

MEMORANDUM OF AGREEMENT
BETWEEN THE
MONTANA STATE HISTORIC PRESERVATION OFFICER
AND THE
MEDICINE LAKE NATIONAL WILDLIFE REFUGE,
UNITED STATES FISH AND WILDLIFE SERVICE
REGARDING THE MEDICINE LAKE DAM #1 (24SH0028) REMOVAL,
SHERIDAN COUNTY, MONTANA

WHEREAS, the United States Fish and Wildlife Service (Service), Medicine Lake National Wildlife Refuge (Refuge) proposes to remove the Medicine Lake Dam #1 (Dam #1) on Muddy Creek. The proposed undertaking (Undertaking) will result in the complete removal of Dam #1 because it is currently failing and is rarely used for its intended purpose as a water control structure, and will be replaced with a recontoured channel; and

WHEREAS, members of the Assiniboine and Sioux Tribes of the Fort Peck Reservation have expressed a desire to see Dam #1 removed and that Muddy Creek be restored to its natural, free-flowing condition; and

WHEREAS, the Service, as the lead Federal agency, has determined that the Project is an Undertaking subject to review under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic preservation Act (NHPA), or 54 U.S.C. § 306108; and

WHEREAS, the Service, in consultation with the Montana State Historic Preservation Office (MTSHPO), has previously determined Dam #1 (24SH0028) to be eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, the Service, in consultation with MTSHPO, has defined the Undertaking's area of potential effects (APE) as a 1-mile radius from Dam #1 to include portion of the Big Muddy Diversion Canal (24SH1291). The Service has determined with MTSHPO that there will be no adverse effect to the Big Muddy Diversion Canal. Physical effects will be confined to footprint of Dam #1, and there will be a permanent visual effect to the surrounding area through its removal and stream contouring; and

WHEREAS, the Service has determined that the Undertaking will have an Adverse Effect on Dam #1, and the MTSHPO has concurred with this determination in a letter dated October 10th, 2025; and

WHEREAS, the Service has notified the Advisory Council on Historic Preservation (ACHP) on September 29th, 2025, regarding its intent to prepare a MOA to resolve the Adverse Effect and satisfy its Section 106 responsibilities pursuant to 36CFR Part §800.6 (a)(l), and the ACHP has chosen not to participate (response letter dated January 26th, 2026), pursuant to 36 CFR§800.6(a)(l)(iii); and

WHEREAS, the Service have accomplished appropriate public outreach through a public notice posted February 12, 2026 – March 14, 2026.

WHEREAS, Service has contacted Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Blackfeet Nation, the Cheyenne and Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Rosebud Sioux Tribe, and the Standing Rock Sioux Tribe regarding the effects of the Undertaking on historic properties on September 30th 2025, with follow up emails on December 10th 2025, and;

WHEREAS, the Assiniboine and Sioux Tribes of the Fort Peck Reservation stated by letter dated August 23rd 2024 that they supported removal of Dam #1, and the Northern Cheyenne responded to consultation via email on November 3rd 2025 that they viewed the Undertaking as having no adverse effects to historic properties, and;

WHEREAS, the Service has consulted with the National Park Service's Heritage Partnerships Program to determine the appropriate level of Historic American Engineering Record (HAER) documentation for the recording of Dam #1. The National Park Service recommended Level 3 HAER documentation of Dam #1 via email on September 30, 2025.

WHEREAS, no substantive comments from the public, interested parties and the Tribes have been received regarding the final project design of the Undertaking; and

NOW, THEREFORE, in accordance with 36 CFR §800.6(b)(l)(iv), this MOA is being executed to implement the agreed upon resolution of Adverse Effects. The Service and MTSHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to mitigate the adverse effect of the Undertaking on historic properties:

STIPULATIONS

To the extent of its legal authority and in coordination with the MTSHPO, the Service will require that the following measures are implemented to mitigate the adverse effect of the Undertaking on historic properties, and in keeping with the timelines described in Part IV - Duration.

