

Appendix E

U.S. Army Corps of Engineers MOA with the State Historic
Preservation Officer

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE FRIANT RANCH PROJECT,
FRESNO COUNTY, CALIFORNIA**

WHEREAS, the United States Army Corps of Engineers, Sacramento District (Corps) proposes to issue a permit pursuant to Section 404 of the Clean Water Act (Undertaking) to Dennis Bacopulos, Friant Ranch L.P. (Applicant), for the Friant Ranch Project in Fresno County, California (Project); and

WHEREAS, the Project would involve the construction of a mixed-use residential and commercial development, including utility and recreational facilities; and

WHEREAS, the Corps, in consultation with the California State Historic Preservation Officer (SHPO) and in accordance with 36 CFR § 800.4(a)(1), has established the Undertaking's Area of Potential Effects (APE) as including all areas to be developed as part of the Undertaking, including all staging and construction areas, as depicted in Attachment 1 to this MOA; and

WHEREAS, the Corps, in consultation with SHPO and in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried historic properties within the Undertaking's APE and has determined that prehistoric archaeological site Ca-Fre-2653 is eligible for listing in the National Register of Historic Places; and

WHEREAS, the Corps, in consultation with SHPO and in accordance with 36 CFR § 800.5(a), has applied the criteria of adverse effect and determined that the Undertaking will have an adverse effect on Ca-Fre-2653; and

WHEREAS, the Corps has considered alternatives to the Undertaking, has chosen to proceed with the Undertaking, and has determined to resolve adverse effects of the Undertaking to Ca-Fre-2653 through the execution and implementation of this Memorandum of Agreement (MOA); and

WHEREAS, the USACE has consulted with the Dumna Wo-Wah Tribal (Tribe), for which Ca-Fre-2653 may have religious and/or cultural significance has invited the Tribe to sign this MOA as an invited concurring party; and

WHEREAS, the Applicant has participated in the consultation and has been invited to concur in this MOA; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with

specified documentation and the Council, in a letter dated July 5, 2011, has chosen to not participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the Corps and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The Corps shall make this MOA a condition of the Clean Water Act Section 404 permit for the Project and shall ensure that the following measures are carried out by the Applicant to the satisfaction of the Corps:

I. TREATMENT OF ADVERSE EFFECTS OF HISTORIC PROPERTIES

- A. The Applicant shall implement the attached January 6, 2011, *Data Recovery Plan for CA-Fre-2653, Friant Ranch Project, Fresno County, California* (HPTP) (Attachment 2) prior to the start of project construction. The HPTP (1) specifies the research issues and questions to be addressed through the recovery of archaeological data; (2) specifies the methods to be used in fieldwork and analysis, and explains how these methods are relevant to the research design; (3) presents treatment approaches for a previously unidentified property that may be eligible for inclusion in the National Register or if the undertaking affects a known historic property in an unanticipated manner; (4) specifies the methods to be used in data management and data dissemination; (5) indicates how recovered materials and records will be curated; and (6) provides for final reporting of the work and curation of all materials and records.
- B. Any party to this MOA may propose an amendment to the HPTP. Such amendment will not require amendment of this MOA. Disputes regarding amendments proposed hereunder shall be resolved through consultation between the MOA parties. The time frames for such consultation shall be consistent with those established under Stipulation IV.C below. If the dispute is resolved within this time frame, the MOA parties shall proceed in accordance with the terms of that resolution. If the dispute is not resolved within this time frame, no amendment to the HPTP will occur.

II. REPORTING REQUIREMENTS AND RELATED REVIEWS

- A. Within ten (10) days of completion of all fieldwork required under Stipulation I, the Applicant shall notify the Corps, SHPO, and the Tribe.
- B. Within twelve (12) months of completion of all fieldwork required under Stipulation I, a draft technical report documenting the results of the archaeological fieldwork will be prepared. The Applicant will distribute the draft

technical report concurrently to the USACE and SHPO for review and comment. The USACE and SHPO shall review and provide any comments to the Applicant, and copy the other MOA parties regarding their comments, within thirty (30) days of receipt of the draft technical report. If no comments are received within the thirty (30) day comment period, the Applicant may assume the Agency has no comment. The Applicant shall respond to any comments, and copy the other MOA parties, within thirty (30) days or implement the Resolving Objections Stipulation of the MOA (Stipulation IV.C). After all comments are addressed, the Applicant shall provide a final technical report in accordance with Stipulation IV.B.

