

**MEMORANDUM OF AGREEMENT  
AMONG THE  
BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE,  
THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION,  
AND  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
RESOLUTION OF ADVERSE EFFECTS FOR THE  
IMPROVEMENTS FOR THE CHINA DIVERSION DAM PROJECT**



**Bureau of Indian Affairs, Western Regional Office  
October 5, 2021**

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**WHEREAS**, the Regional Director of the Bureau of Indian Affairs, Western Regional Office (BIA/WRO), is responsible as the Agency Official for Western Region compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and codified in Subpart B of Code of Federal Regulations Title 36, Part 800 (36 CFR 800); and

**WHEREAS**, the undertaking before BIA/WRO is approval of reconstruction of the China Diversion Dam to include headgates, sluiceways, conduits, gates, outlet transitions, overlay of the existing spillway, and raising the spillway crest elevation (hereinafter referred to as the undertaking); and

**WHEREAS**, the Shoshone-Paiute Tribes of the Duck Valley Reservation (Tribe) is a federally recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, which exercises general governmental jurisdiction over all lands of the Duck Valley Reservation; for purposes of this consultation is an Indian tribe as described at 36 CFR 800.2(c)(2)(i)(B); and as contemplated in the referenced regulation a Signatory to this Memorandum of Agreement (Agreement); and

**WHEREAS**, the Area of Potential Effect (APE) is the footprint of the dam and impoundment area (Direct APE) plus a one-mile wide buffer zone (Appendix A); and

**WHEREAS**, the Nevada State Historic Preservation Officer (SHPO) is authorized to enter into this Agreement as a Signatory in order to fulfill its role of advising and assisting federal agencies in carrying out their historic preservation responsibilities and to cooperate with these agencies under the following federal statutes: Sections 101 and 106 of the NHPA, 54 U.S.C. 306108, 36 CFR 800.2(c)(1)(i) and 800.6(b), and BIA/WRO has consulted with the SHPO pursuant to 36 CFR 800.6 in the development of this Agreement; and

**WHEREAS**, BIA/WRO, in consultation with the Signatories, has determined that the undertaking will cause adverse effects to the China Diversion Dam (S1914), which was determined by the BIA/WRO, in consultation with the Signatories, to be eligible for listing in the National Register of Historic Places under Criterion A; and

**WHEREAS**, BIA/WRO has notified the Advisory Council on Historic Preservation (ACHP) of this determination of adverse effect pursuant to 36 CFR 800.6(a)(1) and the ACHP has notified BIA/WRO by letter dated 19 February 2021 that it has declined to participate in this Agreement; and

**WHEREAS**, BIA/WRO is preparing an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) for the undertaking and has used the public notification process embodied in NEPA to seek public input and notify the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800; and

**WHEREAS**, no provision of this Agreement shall be construed by any of the Signatories as abridging or debilitating any sovereign powers of the Tribe; affecting the trust relationship between the Secretary of the Interior and the Tribe; or interfering with the government-to-government relationship between the United States and the Tribe; and

**NOW, THEREFORE**, BIA/WRO, Tribe, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

### **STIPULATIONS.**

BIA/WRO shall ensure that the following stipulations are implemented.

#### **I. HISTORIC PROPERTIES TREATMENT PLAN.**

- A. BIA/WRO, in consultation with the Signatories, shall ensure that the Tribe retains an architectural historian meeting the Secretary of the Interior's Professional Qualifications Standards appropriate to the historic property, develops and implements the fieldwork portion of a Historic Properties Treatment Plan (HPTP) to avoid, minimize, or otherwise mitigate adverse effects to the dam before the Tribe initiates any improvements associated with the undertaking. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44737).
- B. The HPTP will include, but not be limited to:
  1. Documentation of the dam will be similar to Level II HAER documentation, consisting of an historic context; preparation of a map and drawings illustrating the dam; submission to the Library of Congress; and archival-quality large-format photographs;
  2. A proposed schedule for cultural resource tasks, and a schedule for the submission of draft and final reports to the Signatories;

3. A plan for the conclusion of mitigation in the event that the undertaking is suspended or terminated that stipulates the procedures to be followed;
4. Preparation of a draft Mitigation Report and review process, as well as proposed timelines;
5. Preparation of a final Mitigation Report and review process, as well as proposed timelines.

C. Review and Comment on the HPTP.

1. The Tribe, through its qualified consultant, shall submit a draft HPTP to BIA/WRO.
2. Upon receipt of the draft HPTP, BIA/WRO will review the document and provide comments within thirty (30) calendar days to the Tribe.
3. The Tribe, through its qualified consultant, shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.
4. BIA/WRO shall submit the draft HPTP document to the SHPO for review. The SHPO shall have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO. If the SHPO does not respond to the submission within the review period, BIA/WRO may finalize the HPTP.
5. BIA/WRO shall ensure that any timely written comments received from the Signatories are addressed during the preparation of the final draft HPTP.
6. If any comments are received that require a substantive change in the HPTP, BIA/WRO shall resubmit the final HPTP to all Signatories. The Signatories shall have thirty (30) calendar days from receipt to review the comments made by other Signatories, review the revisions, and provide comments to BIA/WRO. If a Signatory fails to respond, BIA/WRO may finalize the HPTP.
7. BIA/WRO will address any timely written comments from the SHPO on the final draft document during the preparation of the final HPTP.
8. BIA/WRO shall issue an authorization to proceed with the implementation of the HPTP to the Tribe once consultation on the HPTP is complete and prior to construction activities.
9. BIA/WRO shall ensure that copies of the final HPTP are provided to all Signatories.

