



United States Department of the Interior



BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

IN REPLY REFER TO:
PN-3322
WTR-4.00

JUN 27 2008

Ms. Mary Sexton
Director
Department of Natural Resources and Conservation
State of Montana
P.O. Box 201601
Helena, Montana 59620-1601

Subject: Execution of Cost Reimbursement Agreement No. 1425-08-MR-10-7127,
Hungry Horse Project, Montana


Dear Ms. Sexton:

Enclosed for your consideration and execution are two copies of the proposed Memorandum of Agreement (MOA) between the United States Bureau of Reclamation and the Department of Natural Resources and Conservation (DNRC). The MOA describes generally the scope of work for Reclamation and the DNRC to conduct activities leading up to preparation and execution of a contract for a municipal, residential, and industrial water supply from Hungry Horse Reservoir and describes the funding arrangement by which the DNRC will fund Reclamation's performance of the work.

Taking into consideration the DNRC's impending funding deadline for this activity, we altered our normal procedure by signing the agreement first. We trust this accommodation will assist the DNRC in meeting its deadline. Once the MOA is executed on behalf of the DNRC, please return one original signed copy to Reclamation, Attention: PN-3300, at the address identified in Section XIII. Concurrently, the initial advance payment should be sent to the Reclamation lockbox address identified in Section VIII (J). To assure proper crediting, please assure that the advance payment references agreement number 1425-08-MR-10-7127.

Please feel free to contact Mr. Ryan Patterson at 208-378-5340 if you have any questions.

Sincerely,

Acting for 
J. William McDonald
Regional Director

Enclosure in duplicate

Reclamation Agreement No. 1425-08-MR-10-7127

MEMORANDUM OF AGREEMENT

BETWEEN

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

And

**STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**

This Memorandum of Agreement (MOA) is made pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388); the Reclamation Extension Act (Act of August 13, 1914; 38 Stat. 686); the Second Deficiency Appropriation Act for 1924 (Fact Finders Act) (Act of December 5, 1924; 43 Stat. 672); the Omnibus Adjustment Act (Act of May 25, 1926; 44 Stat. 636); the Interior Department Appropriation Act For 1928 (Act of January 12, 1927; 44 Stat. 924); and the Reclamation Project Act of 1939 (Act of August 4, 1939; 53 Stat. 1187) and acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, and the STATE OF MONTANA, acting through the Department of Natural Resources and Conservation, hereinafter referred to as DNRC.

I. Background

Construction of Hungry Horse Dam was authorized by the Act of June 5, 1944 (58 Stat. 270, Public Law 78-329). The act of May 29, 1958 (Public Law 85-428) amended the authorizing act to make Hungry Horse a Reclamation project subject to Reclamation laws. The authorized purposes of the Hungry Horse Project are irrigation flood control, navigation, streamflow regulation, hydroelectric generation, and other beneficial uses.

Reclamation is evaluating the possibility of entering into a contract under the authority of the Reclamation Project Act of 1939 (Act of August 4, 1939; 53 Stat. 1187) to provide the State of Montana a supply of stored water from Hungry Horse Reservoir for municipal, residential, and industrial uses in the amount of up to approximately 100,000 acre-feet. Prior to entering into a contract, several steps and processes must be completed, which may include: cost reallocation, environmental compliance, water rights examination, hydrologic modeling, and other associated activities; contracting activities, including the drafting and negotiation of a contract.

II. Purpose

The purpose of this MOA is to describe generally the scope of work for Reclamation and the DNRC to conduct activities leading up to preparation and execution of a contract for a municipal, residential, and industrial water supply from Hungry Horse Reservoir and to describe the funding arrangement by which the DNRC will fund Reclamation's performance of the work.

II. Objectives

The mutual objective of the DNRC and Reclamation is to proceed in good faith and use their best efforts to complete the work necessary for the DNRC and Reclamation to execute a contract for a supply of water from Hungry Horse Reservoir. Accordingly, the DNRC's objective is to develop the foundation upon which Reclamation may base its decision whether to enter into a contract with the DNRC. Reclamation's objective is to cover its costs incurred in the completion of the work identified in Section III Implementing Actions, below.

