

**PROGRAMMATIC AGREEMENT
AMONG THE
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION,
COLUMBIA-CASCADES AREA OFFICE, THE OREGON STATE HISTORIC
PRESERVATION OFFICE, AND THE CENTRAL OREGON IRRIGATION
DISTRICT
REGARDING
COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC
PRESERVATION ACT FOR CERTAIN ACTIVITIES INVOLVING THE
CENTRAL OREGON PROJECT SYSTEM OF CANALS, LATERALS, AND
ASSOCIATED IRRIGATION FEATURES AND FACILITIES**

WHEREAS, the Central Oregon Irrigation District (COID) operates and maintains irrigation systems, including the Pilot Butte and Central Oregon canals and those canals, dams, laterals, sub-laterals, ditches, and their associated features and facilities, and also known as the Central Oregon Project (Map - Appendix A), as defined in the Multiple Property Document, *Carey and Reclamation Act Irrigation Projects in Oregon, 1901-1978* (MPD), accepted by the National Park Service on July 10, 2017 (NRIS# MC100001302); and

WHEREAS, U.S. Bureau of Reclamation (Reclamation) determined, and the Oregon State Historic Preservation Officer (SHPO) concurred, that the Central Oregon Project is eligible for listing in the National Register of Historic Places (National Register) as a historic district, subsequently affirmed by the National Park Service through acceptance of the MPD; and

WHEREAS, Reclamation, the SHPO, and COID executed a Memorandum of Agreement #R14MA13733 in 2014 (2014 MOA – see Appendix E) pursuant to 36 CFR § 800.6. Execution of this Programmatic Agreement (PA) fulfills Stipulation 3.B.1 of the 2014 MOA. Upon completion of its implementing actions in Section 3, the 2014 MOA will programmatically mitigate adverse effects to contributing features and structures in the Central Oregon Project which are not individually eligible for listing to the National Register; and

WHEREAS, COID pursued completion of the implementing actions of the 2014 MOA in good faith and has completed 1) an inventory, reconnaissance level survey (RLS), with a

GIS-based database identifying the contributing and non-contributing features of the COID historic system and other relevant data; and 2) a National Register Multiple Property Document for the Carey and Reclamation Acts Irrigation projects in Oregon, 1901-1978 (MPD). COID committed to interpretation and nomination of segments of the Pilot Butte Canal and the Central Oregon Canal to the National Register. These segments are identified as the Pilot Butte Canal: Downtown Redmond Segment Historic District and Central Oregon Canal Historic District: Ward Road - Gosney Road Segment; and

WHEREAS, Reclamation and other federal agencies may provide federal grant funding or other authorizations to COID for piping, modifications, and system upgrades within the District; and

WHEREAS Reclamation, in acknowledgement of its continued responsibility to engage in meaningful consultation with tribes, invited the Confederated Tribes of Warm Springs to be a consulting party to this PA; and

WHEREAS, Reclamation and any other federal agency that may sign this agreement acknowledges its 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, Reclamation notified the Advisory Council on Historic Preservation (Council) of its desire to satisfy its Section 106 responsibilities for undertakings that may affect COID in a programmatic manner, and invited the Council's comments and participation in the review of this PA, pursuant to 36 CFR § 800.6(a)(1), and the Council declined to formally participate in development of the PA or to be a signatory; and

WHEREAS, COID and SHPO may address COID's obligations under Oregon Revised Statute 358.653 in a separate programmatic agreement; an

NOW THEREFORE, Reclamation and any other federal agency that may sign this agreement, the SHPO, and COID (Parties) agree that where federal funding, permitting or authorization of covered undertakings (*See* Section III (A)(1)) comply with the procedures of this PA, such compliance will satisfy the federal agency's responsibilities under Section 106 of the National Historic Preservation Act, as amended (54 USC § 306108) for addressing the effects of these undertakings on historic properties.

I. PURPOSE AND INTENT

The purpose of this PA is to establish procedures that the Parties will use to fulfill the consultation process described in 36 CFR Part 800 related to the piping, repair, and maintenance of the COID canal system and its related features. This PA:

- establishes procedures to use the MPD to evaluate unevaluated features and segments of the COID canal system regarding their eligibility for listing in the National Register;
- addresses adverse effects to individually eligible irrigation-related, built resources within the COID system, not programmatically mitigated by the MOA that mandated this PA;
- identifies routine and minor COID activities that would have “no effect” or “no adverse effect” to historic properties, and would not require standard review under 36 CFR §§ 800.3-800.6;
- provides procedures to streamline implementation of undertakings related to piping of irrigation canals, laterals, and sub-laterals where archaeological survey resulted in no archaeological materials identified;
- provides a protocol for addressing inadvertent or unanticipated discoveries of archaeological resources including those of religious and cultural significance to Indian Tribes;
- Establishes management procedures for National Register-listed segments and elements that the COID committed to preserve.

II. ROLES AND RESPONSIBILITIES

Each agency will be responsible for activities as follows:

- A. The signatory Federal agency who funds, permits or authorizes the covered undertaking will serve as the lead Federal agency as defined under 36 CFR § 800.2. The lead federal agency will be responsible for ensuring the completion of cultural resource documentation and archaeological survey reporting; assembling all submissions to SHPO; and resolving SHPO comments regarding compliance determinations made pursuant to this PA. In the event multiple federal agencies fund a single covered undertaking, the agencies will identify a lead federal agency and notify COID and SHPO.
- B. COID will be responsible for providing annual reporting of activities undertaken by COID where the provisions of this PA are applied. Annual reporting will describe all activities conducted during the reporting period that fall within the categories of activities listed in Procedures (Section III) below, and Appendices B and D. The lead federal agency will have 15 calendar days from receipt for an internal review of these documents before forwarding to SHPO for review. All documents provided will meet standards established under 36 CFR § 800.11. Electronic correspondence between the lead federal agency and COID is acceptable and encouraged during the internal review.
- C. The lead federal agency will be the point of contact for any inadvertent or unanticipated cultural resources, and will consult with the SHPO, COID, and other

consulting parties consistent with Section III.C and Appendix D.

