MEMORANDUM OF AGREEMENT

AMONG

THE U.S. BUREAU OF RECLAMATION

THE OREGON STATE HISTORIC PRESERVATION OFFICE

And

CENTRAL OREGON IRRIGATION DISTRICT

For

Piping of a Segment of the Central Oregon Canal

WITHIN THE CITY OF BEND, DESCHUTES COUNTY, OREGON

WHEREAS, the Central Oregon Irrigation District (COID) owns and operates the Central Oregon Main Canal, which carries water diverted from the Deschutes River in Deschutes County, into a system of laterals for irrigation and other purposes; and

WHEREAS, COID proposes to construct the Siphon Power Property Canal Piping Project to pipe a 3,000-foot-long portion of the open Central Oregon Canal, between the siphon pipeline headworks and the Brookswood Blvd. bridge, in order to reduce water loss and improve efficiency; and

WHEREAS, COID applied for and was awarded funding for the Siphon Power Property Canal Piping Project under the WaterSMART Water and Efficiency Grant Program, administered by Bureau of Reclamation (Reclamation), and such funding meets the definition of an undertaking 36 CFR 800.3, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) (NHPA); and

WHEREAS, Reclamation determined that the Central Oregon Canal is eligible for listing in the National Register of Historic Places (NRHP) and that the undertaking will physically and visually alter the historic character of the canal, resulting in an adverse effect to the property; and

WHEREAS, Reclamation consulted with the Oregon State Historic Preservation Office (OR SHPO) pursuant to 36 CFR part 800 and 33 CFR 325, Appendix C of NHPA, and the Oregon SHPO concurred with Reclamation regarding the eligibility of canal for listing in the NRHP, and the determination of adverse effect upon the Central Oregon Canal, pursuant to 36 CFR 800.4(b) and 36 CFR 800.5(a), respectively; and

WHEREAS, Reclamation consulted with the Confederated Tribes of the Warm Springs and Burns Paiute Tribes (Tribes) pursuant to 36 CFR 800.6(a) of the adverse effect determination with specified documentation, and the Tribes have chosen not to participate in the consultation; and
STIPULATIONS

Reclamation will ensure that the following stipulations are carried out:

I. PUBLIC RECREATION SUPPORT. COID will support the development of the “Central Oregon Canal Historic Trail” (Appendix A), through collaboration with Bend Metro Parks and Recreation District (BMPRD). The trail will be a publicly-accessible bike and pedestrian way along the portions of COID’s 30-plus mile long canal system that will be incorporated into BMPRD’s system of developed trails throughout the city of Bend. BMPRD has already developed portions of this trail, which will be improved by greater access as the result of the 3000-foot long segment flanking the project area between the siphon pipeline headworks Intake and the Brookswood Blvd. Bridge. The trail will be developed within the CO Canal right-of-way, and consist of a single lane gravel road, with a soft surface natural trail, not to exceed 15 ft. width, running parallel to the road. Maintenance of the trail will be in accordance with the terms of the COI-BMPRD 2002 Trails Agreement. This trail will connect the existing Deschutes River Trail to the existing Central Oregon Canal Trail, located east of Brookswood Blvd.

II. PUBLIC INTERPRETATION. COID will also provide additional interpretative opportunities on the Historic Central Oregon Canal Trail by funding, researching, and developing an interpretative panel of a minimum 24” x 36” dimension, to be installed adjacent to the trail head near the siphon pipeline headworks, at the project starting point. This professionally researched and written panel will include information on the history and significance of the Central Oregon Canal within the development history of Bend and Deschutes County along with a brief explanation of the Siphon Power Property project itself. The panel will include color and black-white photos, maps and other graphic material as appropriate, all fabricated using durable, weather- and vandal-resistance materials that will provide long-term public benefit. COID will install the signage in a location conducive to
public display, security, and safety. This panel will be consistent with, and augment other interpretative signage being developed by COID, such as the interpretative kiosk at the site of the former Cline Falls power plant, and along the Pilot Butte Canal-Downtown Redmond Segment Historic District.

III. REVIEW OF MITIGATION MATERIALS. COID shall provide the signing parties to this document at least one opportunity lasting a minimum of thirty (30) calendar days to comment on the completeness of the mitigation materials specified in Stipulation I. of this document. Comments provided by the consulting parties shall be taken into consideration within the limits of the project as described in the stipulation.

