



MONTANA HISTORICAL SOCIETY

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December 03, 2008

Martha S. Chieply, Chief
Regulatory Branch
Corps of Engineers, Omaha District
1616 Capitol Avenue
Omaha, NE 68102-4901



RE: COE Permit SME Highwood Generating Plant, Cascade County, MT

Thank you for your letter of November 20 (received November 28) inviting our concurrence in a finding of Adverse Effect, pursuant to 36 CFR 800, for the above referenced undertaking. Thank you also for providing us a copy of the COE recent response to the Advisory Council on Historic Preservation (ACHP) inquiry of October 20, 2008 regarding this undertaking.

While it seems clear that any COE approval resulting in ground disturbance, construction and ongoing operations within the Area of Potential Effect (APE) as defined by the COE for this undertaking will result (or has already resulted) in adverse effects to the Great Falls Portage National Historic Landmark (NHL), it also appears premature at this point to reach such a finding with the goal of proceeding immediately to a Memorandum of Agreement for mitigation. There are at least two unresolved issues that appear to us to precede this proposed Adverse Effect finding.

First, the COE has not to our knowledge demonstrated an attempt to meet the statutory requirements at Section 110(f) of the National Historic Preservation Act (NHPA) to avoid or minimize harm, to the maximum extent possible, to National Historic Landmarks.

Second, as already raised by the ACHP, there is the question of COE compliance with Section 110(k) which prohibits issuance of agency permits when proponents move forward with the intent of avoiding Section 106 review (i.e., "anticipatory demolition"). The COE response to the ACHP confirms that the proponent (Southern Montana Electric/SME) started work within the APE, as originally defined by Rural Utility Service (RUS) and subsequently adopted by the COE, after the RUS withdrawal but before the COE initiated consultation with SHPO (by at least a month). This is inconsistent with 36 CFR 800. It also appears to have been inconsistent with the state's Air Quality permit process as well since the Montana Department of Environmental Quality halted further work by SME on November 24, 2008 (Great Falls Tribune, November 25, 2008), making the COE statement that SME work began in order to hold the DEQ permit confusing.

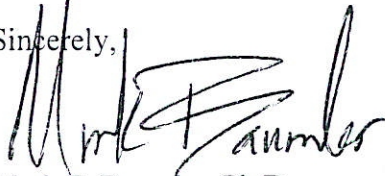
The ACHP has already raised these issues in their October 20, 2008 letter and to my knowledge has not yet had the opportunity to reply to the recent COE response. We can



not further compromise the Council's opportunity to comment here. If indeed construction work has interfered with or foreclosed the Council's opportunity to comment, or inhibited your agency's attempts to avoid or minimize harm to the Great Falls Portage NHL, our further comment under 36 CFR 800 at this time would be inappropriate. We recommend the COE and the proponent cease actions in the APE until the above issues can be further addressed by the Council.

Please find attached a list of interested and consulting parties we are aware of identified by USDA RUS prior to their withdrawal, per your request. Please note that this list may not be current.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark F. Baumler". The signature is written in a cursive style with a large, stylized initial "M".

Mark F. Baumler, Ph.D.
State Historic Preservation Officer

Cc:

C. Vaughn, ACHP
COE, Helena Regulatory Office