

**PROGRAMMATIC AGREEMENT
AMONG THE
BUREAU OF INDIAN AFFAIRS
SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION
IDAHO STATE PRESERVATION OFFICER
NEVADA STATE PRESERVATION OFFICER AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE DUCK VALLEY IRRIGATION PROJECT IN OWYHEE COUNTY, IDAHO
AND ELKO COUNTY, NEVADA**

WHEREAS, the Shoshone-Paiute Tribes of the Duck Valley Reservation (hereafter "Tribes") plans to install approximately 62 miles of new pipeline, clean and reshape certain canals and laterals, install canal lining along certain canals and laterals, improve or develop access roads, and replace or repair irrigation structures along main canals and laterals as part of the Duck Valley Irrigation Project (hereafter "Project") as more fully described in Exhibit A; and

WHEREAS, the Duck Valley irrigation system is owned by the Bureau of Indian Affairs, Western Regional Office (hereafter "BIA/WRO") and operated by the Tribes through a Public Law 93-638 self-determination agreement; and

WHEREAS, the Project would require a right of-way (ROW) from the BIA/WRO; and

WHEREAS, BIA/WRO has determined that Project approval on BIA-owned infrastructures, maintenance of features in the Project, and approval of a new right-of-way are federal actions that make the Project an undertaking subject to review by BIA/WRO under Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800) and

WHEREAS, the Natural Resources Conservation Service (hereafter "NRCS") has provided grant monies to the Tribes in support of the Project making the project an undertaking subject to review by NRCS under Section 106 and is an Invited Signatory to this Agreement pursuant to 36 C.F.R. Part 800.2(a); and

WHEREAS, the Bureau of Reclamation (hereafter "Reclamation") has provided grant monies to the Tribes in support of the Project making the project an undertaking subject to review by Reclamation under Section 106 and is an Invited Signatory to this Agreement pursuant to 36 C.F.R. Part 800.2(a); and

WHEREAS, NRCS and Reclamation have designated BIA/WRO as the lead federal agency for the purposes of Section 106 pursuant to 36 C.F.R. § 800.2(a)(2); and

WHEREAS, BIA/WRO, in consultation with the Idaho State Historic Preservation Officer (hereafter "IDSHPO") and the Nevada State Historic Preservation Officer (hereafter "NVSHPO"), has agreed to develop a Programmatic Agreement (hereafter "Agreement") for this project pursuant to 36 C.F.R. Part 800.14(b) because the effect on historic properties cannot be fully determined prior to approval, and because the scope of the Project includes multiple States; and

WHEREAS, the Tribes as described above are a federally recognized Indian Tribe which exercises general governmental jurisdiction over all lands of the Duck Valley Indian Reservation, and because the Project is located on the reservation, the Tribes are a Signatory to this Agreement pursuant to 36 C.F.R. Part 800.2(c)(2); and

WHEREAS, Federal agencies consult with the IDSHPO for undertakings that occur within the State of Idaho to ensure that historic properties are taken into consideration at all levels of project planning and development for undertakings that may affect historic properties pursuant to 36 C.F.R. Part 800.2(c)(1); and

WHEREAS, Federal agencies consult with the NVSHPO for undertakings that occur within the State of Nevada to ensure that historic properties are taken into consideration at all levels of project planning and development for undertakings that may affect historic properties pursuant to 36 C.F.R. Part 800.2(c)(1); and

WHEREAS, BIA/WRO has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation process for this Project and the ACHP has accepted this invitation pursuant to 36 C.F.R. Part 800.2(b)(1); and

WHEREAS, BIA/WRO is responsible for government-to-government consultation with federally recognized Indian Tribes for this undertaking and is the lead Federal agency for all Native American consultation and coordination, and has formally invited the Tribes to participate in consultation, and continue to be consulted regarding the potential effects of the Project on historic properties pursuant to 36 C.F.R. Part 800.2(c)(2); and

