

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE –
NATURAL RESOURCES CONSERVATION SERVICE, THE U.S. DEPARTMENT OF
AGRICULTURE – FOREST SERVICE ROCKY MOUNTAIN REGION, THE U.S.
DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE – MOUNTAIN –
PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

WHEREAS, the U.S. Department of the Interior - Bureau of Reclamation (Reclamation), the Bureau of Land Management (BLM), the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture - Forest Service Rocky Mountain Region (FS), and the U.S. Fish and Wildlife Service - Mountain - Prairie Region (FWS) (collectively the “Agencies”) are responsible for the management and maintenance of various water control features and/or the lands on which these features are located throughout the State of Colorado; and the Agencies may provide federal grant funding or other assistance or authorizations for repair, maintenance, piping, modifications, and system upgrades for water control features within the State of Colorado; and

WHEREAS, for purposes of this programmatic agreement (PA), a water control feature (WCF) may include but not be limited to a human-built structure, or system of structures, for the storage, diversion, management, and distribution of water for the purpose of irrigation, conservation, drainage, or flood control. It may include, but is not limited to: ditches, canals, laterals, small dams, levees, pipelines, pumps, sprinklers, wells, flumes, acequias, retention ponds, reservoirs, gaging stations, head gates, inlets, and culverts; and

WHEREAS, Reclamation and the referenced Agencies are developing this PA to establish a systematic and efficient process, pursuant to Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, “Protection of Historic Properties” (36 C.F.R. Part 800) for taking into account the potential for effects to historic properties from undertakings that include, but are not limited to, the management, maintenance, modification, operation, piping, repair, and system upgrades that are sponsored and carried out by federal agencies, as well as those carried out by non-federal entities that are authorized or assisted by federal agencies; and

WHEREAS, the Agencies have consulted with the Colorado State Historic Preservation Officer (SHPO) about the nature and frequency of repetitive actions involving such undertakings; and have established the scope of the PA to include the State of Colorado; and

WHEREAS, this PA sets forth a list of undertakings that are evaluated for exemption from further review under Section 106 (see Appendix A herein incorporated by reference); and

WHEREAS, undertakings under the jurisdiction of the Agencies have the potential to adversely affect historic properties and this PA sets forth a recommended method for resolving adverse effects to historic properties that are components of water control features that may be used with minimal additional consultation (Appendix B herein incorporated by reference); and

WHEREAS, the Signatories (which shall refer to both signatories and invited signatories) to this PA agree that the most effective and efficient way to resolve the repetitive adverse effects of undertakings covered by this PA is through the application of the stipulations agreed upon in this PA pursuant to 36 CFR §800.14(b)(3); and

WHEREAS, the Colorado SHPO is a Signatory on this PA; and

WHEREAS, Reclamation and the invited Agencies have responsibilities under Section 106 of the NHPA for the undertakings covered by this PA that they sponsor, implement, authorize, or assist. Reclamation has invited the Agencies listed above to be Signatories and they have agreed to sign; and

WHEREAS, Reclamation invited the National Park Service, the U.S. Army Corps of Engineers, and the Western Area Power Administration to participate in the creation of this document; and

WHEREAS, Reclamation invited the following tribes to participate in the development of the PA as Consulting Parties. Invited tribes include the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma; Cheyenne River Sioux Tribe; Comanche Nation, Oklahoma; Crow Creek Sioux Tribe; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; Fort Sill Apache Tribe; Hopi Tribe; Jicarilla Apache Nation, New Mexico; Kewa Pueblo; Kiowa Tribe of Oklahoma; Mandan, Hidatsa, Arikara Tribes; Mescalero Apache Tribe; Navajo Nation, Arizona, New Mexico & Utah; Northern Arapaho; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe; Ohkay Owingeh; Osage Nation; Paiute Indian Tribe of Utah; Pawnee Nation of Oklahoma; Pueblo de Cochiti; Pueblo of Acoma; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Rosebud Sioux Tribe; San Juan Southern Paiute Tribe; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe; Ute Indian Tribe (Uintah & Ouray Reservation); Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Wichita & Affiliated Tribes; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation; and

WHEREAS, Reclamation invited the Advisory Council on Historic Preservation (ACHP) to participate in the development of this PA according to 36 CFR § 800.14(b)(3), and the ACHP has elected to participate and is a Signatory on this PA; and

WHEREAS, Reclamation invited the following Water Conservancy Districts to participate in the development of this PA. The invited Water Conservancy Districts include: Northern Water Conservancy Group; Southeastern Colorado Conservancy District; Colorado River Water Conservation District; Tri-county Water Conservancy District; San Juan Water Conservancy District; Dolores Water Conservancy District; Rio Grande Water Conservation District; Purgatorie River Water Conservancy District; Upper South Platte Water Conservancy District; Upper Arkansas Water Conservancy District; Central Colorado Water Conservancy District; Animas-La Plata Water Conservancy District; Ute Water Conservancy District; Republican River Water Conservancy District; St Vrain and Left Hand Water Conservancy District; Upper Yampa Water Conservancy District; Jackson County Water Conservancy District; The Water Supply & Storage Company; Basalt Water Conservancy District; Conejos Water Conservancy District; San Luis Valley Water Conservancy; Southwestern Water Conservation District; Rio Blanco Water Conservancy District; Upper Gunnison River Water Conservancy District; North Fork Water Conservancy; and Kogovsek and Associates; and

