

---

# **Lower Yellowstone Intake Diversion Dam Fish Passage Project, Montana**

**FINAL - Appendix H**

**Cultural Resources Consultation**





IN REPLY REFER TO:

MT-227  
ENV-3.00

# United States Department of the Interior

BUREAU OF RECLAMATION  
Great Plains Region  
Montana Area Office  
P.O. Box 30137  
Billings, Montana 59107-0137

VIA ELECTRONIC MAIL ONLY

Dr. Mark Baumler  
State Historic Preservation Officer  
Montana Historical Society  
P.O. Box 201202  
Helena, MT 59620-1202

Subject: New Memorandum of Agreement Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

Dear Dr. Baumler:

Enclosed please find a new Memorandum of Agreement (MOA) regarding the modification of the Intake Diversion Dam, Lower Yellowstone Project, and Dawson County, Montana. The original MOA as amended between the Montana Area Office of the Bureau of Reclamation (Reclamation), Omaha District Office of the Corps of Engineers, the Montana State Historic Preservation Office, and the Lower Yellowstone Joint Board of Control for the above subject undertaking executed on June 22, 2010, terminated on December 31, 2014.

Because of the termination of the original amended MOA, and a change to the undertaking that includes the addition of a proposed bypass channel substituting for an initially proposed rock ramp, Reclamation has reinitiated consultation and prepared a new MOA for the subject undertaking. Reclamation anticipates signature of the enclosed new MOA by the other original signatories. The new MOA contains some of the original stipulations and adjusted original stipulations of the 2010 MOA as the undertaking is not yet complete and Reclamation continues to honor their commitment. Additional stipulations have been added to conform to the changes in the undertaking.

Enclosed is the Advisory Council on Historic Preservation (ACHP) Electronic Section 106 Documentation Submittal System (e106) Form providing information related to historic properties and the undertaking, that Reclamation provided the ACHP on July 6, 2016. The ACHP has declined to participate in this undertaking as Reclamation received no response to Reclamation's July 6, 2016, invitation letter to participate.

In addition, enclosed is: a copy of the July 6, 2016, letter to the ACHP, an aerial project map overview of the proposed bypass channel, and a copy of the cultural resource inventory coverage of the Area of Potential Effects (APE) taken from the report *Lower Yellowstone Irrigation Project, 1996 and 1997 Cultural Resources Inventory, Dawson and Richland Counties*,

*Montana, and McKenzie County, North Dakota* by (Kordecki, C. et.al, 2000) previously provided to your office.

This information is being provided to your office as required by 36 CFR Part 800. We request your signature of the MOA. If you have any questions concerning this letter, please feel free to contact Rick Hanson at 406-247-7666 or by email at [rdhanson@usbr.gov](mailto:rdhanson@usbr.gov) or George Ward Shannon, Jr., Ph.D. at 406-247-7751 or by e-mail at [gshannon@usbr.gov](mailto:gshannon@usbr.gov).

Sincerely,



Steve Davies  
*Active For* Area Manager

Enclosures - 6

cc: James Brower  
 District Manager  
 Lower Yellowstone Project Board of Control  
 Route 1, Box 2064  
 Sidney, MT 59270

Colonel John W. Henderson  
 District Commander  
 Omaha District, USACE  
 1616 Capitol Avenue, Suite 9000  
 Omaha, NE 68102

George Herbst  
 Federal Preservation Officer  
 Policy & Administration  
 Bureau of Reclamation  
 U.S. Department of the Interior  
 P.O. Box 25007 (84-53000)  
 Denver, CO 80225

bc: GP-4200 (DEpperly, GShannon, DTrimpe) (w/o encl)  
 MT-100, MT-105, MT-120, MT-200 (w/o encl), MT-227 (w/encl)

WBR:SDavies:MBustos:09-02-2016:406-247-7298/7663  
 V:\Shared\Correspondence\100\227\New Memorandum of Agreement Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE BUREAU OF RECLAMATION, MONTANA AREA OFFICE,  
THE CORPS OF ENGINEERS, OMAHA DISTRICT OFFICE  
THE MONTANA STATE HISTORIC PRESERVATION OFFICE  
AND  
THE LOWER YELLOWSTONE JOINT BOARD OF CONTROL  
FOR  
MODIFICATION OF THE INTAKE DIVERSION DAM,  
LOWER YELLOWSTONE PROJECT, DAWSON COUNTY, MONTANA**

WHEREAS, the Bureau of Reclamation, Montana Area Office (Reclamation) owns certain constructed irrigation facilities known as the Lower Yellowstone Project on the Yellowstone River in Dawson County, Montana,

WHEREAS, the Lower Yellowstone Irrigation Project Board of Control (Board) operates and maintains the Lower Yellowstone Project according to a contract effective December 31, 1931,

WHEREAS, the U.S. Army Corps of Engineers (Corps) is a joint lead agency, with Reclamation on the proposed modification of the Intake Diversion Dam and associated facilities and lands,

WHEREAS, the Montana State Historic Preservation Officer (SHPO) has made a consensus determination that the Intake Diversion Dam and certain associated features are eligible for listing on the National Register of Historic Places (Register),

WHEREAS, the modifications are necessary to: (1) Improve upstream and downstream fish passage for adult pallid sturgeon and other native fish in the lower Yellowstone River, (2) Minimize entrainment of pallid sturgeon and other native fish into the Lower Yellowstone Project main canal, (3) continue effective operation of the Lower Yellowstone Project in compliance with the Endangered Species Act, and, (4) contribute to restoration of the lower Yellowstone River ecosystem.

