

**Programmatic Agreement No. 19-USFO-PA-01**

**Draft Programmatic Agreement**  
**Concerning the Title Transfer of the Minidoka Gravity Division, Minidoka**  
**among**  
**Bureau of Reclamation**  
**Pacific Northwest Region, Snake River Area Office, the Idaho**  
**State Historic Preservation Office, and the Minidoka Irrigation District**

**Whereas**, the Minidoka Irrigation District (MID) has applied to transfer title of lands and facilities associated with Minidoka Gravity Division (MGD) of the Minidoka Project, and

**Whereas**, the Bureau of Reclamation (Reclamation) currently holds title and MID has a contract to administer operation and maintenance of the MGD facilities, and

**Whereas**, MID is qualified under law and regulation to request title transfer after repayment has been made and full repayment has been made to the US Government, and

**Whereas**, the MGD is over 100 years old and has not been fully recorded or evaluated as a cultural resource, and

**Whereas**, The MGD is eligible for listing in the National Register of Historic Places (National Register) as a Historic District and certain features of MGD are individually eligible for listing in the National Register under Criterion A, and

**Whereas**, the transfer of historic properties out of federal control is considered an adverse effect to historic properties, and

**Whereas**, Reclamation has ongoing and potential for future projects concerning the MGD that require consultation and/or mitigation under Section 106, and

**Whereas**, Reclamation, MID and the State Historic Preservation Officer (SHPO) have met to discuss the level of effort to complete the Section 106 Process, and

**Whereas**, the Advisory Council on Historic Preservation (ACHP) was invited to participate and declined on **[insert date]**,

**Now Therefore**, Reclamation and MID are entering into this Programmatic Agreement (Agreement) with the SHPO to record and resolve adverse effects to the MGD resulting from the title transfer, record and evaluate resources within the area of potential effects (APE) not associated with the MGD, and address consultation for ongoing and subsequent projects affecting the MGD that may occur during the title transfer process.

## I. Roles and Responsibilities

- A. Reclamation shall complete all work to identify, record, and evaluate cultural resources in accordance with the stipulations herein. Agreed upon actions to mitigate for adverse effect may be completed by Reclamation personnel, contracted by Reclamation, or assigned to MID as appropriate. Reclamation will further be responsible for consultation regarding Section 106 actions and will provide carbon copies to all signatory parties as designated in Stipulation XIV.
- B. MID shall grant Reclamation access to any properties it manages in connection with the MGD for purposes of recordation and evaluation, where necessary. It shall loan historic documents, upon request, to Reclamation for purposes of research in connection to the recordation, evaluation and mitigation of the Minidoka Gravity Division Historic District (District) or other cultural resources identified during this process. MID may complete mitigation of adverse effects, if so decided by the signatory parties.
- C. SHPO shall review and comment on documents and other products stipulated herein, in accordance with 36 CFR §800.4-6 and agreed upon within this document.
- D. Nothing in this document supersedes the roles and responsibilities detailed in the Memorandum of Agreement [insert number] between Reclamation and MID regarding the title transfer process. Any roles and responsibilities not discussed herein between Reclamation and MID regarding the title transfer shall be guided by that document.

## II. Area of Potential Effect

- A. The APE for the project has been defined as the footprint of lands and facilities under Reclamation jurisdiction to be transferred to MID. A map of the APE is included as Attachment A.
- B. Should changes to the APE be proposed after the execution of this document, Reclamation will consult with the signatory and consulting parties concerning the change in APE. A change to the APE would not require an amendment to the Agreement, but would require written agreement by the signatory parties. If an agreement cannot be reached, Reclamation will follow the steps in Stipulation XII.

