

APPENDIX

Section 208 of Title II of P.L. 108-447

SEC. 208. MONTANA WATER CONTRACTS EXTENSION. (a) AUTHORITY TO EXTEND- The Secretary of the Interior may extend each of the water contract listed in subsection (b) until the earlier of--

- (1) the expiration of the 2-year period beginning on the date on which the contract would expire but for this section; or
- (2) the date on which a new long-term water contract is executed by the parties to the contract listed in subsection (b).

(b) EXTENDED CONTRACTS - The water contracts referred to in subsection (a) are the following:

- (1) Contract Number 14-06-600-2078, as amended, for purchase of water between the United States of America and the City of Helena, Montana.
- (2) Contract Number 14-06-600-2079, as amended, between the United States of America and the Helena Valley Irrigation District for water service.
- (3) Contract Number 14-06-600-8734, as amended, between the United States of America and the Toston Irrigation District for water service.
- (4) Contract Number 14-06-600-3592, as amended, between the United States and the Clark Canyon Water Supply Company, Inc., for water service and for a supplemental supply.
- (5) Contract Number 14-06-600-3593, as amended, between the United States and the East Bench Irrigation District for service.

MEMORANDUM OF UNDERSTANDING

No. 06-AG-60-2158

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
GREAT PLAINS REGION
MONTANA AREA OFFICE**

and

**STATE OF MONTANA
DEPARTMENT OF FISH, WILDLIFE AND PARKS**

This Memorandum of Understanding (MOU) is between the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) and the State of Montana, Department of Fish, Wildlife and Parks (Department). The purpose of the MOU is to define the roles and responsibilities of Reclamation and the Department to examine the opportunities to improve the environmental health of Clark Canyon Reservoir and the Beaverhead River while continuing to provide water to entities holding contracts with Reclamation; including irrigation, municipal, and industrial needs.

Bureau of Reclamation
Montana Area Office

Signature

Dan Jewell
Name

Area Manager
Title

02 AUGUST 2006
Date

State of Montana
Department of Fish, Wildlife and Parks

Signature

M. Jeff Hagener
Name

Director
Title

8/1/06
Date

Memorandum of Understanding
Bureau of Reclamation
and the
State of Montana
Department of Fish, Wildlife and Parks
for the
Betterment of the Beaverhead River and Valley

I. BACKGROUND AND OBJECTIVES

The purpose of the MOU is to define the roles and responsibilities of Reclamation and the Department to examine the opportunities to improve the environmental health of Clark Canyon Reservoir and the Beaverhead River while continuing to provide water to entities holding contracts with Reclamation; including irrigation, municipal, and industrial needs.

Clark Canyon Dam and Reservoir and Barretts Diversion Dam are part of the East Bench Unit of the Pick-Sloan Missouri Basin Program. The East Bench Unit is a Federally-owned facility developed under the authority of the Flood Control Act of 1944. The dam and reservoir are located near the headwaters of the Beaverhead River in Southwestern Montana. Reclamation has a right under Montana statute to impound and store water behind Clark Canyon Dam. This stored water is released from the dam and flows through the Beaverhead River Valley supplying irrigation, municipal, and industrial water to entities holding water contracts with Reclamation; including but not limited to the East Bench Irrigation District and Clark Canyon Water Supply Company. In addition to Reclamation's contract holders, other water right holders exist who have natural flow water rights from the Beaverhead River and divert water at various locations on the river. Reclamation has no contractual relationship with this group of water users.

Clark Canyon Dam has altered the hydrology of the Beaverhead River from its natural state. This altered condition has provided enhanced fish habitat and maintained minimum flows in certain reaches, but has also potentially contributed to environmental degradations in other reaches.

The Reclamation Act of 1956 requires Reclamation to provide water users holding existing contracts a right to renew their contracts for the project's available water supply, as well as the right to convert from a water service contract to a repayment contract subject to agreeable terms and conditions. As part of the 2005-2006 contract renewal process, Reclamation and the Department engaged in discussions to explore working cooperatively and collaboratively on the various environmental issues on the Beaverhead River.

