Dear Plenary Group and Hydrology Technical Working Group Members:

Purpose of this letter. At the last Plenary Meeting meeting, the COE and FWS (the "Agencies") agreed to provide the Plenary Group with technical "staff work" to analyze some of the components and options that would be part of a workable Spring Rise. The Agencies agreed that their staff work would involve putting together one or more options/proposals for the Plenary Group's consideration, which would satisfy to the greatest extent possible, the constellation of interests of involved in the Spring Rise deliberations. The Agencies also agreed that they would identify their best current thinking regarding possible sideboards that would satisfy the BiOp, and promote the spawning and recruitment of pallid sturgeon.

The Agencies' understanding of their offer to do "staff work" for the Plenary was that they would not be designing or presenting an Agency "proposal", but would be helping to develop options to focus Plenary Group discussions, narrow differences and provide a framework for a Plenary Group consensus on a recommendation.

After completing their staff work earlier today, the Agencies' options and considerations were discussed with and reviewed by the CDR Team, and then sent, via the email that came with this letter to the Plenary and the Hydrology Technical Working Group (HC). The CDR Team seeks the HC's response to the options and would like them to make a report to the Plenary Group for its consideration at August 19th.

Finding a "starting point" rather than the "right" answer. It should be clear at this point in our deliberations that there is probably not a single "right" technical or biologic answer which defines what is required for an adequate Spring Rise for all time. What the Plenary Group has been mandated to do is to identify a *start point* from which we can conduct future adaptive management to positively influence the pallid sturgeon. As such, the CDR Team strongly recommends that no participant seek to "win" this recommendation process – rather, the starting point begins a long term process for improvement, and integration of new information and understandings.

In our deliberations, it is clear that all participants agree that the start point should have a probable positive impact on the spawning and recruitment of the pallid sturgeon, and at the same time minimize to the greatest extent possible, risks and any adverse impacts on other concerned parties in the basin. The data on these issues is complex, and there is a great deal of work for MRRIC to assess the "starting point" and refine and improve it.

To this end, the Agencies, in consultation with the facilitators, have developed some possible parameters for conducting a spring rise. Note that these options are the Agencies' best thinking at this time, and that they are open to other options that might better meet parties' needs as long as those of the pallid sturgeon are also satisfactorily addressed. Nonetheless, the short time period left for discussion requires that you know the Agencies' best thinking so we can focus our final efforts toward a recommendation.

The Agencies' best thinking on criteria that would allow the conduct of an acceptable Spring Rise. So here are some options/parameters that summarize the Agencies thinking. Based on their staff work regarding the Spring Rise, the Agencies are inclined toward:

- **A system storage preclude no higher than 40 MAF**.

Agencies considerations: The Agencies believe that 40 MAF spring rise preclude level for the ten-year plan affords sufficient conservation benefit for pallid sturgeon.

- **Some form of interim relaxed preclude below 40 MAF to encourage a first Spring Rise in 2006 or 2007 because one has not occurred for the last five years.**

Agencies considerations: The Agencies see that there has not been a spring rise below Gavin's Point Dam for many years, and applying the 40 MAF preclude level in 2006 could further delay a necessary element for pallid sturgeon conservation. An approach that would address this concern is application of the 40 MAF preclude level only *after* one year of a spring rise, and set a "first year only" spring rise System storage preclude level at 36.5 MAF (for both the March and May rises). Under this approach, for example, there would not have been a spring rise in 2005 because the spring rise preclude (36.5 MAF) would have prevented a rise when the System storage level was only 35 MAF (which is the lowest level actually experienced during the current drought). Furthermore, under this approach a spring rise would not occur in years where the current drought criteria wouldn't be mitigating loss in storage (such as eventual shortening of the navigation season as a result of the July 1st system storage check).

- **A Spring Rise peak magnitude of at least 16 kcfs.**

Agencies consideration: Consistency with the BiOp.

- **A minimal relaxation of Flood Control Constraints to ensure sufficient number of Rises, which would involve adjustments at Omaha and Nebraska City (as has been discussed in the HG conference calls)**

Agencies consideration: According to calculations provided by hydrologists, flood control constraints would need relaxation from those presented in the CWCP. The minimally relaxed flood control constraints identified by the Corps allow for sufficient spring rises to meet pallid sturgeon conservation needs and address risk concerns raised by downstream stakeholders.

- **Spring Rise Peaks of two days duration with a 30% drop in magnitude after the peak.**

Agencies considerations: save water and minimize any potential impacts in lower basin.

- **Proration Limits on the May Rise to make the proration on the May Rise from 100% at storage of 54.5 MAF to 75% at 40 MAF.**

Agencies considerations: The Agencies believe that the May rise magnitude should be prorated from 54.5 MAF to the spring rise preclude level (40 MAF, except for the first year only at 36.5 MAF). They further believe that the lowest May rise (40 MAF, except

for the first year only at 36.5 MAF) should be no less than 75% of the magnitude at 54.5 MAF.

- **At some time after the first Rise, a possible reversal of the rises (March rise larger than May) to examine habitat creation and minimize possible impacts of a second Rise.**

Agencies considerations: The pallid sturgeon evolved with the natural hydrograph, and the natural hydrograph of the Missouri River reflected a bimodal pattern of rises; that is why the Biological Opinion specifies a bimodal pattern. After one initial year of implementation, the Service is open to consideration of reversal of the magnitude of the two pulses (March and May rises). This would allow for data collection on the higher-magnitude-in-May scenario for the first year, with subsequent assessment of a higher-magnitude-in-March scenario.