WHEREAS, for any matter regarding Section 106 compliance not addressed in this Agreement, the provisions of Section 106 of the NHPA and its implementing regulations (36 C.F.R. Part 800) shall apply; and

WHEREAS, the Tribes perform routine maintenance activities on the Project to maintain the reliability of the irrigation system; and

WHEREAS, no provisions of this Agreement will be construed by any of the Signatories as abridging or debilitating any sovereign powers of the Tribes; affecting the trustee-trustor relationship between the Secretary of the Interior and the Tribes; or interfering with the government-to-government relationship between the United States and the Tribes; and

WHEREAS, unless defined differently in this Agreement, all terms are used in accordance with 36 C.F.R. Part 800.16.

NOW, THEREFORE, the Signatories to this Agreement agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties and fulfill obligations for compliance with Section 106 of NHPA.

STIPULATIONS

BIA/WRO, as the lead federal agency, shall ensure that the following measures are carried out:

1. BIA/WRO will continue to consult with the Tribes regarding historic properties of religious and cultural significance in accordance with the NHPA, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, American Indian Religious Freedom Act, Executive Order 13007 Sacred Sites, and any respective implementing regulations.
2. BIA/WRO shall coordinate overall actions required under this Agreement as specified herein.

3. The Tribes, as the Project sponsor, will fund all cultural resources fieldwork, analysis, monitoring, reporting, curation, and other mitigation required under this Agreement.
4. BIA/WRO will ensure that all work undertaken to satisfy the terms of this Agreement meets the Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservation (48 FR 44716-77442, September 23, 1983) and the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. 68) (hereafter "Secretary's Standards"), takes into consideration the ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites, May 1999, Section 106 Guidance (at: https://www.achp.gov/protecting-historic-properties/Section_106_Archaeology_Guidance), and considers Guidelines for Evaluating and Documenting Traditional Cultural Properties (TCP's), *National Register Bulletin 38*, 1989, as incorporated by reference herein.
5. Identification of Historic Properties.
 - a. *Area of Potential Effects (APE)*. The APE for the Project considers both direct and indirect effects for all Project features. The Project APE, encircling areas of both direct and indirect effects, is depicted on the map in Exhibit B.
 - i. Indirect Effects APE
 1. The indirect effects APE surrounds all Project features as depicted in Exhibit B.
 - ii. Direct Effects APE
 1. The direct effects APE for water pipeline installation activities will include a 150-foot wide corridor centered on the pipeline's centerline.
 2. The direct effects APE for existing canal maintenance activities, including but not limited to canal cleaning, reshaping, vibratory compaction, and/or lining will include a 150-foot wide corridor centered on the canal centerline.
 3. The direct effects APE for repair or replacement of irrigation structure activities will include a 150-foot wide buffer extending from the structure.
 4. The direct effects APE for maintenance or construction of access road activities will include a 150-foot wide corridor centered on the road's centerline.
 5. The direct effects APE for construction work area activities will include the area of ground disturbance necessary for the work area and a 100-foot wide buffer extending beyond the boundary of the work area.
 - b. *Cultural Resources Literature Review*. BIA/WRO will prepare a cultural resources literature review that summarizes known cultural resources, including but not limited to prehistoric and historic archaeological sites, traditional cultural properties, and historic built environment resources including linear resources within the Project APE.
 - c. *Class III Intensive Pedestrian Survey*. BIA/WRO will ensure that a Class III intensive field survey (Class III survey) as defined in BLM Manual 8110 – Identifying and Evaluating Cultural Resources will be conducted prior to activities in the direct effects APE as described above in Stipulation 5.a.

Multiple Class III surveys may be required to facilitate changes in project activities as described in Stipulation 11 or discoveries made during Project construction as described in Stipulation 13.

