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## Article Title: The Missouri National Recreational River: An Unlikely Alliance of Landowners and Conservationists

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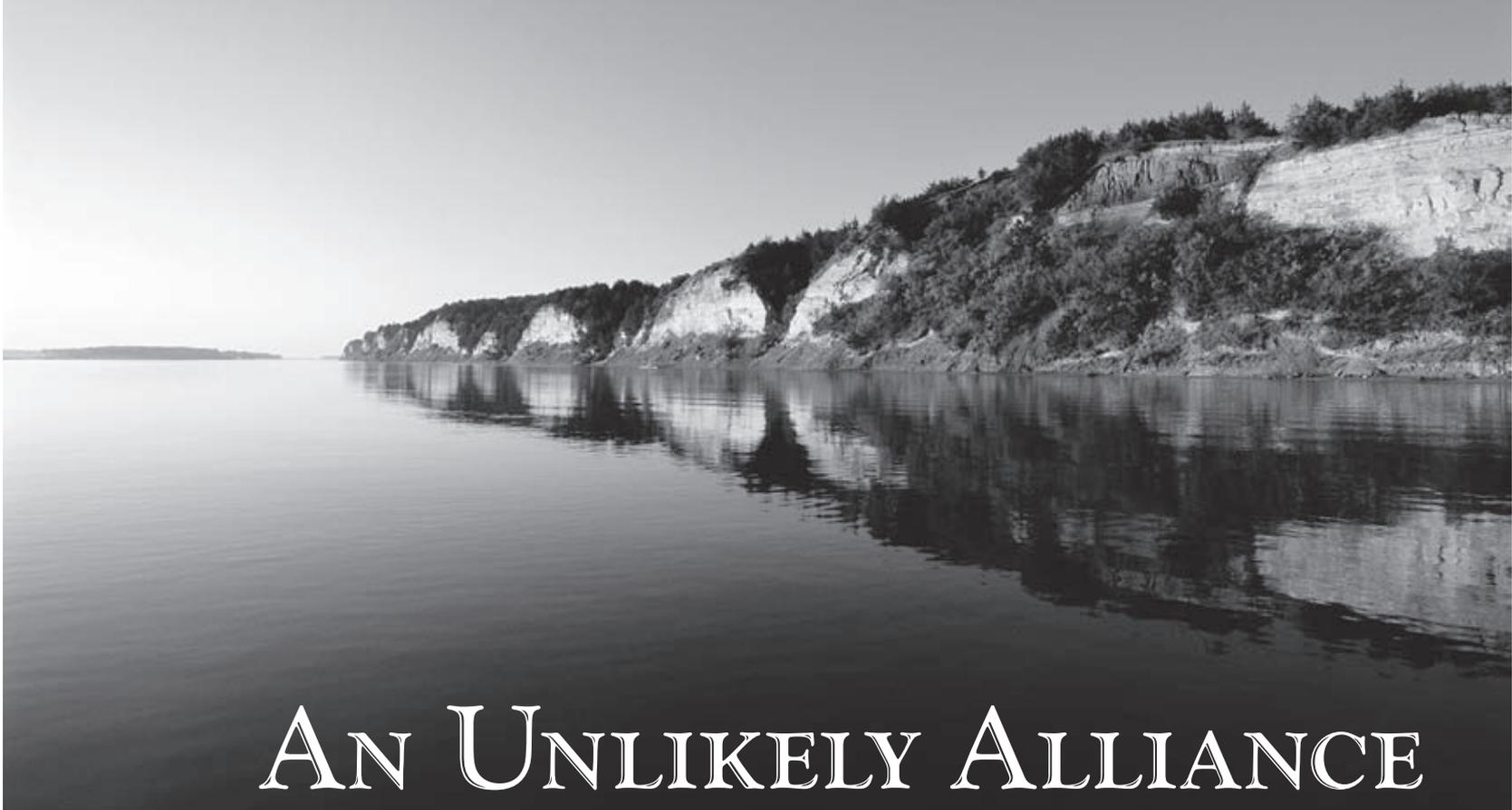
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Photographs / Images: maps: Missouri River National Recreational Riverway, original 1978 river boundary; Missouri River near Lewis and Clark Lake\*; Gavins Point Dam\*; US Fish and Wildlife Service biologists transferring a caught paddlefish to a holding tank for spawning purposes\*; sunrise near Ponca State Park\*; Canadian violet at Ponca State Park\*; white-tailed deer at Niobrara State Park\*; "turtleback" formations near Lewis and Clark Lake\*; bald eagle nest on a sandbar island\*; endangered pallid sturgeon in holding tank at Gavins Point National Fish Hatchery\*; white-tailed deer following the shoreline\*; students listening to US Fish and Wildlife Service biologist\*; sunrise at Bazile Creek Wildlife Management Area\*; young raccoon at Niobrara State Park\*; duckcissel on a sunflower at Ponca State Park\*; sunrise near Standing Bear Bridge, Niobrara (2 views)\*; views of Ponca State Park: moonset\*, summer rainstorm\*, columbine\*, great spangled fritillary\*; endangered pallid sturgeon fry at Gavins Point hatchery\*; tallgrass prairie\*; Niobrara State Park\*; old bridge piling in the river at Ponca State Park\*; endangered least tern on her eggs at a sandbar island nest\*; hiker-biker trail at Niobrara State Park\*; Congresswoman Virginia Smith; Congressman Charles Thone; Senator Carl Curtis; Missouri River sandbar island near the confluence of the Niobrara River\*

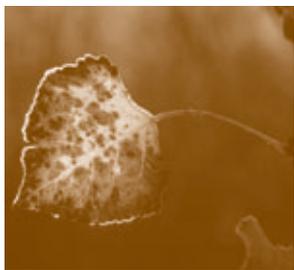
\*Michael Forsberg photograph

*In 1978 lawmakers hailed a fragile alliance of landowners and conservationists who sought to protect a rare “natural” stretch of the Missouri River. The result was not what they expected.*