In addition, the facilitators suggest that the Plenary Group should consider as part of it recommendation, or as a subject of adaptive management:

- A single rise in some years, with timing being the normal timeframe for either the first or second rise.
- Locations for measurement of Spring Rises (Gavins or downstream).
- Monitoring mechanisms that allow for real-time management of rises, and the prevention of any adverse rise impacts.
- Use of more than one kink in Rise curves (descending limb) to save water and minimize potential impacts.
- Timing adjustments.
- Proration methods and use of runoff as an indicator for prorations.
- Return to Master Manual service level guide curve between Rises.
- Flexibility for the COE in the timing of the Second Rise to minimize bird "take" potential.
- Methods that ensure some frequency of Spring Rise, such as a protocol for a Rise every four years.

The above options are being submitted by the facilitators to the Hydrology Technical Working Group for its' analysis and the development of feedback on impacts to all concerned interests. This information will be presented at the next Plenary Group Meeting in Sioux City or August 19th.

Hydrology Group Report. Because the negotiations over the Spring Rise have only one day to reach a conclusion, and to most effectively use the Plenary Group's time, the CDR Team believes that the best possible process for August 19 would be for the Hydrology Group to comment on each of the proposals before the Plenary that appear to be workable in light of the Agency considerations in this letter.

Hydrology Group comments to the Plenary Group should include

a) A consensus statement from the Hydrology Group, perhaps presented by the COE and John Drew, on flood implications of each option from Gavins to Herman - e.g., in what ways does each alternative impact Lower Basin interests, and how do the constraints affect the ability to provide a Spring Rise? What additional monitoring or assessment would reduce risk?

b) A consensus statement from the Hydrology Group, perhaps presented by the COE and Wayne/Mark/Jeff/Rebecca, on the reservoir implications (including the Randall issue), and sensitivity analysis of storage stop protocols on the number of Rises achieved – eg., in what ways do the various stop protocols proposed by the Upper Basin affect the ability to provide a Spring Rise?

c) A consensus report on the number of Rises achieved for each proposed option.

The CDR Team does not believe that there is time on August 19 for lengthy presentation of slides and analysis. Rather we ask that the Hydrology Group consider three levels of presentation:

1. Verbal summary of conclusions and options.
2. More detailed summary format with limited slides or charts.
3. Detailed presentations.

The CDR Team prefers that the HG send out the detailed back up data prior to August 19 and stay to using options 1 or 2 above for your presentation. We believe that a clear report on these questions (a, b and c) would permit the Plenary to make policy decisions rather than get caught in technical disputes.

USGS perspective. We know that the USGS has participated in this process not to make recommendations or proposals, but rather to offer its independent perspective. We believe that it will be helpful if Robb Jacobson could participate during the Hydrology Group report and in the Plenary discussions to provide some outside input on the various implications of choosing between options and the effects of the various contemplated limits (e.g., preclude, flood control).

Why seek consensus? It has been mentioned that facilitators and mediators are inclined toward parties' reaching joint agreements and may have a bias that way. We do urge that you seek consensus but not because of a bias. Each of your facilitators has been in conflicts in which we have told the parties – "it appears that you cannot reach agreement and may very likely need to resolve this in court." This in not such a case.

We urge consensus for the following reasons:

Starting point – You are not competing for the best or most correct Spring Rise for all time. Rather, you are setting the start point from which you will learn and improve. Whatever you do in the Spring Rise process will need adjustment.

***The Missouri River needs a long term process –* MRRIC**. An agreement on a Spring Rise is the best way to start the MMIC process, to address Pallid Sturgeon issues and to start to address a number of other topics of concern to stakeholders on the river..

A modest start is much better than no start. We believe that no agreement at all will increase the likelihood and potential magnitude of future conflict. The fact thatthe River connects all of you means that you will inevitably have to work on these issues together in the future. A stalemate now will not be helpful as you move forward to address river issues, either in the near or long term. What is needed is an effective way to begin to manage and resolve differences now, which will act as a positive impetus to address other issues in the future..

This matter does not belong in court. Your facilitators have a lot of experience in disputes that are bargained in the "shadow of the law." The factual complexity of this matter alone is reason enough not to go to court. Courts are not designed to effectively deal with this type of dispute. Going to court just lets you know there will be an outcome without any guaranty of its substantive quality or fairness. The court gives you fair and due process – only. If you want substantive quality and effectiveness, you need to be out of court and designing technical solutions which this group has the knowledge to do. Courts deal with short-term solutions (you win and you lose) and are not inclined to long-term matters.

Lastly, we think the goal of a consensus recommendation is achievable if Plenary Group members have some patience and flexibility, and keep a long-term perspective. We have seen your work together, and believe that you can reach a mutually acceptable and workable agreement. Although this is complex and tedious at times, we know you can make the decision to start a long-term process on the Spring Rise and to contribute to a positive launch of MRRIC. We strongly believe that in the long run an agreement on a Spring Rise will be more beneficial than short-term legal or political battles. Politics and law generally do not provide long term adaptive solutions. That is the work of groups like the Plenary and MRRIC.

So what are the next steps? To date the Plenary Group has spent the majority of its time developing a common understanding of issues, identifying possible general options to consider and, to some extent, identifying problems with these proposals. We now need to transition to getting concrete "integrative proposals" for a Spring Rise that Plenary members think will address and satisfy as many of the interests of concerned stakeholders as possible, with tangible proposals for monitoring and mitigation where the latter is necessary. Please come to the meeting with such proposals to share with you colleagues.

We look forward to hearing your comments and ideas, and to productive deliberations and decision making on the 19th.

Chris and Joe