- D. Within 60 days of signing this PA, each signatory and any other consulting party will designate a primary point of contact for carrying out this PA, and provide contact information for that individual to Reclamation. If more than one person is designated as a primary contact, the party will also indicate the responsibilities of each such person for carrying out this PA. A list of primary contacts is provided as Appendix C and will be updated annually, as needed.
- E. All cultural resources technical activities conducted pursuant to this PA will be carried out by, or under the direct supervision of, persons meeting the relevant *Secretary of the Interior's Professional Qualification Standards* (36 CFR Part 61, Appendix A).

III. PROCEDURES

A. APPLICABILITY

- 1. **Covered undertakings.** These procedures apply to COID projects or activities related to the proposed and future piping of the canals, laterals, sub-laterals, and ditches within the Central Oregon Project carried out, authorized or funded, in whole or in part, by Reclamation or other federal agencies that may sign this PA, and as per the 2014 MOA, hereafter, "piping projects," and as covered in Section III.B.

Covered undertakings also include:

- a. exempt activities with no potential to cause adverse effects to historic resources, listed in Appendix B;
 - b. activities involving the inadvertent discovery of cultural resources (Section III.C and Appendix C); and
- 2. **Covered undertakings do not require further consultation.** Upon completion of the implementing actions of the 2014 MOA, adverse effects resulting from conversion of open irrigation conveyance systems to subterranean pipes will be fully mitigated and the lead agency may carry out, authorize, or fund these undertakings without further consultation with the SHPO.
 - 3. **Undertakings not covered by this PA will include:**
 - a. Those that affect properties that are individually listed, or are determined to be individually eligible for listing in the National Register (Section III.B.2); and
 - b. Those where a cultural resource survey under Section III.C determines the undertaking may impact archaeological resources and that those impacts cannot be avoided

- c. Historic properties not related to the Central Oregon Project that may be affected by an undertaking. Effects to such properties are not covered by this agreement.
4. Unless otherwise noted in this agreement, the signatories will use the procedures identified below in place of those identified at 36 CFR §§ 800.3 - 800.13.

B. PROCEDURES: BUILT ENVIRONMENT HISTORIC PROPERTIES

1. The parties will use the stepped processes in this section in lieu of the process at 36 CFR § 800.4-800.6 for covered undertakings with respect to impacts on built environment historic properties, unless the activity does not require further review under Appendix B of this agreement, or unless the activity is subject to Section III.D of this agreement.
2. **Built Environment Evaluation Standards.** The Parties will use the MPD and RLS to identify individually eligible features and segments of the canal system to be managed under this PA and any subsequent documents created as part of the process addressing adverse effects of future piping projects.
3. **Built Environment Surveys and Amendments.** COID or the lead federal agency will amend the RLS, as necessary, using the evaluation standards described in the MPD, to evaluate the eligibility of any previously unevaluated elements or segments that are subject to an undertaking. The survey amendments will include all categories of information collected for the original RLS, including, but not limited to: location/address; GIS data; photograph; year built/altered; construction materials; structure type/style; original use; specific notes/comments; evaluation conclusion or National Register status (non-contributing, contributing, or individually eligible); and date of survey amendment. If performed by COID, COID will notify the lead federal agency of the RLS amendment and any conclusions in writing. Within 15 days of receipt of notification, the lead federal agency will use the MPD to accept or revise the conclusions of the amendment regarding National Register status.
4. **Public Comment and SHPO Review.** If the lead federal agency determines that no individually eligible segments are within the Area of Potential Effect for the undertaking, COID will provide the public 30 days to comment. COID will then forward all comments received during the comment period to SHPO and the lead federal agency. SHPO will review the evaluation and received comments and provide any comments it may have to the lead federal agency within 30 days of receipt. The lead federal agency will consider and address any comments SHPO may provide within 30 days of receipt. If the lead federal agency receives no comment from SHPO, they will make the Determination of Eligibility and the project may proceed.

5. **Amendment Reporting and Eligibility Determinations.** If no features or elements are individually eligible, COID will forward the amended RLS data to the lead federal agency who will submit the data to SHPO for inclusion in the Oregon Historic Sites Database. Upon submittal to the SHPO of these data, COID may proceed with the covered undertaking without further consultation. A summary of survey amendments and eligibility determinations will be provided to the SHPO as part of the annual report (See Part IV (B)).
6. **Consultation on Individually Eligible Features or Segments.** If the lead federal agency determines a feature or segment is individually eligible, the lead federal agency will determine whether the undertaking will adversely affect the resource and, if necessary, consult with SHPO using the procedures in 36 CFR § 800.6.

C. PROCEDURES: ARCHAEOLOGICAL HISTORIC PROPERTIES

1. The parties will use the stepped processes in this section in lieu of the process at 36 CFR §§ 800.4-800.6 for covered undertakings with respect to impacts on archaeological historic properties, unless the activity does not require review under Section III.A of this agreement, or the activity is subject to Section III.D of this agreement.
2. **Inadvertent Discoveries of Archaeological Resources.** If there are inadvertent or unanticipated discoveries of archaeological resources during implementation of any undertakings covered under this PA, the lead federal agency and COID will implement the inadvertent discovery plan (Appendix D) and consult with the SHPO to develop a plan for the treatment of the property.
3. **Requirement for Cultural Resource Surveys.** For any undertaking involving ground-disturbing activities that may affect previously undisturbed surface or subsurface soils, including previously mitigated and exempt undertakings, COID will conduct a cultural resources survey to identify the potential for archaeological resources within the APE.
 - a. “Previously undisturbed soils” are considered any surface or subsurface area(s) outside the width and depth of the cross sections, or prisms, of the canals, laterals, sub-laterals, and ditches that comprise the Central Oregon Project, inclusive of the berms and embankments created by their construction, which often consist of flanking ditch rider roads, and which may have been deposited on undisturbed soils.
 - b. “Ground-disturbing activities” are considered any activity that involves the movement or removal of surface soil, or excavation of soils for an undertaking, including but not limited to digging,

drilling, and grading, and the activities and staging of heavy equipment.