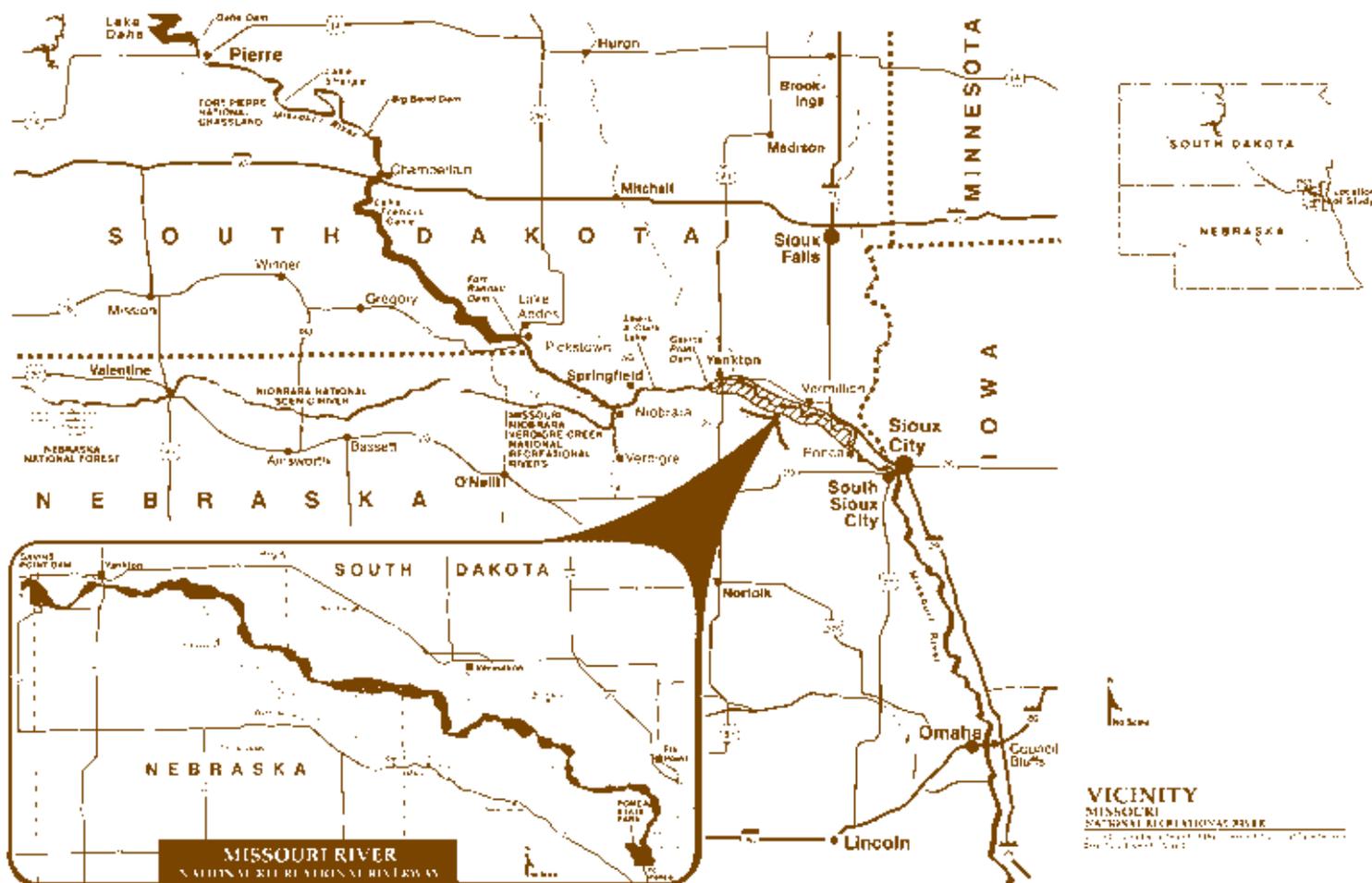
## The Missouri National Recreational River:



# AN UNLIKELY ALLIANCE OF LANDOWNERS AND CONSERVATIONISTS



BY DANIEL D. SPEGEL  
PHOTOGRAPHY BY MICHAEL FORSBERG



The Missouri River has historically been a temperamental force. People huddled close to it for security and sustenance, though they knew it held the kinetic energy to overwhelm them at any moment. In the mid-twentieth century the federal government harnessed the river's great potential with the creation of large public works projects. Federal authorities have continued to alter the river's natural course ever since.

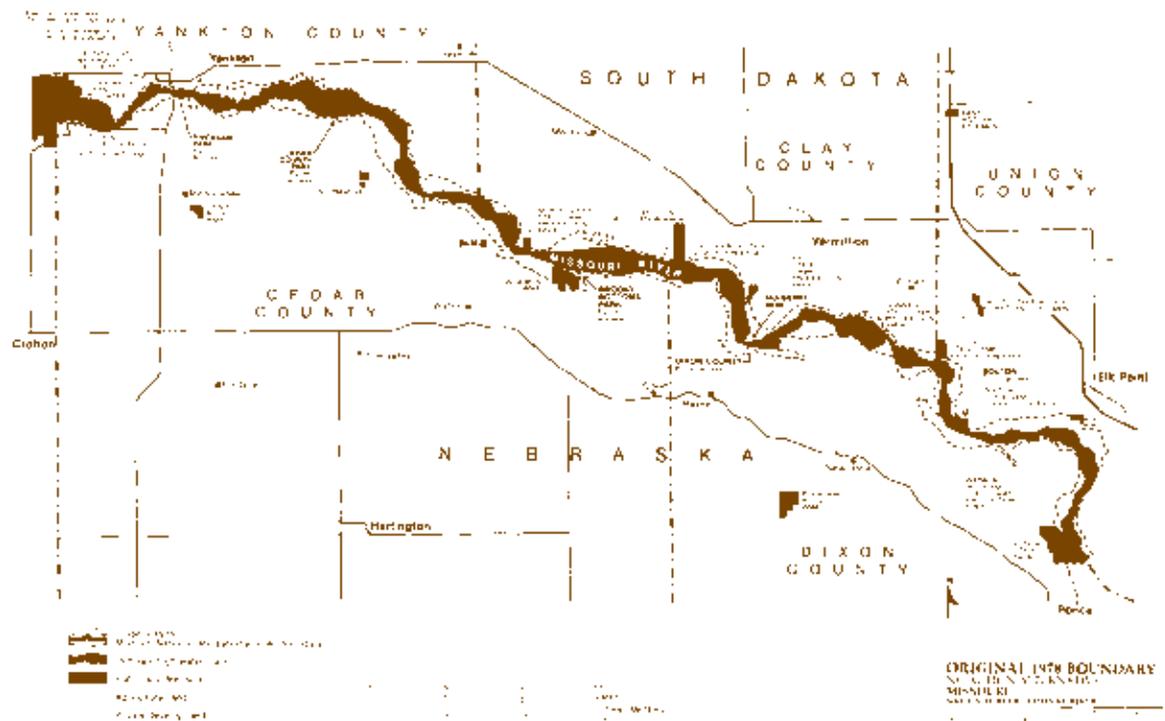
Bordering northeastern Nebraska, one segment of the mighty river has maintained its natural character by escaping most of these radical alterations. Efforts to preserve it as a component of the National Wild and Scenic Rivers System have been a precarious balancing act between progress and conservation.

This is the story of an unlikely alliance formed in the late 1970s, in which conservationists seeking to preserve this reach as a federal recreational river joined forces with landowners intent on stabilizing the riverbanks. The coalition spurred Congress to enact the National Parks and Recreation Act of 1978, from which the fifty-nine-mile stretch

of Missouri National Recreation River (MNRR) was created.<sup>1</sup>

Because the coalition involved a marriage of differing ideals that were at times difficult to reconcile, lawmakers had to walk a fine line in order to keep all parties in agreement. To do so, they wrote legislation with unique stipulations. Nonetheless, the history of the legislation's development is a remarkable example of compromise—and perhaps naivety. In the end, the scenic designation led to a far different result than what many of its backers anticipated.

**The Missouri River Basin** encompasses one-sixth of the contiguous United States, draining a watershed of more than 500,000 square miles. Starting at an elevation of 4,032 feet above sea level, the river leaves its mountainous origins and descends more than four hundred feet over a twelve-mile series of cataracts to the Great Plains. It later widens at the large reservoir above Fort Peck Dam in northeastern Montana. The remainder of its journey is through mostly flat grasslands, with bluffs often flanking its valley.



The stretch of river designated the MNRR begins at Gavins Point Dam near Yankton, South Dakota, and runs fifty-nine miles downstream to Ponca State Park, Nebraska. (This is also referred to as the “fifty-nine-mile” segment or reach).<sup>2</sup> This unrestrained segment comprises only a small portion of the mighty river’s 2,341-mile length, but its historic, scenic, and natural values are remarkable. The reach offers a vision of what much of the Missouri River used to be like in its natural state—free-flowing, with a shifting and braided channel, islands, sandbars, and wetlands. The river here is also wide and shallow compared to the long channelized stretch downstream from Sioux City to St. Louis.