6. Reporting.

- a. All cultural resources survey reports prepared for the Project will meet or exceed the Secretary of the Interior's Standards for Archaeological Documentation.
- b. The Tribes or through their qualified consultant will prepare a Class III Survey Report upon completion of each Class III survey conducted for the Project. This report will describe the cultural resources survey effort, describe the survey methods used, provide the results of the literature review and Class III surveys, provide an appropriate regional context for the resources identified during the literature review and Class III surveys, and make recommendations for the National Register of Historic Places (NRHP) eligibility of all cultural resources discovered or revisited.
- c. The Tribes or their qualified consultant will submit each Class III Survey Report to the BIA/WRO. BIA/WRO will review and comment on the Class III Survey Report submitted within 30 calendar days of receipt.
- d. The Tribes or their qualified consultant shall revise each Class III Survey Report to address any comments provided by the BIA/WRO within 30 calendar days.
- e. BIA/WRO shall provide a copy of each draft Class III Survey Report to the appropriate SHPO for review along with a letter containing the BIA/WRO findings or determinations within 90 days of the end of fieldwork. The report will be consistent with IDSHPO and NVSHPO standards. Site forms will follow each state's documentation standards. The SHPO will have thirty (30) calendar days from receipt to review and comment on the draft report. If the SHPO fails to respond to BIA/WRO within thirty (30) calendar days of receipt of an adequately documented submission, BIA/WRO may finalize a Class III survey report.
- f. Signatory or Invited Signatory Parties may, upon written request to BIA/WRO, review draft reports and provide comments to BIA/WRO. The Consulting Parties will have thirty (30) calendar days from receipt of the report to review and comment on the draft report.
- g. Consulting Parties may, upon a written request to BIA/WRO, review redacted draft reports and provide comments to BIA/WRO. Signatory or Invited Signatory Parties will have thirty (30) calendar days to review and comment on the draft report.
- h. BIA/WRO shall consider and incorporate comments made by the SHPO or SHPOs and Consulting Parties as appropriate in the final Class III Survey Report.
- i. BIA/WRO shall provide the final Class III Survey Report to the appropriate SHPO once comments and edits have been addressed.

7. NRHP Eligibility Determinations.

- a. BIA/WRO is responsible for all NRHP eligibility determinations for cultural resources found within the Project APE that are identified as a result of activities undertaken for the Project and will evaluate the historic significance of sites within the APE pursuant to 36 C.F.R. Part 800.4(c) consistent with the appropriate regional context noted in Stipulation 6.b.
- b. BIA/WRO shall consult with the appropriate SHPO regarding their NRHP eligibility determinations for cultural resources within the APE. The format of the submission will be consistent with the prior written request of the SHPO. The SHPO will have thirty (30)

calendar days from receipt to review and comment on the BIA/WRO determinations. If the SHPO fails to respond to BIA/WRO within thirty (30) calendar days of receipt of an adequately documented submission, BIA/WRO may finalize their determinations of eligibility.

- c. Should BIA/WRO, a SHPO or SHPOs, or the Tribes disagree regarding BIA/WRO's NRHP eligibility determinations, BIA/WRO shall notify and consult with the appropriate SHPO or SHPOs to resolve the dispute. If the dispute cannot be resolved, the BIA/WRO shall seek a formal determination of NRHP eligibility from the Keeper of the National Register. The Keeper's determination will be considered final.

8. Assessment of Effect.

- a. BIA/WRO is responsible for assessing effects of the Project on historic properties pursuant to 36 C.F.R. Part 800.5.
- b. BIA/WRO shall consult with the appropriate SHPO regarding their assessments of effect for Project activities. The format of the submission will be consistent with each SHPO's guidelines. The SHPO will have thirty (30) calendar days from receipt to review and comment on the BIA/WRO determinations. If the SHPO fails to respond to BIA/WRO within thirty (30) calendar days of receipt of an adequately documented submission, BIA/WRO may finalize their determinations of effect.
- c. Should BIA/WRO and the SHPO disagree regarding BIA/WRO's assessment of Project effects to historic properties the dispute will be addressed following the Dispute Resolution processes stipulated below in Stipulation 14.