## III. Identification of Resources

- A. The MGD is part of the original Minidoka Project and was constructed between 1905 and 1916. Portions of the MGD have been previously recorded as individual cultural resources. In addition, a small number of these resources have been evaluated for their eligibility for listing in the National Register. Prior to beginning the title transfer process, Reclamation treated the MGD as eligible during consultation, but no official determination had been made concerning the system as a whole. As part of the current title transfer project, the MGD was evaluated as a historic district and found eligible for listing in the National Register under Criterion A. A period of significance was identified for the District of 1905-1916. Not all contributing elements of the District were identified prior to the determination; recording of the District will occur as follows.
1. Up to a 10% survey of linear features within the MGD will be completed. The sample will be directed to record specific known historic features. Linear resources to be included in the field sample include primary and secondary canals and primary and secondary drains.

2. Recordation of all historic structures or buildings, such as the administration building or pump facilities.

3. All canal features to the tertiary level and drains to the secondary level that date to the period of significance and have not been piped nor moved will be mapped via current aerial photography using GIS, even if they are not subject to field survey.

B. Additional cultural resources not part of the District may exist within the APE, either related to the MGD but out of the period of significance or unrelated to the MGD. Other Resources may include structures or archaeological sites. Efforts to identify these resources will include:

1. A record search with the Idaho State Historical Society (ISHS) will be completed for the entire APE with a 25-foot buffer. Other sources such as the National Register, General Land Office survey maps, historic aerial photographs (USGS), historical societies, and Reclamation Project Histories will be consulted as appropriate to identify potential historic features noted in the field.

2. Archaeological survey will be used to identify previously unidentified cultural resources. Based on consultation with the SHPO, Reclamation shall ensure the following survey protocols will be followed.

a) For any undeveloped parcels of land to be transferred, a pedestrian archaeological survey shall be completed for the entire acreage with transects no farther than 30 meters apart.

b) Full recordation of any archaeological sites, historic structures or buildings per Stipulation IV.B.

#### IV. Reporting and Site Documentation

A. A cultural resources inventory report will be prepared following fieldwork that documents the history of the MGD, its historical significance, and documenting the survey results and overall District. The report will also document any additional cultural resources identified during efforts under Stipulation III. The report will follow the report guidelines published by the ISHS.

B. Site records will be completed using ISHS forms including the Archaeological Survey of Idaho (ASI) Site Form and the Idaho Historic Sites Inventory (IHSI) Form as appropriate to the resource.

1. For District related resources an ASI form documenting the overall District will be completed. ISHS forms will be completed for the following contributing resources visited as part of fieldwork.

a) Primary and secondary canals,

b) Primary and secondary drains,

c) Administrative buildings, and

d) Major ancillary features such as pumphouses.

2. Forms will not be completed for in-canal features such as drops, turnouts, checks, bridges or similar, unless evidence shows that the feature would be individually eligible for listing in the National Register. Otherwise they will be considered features of the canal.

3. Any linear features of the system not documented individually will be included in the ASI form.

## V. Evaluation

A. The District has been treated as eligible under previous consultations addressing individual elements of the MGD. A small number of elements have been determined individually eligible, as contributing elements, or as non-contributing elements since they date outside the period of significance. As a part of the title transfer process, the District was evaluated as a whole and found eligible for listing in the National Register under Criterion A for its contributions to agriculture, reclamation, and early settlement and development of southeastern Idaho. It also has strong ties to the Minidoka Dam and Powerplant which was listed in the National Register in the 1970s.

B. As mentioned in Stipulation III.A, certain elements of the District have been evaluated for their individual eligibility for listing in the National Register. Elements listed in Stipulation IV.A(1)(a-d) that have not already been evaluated will be evaluated for their individual eligibility for listing in the National Register.

C. Cultural resources not associated with the MGD, if any, will be evaluated for their eligibility for listing in the National Register consistent with the *Secretary of Interior's Standards for Evaluation*, 36 C.F.R. § 60.4. Consultation on the eligibility of these resources will be conducted in accordance with Stipulation VIII.

## VI. Finding of Effect

A. As the District will be transferred out of federal jurisdiction and the transfer of historic properties out of federal jurisdiction is considered an adverse effect, the title transfer will have an adverse effect on historic properties.