Efforts to control the Missouri River were sporadic until Congress authorized the Pick-Sloan Plan in 1944, the largest and most durable alteration of the river and its floodplain. As a part of the Flood Control Act of 1944, the plan was a consequence of the Great Depression and the conservation movement’s belief that multipurpose water projects would stimulate growth in the arid West. The Pick-Sloan Plan was largely responsible for creating the conditions that made a wild and scenic river designation of the fifty-nine-mile segment important. If the plan’s massive projects had never been built, the MNRR probably would not have been established.

The plan called for five main stem dams/reservoirs in the Dakotas: Garrison/Lake Sakakawea; Oahe/Lake Oahe; Fort Randall/Lake Francis Case;

and Gavins Point/Lewis and Clark Lake. (Montana’s massive Fort Peck Dam and reservoir had already been completed.) The storage capacity of these six reservoirs is about seventy-three-million acre-feet, the largest amount of water stored by any system in North America. Meanwhile, reinforced banks and the dredging of a navigation channel helped tame the river’s lower reaches.<sup>3</sup>

The benefits of these engineering efforts are undeniable. Major floods are no longer the threat that they once were, and recreational opportunities have increased, thus improving local economies. According to data maintained through 1999 by the U.S. Army Corps of Engineers, a total of 6,731,800 visits are made each year to the six main stem reservoirs, and recreationalists spend \$108.26 million annually. The improvement in upstream recreation is also related directly to the enhancement of fishing and wildlife in the system reservoirs. The upper three larger reservoirs have been stocked with cold-water fish to take advantage of their deep, chilly waters, and large areas on project lands are preserved for diverse wildlife. Thirty-six hydropower units at the six main stem dams provide a combined capacity of 2,435 megawatts, helping to meet the region’s power needs. The navigation project provides a means for low-cost transportation as a link in the Mississippi River waterway system, and the river provides irrigation for dry farmlands.<sup>4</sup>



Along the Missouri River near Lewis and Clark Lake.



Below Gavins Point Dam, U.S. Fish and Wildlife Service biologists transfer a caught paddlefish to a holding tank for spawning purposes, part of a restoration effort for the species.



Gavins Point Dam, at the head of the lower 59-mile reach of the Missouri National Recreational River.



Sunrise near Ponca State Park. "With what propriety this 'Hell of waters' might be denominated the river 'Styx,' I will not undertake to decide,"wrote George Catlin in 1844, "but nothing could be more appropriate or innocent than to call it the river of Sticks."



Canadian violet growing in the bluffs forest at Ponca State Park.



White-tailed deer at dusk on the prairie above the Missouri River at Niobrara State Park, part of a 39-mile reach below Fort Randall Dam that was added to the Missouri National Recreational River in 1991.



“Turtleback” formations along Missouri River near Lewis and Clark Lake.



Bald eagle nest on a sandbar island, along the Missouri near its confluence with the Niobrara.



Endangered pallid sturgeon adult female from the wild in temporary holding tank for spawning purposes. Gavins Point National Fish Hatchery, Yankton, South Dakota.



A white-tailed deer follows the shoreline along a cottonwood gallery forest on a Missouri River island.



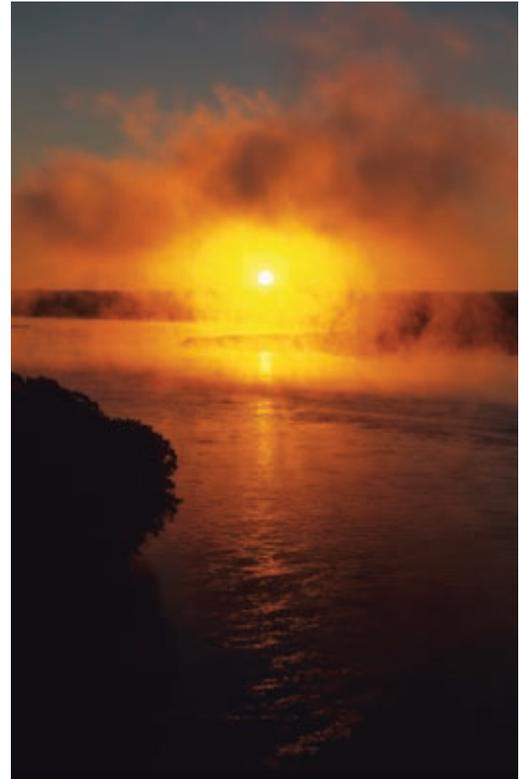
At Gavins Point National Fish Hatchery in Yankton, S.D., students listen to U.S. Fish and Wildlife Service biologist Herb Bollig (now re-tired) as he explains how scientists are recovering the endangered pallid sturgeon.



A foggy, early October sunrise in riparian wetlands at Bazile Creek Wildlife Management Area, adjacent to the Missouri National Recreational River.



A young raccoon at Niobrara State Park.



A foggy October sunrise near Chief Standing Bear Bridge, Niobrara.



Dickcissel singing on a sunflower perch in restored tallgrass prairie at Ponca State Park.



Moonset at Ponca State Park.



A summer rainstorm at Ponca State Park.



Columbine in early summer in the Missouri River bluffs forest at Ponca State Park.



A great spangled fritillary butterfly draws nectar from a purple prairie coneflower on restored tallgrass prairie at Ponca State Park.



Endangered pallid sturgeon fry in a captive propagation program at Gavins Point National Fish Hatchery, Yankton, South Dakota.



Tallgrass prairie at first light, Niobrara State Park.



An old bridge piling stands in the river at Ponca State Park, but otherwise this reach of the Missouri retains its historic appearance: a broad, shallow stream with soft cutbanks...and lots of floating timber.



An endangered least tern on her eggs at a sandbar island nest. The nest was built unnaturally high by human hands so that it might survive raised water levels. The Army Corps of Engineers would soon release extra water from Gavins Point Dam to float a barge hauling grain downriver.



Along the Missouri River hiker-biker trail at Niobrara State Park.

But the bad must be taken with the good. William Graf, professor and chair of geography at the University of South Carolina, writes: “The past two centuries of intensive technological development of America’s river resources have damaged the physical, biological, and chemical characteristics of the streams and their associated landscapes by fragmenting what was once an integrated system.”<sup>5</sup> Quite simply, regulated rivers, like the Missouri, cannot function naturally. Except in a few reaches, the Missouri no longer resembles the free-flowing and meandering river it used to be.

System regulation has likewise degraded the river’s water quality. Examples of this degradation are temperature changes found in the reaches downstream from the dams, low concentrations of suspended solids in the releases, and dissolved oxygen problems during droughts. The almost sediment-free releases from the dams have increased riverbed degradation, deteriorated fish and wildlife habitats, and increased riverbank erosion. Severe erosion has always been an issue in the fifty-nine-mile reach, but annual flood deposits replaced the soil that the river took downstream. The main stem dams have halted this accretion process, resulting in a net loss of land.

**O**n September 2, 1971, six families from Newcastle, Nebraska, formed the Missouri River Bank Stabilization Association (MRBSA). They sought to create a unified effort to attain government-funded bank stabilization on the Missouri River. Their major concern, they said, was “the cutting and eroding of the banks along the Missouri, causing an irreparable loss to the farmers in lost income, and to the county in lost taxes.” The association quickly became a force in Missouri River politics. Members launched a letter writing and telephone campaign to increase public awareness, and their numbers grew when landowners from the South Dakota side of the river were invited to join.