- C. Within thirty (30) days of completion of the final technical report, materials and records resulting from the historic preservation work stipulated in this MOA shall be curated in accordance with the HPTP.

III. STANDARDS

A. PROFESSIONAL QUALIFICATIONS AND STANDARDS

1. Professional Qualifications.

All historic preservation activities implemented pursuant to this MOA shall be conducted by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (PQS) for Archeology, History, or Architectural History, as appropriate (48 FR 44738-39).

2. Historic Preservation Standards.

All historic preservation activities carried out pursuant to the MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and National Park Service.

3. Curation and Curation Standards.

The Corps shall ensure that the materials and records resulting from the historic preservation work stipulated in this MOA are curated in accordance with 36 CFR Part 79 or at a Corps-approved facility. (Facility Agreement TBD)

4. Documentation Standards.

The Corps shall ensure that all written documentation prescribed by Stipulation I and II of this MOA shall conform to the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740), as well as to applicable standards and guidelines established by the SHPO.

IV. ADMINISTRATIVE STIPULATIONS

A. CONFIDENTIALITY.

The parties to this MOA acknowledge that Historic Properties covered by this MOA are subject to the provisions of § 304 of the NHPA and § 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with § 304 of the NHPA and § 6254.10 of the California Government Code.

B. REPORT DISTRIBUTION.

The Corps shall ensure that copies of all technical reports and studies prepared to satisfy the terms of this MOA are provided upon completion by the Applicant to all parties to this MOA and to the North Central California Information Center (NCCIC) of the California Historical Resources Information System (CHRIS), consistent with requirements of Stipulation IV.A., above.

C. RESOLVING OBJECTIONS.

1. Should any party to this MOA object at any time in writing to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to the implementation of the MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, the Corps shall immediately notify the other parties to this MOA of the objection, and shall request their comments on the objection be provided within 15 days following receipt of the Corps' notification, and proceed to consult with the objecting party for no more than 30 days to resolve the objection. The Corps will honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.
2. If the objection is resolved during the 30-day consultation period, the Corps may proceed with the disputed action in accordance with the terms of that resolution.
3. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection, including the Corps's proposed response to the objection, to the Council, with the expectation that the Council will, within 30 days after receipt of such documentation, do one of the following:

- a. advise the Corps that the Council concurs in the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly. The objection shall thereby be resolved; or
 - b. provide the Corps with recommendations, which the Corps will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or
 - c. notify the Corps that the objection will be referred for comment, pursuant to 36 CFR § 800.7(c), and proceed to refer the objection and comment. The Corps shall take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4) and § 110(1) of the NHPA. The objection shall thereby be resolved.
4. Should the Council not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the Corps may assume the Council's concurrence in its proposed response to the objection and proceed with implementation of that response. The objection shall thereby be resolved.
5. The Corps shall take into account any Council recommendation or comment provided in accordance with Section IV.C.1 of this stipulation, with reference only to the subject of the objection. The Corps' responsibility to ensure all actions are carried out under this MOA that are not the subject of the objection shall remain unchanged.
6. At any time during the implementation of the terms of this MOA, should an objection pertaining to such implementation be raised by a member of the public, the Corps shall immediately notify the other parties to this MOA in writing of the objection and take the objection into consideration. The Corps shall consult with the objecting party and, if the objecting party so requests, with the other parties to this MOA, for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, the Corps will render a decision regarding the objection and notify all parties to this MOA of its decision in writing. In reaching its decision, the Corps will take into account any comments from the consulting parties regarding the objection, including the objecting party. The Corps' decision regarding the resolution will be final. The objection will thereby be resolved.
7. The Corps may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

8. The Corps shall provide all parties to this MOA and the Council, when the Council has issued comments hereunder, and any parties that have objected pursuant to Section C.6 of this stipulation, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

D. AMENDMENTS

1. Any party to this MOA may propose that this MOA be amended, whereupon all parties to this MOA will consult for no more than thirty (30) days to consider such amendment. The Corps may extend this consultation period. The amendment process shall comply with 36 CFR § 800.6(c)(1) and § 800.6(c)(7). This MOA may be amended only upon the written agreement of the signatory parties. If it is not amended, this MOA may be terminated by the Corps or the SHPO.
2. The HPTP may be amended through consultation as prescribed in Section B of Stipulation I without amending the MOA proper.