COID is responsible for all costs required for the successful completion of Stipulation II.

IV. PROFESSIONAL QUALIFICATIONS. All work focused on the interpretative signage pursuant to this MOA will be researched and developed by or under the supervision of a person or persons with experience or specializing in historic preservation, architectural history, cultural resources, exhibit design, graphic art, or utilizing a professional organization experienced in exhibit design and public interpretation.

V. DURATION. The measures outlined in Stipulation I shall be completed within four (4) years from the date of the execution of this MOA, defined as the date of the latest signature. Prior to such time, Reclamation may consult with the other signatories to reconsider the terms of the MOA and amend in accordance with Stipulation VI below.

VI. MONITORING AND REPORTING. Each year following the execution of this MOA until it expires or is terminated, COID shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in COID’s efforts to carry out the terms of this MOA. Failure to provide such summary report may be considered non-compliance with the terms of this MOA pursuant to Stipulation IX, below.

VII. POST-REVIEW DISCOVERIES. If properties are discovered that may be historically significant or unanticipated effects on historic properties found, COID shall implement the discovery plan included as an attachment [Appendix B] to this MOA.

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

A. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise Reclamation on the resolution of the objection within 30 days, or another time period agreed to by all signatories. Any comment provided by the ACHP shall be provided to the signatories within thirty (30) calendar days of receipt. All comments from the signing parties to the MOA, will be taken into account by Reclamation in reaching a final decision regarding the dispute.

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B. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, Reclamation will render a decision regarding the dispute within 30 days following the ACHP’s review period. In reaching its decision, Reclamation will take into account all comments regarding the dispute from the signing parties to the MOA.

C. COID'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. Reclamation will notify all signing parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. Reclamation's decision will be final.

IX. AMENDMENTS AND NON-COMPLIANCE. Any signing party may request that this MOA be amended by submitting such a request to the other signing parties in writing. Reclamation shall consult with the signing parties for up to sixty (60) calendar days, or another time period agreed to by all signing parties concerning the necessity and appropriateness of the proposed amendment. Any signing party may request the involvement of the ACHP during the amendment process. At the end of the consultation period Reclamation shall provide an amended MOA for signature by the signing and concurring parties or a written statement describing why Reclamation chose not to pursue an amendment to this MOA. Amendments shall be effective on the date a copy of the MOA signed by all of the signatories is filed with the ACHP.

X. TERMINATION. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signing parties to attempt to develop an amendment per Section VI, above. If within sixty (60) days, or another time period agreed to by all signing parties, an amendment cannot be reached, any signing party may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, Reclamation must either (a) execute an MOA pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Reclamation shall notify the signatories as to the course of action it will pursue.

XI. EXECUTION. This MOA may be executed in counterparts, with a separate page for each signing and concurring party, and Reclamation will ensure that each party is provided with a copy of the fully executed agreement. This MOA will become effective on the date that Reclamation receives the last signature. The MOA will be in effect until the above Stipulations in the MOA are met to the OR SHPO’s satisfaction or for four years after its effective date, whichever occurs first. If the Stipulations have not been met to OR SHPO’s satisfaction at the end of five years, the MOA will be amended with a plan for how to meet the Stipulations. This MOA may be amended when such an amendment is agreed to in writing by all signing parties. The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.

Execution of this MOA by Reclamation, COID, and the OR SHPO and its subsequent filing with the ACHP, and implementation of its terms evidences that Reclamation has afforded

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ACHP the opportunity to comment on the proposed undertaking and its effects on historic properties, and that it has taken into account the effects of the undertaking on historic properties, thereby satisfying its responsibilities under applicable sections of the ORS 358.363 and the National Historic Preservation Act of 1966.

XII. PRINCIPAL CONTACTS. The principal contacts for this MOA are:

For Reclamation:
Chris Horting-Jones
Archeologist
1375 SE Wilson Ave. #100
Bend, OR 97701
Phone (541) 389-6541
Fax (541)-389-6394
Email: chortingjones@usbr.gov

For COID:
Craig Horrell
Manager
Central Oregon Irrigation District
1055 SW Lake Court
Redmond, OR 97756
Phone (541) 548-6047
Fax (541) 548-0243
Email: chorrell@coid.org

For Oregon SHPO:
Jessica Gabriel
Historian
State Historic Preservation Office
Oregon Parks and Recreation Department
725 Summer St. NE, Suite C
Salem, OR 97301-1266
Phone (503) 986-0677
Fax (503) 986-0793
Email: Jessica.Gabriel@oregon.gov

XIII. GENERAL PROVISIONS.

A. Non-Fund Obligating Document. This MOA is neither a fiscal nor a funds obligating document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds from Reclamation to the Parties will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This MOA does not provide such authority. This MOA
does not establish authority for noncompetitive award to the parties of any contract or other agreement.