WHEREAS, Reclamation, in consultation with the SHPO, and the Advisory Council on Historic Preservation (ACHP) has determined that the proposed undertaking to modify the Intake Diversion Dam and associated facilities and adjacent lands with historic properties will have an effect on the qualities which make those resources eligible for the Register. Reclamation has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Part 470f);

WHEREAS, the original MOA for this project executed on June 22, 2010 terminated on December 31, 2014;

WHEREAS, Reclamation, the Corps, the Board and the SHPO have previously carried out and accomplished all of the stipulations provided under the MOA (2010) and as amended (2014) in order to take into account the effect of the undertaking on historic properties except for those remaining stipulations enumerated below;

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

### GENERAL STIPULATIONS

I. For purposes of this agreement, the roles of the involved parties are as follows:

A. The SHPO shall be included in all considerations under this agreement per 36 CFR 800.2(c)(I) and will be a consulting signatory to this agreement.

B. The ACHP has declined to participate in this project as documented in a letter dated May 5, 2010.

C. The Corps shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

D. The Lower Yellowstone Irrigation Project Board of Control shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

E. Reclamation shall be the lead Federal Agency for the compliance with the National Historic Preservation Act.

II. Reclamation shall ensure that the following remaining stipulations from the original 2010 MOA are carried out:

1. Interpretative signs will be developed and placed at a point of public access which will provide information on the Lower Yellowstone Project and its importance to the development of the area.
2. Site specific commitments are:
  - a. The Headworks and Main Canal Inlet channel (24DW287) will remain in place. The slide gates will be left in the closed position, inlet pipes filled with concrete and a portion of the Main Canal Inlet channel filled in, but not destroyed. The majority of the main canal will be undisturbed, but extended with a new headworks located to the west of the present one.
  - b. The Intake Diversion dam (24DW443) will be preserved in place with the exception of a small section that may be removed to facilitate flows into the main canal. A new concrete weir will be built upstream from the existing dam. The north cableway tower will be preserved in place. The south tower of the cableway, power plant, and engineer's house are within the construction zone and will be moved offsite and preserved adjacent to the general proximity of



their original location. The dike running southwest across Joe's island from the south side of the dam is also in the construction zone and will be damaged or removed. These features have been documented by drawings, and photography.

c. The Headworks Camp/Gate Tender Residence (24DW447) and associated outbuildings have been photographed and recorded. The house, garage and outhouse have been relocated to nearby property and if practicable, these structures will be returned to the general proximity of their original location. If that is not feasible, the properties will be offered for adoption with appropriate preservation covenants. Reclamation has developed and implemented a data recovery plan in consultation with SHPO and other interested parties as appropriate.

d. The Old Cameron and Brailey Sub-Camp (24DW298) site will be fenced and avoided to prevent damage.

e. The prehistoric sites (24DW430 and 24DW434) are present south of the immediate project area will be avoided to prevent damage.

III. Reclamation has deposited the HABS/HAER documentation (photographs, drawings and supplemental history) with the U.S. National Archives, and at the Montana Area Office of the Bureau of Reclamation, The State Historic Preservation Office, and the Montana Historical Society Library. Reclamation will provide a document titled, "Lower Yellowstone Project—A History in Photographs" to the Public Libraries and School Systems in Glendive and Sidney, Montana as suggested by the MT SHPO.

IV. Due dates – under the 2010 MOA Reclamation provided the final report on data recovery and the other documentation stipulated above to the appropriate parties on December 31, 2011. The interpretive panels will be erected by December 31, 2025. The moved buildings and structures will be returned to the proximity of the original locations by December 31, 2025, if Reclamation determines that the return is practicable.

V. Amendments – If a signatory to the agreement determines that the terms of the Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider whether an amendment is necessary in accordance with 36 CFR Part 800.6. Amendments will be approved by all signatories of the original Agreement.

VI. Dispute Resolution – Should a signatory to this Agreement object within 30 days to any action proposed pursuant to this agreement, Reclamation shall consult with the objecting party to resolve the objection. If Reclamation determines that the objection cannot be resolved, Reclamation shall request comments from the ACHP pursuant to 36 CFR Part 800.9. Reclamation will submit all relevant documentation to the ACHP pertaining to the dispute or objection along with Reclamation's proposal for resolution. Reclamation's responsibility shall be to carry out all the actions under this agreement that are not in dispute.

VII. This agreement applies only to the Lower Yellowstone Intake Diversion Dam Fish Passage Project. Subsequent to construction, should any activities related to the project result in disturbance of previously undisturbed areas, Reclamation will initiate consultation under 36 CFR Part 800.4 through 800.7.

VIII. Termination - If the terms of this agreement have not been implemented by December 31, 2025, this agreement shall be considered null and void. In such event Reclamation shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

This agreement has been prepared in accordance with 36 CFR Part 800.6. Execution of this agreement and implementation of its terms are evidence that Reclamation has afforded the ACHP, the SHPO, the Corps, and the Board an opportunity to comment on the Intake Diversion Dam Modification, Lower Yellowstone Project, its effects of the undertaking on historic properties, and that Reclamation has taken into account the effects of the undertaking on historic properties. Execution and implementation of this Agreement evidences that Reclamation has satisfied its responsibilities under the National Historic Preservation Act for all activities associated with the proposed project.