After failing to secure bank stabilization via the 1973 Omnibus Rivers and Harbors Act, the MRBSA rallied behind a more promising opportunity. A 1969 Corps of Engineers report had found that the cost to prevent erosion losses far outweighed the benefits. In order to develop low-cost methods to limit the economic impact of streambank erosion, Congress passed the Streambank Erosion Control Evaluation and Demonstration Act of 1974 (Public Law 93-251) on March 7, 1974. Section 32 of this legislation established a program that provided for research studies to better identify the causes of erosion, an evaluation of existing bank protection

techniques, and the construction and monitoring of demonstration projects to assess the most promising bank protection methods. The act, referred to as Section 32, provided for the completion of sixty-eight bank stabilization demonstration projects by 1981, nine of which were in the Gavins Point Dam to Ponca segment. This brought hope to the beleaguered landowners, but protection was limited to a handful of sites and funding was uncertain. So the MRBSA and congressional delegates from Nebraska and South Dakota pressed for more governmental support for bank stabilization.<sup>6</sup>

In August 1977 the Corps of Engineers released a three-volume report titled, *Missouri River: South Dakota, Nebraska, North Dakota, Montana. Review Report for Water Resources Development*. This report, also known as the “Umbrella Study,” examined a broad range of water resource problems and opportunities that related to the Missouri River between Three Forks, Montana, and Sioux City, Iowa. One of the corps’ goals was to find a way to lessen the effect of erosion in the fifty-nine-mile segment, and it cited a 1971 Bureau of Outdoor Recreation report that examined the reach for possible inclusion into the National Wild and Scenic Rivers System. Here, the Corps of Engineers believed, was a possible solution.<sup>7</sup>

In fact, the Bureau of Outdoor Recreation report was one of three reports released from 1969 – 1971 to acknowledge the reach’s worthiness for national protection. After conducting a feasibility study (and after much debate among concerned parties), the Corps recommended in the Umbrella Study that the reach be included within the system under the classification of Recreational River. The segment did not meet eligibility for Scenic classification due to extensive shoreline intrusions. Preservation of the reach’s outstanding values were to be carried out through the acquisition of scenic and recreational easements, protecting approximately 14,500 acres of land, and the purchase of 424 acres of private land necessary for facility development. Regarding erosion control on the fifty-nine-mile reach, the Umbrella Study’s chosen plan provided for bank stabilization in furtherance of the Section 32 projects.<sup>8</sup>

Most concerned parties strongly endorsed a draft of the Umbrella Study’s proposal, including the congressional representatives from South Dakota and Nebraska. South Dakota Senator James Abourezk made a speech at the Pierre informational meeting on June 30, 1976, and said that the river proposal was a great example of how conservation and erosion control could be incorporated into river management. Abourezk praised it for allow-

ing a meandering river that would be aesthetically pleasing, cost effective, protect wildlife, and protect valuable farmland from being washed downriver. If the proposal's initial promises were included in the Umbrella Study's final report, Abourezk said that he would "be one of its most ardent supporters."<sup>9</sup>

Not everyone supported the Umbrella Study's recommendation. During the study process, the Bureau of Outdoor Recreation and the Fish and Wildlife Service questioned whether a recreational river designation was compatible with bank stabilization. The bureau said the Corps of Engineers did not "seem to realize what was involved in the potential designation of a river into the National System."<sup>10</sup> This was a crucial point, as later events would prove. Further, they said that the report did not clearly define the minimum criteria for inclusion, such as the use of artificial riverbank stabilization devices, and thus appeared to downgrade the National Wild and Scenic Rivers System by sponsoring a "channelized stream." The agency also expressed concern over the visibility of even natural structures.<sup>11</sup>

To protect the system's integrity, the Bureau of Outdoor Recreation suggested that the report be modified to include a trial period for the Section 32 structures to see if they were compatible with the Wild and Scenic Rivers Act.<sup>12</sup> Despite their reservations, the agency recognized that designation would not occur without some sort of erosion control. An unsigned Bureau of Outdoor Recreation memo to the planning committee stated: "It is our understanding that considerable widespread public support exists for inclusion . . . and that much of this support is dependent upon installation of structures to alleviate the soil erosion problem. We suggest that you consider increasing report emphasis on this very important matter of public support and local sentiment."<sup>13</sup>

Thus, despite the concerns voiced by some, the Umbrella Study delivered a proposal acceptable to both landowners and conservationists. Landowners felt that a recreational river designation would provide federally-funded bank stabilization, and conservationists were willing to accept that it could be done without harming the river's natural character. Congress quickly began to draft legislation before the fragile alliance fell apart.

**T**he development of this legislation began at a March 1, 1978, meeting convened by the Missouri River – Fort Randall Dam to Sioux City Erosion Control Task Force. The meeting's primary purpose was to discuss ongoing erosion issues and

possible legislative solutions. In attendance were representatives from the Corps of Engineers, U.S. Fish and Wildlife Service, Heritage Conservation and Recreation Service, MRBSA, and other interested groups. The Fish and Wildlife Service introduced a proposal to develop legislation for designating the fifty-nine-mile segment as a recreational river, but expressed apprehension toward mating bank stabilization to a wild and scenic rivers designation. Members in attendance agreed to circulate the proposal for review by all concerned entities, and then to draft legislation acceptable to these parties.<sup>14</sup>

Washington, D. C., officials supported the meeting's efforts. Robert Herbst, assistant secretary for Fish, Wildlife, and Parks, wrote that all local interests and local governmental entities supported the plan. He believed that an amendment designating the fifty-nine-mile reach could be included in the 1978 omnibus bill.<sup>15</sup> Virginia Smith, representative for Nebraska's Third District, was a strong advocate for erosion control on the fifty-nine-mile reach and supported the recreational river concept. On April 11, she convened a meeting at her Washington, D.C., office to resolve questions about the relationship between bank stabilization and national recreational river status. Attendance included the staff assistants to Senators Edward Zorinsky, George McGovern,



**Congresswoman Virginia Smith was a strong advocate for erosion control on the fifty-nine-mile reach and supported the recreational river concept.**  
NSHS RG2411:5180

and James Abourezk, and Representatives Charles Thone and James Abdnor, as well as representatives for the secretary of the interior, Siouxland Interstate Metropolitan Planning Council, MRBSA, Corps of Engineers, Fish and Wildlife Service, state of South Dakota, and National Park Service.<sup>16</sup>

During the meeting, local interests voiced their opposition to any action that jeopardized the Section 32 erosion control program, but they agreed to support the recreational river proposal if it protected their lands from erosion and forced sale. The Fish and Wildlife Service said that the recreational river designation was “essential” to preserve the aesthetic and environmental values of the fifty-nine-mile reach; it also acknowledged the need for bank stabilization, but with some reservation. The service believed that the current approach of designating a few sites each year caused problems. For one thing, it meant that agencies had to re-evaluate the program every year, straining a small staff that lacked expertise, which in turn led to delays in commenting upon the proposed projects. An integrated recreational river/erosion control plan, the service said, would “greatly reduce the repetitive workload.” It would be simpler to evaluate a comprehensive plan and make sure that bank stabilization devices would be compatible with recreational river goals. The Corps of Engineers strongly supported the recreational river concept and steadfastly argued that they were the logical agency to administer it.<sup>17</sup>