4. **Cultural Resource Surveys, Standards.** Cultural resource surveys and reports will address cultural resources including those of religious or cultural importance to Indian tribes, as ascertained through tribal consultation. All cultural resources surveys will meet requirements of the most recent Guidelines for Conducting Field Archaeology in Oregon, and be carried out by a qualified archaeologist, as defined by the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61, Appendix A).
5. **Notice of No Archaeological Resources Detected.** If the cultural resources survey does not identify archaeological resources within the area of potential effect, COID will notify the lead federal agency in writing that no archaeological resources were detected and include a copy of the cultural resource survey report. For covered undertakings, this document may be combined with a *finding of no adverse effect to historic properties* determination. The lead federal agency has 15 days from receipt to review and accept the report. The lead federal agency will then provide a copy to SHPO with the annual report, and COID may proceed with the undertaking.
6. **Consultation on Archaeological Resources identified during survey.** If archaeological resources (including properties of traditional religious and cultural importance to an Indian tribe, per 36 CFR § 800.16(1)(1)) are found within the area of potential effects, COID will provide the lead federal agency a copy of the cultural resources survey, and the lead federal agency will initiate consultation with the SHPO and appropriate Tribes using the Section 106 process defined at 36 CFR §§ 800.2-800.13. Consultation on archaeological resources may be combined with any consultation regarding built environment historic properties required by this agreement.
7. **Adverse Effects.** Adverse effects to eligible archaeological sites must be resolved according to the provisions of 36 CFR § 800.6. Mitigation measures will be determined through consultation with the SHPO and other appropriate parties.

D. MANAGEMENT OF RESOURCES

The listed historic properties COID committed to preserve will be maintained such that the historic integrity of and identification of the historic property as representative of an irrigation conveyance system will not be adversely affected, and in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (See 36 CFR Part 68).

1. The historic character will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
2. Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.
3. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
4. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
5. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

IV. REPORTING

A. Documentation Requirements. Documents prepared in support of this agreement will satisfy those standards identified in 36 CFR § 800.11, the most recent SHPO *Built Resources Survey Guidelines*, and *State of Oregon Guidelines for Reporting on Archaeological Investigations*, unless otherwise defined in this document. Submission to SHPO will be made through the most current SHPO submission process.

B. Annual Report. The annual report will include the following:

1. A summary of all activities taken to fulfill the terms of this PA during the previous year, any problems encountered in fulfilling its terms, and suggestions for amendments to the PA.
2. A list of historic properties that were affected by activities completed under the PA during the previous reporting period, including the type and extent of historic property documentation conducted related to the covered undertakings, any determinations regarding the individual eligibility of a feature or segment (Section III.B), any unanticipated discoveries which occurred (Section III.C[2]), any emergency situations (Section III.D), and negative archaeological survey data (Section III.C[5]).
3. A summary of exempt activities that occurred during the PA reporting period. COID will document each Exempt Activity with a spreadsheet, that describes

the Exempt Activity, its location, and start date, end date or projected end date. The descriptions will indicate which Exempt Activity category applies to the action, as per Appendix B. Updates to the RLS where upgrades or system modifications have occurred during the reporting year will be completed, and updated data will be provided.

4. Work proposed for the upcoming reporting period that is subject to this PA.
5. Updates to points of contact (Appendix C), as needed.

Timing and Review of Annual Report. COID will prepare and submit an annual report to all lead federal agencies responsible for undertakings that year. It will be reviewed and signed by all lead federal agencies, and then submitted to SHPO for review and signature. SHPO will provide a fully signed copy to all relevant signatories. The first annual report will be issued on November 15, 2019, and annually thereafter. Each annual report will be submitted to the relevant lead federal agency for transmittal to SHPO. A copy of each annual report will also be provided to any other signatories of the PA. The lead federal agency or SHPO will raise any concerns they may have regarding the annual report by close of business 30 days after submitted. No response by the lead federal agency or SHPO within 30 days is considered approval of the report.

C. **Request for Project File.** The SHPO may request project files for any activity carried out pursuant to this PA. COID and relevant lead federal agencies will cooperate with the SHPO to provide the documentation and review project files for an undertaking.

V. DISPUTE RESOLUTION

- A. Should any signatory to this PA object in writing at any time to any activities proposed pursuant to the terms of this PA, the lead federal agencies will consult with the objecting party and the SHPO to resolve the objection. If, after 30 days from receiving written notification, the lead federal agency determines that the objection cannot be resolved, they will:
 1. Forward all documentation relevant to the dispute, including the lead federal agency's proposed resolution, to the Council. The Council will provide the lead federal agency with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the lead federal agency will prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories, and concurring parties, and provide them with a copy of this written response within 30 days of receipt of Council comments. The lead federal agency will then proceed according to its final decision.

2. If the Council does not provide its advice regarding the dispute within 30 calendar days, the lead federal agency will, from the expiration of the Council's comment period, have 30 days within which to make a final decision on the dispute, and will proceed accordingly. Prior to reaching such final decision, the lead federal agency will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the Council with a copy of such written response.
- B. Parties' responsibilities to carry out all other actions under this PA that are not the subject of an ongoing dispute remain unchanged.
 - C. All timelines in this section can be modified at the mutual agreement of the relevant signatories.

VI. DURATION

- A. This PA will become effective on the date of the initial submission to Council, and will remain in effect for a period of ten years unless extended pursuant to Section VI.B, below, or terminated in accordance with Section VII.
- B. As needed, the signatories will review this agreement five years after this agreement becomes effective and every five years thereafter and amend the document as necessary, upon agreement of the signatories. The agreement may be extended for an additional ten years (with an additional five-year review), subject to agreement of all signatories. All 5-year and 10-year reviews should include representatives of Reclamation, other federal agencies that have signed this agreement, SHPO, and COID.
- C. All timelines in this section can be modified at the mutual agreement of the relevant signatories.