B. Reclamation will apply the criteria of adverse effect, pursuant to 36 C.F.R. § 800.5(a)(1), to all Historic Properties not related to the District, if any, within the APE that will be affected by the undertaking. Consultation on the effect of the title transfer to historic properties other than the District will be conducted in accordance with Stipulation VIII.

## VII. Resolving Adverse Effects

A. As stated in Stipulation VI.A, the transfer of the District out of federal jurisdiction was determined an adverse effect to historic properties. To resolve adverse effects to the District, Reclamation and MID shall complete the following tasks:

1. Develop a public history document concerning the development of the area serviced by the MGD, relying heavily on Minidoka Project Histories and other historical documents held by Reclamation and MID. The public history document will be made available for download through Reclamation's website and [specify number] hard copies produced for local schools, libraries, and the Minidoka Historical Society.
2. Place an informational signboard outside the current MID administrative office documenting the importance of the MGD to agricultural development in the region. Historic photographs and maps will be used, as available, to illustrate the scope of the District.
3. Conduct two public information sharing meetings after the completion of VII.A(1) to provide information to the public on the history of the construction of the MGD and subsequent development of agriculture.

4. If other mitigation ideas are presented by the public as part of the meetings in Stipulation IX, Reclamation will consult with the other signatory parties as to the appropriateness of the mitigation and whether or not the new ideas should replace or supplement one or more of the items in Stipulation VII.A(1-3). Should signatory parties agree to alterations to mitigation options they shall each provide an email or letter to Reclamation to document their agreement and no amendment to this Agreement will be necessary. If an agreement cannot be met, procedures in Stipulation XII shall be followed.

5. Mitigation actions described in Stipulation VII.A(1-3) shall be completed within two (2) calendar years from the date this Agreement is fully executed.

B. If any cultural resources are identified which are not associated with the District and are found eligible under criteria specified in 36 C.F.R. § 60.4 (A) through (D) and would be subject to an adverse effect, Reclamation shall consult on an appropriate resolution to adverse effects. Such mitigation may include data recovery, HABS/HAER, oral history, historic markers, exhibits, interpretive brochures or publications, or other means as deemed appropriate by the signatories. In addition to the SHPO, MID, and American Indian Tribes, Reclamation may invite the interested public, in accordance with Stipulation IX, to comment on the means of mitigation, as appropriate.

C. The signatory parties agree that any future projects involving adverse effects to the District are mitigated by the actions found in Stipulation VII.A.

## VIII. Consultation

A. For all documents and deliverables produced in accordance with the stipulations of this Agreement, Reclamation shall provide a draft document to the signatory parties and American Indian Tribes. Any written comments provided within thirty (30) calendar days from the date of receipt shall be considered in the revision of the document or deliverable. Reclamation shall document and report the written comments received for the document or deliverable and how comments were addressed. Reclamation shall provide a final document or deliverable to the signatory parties for their records. Failure of the signatory parties or American Indian Tribes to respond within thirty (30) calendar days of any submittal shall not preclude Reclamation from moving to the next step in this Agreement.

B. Should a signatory party object to a final document or deliverable, Reclamation and the objecting party shall consult for a period not to exceed fifteen (15) calendar days following the receipt of the written objection in an effort to come to agreement. Should Reclamation and the objecting party be unable to agree, Reclamation shall proceed in accordance with Stipulation XII.

C. Reclamation has identified that the Shoshone-Bannock Tribes have documented interest in the APE. The project was first discussed with the tribal cultural staff in July 2018 at a regular quarterly staff meeting between Reclamation and the Shoshone-Bannock Tribes. The Shoshone-Bannock Tribes were formally invited to participate in consultation on the MID title transfer on [insert date]. Reclamation will continue to consult with the Shoshone-Bannock Tribes and other American Indian Tribes that voice interest in the project.

