



United States Department of the Interior

BUREAU OF RECLAMATION
P.O. Box 36900
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IN REPLY REFER TO:

MB-4200
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VIA ELECTRONIC MAIL ONLY

Mr. John T. Eddins
Advisory Council Historic on Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Subject: Bureau of Reclamation Request for the Advisory Council on Historic Preservation
Review and Opinion on Bureau of Reclamation Findings on Two Proposed
Undertakings located near Canyon Ferry Reservoir in Lewis and Clark County,
Montana

Dear Dr. Eddins:

The Bureau of Reclamation, Missouri Basin Region (Reclamation) requests Advisory Council on Historic Preservation (ACHP) review according to 36 CFR 800.4(d)(1)(ii) and pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) for its review and opinion on Reclamation's determination of no historic properties affected for the proposed undertakings, Boundary Fence Replacement, MTAO Project No. CF-20-007 and the Crittendon Day Use Area Fence Construction, MTAO Project No. CF-20-006 located near Canyon Ferry Reservoir in Lewis and Clark County, Montana. Reclamation and the Montana State Historic Preservation Office (SHPO) are in a dispute over the adequacy and use of a previous inventory conducted in 1982 in the Area of Potential Effects.

Project CF-20-007 is to replace a section of modern boundary fence where Reclamation is encroaching on private land. Project CF-20-006 is to place a small section of fence at a recreation day use area to keep a neighboring private landowner from continuing to place private property and trespass on public land. Please see the enclosed finding and supporting documentation.

On November 12, 2020, Reclamation Montana Area Office Archaeologist Rick Hanson left you a voicemail saying that Project CF-20-007 had begun but was stopped shortly after because of snow and he informed the field office to stop all work until the dispute is resolved. On further clarification with the field office, Mr. Hanson was informed the project had not started and no ground disturbance has occurred. Only vegetation in the area was cleared and new fence materials brought out to the area. A private landowner, however, has removed part of the existing fence encroaching on his property, which he has the right to do.

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* PARTIAL

The dispute concerns the use of a cultural resource inventory, specifically the 1982 inventory [Class III Cultural and Paleontological Resource Inventory at Canyon Ferry Reservoir, Near Helena, Montana (Greiser, S.T. et al, 1983)] by Historical Research Associates. Keep in mind, the determination of the adequacy of inventories is ultimately the responsibility of the lead Federal Agency official under Section 106, of NHPA and its implementing regulations at 36 CFR 800.4(b)(1). The SHPO believes the survey is too antiquated to be useful other than as background research. Enclosed are the introduction overview and methods section of the survey.

The SHPO states in two October 29, 2020, letters to Reclamation that the ACHP was copied on that, “Our office considers previous inventories valid for ten years, after which point their usefulness needs to be reviewed for changing standards, changing exposures of buried sites, and changing integrity of structures. Since cultural resources are considered historic once they are 50 years old, some sites which were not recorded in the past may have become historic in the intervening time and now require consideration. The older a previous inventory, the more suspect it becomes, and the more likely a re-inventory is necessary.”

Another SHPO statement is, “We do not believe relying on a 1982 inventory is an adequate level of effort to identify historic properties within the area of potential effect. We believe the area of potential effect for this project has the potential for unrecorded cultural resources. BOR has not countered SHPO’s claim but rather simply will not motivate to perform this small-scale field work.”

The SHPO also states, “All cultural inventories use statistical sampling methods. It is impossible to have 100 percent confidence that a previous survey identified 100 percent of the cultural resources due to factors such as ground surface visibility and transect spacing.”

Reclamation maintains that this is the case in all intensive cultural resource inventories, whether conducted yesterday or years ago. We have never claimed, nor should we claim, that the goal is 100 percent coverage. Rather, surveys are designed to identify historic properties within an area that may be affected by proposed or future actions. In the present case, the government has made a good faith effort by conducting an intensive survey in 1982. Further, Reclamation has reviewed the survey multiple times and determined the survey to be more than adequate and useful.

The SHPO has accepted the 1982 inventory until this year. Many Reclamation undertakings have been concurred on by the SHPO using this very 1982 inventory thus setting a precedent. In addition, how is a 10-year limit arrived at? This is an arbitrary time span. To complete a costly, unnecessary and unsubstantiated new survey every 10 years on Reclamation administered lands is arbitrary, a waste of limited agency resources, and wasteful of taxpayer funding.

Reclamation is being second-guessed by the SHPO and the burden of proof is being placed on Reclamation to explain itself. The SHPO is not relying on the professional judgement of Reclamation staff or the adequacy of a well conducted inventory, minimalizing the fine work conducted in 1982 to background research. In the two cases presented here, Reclamation staff reviewed aerial photographs and maps for existing structures that may be historic with negative results and determined the inventory as adequate. The burden of proof is on the SHPO to give a defensible reason to resurvey an area other than the age of a survey or generalities.

As mentioned previously, the determination of the adequacy of inventories is ultimately the responsibility of the lead Federal Agency official under Section 106, of NHPA and its implementing regulations at 36 CFR 800.4(b)(1). While Reclamation appreciates and considers the opinion of the SHPO, the SHPO does not have the authority to unilaterally and arbitrarily declare parameters for the adequacy of surveys conducted on behalf of Reclamation. Reclamation has previously notified the SHPO that age itself is not a sufficient reason to render a survey invalid for Section 106 purposes; therefore, SHPO's refusal to provide comments pertaining to effect determinations on projects due to the age of the survey being 10 plus years is non-responsive and subjective.

Reclamation has an excellent long-standing (decades) consultation relationship with the Montana State Historic Preservation Office on literally hundreds of projects. However, Reclamation disagrees with the SHPO in this instance and respectfully submits its supporting documentation, position, and supporting argument to the ACHP for ACHP review and opinion regarding Reclamation's determination of no historic properties affected for the cited proposed undertakings of the Boundary Fence Replacement, MTAO Project No. CF-20-007 and the Crittendon Day Use Area Fence Construction, MTAO Project No. CF-20-006.

If you have any questions concerning this letter, please contact me at (406) 247-7751 or by email at gshannon@usbr.gov. For the hearing impaired, please call the Federal Relay System at (800) 877-8339.

Sincerely,

**GEORGE
SHANNON**

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George Ward Shannon, Jr., Ph.D.
Missouri Basin Region; Arkansas Rio Grande Texas
Gulf Region; Wyoming and Eastern Colorado of the
Upper Colorado Region Regional Archaeologist

Enclosures

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