The meeting participants then planned how to proceed. They agreed that local interests and congressional liaisons would meet the following morning to draft legislation recommending the recreational river designation, but with the demands that it (1) create a clear definition of erosion control features, (2) eliminate or stringently limit condemnation powers, and (3) limit the authority of the proposed river management group. The group also proposed that the amendment be included in the Interior Department’s omnibus bill. Representative Smith began drafting the legislation the next day, and within two or three days sent a discussion draft to interested parties. Their responses were positive.<sup>18</sup>

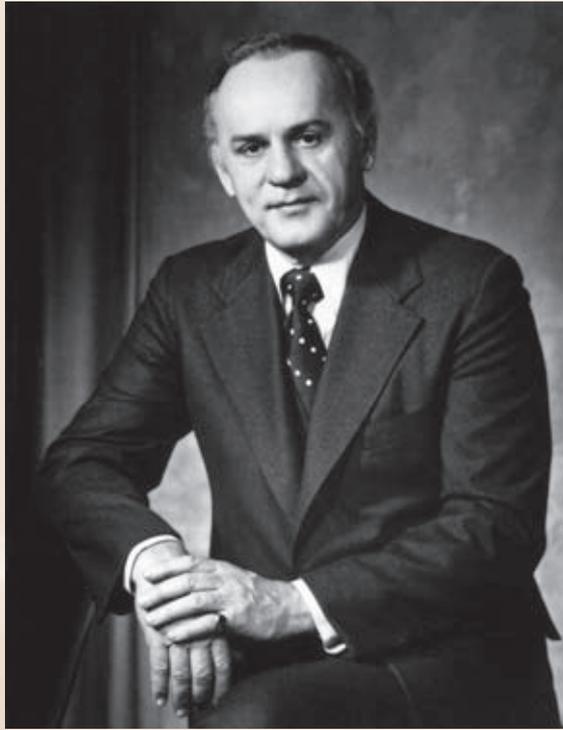
On May 3, 1978, Representative Phillip Burton introduced H.R. 12536 (the “omnibus bill”) into the House. Also cited as the “National Parks and Recreation Act of 1978,” H.R. 12536 provided for funding increases, land acquisition, and boundary changes in certain federal parks and recreation areas. Just three weeks after the bill’s drafting, Representative Smith’s amendment began its journey through Congress as Section 708 of this massive bill. Burton,

a Democrat, represented California’s Sixth Congressional District and was a strong advocate for environmental causes. The Missouri River amendment was a cause he could support.<sup>19</sup>

The Committee on Interior and Insular Affairs did not take long to review H.R. 12536, issuing a report barely two weeks later. Regarding the Missouri River, the report acknowledged the “delicate” negotiations that resulted in the proposed recreational river designation. The committee then addressed streambank stabilization structures and recreational features, acknowledging the secretary of the interior’s responsibility in their development and maintenance. Before construction, the government and landowners had to agree to the protection of the land in accordance with the Wild and Scenic Rivers Act, and condemnation authority had to be limited to no more than five percent of the acreage within the designated river’s boundary. The committee assigned personnel and funds to establish the recreational river as soon as possible. The report warned that a “lack of administration sense of urgency would have a serious impact upon those private landowners affected.” They did not want more land to be washed away by the Missouri River while those in charge dragged their feet.<sup>20</sup>

**The MNRR legislation** approved by the House Interior Committee included a requirement unique to the National Wild and Scenic Rivers System: a cooperative agreement between the secretary of the interior and the secretary of the army, requiring the Corps of Engineers to build and maintain bank stabilization and recreational devices. The corps would decide which new structures needed to be built; continuing maintenance would include all bank stabilization features constructed both before and after the bill’s enactment. The bill also empowered the secretary of the interior to establish a Recreational River Advisory Group, to be composed of representatives from affected governmental and private agencies. Administrators were to consult the group regarding management of the river. The bill limited the governments’ ability to acquire land without consent to five percent of the total land within the designated river boundary, and authorized funding not to exceed \$21 million.<sup>21</sup>

Representative Smith tried to incorporate the concerns of all interested parties into the amendment. According to one of her aides, the legislation was revised several times before the committee report was released. Even so, the Corps of Engineers—despite its approval of the legislation’s wording in April—found deficiencies in the bill’s



**Congressman Charles Thone praised the “spirit of cooperation” among the interested parties. He testified that the proposed legislation would preserve the environment, promote recreation, and expand erosion control efforts along the river.**  
NSHS RG2411:5595a

language. Brig. Gen. William Read wrote a letter to Maj. Gen. Charles McGinnis, director of civil works for the corps, saying that the project’s \$21 million budget was an “undesirable restriction” during a time of inflation. Read also felt that the five percent limit on eminent domain would result in higher costs and an “unworkable pattern” of available lands. Finally, he warned that the provisions for river administration were “so ambiguous as to be nearly unintelligible,” mainly because of uncertainty surrounding the proposed Recreational River Advisory Group’s authority. But in the end, probably in the interest of preserving the fragile accord, the bill’s wording was not changed to accommodate General Read’s concerns.<sup>22</sup>

The House considered H.R. 12536 on several occasions between late June and mid-July. The first debate regarding the establishment of the MNRR took place on June 26, 1978, when Republican Charles Thone, representative for Nebraska’s First Congressional District, testified in its favor. Praising the “spirit of cooperation” among the interested parties, Thone testified that the proposed legislation was unique because it addressed two important but distinct concerns. First, it would preserve the

environment while promoting recreation. Second, it would expand erosion control efforts on the fifty-nine-mile reach. The river’s designation would have been impossible without both of these factors, he said, adding that the bill’s two key aspects were a limit on government condemnation powers and the establishment of an advisory group.<sup>23</sup>

Later that day, Representative Smith spoke to the House about the proposal’s merit. She congratulated those who had worked for the designation, identifying Earl Rowland, president of the MRBSA, in particular. She said environmental protection and the need to stabilize the riverbanks were equally important. Intertwining erosion control and preservation would benefit the entire public. As an example, she noted that streambank stabilization helped save private and government land, but by doing so, trees, wildlife shelter, and other vegetation were also protected from erosion. Further, stabilized banks ensured ongoing recreational activities for the public.<sup>24</sup>

Such statements make it clear that Smith intended to stabilize the banks of the fifty-nine-mile reach. She went on to say that the Section 32 demonstration program was inadequate because it was temporary and only protected a limited number of sites, while Section 708 of H.R. 12536 was “much more comprehensive and valuable.” She further said that the restrictions placed on governmental condemnation powers were a signal to the rest of the country that laws were “most successful when they are reasonably administered and derive their force from direct consent of the people.”<sup>25</sup>

The House passed H.R. 12536, the National Parks and Recreation Act of 1978, by a vote of 341 yeas, 61 nays, and 30 abstentions on July 12 and referred it to the Senate Committee on Energy and Natural Resources. There it would meet greater opposition.<sup>26</sup>

**I**n the Senate, the issue was first taken up by the Subcommittee on Parks and Recreation of the Committee on Energy and Natural Resources. They conducted hearings on S. 2706, S. 2848, and H.R. 12536. National Park Service Director William Whalen testified that the Carter administration supported the addition of all proposed wild and scenic river segments in H.R. 12536—except for the fifty-nine-mile stretch of the Missouri. Too many questions about it remained.<sup>27</sup>

Rather than spend \$21 million, Whalen recommended authorizing only \$1 million for the Missouri River proposal. This would pay for further study to evaluate the environmental impact of future stabilization structures. However, the subcommittee noted

that the bill called for development in accordance with the Corps of Engineers' Review Report, and asked why the river should be studied again.

