

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

**MEMORANDUM OF UNDERSTANDING
MOU No. 05AG602052**

**With the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service,
The State of Montana and The Nature Conservancy
For
Fish Passage, Entrainment Protection and Monitoring of the Lower Yellowstone
Diversion Dam (Intake Diversion Dam)**

This Memorandum of Understanding (MOU) dated 8 JULY, 2005, between the United States Department of the Interior, Bureau of Reclamation, Montana Area Office, hereinafter referred to as "Reclamation", the U.S. Army Corps of Engineers, hereinafter referred to as "Corps", the United States Department of the Interior, Fish and Wildlife Service, hereinafter referred to as the "Service", the State of Montana, hereinafter referred to as "State", and The Nature Conservancy, hereinafter referred to as "TNC", identifies the roles, work objectives and responsibilities associated with modifications to the Lower Yellowstone Project and monitoring. The parties agree to abide by the terms and provisions expressed or referenced herein.

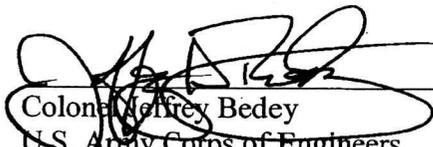
BUREAU OF RECLAMATION



Date: 08 JULY 2005

Dan Jewell
Area Manager
Montana Area Office

U.S. ARMY CORPS OF ENGINEERS



Date: 8 JULY 2005

Colonel Jeffrey Bedey
U.S. Army Corps of Engineers
Omaha District

U.S. FISH AND WILDLIFE SERVICE



Date: 7-8-05

for Mark Wilson
Field Supervisor
Montana Ecological Services

THE STATE OF MONTANA



Date: 7/8/05

Jeff Hagener
State Director
Fish Wildlife and Parks

THE NATURE CONSERVANCY



Date: 7/8/05

Jamie Williams
Montana State Director

I. BACKGROUND, PURPOSE, AND BENEFITS

A. Background

Construction of the Lower Yellowstone (Project) began in 1905. The Project was constructed to provide a dependable supply of irrigation water for approximately 52,000 acres of land along the west bank of the Yellowstone River. Approximately two-thirds of the irrigated lands are in Montana with the remaining located in North Dakota. Water flows by gravity through 71 miles of the Main Canal and a lateral system of 225 miles toward the confluence of the Yellowstone and Missouri Rivers to service most of the irrigated lands. A total of 118 miles of drains have been constructed. In addition to the main Project, water is also supplied to approximately 828 acres in the Intake Project and 2,200 acres in the Savage Unit, using water pumped from the main canal. Currently, the average annual water supply diverted for these projects is 327,046 acre-feet.

The Lower Yellowstone Diversion Dam (Diversion Dam), also known as Intake Diversion Dam, was constructed to elevate the water surface to allow for gravity diversion into the main canal. The Diversion Dam is located about 15 miles northeast of Glendive, Montana. It was originally constructed as a rock-filled crib weir, approximately twelve feet in height and contained about 23,000 cubic yards of material. The Lower Yellowstone Board of Control is responsible for operation and maintenance of the Diversion Dam under contract with Reclamation. On an as-needed basis, 300 to 1,200 cubic yards of large quarried rock is placed across the crest of the Diversion Dam to replace displaced rock.

The lower Yellowstone River has been identified by the Service's Recovery Plan as a priority recovery area for pallid sturgeon, and the Diversion Dam has been identified as a barrier to pallid sturgeon migration to historic spawning habitat. Fish entrainment has also been identified as an issue. Studies of fish entrainment have shown high rates of fish loss to the main canal and pallid sturgeon released above the Diversion Dam have subsequently become entrained. Through informal consultation with the Service under the Endangered Species Act (ESA), Reclamation has developed proposed conservation measures to address these issues.

A draft biological assessment (BA) has been prepared by Reclamation to evaluate the potential effects of future operation of the Project, with proposed conservation measures, on federally listed threatened or endangered species and designated critical habitat. The information contained in the BA is intended to facilitate formal consultation on future operation of the Project with the Service in compliance with Section 7(a) (2) of the ESA of 1973, as amended. Proposed conservation measures under Section 7(a) (1) of the ESA include project modifications and monitoring. They are:

1. construct a fish passageway to provide fish passage at Diversion Dam;
2. install fish screens to reduce fish entrainment into the Main Canal;
3. pallid sturgeon monitoring, including ongoing studies and assessment of the effectiveness of the proposed project modifications; and

4. monitoring for disturbances to least terns and bald eagles during construction.

The proposed conservation measures are intended to provide passage and reduce entrainment. The specific project modifications to accomplish these objectives are subject to change through the ESA consultation process.

B. Purpose of the MOU

Reclamation has proposed modifications to Project facilities and monitoring to reduce adverse effects of future Project operations on pallid sturgeon. The purpose of this MOU is to facilitate the implementation of those proposed conservation measures and is generally described as follows:

1. Identify the scope of involvement for each of the parties for the implementation of conservation measures, including the roles and responsibilities of the parties.
2. Identify a process for funding the project.
3. Outline the terms of the MOU.
4. Identify representatives for each of the parties responsible for monitoring and implementing the MOU.