WHEREAS, Reclamation invited the Colorado Council of Professional Archaeologists, Colorado Department of Transportation, Colorado State University Public Lands History Center, High Line Canal Conservancy, and Southern Colorado Conservancy District to participate in the creation of this document; and

WHEREAS, the Agencies, SHPO, and the ACHP agree that the effects of the undertakings on water control features are often similar and repetitive [36 CFR § 800.14(b)(1)(i)], and include routine management and maintenance [36 CFR § 800.14(b)(1)(iv)]; and

WHEREAS, the Agencies have determined in consultation with the SHPO, ACHP, and other consulting parties that the exempted undertakings in Appendix A have minimal potential to adversely affect historic properties based on the nature of the undertakings and their location and therefore require no further review by SHPO and other consulting parties; and

WHEREAS, the Agencies that sign this agreement acknowledge their individual and continued responsibility to engage in meaningful consultation with Tribes (See 54 USC § 302706, Executive Order 13175, and the November 5, 2009 Presidential Memorandum on Tribal Consultation) throughout the process of carrying out the stipulations of this agreement; and

WHEREAS, this PA is also applicable to undertakings covered by this PA where the lead agency is a Signatory to this PA and the other agencies involved agree to its use; and

WHEREAS, the Agencies will make compliance with the terms of this PA and fulfillment of the steps specified for the resolution of adverse effects of any specific undertaking covered by this PA conditions of any authorizations or assistance they provide to non-federal entities carrying out undertakings subject to this PA; and

WHEREAS, the Agencies have provided consulting parties information about the PA and its implementation by means of letters, emails, and telephone calls. The Agencies have acted in good faith to identify and involve interested parties; and

NOW, THEREFORE, Reclamation, the Agencies, SHPO, and ACHP agree that the PA shall be implemented in accordance with the following stipulations in order to take into account the effects on historic properties of undertakings covered by this PA.

STIPULATIONS

The Agencies shall ensure that the following Stipulations are implemented for their individual undertakings that are covered by this PA.

I. COVERED UNDERTAKINGS

The undertakings covered by this PA include operation and maintenance activities as defined in the third whereas clause and specified by Appendix A that are carried out by federal agencies and non-federal entities that are assisted and/or authorized by federal agencies, including authorizations from federal land managers for such undertakings carried out by non-federal entities on federal lands in the State of Colorado. This PA will not apply on tribal land of any federally recognized tribe in Colorado unless agreed to by that Tribe.

II. REVIEW PROCESS

- a. The Agency will review each undertaking to determine if it meets the definition of an Exempted Undertaking as defined in Appendix A. Exempted undertakings do not require further review under Section 106 but will be documented pursuant to Stipulation III.2 (Annual reporting).
- b. If an undertaking covered by this PA is not exempt from review as defined in Appendix A, the Agency shall identify affected historic properties and assess adverse effects in consultation with appropriate consulting parties by following the process set forth in 36 CFR Part 800.3-800.5, or by following the protocols set forth in existing applicable agency specific agreements with SHPO. For example, agencies with statewide PAs or Protocols may submit reports in accordance with the stipulations therein and may then use this PA for resolution of adverse effects subject to the parameters below. Development, approval, and documentation of the resolution for adverse effects for a specific undertaking covered by this PA shall not require the development of a new agreement document.
 - i. If the Agency determines in consultation with appropriate consulting parties that a specific non-exempt undertaking will have an adverse effect on components of water control features that have been determined to be historic properties, the Agency may choose to use the mitigation option, Contribution to the webpage, described in Appendix B in order to resolve adverse effects under this PA. The Agency may also develop a different mitigation option in consultation with the SHPO and consulting parties for a specific undertaking through the process

described in Appendix B and by submittal and approval of a mitigation proposal utilizing the template in Appendix B.

- ii. If the Agency determines in consultation with SHPO and appropriate consulting parties that a non-exempt undertaking will have an adverse effect on historic properties that are not components of irrigation infrastructure, then the Agency will continue consultation with SHPO and appropriate consulting parties per 36 CFR 800 to resolve the adverse effect(s).