## IX. Public Outreach

A. The interested public will be invited to provide input on the proposed treatment of the District. Information concerning the District in relation to the title transfer will be provided through public meetings held by Reclamation and MID in 2019. The SHPO will be invited to attend these meetings.

B. Should other cultural resources not associated with the District be identified, Reclamation will request additional input from the interested public, as appropriate, regarding the identification, evaluation, and proposed treatment of Historic Properties. This may be carried out through letters of notification, public meetings, and/or electronic notifications.

## X. Outstanding Mitigation for Past Projects

Reclamation currently has two outstanding Section 106 actions concerning the District. At the time of original consultation, it was determined that the District would be adversely affected by each project and that mitigation was necessary. As the current project proposes to mitigate for the District as a whole, the signatory parties agree that it will also cover mitigation for the following outstanding projects:

A. In 2017, Reclamation began consultation on a project involving Lateral 1010 of the MGD. At the time of consultation, it was determined that the Section 106 process had been foreclosed and that the actions resulted in an adverse effect to the District. MOA No. R18MA11718 was circulated in 2018 and signed by the SHPO, but never fully executed. As SHPO no longer considers tertiary canals during consultation, it has been agreed that the actions under Stipulation VII.A will replace mitigation originally proposed for this undertaking.

B. In April 2018, Reclamation and SHPO executed MOA number R18MA11719 concerning adverse effects to the District from the total removal of Lateral 174-1. The project has yet to be completed, so the terms of that MOA remain unmet. Reclamation and SHPO agree that this Agreement supersedes the original MOA and have terminated that agreement in accordance with Stipulation VI.2 of the original MOA.

## XI. Consultation on New Projects Occurring During Title Transfer

A. As Reclamation regularly participates in undertakings affecting the District and such projects may arise during the title transfer process, the signatory parties to this document agree to the following actions:

1. Reclamation shall follow the steps outlined in 36 CFR §800.4-5 and provide a written document in the form of a report or letter report, as appropriate, to the SHPO containing the identification of historic properties and a finding of effect.
2. The SHPO shall have thirty (30) days to review the provided documentation.
3. In the even of an adverse effect to the District, the Reclamation and SHPO agree that the resolution of adverse effects will be covered by actions under Stipulation VII.A.
4. Should additional historic properties, not associated with the District, be involved in the new project that will be adversely affected by the proposed undertakings, Reclamation shall continue to consult under 36 CFR §800.6 separate from this Agreement.

## XII. Dispute Resolution

A. Should any Signatory Party to this Agreement object in writing to any action proposed or carried out pursuant to this Agreement, Reclamation will immediately notify the signatory parties of the objection and proceed to consult with the objecting party for a period of time, not to exceed thirty (30) calendar days, to resolve the objection. If the objection is resolved through consultation, Reclamation may authorize the disputed action to proceed in accordance with the terms of such resolution. If Reclamation determines that the objection cannot be resolved, Reclamation shall forward all documentation relevant to the dispute, along with its proposed response, to the ACHP. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP shall either:

1. Advise Reclamation that the ACHP concurs in Reclamation's proposed response to the objection, whereupon Reclamation will respond to the objection accordingly; or
2. Provide Reclamation with recommendations, which Reclamation shall consider in reaching a final decision regarding the objection; or
3. Notify Reclamation that the ACHP will comment in accordance with the requirements of Section 106 of the NHPA, and proceed to comment. Any ACHP comment provided in response shall be considered by Reclamation, pursuant to the requirements of Section 106 of the NHPA.

B. Should the ACHP not exercise one of the options within forty-five (45) calendar days after receipt of all submitted pertinent documentation, Reclamation's responsibilities under Section 106 of the NHPA will be fulfilled upon implementation of the proposed response to the objection.