III. Implementing Actions

A. The DNRC will, subject to available resources and funding:

1. Provide information, data, and analysis to Reclamation as may be needed to complete the work described in this MOA.
2. Provide advance funding as mutually agreed in writing to cover Reclamation's costs for the performance of the work pursuant to the terms of this MOA.
3. Participate with Reclamation staff as necessary in gathering and analyzing pertinent information.
4. Participate in meetings with Reclamation and other Federal and state agencies, and with public interest groups.
5. Provide assistance in resolving issues that may develop during the performance of the work described in this MOA.

B. Reclamation, in cooperation with the DNRC, will:

1. Conduct a cost reallocation study for the Hungry Horse Project. Anticipated tasks for this work item include:
 - (a). Gather as-built construction cost data.
 - (b). Calculation of benefits for each authorized purpose (hydroelectric generation, flood control, irrigation, navigation, streamflow regulation, and other beneficial uses) under the new operation criteria.
 - (c). Perform associated hydrologic studies and calculate estimate of operation and maintenance costs.
 - (d). Seek Congressional approval.

The estimate for time and costs for economic and engineering work for the cost reallocation

study is approximately 300 staff days over a period of 1.5 years at an estimated cost of \$260,000.

2. Complete any environmental analyses which Reclamation determines is required under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et. seq., (NEPA), including any and all associated compliance activities to implement the proposed contract action. The anticipated level of NEPA compliance is an Environmental Impact Statement (EIS), and is estimated to cost \$1 to \$2 million.

3. Conduct a Water Needs Assessment to identify the water supply needs of the contractor(s). Reclamation, with participation from the contractor(s) would initiate a water needs assessment study (including possible mitigation water, modeling, etc.) to identify the needs of the contractor(s). The cost estimate for this item is estimated at \$2,600.

4. Request approval of the Commissioner of Reclamation to negotiate and execute contract(s). Items that must be addressed in such a request include, but are not limited to: identification of contractor, authority to contract, contractor's need for water and proposed use, quantity of water requested, compliance with NEPA and public participation requirements, explanation of water rate calculation, water conservation measures, term of contract, operation and maintenance responsibility, etc. We estimate that it would take 40 hours to prepare the request at an estimated cost of \$2,600.

5. Complete any consultation with the National Marine Fisheries Service and/or the United States Fish and Wildlife Service, determined by Reclamation to be necessary or advisable to comply with the Endangered Species Act (ESA), 16 U.S.C. 1531 et. seq.

6. Comply with the National Historic Preservation Act (NHPA) (36 CFR 800) requirements.

7. Complete the contracting process upon Commissioner approval, which consists of negotiation, preparation, and execution of a contract in accordance with this MOA and applicable law, including applicable provisions of NEPA; NHPA; and the ESA.

8. Complete any consultation with Indian tribes, determined by Reclamation to be necessary or advisable, relative to Indian Trust Assets and/or sacred sites.

9. Provide notice to the public and opportunities to observe the contract negotiation process, as required in 43 CFR 426.22, or as required under NEPA, ESA. However, under no circumstances will anyone other than designated representatives of Reclamation and DNRC be permitted to negotiate the actual terms of the contract(s). Reclamation also agrees to cooperate with DNRC in complying, as necessary, with State open meeting and public information law.

10. Perform other technical tasks associated with the purpose of this MOA as mutually agreed to in advance in writing by both parties.

11. Provide the DNRC with reasonable opportunity to comment on all draft studies, assessments and analyses produced pursuant to this MOA. Reclamation agrees to consider and discuss with the DNRC all comment(s) received from the DNRC with the understanding that upon review and any subsequent discussion between the parties the comment(s) may not be fully addressed, incorporated, and/ or resolved by Reclamation in the final product at issue.

12. Assign an Activity Manager who will be responsible for coordinating activities necessary to complete the work described in this MOA.

13. Reclamation, after notification and agreement by the DNRC, may contract with another person or entity, including DNRC, for any of Reclamation's obligations described herein, and such costs, including Reclamation's costs for administering the contracts, except as excluded below, shall be paid by the DNRC. Such approval shall not be unreasonably withheld by the DNRC.

14. Ensure that all contracts or obligations entered into relating to this MOA contain provisions for cancellation, wherein the contracts or obligations may be terminated at any time upon the request of the DNRC and the DNRC will only be responsible for costs and expenditures incurred up to the date of the termination including payment of costs incurred by Reclamation pursuant to the terms of Section VIII Payment, below. Funds in excess of the expenditures will be returned to the DNRC.