VII. AMENDMENT, NON-COMPLIANCE, AND TERMINATION

- A. **Additional Federal Agencies.** Additional federal agencies that may carry-out, authorize or fund the kinds of covered undertakings described in this agreement may join the agreement by providing a signed signature page to the other signatories at least 90 days prior to an undertaking. Any agencies requesting to be added to this agreement must meet all requirements and obligations within this agreement, including professional qualifications.
- B. **Amendment.** Any signatory may request amendment of this PA to the other signatories and consulting parties in writing. The lead federal agency will consult with the signatories for up to thirty (30) calendar days concerning the necessity and appropriateness of the proposed amendment. Any signatory or consulting party may

request the involvement of the Council during the amendment process. At the end of the consultation period the lead federal agency will provide an amended document for signature by the signatories or a written statement describing why the proposed lead federal agency chose not to pursue an amendment to this document. Amendments will be effective on the date a copy of the document signed by all of the signatories is filed with the Council. Any Signatory to this PA may propose that any appendix be modified or removed at any time upon written agreement of the Signatories to this PA. Amendments to Appendices may be made, if agreed to by all signatories, without consulting the Council.

- C. **Termination.** If any signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately provide written notification to the lead federal agency and consult with the other signatories to attempt to develop an amendment per Stipulation VII.B, above. If an amendment cannot be reached within thirty (30) days (or another time period agreed to by all signatories) from the notice opening consultation under this provision, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, Reclamation, any additional federal agencies that may sign onto this agreement, COID, and SHPO must either (a) execute another PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR § 800.7, or (c) the lead federal agency will comply with standard consultation as defined in 36 CFR § 800.3-13. The lead federal agency will notify the signatories as to the course of action it will pursue.

- D. **Replacement.** This agreement may be replaced by another subsequent agreement that explicitly terminates or supersedes this agreement, or by the lead federal agency's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a), or of supplanting regulations.
- E. All timelines in this section can be modified at the mutual agreement of the relevant signatories.

VIII. GENERAL PROVISIONS

- A. This agreement is neither a fiscal nor a funds obligating document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties of this agreement 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 will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This PA does not provide such authority.

- B. Nothing herein will be construed to obligate the lead federal agency to expend or involve the United States of America in any contract or other obligation for the future payment of money in excess of the appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.
- C. No member of or delegate to Congress, or resident Commissioner, will be admitted to any share or part of the PA or to any benefit that may arise out of it.
- D. This agreement does not alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of an Indian tribe. This PA also does not alter the existing government-to-government relationship between the federal government and Indian tribes.

IX. EXECUTION OF THIS PROGRAMMATIC AGREEMENT IN COUNTERPARTS

This PA may be executed in counterparts, with a separate page for each signatory. Reclamation will ensure that each party is provided with a copy of the fully executed PA.

EXECUTION of this PA by Reclamation, the SHPO, and COID and implementation of its terms, is evidence that Reclamation has taken into account the effects of these undertakings on historic properties and afforded the Council an opportunity to comment.

[Signature pages follow separately]

SIGNATORY:

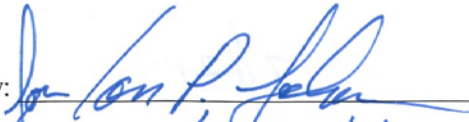
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RELAMATION

By: *Dawn Wiedmier* Date: 7/12/19

Dawn Wiedmier
Area Manager

SIGNATORY:

OREGON STATE HISTORIC PRESERVATION OFFICER

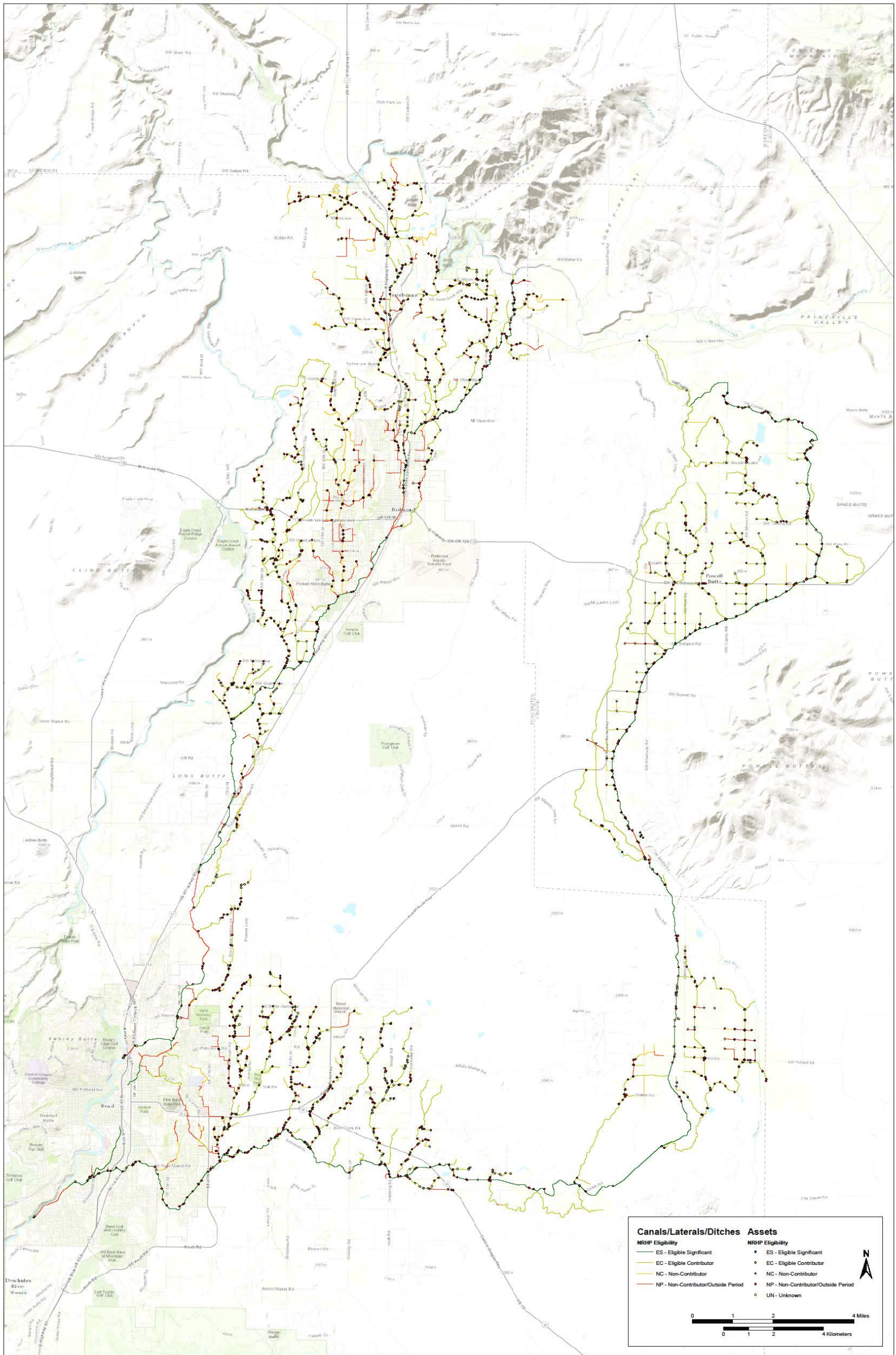
By:  Date: 7/16/2019
Chrissy Curran *Lon P. Johnson Assoc. Deputy SAPO*
Deputy Oregon State Historic Preservation Officer

