

MEMORANDUM OF AGREEMENT
AMONG THE FRIENDS OF THE RIVERS OF VIRGINIA,
U.S. FISH AND WILDLIFE SERVICE AND
VIRGINIA DEPARTMENT OF HISTORIC RESOURCES
REGARDING THE PIGG RIVER RESTORATION AT POWER DAM PROJECT
IN FRANKLIN COUNTY, VIRGINIA

WHEREAS, Friends of the Rivers of Virginia (FORVA) proposes to undertake the Pigg River Restoration at Power Dam (Project) consisting of the breaching of the Rocky Mount Dam on the Pigg River immediately upstream of Route 713 (Power Dam Road) Bridge in Franklin County, Virginia; and

WHEREAS, the U.S. Fish and Wildlife Service (the Service) plans to provide Federal funds and staff time for the Project pursuant to 50 CFR § 22.26, thereby making the Project and undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, the Service, in consultation with the Virginia Department of Historic Resources (SHPO), has established the Area of Potential Effect (APE) for this undertaking as 26.49 acres, the pool upstream of the dam within the APE comprising 25.33 acres, which will be drained after the dam has been breached, and the remaining 1.16 acres of the APE consisting of the dam, the access constructed to notch the dam, and the staging and temporary stockpile areas (see Attachment I); and

WHEREAS, the Service has completed the identification of historic properties for the Project, and in consultation with the SHPO, finds that the Phase II evaluation study titled *Rocky Mount Dam and Powerhouse (033-0016), Franklin County, Virginia, Report and National Register Evaluation (Pezzoni, 2007)* meets the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44742, September 29, 1983) and the SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44742, September 29, 1983) 1999, rev. 2003*; and

WHEREAS, the Service has determined, in consultation with the SHPO in correspondence dated May 24, 2007 that the Rocky Mount Dam and Power House (DHR ID#033-0016) are eligible for listing for the National Register of Historic Places under criterion A in the area of industry at the local level of significance; and

WHEREAS, the Service, in consultation with SHPO, has determined that the Project will have an adverse effect on the Rocky Mount Dam and Power House; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the Service has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has not elected to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii) in correspondence dated February 12, 2016; and

WHEREAS, pursuant to Section 10 and/or Section 404 of the Clean Water Act, a Department of the Army permit will likely be required from the U.S. Army Corps of Engineers (Corps) for this project, and the Corps has designated the Service as the lead Federal agency to fulfill Federal responsibilities under Section 106 of the NHPA; and

WHEREAS, the Service has invited the Corps to participate in this consultation and the Corps has elected not to sign the Agreement; and

WHEREAS, the Service has invited FORVA to participate in this consultation and to sign this Agreement as an invited signatory and FORVA has elected to participate; and

WHEREAS, the Service has invited Franklin County to participate in this consultation and to sign this Agreement as a concurring party and Franklin County has elected to participate; and

WHEREAS, the Service has invited the Town of Rocky Mount to participate in this consultation and to sign this Agreement as a concurring party and the Town of Rocky Mount has elected to participate; and

WHEREAS, the Service has invited the Franklin County Historical Society to participate in this consultation and to sign this Agreement as a concurring party and the Society has elected to participate.

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

STIPULATIONS

The Service shall ensure that the following measures are carried out:

I. PRESERVATION

FORVA will leave in place the Power House and dam abutments on both riverbanks for historical interpretation.

II. DOCUMENTATION

A. Prior to January 30, 2019 and prior to any construction, whichever comes first, FORVA shall prepare black and white 35 mm photographic documentation and digital color images of the dam consistent with the guidance found in "Photographic Documentation - Virginia Department of Historic Resources (DHR) Architectural Survey" (updated December 2015) and complete an updated SHPO Intensive Level documentation for the historic property in the SHPO's Virginia Cultural Resource Information System (V-CRIS). FORVA shall submit the documentation to the

shall immediately halt all activity within a one hundred (100)-foot radius of the discovery, and notify FORVA of the discovery and implement interim measures to protect the discovery from looting and vandalism." The initial one hundred (100)-foot boundary will remain in effect until a professional archaeologist inspects the discovery and can determine an appropriate buffer distance.