**SIGNATORIES**

Bureau of Reclamation, Montana Area Office

\_\_\_\_\_ Date \_\_\_\_\_  
Steve Davies, Area Manager

Lower Yellowstone Irrigation District

\_\_\_\_\_ Date \_\_\_\_\_  
James Brower, District Manager

Corps of Engineers

\_\_\_\_\_ Date \_\_\_\_\_  
Colonel John W. Henderson

Montana State Historic Preservation Officer

\_\_\_\_\_ Date \_\_\_\_\_  
Dr. Mark Baumler, SHPO



IN REPLY REFER TO:

MT-227  
ENV-3.00

## United States Department of the Interior

BUREAU OF RECLAMATION  
Great Plains Region  
Montana Area Office  
P.O. Box 30137  
Billings, Montana 59107-0137

VIA ELECTRONIC MAIL ONLY

Colonel John W. Henderson  
District Commander  
Omaha District, USACE  
1616 Capitol Avenue, Suite 9000  
Omaha, NE 68102

Subject: New Memorandum of Agreement Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

Dear Colonel Henderson:

Enclosed please find a new Memorandum of Agreement (MOA) regarding the modification of the Intake Diversion Dam, Lower Yellowstone Project, and Dawson County, Montana. The original MOA as amended between the Montana Area Office of the Bureau of Reclamation (Reclamation), Omaha District Office of the Corps of Engineers, the Montana State Historic Preservation Office, and the Lower Yellowstone Joint Board of Control for the above subject undertaking executed on June 22, 2010, terminated on December 31, 2014.

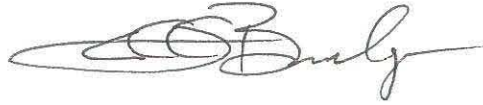
Because of the termination of the original amended MOA, and a change to the undertaking that includes the addition of a proposed bypass channel substituting for an initially proposed rock ramp, Reclamation has reinitiated consultation and prepared a new MOA for the subject undertaking. The new MOA contains some of the original stipulations and adjusted original stipulations of the 2010 MOA as the undertaking is not yet complete and Reclamation continues to honor their commitment. Additional stipulations have been added to conform to the changes in the undertaking.

The Advisory Council on Historic Preservation (ACHP) has declined to participate in this undertaking as Reclamation received no response to Reclamation's July 6, 2016, invitation letter to participate. Enclosed are a copy of the July 6, 2016, letter to the ACHP and an aerial project map overview of the proposed bypass channel.

This information is being provided to your office as required by 36 CFR Part 800. We request your signature of the MOA.

If you have any questions concerning this letter, please feel free to contact Rick Hanson at 406-247-7666 or by e-mail at [rdhanson@usbr.gov](mailto:rdhanson@usbr.gov) or George Ward Shannon, Jr., Ph.D. at 406-247-7751 or by e-mail at [gshannon@usbr.gov](mailto:gshannon@usbr.gov).

Sincerely,



Steve Davies  
Area Manager

*Active File*

Enclosures - 3

cc: James Brower  
District Manager  
Lower Yellowstone Project Board of Control  
Route 1, Box 2064  
Sidney, MT 59270

Dr. Mark Baumler  
State Historic Preservation Officer  
Montana Historical Society  
P.O. Box 201202  
Helena, MT 59620-1202

George Herbst  
Federal Preservation Officer  
Policy & Administration  
Bureau of Reclamation  
U.S. Department of the Interior  
P.O. Box 25007 (84-53000)  
Denver, CO 80225

bc: GP-4200 (DEpperly, GShannon, DTrimpe) (w/o encl)  
MT-100, MT-105, MT-120, MT-200 (w/o encl), MT-227 (w/encl)

WBR:SDavies:MBustos:09-02-2016:406-247-7298/7663

V:\Shared\Correspondence\100\227\New Memorandum of Agreement Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE BUREAU OF RECLAMATION, MONTANA AREA OFFICE,  
THE CORPS OF ENGINEERS, OMAHA DISTRICT OFFICE  
THE MONTANA STATE HISTORIC PRESERVATION OFFICE  
AND  
THE LOWER YELLOWSTONE JOINT BOARD OF CONTROL  
FOR  
MODIFICATION OF THE INTAKE DIVERSION DAM,  
LOWER YELLOWSTONE PROJECT, DAWSON COUNTY, MONTANA**

WHEREAS, the Bureau of Reclamation, Montana Area Office (Reclamation) owns certain constructed irrigation facilities known as the Lower Yellowstone Project on the Yellowstone River in Dawson County, Montana,

WHEREAS, the Lower Yellowstone Irrigation Project Board of Control (Board) operates and maintains the Lower Yellowstone Project according to a contract effective December 31, 1931,

WHEREAS, the U.S. Army Corps of Engineers (Corps) is a joint lead agency, with Reclamation on the proposed modification of the Intake Diversion Dam and associated facilities and lands,

WHEREAS, the Montana State Historic Preservation Officer (SHPO) has made a consensus determination that the Intake Diversion Dam and certain associated features are eligible for listing on the National Register of Historic Places (Register),

WHEREAS, the modifications are necessary to: (1) Improve upstream and downstream fish passage for adult pallid sturgeon and other native fish in the lower Yellowstone River, (2) Minimize entrainment of pallid sturgeon and other native fish into the Lower Yellowstone Project main canal, (3) continue effective operation of the Lower Yellowstone Project in compliance with the Endangered Species Act, and, (4) contribute to restoration of the lower Yellowstone River ecosystem.

WHEREAS, Reclamation, in consultation with the SHPO, and the Advisory Council on Historic Preservation (ACHP) has determined that the proposed undertaking to modify the Intake Diversion Dam and associated facilities and adjacent lands with historic properties will have an effect on the qualities which make those resources eligible for the Register. Reclamation has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Part 470f);

WHEREAS, the original MOA for this project executed on June 22, 2010 terminated on December 31, 2014;

WHEREAS, Reclamation, the Corps, the Board and the SHPO have previously carried out and accomplished all of the stipulations provided under the MOA (2010) and as amended (2014) in order to take into account the effect of the undertaking on historic properties except for those remaining stipulations enumerated below;

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

### GENERAL STIPULATIONS

I. For purposes of this agreement, the roles of the involved parties are as follows:

A. The SHPO shall be included in all considerations under this agreement per 36 CFR 800.2(c)(I) and will be a consulting signatory to this agreement.