III. CONSULTATION AND REVIEW OF MITIGATION DOCUMENTATION

1. Consultation, Review, and Acceptance of Mitigation Proposals and Acceptance of Mitigation Projects

- a. The Lead Agency shall submit a copy of the mitigation proposal (template in Appendix B) (if multiple Agencies are involved in a specific covered undertaking, the Agencies involved should designate one as the lead for that specific undertaking as per 36 CFR 800.2(a)(2)). The proposal needs to include mitigation action descriptions, time frames for completion, and how the product(s) will be made available to the public, using the template in Appendix B. The Lead Agency will consult with the SHPO and consulting parties identified for the specific undertaking, to determine whether or not the proposed measures are appropriate to resolve the specific undertaking's adverse effect. The SHPO will have 30 days to review and comment on the proposal. Upon acceptance of the proposal by the SHPO, the proposal may be initiated.
- b. The Lead Agency will submit a draft of the mitigation deliverables for review and dissemination to the SHPO and consulting parties identified for the specific undertaking for a 30-day review and comment. The lead agency will take into account any timely comments in revising and finalizing the mitigation deliverables. If revisions were required, the Agency will distribute revised and finalized deliverables to the SHPO and any participating interested parties, for a final 30-day review. Upon acceptance of the deliverables by the SHPO, mitigation for the undertaking shall be considered complete.
- c. Any specific consulting party dispute about how the specific undertaking resolves adverse effects will be resolved through consultation.
- d. If the mitigation is not complete by the proposed timeline, then the Agency shall consult with SHPO about the proposed project. Upon agreement by the Agency and SHPO, the template in Appendix B shall be revised to incorporate new project proposals or timelines. If agreement cannot be reached the dispute shall be resolved in accordance with Stipulation VI and may involve the creation of a separate memorandum of agreement.

2. Annual Reporting

- a. For exempt undertakings contained in Appendix A, each Signatory shall submit an annual report listing the number of undertakings conducted within that calendar year and the exemption that they were conducted under no later than March 31 of the following year to SHPO. The annual report may include GIS data as warranted. Federal Agencies' Annual Reports required by their respective agencies can be used to fulfill this stipulation.

IV. EMERGENCY REPAIRS TO IRRIGATION INFRASTRUCTURE

- a. Water control features that were built after 1960 or that have been previously determined not eligible for inclusion on the national register of historic places are exempt from consultation due to an emergency.
- b. Should water control features require emergency repairs, the Agency shall begin repairing the emergency while consulting with SHPO via the most expeditious manner (i.e., telephone, email, text) about the nature of the emergency within 48 hours of the emergency event. Depending on the type and severity of the emergency, the Agency and SHPO will decide on an appropriate course of action.
- c. SHPO and the Agencies mutually agree that it is in the public's interest to repair the affected infrastructure quickly and that a standard literature review and Class III cultural assessment may not be possible under the circumstances. Consequently, in such cases, a post-incident cultural assessment may be completed.
- d. Should mitigation be required, the provisions of this PA, if applicable, may be used in fulfillment of mitigation for eligible and listed water control features.

V. INADVERTENT DISCOVERIES

Agencies shall ensure that any inadvertent discovery made during construction for any undertaking under this PA shall follow established discovery plans in existing Agency agreements with SHPO or 36 CFR 800.13(b). For any human remains discovery, the Native American Graves Protection and Repatriation Act and/or the Unmarked Human Graves provision of the Colorado Historical, Prehistorical, and Archaeological Resources Act of 1973, as amended (CRS 24-80-130lff) will be followed as landownership dictates.

VI. DISPUTE RESOLUTION

Should any Signatory to this PA object at any time to the manner in which the terms of this PA are implemented, the appropriate Agency shall consult with such party to resolve the objection. If the Agency determines that such objection cannot be resolved, the Agency will:

- a. Forward all documentation relevant to the dispute, including the Agency's proposed resolution, to the ACHP, copying the Signatories and consulting parties. The ACHP shall provide the Agency with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Agency shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and consulting parties, and provide them with a copy of this written response. The Agency will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the Agency may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Agency shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and consulting parties and provide them and the ACHP with a copy of such written response.
- c. The Agency's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

VII. AMENDMENT

- a. Any Signatory to this agreement may request that the other Signatories consider amending it if circumstances change over time and warrant revision of the stipulations. Amendments shall be executed in writing and shall be signed by all Signatories in the same manner as the original PA.
- b. Agencies who did not initially sign the PA may do so through consultation with SHPO and Reclamation without an amendment to the PA.

VIII. TERMINATION

Any Signatory to this PA may initiate termination by providing written notice to the other Signatories of their intent. After notification by the initiating Signatory, the Signatories shall have 90 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. In the event of termination, the Agencies shall comply with the provisions of subpart B of 36 CFR 800 for each individual undertaking.

IX. SUNSET TERMS

This PA shall remain in effect for 10 years after the date of execution hereof. The Agencies and SHPO shall re-evaluate the PA every five years. Reclamation shall sponsor a meeting or teleconference within five years of the execution of the PA for the Signatories and consulting parties to review PA efficacy and discuss amendments if needed. Six months prior to the expiration date of the agreement, Reclamation will initiate consultation with Signatories and Consulting Parties to amend the PA to extend its duration and make any other changes deemed appropriate according to Stipulation VII (Amendment).

XI. PROFESSIONAL STANDARDS

All actions prescribed by this PA that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition for historic properties, and/or that involve reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet at a minimum the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-44739; Appendix A to 36 CFR 61) in the appropriate discipline. Each Agency will ensure that the work outlined in this PA is conducted by individuals meeting these qualifications standards.

The Agencies acknowledge that Indian tribes "possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them" (§ 800.4 (c)(1)). The Agencies acknowledge and respect traditional knowledge and traditional education systems on their own terms. The Secretary of Interior's Professional Qualifications Standards do not apply to individuals designated by tribes to assist in or review results of identification, evaluation, analysis, recording, treatment, monitoring or disposition of historic properties.