B. **No Binding Rights or Obligations.** Except as set forth in 54 USC 306108 and 36 CFR 800, nothing in this MOA is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies its officers, or any other person. Nothing in this MOA shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 USC 2671 et seq.).

C. **No Sharing of Benefits.** No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of the MOA or to any benefit that may arise out of it.

D. **Freedom of Information Act.** Any information furnished to Reclamation, under this MOA, is subject to the Freedom of Information Act (5 USC 552).

E. **Participation in Similar Activities.** This MOA in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.

F. **Endorsement.** Any of Parties' contributions made under this MOA do not by direct reference or implication convey endorsement of Parties' products or activities.

G. **Compliance with Federal Laws.** All parties to this MOA agree to comply with all Federal statutes relating to nondiscrimination, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the Education amendments of 1972, as amended, which prohibits discrimination of the basis of sex; the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended, which prohibits discrimination based on age against those who are at least 40 years of age; and the Equal Pay Act of 1963.
XIV. SIGNATORIES:

IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the last date written below.

SIGNING PARTIES

U. S. Department of Interior, Bureau of Reclamation

[Signature]

Dawn Wiedmeier
Area Manager

Date: 1/5/2018

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SIGNING PARTIES

Oregon State Historic Preservation Office

Christine Curran
Deputy State Historic Preservation Officer

Date: 1/5/18

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SIGNING PARTIES

Central Oregon Irrigation District

Craig Horrell
District Manager

Date: 1.5.18

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CONCURRING PARTIES

Deschutes River Conservancy

[Signature]
Kate Kitzpatrick
Program Director

Date: 1/4/17

MOA Agreement #R18MA13711
CONCURRING PARTIES

Deschutes Basin Board of Control

[Signature]

Mike Britton
Chairman

Date: 1/5/18

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CONCURING PARTIES

Coalition for the Deschutes

Gail Snyder
Executive Director

Date: 1/5/18

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APPENDIX A
COID Resolution

RESOLUTION NUMBER: 2017-15
NAMING OF THE CENTRAL OREGON CANAL HISTORIC TRAIL

A RESOLUTION TO ACCEPT THE OFFICIAL NAMING OF THE CENTRAL
OREGON CANAL HISTORIC TRAIL.

WHEREAS, the District approves officially naming the trail resulting from the Siphon Power
Property Canal Piping Project the “CENTRAL OREGON CANAL HISTORIC TRAIL.”

The trail will have public access and the District will establish markers for the trail.

Dated this 13th day of November 2017:

Craig Horrell, Manager
Terry Blackwell
Robert Bodien
Thomas Burke
Paul Kasberger
Carroll Peahollow

Resolution 2017-15 NAMING OF THE CENTRAL OREGON CANAL HISTORIC TRAIL

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APPENDIX B
Inadvertent Discovery Plan
INADVERTENT DISCOVERY PLAN FOR UNANTICIPATED CULTURAL RESOURCES

Central Oregon Irrigation District’s Siphon Power Property Canal Piping Project

Funded in part by the US Bureau of Reclamation Through the WaterSMART Grant Program
January 2018

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Inadvertent Discovery Plan for Cultural Resources
Central Oregon Irrigation District’s Siphon Power Property Piping Project

Introduction

The Bureau of Reclamation (Reclamation) proposes to fund a portion of the Central Oregon Irrigation District’s SPP piping project through a WaterSmart Grant to increase efficiencies in energy use, water deliveries, and allowing for increased flows to remain in the Deschutes River to benefit aquatic species. Project work includes installation of approximately 3000 feet of 120 inch-diameter steel pipe within the prism of the Central Oregon (CO) Canal, between the siphon pipeline headworks and the Brookswood Blvd. Bridge. The project area is located on lands owned by COID in fee. A reconnaissance survey has been conducted along the CO Canal, and the Canal has been determined to be a historic property in accordance with the National Historical Preservation Act.