B. The ACHP has declined to participate in this project as documented in a letter dated May 5, 2010.

C. The Corps shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

D. The Lower Yellowstone Irrigation Project Board of Control shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

E. Reclamation shall be the lead Federal Agency for the compliance with the National Historic Preservation Act.

II. Reclamation shall ensure that the following remaining stipulations from the original 2010 MOA are carried out:

1. Interpretative signs will be developed and placed at a point of public access which will provide information on the Lower Yellowstone Project and its importance to the development of the area.
2. Site specific commitments are:
  - a. The Headworks and Main Canal Inlet channel (24DW287) will remain in place. The slide gates will be left in the closed position, inlet pipes filled with concrete and a portion of the Main Canal Inlet channel filled in, but not destroyed. The majority of the main canal will be undisturbed, but extended with a new headworks located to the west of the present one.
  - b. The Intake Diversion dam (24DW443) will be preserved in place with the exception of a small section that may be removed to facilitate flows into the main canal. A new concrete weir will be built upstream from the existing dam. The north cableway tower will be preserved in place. The south tower of the cableway, power plant, and engineer's house are within the construction zone and will be moved offsite and preserved adjacent to the general proximity of



their original location. The dike running southwest across Joe's island from the south side of the dam is also in the construction zone and will be damaged or removed. These features have been documented by drawings, and photography.

c. The Headworks Camp/Gate Tender Residence (24DW447) and associated outbuildings have been photographed and recorded. The house, garage and outhouse have been relocated to nearby property and if practicable, these structures will be returned to the general proximity of their original location. If that is not feasible, the properties will be offered for adoption with appropriate preservation covenants. Reclamation has developed and implemented a data recovery plan in consultation with SHPO and other interested parties as appropriate.

d. The Old Cameron and Brailey Sub-Camp (24DW298) site will be fenced and avoided to prevent damage.

e. The prehistoric sites (24DW430 and 24DW434) are present south of the immediate project area will be avoided to prevent damage.

III. Reclamation has deposited the HABS/HAER documentation (photographs, drawings and supplemental history) with the U.S. National Archives, and at the Montana Area Office of the Bureau of Reclamation, The State Historic Preservation Office, and the Montana Historical Society Library. Reclamation will provide a document titled, "Lower Yellowstone Project—A History in Photographs" to the Public Libraries and School Systems in Glendive and Sidney, Montana as suggested by the MT SHPO.

IV. Due dates – under the 2010 MOA Reclamation provided the final report on data recovery and the other documentation stipulated above to the appropriate parties on December 31, 2011. The interpretive panels will be erected by December 31, 2025. The moved buildings and structures will be returned to the proximity of the original locations by December 31, 2025, if Reclamation determines that the return is practicable.

V. Amendments – If a signatory to the agreement determines that the terms of the Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider whether an amendment is necessary in accordance with 36 CFR Part 800.6. Amendments will be approved by all signatories of the original Agreement.

VI. Dispute Resolution – Should a signatory to this Agreement object within 30 days to any action proposed pursuant to this agreement, Reclamation shall consult with the objecting party to resolve the objection. If Reclamation determines that the objection cannot be resolved, Reclamation shall request comments from the ACHP pursuant to 36 CFR Part 800.9. Reclamation will submit all relevant documentation to the ACHP pertaining to the dispute or objection along with Reclamation's proposal for resolution. Reclamation's responsibility shall be to carry out all the actions under this agreement that are not in dispute.



VII. This agreement applies only to the Lower Yellowstone Intake Diversion Dam Fish Passage Project. Subsequent to construction, should any activities related to the project result in disturbance of previously undisturbed areas, Reclamation will initiate consultation under 36 CFR Part 800.4 through 800.7.

VIII. Termination - If the terms of this agreement have not been implemented by December 31, 2025, this agreement shall be considered null and void. In such event Reclamation shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

This agreement has been prepared in accordance with 36 CFR Part 800.6. Execution of this agreement and implementation of its terms are evidence that Reclamation has afforded the ACHP, the SHPO, the Corps, and the Board an opportunity to comment on the Intake Diversion Dam Modification, Lower Yellowstone Project, its effects of the undertaking on historic properties, and that Reclamation has taken into account the effects of the undertaking on historic properties. Execution and implementation of this Agreement evidences that Reclamation has satisfied its responsibilities under the National Historic Preservation Act for all activities associated with the proposed project.

**SIGNATORIES**

Bureau of Reclamation, Montana Area Office

\_\_\_\_\_ Date \_\_\_\_\_  
Steve Davies, Area Manager

Lower Yellowstone Irrigation District

\_\_\_\_\_ Date \_\_\_\_\_  
James Brower, District Manager

Corps of Engineers

\_\_\_\_\_ Date \_\_\_\_\_  
Colonel John W. Henderson

Montana State Historic Preservation Officer

\_\_\_\_\_ Date \_\_\_\_\_  
Dr. Mark Baumler, SHPO



IN REPLY REFER TO:

MT-227  
ENV-3.00

# United States Department of the Interior

BUREAU OF RECLAMATION  
Great Plains Region  
Montana Area Office  
P.O. Box 30137  
Billings, Montana 59107-0137

VIA ELECTRONIC MAIL ONLY

James Brower  
District Manager  
Lower Yellowstone Project Board of Control  
Route 1, Box 2064  
Sidney, MT 59270

Subject: New Memorandum of Agreement Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

Dear Mr. Brower:

Enclosed please find a new Memorandum of Agreement (MOA) regarding the modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana. The original MOA as amended between the Montana Area Office of the Bureau of Reclamation (Reclamation), Omaha District Office of the Corps of Engineers, the Montana State Historic Preservation Office, and the Lower Yellowstone Joint Board of Control for the above subject undertaking executed on June 22, 2010, terminated on December 31, 2014.