XII. GENERAL PROVISIONS

- A. Anti-Deficiency Act. The Agencies' obligations under this Programmatic Agreement are subject to the availability of appropriated funds, and the stipulations of this Programmatic Agreement are subject to the provisions of the Anti-Deficiency Act. The Agencies shall make reasonable and good faith efforts to secure the necessary funds to implement this Programmatic Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs an Agency's ability to implement the stipulations of this agreement, the Agency shall consult in accordance with the amendment and termination procedures found at Stipulations VII and VIII of this agreement.
- B. The NRCS, other signatories, and the SHPO and their respective agencies will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
- C. Any transfer of funds from one party to another shall be done via a separate instrument as appropriate. Specific work projects or activities that involve the transfer of funds, services, or property among the NRCS, other signatories, and the SHPO and their respective agencies will require execution of separate agreements and be contingent upon the availability of appropriated funds. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
- D. This PA shall become effective on the last date that it has been signed by Reclamation and the SHPO or ACHP. Reclamation shall ensure that each signatory is provided a copy of the fully executed PA. This PA may be executed in any number of counterparts, each of which when executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same agreement.
- E. Additional Agencies may become signatories to this PA without altering the content or the responsibilities of the signatories. If additional agencies do sign on to this PA, they will be beholden to the original 10-year sunset period, not a new sunset period of their own choosing.

Execution of this PA and implementation of its terms evidence that Reclamation and the Agencies have taken into account the effects on historic properties of the undertakings covered by this PA.

Signatures. In witness whereof, the Parties to this PA through their duly authorized representatives have executed this PA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

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PROGRAMMATIC AGREEMENT

AMONG

**THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE –
NATURAL RESOURCES CONSERVATION SERVICE, THE U.S. DEPARTMENT OF
AGRICULTURE – FOREST SERVICE ROCKY MOUNTAIN REGION, THE U.S.
DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE – MOUNTAIN –
PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

Bureau of Reclamation, Upper Colorado Region

WAYNE PULLAN Digitally signed by WAYNE
PULLAN
Date: 2022.05.12 00:16:35 -06'00'

**Wayne Pullan
Regional Director**

DATE

PROGRAMMATIC AGREEMENT

AMONG

**THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE –
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DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE – MOUNTAIN –
PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

Bureau of Reclamation, Missouri Basin Region

BRENT ESPLIN

Digitally signed by BRENT ESPLIN
Date: 2022.06.23 10:54:01 -06'00'

**Brent Esplin
Regional Director**

DATE

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AMONG
THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE –
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OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

Colorado State Historic Preservation Officer

Dr. Holly Kathryn Norton

Digitally signed by Dr. Holly Kathryn
Norton

Date: 2022.05.03 13:35:35 -06'00'

Dawn DiPrince, SHPO

Date

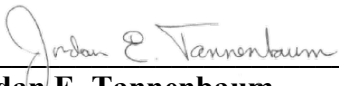
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PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

	7.29.22
Jordan E. Tannenbaum	DATE
Vice Chairman	

**PROGRAMMATIC AGREEMENT
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THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
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COLORADO**

Signatories:

**U.S. DEPARTMENT OF AGRICULTURE – FOREST SERVICE
ROCKY MOUNTAIN REGION**

**STEVEN
LOHR**

Digitally signed by
STEVEN LOHR
Date: 2022.05.23
09:57:47 -06'00'

**STEVEN LOHR
DEPUTY REGIONAL FORESTER**

DATE

**PROGRAMMATIC AGREEMENT
AMONG**

**THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE –
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PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

**THE U.S. DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE –
MOUNTAIN – PRAIRIE REGION,**

STACY ARMITAGE

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ARMITAGE
Date: 2022.06.15 11:50:18 -06'00'

STACY ARMITAGE	DATE
ASSISTANT REGIONAL DIRECTOR	
NATIONAL WILDLIFE REFUGE SYSTEM	
U.S. FISH AND WILDLIFE SERVICE	

PROGRAMMATIC AGREEMENT

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REGARDING

**THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

**U.S. DEPARTMENT OF AGRICULTURE – NATURAL RESOURCES CONSERVATION
SERVICE**

RANDOLPH RANDALL  Digitally signed by RANDOLPH
RANDALL
Date: 2022.06.16 15:09:36 -06'00' **6.16.2022**
Randy Randall **DATE**
Acting State Conservationist

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

Pawnee Nation of Oklahoma



**Walter Echo-Hawk
President**

DATE 6-7-2022

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REGARDING

**THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Concurring Party: Jared Orsi

Colorado State University Public Lands History Center

Jared Orsi

Jared Orsi

Director, Public Lands History Center

5/31/22

Date

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REGARDING
THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Signatories:

BUREAU OF LAND MANAGEMENT, COLORADO STATE OFFICE

DOUGLAS VILSACK

Digitally signed by DOUGLAS VILSACK
Date: 2022.09.28 11:18:43 -06'00'