C. Benefits of the MOU

This MOU is intended to facilitate implementation of conservation measures for pallid sturgeon. The benefits of the MOU include:

1. Efficient and timely implementation of the conservation measures.
2. Improved service to the public through multi-agency partnership.
3. Effectively utilized discipline-specific expertise of the parties.
4. Multi-agency cooperation to assist in the recovery of pallid sturgeon through the restoration of the lower Yellowstone River as a natural migratory route and reduced fish entrainment.

II. SCOPE OF WORK

A. Reclamation Responsibilities

Reclamation will:

1. Identify an individual from Reclamation to serve as overall project manager.

2. As lead Federal Agency, coordinate multi-agency technical teams for the proposed implementation.
3. Coordinate team activities to collect the necessary design data for the project.
4. Serve as the lead Federal agency for NEPA, NHPA and FWCA compliance as well as ESA consultation with the Service. Invite the other parties to be cooperating agencies in preparation of the appropriate NEPA compliance document.
5. Serve as the lead agency to coordinate teams to participate in Value Engineering (VE) studies, if needed.
6. Be responsible for the preparation of detailed project designs, cost estimates and construction schedules, which may be completed by various parties.
7. Be responsible for providing construction management.
8. Be responsible for providing post-construction monitoring of project operations.
9. Be responsible for keeping appropriate parties apprised of project progress on a regular and timely basis.
10. Liaise with the Lower Yellowstone Project Board of Control.

B. U.S. Army Corps of Engineers Responsibilities

The Corps will:

1. Participate in multi-agency teams for the proposed project.
2. Participate in multi-agency teams to collect design data for the project.
3. Participate as a cooperating agency for NEPA compliance.
4. Participate on Value Engineering (VE) study teams as needed.
5. Participate in multi-agency teams in the development of project designs, cost estimates and construction schedules.
6. Participate in construction administration and provide management expertise.
7. Participate in post-construction monitoring.
8. Identify an agency lead contact for the MOU.

C. U.S. Fish and Wildlife Service Responsibilities

The Service will:

1. Participate on multi-agency teams and discussions.
2. Participate in various activities (design data, design, construction management, etc.) as appropriate.
3. Participate as a cooperating agency for NEPA compliance, providing fishery and endangered species expertise.
5. Participate on Value Engineering (VE) study teams as needed.
6. Provide expertise in development of monitoring methods and participate in post-construction monitoring.
7. Identify an agency lead contact for the MOU.

D. The State of Montana Responsibilities

The State will:

1. Be the lead agency for the State of Montana and coordinate with other state agencies including the Montana Department of Natural Resources and Conservation.
2. Participate in multi-agency teams and discussions.
3. Participate as a cooperating agency, providing fishery expertise for NEPA and FWCA compliance.
4. Participate in multi-agency teams providing design and construction expertise.
5. Participate on Value Engineering (VE) study teams as needed.
6. Complete all necessary state permitting.
7. Provide expertise in development of monitoring methods and participate in post-construction monitoring.
8. Identify an agency lead contact for the MOU.

E. The Nature Conservancy's Responsibilities

TNC will:

1. Participate on multi-agency teams and discussions regarding the proposed project.
2. Participate in various activities (design data, design, construction management, etc.) as appropriate.
3. Participate in NEPA compliance activities.
4. Participate in the preparation of newsletters and materials for public meetings.
5. Participate on Value Engineering (VE) study teams as needed.
6. Coordinate with other agencies and non-governmental organizations.
7. Participate in post-construction monitoring.
8. Identify an organization lead contact for the MOU.

III. TIMELINES

Project schedules will be developed in the future in accordance with Federal funding levels.

IV. FEDERAL FUNDING

Funding agreements between the parties will be developed in the future in accordance with Federal funding levels and authorizations.

V. NON-FEDERAL FUNDING

To be discussed in further agreements between the parties.

VI. PAYMENT FOR SERVICES

To be discussed in further agreements between the parties.

It is understood that the cost estimates are preliminary and that actual costs may be lesser or greater than estimated.

VII. TERM OF THE MOU

Subject to the termination provisions below, this MOU will remain in effect until August 30, 2009. A single party may withdraw from this agreement upon any of the following conditions:

1. Mutual agreement
2. Thirty (30) day written notice from that party

This MOU may be extended or amended at any time by written consent of the designated representatives of the parties hereto, provided justification is given to the other parties and is accepted. This MOU is renegotiable upon agreement of all parties.

VIII. KEY RESPONSIBLE PERSONNEL

The following people will represent Reclamation, the Corps, the Service, the State, and TNC for this MOU:

Reclamation's Representative for MOU: C.J. McKeral, Deputy Area Manager, Montana Area Office, 406-247-7667

The Corps Representative for MOU: Greg Johnson, Project Manager, Planning, Programs and Project Management Division, Omaha District, 422-221-7258

The Service's Representative for MOU: George Jordan, Fisheries Biologist, Yellowstone River Coordinator, 406-247-7365

The State's Representative for MOU: Brad Schmitz, Regional Fisheries Manager, 406-234-0914

TNC's Representative for MOU: Burt Williams, Southeast Montana Project Manager, 406-256-7512.