The report, Whalen said, identified where structures were needed; he acknowledged that some were necessary and probably compatible



**Senator Carl Curtis was “dumbfounded” by the Carter administration’s rejection of the plan so carefully worked out by landowners and government officials.**  
NSHS RG2411:1193c

with a recreation river classification. However, the National Park Service feared that the structures' impact over time might disqualify this river segment. The subcommittee asked if Whalen thought Congress should act immediately to establish the river because support for its designation was held in a tenuous coalition of government agencies, environmentalists, and local groups. Whalen admitted the alliance's fragile nature, but he also appealed to members' sincere interests in the values of the river and asked that those conducting the study keep all groups involved in the process.<sup>28</sup>

After the hearing, Robert Eastman of the National Park Service's planning development office said that it was the Office of Management and Budget, not the Park Service, which decided to oppose the proposal. Nebraska Senator Carl Curtis said in a statement that he was “dumbfounded” by the Carter administration's rejection of a plan so carefully worked out by landowners and government officials.<sup>29</sup>

Alarmed by the Department of the Interior's testimony at the Parks and Recreation Subcommittee hearing, Senators Carl Curtis, George McGovern, and Edward Zorinsky wrote to Senator James Abourezk, the subcommittee's chairman, hoping to win his support and soften administration opposition to the project's cost. Abourezk, a Democrat from South Dakota, did not have a firm position on the recreational river proposal because he had been busy with other issues. The three senators expressed their extreme disappointment in the Department of the Interior's decision to oppose the Gavins Point – Ponca reach as a recreational river, and stated that if cuts were to be made in the omnibus parks bill (H.R. 12536), “the Missouri River is hardly the place to begin.”<sup>30</sup>

Curtis, McGovern and Zorinsky recounted some of the circumstances which influenced their decision to support the designation. In 1974, the Corps of Engineers' received its Section 32 authorization to build six bank stabilization demonstration projects, but it was not required to provide environmental impact statements due to the minimal impact on the local human environment. Following that determination, Congress authorized the Corps to construct up to five more projects, which would exceed the originally agreed upon six structures that received an environmental waiver. Because of this, consideration had been given to requiring environmental impact statements for the additional bank stabilization structures. The letter noted that further environmental impact statements would “impede” or even “stymie” bank stabilization in the area, despite “an undeniable need and compelling evidence” for it to occur. As a solution to the challenges of implementing necessary bank stabilization, while at the same time protecting wildlife values, the senators wrote that the Umbrella Study's recommendation for recreational river status was “seized upon” by all the parties. The proposal also presented a “unique opportunity” for recreation along the Missouri River's last relatively natural reach.<sup>31</sup>

The subcommittee recognized the widely varying interests behind the river proposal, but generally supported it, and wondered if Congress should act immediately in order to keep the tenuous alliance together. Senators McGovern, Curtis, and Zorinsky capitalized on this concern, remarking in their letter: “We are afraid that without passage of this legislation the attempt to arrive at an amicable compromise will be lost forever, that the parties involved in working so hard and long to formulate this agreement will be so thoroughly frustrated that they will return to their adversary relationship.”<sup>32</sup>

The problems of using the Wild and Scenic Rivers Act to achieve bank stabilization in the Gavins Point to Ponca reach remained a major concern of the subcommittee. The letter pointed out that the bill's language ensured that there would be no bank stabilization without the preservation of wildlife values. A landowner who stood to benefit from stabilization would have to make available land for the protection of fish and other wildlife. This may have been the senators' way of reconciling the inherent differences of man-made structures designed to limit a river's natural tendency, with an act intended to preserve a river's natural state. They balked at the Department of the Interior's recommendation of another year's study of the river's designation, commenting that it had already been studied thoroughly. In hindsight, Congress should have taken a closer look at the marriage of bank stabilization and the Wild and Scenic Rivers Act. Nevertheless, the letter sent by Curtis, McGovern, and Zorinsky succeeded in its intended task, and by August 4, Abourezk stood firmly behind the recreational river proposal and felt that the bank stabilization aspect of the project was particularly important.<sup>33</sup>

The senators' letter was not the only one written in response to the Department of the Interior's opposition to the proposal. Local environmental groups also sought the backing of Interior Secretary Cecil Andrus. Constance Bowen, executive director for the 1,500-member Nebraska Wildlife Federation, sent one such letter, describing the designation as a means to protect the Missouri River's last "old wide-bed meandering" reach. But contrary to nearly every other interested party, Bowen felt that by including the fifty-nine-mile segment into the National Wild and Scenic Rivers System, the construction of further bank stabilization devices would be prevented. Bowen, who wanted to keep the river as natural as possible, warned Secretary Andrus that widespread bank stabilization would be unavoidable without the designation, resulting in increased spending and the loss of social values.<sup>34</sup>

One week later, Fred Prierwert, director of the Iowa Conservation Commission, wrote to Secretary Andrus asking that the department rescind its request for further studies on the reach. Prierwert emphasized that studies had already been completed, and that the Heritage Conservation and Recreation Service and Fish and Wildlife Service were in agreement with farmers and the corps on this issue. The Department of the Interior responded with letters to both agencies, stating that its position would remain the same. Administration support for the recreational river proposal would still hinge

upon the completion of a full environmental impact study indicating that bank stabilization in the reach would be compatible with the Wild and Scenic Rivers Act.<sup>35</sup>

On October 4, 1978, Representative Burton requested that S. 791 be discharged from the Committee on Interior and Insular Affairs. While it still remained a part of H.R. 12536, and the House had passed the National Parks and Recreation Act of 1978 on July 12 by a large margin, a few senatorial complaints stalled the bill. Burton intended to deal with these complaints in a revitalized S. 791, which Senator Frank Church had first introduced on February 24, 1977, and which never made it out of committee. Burton requested that most of S. 791 be stricken and replaced with a revised version of the National Parks and Recreation Act from H.R. 12536. The transfer left the MNRR designation unaltered, except for being moved from Section 708 to Section 707. The amended bill was passed by the House that same day.<sup>36</sup>

On October 12, several senators debated the merits of S. 791. Among them was Senator George McGovern, who described the reach as "one of the last vestiges of the 'free flowing' Missouri," remaining nearly in the same state as it had been prior to the passage of the Flood Control Act of 1944. He recounted how the Pick-Sloan dams both benefited and harmed the region. They provided low-cost electricity, saved the loss of hundreds of millions of dollars to flood damage, made possible a navigation industry, and even benefited some wildlife such as the whooping crane. However, the dams also caused the loss of fertile river-bottom land, which provided habitat for diverse wildlife. McGovern added, "We might be tempted to believe we cannot have it both ways—that we cannot have both the dams and reservoirs and the river bottom land. But we can."<sup>37</sup>

McGovern described the exceptional characteristics of the fifty-nine-mile reach, contrasting it to the rest of the engineered Missouri River as a segment that looked much like it did when Lewis and Clark traveled its waters. A recreational river designation, combined with a proposal to make the river a part of the Lewis and Clark National Historical Trail, would provide outstanding recreational opportunities. But McGovern spent most of his time recounting the agreement that made the recreational river proposal possible and the unique attributes of the legislation, which was the result of "delicate negotiations" among numerous state and federal agencies and the MRBSA. McGovern argued that this interstate cooperation between groups with

diverse interests in the river's future was what made the legislation "so remarkable," and that a designation was justified on that basis alone.<sup>38</sup>