**DOUG VILSACK
STATE DIRECTOR**

DATE

**INCLUSION OF THE USACE INTO
THE PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE –
NATURAL RESOURCES CONSERVATION SERVICE, THE U.S. DEPARTMENT OF
AGRICULTURE – FOREST SERVICE ROCKY MOUNTAIN REGION, THE U.S.
DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE – MOUNTAIN –
PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION
OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

WHEREAS, the U.S. Department of the Interior - Bureau of Reclamation (Reclamation), the Bureau of Land Management (BLM), the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture - Forest Service Rocky Mountain Region (FS), and the U.S. Fish and Wildlife Service - Mountain - Prairie Region (FWS) (collectively the “Agencies”) are responsible for the management and maintenance of various water control features (WCFs) and/or the lands on which these features are located throughout the State of Colorado; and the Agencies may provide federal grant funding or other assistance or authorizations for repair, maintenance, piping, modifications, and system upgrades for water control features within the State of Colorado, and along with the Colorado State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) executed this Programmatic Agreement (PA) on September 28, 2022; and

WHEREAS, the United States Army Corps of Engineers, Albuquerque District (USACE) under the authority of Section 404 of the Clean Water Act (33 United States Code [U.S.C.] § 1344) (Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) (Section 10) issues permits for impacts to jurisdictional wetland and non-wetland waters, and anticipates issuing one or more permits for impacts to these WCFs; and

WHEREAS, the USACE under the authority of Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 408) (Section 408) grants permission for occupation, alteration, or use of civil works projects built by the United States, and anticipates granting one or more permissions for work associated with these WCFs; and

WHEREAS, the issuance of permits or permissions by the USACE constitutes an Undertaking as defined at 36 Code of Federal Regulations [C.F.R.] § 800.16(y) subject to review by the USACE under Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, “Protection of Historic Properties” (36 C.F.R Part 800); and

WHEREAS, the USACE was invited to participate in the development of the original PA, and the USACE apparently chose not to participate, but has requested to join the other Signatories to

the original PA in 2025, including the five federal agencies, to amend the original PA pursuant to Stipulation VII.b in order for the USACE to be added as a Signatory to this amended PA due to their federal permitting undertakings, in an effort to further fulfill the purpose of the original PA by establishing a systematic and efficient process, pursuant to Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, “Protection of Historic Properties” (36 C.F.R. Part 800), and Reclamation and the SHPO have agreed to amend this PA pursuant to Stipulation VII.b of the original PA by adding the USACE as a Signatory; and

THEREFORE, the USACE is included as a Signatory as of the date below. Reclamation will attach this document to the original agreement and send a copy to all Signatories.

SIGNATORY

MILLER.MATTHEW.T.1071190931
W.T.1071190931

Digitally signed by
MILLER.MATTHEW.T.10711909
31
Date: 2025.10.15 08:32:59 -06'00'

Matthew T. Miller, P.E., PMP
Lieutenant Colonel, U.S. Army
District Commander

Programmatic Agreement for the Management of Water Control Features in the State of Colorado SHPO Compliance Flowchart***

Archaeologist reviews new water-related project.



Does it fit under an exemption? (Appendix A)



Yes

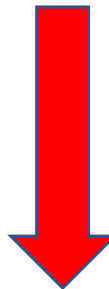
Add to Annual Report
Compliance is complete

If no adverse effect
then compliance is complete

No



Survey and identify
water-related historic
properties. Write report.
Consult with SHPO.



If Adverse Effect, choose mitigation option:

1. Add page to website. Document decision with SHPO (Appendix B). Project may proceed. Fulfill obligation.

OR

2. Do something else.

Document decision with SHPO (Appendix B). Project may proceed. Fulfill obligation.

***Tribal consultation is a separate activity.

PROGRAMMATIC AGREEMENT

AMONG

THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION, BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE – NATURAL RESOURCES CONSERVATION SERVICE, THE U.S. DEPARTMENT OF AGRICULTURE – FOREST SERVICE ROCKY MOUNTAIN REGION, THE U.S. DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE – MOUNTAIN – PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF COLORADO

Appendix A

Undertakings affecting water control features with minimal potential to cause adverse effects to historic properties

The activities summarized below are undertakings that have limited potential to adversely affect historic properties and should not require consultation. To be exempted under this agreement, all of these activities, including equipment access, staging areas, and deposition of resulting sediments or debris, must take place in previously disturbed areas and be limited to the horizontal and vertical extents of that disturbance.

For purposes of this Programmatic Agreement (PA), the following terms are defined as:

Water Control Feature: A water control feature is defined as a human-built structure, or system of structures, intended to facilitate the storage, diversion, management, and distribution of water for the purposes of irrigation, conservation, drainage, or flood control. Water control features include, but are not limited to: ditches, canals, laterals, small dams and reservoirs, levees, pipelines, pumps, sprinklers, wells, flumes, retention ponds, gaging stations, head gates, inlets, and culverts. This PA does not apply to large dams, i.e., holding back more than 2,000 acre-feet of water, or complex water retention systems (e.g. the Big-Thompson project). This definition does not include buildings that may be associated with the aforementioned features, nor does this PA apply to such. This PA does not apply to acequias, or New Deal constructions (1933 to 1942) except with SHPO consultation.

