

MEMORANDUM OF AGREEMENT
AMONG
THE NATURAL RESOURCES CONSERVATION SERVICE,
THE UTAH STATE HISTORIC PRESERVATION OFFICE,
BEAR RIVER WATER CONSERVANCY DISTRICT,
THE BEAR RIVER CANAL COMPANY,
AND THE UTAH DIVISION OF WILDLIFE RESOURCES
REGARDING
THE MITIGATION OF ADVERSE EFFECTS
TO SITES 42BO1182, 42BO1185, 42BO1507, and 42BO2990
BOX ELDER COUNTY, UTAH

WHEREAS, the Natural Resources Conservation Service (NRCS) is providing technical and financial assistance to the Bear River Water Conservancy District (BRWCD) and Bear River Canal Company (BRCC) as project sponsors, is planning the Lower Bear River Watershed Plan, funded through the authority of the Watershed Protection and Flood Prevention Act (Public Law 83-566). The proposed project has three objectives: agricultural water management, flood prevention, and watershed protection. Project components are located predominantly on private land, federal wildlife refuge managed by the U.S. Fish and Wildlife Service (FWS), and state wildlife refuge managed by the Utah Division of Wildlife Resources (DWR) (hereafter referred to as the "Project"); and

WHEREAS, the NRCS has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §306108, and its implementing regulations, 36 C.F.R. 800; and

WHEREAS, the Sponsor(s) will apply for, and the United States Army Corps of Engineers, Sacramento District (Corps), proposes to issue a permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) for the Project; and

WHEREAS, the NRCS, as the lead Federal agency under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §306108, and its implementing regulations, 36 C.F.R. 800 will consult on behalf of the Corps, FWS, National Park Service (NPS), EPA, and DWR; and

WHEREAS, the NRCS has established the Project's Area of Potential Effects (APE), as defined at 36 C.F.R. 800.16(d), as 634.1 acres, which encompasses all locations of anticipated ground disturbance, including staging areas and access roads; and

WHEREAS, a cultural resources inventory of the APE has been completed, as required by 36 C.F.R. 800, and described in the report entitled *Archaeological Resources Survey for the Lower Bear River Watershed Plan Environmental Impact Statement, Box Elder County, Utah*, prepared by SWCA Environmental Consultations and dated May 2025, which the NRCS and the Utah State Historic Preservation Office (Utah SHPO) agree that historic canal sites 42BO1182, 42BO1185, 42BO1507, and 42BO2990 are eligible for inclusion in the National Register of Historic Places (NRHP) under Criterion A and/or C; and

WHEREAS, the NRCS has determined that the Project will result in an adverse effect to 42BO1182, 42BO1185, 42BO1507, and 42BO2990 due to conversion of the sites from open ditches to pressurized pipe or concrete-lined; and

WHEREAS, the NRCS has consulted with the Utah SHPO, the FWS, NPS, Corps, EPA, DWR, the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming, Northwest Band of the Shoshone Nation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Skull Valley Band of Goshute Indians, Confederated Tribes of the Goshute Reservation, and the Ute Indian Tribe of the Uintah & Ouray Reservation; and

WHEREAS, the NPS, EPA, FWS, Eastern Shoshone Tribe of the Wind River Reservation, Wyoming, Northwest Band of the Shoshone Nation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Skull Valley Band of Goshute Indians, Confederated Tribes of the Goshute Reservation, and the Ute Indian Tribe of the Uintah & Ouray Reservation declined or failed to respond to requests for further participation in the development of this MOA; and

WHEREAS, the Utah SHPO, BRWCD, BRCC, the Corps, and DWR have requested to participate in the development of this MOA; and

WHEREAS, the NRCS has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effects to Sites 42BO1182, 42BO1185, 42BO1507, and 42BO2990, and has invited the ACHP's participation in the Project, pursuant to 36 C.F.R. 800.6(a)(1), in a transmittal dated May 27, 2025; and

WHEREAS, the ACHP, in a letter dated June 10, 2025, declined to participate in consultation; and

WHEREAS, "Signatories" hereafter collectively refers to the Signatories (NRCS, Utah SHPO, BRWCD, BRCC, and DWR) with Bear River City and the Corps as a Concurring Parties; and

WHEREAS, other parties may be invited to become signatories to this MOA if such a party agrees to these terms; and

WHEREAS, the NRCS will file a copy of this executed MOA to the ACHP; and

NOW, THEREFORE, the Signatories agree that upon the decision of the NRCS to proceed with the Project, the NRCS shall ensure that the following stipulations are implemented in order to resolve the adverse effect of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The NRCS shall ensure that the following stipulations are implemented:

I. PROFESSIONAL QUALIFICATIONS

- A. All tasks will be completed by personnel meeting the Secretary of the Interior's *Standards and Guidelines for Archeology* as stated in 36 C.F.R. 61.
- B. All tasks will be completed according to specifications consistent with the Secretary of Interior's *Standards and Guidelines for Archeological Documentation and Historical Documentation* and, where appropriate, guidelines required by the Utah SHPO.