9. Resolution of Adverse Effects.

- a. BIA/WRO shall seek to avoid adverse effects to historic properties during the design of Project activities where feasible and prudent. BIA/WRO may achieve this through engineering redesign, alternate placement of necessary structures, or shifting of alignments to avoid historic properties.

Standard methodologies for avoidance of adverse effects to common historic property types will be detailed in the Project's Historic Properties Treatment Plan (HPTP) stipulated below in Stipulation 9.c.i.

- b. BIA shall provide notice to Signatories and Invited Signatories of their determination of adverse effects pursuant to 36 C.F.R. Part 800.11(e).
- c. If BIA/WRO determines that the Project will adversely affect historic properties, BIA/WRO shall ensure that the appropriate mitigation will be detailed in a HPTP. Standard methodologies for avoidance of adverse effects to common historic property types will be detailed in the Project's HPTP.

- i. Historic Properties Treatment Plan.

1. The Tribes through their qualified consultant will develop an HPTP to address adverse effects of the Project to historic properties; including prehistoric and historic archaeological sites, historic canals, historic architecture, and TCPs. The HPTP will identify the nature of the effects to which each historic property will be subjected and the proposed treatment to avoid, minimize, or mitigate adverse effects. If the HPTP proposes data recovery excavation as a mitigation measure, the Tribes through their qualified consultant may not implement the HPTP until required tribal and federal excavation permits have been issued.

2. BIA/WRO will develop a Native NAGPRA Plan of Action in consultation with the Tribes and included as part of the HPTP pursuant to 43 C.F.R. Part 10.3.
 3. The Tribes through their qualified consultant will develop a monitoring and inadvertent discoveries plan that will be included as part of the HPTP. The HPTP will identify those areas that will be monitored. Cultural resources discovered during Project activities will be treated in accordance with the inadvertent discoveries plan which will include a HPTP for discoveries.
 4. BIA/WRO will submit the draft HPTP to the appropriate SHPO and other Consulting Parties as appropriate. The format of the submission will be consistent with the prior written request of the SHPO. The SHPO will have thirty (30) calendar days from receipt to review and comment on the HPTP. If the SHPO fails to respond to BIA/WRO within thirty (30) calendar days of receipt of an adequately documented submission, BIA/WRO may initiate the fieldwork portion of the HPTP.
 - a). Consulting Parties will have thirty (30) calendar days from receipt of the draft HPTP to provide comments to BIA/WRO.
 5. BIA/WRO shall submit the draft final HPTP, revised as necessary, to the appropriate SHPO for review and comment. The appropriate SHPO will have thirty (30) calendar days from receipt to provide comments to BIA/WRO. If the appropriate SHPO does not submit comments within thirty (30) calendar days of receipt, BIA/WRO may finalize and implement the plan.
- d. The Tribes through their qualified consultant shall submit a draft report of the results of any treatment effort to BIA/WRO within one year of completion of fieldwork. BIA/WRO will have ninety (90) days from receipt of this report to review and comment on the draft report.
 - e. The Tribes through their qualified consultant shall edit the draft report to address any BIA/WRO comments or concerns within (45) calendar days.
 - f. BIA/WRO shall submit the draft report to the appropriate SHPO and other Consulting Parties as appropriate. The format of the submission will be consistent with SHPO guidelines. The SHPO will have thirty (30) calendar days from receipt to review and comment on the draft report. If the SHPO fails to respond to BIA/WRO within thirty (30) calendar days of receipt of an adequately documented submission, BIA/WRO may finalize the document.
 - g. The Tribes through their qualified consultant shall edit the draft report to address any SHPO comments or concerns.
 - h. Once complete, BIA/WRO will request that the Tribes through their qualified consultant finalize the document.
10. Project Authorization.