SIGNATORY:

CENTRAL OREGON IRRIGATION DISTRICT

By:  _____ Date: 7.16.19
Craig Horrell
Manager

APPENDIX A: MAP OF COID CONTRIBUTING AND NON-CONTRIBUTING ELEMENTS



APPENDIX B: ACTIVITIES EXEMPT FROM REVIEW

An Exempt Activity is an activity that has no potential to affect historic properties as part of a federally funded or authorized undertaking. The following activities have no potential to affect historic properties, or have been previously mitigated under Section 3 of the 2014 MOA. These activities are exempted from further review under Section 106 of the NHPA and do not require further consultation among Reclamation and the SHPO, but will be documented pursuant to Section III of the PA. This list may be revised without amending the PA, with the written concurrence of all signatory federal agencies, the SHPO, and COID.

EXEMPT ACTIVITIES

1. Funding, developing, or implementing programs related to in-stream releases related to water quality, fisheries, and other environmental improvements, provided the released water is within the historic flow range for the river or stream.
2. Removal or replacement of pipelines, cables, or utility conduit entirely within demonstrated previously disturbed areas where equipment access is also within demonstrated previously disturbed areas;
3. Installing temporary or removable (5 years or less), certified, pre-fabricated bridges over water conveyance features to provide crossings for new irrigation pipes or sprinkler systems;
4. Obtaining soil or rock materials from existing stockpiles, or from within the confines of a previously excavated pit where there is no expansion of the pit into areas not previously used;
5. Stockpiling rocks and other materials, or placing fill in existing borrow locations, within previously disturbed soils;
6. Re-shaping gravel roads when confined to the existing roadbed to maintain proper drainage;
7. Investigations including physical testing of dams, power plants, and other structures where there is no change to the structure or the repairs are minor and completed in-kind;
8. Placement or replacement of fences or guardrails within demonstrated previously disturbed areas;

9. Removal or repair of existing utilities in-kind in the exact same location at the same depth, including: electrical poles, boxes, and lines; water wells, cisterns, and pipelines; sewer vaults and holding tanks; telephone poles, boxes, and lines; propane tanks and lines, but only as long as there is no work in undisturbed sediments;
10. Placement of scientific equipment within the existing channel of streams or rivers where access and placement of the equipment and accessing the work site involves no new ground disturbance;
11. Contract actions (e.g., water service renewals, repayment contracts, Warren Act, seasonal water, short term water delivery) where existing facilities will be used with no modifications and no land use changes are proposed;
12. Agreements between COID and another person or entity where existing water conveyance facilities are used;
13. Providing funding support for or development of water banking programs (including if-and-when contracts) as long as the water placed in a reservoir does not exceed historic water levels;
14. Issuing use authorizations (e.g., grants, licenses, leases, use authorizations, consent letters, permits, rights-of-way, or easements) where there is no ground disturbance or other physical disturbance.
15. Temporary or permanent changes in operations that affect the presence or amount of water in a water conveyance structure.

APPENDIX C: PRIMARY CONTACTS LIST

For Reclamation:

Primary contact:

Chris Horting-Jones, Archeologist
Bend Field Office
1375 SE Wilson Ave. #100
Bend, OR 97701
Phone (541) 389-6541 ext 236
Fax (541) 389-6394
Email: chortingjones@usbr.gov

Secondary contact:

Gregg Garnett, Manager
Bend Field Office
1375 SE Wilson Ave. #100
Bend, OR 97701
Phone (541) 389-6541 ext. 226
Fax (541) 389-6394
Email: ggarnett@usbr.gov

For Oregon State Historic Preservation Office:

Tracy Schwartz, Review & Compliance Program Coordinator
OR State Historic Preservation Office
725 Summer St. NE Ste. C
Salem, OR 97301
Phone (503) 986-0579
Email: Tracy.schwartz@oregon.gov

For Central Oregon Irrigation District:

Jenny Hartzell-Hill, Executive Assistant
Central Oregon Irrigation District
1055 SW Lake Creek Ct.
Redmond, OR 97756
Phone (541) 504-7582
Email: jenny@coid.org

