

**MEMORANDUM OF AGREEMENT
BETWEEN
THE BUREAU OF RECLAMATION, MONTANA AREA OFFICE,
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
AND
THE MONTANA STATE HISTORIC PRESERVATION OFFICE
FOR
THE HUNTLEY PROJECT IRRIGATION DISTRICT – PRYOR CREEK SIPHON, HUNTLEY
MONTANA**

WHEREAS, the Bureau of Reclamation, the Federal Emergency Management Agency, and the Huntley Project Irrigation District plan to replace a box culvert complex with an inverted siphon complex because the box culvert has been damaged by flooding and is essential to the delivery of water to the Huntley Irrigation Project; and

WHEREAS, the box culvert is a feature of the Huntley Main Canal (24YL1328), which is a contributing feature of the Huntley Irrigation Project (24YL0285) which is eligible for the National Register of Historic Places (NRHP); and

WHEREAS, the Bureau of Reclamation (Reclamation) plans to carry out the Project pursuant to the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security administered Federal disaster assistance through the Public Assistance Program pursuant to the Robert T. Stafford Disaster Relief Emergency Assistance Act, 42 U.S.C. §5121-5206 (Stafford Act) through the Montana Division of Disaster and Emergency Services to Huntley Project Irrigation District (Sub-Grantee), for the demolition and replacement of the box culvert complex of the Huntley Main Canal (Undertaking) substantially damaged as a result of flooding in May 2011 that resulted in federally declared disaster DR-1996-MT, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. part 800; and

WHEREAS, Reclamation has defined the undertaking's area of potential effect (APE) as identified in Attachment I; and

WHEREAS, Reclamation has determined that the undertaking may have an adverse effect on the Huntley Main Canal, and has consulted with the Montana State Historic Preservation Officer (SHPO) and the Crow Tribe Tribal Historic Preservation Officer (THPO) on this resource and other archaeological resources pursuant to 36 C.F.R. part 800; and

WHEREAS, these properties are within the original and treaty territory of the Apsaalooke Nation, otherwise known as the Crow Tribe of Indians of Montana.

WHEREAS, Reclamation has consulted with the Huntley Project Museum of Irrigated Agriculture regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), Reclamation has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii);

NOW, THEREFORE, Reclamation, FEMA and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

I. STIPULATIONS

Reclamation shall ensure that the following measures are carried out:

- A. Reclamation shall mitigate the adverse effect of removing the box culvert complex and replacing it with an inverted siphon by nominating the Huntley Project Irrigation District Office building located in Ballantine, Montana for listing in the NRHP. To do so, Reclamation shall submit a complete NRHP nomination, including a nomination form, photo documentation according to NRHP standards and requirements, and accompanying maps to SHPO. This work shall be conducted by an individual who meets the professional standards contained in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. Upon SHPO's approval, Reclamation shall present the nomination to the State Historic Preservation Review Board, and complete any recommended edits before Reclamation forwards the nomination to the Keeper of the NRHP for listing as stipulated in 36 CFR 60.9(d). The draft nomination will be submitted to the SHPO no later than July 1, 2012. SHPO comments will be addressed no later than September 1, 2012. Reclamation shall present the nomination to the State Historic Preservation Review Board no later than February 2013.
- B. Two areas, indicated as sensitive areas on project plans and located in T2N, R27E, S½ of Section 25 and NW¼ of Section 36, Yellowstone County, Montana, shall be avoided by construction, staging, stockpiling, and material borrowing. No activity is allowed in these areas. Appropriate Reclamation staff shall meet with the construction contractor prior to field work to indicate avoidance boundaries.
- C. The Crow Tribe may choose to have a monitor, designated by the THPO, present at the project site during the construction phase, when earth disturbing activities are conducted, in the event there are any inadvertent archaeological discoveries. In the event of such inadvertent discoveries, the Crow Tribe's archaeologist and THPO will be included in consultations.

II. DURATION

This MOA will be null and void if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the undertaking, Reclamation shall either (a) execute a new MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, Reclamation may consult with the

other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below. Reclamation shall notify the signatories as to the course of action it will pursue.

III. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, work will halt in the vicinity of the discovery until such time as the historic properties have been evaluated and addressed, as appropriate, under the post-review discoveries procedures set forth in 36 CFR Part 800.13(b).

IV. MONITORING AND REPORTING

At the end of every federal fiscal year (September 30th) following the execution of this MOA until all stipulations are met, or it expires or is terminated, except fiscal year 2011, Reclamation shall provide all parties to this MOA and the ACHP a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Reclamation's efforts to carry out the terms of this MOA.

V. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, Reclamation shall consult with such party to resolve the objection. If Reclamation determines that such objection cannot be resolved, Reclamation will:

A. Forward all documentation relevant to the dispute, including the Reclamation's proposed resolution, to the ACHP. The ACHP shall provide Reclamation with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, Reclamation shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. Reclamation will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, Reclamation may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Reclamation shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. Reclamation's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, Reclamation must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Reclamation shall notify the signatories as to the course of action it will pursue.

EXECUTION of this MOA by Reclamation, FEMA and SHPO, and implementation of its terms evidence that Reclamation has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

Bureau of Reclamation

_____ Date _____
Dan Jewell, Area Manager
Montana Area Office

Federal Emergency Management Agency

_____ Date _____
Steven Hardegen, Regional Environmental Officer
FEMA Region 8

Montana State Historic Preservation Officer

_____ Date _____
Dr. Mark Baumler

CONCURRING PARTIES:

The Crow Tribe Tribal Historic Preservation Officer

_____ Date _____
Dale Old Horn

Montana Disaster and Emergency Services

_____ Date _____
Ed Tinsley, Administrator

Huntley Project Irrigation District

_____ Date _____
Dale Bilyeu, Manager

Huntley Project Museum of Irrigated Agriculture

_____ Date _____
Melissa Koch, Museum Director