Maintenance: The act of keeping existing structures, property, or equipment in working or visually appropriate condition by making repairs, correcting problems, or performing preventative upkeep.

Replacement: The process of exchanging an existing structure or element with a different structure or element of similar function and design.

Associated Structures: These are facilities that are associated with the water control structure, or provide access to the structures, but are not directly involved with the control of water.

In accordance with OAHP's white paper "Walking the Line," (November 2021): "The small divisions of water beyond a primary ditch or canal and small return ditches are so ubiquitous across the agricultural landscape as to be rather meaningless background noise in terms of historical significance. The broad pattern of these dendritic systems can usually be seen on state water rights maps. Although a large number of these small infrastructure ditches are certainly old enough to be recorded and evaluated under the NRHP Criteria, they are commonplace and of such uniformity that they do not offer any significant physical characteristics or important data." Thus, any canal or ditch that is tertiary to a larger dendritic water system, or is unnamed on USGS maps, or does not appear on General Land Office maps, or is merely a field ditch installed by a landowner for agricultural irrigation purposes since 1960, possesses no to limited potential to be considered eligible for inclusion in the National Register of Historic Places. Accordingly, the parties agree that under the terms of this PA such waterways are not subject to Section 106 and require no further consultation.

I. Water Control Features

A. Maintenance**

1. Draining, cleaning, grading, or burning within an existing footprint without changing the profile of the feature.
2. Clearing or dredging of sediment or debris from stilling basins, forebays, canals, laterals, ditches, conduits, siphons, drains, sand-traps, weirs, tunnels, and other constructed features.
3. Routine maintenance or investigations of canals and other structures where there is no change to the exterior of the feature.
4. Restoring and replacing existing rip rap.
5. Repairing or replacing concrete features or lining features, so long as any replacements are completed with in-kind material by patching or cutting out sections that represent 25% or less of the total structure to replace deteriorated rebar and concrete or other materials.
6. Maintenance of an existing point of diversion (i.e., similar to headgate) within a stream bed.
7. Painting and application of other protective coverings, such as sealants or epoxy, where the original coloring is maintained.

**Should any damage occur to features older than 1960, then the material will be repaired or replaced with in-kind materials. Severe damage should require consultation with SHPO.

B. Replacement

1. Replacing pipelines, cables, metal or concrete culverts, or utility conduits.
2. Replacing canal or aqueduct features, such as pumping stations, relift stations, head gates, flumes, metal or concrete culverts, manholes, fish-screens, diversions, sand-traps, weirs,

and other constructed irrigation system features if it does not change the footprint of the existing feature, and provided that it is not a “New Deal” construction.

3. Replacing existing sensors in existing pipelines or residential neighborhoods (e.g., sprinkler heads and measuring devices).

C. Additions**

1. Installing new water-related belowground pipelines, cables, or utility conduits within existing previously disturbed areas, provided that the infrastructure does not pass through an eligible archaeological site.
2. Installing culverts in water systems younger than 1960.
3. Placing sensors in existing pipelines (SCADA/Supervisory control and data acquisition). The SCADA must be easily removeable with minimal damage to the infrastructure and can not be installed on stone masonry. It can be installed on infrastructure that post-dates 1960.
4. Placing sensors in existing waterlines in residential neighborhoods (e.g., sprinkler heads and measuring devices) if installed within an existing box or placed flush with the ground.
5. Placing pipe in bank of canal but leaving canal open for storm water management, so long as the original design, form, materials, and contours of the canal are returned to pre-construction conditions upon project completion.
6. Temporary water pipelines laid on ground surface for construction purposes, so long as it is restricted to the duration of construction activities.
7. Setting a stationary or cleaning screen at an existing head gate, so long as the head gate is younger than 1960.
8. Placing a crossing for a pivot sprinkler wheel.
9. Placing a removable liner into an existing ditch or canal regardless of age, so long as the liner is not constructed of concrete or shotcrete and is removable with minimal alterations to the original materials of the waterway and no changes to the original route.
10. Placing additional rip rap on top of existing rip rap, when using the same type of materials and maintaining original design criteria, not to exceed +10%.

**Within previously disturbed areas (see introduction).

II. Associated Structures

A. Maintenance

1. Repairing existing roads, trails, walks, paths, and sidewalks, including repaving existing roads or existing parking areas. All work must be completed within the existing corridor prism. And all repairs must not significantly alter the appearance (i.e., size, color, texture, design, materials, etc.) of the roadway, trail, path, etc.
2. Repairing guardrails so long as the repairs do not significantly alter the appearance (i.e., size, color, texture, design, materials, etc.) of the guardrails. Repairs and replacements must not alter the height or dimensions of the guardrail (within 10% of its existing dimensions).

B. Replacement

1. In-kind replacements of fencing, so long as the new fencing retains the original location, height, and materials of the old fencing.
2. In-kind replacements of guardrails, so long as the new guardrails retain the original location, height, and materials of the old guardrails.