Because of the termination of the original amended MOA, and a change to the undertaking that includes the addition of a proposed bypass channel substituting for an initially proposed rock ramp, Reclamation has reinitiated consultation and prepared a new MOA for the subject undertaking.

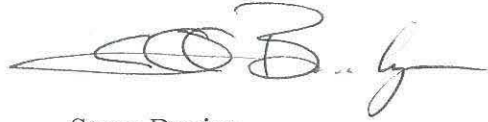
The new MOA contains some of the original stipulations and adjusted original stipulations of the 2010 MOA as the undertaking is not yet complete and Reclamation continues to honor their commitment. Additional stipulations have been added to conform to the changes in the undertaking.

The Advisory Council on Historic Preservation (ACHP) has declined to participate in this undertaking as Reclamation received no response to Reclamation's July 6, 2016, invitation letter to participate. Enclosed is a copy of the July 6, 2016, letter to the ACHP and an aerial project map overview of the proposed bypass channel.

This information is being provided to your office as required by 36 CFR Part 800. We request your signature of the MOA.

If you have any questions concerning this letter, please feel free to contact Rick Hanson at 406-247-7666 or by e-mail at [rdhanson@usbr.gov](mailto:rdhanson@usbr.gov) or George Ward Shannon, Jr., Ph.D. at 406-247-7751 or by e-mail at [gshannon@usbr.gov](mailto:gshannon@usbr.gov).

Sincerely,



Steve Davies  
*Acting*  
 Area Manager

Enclosures - 3

cc: Colonel John W. Henderson  
 District Commander  
 Omaha District, USACE  
 1616 Capitol Avenue, Suite 9000  
 Omaha, NE 68102

Dr. Mark Baumler  
 State Historic Preservation Officer  
 Montana Historical Society  
 P.O. Box 201202  
 Helena, MT 59620-1202

George Herbst  
 Federal Preservation Officer  
 Policy & Administration  
 Bureau of Reclamation  
 U.S. Department of the Interior  
 P.O. Box 25007 (84-53000)  
 Denver, CO 80225

bc: GP-4200 (DEpperly, GShannon, DTrimpe) (w/o encl)  
 MT-100, MT-105, MT-120, MT-200 (w/o encl), MT-227 (w/encl)

WBR:SDavies:MBustos:09-02-2016:406-247-7298/7663

V:\Shared\Correspondence\100\227\New Memorandum of Agreement Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE BUREAU OF RECLAMATION, MONTANA AREA OFFICE,  
THE CORPS OF ENGINEERS, OMAHA DISTRICT OFFICE  
THE MONTANA STATE HISTORIC PRESERVATION OFFICE  
AND  
THE LOWER YELLOWSTONE JOINT BOARD OF CONTROL  
FOR  
MODIFICATION OF THE INTAKE DIVERSION DAM,  
LOWER YELLOWSTONE PROJECT, DAWSON COUNTY, MONTANA**

WHEREAS, the Bureau of Reclamation, Montana Area Office (Reclamation) owns certain constructed irrigation facilities known as the Lower Yellowstone Project on the Yellowstone River in Dawson County, Montana,

WHEREAS, the Lower Yellowstone Irrigation Project Board of Control (Board) operates and maintains the Lower Yellowstone Project according to a contract effective December 31, 1931,

WHEREAS, the U.S. Army Corps of Engineers (Corps) is a joint lead agency, with Reclamation on the proposed modification of the Intake Diversion Dam and associated facilities and lands,

WHEREAS, the Montana State Historic Preservation Officer (SHPO) has made a consensus determination that the Intake Diversion Dam and certain associated features are eligible for listing on the National Register of Historic Places (Register),

WHEREAS, the modifications are necessary to: (1) Improve upstream and downstream fish passage for adult pallid sturgeon and other native fish in the lower Yellowstone River, (2) Minimize entrainment of pallid sturgeon and other native fish into the Lower Yellowstone Project main canal, (3) continue effective operation of the Lower Yellowstone Project in compliance with the Endangered Species Act, and, (4) contribute to restoration of the lower Yellowstone River ecosystem.

WHEREAS, Reclamation, in consultation with the SHPO, and the Advisory Council on Historic Preservation (ACHP) has determined that the proposed undertaking to modify the Intake Diversion Dam and associated facilities and adjacent lands with historic properties will have an effect on the qualities which make those resources eligible for the Register. Reclamation has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Part 470f);

WHEREAS, the original MOA for this project executed on June 22, 2010 terminated on December 31, 2014;

WHEREAS, Reclamation, the Corps, the Board and the SHPO have previously carried out and accomplished all of the stipulations provided under the MOA (2010) and as amended (2014) in order to take into account the effect of the undertaking on historic properties except for those remaining stipulations enumerated below;

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

### GENERAL STIPULATIONS

I. For purposes of this agreement, the roles of the involved parties are as follows:

A. The SHPO shall be included in all considerations under this agreement per 36 CFR 800.2(c)(I) and will be a consulting signatory to this agreement.