C. Reclamation shall consider any ACHP recommendation or comment and any comments from the SHPO to this Agreement provided in accordance with this stipulation with reference only to the subject of the objection; Reclamation's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

D. Reclamation shall provide the SHPO with a written copy of its final decision regarding any objection addressed.

E. Should an objection pertaining to this Agreement be raised by an American Indian Tribe or a member of the public at any time during implementation of the measures stipulated in the Agreement, Reclamation shall notify the Signatory Parties and take the objection under consideration, consulting with the objecting party and, should the objecting party request, any of the Signatory Parties to this Agreement, for no longer than fifteen (15) calendar days. Reclamation shall consider the objection and all comments provided by the other parties in reaching its decision. Within fifteen (15) calendar days following closure of the comment period, Reclamation will render a decision regarding the objection and respond to the objecting party. Reclamation will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. Reclamation's decision regarding resolution of the objection will be final. Following issuance of its final decision, Reclamation may authorize the action that was the subject of the dispute to proceed in accordance with the terms of that decision. Reclamation's responsibility to carry out all other actions under this Agreement shall remain unchanged.

### XIII. AMENDMENTS, TERMINATION, AND DURATION

A. **Amendment:** Any Signatory Party to this Agreement may propose that the Agreement be amended, whereupon Reclamation shall consult with the Signatory Parties to consider such amendment. The Agreement may be amended only upon written concurrence of all Signatories.

B. **Termination:** Only the Signatories may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XIII.A, or if any Signatory proposes termination of this Agreement for other reasons, the Signatory proposing termination shall notify the other Signatories in writing, explain the reasons for proposing termination, and consult with the other Signatories to seek alternatives to termination, within thirty (30) calendar days of the notification.

1. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement.

2. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories in writing.

3. Beginning with the date of termination, Reclamation shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.

4. Should the title transfer process be abandoned or otherwise terminated, Reclamation shall provide a notice to all Signatory Parties within seven (7) days of that decision and the terms of this Agreement will be null and void and the Agreement terminated without need for further consultation.

C. **Duration:** This Agreement shall remain in effect for a period of three (3) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this three-year period unless it is terminated prior to that time. No later than ninety (90) calendar days prior to the expiration date of the Agreement, Reclamation shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect.



## XIV. Principal Contacts

The principal contacts for this MOA are:

### Reclamation

Nikki Polson  
Archaeologist  
Upper Snake Field Office  
470 22<sup>nd</sup> Street  
Heyburn, ID 83336  
(208) 678-0461 x13  
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### MID

Dan Davidson  
Manager  
Minidoka Irrigation District  
98 S. 50 W.  
Rupert, ID 83350  
dan.mid@pmt.org

### SHPO

Ashley Brown  
Historical Review Officer  
Idaho State Historical Society  
210 Main Street  
Boise, ID 83702  
(208) 488-7463  
ashley.brown@ishs.idaho.gov

## XV. 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 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 Agreement does not provide such authority. Specifically, this Agreement does not establish authority for noncompetitive award to the parties of any contract or other agreement.

B. No Binding Rights or Obligations. Nothing in this Agreement 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 Agreement shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 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 Agreement or to any benefit that may arise out of it.

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

E. Endorsement. Any of the Parties' contributions made under this Agreement do not by direct reference or implication convey endorsement of Parties' projects or activities.

## XVI. EFFECTIVE DATE

This Agreement shall take effect on the date that it has been fully executed by Reclamation, MID and the SHPO.

**EXECUTION** of this Agreement by Reclamation, MID and the SHPO, its transmittal to the ACHP, and subsequent implementation of its terms are evidence that Reclamation has afforded the ACHP an opportunity to comment on the undertaking and its effects on Historic Properties, that Reclamation has taken into account the effects of the

undertaking on Historic Properties, and that Reclamation has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations for all aspects of the undertaking.

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

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Roland K. Springer, Area Manager  
Snake River Area Office  
Bureau of Reclamation

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Date

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Ron Kowitz, Chair  
Minidoka Irrigation District

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Date

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Name, Title  
State Historic Preservation Officer

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Date