II. MITIGATION OF ARCHAEOLOGICAL RESOURCES

- A. The NRCS, in consultation with the Signatories, shall complete the following mitigation measures:
 - 1. Aerial video flyovers and detail photographs of select contributing features to fully document Sites 42BO1182, 42BO1185, 42BO1507, and 42BO2990; and
 - 2. Site 42BO1185 Feature-01 (aqueduct): Informal HAER documentation to include select existing drawings (where available), detailed photographs, and NPS short form for historical reports; and
 - 3. Creation of a Story Map of the ditches to be made available to the public online; and
 - 4. Historic context of Sites 42BO1182, 42BO1185, 42BO1507, and 42BO2990, as applicable given available data; and
 - 5. Post-construction updated Utah Archaeology Site Forms for each site, with revised eligibility, to be submitted to SHPO upon review and approval by NRCS.

III. UNANTICIPATED DISCOVERIES

- A. In the event of an unanticipated archaeological discovery during mitigation work or during construction, the NRCS will document and/or treat the discovery based on the criteria and methods described in the Prototype Programmatic Agreement with the Utah SHPO. If significant discoveries requiring longer-term work stoppage for consultation and mitigation are encountered, the NRCS will consult per 36 C.F.R. 800.6 to develop a plan to further mitigate the adverse effect.
- B. If human remains/funerary objects are discovered under any circumstance, the remains will be treated in accordance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.) and its implementing regulations (43 C.F.R. 10). All construction activities within 100 feet of the remains shall cease immediately and the NRCS shall consult pursuant to 43 C.F.R. 10.5, to develop a written plan of action to manage the discovery. Construction in the area of the remains may need to be halted throughout the review process. Continuation of work following a discovery will be contingent upon approval by the NRCS in consultation with the Utah SHPO, tribes, and other consulting parties that the approved plan has been satisfactorily completed.

IV. DISPUTE RESOLUTION

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

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

V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

VI. COORDINATION WITH OTHER ACTIONS

Other state or federal agencies that provide permitting or financial assistance to an undertaking covered by this MOA may satisfy their own compliance responsibilities under Section 106 of the NHPA by accepting and complying with the terms of this MOA. Other parties may have their actions covered by this MOA if they agree to its terms. Agencies shall notify the NRCS and the Utah SHPO in writing of the intent to adhere to this MOA.

VII. TERMINATION

- A. If the terms of this MOA have not been implemented within five years from the date of final signature, then this MOA shall be considered null and void. In such an event, the NRCS shall so notify the Signatories and, if it chooses to continue with the Project, then it shall

reinitiate review of and consultation on the Project in accordance with 36 C.F.R. 800.3 through 800.7.

- B. In the event that the NRCS does not carry out the terms of this MOA, the Signatories shall consult to seek amendment to the MOA and proceed in accordance with 36 C.F.R. 800.6(c)(8).
- C. Any signatory to the MOA may terminate this MOA by providing thirty (30) days' notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the NRCS shall proceed in accordance with 36 C.F.R. 800.6(c)(8), execute a new agreement in accordance with 800.6(c)(1) or request comments of the ACHP under 800.7(a).

VIII. USDA STIPULATIONS

- A. The signatories to this agreement and their respective agencies will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
- B. Any transfer of funds from one party to another shall be done via a separate instrument as appropriate. Specific work projects or activities that involve the transfer of funds, services, or property among the signatories, and their respective agencies will require execution of separate agreements and be contingent upon the availability of appropriated funds. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

Execution of this MOA by the NRCS and Signatories, and its submission to the ACHP in accordance with 36 C.F.R. 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. 800.6(c), be considered to be an agreement with the ACHP for the purposes of Section 110(l) of the NHPA. Execution and submission of this MOA, and implementation of its terms, evidence that the NRCS has afforded the ACHP an opportunity to comment on the Project and its effects on historic properties, and that the NRCS has taken into account the effects of the Project on historic properties.

SIGNATORY PAGE

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AND THE UTAH DIVISION OF WILDLIFE RESOURCES

REGARDING

THE MITIGATION OF ADVERSE EFFECTS
TO SITES 42BO1182, 42BO1185, 42BO1507, and 42BO2990
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NATURAL RESOURCES CONSERVATION SERVICE

_____ Date: _____
Arellys Ortiz, Acting Utah State Conservationist

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UTAH STATE HISTORIC PRESERVATION OFFICER

_____ Date: _____
Dr. Christopher Merritt, Utah State Historic Preservation Officer

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BEAR RIVER WATER CONSERVANCY DISTRICT

_____ Date: _____
Jay Capener, Chairman

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BEAR RIVER CANAL COMPANY

----- Date: -----
Jeff Hardy, President

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UTAH DIVISION OF WILDLIFE RESOURCES

_____ Date: _____
Michael Canning, Deputy Director

CONCURRING PARTY SIGNATORY PAGE

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U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

----- Date: -----
Jason Gipson, Chief

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BEAR RIVER CITY

_____ Date: _____
Riggin Holmgren, Council Member