15. Provide copies, if requested, to the DNRC of all contracts, documents, invoices and other writings which evidence performance of obligations pursuant to this MOA, unless these items are protected by a privilege or other protection from disclosure under applicable law.

16. Ensure that the costs billed to the DNRC by Reclamation and any other person or entity Reclamation contracts with to perform any of the obligations pursuant to this MOA, including Reclamation's costs of administering the contracts, shall be actual costs incurred to complete the obligations.

17. Provide the DNRC with a Cost List once per quarter, as described in Section VIII.D of this MOA, until the proposed contract(s) has (have) been executed or this MOA is terminated.

18. Provide the DNRC with a written explanation for any costs exceeding the amounts described in prior estimates prepared by Reclamation pursuant to this MOA.

19. Within thirty (30) days after completion or termination of all the activities described in this MOA, provide a full accounting of its costs since the last completed quarter and will refund to the DNRC all funds it advanced to Reclamation that were not expended or obligated by Reclamation for costs incurred.

IV. Areas of Mutual Responsibility

A. The DNRC and Reclamation will appoint principal contacts (see Section XIII of this MOA) to coordinate activities necessary to complete the work described in this MOA. All requests relating to the work described under this MOA will go through the principal contacts.

B. The DNRC and Reclamation will ensure completion of all activities required to comply with NEPA, ESA, and other State and Federal laws applicable to the proposed water supply contract(s).

C. The DNRC and Reclamation will provide for public notice as deemed necessary and

appropriate by either party to comply with NEPA.

D. The DNRC and Reclamation will cooperate to ensure appropriate public and stakeholder participation.

V. Areas of Mutual Agreement

A. Reclamation and the DNRC pledge their individual good faith to seek prompt and fair agreement on all issues relating to this MOA.

B. Reclamation and the DNRC agree that performance by Reclamation of the activities identified herein is contingent upon receipt of advance payment as identified in Section VIII Payments, of this MOA and that payment in advance for Reclamation costs or completion of any or all aspects of this MOA does not guarantee that a water supply contract will be approved by Reclamation. Execution of a contract is contingent on the successful completion of work items and acceptance by the DNRC of terms and conditions to be included in a contract.

C. Reclamation agrees to take the necessary steps to minimize costs for activities, including Reclamation administration costs, associated with the proposed water supply contract.

D. Reclamation and the DNRC agree that any of the responsibilities of either party under this MOA may become the responsibility of the other party if agreed to by both parties in writing, unless prohibited by law or regulation.

VI. Budget

The estimated cost range for Reclamation's activities under this MOA is approximately \$1.3 million to \$2.35 million. These estimates are provided not as maximums or caps, but as estimates of the approximate total costs; final actual costs may be more or less than the estimated amounts, in consideration of the number, complexity, and type of actions requested by the DNRC. Reclamation will refine the cost estimates as work progresses by submitting a Cost List that projects the costs of scheduled work for the upcoming quarter as described in Section VIII Payment, below. Presentation of quarterly Cost Lists shall not require modification to this MOA.

Reclamation has estimated its cost in staff days and converted the measurement to dollars. Costs include administrative expenses (actual labor cost plus any non-labor expenses such as travel, printing, and equipment). Costs per labor hour includes salary, benefits, and indirect costs. Reclamation has previously provided the DNRC with a preliminary budget prior to entering into this MOA for purposes of discussion. When the preliminary budget and the Cost Lists submitted pursuant to Section VIII Payment, below, are in conflict, the quarterly Cost Lists shall be controlling.

VII. Funds Availability

There will be no Reclamation funding associated with the work covered by this MOA, except for such funding as may be appropriated for this specific work by Congress. Reclamation shall not be obligated to continue performance under this MOA or incur costs in excess of funds made

available to Reclamation for the purposes of this MOA.

Prior to the commencement of work by Reclamation, the DNRC shall contribute funds pursuant to the terms of this MOA and specifically in Section VIII Payments, below. The DNRC shall not be obligated to make funds available in excess of the amount estimated above except by appropriate modification of this MOA. If costs exceed the estimated amounts, Reclamation will cease all work until the modification to this MOA is completed. Reclamation and DNRC recognize that funding from sources other than DNRC may become available and can be used for work performed under this MOA.