E. TERMINATION

1. Only the Corps or the SHPO may terminate this MOA. If this MOA is not amended as provided for in Section D of this stipulation, or if the Corps or the SHPO proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and consult with the other parties to this MOA for at least thirty (30) days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then the parties shall proceed in accordance with the terms of that agreement. Such consultation shall not be required if the Corps proposes termination because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).
2. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if the Corps determines that the undertaking will nonetheless proceed, then the Corps shall either consult in accordance with 36 CFR § 800.6 to develop a new MOA, or request the comments of the Council, pursuant to 36 CFR Part 800.

F. DURATION OF THE MOA

1. Unless terminated pursuant to Section E of this stipulation, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the signatory parties until the Corps, in consultation with the other parties to this MOA, determines that all the terms of this MOA have been satisfactorily fulfilled. Upon a determination by the Corps that all of the terms of this MOA have been satisfactorily fulfilled, the Corps will immediately notify the other parties to this MOA in writing of its determination that all terms of this MOA have been satisfactorily fulfilled and of the termination of the MOA. Following provision of such notice, this MOA will have no further force or effect.
2. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the date of execution by the signatory parties. If the Corps determines that this requirement cannot be met, the parties to this MOA will consult to reconsider its terms. Reconsideration may include the continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, the Corps will comply with Section E.4 of this stipulation, if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
3. If the Undertaking has not been implemented within five (5) years following execution of this MOA by the signatory parties, this MOA shall automatically terminate and have no further force or effect. In such event, the Corps shall notify the other MOA parties in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with 36 CFR Part 800.

G. EFFECTIVE DATE.

This MOA will take effect immediately upon full execution by the Corps and the SHPO.

EXECUTION of this MOA by the Corps and the SHPO, pursuant to 36 CFR § 800.6, including its transmittal by the Corps to the Council in accordance with 36 CFR § 800.6 (b)(1)(iv), and subsequent implementation of its terms, shall evidence that the Corps has afforded the Council an opportunity to comment on the Undertaking and its effects on Historic Properties, and that the Corps has taken into account the effects of this Undertaking on Historic Properties.

SIGNATORY PARTY:

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name:



Michael S. Jewell

29 May 2012
Date

Title: Chief, Regulatory Division

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

Name:


for _____
Milford Wayne Donaldson, FAIA

6/5/12
Date

Title: State Historic Preservation
Officer

CONCURRING PARTY:

APPLICANT

Name:

Bryan Wagner

Date

Title:

DUMNA WO-WAH TRIBAL GOVERNMENT

Name:

Robert George Ledger Sr.

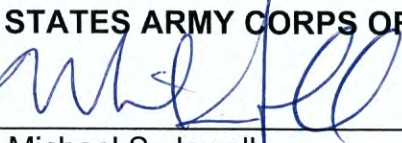
Date

Title: Tribal Chairman

SIGNATORY PARTY:

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name:



Michael S. Jewell

29 May 2012

Date

Title: Chief, Regulatory Division

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

Name:

Milford Wayne Donaldson, FAIA

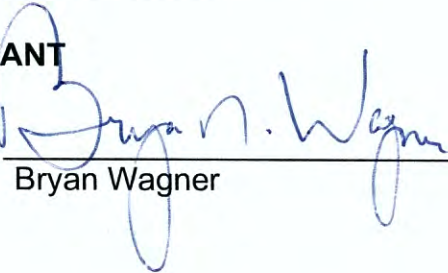
Date

Title: State Historic Preservation
Officer

CONCURRING PARTY:

APPLICANT

Name:



Bryan Wagner

May 31, 2012

Date

Title:

DUMNA WO-WAH TRIBAL GOVERNMENT

Name:

Robert George Ledger Sr.