BIA/WRO may grant an authorization to proceed to begin construction for Project activities under any of the following conditions:

- a. BIA/WRO, in consultation with the SHPO, and other Consulting Parties as appropriate, has determined that the Tribes through their qualified consultant has implemented an adequate HPTP for the Project activity that would affect historic properties, and:
 - i. The fieldwork phase of the HPTP has been completed; and
 - ii. BIA/WRO has received a fieldwork summary report. The BIA/WRO will have seven (7) calendar days from receipt of adequate documentation that fieldwork is complete to comment; and
 - iii. The Tribes through their qualified consultant shall edit the fieldwork summary to address all BIA/WRO comments and concerns within (45) calendar days; and
 - iv. BIA/WRO has accepted a summary description of fieldwork performed for the Project activity; and
 - v. BIA/WRO shall provide a copy of the summary to the appropriate SHPO; and
 - vi. The appropriate SHPO will review the summary and if the SHPO concurs or does not respond within ten (10) working days of receipt, BIA/WRO may issue the project authorization.
11. Changes in Project Activities.
- a. If the Tribes propose changes to Project activities during construction to effect areas outside of the APE as described above in Stipulation 5.a the Tribes through their qualified consultants will conduct a Class III intensive pedestrian survey as described above in Stipulation 5.c and a report prepared as described above in Stipulation 6.
 - b. Adverse effects to historic properties identified during inventory for project changes in activities will be subject to provisions described in Stipulation 9.
12. Exempt Routine Maintenance Activities.
- a. The Tribes perform routine maintenance on the irrigation system and associated roads, all within the APE for direct effects. This is necessary to ensure planned distribution and full use of water resources for heavy yield of agricultural crops of good quality under irrigation conditions. These maintenance activities will not require additional cultural resource investigations or consultations with any parties to this Agreement. These activities have little likelihood of affecting cultural resources. Exhibit C is a list of these routine activities.
13. Discoveries and Unanticipated Effects.
- a. If historic properties or unanticipated adverse effects to historic properties are identified during the Project, BIA/WRO will implement the inadvertent discoveries plan included in the Project's HPTP as stipulated above in Stipulation 9.c.i.3.
14. Dispute Resolution.
- a. Should any party to this Agreement object, in writing, at any time to any actions proposed or how the terms of this Agreement are implemented, the BIA/WRO shall consult with the objecting party to resolve the concern within 45 calendar days. If the BIA/WRO determines that the concern cannot be resolved, the BIA/WRO will:
 - i. Forward all documentation relevant to the dispute, including the BIA/WRO's proposed resolution to the ACHP and Signatories to this Agreement. The ACHP may provide the BIA/WRO with its advice on the resolution of the concern within thirty (30) days of receiving adequate documentation. Prior to reaching a

final decision on the dispute, the BIA/WRO shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP or Signatories to this Agreement and provide them with a copy of this written response. The BIA/WRO will then proceed according to its final decision.

- ii. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, BIA/WRO may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BIA/WRO shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to this Agreement and provide them and the ACHP with a copy of such written response.

- b. The BIA/WRO's responsibility to carry out all other actions subject to the terms of this Agreement that are not subject of the dispute will remain unchanged.

15. Amendments.

Any Consulting Party to this Agreement may request that it be amended, whereupon the Signatories will consult for no more than thirty (30) days or any other time frame as agreed to by the Signatories to consider such amendment. An amendment will become effective upon execution by all Signatories.

16. Withdrawals.

Any Signatory to this Agreement may withdraw from the Agreement after first providing the other signatories written notice to explain the reasons for withdrawal and providing them an opportunity to consult regarding amendment of the Agreement to prevent withdrawal.

If a SHPO withdraws from the Agreement, the BIA/WRO and the withdrawing SHPO will comply with Section 106 in accordance with 36 CFR 800.3 through 800.7 or by the execution of an agreement in accordance with 36 CFR 800.14(b). Such Section 106 compliance will be limited to the consideration of effects of the Project solely within the jurisdiction of the withdrawing SHPO. This Agreement will remain in effect with regard to the portions of the Project located in the jurisdiction of the SHPO that has not withdrawn from the Agreement. If all SHPOs withdraw from the Agreement, the Agreement will be considered to be terminated.