X. APPENDIX D: INADVERTENT OR UNANTICIPATED DISCOVERY PLAN

POST-REVIEW DISCOVERY PLAN FOR UNANTICIPATED CULTURAL RESOURCES

Central Oregon Irrigation District



Inadvertent or Unanticipated Discovery Plan for Cultural Resources

Central Oregon Irrigation District

Introduction

This Inadvertent Discovery Plan is a component of the Programmatic Agreement between the Bureau of Reclamation, Oregon State Historic Preservation Officer and Central Oregon Irrigation District, regarding Compliance with Section 106 of the National Historic Preservation Act for Improvement, Operation, and Maintenance of the Central Oregon Irrigation District System of Canals, Laterals, and Associated Irrigation Features and Facilities. It is to be utilized by the Central Oregon Irrigation District (COID) on projects funded, either partially or in full, by the Bureau of Reclamation and any other federal agency, and which will result in ground disturbance with the potential for exposure of cultural materials, including human remains.

The following paragraphs outline the steps to be taken in the event that cultural materials are found during project activities (such as pipeline installation and canal realignment) within district boundaries on lands owned by or held as easement by COID. A copy of this IDP will be provided to all contractors and sub-contractors working on COID projects as funded by any federal agency.

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*.

Protocol for coordination in the event of an 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 *lead federal agency 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.

This contact list will need to be updated as necessary to reflect current contact names and phone numbers.

Contact Agency	Contact Name	Phone number
Oregon State Police (OSP)	Chris Allori	503-731-4717
Commission on Indian Services (CIS)	Danny Santos	503- 986-1067
Appropriate Tribes	As designated by CIS	
SHPO	Dennis Griffin	503-986-0674
	John Pouley	503-986-0675
	Jamie French	503-986-0729
Reclamation Contact	Leah Meeks, GOTR	208-378-5025 work
Reclamation Archaeologist	Chris Horting-Jones	541-389-6541 ext 236 541-410-9895 cell
COID Project Manager	Kelly O'Rourke	541-548-6467

- No work may resume until a professional archaeologist is able to assess the discovery and consultation with the SHPO and Reclamation has occurred.
- If human remains are encountered, they will not be disturbed in any way. *911 will not be called.* No one will speak with the media. The location will be secured. No photos will be taken. The location will 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 archaeologist, 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;

When in doubt, call it in!

Proceeding with Construction

- Construction can proceed only after the proper archaeological inspections have occurred and environmental clearances are obtained. 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.

**APPENDIX E: 2014 MEMORANDUM OF AGREEMENT AMONG
RECLAMATION, COID, AND SHPO**

MEMORANDUM OF AGREEMENT
No. R14MA13733
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 I-Lateral

ALFALFA VICINITY, DESCHUTES COUNTY, OREGON

This Memorandum of Agreement (MOA) is entered into by Bureau of Reclamation, Columbia-Cascades Area Office (Reclamation), the Oregon State Historic Preservation Office (SHPO) and the Central Oregon Irrigation District (District) to define their respective roles in mitigation efforts related to the piping of the I-Lateral of the Central Oregon Irrigation District System (System). This MOA outlines separate, but related mitigation for the current undertaking (subterranean piping of a Segment of I-Lateral) and the proposed future piping of the remainder of the canals, laterals, sub-lateral and ditches within the District. This MOA replaces MOA No. R12MA13723 thereby canceling it in its entirety.

1. Background

The District is located in Deschutes County. The District provides irrigation water within the Central Oregon Tri-county area with 43,000 acres delivered to water users in the vicinity of Bend, Alfalfa, Powell Butte, Redmond, and Terrebonne, within the upper Deschutes River basin.

A. I-Lateral Piping

Under the current undertaking, the District intends to protect and improve water quality and improve water delivery by converting approximately 4,800 feet of open ditch laterals within the I-Lateral of the System to pipe, in T17S R14E Sections 25, 26 and 36.

The District has been awarded a grant through Reclamation's WaterSMART Program to perform the work. Because Reclamation-administered Federal funds will be involved in this project, the Section 106 process of the National Historic Preservation Act was applied to identify affected historic properties.

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), the District has documented the extent of the Lateral within the current undertaking's Area of Potential Effects for historic and archaeological resources to standards acceptable to Reclamation and SHPO.

Reclamation, in consultation with SHPO, determined that replacement of the open I-Lateral with the pipe will have an adverse effect upon the historic integrity of the Lateral. Reclamation notified the Advisory Council on Historic Preservation (Council) of the adverse effect on the I-Lateral pursuant to the Code of Federal Regulations (CFR) 36 CFR Section 800.6(a)(1), and in a letter dated September 17, 2012, the Council indicated that their participation is not needed in the consultation for resolution of adverse effects from this undertaking.

Specific mitigation strategies designed to address the adverse effect of this undertaking are identified below, in section 3.A.

B. Future Piping of Canals, Laterals, sub-Laterals, and Ditches

Through discussions between Reclamation, SHPO, and the District related to future project planning and the stated intentions of the District, a proposal to programmatically mitigate for future adverse effects related to the future piping of canals, laterals, sub-laterals, and ditches throughout the District has been developed. This MOA is intended to provide mitigation for such future piping efforts.

Specific mitigation strategies designed to address the adverse effects of these future undertakings are identified below, in section 3.B.

C. Interim Management

Until the Programmatic Agreement is signed and in place, all consultation regarding non-Federal undertakings will be reviewed by SHPO under standard State review practices, as defined in Oregon State Regulations (ORS) 358.653.

This MOA is entered into under the authority of the National Historic Preservation Act of 1966 as amended, as specified in the regulations in 36 CFR 800, and specifically in Section 6(c) – Resolution of Adverse Effects without the Council.