- B. Immediately upon receipt of the notification required in the above Stipulation, FORVA shall:
1. inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted; and
 2. clearly mark the area of the discovery; and
 3. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
 4. have a professional archeologist, meeting the Secretary of the Interior Professional Qualifications Standards (48 FR 44738, September 29, 1983), inspect the construction site to determine the extent of the discovery and provide recommendations regarding its National Register of Historic Places (NRHP) eligibility and treatment; and
 5. notify the Service, the SHPO, and other consulting parties of the discovery, within seventy-two (72) hours, describing the measures that have been implemented to comply with this Stipulation.
- C. Within two (2) business days of the receipt of the information required in the above Stipulation, the Service shall provide FORVA, the SHPO, and other consulting parties with its preliminary assessment of the extent and NRHP eligibility of the discovery and the measures proposed to resolve adverse effects. In making its evaluation, the Service, in consultation with the SHPO, may assume the discovery to be NRHP eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c). FORVA, the SHPO, and other consulting parties shall respond to the Service's assessment within forty-eight (48) hours of receipt.
- D. The Service will take into account the SHPO and other consulting parties' recommendations on eligibility and treatment of the discovery and will notify FORVA of its eligibility determination and any appropriate required actions. FORVA must comply with the required actions, if any, and provide the Service, the SHPO, and other consulting parties with a report on the actions when implemented. Any actions that the Service deems appropriate for FORVA to take with regard to such discovery will automatically become additional stipulations to this Agreement.

Service and the SHPO for review and approval, and to the other consulting parties for thirty (30) calendar day review and comment. All comments shall be incorporated into the final deliverables to be submitted within thirty (30) calendar days.

- B. FORVA shall ensure that the dam will be documented in a written report illustrated with maps and line drawings, and photographic images. The report shall address, at minimum, the physical description and historical context of the property. Photographs shall be taken of all elevations and character-defining elements. The existing Intensive level information for the dam will be updated as appropriate and entered into V-CRIS. FORVA shall ensure that the documentation, including photographs, is completed according to the most recent SHPO survey guidelines, and that all materials are accepted by the SHPO prior to implementation of the undertaking. FORVA shall ensure that copies of the documentation will be made available to other consulting parties. Following approval of the final documentation by the Service, FORVA may proceed with implementation of permitted activities.

III. WEBSITE INFORMATION

Within three (3) months of the Service's approval of the documentation, FORVA will post all documentation materials on the FORVA website (<http://www.forva.org>). Alternately, this information may be placed on the Service's Virginia Partners for Fish and Wildlife Program website (<http://www.fws.gov/northeast/virginiafield/partners/partners.html>).

IV. INTERPRETIVE SIGNAGE

- A. FORVA shall design and install an on-site information kiosk at the dam site on the northwest side of the river to provide the public with an account of the historic significance of the Rocky Mount Dam and Power House and the development of the river at this location.
- B. Within six (6) months of the date of the last signatory party's signature on this Agreement, FORVA shall submit a draft of the text, images, and other materials for the kiosk to the Service for review and approval, and to the SHPO and the other consulting parties for review and comment. FORVA shall take into account any comments received in a timely manner from the consulting parties, revising the draft kiosk display as appropriate. Within ninety (90) calendar days of receiving final approval of the signage in writing from the Service, FORVA shall pay for the fabrication and installation of the interpretive kiosk.
- C. FORVA shall notify the Service and the SHPO of the installation of the interpretive kiosk in writing within thirty (30) calendar days of its completion.

V. POST-REVIEW DISCOVERIES

- A. FORVA shall ensure that the following provision is included in all construction contracts: "If previously unidentified historic properties or unanticipated effects to historic properties are discovered during construction, the construction contractor

- E. Construction activities may proceed in the area of the discovery when the Service has determined that implementation of the actions undertaken to address the discovery pursuant to this Stipulation are complete.

VI. HUMAN REMAINS

- A. FORVA shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. FORVA shall treat all human remains in a manner consistent with the ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>).
- B. FORVA shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in accordance with the Regulations Governing Permits for the Archaeological Removal of Human Remains (Virginia Register 390-01-02) found in the Code of Virginia (10.1-2305, et seq., Virginia Antiquities Act). If removal is proposed, FORVA shall apply for a permit from the SHPO for the removal of human remains in accordance with the regulations stated above.
- C. FORVA shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary artifacts. The consulting parties to this Agreement shall release no photographs of any Native American burial site or associated funerary artifacts to the press or general public. The Service shall notify the appropriate Federally-recognized Tribe(s) and/or appropriate tribal leaders when Native American burials, human skeletal remains, or funerary artifacts are encountered on the project, prior to any analysis or recovery.
- D. FORVA shall deliver any Native American human skeletal remains and associated funerary artifacts recovered pursuant to this Agreement to the appropriate tribe to be reinterred. The disposition of any other human skeletal remains and associated funerary artifacts shall be governed as specified in any permit issued by the SHPO or any order of the local court authorizing their removal. FORVA will be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.