McGovern also had printed into the *Congressional Record* the letter that he and Senators Curtis and Zorinsky had sent to Senator Abourezk, and House Report 95-1165, which the Committee on Interior and Insular Affairs released earlier that year. McGovern said that these documents made important points that were vital to establishing a legislative history, which could later be used to establish congressional intent. He highlighted the unique cooperative agreement that would transfer the recreational river's routine management from the National Park Service to the Corps of Engineers, the limitation on the government's ability to acquire lands without the owners' consent, and the "quid pro quo" provision that required landowners requesting bank stabilization to make available other land for the protection of wildlife habitat and other values.<sup>39</sup>

McGovern was a good salesman. He did not focus his argument on helping a few landowners prevent erosion, but rather emphasized how the amendment benefited the greater good. In closing, he said that the Carter administration's proposal for further study would only delay the designation and would serve no purpose. It was proof enough that the Corps of Engineers had already studied the river, and that the Fish and Wildlife Service had agreed to the designation. However, McGovern conceded that further studies could be conducted after the recreational river was established, and could be financed with money authorized by the legislation.<sup>40</sup>

Congressional approval of S. 791 happened very quickly after Senate debate ended on October 12, 1978, and on November 10, the President signed the National Parks and Recreation Act of 1978 into law. Carter said that he signed the bill "with great pleasure," and described the act as the "most significant conservation legislation" to pass the 95<sup>th</sup> Congress.<sup>41</sup>

**Described by former** Nebraska Governor Charles Thone as "one of a kind," the legislation that designated the Missouri National Recreational River was very unusual, and the amount of time required for its approval was relatively brief. From the time that the Corps of Engineers and the Heritage Conservation and Recreation Service agreed to conduct an \$18,000 study until the river's official designation, only a year and a half had passed, compared to an average of six and a half years for approval of other rivers. No other component of the system had been adminis-



tered by the Heritage Conservation and Recreation Service; none had a signed cooperative agreement between the National Park Service and the Corps of Engineers; none had such limited condemnation powers; and none tried to marry bank stabilization with the Wild and Scenic Rivers Act.<sup>42</sup>

These characteristics, however, made the MNRR a challenge to administer. Struggles were evident within two years, and worsened over subsequent years. The National Park Service essentially abandoned the MNRR through the 1980s, leaving the corps to manage it on their own. The prospect of more purposeful river administration improved in 1991, with the establishment of a headquarters in O'Neill, Nebraska, and an updated management plan in 1999 that focused on the environment.<sup>43</sup>

In recent years, the Corps of Engineers and the National Park Service have succeeded in maintaining the river's natural appearance and have worked to restore habitat negatively affected by the dams. But the great irony of the river's designation is that, due to the government's concerted effort to preserve the river's free-flowing character, bank stabilization has been limited—and in fact, frowned upon. It is now the opinion of the National Park Service that bank stabilization authorized in the legislation refers only to the Section 32 demonstration projects, and that the mandate has now been fulfilled.<sup>44</sup>

**Missouri River sandbar island in the middle of braided channel near the confluence of the Niobrara River.**



An early October sunrise near Chief Standing Bear Bridge, Niobrara.

Landowners contending with erosion now find themselves in a worse conundrum than they were thirty years ago, and with no easy solution. The Missouri River Bank Stabilization Association is still active, and its members believe that they hold the “moral high ground” in their disagreement with the National Park Service. Landowners periodically pay to stabilize their riverbanks, but face objection and possible action by the federal government if they do not receive approval to do so.<sup>45</sup>

The 1999 General Management Plan makes MNRR funds available for bank stabilization if it is used as a means to protect and enhance the values for which the reach was designated.<sup>46</sup> Federally funded projects in recent years include a 1999 breakwater structure at Ponca State Park to protect public access to the river; a bank stabilization structure constructed on private land to protect an eagle’s nest in 2000; and a bank stabilization structure to protect Dixon County Road 889 at Mulberry Bend in 2005.

However, private landowners losing land to erosion are unlikely to meet the requirements for federally-funded stabilization. The General Management Plan allows privately-funded bank stabilization if it is covered with topsoil and seeded. Before construction can begin, Section 404 permit conditions must be met and a Wild and Scenic Rivers Act Section 7(a) determination is needed. It is rare that both of these conditions are approved. Section 404 of the Clean Water Act requires that a permit be issued before dredged or fill material can be discharged into the river. To receive a permit, landowners must show that they have taken steps

to avoid impacting wetlands and to minimize and compensate for unavoidable impact.<sup>47</sup> The Corps of Engineers makes permit decisions, but the main problem for landowners is receiving a favorable Section 7(a) ruling from the National Park Service, a process triggered by the Section 404 permit application. Section 7(a) of the Wild and Scenic Rivers Act states that federal agencies must not assist in the construction of any water resources project “that would have a direct and adverse effect on the values for which such river was established.”<sup>48</sup> The National Park Service determines if a proposed bank stabilization project harms the values of the MNRR, and almost invariably the ruling concludes that it does.

By marrying an act that preserved a river’s free-flowing condition with bank stabilization measures, lawmakers united diverse groups in support of a solution that defied logic. The answer seemed too good to be true to some observers, and in fact it may have been. Managing agencies have struggled to reconcile the inherent differences between the law’s purposes. The National Park Service is charged to uphold the tenets of the Wild and Scenic Rivers Act, and it is reasonable for them to rule that artificial bank stabilization is incompatible with these tenets. However, Congress clearly intended to combat erosion by passing the 1978 legislation. There is no reason to believe that the debate over bank stabilization on the MNRR it will be resolved soon. Time will tell if the same compromise that made the Missouri National Recreational River possible can ever bridge the gap that now exists between landowners and river administrators. ☐

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## NOTES

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<sup>1</sup> Public Law 95-625, The National Parks and Recreation Act of 1978, 95th Cong., 2d sess. (Nov. 10, 1978).

<sup>2</sup> River mile markers 809-750.

<sup>3</sup> Department of the Interior, National Park Service, *Missouri National Recreational River, Nebraska-South Dakota, Water Resources Information and Issues Overview Report* (March 2005), by Don P. Weeks, David L. Vana-Miller, and Hal Pranger, 36.

<sup>4</sup> U.S. Army Corps of Engineers, Northwestern Division, *Missouri River Mainstem Reservoir System: Master Water Control Manual* (2006), B1-B2, D6.

<sup>5</sup> William L. Graf, "Damage Control: Restoring the Physical Integrity of America's Rivers," *Annals of the Association of American Geographers* 91 (March 2001): 2.

<sup>6</sup> U.S. Army Corps of Engineers, *Final Report to Congress: The Streambank Erosion Control Evaluation and Demonstration Act of 1974*, Section 32, Public Law 93-251, Main Report (1981), III-1, III-3.

<sup>7</sup> U.S. Army Corps of Engineers, Missouri River: South Dakota, Nebraska, North Dakota, Montana. *Review Report for Water Resources Development* (1977) ("The Umbrella Study"), vol. 2, E1, 3, 15, 119 (hereafter cited as "Umbrella Study"); Department of the Interior, Bureau of Outdoor Recreation, *Missouri River: Gavins Point to Ponca State Park – Recommendation for Inclusion Under Section 5(d) of the Wild and Scenic Rivers Act* (1971), 6-7.