2. Purpose and Applicability

This MOA will serve to define the necessary actions for documentation of the System in its current state, define in more detail the historical significance, contextual setting, character-defining characteristics and the contributing properties within the System, and set the parameters by which future actions to pipe the System can be accomplished. This MOA will reduce the need to consult with the SHPO on a case-by-case basis when qualifying future activities (defined as subterranean piping of canals, laterals, sub-laterals, and ditches) take place on the System, and provides for a schedule that allows the SHPO to be updated on implemented actions.

This MOA does not apply to projects affecting any feature or element that is or may be individually eligible for listing in the National Register of Historic Places. Federal undertakings that affect these elements of the District will continue to be reviewed under standard Section 106 review processes (36 CFR 800). Non-Federal projects will continue to be reviewed under ORS 358.653.

3. Implementing Actions

A. Piping of I-Lateral

The SHPO, Reclamation, and the District agree that the current undertaking, consisting of the subterranean piping of approximately 4,800 feet of the I-Lateral, currently an open-ditch structure, represents an adverse effect to the National Register-eligible District water conveyance system. In order to mitigate that adverse effect, the following shall be implemented:

1. Reclamation will:

- (a) Consult with the proper interested parties, such as the Council, SHPO, and the Confederated Tribes of the Warm Springs Reservation.
- (b) Ensure that mitigation efforts defined in this MOA as part of the current undertaking (identified below, Section 3.A.2) are completed to the standards set forth below.

2. The District will:

- (a) Perform or cause to be performed the Historic Documentation of the System:

- Following all applicable guidance provided by the National Park Service and SHPO, the District will conduct a historic properties inventory of the entirety of the District facilities and infrastructure related to water conveyance (i.e., not to include district offices and equipment/vehicle maintenance or storage facilities). This inventory will document all water-conveyance system buildings and structures, provide locational information (in GIS format, using lines to represent canals, etc., and points or polygons, as appropriate, to represent features) for all water conveyance-related buildings and structures, as well as associated features. The inventory will meet the requirements set forth for Reconnaissance Level Surveys, as defined in the document, “Guidelines for Historic Resource Surveys in Oregon.” Prior to initiation of the survey, a written, detailed survey design will be submitted to SHPO for review and concurrence.
- This inventory will be completed and submitted to Reclamation and SHPO for draft review within three (3) years of the date of the final signature on the document. Comments and revision requests from Reclamation and/or SHPO will be addressed, and a final version of the inventory will be submitted within one (1) year of the receipt of such comments.

B. Future Piping of Canals, Laterals, sub-Laterals, and Ditches Elsewhere Within the District

SHPO, Reclamation, and the District understand that it is the intention of the District to convert significant portions of the system of open canals, laterals, sub-laterals and ditches within the District to a subterranean, piped system. In order to mitigate for future adverse effects that would arise from these efforts, Reclamation, SHPO and the District have agreed to mitigate programmatically through the following measures in order to reduce time, effort, and resources required to conduct standard Section 106 and/or ORS 358.653 consultation:

1. Develop a Programmatic Agreement (PA)

- (a) Reclamation, SHPO, and the District shall enter into a PA to allow for the more efficient fulfillment of the entity’s obligations under Section 106 of the National Historic Preservation Act, as amended, and Oregon Revised Statute 358.653, as applicable.
- (b) All parties shall use the Multiple Property Document (see Section 3.B.2., below) to identify contributing segments of the canal system to be managed under the PA and any subsequent documents created as part of the process. The PA will include, at minimum:
 - A list of routine maintenance and minor construction activities and actions that do not adversely affect the historic resource and that are exempt from regular review by SHPO;
 - A provision to address emergency situations where catastrophic breach of the canal or other unforeseen event or eminent threat endangers human life or property. Such a provision shall allow the District to act on the immediate situation without consultation and address compliance with applicable cultural resource laws in consultation with appropriate federal agencies and stakeholders within 30 days of the incident.
 - An inadvertent discovery clause, which will outline procedures to be followed when unknown, unanticipated cultural resources are discovered due to District activities;
 - A description of annual reporting requirements and timetable for reporting activities undertaken by the District where the provisions of the PA were applied;

- A defined effective period of ten (10) years with provisions for the document to be reviewed at five years from last date of signature, amended as necessary, and the effective period continued, based on consultation. If appropriate, the effective period can be extended for an additional ten (10) years (with an additional five-year review), subject to the agreement of Reclamation, SHPO, and the District.
- (c) The PA may also include a probability model for subsurface archaeological sites, cultural resource treatment plans, and preservation plans, as agreed to by the signing Parties.
- (d) Reclamation, SHPO, and the District, as well as any other interested, consulting parties, will be signatories to the PA.
- (e) Until the PA is signed and in place, all consultation regarding future federal undertakings (those not covered under Stipulation A) affecting the District water conveyance system will be reviewed by Reclamation and SHPO under standard Section 106 review practices, as defined in 36 CFR 800.

2. Develop Multiple Property Document (MPD)

- (a) Following all applicable guidance provided by the National Park Service and SHPO for the preparation of MPDs, the District will edit the MPD, *Historic Agricultural Resources in Central Oregon*, which is currently in draft form, as prepared by Claeysens and Tomlinson (2006) under a previous Reclamation water conservation grant. The MPD will be prepared sufficiently such that subsequent Irrigation Districts are able to add their district-specific contexts and registration requirements. The MPD elements will be based on the results of the Reconnaissance Level Survey inventory created as a result of Stipulation A.2. (above). The MPD elements to be developed include:
1. General framework for the functioning of the MPD, once registered, including Sections A through D (complete), Sections E-I such that deal specifically with the District, but that includes general introductions, contexts, and registration requirements that will be applicable across all irrigation districts included in the final MPD;
 2. Establishment of the various historic contexts pertaining to the history and significance of the District. The historic context(s) will be based on historical research, and supported by historical documents and images;
 3. Development of associated property types and general and type-specific registration requirements through which identified elements of the system can be evaluated for eligibility (including consideration of significance and integrity) for inclusion in the NRHP through the framework of the MPD; and
 4. A GIS-based map of the entire system identifying the location, extent, and features of the District, and any other necessary appendices, shall be included. The map should identify elements and sections of the System as either contributing or non-contributing to the District as a comprehensive historic resource.
- (b) The draft MPD (including all GIS information) will be submitted to Reclamation and SHPO for review and comment within three (3) years of the date of the final signature of this MOA. Draft MPD and nomination materials will be submitted to Reclamation and SHPO for review by SHPO and the Oregon State Advisory Committee on Historic

Preservation (SACHP). The District will address any SHPO and SACHP comments prior to forwarding the document to the National Park Service for final consideration.