If it is found that the requested water supply contract(s) is (are) not feasible or will not be executed for any reason, there shall be no refunds of funds contributed by the DNRC and applied by Reclamation to cover costs of work performed under this MOA.

VIII. Payments

A. Authority. Reclamation may receive and may expend funds received for investigations and other work involving operations similar to those provided for by the Reclamation law pursuant to the Contributed Funds Act of 1921, 43 U.S.C. § 395.

B. Advance Payment. The DNRC agrees to provide payment as mutually agreed in advance of Reclamation's performance of tasks outlined in this MOA. Funds contributed by DNRC will be used to pay for costs incurred by Reclamation associated with the tasks herein described. To ensure that advance payments are sufficient to fund Reclamation's performance, DNRC agrees to submit an initial advance payment to Reclamation in the amount of \$50,000.00, and shall deposit funds by the end of each quarter as necessary in order to maintain a minimum balance of not less than \$5,000.00 and no more than the anticipated costs for the upcoming quarter.

Bills, statements, and correspondence associated with this MOA shall be directed to the principal contact identified in Section XIII.

C. Application of Contributed Funds. Funds contributed by the DNRC will be used to pay for costs incurred by Reclamation for the performance of the tasks described in this MOA.

D. Periodic Contribution of Funds. Reclamation shall use its best efforts to at least thirty (30) days, and in any event, no less than seven (7) days prior to the first day of each calendar quarter, provide to DNRC for its review and approval, a Cost List of Reclamation's proposed actions and estimate of expenses for the upcoming quarter. Said estimate shall identify in reasonable detail the factual data relied upon and methodology by which the estimate was prepared. If acceptable, DNRC shall notify Reclamation in writing as soon as possible and shall remit sufficient funds required to reestablish the minimum balance and cover the anticipated costs for the upcoming quarter. Any unexpended amounts from the prior quarter shall be applied to the upcoming quarter or refunded to DNRC at its option. If DNRC does not approve the Cost List, the DNRC and Reclamation shall consult prior to the start of the quarter to resolve issues pertaining to the Cost List.

If Reclamation incurs expenses during the quarter that exceed the Cost List provided at the

beginning of the quarter, Reclamation will cease work to the extent possible and notify the DNRC of the deficiency. Reclamation will resume work upon receipt of funds sufficient to cover costs up to the end of that quarter.

E. Separate Account. Reclamation shall deposit funds contributed by the DNRC under this MOA into a Reclamation reimbursable account for use on the “State of Montana Hungry Horse Reservoir Water Supply” project. Reclamation shall at all times hold DNRC funds separate from all other funds and shall not commingle said funds with any other funds.

F. Return of Unexpended Funds. Reclamation shall return any of the funds contributed by the DNRC for use by Reclamation, which are not spent or obligated for the purposes of this MOA.

G. Insufficient Payment. In the event that funds contributed by DNRC are not sufficient to cover all costs incurred by Reclamation, or if this MOA is terminated by either party, Reclamation will cease work to the extent possible and notify DNRC of the deficiency. The DNRC will be responsible for costs incurred by Reclamation for all activities that Reclamation is unable to cancel after reasonable diligence.

H. Date of Incurrence of Costs. Reclamation shall be entitled to reimbursement of costs incurred by Reclamation on or before the effective date of this MOA, if such costs would have been reimbursable, if incurred by Reclamation after this MOA had been executed. As of June 23, 2008, Reclamation has incurred a total of \$1,192.00 in reimbursable costs associated with the preparation of this MOA.

I. Address for Return of Funds to the DNRC. Reclamation shall return unexpended funds after the termination or expiration of this MOA to the DNRC at the address cited in Section XIII.

J. Address to send Payments to Reclamation. The DNRC shall make all payments payable to Bureau of Reclamation and list the agreement number 1425-08-MR-10-7127. The DNRC shall remit all payments to Reclamation’s lockbox at:

Bureau of Reclamation
PN Region: Pacific Northwest
P.O. Box 894240
Los Angeles, CA 90189-4240

IX. Term

This MOA shall become effective on the date of last signature hereto and shall remain in effect until full execution of a contract(s) for water supply from Hungry Horse Reservoir, unless terminated sooner as provided in Section XI Termination, below.

