

**MEMORANDUM OF AGREEMENT  
BETWEEN BUREAU OF RECLAMATION, EASTERN COLORADO AREA OFFICE,  
AND THE COLORADO STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE WINDY GAP FIRING PROJECT,  
LARIMER COUNTY, COLORADO**

**WHEREAS**, the Bureau of Reclamation, Eastern Colorado Area Office (ECAO) has determined that the WINDY GAP FIRING PROJECT, Larimer County, Colorado (Project) may have an adverse effect on historic properties 5LR1363, 5LR3984, 5LR3986, 5LR4002, and 5LR12074, as well as on 5LR.10735 for which there has been a concurrence eligibility determination of need data and on 5LR.9454 and 5LR.10380 for which access has been denied (all eight of which are hereinafter referred to as "Properties"), and has consulted with the Colorado State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f); and

**WHEREAS**, a table of the Properties is attached as Exhibit A; and

**WHEREAS**, there is currently insufficient information about the details of the Project to make determinations of effect of the Project on the Properties; and

**WHEREAS**, there is an additional 17.2 acres in the Project area of potential effects (APE) that has not been inventoried because access was restricted at the time of the Environmental Impact Statement preparation; and

**WHEREAS**, Reclamation originally defined the WGFP APE to include the five reservoir study areas (i.e., the project footprint) and an approximate 2-mile buffer surrounding each. The SHPO concurred with this definition (CHS#48893). The preferred alternative for the WGFP is the Chimney Hollow site (see attached map). The APE for Chimney Hollow has a 1-mile buffer because intensive Class III pedestrian surveys were conducted for the reservoir footprint (WCRM 2004a and 2004b) and its associated facilities (WCRM 2010). The APE includes areas of possible direct, indirect, and cumulative effects. Areas that would be indirectly affected include planned open space recreation associated with Chimney Hollow Reservoir.

**WHEREAS**, using expedited consultation procedures [36 CFR Section 800.3(g)], ECAO is consulting with the nineteen Tribes previously consulted on the Project (Tribes) regarding the effects of the undertaking on the Properties and invite them to sign as concurring parties; and

**WHEREAS**, using expedited consultation procedures [36 CFR Section 800.3(g)], and in accordance with 36 CFR Section 800.6(a)(1), ECAO notified the Advisory Council on Historic Preservation (Council) of the possible adverse effects of the Project on the Properties, and the Council has declined to participate in this Memorandum of Agreement (Agreement);

**NOW, THEREFORE**, ECAO and the Colorado SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

ECAO shall ensure that the following measures are carried out:

I. Prior to any construction of the Project, ECAO will inventory the remaining 17.2 acres in the APE and consult with SHPO on eligibility and effects of the Project pursuant to 36 CFR 800, including mitigation that will be set forth in an amendment to this Agreement.

II. Regarding the Properties, ECAO will consult with SHPO on effects after more details of the Project are available, including mitigation that will be set forth in an amendment to this Agreement.

### **III. DURATION**

This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, ECAO may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with Stipulation V. below.

### **IV. DISPUTE RESOLUTION**

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, ECAO shall consult with the objecting party (ies) to resolve the objection. If ECAO determines, within 30 days, that such objection(s) cannot be resolved, ECAO will:

A. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b) (2). Upon receipt of adequate documentation, the Council shall review and advise ECAO on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by ECAO in reaching a final decision regarding the dispute.

B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, ECAO may render a decision regarding the dispute. In reaching its decision, ECAO will take into account all comments regarding the dispute from the parties to the MOA.

C. ECAO's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. ECAO will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. ECAO's decision will be final.

### **V. AMENDMENTS AND NONCOMPLIANCE**

If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall

immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation VI, below.

## VI. TERMINATION

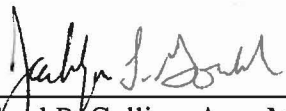
If an MOA is not amended following the consultation set out in Stipulation V, it may be terminated by any signatory or invited signatory. Within 30 days following termination, ECAO shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c) (1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

Execution of this Memorandum of Agreement by ECAO and SHPO, the submission of documentation, and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR Section 800.6(b) (1) (iv) prior to ECAO's approval of this undertaking, and implementation of its terms evidence that ECAO has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.


## SIGNATORIES:

ACTING FOR

Bureau of Reclamation, Eastern Colorado Area Office

 Name 4/19/12 Date  
Michael P. Collins, Area Manager

Colorado State Historic Preservation Officer

 Deputy SHPO Name 4/3/12 Date  
Edward C. Nichols

**CONCURRING PARTIES INVITED TO SIGN**  
**APACHE TRIBE OF OKLAHOMA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**CHEYENNE - ARAPAHO TRIBE OF OKLAHOMA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**CHEYENNE RIVER SIOUX TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**COMANCHE NATION OF OKLAHOMA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**CROW CREEK SIOUX TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**EASTERN SHOSHONE TRIBE (Wind River Reservation)**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**FORT SILL APACHE TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

JICARILLA APACHE NATION

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

KIOWA TRIBE OF OKLAHOMA

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

MESCALERO APACHE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

NORTHERN ARAPAHO TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

NORTHERN CHEYENNE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

NORTHERN UTE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

OGLALA SIOUX TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

PAWNEE NATION OF OKLAHOMA

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

ROSEBUD SIOUX TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

SOUTHERN UTE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

STANDING ROCK SIOUX TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

UTE MOUNTAIN UTE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

Site Number	Site Type	NRHP Eligibility Status
5LR1363	Carter Lake Historic Area	Contributing to a Historic District
5LR3984	Flatiron Dam & Reservoir	Contributing to a Historic District
5LR3986	Flatiron Power Plant	Contributing to a Historic District
5LR4002	Carter Lake Pressure Tunnel	Contributing to a Historic District
5LR9454	Estes to Lyon Transmission Line Segment	No current assessment (Access denied)
5LR10380	Eagle Trap	No current assessment (not relocated)
5LR12074	Carter lake South Shore	Contributing to a Historic District
5LR10735	Multi-component	Officially Needs Additional Data