3. Preservation and Interpretation

- (a) Following completion of the draft MPD elements described above (Stipulation B.2.a-b), the District, in consultation with Reclamation and the SHPO, shall select appropriate, contributing segments to be listed in the National Register of Historic Places through the MPD. These segments will be selected based on the following criteria:
 - 1. The segments will be high-integrity, substantial, contributing segments (minimally, one substantial segment each in the Pilot Butte Canal and the Central Oregon Canal) to the overall eligible District;
 - 2. The segment should include a variety of features, such that it well-represents the function and appearance of the water conveyance system, as it appeared as an intact system;
 - 3. The segment should be of sufficient length that on-site interpretation (see Stipulation B.3 (b), below) can be achieved in an attractive, well-organized fashion, without crowding or overwhelming the resource itself.
- (b) Once selected, the identified segment will be cleaned, repaired, and returned to working condition in a way that meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, and the immediate vicinity prepared such that it creates a welcoming, attractive environment for the public visitation and interpretation of the resource.
- (c) The interpretation of the resource will be achieved through the use of static or active displays that relate the history, function, and significance of the Central Oregon Irrigation District water conveyance system. Such displays will be presented in a format that is weather- and vandal-resistant, attractive, and engaging. Draft content and layout of the interpretive display(s) will be submitted to Reclamation and SHPO for review and comment, and if any revisions are requested, revised versions will be submitted for a second review prior to fabrication. Upon acceptance of the draft content by Reclamation and SHPO, the District will cause the interpretive display to be constructed.
- (d) Once constructed, the interpretive site and displays must be maintained by the District in an attractive and functioning condition.

4. Completion of this MOA

The terms of this MOA will be considered to be completed when the above implementing actions (A-B) have been completed to the satisfaction of Reclamation and SHPO. Upon completion of the implementing actions, all adverse effects resulting from subterranean piping of *all canals, laterals, sub-laterals, and ditches will be considered to be fully mitigated*, and may proceed without Section 106 or ORS 358.653 (as appropriate) consultation with Reclamation or SHPO.

5. Period of Performance

This MOA shall become effective on the date of the last signature hereto and extend three years after the date of the last signature. The MOA will also be considered terminated once all stipulations are complete, or five years after the date of the last signature on this MOA. Any party may terminate this MOA by providing 30

days written notice to the other party(ies). Any party may formally request modification of the MOA by providing a written request to the other party(ies).

If this MOA is terminated prior to completion of the above stipulations, then all projects undertaken from the date of the final signature not covered by the PA (should it be in effect) on this MOA must be reviewed under standard review practices under Section 106 of the National Historic Preservation Act, or under ORS 358.653, as appropriate.

6. Modifications

Reclamation, SHPO or the District may formally request modification of this MOA. Modifications shall be made by mutual consent of Reclamation, SHPO and the District by the issuance of a written modification to this MOA, signed and dated by all parties prior to any changes being performed.

7. 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
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For the District:

Laura Wollam
Grant Specialist
Central Oregon Irrigation District
1055 SW Lake Ct.
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Fax (541) 548-0243
Email: lauraw@coid.org

For SHPO:

Jason Allen
Historic Preservation Specialist
State Historic Preservation Office
Oregon Parks and Recreation Department
725 Summer St. NE, Suite C
Salem, OR 97301-1266
Phone (503) 986-0579
Fax (503) 986-0793
Email: Jason.Allen@state.or.us

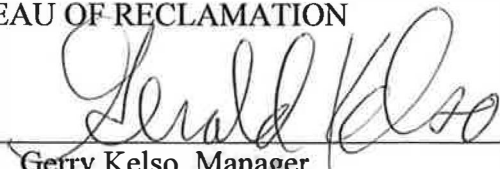
8. General Provisions

- a. Reclamation’s responsibility for ensuring completion of consultation with SHPO for future undertakings identified in Section 3.B. is limited only to those that qualify as Federal undertakings. Projects identified in Section 3.B. that do not qualify as Federal undertakings are subject to review by the SHPO under ORS 358.653, and the responsibility for consultation and completion will rest with the District.
- b. Completion of the mitigation stipulations will be considered to satisfy the requirements for mitigation of adverse effects for a previous undertaking (Pilot Butte Canal Juniper Ridge Piping Project Phase 2 [SHPO Case# 10-1873]) that has not yet been mitigated as of the date of the final signature on this MOA.
- c. This MOA is neither a fiscal nor a funds-obligating document for Reclamation. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties of this MOA 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.
- d. Nothing herein shall be construed to obligate Reclamation to expend or involve the United States of America in any contract or other obligation for the future payment of money in excess of the appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.
- e. 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.
- f. Any information furnished to Reclamation, under this MOA, is subject to the Freedom of Information Act (5 U.S.C. 552).
- g. 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 on 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.

9. Signatures


Reclamation, SHPO and the District will abide by the terms and provisions expressed or referenced herein.

BUREAU OF RECLAMATION

by: 
Gerry Kelso, Manager
Columbia-Cascades Area Office

DATE: 2/12/11

OREGON STATE HISTORIC PRESERVATION OFFICE

BY: 

Roger Roper
Deputy State Historic Preservation Officer

DATE: 2-25-14

CENTRAL OREGON IRRIGATION DISTRICT

BY: 

Steven Johnson
Secretary-Manager

DATE: 14 Feb. 2014

~ End of Document ~