B. The ACHP has declined to participate in this project as documented in a letter dated May 5, 2010.

C. The Corps shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

D. The Lower Yellowstone Irrigation Project Board of Control shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

E. Reclamation shall be the lead Federal Agency for the compliance with the National Historic Preservation Act.

II. Reclamation shall ensure that the following remaining stipulations from the original 2010 MOA are carried out:

1. Interpretative signs will be developed and placed at a point of public access which will provide information on the Lower Yellowstone Project and its importance to the development of the area.
2. Site specific commitments are:
  - a. The Headworks and Main Canal Inlet channel (24DW287) will remain in place. The slide gates will be left in the closed position, inlet pipes filled with concrete and a portion of the Main Canal Inlet channel filled in, but not destroyed. The majority of the main canal will be undisturbed, but extended with a new headworks located to the west of the present one.
  - b. The Intake Diversion dam (24DW443) will be preserved in place with the exception of a small section that may be removed to facilitate flows into the main canal. A new concrete weir will be built upstream from the existing dam. The north cableway tower will be preserved in place. The south tower of the cableway, power plant, and engineer's house are within the construction zone and will be moved offsite and preserved adjacent to the general proximity of



their original location. The dike running southwest across Joe's island from the south side of the dam is also in the construction zone and will be damaged or removed. These features have been documented by drawings, and photography.

c. The Headworks Camp/Gate Tender Residence (24DW447) and associated outbuildings have been photographed and recorded. The house, garage and outhouse have been relocated to nearby property and if practicable, these structures will be returned to the general proximity of their original location. If that is not feasible, the properties will be offered for adoption with appropriate preservation covenants. Reclamation has developed and implemented a data recovery plan in consultation with SHPO and other interested parties as appropriate.

d. The Old Cameron and Brailey Sub-Camp (24DW298) site will be fenced and avoided to prevent damage.

e. The prehistoric sites (24DW430 and 24DW434) are present south of the immediate project area will be avoided to prevent damage.

III. Reclamation has deposited the HABS/HAER documentation (photographs, drawings and supplemental history) with the U.S. National Archives, and at the Montana Area Office of the Bureau of Reclamation, The State Historic Preservation Office, and the Montana Historical Society Library. Reclamation will provide a document titled, "Lower Yellowstone Project—A History in Photographs" to the Public Libraries and School Systems in Glendive and Sidney, Montana as suggested by the MT SHPO.

IV. Due dates – under the 2010 MOA Reclamation provided the final report on data recovery and the other documentation stipulated above to the appropriate parties on December 31, 2011. The interpretive panels will be erected by December 31, 2025. The moved buildings and structures will be returned to the proximity of the original locations by December 31, 2025, if Reclamation determines that the return is practicable.

V. Amendments – If a signatory to the agreement determines that the terms of the Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider whether an amendment is necessary in accordance with 36 CFR Part 800.6. Amendments will be approved by all signatories of the original Agreement.

VI. Dispute Resolution – Should a signatory to this Agreement object within 30 days to any action proposed pursuant to this agreement, Reclamation shall consult with the objecting party to resolve the objection. If Reclamation determines that the objection cannot be resolved, Reclamation shall request comments from the ACHP pursuant to 36 CFR Part 800.9. Reclamation will submit all relevant documentation to the ACHP pertaining to the dispute or objection along with Reclamation's proposal for resolution. Reclamation's responsibility shall be to carry out all the actions under this agreement that are not in dispute.

VII. This agreement applies only to the Lower Yellowstone Intake Diversion Dam Fish Passage Project. Subsequent to construction, should any activities related to the project result in disturbance of previously undisturbed areas, Reclamation will initiate consultation under 36 CFR Part 800.4 through 800.7.

VIII. Termination - If the terms of this agreement have not been implemented by December 31, 2025, this agreement shall be considered null and void. In such event Reclamation shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

This agreement has been prepared in accordance with 36 CFR Part 800.6. Execution of this agreement and implementation of its terms are evidence that Reclamation has afforded the ACHP, the SHPO, the Corps, and the Board an opportunity to comment on the Intake Diversion Dam Modification, Lower Yellowstone Project, its effects of the undertaking on historic properties, and that Reclamation has taken into account the effects of the undertaking on historic properties. Execution and implementation of this Agreement evidences that Reclamation has satisfied its responsibilities under the National Historic Preservation Act for all activities associated with the proposed project.

**SIGNATORIES**

Bureau of Reclamation, Montana Area Office

\_\_\_\_\_ Date \_\_\_\_\_  
Steve Davies, Area Manager

Lower Yellowstone Irrigation District

\_\_\_\_\_ Date \_\_\_\_\_  
James Brower, District Manager

Corps of Engineers

\_\_\_\_\_ Date \_\_\_\_\_  
Colonel John W. Henderson

Montana State Historic Preservation Officer

\_\_\_\_\_ Date \_\_\_\_\_  
Dr. Mark Baumler, SHPO



# United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region

Montana Area Office

P.O. Box 30137

Billings, Montana 59107-0137

IN REPLY REFER TO:

MT-227

ENV-3.00

OCT 5 2016

VIA ELECTRONIC MAIL ONLY

Advisory Council on Historic Preservation

Office of Federal Agency Programs

Director

Attn: Reid Nelson

401 F Street Northwest, Suite 308

Washington DC 20001-2637

Subject: Filing of Memorandum of Agreement (MOA) Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

Dear Mr. Nelson:

Pursuant to 36 CFR § 800.6(b)(1)(iv), the Montana Area Office of the Bureau of Reclamation (Reclamation) is submitting a copy of the signed MOA for the subject undertaking. Because of the termination of the original amended MOA, and a change to the undertaking, Reclamation has reinitiated consultation with the signatories and produced a new MOA for the subject undertaking. We have no supporting documentation to submit other than the documentation submitted with our letter to your office on July 6, 2016.

If you have any questions, please contact Rick Hanson at 406-247-7666 or by e-mail at [rdhanson@usbr.gov](mailto:rdhanson@usbr.gov).