17. Termination.

Any Signatory to this Agreement may terminate it by providing 30-calendar day notice, in writing, to the other Signatories, provided that the Signatories will consult during the period prior to termination to seek agreement on amendments or other actions that will avoid termination.

In the event of termination and, to the extent feasible prior to work continuing on the Project, the BIA/WRO must either (a) execute a new agreement pursuant to 36 C.F.R. § 800.14(b)(3), or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. BIA/WRO shall notify the Signatories as to the course of action it will pursue.

18. Term.

- a. This Agreement shall be effective when all Signatories have signed and will remain in effect for ten (10) years or execution of all its terms, whichever occurs first.
- b. The term of this Agreement may be extended by written agreement by all Signatories.
- c. Each year, on the date of the execution of this Agreement and until it expires or is terminated, BIA/WRO shall provide all Consulting Parties to this Agreement a summary report detailing work carried out pursuant to its terms. Such report shall include any

proposed scheduling changes, any problems encountered, and any disputes or objections received in BIA/WRO's efforts to carry out the terms of this Agreement.

19. Coordination with Other Federal Reviews

- a. In the event that the Tribes apply for federal funding or approvals for the Project from another Federal agency and the Project's undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this Agreement and notifying and consulting with the ACHP, IDSHPO, and NVSHPO. Amendments to the Agreement will be considered in accordance with Stipulation 15.

20. General Provisions.

- a. *Entirety of Agreement.* This Agreement, consisting of 19 pages, represents the entire and integrated agreement between parties and supersedes all prior negotiations, representations, and agreements, whether written or oral, regarding compliance with the NHPA Section 106 for the Undertaking.
- b. *Severability.* Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in force and effect, and any party may renegotiate the terms affected by severance.
- c. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The BIA/WRO shall distribute copies of all pages to all Consulting Parties once the agreement is fully executed.

Execution of this Agreement by the Signatories and implementation of its terms evidence that the BIA/WRO has taken into account the effects of this Project on historic properties and afforded the ACHP an opportunity to comment.

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SIGNATORY

Bureau of Indian Affairs, Western Regional Office



Bryan Bowker
Regional Director



2/11/19
Date

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SIGNATORY

Shoshone-Paiute Tribes of the Duck Valley Reservation

Theodore Howard

Date

Chairman

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SIGNATORY

Idaho State Historic Preservation Office

Janet Gallimore

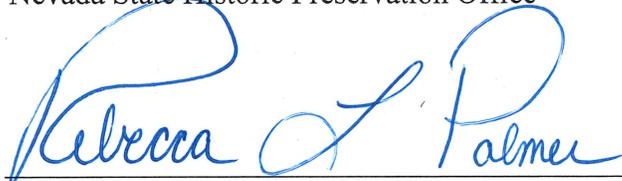
Date

Idaho State Historic Preservation Officer

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SIGNATORY

Nevada State Historic Preservation Office



Rebecca L. Palmer

02/19/19

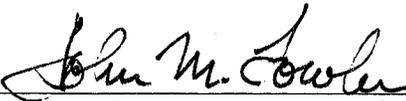
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Nevada State Historic Preservation Officer

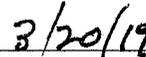
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Advisory Council on Historic Preservation



John M. Fowler
Executive Director



Date

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INVITED SIGNATORY

Natural Resources Conservation Service

Ray Dotson

Date

Nevada State Conservationist

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INVITED SIGNATORY

Bureau of Reclamation

Roland K. Springer

Date

Snake River Area Manager

Exhibit A: Duck Valley Irrigation Project Description

The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation (Tribes) are proposing improvements to sections of the Duck Valley Irrigation Project (DVIP) that are downstream of the China Diversion (Project). The Project is needed to improve the operation and distribution of water throughout the historic DVIP. The Project will include the following:

- Main canals and laterals downstream of China Diversion
 - Cleaning and reshaping would be performed for all canals and laterals to remain as open ditches.
 - Canal lining would be installed, or vibratory compaction of the canals would take place to help reduce canal seepage.
 - Existing operation and maintenance (O&M) roads would be improved or new access roads would be constructed.
 - All of the irrigation structures on the main canals and laterals would be replaced or rehabilitated at the discretion of the DVIP. This includes—but is not necessarily limited to—headgates, turnouts, checks, drops, and culvert crossings.

- Delivery laterals
 - Many of the open, delivery lateral ditches would be eliminated and replaced with pipelines that provide flow measurement and are simple to operate.
 - Depending on site conditions, pipeline alignments may not follow the existing alignment or footprint of the ditches that are being converted to pipe.
 - Existing irrigation structures on ditches to be converted to pipelines would be removed. This includes—but is not necessarily limited to—headgates, turnouts, checks, drops, and culvert crossings. In some cases, at the discretion of the DVIP, structures that are not in conflict with the new pipelines may be left in place.
 - Delivery laterals that are not converted to pipelines would be cleaned and reshaped. All irrigation structures on these ditches may be replaced or rehabilitated. O&M road improvements or construction would be made to maintain access to the DVIP facilities.

The Tribes are funding the work with a grant from the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), qualifying the Project as a federal Undertaking requiring compliance with Section 106 of the NHPA. As the agency responsible for the administration and management of reservation lands held in trust by the United States for the Tribes, the Bureau of Indian Affairs (BIA) is lead federal agency for the purposes of Section 106 during the Project with the NRCS acting as a cooperating agency. Additional funding has been provided by the Bureau of Reclamation (Reclamation) who is also acting as a cooperating agency.

Exhibit C: Exempt Duck Valley Irrigation Project Routine Maintenance Activities

Pursuant to 36 CFR Part 800.14(c), BIA/WRO, in consultation with the Signatories to this PA, has determined that the activities on the following list have limited potential to affect historic properties and thus are considered "Exempt Undertakings" from further review under the Section 106 process.

- 1) Grading existing access roads when the activities are confined to the existing road and will not result in excavation below the extant roadbed or area of previous disturbance and the feature is returned to its previous appearance once complete.
- 2) Repair or replacement of existing irrigation pipelines less than fifty (50) years in age when equipment access and staging is also limited to the areas previously disturbed by the original pipeline installation.
- 3) Canal dewatering; embankment maintenance; repair, patching, or replacement of linings within existing canals and other irrigation features (e.g. check structures, turnouts) with in-kind materials and finish (e.g. earth, concrete, wood, etc.) and returned to current form.
- 4) Removal and disposal of vegetation by hand.
- 5) Repair breaches and animal burrows affecting the canals, laterals, or ditches and return to current form.
- 6) Repair or replacement of water control gates where the size, appearance, and materials used are similar to the existing.
- 7) Repair or replacement of existing concrete in an irrigation ditch.
- 8) Inspection, repair, and/or replacement of minor operational hardware on irrigation facilities.
- 9) Clearing and removal of sediment, debris, and terrestrial and aquatic weeds or invasive plants from canals, laterals, and ditches when the clearing occurs in areas that have been demonstrated to be previously disturbed and any removed sediment, debris, or vegetation is disposed of in previously disturbed areas.
- 10) Repair, modification, or replacement of existing fence lines, posts, and/or fence gates when the existing fencing is less than fifty (50) years old and/or ground disturbance will not exceed the existing ground disturbance.
- 11) Burning of overgrown vegetation on or inside of man-made water conveyances (e.g., canals, laterals, ditches, conduits, siphons, drains, stilling basins, etc.).
- 12) Repair and/or in-kind replacement of culverts, where the size, appearance, and materials used are similar to the existing structure.