For purposes of this document, Project Manager refers to a COID employee who is overseeing project implementation. Reclamation Contact refers to the individual employed by Reclamation who is considered the Grants Specialist and regularly communicates with COID’s Project Manager.

The Inadvertent Discovery Plan (IDP) will be followed if cultural materials, including human remains, are encountered during project work.

Protocol for coordination in the event of inadvertent discovery:
In the event of an inadvertent discovery of possible cultural materials, including human remains:

• All work will stop immediately in the vicinity of the find. A 30-meter buffer should be placed around the discovery with work being able to proceed outside of this buffered area unless additional cultural materials are encountered.

• The area will be secured and protected.

• The Project Manager, as designated by COID, and the Reclamation Contact will be notified. The Project Manager will immediately notify the State Historic Preservation Office (SHPO) and Reclamation’s archaeologist. If possible human remains are encountered, the Oregon State Police, Commission on Indian Services (CIS), SHPO, appropriate Tribes, and Reclamation’s archaeologist will also be notified.

<table>
<thead>
<tr>
<th>Contact Agency</th>
<th>Contact Name</th>
<th>Phone number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon State Police (OSP)</td>
<td>Chris Allori</td>
<td>503-731-4717</td>
</tr>
<tr>
<td>Commission on Indian Services (CIS)</td>
<td>Karen Quigley</td>
<td>503-986-1067</td>
</tr>
<tr>
<td>Appropriate Tribes</td>
<td>As designated by CIS</td>
<td>503-986-1067</td>
</tr>
<tr>
<td>SHPO</td>
<td>Dennis Griffin</td>
<td>503-986-0674</td>
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<td></td>
<td>John Pouley</td>
<td>503-986-0675</td>
</tr>
<tr>
<td></td>
<td>Matt Diederich</td>
<td>503-986-0577</td>
</tr>
<tr>
<td>Reclamation Contact</td>
<td>Leah Meeks</td>
<td>208-378-5025 work</td>
</tr>
<tr>
<td>Reclamation Archaeologist</td>
<td>Chris Horting-Jones</td>
<td>541-389-6541 ext 236</td>
</tr>
<tr>
<td></td>
<td></td>
<td>541-410-9895 cell</td>
</tr>
</tbody>
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• No work may resume until a professional archaeologist is able to assess the discovery and consultation with the SHPO has occurred.

• If human remains are encountered, do not disturb them in any way. Do not call 911. Do not speak with the media. Secure the location. Do not take photos. The location should be secured and work will not resume in the area of discovery until all parties involved agree upon a course of action.

• A professional archaeologist may be needed to assess the discovery and they, working in tandem with Reclamation’s archeologist, will consult with SHPO and appropriate Tribal Governments to determine an appropriate course of action.

• Archaeological excavations may be required. This is handled on a case-by-case basis by Reclamation’s archaeologist and Reclamation Contact, the professional archaeologist and Project Manager, in consultation with SHPO and appropriate Tribes.

**When to stop work:**

Construction work may uncover previously unidentified Native American or Euro-American artifacts. This may occur for a variety of reasons, but may be associated with deeply buried cultural material, access restrictions during project development, or if the area contains impervious surfaces throughout most of the project area which would have prevented standard archaeological site discovery methods.

Work must stop when the following types of artifacts and/or features are encountered:

**Native American artifacts may include (but are not limited to):**
• Flaked stone tools (arrowheads, knives scrapers etc.);
• Waste flakes that resulted from the construction of flaked stone tools;
• Ground stone tools such as mortars and pestles;
• Layers (strata) of discolored earth resulting from fire hearths - may be black, red or mottled brown and often contain discolored cracked rocks or dark soil with broken shell;
• Human remains;
• Structural remains - wooden beams, post holes, fish weirs.

**Euro-American artifacts may include (but are not limited to):**
• Glass (from bottles, vessels, windows etc.);
• Ceramic (from dinnerware, vessels etc.);
• Metal (nails, drink/food cans, tobacco tins, industrial parts etc.);
• Building materials (bricks, shingles etc.);
• Building remains (foundations, architectural components etc.);
• Old Wooden Posts, pilings, or planks (these may be encountered above or below water);
• Remains of ships or sea-going vessels, marine hardware etc.;
• Old farm equipment may indicate historic resources in the area;
• Even what looks to be old garbage could very well be an important archaeological resource;

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When in doubt, call it in!