VII. REPORTING REQUIREMENT

Within ninety (90) calendar days of completion of all stipulations to this Agreement, FORVA shall provide to the Service, the SHPO, and the other concurring parties, a signed statement affirming that it has fulfilled all its responsibilities under this Agreement. The Agreement will terminate only after all the items in the Agreement have been confirmed as complete in writing by the Service after consultation with SHPO.

VIII. DISPUTE RESOLUTION

- A. Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Service shall consult with such party to resolve the objection. If the Service determines that such objection cannot be resolved, the Service:
1. Will forward all documentation relevant to the dispute, including the Service's proposed resolution, to the ACHP. The ACHP shall provide the Service with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Service 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. The Service will then proceed according to its final decision.
 2. May make a final decision on the dispute and proceed accordingly if the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar days. Prior to reaching such a final decision, the Service shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement. The Service will provide the written response to the signatories and concurring parties to the Agreement and provide the ACHP with a copy.
- B. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement be raised by a member of the public, the Service shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, consult with all parties to this Agreement to resolve the objection.
- C. The Service's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remains unchanged.
- D. If FORVA decides it will not proceed with the undertaking, it shall so notify the Service, the SHPO, and the other consulting parties and this Agreement shall become null and void.

IX. AMENDMENTS

This Memorandum of Agreement (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.

X. 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 signatories to attempt to develop an amendment per Stipulation XI, above. If within thirty (30) calendar 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, the Service 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. The Service shall notify the SHPO as to the course of action it will pursue.

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

XI. DURATION

This Agreement 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, the Service shall either (a) execute a 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. Prior to such time, the Service may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation VIII (Dispute Resolution). The Service shall notify the signatories as to the course of action it will pursue.

If any obligation is not complete, the party responsible for such obligation is in violation of this Agreement. Failure of the Service to pursue such violation is NOT a waiver. No amendment, modification, or extension will be effective unless all parties to the Agreement have agreed in writing.

SIGNATORY PAGE

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IN FRANKLIN COUNTY, VIRGINIA

SIGNATORY

Virginia State Historic Preservation Office

By: 
Julie V. Langan, Director

Date: 5.2.16

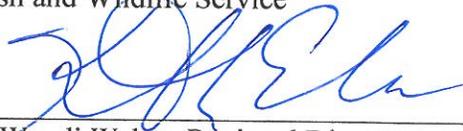
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SIGNATORY

U.S. Fish and Wildlife Service

By:

 Acting

Wendi Weber, Regional Director, Northeast Region

Date:

APR 25 2016

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INVITED SIGNATORY

Friends of the Rivers of Virginia

By: 
William Tanger, Chairman

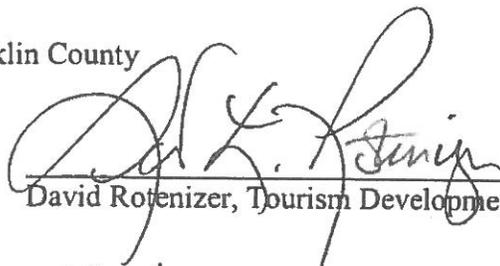
Date: April 6, 2016

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CONCURRING

Franklin County

By:



David Rotenizer, Tourism Development Manager

Date:

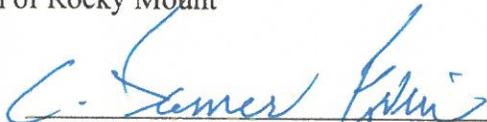
15 APRIL 2016

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CONCURRING

Town of Rocky Mount

By:


C. James Ervin, Town Manager

Date:



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CONCURRING:

Franklin County Historical Society

By: Linda Stanley 
Linda Stanley, Special Projects Coordinator

Date: 4-14-2014