



5-6-2015

## Memorandum of Agreement Between the Department of the Interior and the Department of the Army Pursuant to Section 206(b) of the Fort Berthold Mineral Restoration Act, Public Law 98-602 (1984)

United States Department of the Interior

US Department of the Army (Civil Works)

US Department of Indian Affairs

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## **MEMORANDUM OF AGREEMENT**

### **BETWEEN THE DEPARTMENT OF THE INTERIOR AND THE DEPARTMENT OF THE ARMY PURSUANT TO SECTION 206(b) OF THE FORT BERTHOLD MINERAL RESTORATION ACT, PUBLIC LAW 98-602 (1984)**

#### **I. Purpose**

This Memorandum of Agreement (MOA) dated May 6, 2015, is made between the Secretary of the Army on behalf of the Department of the Army, by and acting through the Assistant Secretary of the Army (Civil Works) (DA), the Secretary of the Interior on behalf of the Department of the Interior, by and acting through the Assistant Secretary – Indian Affairs (DOI) (collectively the Parties). This MOA sets forth the process by which any land within the exterior boundaries of the Fort Berthold Reservation (Reservation) acquired by the United States for the construction, maintenance, or operation of the Garrison Dam and Reservoir Project (Project) that is no longer needed for such purposes may be considered for administrative transfer to DOI to be held by the United States in trust for the benefit of the Mandan, Hidatsa, and Arikara (MHA) Nation of the Fort Berthold Reservation, also known as the Three Affiliated Tribes of the Fort Berthold Reservation.

#### **II. Authorities**

The Parties enter into this MOA pursuant to Section 206(b) of the Fort Berthold Mineral Restoration Act of 1984, Pub. L. 98-602, 98 Stat. 3152 (Oct. 30, 1984) (FBMRA), and other applicable Federal authorities.

#### **III. Background**

The DA acquired land situated within the exterior boundaries of the Reservation for construction, maintenance, and operation of the Project pursuant to the Flood Control Act of 1944, Pub. L. 78-534, 58 Stat. 887 (Dec. 22, 1944) and Pub. L. 81-437, 63 Stat. 1026 (Oct. 29, 1949) which authorized land acquisition from the MHA Nation.

Section 206(b) of the FBMRA provides that DA and DOI may enter into agreements under which any land within the exterior boundaries of the Reservation acquired by the United States for the construction, maintenance, or operation of the Project that is no longer needed for such purposes is declared to be held by the United States in trust for the benefit of the MHA Nation.

## **IV. Administrative Transfer Process**

### **1. DA Determination.**

a. For the purpose of determining lands, if any, that are no longer needed for the construction, maintenance, or operation of the Project, the DA considered those lands that had been acquired for the Project in light of the authorized project purposes and how the land is being used. In making the determination, the DA held several public meetings, received oral and written testimony regarding the proposed action, and addressed public comments in a document entitled draft DA Effects Report dated April 2008. This led to a determination that there are approximately 30,480 acres of land within the exterior boundaries of the Reservation, acquired by the United States for the construction, maintenance, or operation of the Project that are no longer needed for such purposes.

b. If any lands are transferred to DOI, DA retains the right to flood, slough or erode all of the transferred lands and a commitment that lawful current land use will continue and not change after the transfer and that public access will be granted. Such conditions are necessary to meet statutory requirements for public access to the Project and to ensure no residential development, mineral harvesting, or other activities that could threaten the operation of the Project.

c. If the land is transferred, DOI will ensure any activities on the land are consistent with the DA conditions described above, and will ensure any damage to the Project from activities conducted on any lands transferred will be fully corrected and restored in a timely fashion and at the full expense of the DOI.

**2. Letter of Transfer.** The administrative accountability and responsibility for the lands will be offered to DOI and, upon acceptance by DOI consistent with the terms of this MOA, will be transferred by DA pursuant to a letter of transfer (Letter of Transfer) that includes all appropriate documentation furnished to and accepted by the DOI. The Letter of Transfer will be effective upon signature by authorized representatives of the DA and the DOI. The Letter of Transfer will address the environmental condition of the property and describe the restrictions, conditions, reservations, and exceptions needed by DA to ensure the operation and maintenance of the Project, including but not limited to, those described in paragraph IV.1.b. and c. above. The Letter of Transfer will also include (1) legal descriptions in aliquot parts of the rectangular survey system; (2) maps depicting the transfer area; (3) a title report; (4) certified copies of acquisition information (estate, method of acquisition, title abstracts, etc.); and (5) certified copies of third party interests granted by DA since the acquisition of the land.

**3. DOI Trust Acquisition.** Upon acceptance by DOI of the Letter of Transfer for any lands, the DOI will take the lands offered by the DA in trust for the benefit of the MHA Nation consistent with the terms of the FBMRA and the DOI's Memorandum from Mr. Larry Echo Hawk, former Assistant Secretary – Indian Affairs, to Regional Directors, Updated Guidance on Processing Mandatory Trust Acquisitions (Apr. 6, 2012); Memorandum from Mr. Mike Black, Bureau of Indian Affairs Director, to Regional Directors, Supplement to April 6, 2012 Updated Guidance on Processing Mandatory Trust Acquisitions (Jan. 14, 2014).

**4. Finality and Appeals.** No action or decision under this MOA is final for any Party until the DOI has acquired lands in trust for the MHA Nation as described in paragraph IV. 3 above. If the DOI accepts lands in trust for the MHA Nation pursuant to this MOA, the DOI will publish a notice of decision in the Federal Register.

**V. Other Matters**

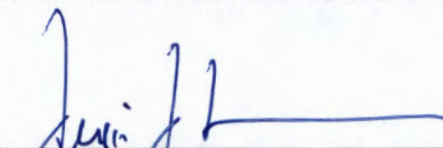
1. This MOA is not intended to create any right, benefit, or responsibility, substantive or procedural, enforceable at law by any person against the United States, its agencies, or any other person.

2. Modifications to this MOA may be submitted in writing by either the DOI or the DA, at any time and shall become effective upon the written acceptance of the Parties. Such modifications must be signed by the signatories hereto, or by their successors in office.

3. This MOA shall remain in full force until such time as DOI declares by letter to the DA and MHA Nation that: (a) the lands are held in trust by the United States for the benefit of the MHA Nation; (b) the DOI as a landholding agency accepts the transfer of custody and accountability of all the lands; and (c) the physical and system records of all the lands have been transferred from DA to the appropriate DOI office. Any provisions requiring performance after the expiration or termination of this MOA shall remain in full force, notwithstanding the expiration or termination of this MOA. If any provision of this MOA becomes invalid or unenforceable, the remaining provisions shall remain in full force and unaffected to the extent permitted by law.

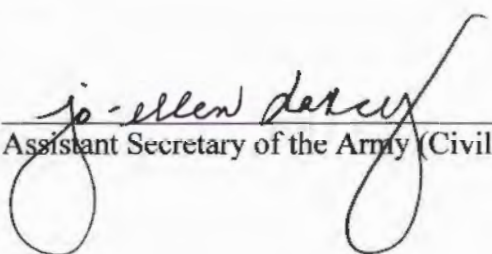
4. It is expressly understood and agreed that this MOA embodies the entire agreement among the Parties and there are no understandings or agreements, verbal or otherwise, among the Parties except as expressly set forth herein.

**U.S. DEPARTMENT OF THE INTERIOR**

  
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Assistant Secretary – Indian Affairs

Date:     MAY 06 2015    

**U.S. DEPARTMENT OF THE ARMY**

  
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Assistant Secretary of the Army (Civil Works)

Date:     06 MAY 2015