Date

Title: Tribal Chairman

ATTACHMENTS 1 & 2

CONTAIN SENSITIVE INFORMATION

NOT FOR PUBLIC RELEASE

Appendix F

Reclamation's Cultural and ITA Determinations

Healer, Rain L

From: Nickels, Adam M
Sent: Wednesday, October 10, 2012 1:30 PM
To: Healer, Rain L
Cc: Barnes, Amy J; Bruce, Brandee E; Fogerty, John A; Goodsell, Joanne E; Leigh, Anastasia T; Perry, Laureen M; Soule, William E; Williams, Scott A
Subject: Friant Ranch
Attachments: 12-SCAO-244 EA Language Cultural Resources Section.doc; image001.png; image002.jpg

From: Nickels, Adam M
Sent: Wednesday, October 10, 2012 1:10 PM
To: Healer, Rain L
Cc: Barnes, Amy J; Bruce, Brandee E; Fogerty, John A; Goodsell, Joanne E; Leigh, Anastasia T; Perry, Laureen M; Soule, William E; Williams, Scott A
Subject: Friant Ranch

Project No. 12-SCAO-244

Rain:

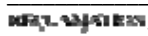
I have reviewed the Draft EA/Project description for Friant Ranch. Attached you will find the cultural resources language needed to demonstrate Reclamation's consideration of impacts to cultural resources in the EA. According to the draft EA reclamation's action consisted of (1) the inclusion of 523.8 acres of the Friant Ranch Specific Plan area into FCWW 18's service area, (2) the permanent transfer of up to 2,000 AFY of LTRID's Friant Division CVP water to FCWW 18 consistent with the term of LTRID's 9(d) Repayment Contract, (3) modification of existing infrastructure located near Friant Dam, and (4) execution of a perpetual agreement with FCWW 18 to O&M Reclamation-owned facilities. The approval of this action constitutes an undertaking that has the potential to cause effects to historic properties. The U.S. Army Corps of Engineers (USACE) will issue a 404 Clean Water Act permit for the overall Friant Ranch project and has been identified as the lead federal agency for complying with the collective responsibility for section 106 of the NHPA. Identification efforts resulted in the finding of one cultural resource being eligible for inclusion in the National Register and that the proposed Friant Ranch Project would be an adverse effect to historic properties. USACE entered into an MOA to resolve adverse effects.

Although USACE is lead for the overall project, their nexus does not include the improvements to existing water pipes on Reclamation's Right-of-way. The improvements will be to existing buried facilities. All excavation will be contained to the disturbed context of existing pipelines. The pipeline improvement action has no potential to cause effects to cultural resources eligible for inclusion in the National Register pursuant to §800.3(a)(1). This action has no potential to cause effects to historic properties pursuant to 36 CFR §800.3(a)(1).

Please ensure that the attached cultural resources write-up is incorporated into the EA. Please be advised that if the project description changes, then this may result in additional Section 106 review. Thank you for providing the opportunity to comment.

Sincerely,

Adam M. Nickels - Archaeologist - M.S.
Phone: 916.978.5053 - Fax: 916.978.5055 - www.usbr.gov

 -Mid-Pacific Regional Office MP-153 2800 Cottage Way - Sacramento, California 95825



Healer, Rain L

From: Rivera, Patricia L
Sent: Thursday, October 11, 2012 11:27 AM
To: Healer, Rain L; Robbins, Eleanor J (Ellie); Williams, Mary D (Diane)
Subject: RE: EA-11-097 for review

Rain,

I reviewed the proposed action to approve the following: (1) the inclusion of 523.8 acres of the Friant Ranch Specific Plan area into Fresno County Water Works District No. 18's service area, (2) the permanent transfer of up to 2,000 AFY of LTRID's Friant Division CVP water to Fresno County Water Works District No. 18 consistent with the term of Lower Tule River Irrigation District's 9(d) Repayment Contract, (3) modification of existing infrastructure located near Friant Dam, and (4) execution of a perpetual agreement with Fresno County Water Works District No. 18 to operate and maintain Reclamation-owned facilities.

The proposed action does not have a potential to affect Indian Trust Assets.

Patricia