II. SCOPE OF WORK

A. Reclamation and the Department agree to:

1. Identify environmental degradation issues of the Beaverhead River, including but not limited to;
 - a. the Beaverhead River basin hydrology, including;
 1. the inverted hydrograph, which means the unnaturally high late season flows in the Beaverhead River
 - b. Beaverhead River water quality, including but not limited to;
 1. nutrient and sediment loading
 2. water temperatures.
2. Investigate possible solutions to correct the Beaverhead River environmental degradation issues as identified in Item #1.
3. Review Clark Canyon Reservoir operations with the goal of improving increased river and reservoir environmental health while continuing to supply water to entities holding water contracts with Reclamation. Areas of consideration may include:
 - a. studying different minimum winter flow releases from the dam depending on the water year (drought conditions, average year, wet year);
 - b. studying the potential of a dedicated reservoir storage in order to accomplish higher river flows during naturally low-flow months in all years, and especially in average and drought years;
 - c. studying different minimum threshold reservoir pool levels, depending on the water year (drought conditions, average year, wet year);
 - d. studying the potential of a dedicated reservoir storage in order to accomplish short-term, bank-full events in average and wet years;
 - e. working with water users to dedicate reservoir storage to river flows that result from the investment in efficiency in the management and delivery of irrigation water.
4. Explore water conservation projects; such as irrigation delivery system water efficiency (reducing ditch loss) and improving irrigation management with the understanding that an appropriate share of water saved through conservation projects could be made available for environmental enhancement opportunities. Water saved will be returned to the river when that is the expressed purpose of the implemented conservation measure.
5. Describe the fishery goals and fish management objectives for Clark Canyon Reservoir and the Beaverhead River. These goals and objectives will also describe what water body (the reservoir, the upper Beaverhead River, and the lower Beaverhead River) is the Department's priority in regards to fish management. These priorities will be a key component to fish management and evaluating reservoir operations during times of lower

precipitation patterns and drought conditions. Goals and objectives should also include target species (by water body), target size, and target species abundance.

6. Work through a collaborative process with interested groups to develop resource management strategies resulting from the analyses and/or pilot projects described in subsections (1) through (5), above for the improvement of environmental health of Clark Canyon Reservoir and the Beaverhead River.

B. Reclamation and the Department further agree that:

There will be no additional acres brought under irrigation that use Reclamation stored water unless further environmental analysis has been completed and such environmental analysis demonstrates that consumptive use by the crops under irrigation either remains the same or decreases. Extraordinary circumstances, such as a new variety of crop that requires less water to produce than existing crops may allow additional acreage and also provide an opportunity for conservation of water for instream flow purposes.

This Agreement is referenced by and is a part of the Clark Canyon Contract Renewal Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) completed as part of the renewal or conversion to repayment contracts for the Clark Canyon Water Supply Company (contract no. 14-06-600-3592) and the East Bench Irrigation District (contract no. 14-06-600-3593) water service contracts.

III. TERMS OF AGREEMENT

This MOU shall remain in effect for 15 years from the date of the last signature. This agreement may be modified or terminated at any time by mutual agreement of both parties. As described in the previous section, this MOU will be part of the final EA and FONSI. In the event that implementation of this Federal action is delayed as part some type of legal action, the terms of this MOU will become null and void. New terms will be re-negotiated between the 2 parties that better reflect the outcome of the legal action.

IV. REQUIRED CLAUSES

During the performance of this MOU, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination, and will not discriminate against any person because of race, color, religion, sex, national origin, age, or being handicapped. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, national origin, age, or being handicapped.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this MOU, or to any benefit, or to any benefit that may arise there from, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

V. TECHNICAL REPRESENTATIVES

The following representatives will be responsible for monitoring the work activities included in this MOU:

Reclamation:

Bureau of Reclamation
Montana Area Office
Attn: Lead Environmental Specialist
PO Box 30137
Billings, MT 59107-0137
(406) 247-7330

Department:

State of Montana
Department of Fish, Wildlife and Parks
Attn: In-Stream Flow Specialist
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