Proceding with Construction

• Construction can proceed only after the proper archaeological inspections have occurred and environmental clearances are obtained if deemed necessary. This requires close coordination with SHPO and the Tribes.

• After an inadvertent discovery, some areas may be specified for close monitoring or ‘no work zones.’ Any such areas will be identified by the professional archaeologist and Reclamation’s archaeologist to the Project Manager, and appropriate contractor personnel.

• In coordination with the SHPO, the Project Manager will verify these identified areas and ensure that the areas are clearly demarcated in the field, as needed.
Treatment of Native American Human Remains Discovered Inadvertently or Through Criminal Investigations on Private and Non-Federal Public Lands in Oregon

Native American burial sites are not simply artifacts of the tribe’s cultural past, but are considered sacred and represent a continuing connection with their ancestors. Native American ancestral remains, funerary objects, sacred objects and objects of cultural patrimony associated with Oregon Tribes are protected under state law, including criminal penalties (ORS 97.740-.994 and 358.905-.961). The laws recognize and codify the Tribes’ rights in the decision-making process regarding ancestral remains and associated objects. Therefore both the discovered ancestral remains and their associated objects should be treated in a sensitive and respectful manner by all parties involved.

Identification of Human Remains

- Oregon laws (ORS 146.090 & .095) outline the types of deaths that require investigation and the accompanying responsibilities for that investigation. The law enforcement official, district medical examiner, and the district attorney for the county where the death occurs are responsible for deaths requiring investigation. Deaths that require investigation include those occurring under suspicious or unknown circumstances.

- If human remains that are inadvertently discovered or discovered through criminal investigations are not clearly modern, then there is high probability that the remains are Native American and therefore ORS 97.745(4) applies, which requires immediate notification with State Police, State Historic Preservation Office, Commission on Indian Services, and all appropriate Native American Tribes. To determine who the “appropriate Native American Tribe” the responsible parties should contact the Legislative Commission on Indian Services (CIS). To determine whether the human remains are Native American the responsible parties should contact the appropriate Native American Tribes at the initial discovery. It should be noted that there may be more than one appropriate Native American Tribe to be contacted.

- If the human remains are possibly Native American then the area should be secured from further disturbance. The human remains and associated objects should not be disturbed, manipulated, or transported from the original location until a plan is developed in consultation with the above named parties. These actions will help ensure compliance with Oregon state law that prohibits any person willfully removing human remains and/or objects of cultural significance from its original location (ORS 97.745).

- All parties involved and the appropriate Native American Tribes shall implement a culturally sensitive plan for reburial.

Notification

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State law [ORS 97.745 (4)] requires that any discovered human remains suspected to be Native American shall be reported to-

1. State Police (current contact Sgt. Chris Allori, Department of State Police, office phone 503-731-4717, cell 503-708-6461, or Dispatch 503-731-3030)

2. State Historic Preservation Office (SHPO)
• Primary contact= Dennis Griffin, State Archaeologist, office phone 503-986-0674, cell phone 503-881-5038

• Secondary contact= John Pouley, Asst. State Archaeologist, office phone 503-986-0675, cell phone 503-480-9164.

3. Commission on Indian Services (CIS)

• Current contact= Karen Quigley, Director, office phone 503-986-1067. Karen will provide the list of appropriate Native American Tribes.

4. All appropriate Native American Tribes provided by CIS.

• **Burns Paiute Tribe**- Diane Teeman 541-417-1986

• **Confederated Tribes of Coos, Lower Umpqua and Siuslaw**- Stacy Scott 541-888-9577 X7513

• **Confederated Tribes of Grand Ronde**- Briese Edwards 503-879-2084

• **Confederated Tribes of Siletz**- Robert Kentta 541-444-2532

• **Confederated Tribes of the Umatilla Indian Reservation**- Teara Farrow 541-276-3629, secondary contact; Catherine Dickson 541-429-7231

• **Confederated Tribes of Warm Springs**- Kathleen Sloan 541-553-3464

• **Coquille Indian Tribe**- Kassie Rippee 541-756-0904 X1216

• **Cow Creek Band of Umpqua Indians**- Jessie Plueard 541-677-5575 X5577

• **Klamath Tribes**- Perry Chocktoot 541-783-2219 X159