<sup>8</sup> *Ibid.*

<sup>9</sup> Senator James Abourezk, *Statement Before Hearings of the Army Corps of Engineers, Missouri River Division, On Missouri River Umbrella Study, Pierre, South Dakota, June 30, 1976*, on file at O'Neill National Park Service Office, O'Neill, Nebr., Haubert Box File, Folder 1978, 1 (hereafter cited as O'Neill NPS Office).

<sup>10</sup> John Bradley, Bureau of Outdoor Recreation, memorandum, *Missouri River Study by MCRO*, Oct. 15, 1976, O'Neill NPS Office, Folder D4219, 1.

<sup>11</sup> Bureau of Outdoor Recreation, Division of Water Resources, memorandum to Bill Michaels, Mid Continental Regional Office, Feb. 3, 1977; Bill Lawson, chief, Division of Water Resources, Bureau of Outdoor Recreation, to chief, Division of Resource Area Studies, Bureau of Outdoor Recreation, Mar. 11, 1977, O'Neill NPS Office, Folder D4219, 1-2.

<sup>12</sup> Lawson to chief, Division of Resource Area Studies, Mar. 11, 1977.

<sup>13</sup> Division of Water Resources, memorandum to Michaels, Feb. 3, 1977.

<sup>14</sup> Missouri River - Fort Randall Dam to Sioux City Erosion Control Task Force, Summary of 1 March 1978 Meeting, O'Neill NPS Office, Folder D4219, 1-2.

<sup>15</sup> Robert Herbst, assistant secretary for Fish, Wildlife, and Parks, to Margaret G. Maguire, director, Heritage Conservation and Recreation Service, Mar. 23, 1978, O'Neill NPS Office, Folder D4219, 1.

<sup>16</sup> *Meeting Summary: Representative Smith's Office, Washington, D.C., 11 April 1978, Section 32 Erosion Control and Recreational River Proposal* (April 11, 1978), 4. Document on file at U.S. Army Corps of Engineers, Missouri River Division Office, Omaha, (hereafter cited as Omaha Corps Office).

<sup>17</sup> *Ibid.*, 1-2.

<sup>18</sup> *Ibid.*, 2-3; R. G. Burnett, chief, Engineering Division, Corps of Engineers, to chief, Planning Division, Corps of Engineers, Apr. 17, 1978, Omaha Corps Office, 1; Lucille Adkins, Heritage Conservation and Recreation Service, to Dr. Murphy and Mr. Rennehohm, Apr. 18, 1978, O'Neill NPS Office, Folder D4219, 1.

<sup>19</sup> H.R. 12536, *Congressional Record*, 95th Cong., 2d sess., 1978, 124, pt. 10: 12543.

<sup>20</sup> House Committee on Interior and Insular Affairs, *Providing for Increases in Appropriations Ceilings, Development Ceilings, Land Acquisitions and Boundary Changes in Certain Federal Park and Recreation Areas, and for Other Purposes*: H. Rept. 95-1165 to accompany H.R. 12536, 95th Cong., 2d sess., May 15, 1978, 1, 87.

<sup>21</sup> *Ibid.*, 87, 160.

<sup>22</sup> "Missouri is Part of River Plan," *Omaha World-Herald*, May 27, 1978; Brig. Gen. William Read, division engineer, U.S. Army Corps of Engineers, to Maj. Gen. Charles McGinnis, director of civil works, U.S. Army Corps of Engineers, June 7, 1978, Omaha Corps Office, 1.

<sup>23</sup> H.R. 12536, *Congressional Record*, 95th Cong., 2d sess., 1978,

124, pt. 14: 18881.

<sup>24</sup> *Ibid.*, 18883-18884.

<sup>25</sup> *Ibid.*, 18884.

<sup>26</sup> *Ibid.*, pt. 15: 20493, and pt. 16: 21148.

<sup>27</sup> Senate Committee on Energy and Natural Resources, *National Parks and Recreation Act of 1978: Hearings before the Subcommittee on Parks and Recreation*, S. 2706, S. 2848, and H.R. 12536, 95th Cong., 2d sess. (Washington D.C.:1979), 90, (hereafter cited as Hearings on S. 2706, S. 2848, and H.R. 12536).

<sup>28</sup> *Ibid.*, 103.

<sup>29</sup> Mary Kay Quinlan, "Cost Could Snag Scen-River Plan," *Omaha World-Herald*, May 27, 1978.

<sup>30</sup> *Ibid.*; S. 791, *Congressional Record*, 95th Cong., 2d sess., 1978, 124, pt. 27: 36203.

<sup>31</sup> S. 791, *Congressional Record*, 95th Cong., 2d. sess., 1978, 124, pt. 27: 36203.

<sup>32</sup> Hearings on S. 2706, S. 2848, and H. R. 12536, 103; S. 791, *Congressional Record*, 95th Cong., 2d sess., 124, pt. 27: 36203.

<sup>33</sup> S. 791, *Congressional Record*, 95th Cong., 2d sess., 1978, 124, pt. 27: 36203; "Abourezk Backs River Plan," *Omaha World-Herald*, Aug. 5, 1978.

<sup>34</sup> Constance Bowen, executive director, Nebraska Wildlife Federation, to Cecil Andrus, secretary of the interior, Aug. 1, 1978, O'Neill NPS Office, Folder D4219, 1.

<sup>35</sup> Fred Preiwert, director, Iowa Conservation Commission, to Andrus, Aug. 8, 1978, 1; Daniel Tobin, director, National Park Service, to Constance Bowen, Aug. 26, 1978, O'Neill NPS Office, Folder D4219, 1; Herbst to Priewert, Oct. 4, 1978, 1. Copies of the Priewert and Herbst documents received from the O'Neill NPS Office are on file with the author.

<sup>36</sup> S. 791, *Congressional Record*, 95th Cong., 2d sess., 1978, 124, pt. 25: 33571-72, 33595.

<sup>37</sup> *Ibid.*, pt. 27:36203.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, 36204-5.

<sup>40</sup> *Ibid.*, 36205.

<sup>41</sup> "Statement on Signing S. 791 into Law," *Public Papers of the Presidents of the United States, Jimmy Carter*, 1978, vol. 2, (Washington, D.C.: GPO, 1979), 1999.

<sup>42</sup> *Statement of Governor Charles Thone on the Designation of the Missouri River from Gavins Point Dam to Ponca State Park as a National Recreation River*, Omaha Corps Office, 1; Department of Interior, Heritage Conservation and Recreation Service, *The Missouri River: An Alliance for National Designation*, O'Neill NPS Office, 6.

<sup>43</sup> Paul Hedren, superintendent, Missouri National Recreational River, interview by author, June 29, 2007, Omaha, Nebr.

<sup>44</sup> *Ibid.*

<sup>45</sup> Jim Peterson, president, Missouri River Bank Stabilization Association, to the author, Oct. 24, 2008.

<sup>46</sup> Department of Interior, National Park Service, and Corps of Engineers, *Final General Management Plan / Environmental Impact Statement, Missouri National Recreational River* (1999), 39.

<sup>47</sup> Environmental Protection Agency, *Wetland Regulation Authority*, web-site viewed Feb. 25, 2008, at [http://www.epa.gov/owow/wetlands/pdf/reg\\_authority\\_pr.pdf](http://www.epa.gov/owow/wetlands/pdf/reg_authority_pr.pdf).

<sup>48</sup> The Wild and Scenic Rivers Act, U.S. Code, vol. 16, secs. 1271-87 (1968), 8.