Sincerely,

Steve Davies  
Area Manager

Enclosure

cc: (84-53000), George Herbst  
Federal Preservation Officer  
Policy & Administration  
Bureau of Reclamation  
U.S. Department of the Interior  
P.O. Box 25007  
Denver, CO 80225  
(w/o encl)

bc: GP-4200 (DEpperly, GShannon, DTrimpe) (w/o encl)  
MT-100, MT-105, MT-120, MT-200, (w/o encl), MT-227 (w/encl)

WBR:SDavies:MBustos:10-05-2016:406-247-7666

V:\Shared\Correspondence\2016\100\227\Filing of Memorandum of Agreement (MOA) Regarding the Modification of the Intake Diversion Dam, Lower Yellowstone Project, Dawson County, Montana.

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE BUREAU OF RECLAMATION, MONTANA AREA OFFICE,  
THE CORPS OF ENGINEERS, OMAHA DISTRICT OFFICE  
THE MONTANA STATE HISTORIC PRESERVATION OFFICE  
AND  
THE LOWER YELLOWSTONE JOINT BOARD OF CONTROL  
FOR  
MODIFICATION OF THE INTAKE DIVERSION DAM,  
LOWER YELLOWSTONE PROJECT, DAWSON COUNTY, MONTANA**

WHEREAS, the Bureau of Reclamation, Montana Area Office (Reclamation) owns certain constructed irrigation facilities known as the Lower Yellowstone Project on the Yellowstone River in Dawson County, Montana;

WHEREAS, the Lower Yellowstone Irrigation Project Board of Control (Board) operates and maintains the Lower Yellowstone Project according to a contract effective December 31, 1931;

WHEREAS, the U.S. Army Corps of Engineers (Corps) is a joint lead agency, with Reclamation on the proposed modification of the Intake Diversion Dam and associated facilities and lands;

WHEREAS, the Montana State Historic Preservation Officer (SHPO) has made a consensus determination that the Intake Diversion Dam and certain associated features are eligible for listing on the National Register of Historic Places (Register);

WHEREAS, the modifications are necessary to: (1) Improve upstream and downstream fish passage for adult Pallid Sturgeon and other native fish in the lower Yellowstone River, (2) Minimize entrainment of Pallid Sturgeon and other native fish into the Lower Yellowstone Project main canal, (3) continue effective operation of the Lower Yellowstone Project in compliance with the Endangered Species Act, and, (4) contribute to restoration of the Lower Yellowstone River Ecosystem;

WHEREAS, Reclamation, in consultation with the SHPO, and the Advisory Council on Historic Preservation (ACHP) has determined that the proposed undertaking to modify the Intake Diversion Dam and associated facilities and adjacent lands with historic properties will have an effect on the qualities which make those resources eligible for the Register. Reclamation has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Part 470f);

WHEREAS, the original MOA for this project executed on June 22, 2010, terminated on December 31, 2014;

WHEREAS, Reclamation, the Corps, the Board and the SHPO have previously carried out and accomplished all of the stipulations provided under the MOA (2010) and as amended (2014) in order to take into account the effect of the undertaking on historic properties except for those remaining stipulations enumerated below;



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

### GENERAL STIPULATIONS

I. For purposes of this agreement, the roles of the involved parties are as follows:

A. The SHPO shall be included in all considerations under this agreement per 36 CFR 800.2(c) (I) and will be a consulting signatory to this agreement.

B. The ACHP has declined to participate in this project as Reclamation received no response to Reclamation's July 6, 2016, invitation letter to participate.

C. The Corps shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

D. The Lower Yellowstone Irrigation Project Board of Control shall be included in all consultations under this agreement and will be invited to be a consulting signatory to this agreement.

E. Reclamation shall be the lead Federal Agency for the compliance with the National Historic Preservation Act.

II. Reclamation shall ensure that the following remaining stipulations from the original 2010 MOA are carried out:

1. Interpretative signs will be developed and placed at a point of public access which will provide information on the Lower Yellowstone Project and its importance to the development of the area.
2. Site specific commitments are:
  - a. The Headworks and Main Canal Inlet channel (24DW287) will remain in place. The slide gates will be left in the closed position, inlet pipes filled with concrete and a portion of the Main Canal Inlet channel filled in, but not destroyed. The majority of the main canal will be undisturbed, but was extended with the new headworks completed in 2012, located to the west of the present one.
  - b. The Intake Diversion dam (24DW443) will be preserved in place with the exception of a small section that may be removed to facilitate flows into the main canal. A new concrete weir will be built upstream from the existing dam. The north cableway tower will be preserved in place. The south tower of the cableway, power plant, and engineer's house are within the construction zone



and will be moved offsite and preserved adjacent to the general proximity of their original location. The dike running southwest across Joe's Island from the south side of the dam is also in the construction zone and will be damaged or removed. These features have been documented by drawings, and photography.

c. The Headworks Camp/Gate Tender Residence (24DW447) and associated outbuildings have been photographed and recorded. The house, garage, and outhouse have been relocated to nearby property and if practicable, these structures will be returned to the general proximity of their original location. If that is not feasible, the properties will be offered for adoption with appropriate preservation covenants. Reclamation has developed and implemented a data recovery plan in consultation with SHPO and other interested parties as appropriate.

d. The Old Cameron and Brailey Sub-Camp (24DW298) site will be fenced and avoided to prevent damage.

e. The prehistoric sites (24DW430 and 24DW434) are present south of the immediate project area will be avoided to prevent damage.

f. Avoidance provisions to prevent damage to archaeological sites 24DW295 and 24DW296 will be in place so that they should not be inadvertently impacted by quarrying operations in the future.