C. Additions

1. Placing of fencing for safety purposes within previously disturbed areas, so long as the fencing is not placed within 50 yards of a historic property (excluding the water control feature).
2. Adding sensors to existing infrastructure (e.g., SCADA) including placing vertical poles, so long as the new sensors remain under 10 feet in height. The SCADA must be easily removeable with minimal damage to the infrastructure and can not be installed on stone masonry. It can be installed on infrastructure that post-dates 1960.
3. Placing signage for safety purposes within previously disturbed areas.

III. Vegetation and Pest Control

1. Mowing, brushing, trimming, and general maintenance of existing landscaping.
2. Planting vegetation in previously disturbed areas.
3. Removing terrestrial and aquatic weeds from within earthen or lined canals or laterals.
4. Replacing existing lawns with new vegetation or surface landscaping.
5. Applying chemical treatment to reservoirs or river segments that are not applied directly to existing structures or buildings.
6. Implementing rodent and pest control that do not involve ground disturbance.
7. Applying soil sterilants, herbicides, and insecticides that do not involve ground disturbance that are not applied directly to existing structures or buildings.

IV. Miscellaneous

1. Excavating trenches within the confines of previously disturbed areas so long as the trenches and work areas will not be located within the boundaries of or view of historic properties.
2. Conservation activities, enhancements, and practices that occur within existing tilled soils, croplands, or areas of surface disturbance, and will not exceed the existing depth of tillage, or previous disturbance.
3. Drilling small bore holes (up to 16" diameter), including in dam structures that fit the definitions of this PA. This action can not occur in masonry dams.
4. Short-term (less than one year) disturbance of a linear feature (i.e., canal or road) for boring or open-cut crossings when the linear feature will be returned to pre-construction conditions.
5. Removing equipment or materials from buildings and structures when the equipment or materials are less than forty-five (45) years old.

APPENDIX B

PROGRAMMATIC AGREEMENT

AMONG

**THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION,
BUREAU OF LAND MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE –
NATURAL RESOURCES CONSERVATION SERVICE, THE U.S. DEPARTMENT OF
AGRICULTURE – FOREST SERVICE ROCKY MOUNTAIN REGION, THE U.S.
DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE – MOUNTAIN –
PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION
OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF
COLORADO**

Mitigation Options for Adverse Effects to Water Control Features

Should mitigation be required due to an adverse effect on an historic property that is a component of water control features, the Agency shall consult with SHPO/THPOs and other undertaking-specific consulting parties and may choose to contribute to a broader understanding of irrigation related information by contributing to the webpage intended to document water control features in the state (webpage)¹. This project seeks to gradually build a comprehensive examination of irrigation practice, methods, and history. **Agencies should plan for a nominal fee per project for labor related to upload and posting of the content. Additionally, agencies that are signatories to this agreement may be requested to provide a small fee for yearly hosting of the water control features resource webpage.**

Agencies with undertakings that have an adverse effect to historic properties may choose to expand on a topic of the webpage through data gathering, historic research, videos, oral interviews, designs, etc. The information provided shall be for a general audience. Mitigation will consist of filling out a topic (or more depending on the complexity of the project being mitigated). Topics can be thought of as analogous to chapters or sections in a book. Each would be self-contained, sufficient to explain the topic, and may reference other online and print material.

¹ This webpage will be located at ORCA (<https://archaeologycolorado.org/>).

Consider the following as a general list of topics appropriate as subjects for a contribution to the development of a water control feature webpage.

- I. Irrigation in Prehistory
 - a. Nomadic to Settled Life
 - b. Horticulture to Agriculture
 - i. Crops
 - ii. Activities
 - c. Cultivation practices
- II. Colorado Prehistory to Proto-History
- III. Fur Trade to Pre-Territorial Era
- IV. Territorial to statehood
 - a. Acequia development
- V. Colorado Statehood to WWI
 - a. Tribes, Treaties, and Water Rights
 - i. Treaties between the Federal Government and Tribes
 - ii. Supreme Court's 1908 *Winters v. United States* decision
 - b. Federal Acts (Homestead Act (1862), Carey Act (1894), and Reclamation Act (1902)
 - c. Colorado Water Administration
 - i. Water Law and Water Rights
 - 1. Law of the River/Colorado River Doctrine
 - ii. "Duty of Water" – 1cfs/70 acres
 - iii. Social organization, litigation/feuds, and colorful characters
 - d. Immigrants to Colorado
 - i. Knowledge of farming brought with them
 - ii. Early experiments in Agriculture
 - 1. Agriculture methods
 - e. Building communities through irrigation
 - i. Early communities
 - ii. Canal building
 - 1. Methods, failures, success
 - 2. Acequias
- VI. Industrial Irrigation (WWI to ~1960)
 - a. Irrigation and Government Agencies (e.g., Bureau of Reclamation, CCC, NRCS, SEP, WWDO, New Deal)
 - i. Purpose, Actions, Methods, Locations
 - ii. Rise of Irrigation Districts, Canal Companies, Water Districts, and other irrigation entities
 - b. Farming in the Industrial Age
 - i. Improvements, modifications, large-machinery, etc.
 - ii. Droughts and water banking
 - iii. Changing trends of agriculture
- VII. Modern Farming (1960 to 2020+)
 - a. Changing Irrigation Ideals and Methods/Irrigation Efficiency