X. Modifications

Either Reclamation or the DNRC may request modification of this MOA. Modifications to this MOA shall be made by mutual consent of the parties, by the issuance of a written modification,

signed and dated by both Reclamation and the DNRC, prior to any changes being made. In the event any such change or additional work causes an increase or decrease in the cost of performing the services, an equitable adjustment in the compensation and the time for performance shall be made.

XI. Termination

Either Reclamation or the DNRC may terminate its obligations and duties under this MOA at any time upon sixty (60) days written notice to the other party. All duties and obligations of both parties under this MOA shall cease at that time except as the MOA provisions relate to outstanding accounting and reimbursement of the parties' expenses. In the event of termination by either party, the DNRC shall reimburse Reclamation for the cost of all work that Reclamation through reasonable diligence is unable to cancel, and for all costs obligated or incurred up to and including the date of termination.

XII. Reports, Materials, and Confidentiality

All data, materials, analyses, and reports prepared for use in this project shall remain the property of Reclamation and, subject to Federal law and Reclamation policies governing its release, shall be made available to DNRC upon request. Reclamation grants DNRC the rights to use, disseminate, transfer, and display all materials released to it and acknowledges that products and materials produced under this MOA in the possession of DNRC are public information under Montana Law. DNRC shall provide notice to Reclamation prior to release of any information prepared by Reclamation under this MOA.

XIII. Principal Contacts

The principle contacts for this MOA are:

Reclamation

Ryan Patterson (Interim)
Activity Manager, (TBA)
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

DNRC

Tim Bryggman
P.O. Box 201601
Helena, MT 59620-1601
(406)-444-6889

XIV. General Provisions

A. Nothing herein shall be construed to obligate Reclamation to expend or involve the United States of America in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.

B. No Member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or be part of this MOA or receive any benefit that may arise out of it other than as a water user or landowner in the same manner as any other water user or landowner.

C. The parties agree to comply with all Federal and State statutes relating to

nondiscrimination, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the Education amendments of 1972, as amended, which prohibits discrimination on the basis of sex; the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended, which prohibits discrimination based on age against those who are at least 40 years of age; and the Equal Pay Act of 1963.

D. Any hiring of employees under this Agreement shall be on the basis of merit and qualifications, and there shall be no discrimination on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. "Qualifications" mean qualifications as are generally related to competent performance of the particular occupational task.

E. Reclamation shall maintain reasonable records of its performance under this MOA. Reclamation agrees that the Montana Legislative Auditor and the Montana Legislative Fiscal Analyst may audit all records, reports, and other documents that Reclamation maintains under or in the course of this MOA to ensure compliance with this MOA. Such records, reports, and other documents may be audited at any reasonable time.

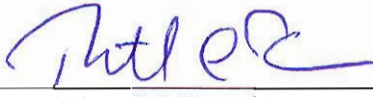
XV. Signatures

IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the last date written below.

State of Montana, Department of Natural Resources and Conservation

Signed  _____ Date 6/30/08
Mary Sexton
Director

United States of America Department of the Interior Bureau of Reclamation

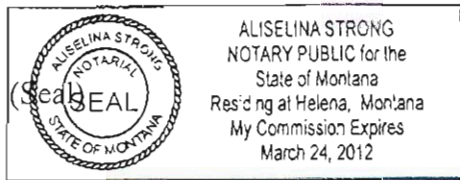
Signed  _____ Date 6-27-08
Acting for J. William McDonald
Regional Director
Pacific Northwest Region

STATE OF MONTANA)

County of Lewis & Clark)
:ss

On this 30th day of June, 2008, personally appeared before me Mary Selton, to me known to be the official of the **Montana Department of Natural Resources and Conservation** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said Montana Department of Natural Resources and Conservation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]
Notary Public in and for the
State of Montana
Residing at: Helena MT
My commission expires: 3-24-2012

STATE OF IDAHO)

County of Ada)
:ss

On this 27th day of June, 2008, personally appeared before me Timothy L. Personius, to me known to be the official of the **UNITED STATES OF AMERICA** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)



[Signature]
Notary Public in and for the
State of Idaho
Residing at: USBR
My commission expires: April 8, 2011