III. Reclamation has deposited the HABS/HAER documentation (photographs, drawings, and supplemental history) with the U.S. National Archives, and at the Montana Area Office of the Bureau of Reclamation, The State Historic Preservation Office, and the Montana Historical Society Library. Reclamation will provide a document titled, "Lower Yellowstone Project - A History in Photographs" to the Public Libraries and School Systems in Glendive and Sidney, Montana as suggested by the MT SHPO.

IV. Due dates – under the 2010 MOA Reclamation provided the final report on data recovery and the other documentation stipulated above to the appropriate parties on December 31, 2011. The interpretive panels will be erected by December 31, 2025. The moved buildings and structures will be returned to the proximity of the original locations by December 31, 2025, if Reclamation determines that the return is practicable.

V. Amendments – If a signatory to the agreement determines that the terms of the Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider whether an amendment is necessary in accordance with 36 CFR Part 800.6. Amendments will be approved by all signatories of the original Agreement.

VI. Dispute Resolution – Should a signatory to this Agreement object within 30 days to any action proposed pursuant to this agreement, Reclamation shall consult with the objecting party to resolve the objection. If Reclamation determines that the objection cannot be resolved, Reclamation shall request comments from the ACHP pursuant to 36 CFR Part 800.9.

Reclamation will submit all relevant documentation to the ACHP pertaining to the dispute or objection along with Reclamation's proposal for resolution. Reclamation's responsibility shall be to carry out all the actions under this agreement that are not in dispute.


VII. This agreement applies only to the Lower Yellowstone Intake Diversion Dam Fish Passage Project. Subsequent to construction, should any activities related to the project result in disturbance of previously undisturbed areas, Reclamation will initiate consultation under 36 CFR Part 800.4 through 800.7.

VIII. Termination - If the terms of this agreement have not been implemented by December 31, 2025, this agreement shall be considered null and void. In such event Reclamation shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

This agreement has been prepared in accordance with 36 CFR Part 800.6. Execution of this agreement and implementation of its terms are evidence that Reclamation has afforded the ACHP, the SHPO, the Corps, and the Board an opportunity to comment on the Intake Diversion Dam Modification, Lower Yellowstone Project, its effects of the undertaking on historic properties, and that Reclamation has taken into account the effects of the undertaking on historic properties. Execution and implementation of this Agreement evidences that Reclamation has satisfied its responsibilities under the National Historic Preservation Act for all activities associated with the proposed project.

SIGNATORIES

Bureau of Reclamation, Montana Area Office

  
\_\_\_\_\_  
Steve Davies, Area Manager

Date 9/16/2016

Lower Yellowstone Irrigation District

\_\_\_\_\_  
James Brower, District Manager

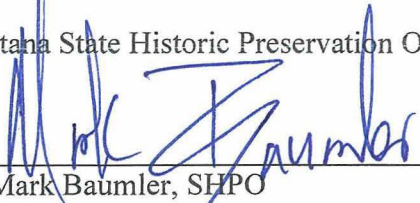
Date \_\_\_\_\_

Corps of Engineers

\_\_\_\_\_  
Colonel John W. Henderson, District Commander

Date \_\_\_\_\_

Montana State Historic Preservation Officer

  
\_\_\_\_\_  
Dr. Mark Baumler, SHPO

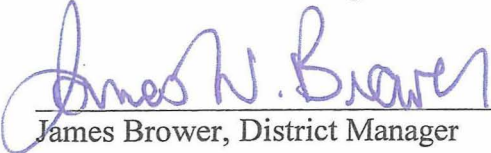
Date 9/29/2016

SIGNATORIES

Bureau of Reclamation, Montana Area Office

\_\_\_\_\_  
Steve Davies, Area Manager Date \_\_\_\_\_

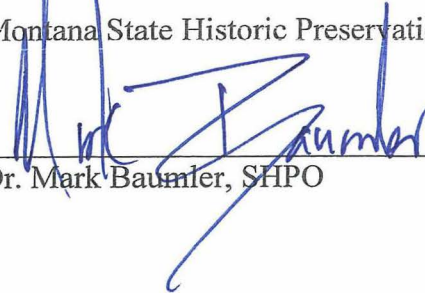
Lower Yellowstone Irrigation District

  
\_\_\_\_\_  
James Brower, District Manager Date 9/15/2016

Corps of Engineers

\_\_\_\_\_  
Colonel John W. Henderson, District Commander Date \_\_\_\_\_

Montana State Historic Preservation Officer

  
\_\_\_\_\_  
Dr. Mark Baunler, SHPO Date 9/29/2016



SIGNATORIES

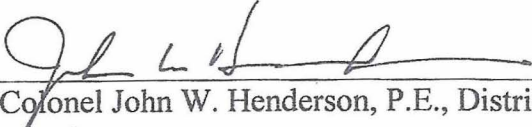
Bureau of Reclamation, Montana Area Office

\_\_\_\_\_  
Steve Davies, Area Manager Date \_\_\_\_\_

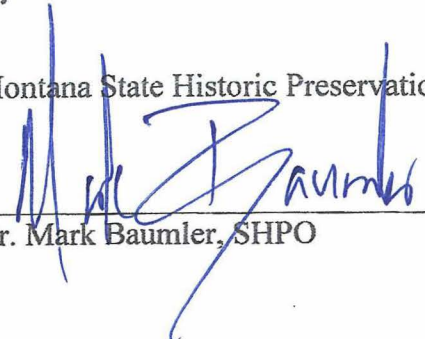
Lower Yellowstone Irrigation District

\_\_\_\_\_  
James Brower, District Manager Date \_\_\_\_\_

Corps of Engineers

  
\_\_\_\_\_  
Colonel John W. Henderson, P.E., District Commander Date 14 SEP 16

Montana State Historic Preservation Officer

  
\_\_\_\_\_  
Dr. Mark Baumler, SHPO Date 9/29/2016