I. PROFESSIONAL QUALIFICATIONS

- A. All tasks will be completed or supervised by personnel meeting the professional qualifications outlined in the Secretary of the Interior's Standards and Guidelines for archeology and Historic Preservation as stated in 36 CFR Part 61. These qualifications are a condition of the MOA and are determined by the Service in consultation with the MTSHPO.
- B. All background research, fieldwork, analysis, and reporting tasks will be completed according to specifications consistent with the Secretary of Interior's Standards and Guidelines for Architectural and Engineering Documentation.

II. RESOLUTION OF ADVERSE EFFECTS

- A. The deconstruction contractor shall use its best efforts to avoid effects to any historic properties other than Dam #1. All work and staging areas will occur in areas which have received archaeological surveys or within previously disturbed areas. No work will be conducted on the Big Muddy Diversion Canal (24SH1291) levee except for minor road repair to ensure access to the construction site; the road repairs will not result in an adverse effect to the Big Muddy Diversion Canal.
- B. The Service will complete Level III Historic American Engineering Record (HAER) documentation of the Medicine Lake Dam #1 (24SH0028) for the National Park Service. A complete HAER documentation packet including short form historical report, large format photographs with interior and exterior views, photograph index, and sketch plan, will be provided to the National Park Service within eight months of the execution of this agreement. National Park Service will provide acceptance at the regional level. SHPO will be provided with a copy of the final, regionally approved HAER document by (INSERT DATE).

III. POST-REVIEW DISCOVERIES

- A. Based on the high level of disturbance within the APE, it is not anticipated that any cultural materials identified during construction will be in primary context and considered significant discoveries requiring longer-term work stoppage for consultation. However, if such a discovery should occur, work will be halted within 10 meters (30 feet) of the discovery where further subsurface remains can reasonably be expected to occur. The contractor will notify the Service Authorizing Officer within 24 hours of the discovery and Service will consult with MTSHPO.
- B. If human remains are discovered under any circumstance, the Service will ensure that local law enforcement office and coroner/medical examiner are notified in accordance with applicable State statute(s) and protect the remains from any harm. Ground disturbing work in the immediate vicinity of the remains shall cease immediately. The signatories shall consult to develop a written plan of action to manage the discovery. Discoveries of human remains on Federal or Tribal lands shall be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001-3013, 18 U.S.C. § 1170) and the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §470aa-470mm) . The Service shall consult with the appropriate Tribal representatives and MTSHPO and will follow the guidelines outlined in the ACHP's Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (2007).

IV. DURATION

Within eight (8) months following execution of this MOA, the Service will provide MTSHPPO a copy of the Level III HAER report. If the terms of this MOA have not been implemented within eight (8) months of the execution date, then it shall be considered null and void. In such an event, the Service shall notify the Signatories to this MOA and, at that time, may elect to extend the period of enforcement through an amendment, in writing, to this MOA. The signatories may also elect to revise the MOA and will consult as appropriate.

VI. DISPUTE RESOLUTION

Should any Signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA 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 will:

- A. Forward all documentation relevant to the dispute, including Service's proposed resolution, to the ACHP. The ACHP shall provide the Service with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Service shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP and the Signatories and provide them with a copy of this written response. LNF will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty-day time period, Service may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Service shall prepare a written response that considers any timely comments regarding the dispute from the Signatories to the MOA and provide them and the ACHP with a copy of such written response.
- C. It will be the responsibility of the Service to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

VII. 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 the Service submits to the ACHP a copy of the amendment signed by all the Signatories.

VIII. TERMINATION

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

notification to the other signatories.

If this MOA is terminated prior to its completion, the Service must either (a) execute a new 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 work continuing on the Project. The Service shall notify the signatories which course of action it will pursue.

Execution of this MOA by the Service and MTSHPO and implementation of its terms supports the Service's efforts to account for the effects of this Project on historic properties and afford the ACHP an opportunity to comment.

EXECUTED:

SIGNATORY

UNITED STATES FISH AND WILDLIFE SERVICE, MEDICINE LAKE NATIONAL REFUGE

By: _____

Brooke Johns
Refuge Manager
Medicine Lake National Wildlife Refuge

Date: _____

SIGNATORY

MONTANA STATE HISTORIC PRESERVATION OFFICE

By: _____

Mr. Peter Brown
State Historic Preservation Officer
Montana State Historic Preservation Office

Date: _____