- i. Canals to Pipe (Water Conservation)
 - ii. Flood irrigation to Pivot and drip
 - b. Changing demographics of farming
 - i. Family Farm to industrial
 - ii. Ranching vs Farming
- VIII. Irrigation methods and equipment
 - a. Early irrigation methods (AD 1800s to 1930)
 - i. How was a canal sited, dug, and built
 - ii. Moving water uphill and other challenges
 - iii. Water Storage and Beneficial Use (Flood Control, Irrigation, Hydroelectric, etc.)
 - b. Industrial Irrigation methods
 - i. Irrigation infrastructure funding, planning, and construction
 - c. Modern tools, methods, and challenges
 - i. Irrigation infrastructure funding, planning, and construction
 - ii. Environmental laws
 - iii. Water Availability
 - iv. Aging Infrastructure
 - d. Definitions and examples
 - i. Major terms
 - 1. Definition, figures, photos, and videos of use
 - ii. People's jobs in irrigation
 - 1. Definition, figures, photos, and videos of use
 - 2. Oral interviews
- IX. Compiling Research on Canals and Irrigation Infrastructure
 - a. Various site forms, pdfs, other videos, etc.
 - b. GIS storymap
 - c. Water infrastructure GIS dataset
 - d. Histories (e.g., oral, interpretive, or thematic)
 - e. School curriculum
 - f. Specific examples
- X. Local Canal, Canal System, or Regional Irrigation History (could include any of the above topics but focused at a smaller scale on single canals or water control feature systems)

OTHER MITIGATION METHODS

Should an Agency not choose to use development of a contribution to the webpage as the resolution of adverse effects for a specific covered undertaking, or if the covered undertaking has effects to historic properties which consulting parties believe might not be appropriately resolved by a contribution to the webpage, other mitigation options commensurate with the adverse effect shall be developed through consultation with SHPO/THPOs, interested tribes, and other consulting parties under the umbrella of this PA. If an Agency decides not to use the webpage to resolve adverse effects, they shall submit the PA mitigation proposal to the SHPO and the other consulting parties per Stipulation III of the PA with a

description of resolution of adverse effects utilizing the following template in Appendix B. A new memorandum of agreement is not necessary if the proponent follows the provisions of this PA.

The following form is an example template and can be modified as necessary.

EXAMPLE MITIGATION PROPOSAL TEMPLATE PER UNDERTAKING

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PROGRAMMATIC AGREEMENT

AMONG

**THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF RECLAMATION, BUREAU OF LAND
MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE – NATURAL RESOURCES
CONSERVATION SERVICE, THE U.S. DEPARTMENT OF AGRICULTURE – FOREST SERVICE ROCKY
MOUNTAIN REGION, THE U.S. DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE –
MOUNTAIN – PRAIRIE REGION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

THE MANAGEMENT OF WATER CONTROL FEATURES IN THE STATE OF COLORADO

PA Mitigation Proposal for Adverse Effects to Components of Irrigation Systems

Project Proponent:

Lead Agency:

Project Name, Agency Project Number, and Description:

History Colorado Number:

Projected Project Construction Date:

Finding of Effect (describe the resource(s) affected by Smithsonian # including type of effect, scope of effect, and other details as needed):

Selected mitigation from Appendix B of the PA or other mitigation activity:

Mitigation for the resolution of the adverse effect(s) stated above in accordance with the PA is agreed upon by the proponent, lead agency, and SHPO/THPO. The scope of the mitigation and timeline for completion shall be commensurate with the adverse effect being mitigated. The proponent agrees to the included schedule to complete the required mitigation. Failure to complete mitigation will result in an adverse effect to a historic property that will require the proponent and lead agency to negotiate a Memorandum of Agreement to resolve adverse effects to historic properties in accordance with 36 CFR 800.6.

Mitigation for this project will be completed no later than: _____

Website handling fee _____ (to be paid to SHPO)

Proponent's signature and date _____

Lead agency official signature and date _____

SHPO/THPO concurrence letter will be attached acknowledging the adverse effect and the mitigation proposed.

Schedule of accomplishments for the mitigation proposal

Date submitted to SHPO/THPO (30-day review/comment for accepting proposal):

Date SHPO/THPO letter accepting the proposal:

Mitigation kickoff meeting to discuss proposal with the lead agency, proponent (including any contractors), and SHPO/THPO (must be within 30 days of proposal acceptance):

Progress meetings (must be within 6 months of kickoff meeting and occur at least every 6 months until a draft is submitted to the lead agency):

Date draft submitted to lead agency (30-day review):

Date revised draft final submitted to lead agency (15-day review):

Date final draft submitted to SHPO/THPO (30-day review):

Date SHPO/THPO accepts mitigation product and mitigation is considered complete:

Please attach all appropriate supporting documents of the proposal (e.g. historic properties treatment plans, etc.) to this template with initial and final submission.