**II. MITIGATION REPORT.**

- A. The Tribe, through its qualified consultant responsible for the work, will prepare and submit a draft Mitigation Report within nine (9) months after the completion of all fieldwork. At a minimum, this report shall contain, but not be limited to:
1. A discussion of the methods and treatments applied to each historic property or unevaluated resource, with an assessment of the degree to

- which these methods and treatments followed the requirements of the HPTP along with a justification of all deviations, if any, from the approved HPTP; and
2. Site plans for the dam depicting all features and treatment areas; and
  3. Discussion of further documentation and/or analyses to be conducted, including any proposed changes in the methods or levels of effort from those proposed in the HPTP.
  4. Draft photographs of the resource produced in accord with the terms of the HPTP.

**B. Review of the Draft Mitigation Report.**

1. Upon receipt of the draft Mitigation Report, BIA/WRO will review the document and provide comments to the Tribe.
2. The Tribe shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.
3. BIA/WRO will distribute the revised draft Mitigation Report to the SHPO for review. The SHPO will have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). If the SHPO fails to respond to the request for review, BIA/WRO will finalize the document.
4. BIA/WRO will address any comments received from the SHPO.
5. If BIA/WRO revises the draft Mitigation Report, BIA/WRO will distribute the revised document to all Signatories. All Signatories will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIA/WRO.
6. BIA/WRO shall ensure that any written comments received are addressed during the preparation of the final document.

**III. PROFESSIONAL QUALIFICATIONS STANDARDS.**

All cultural resources work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting the Secretary of the Interior's Professional Qualifications Standards for Architectural Historians (48 FR 44738-44739) and under the terms of the permits issued for the archaeological and/or architectural investigations.

**IV. CHANGES IN THE APE.**

BIA/WRO may amend the APE as needed, or as requested by any Signatory, without amending the Agreement proper. If this should occur, all Signatories will receive a formal notification of proposed amended APE. Within thirty (30) calendar days of their receipt of the proposed amendment, any Signatory may request that the Agreement

be amended in accord with the process outlined in Stipulation VI. Following BIA/WRO receipt of the request, the Signatories shall prepare an amendment document.

#### **V. REVIEW OF PUBLIC OBJECTIONS.**

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure, or its manner of implementation, be raised by a member of the public, BIA/WRO shall take the objection into account and consult as needed with the objecting party and the Signatories to this Agreement to resolve the objection.

#### **VI. AMENDMENT.**

If any Signatory to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms is necessary, that party shall immediately consult with the other Signatories to develop an amendment to this Agreement pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

#### **VII. DISPUTE RESOLUTION.**

Should any Signatory to this Agreement object to any action(s) or plan(s) pursuant to this Agreement, BIA/WRO shall consult with the objecting party within thirty (30) days to resolve the objection. The objection must be identified specifically and the reasons for objection documented in writing. If the objection cannot be resolved, BIA/WRO shall notify the Signatories to this Agreement of the objection and shall:

- A. Forward all documentation relevant to the dispute, including BIA/WRO's proposed resolution, to the ACHP in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide BIA/WRO with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision regarding the dispute, BIA/WRO shall prepare a written response that takes into account any timely advice or comment provided by the ACHP, and all comments from the Signatories to this Agreement, and provide them with a copy of this written response. BIA/WRO will then proceed according to its final decision.
- B. If the ACHP does not provide any comments regarding the dispute within thirty (30) days after receipt of adequate documentation, BIA/WRO may render a decision regarding the dispute and proceed accordingly. Prior to reaching its decision, BIA/WRO shall prepare a written response that will take into account all written comments regarding the dispute from the Signatories and provide them and the ACHP with a copy of such a written response.

- C. It is the responsibility of the BIA/WRO to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

#### **VIII. DURATION AND TERMINATION.**

This Agreement will expire if its stipulations are not carried out within ten (5) years from execution of the last Signatory signature on the Agreement or until BIA/WRO determines that all of its terms have been satisfactorily fulfilled whichever comes first. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatory to attempt to develop an amendment per Stipulation VI, above. If an amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories. Within thirty (30) days following termination, the BIA/WRO shall notify the Signatories if it will initiate consultation to execute an Agreement with the Signatories under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly.

#### **IX. EXECUTION OF THIS AGREEMENT.**

Execution and implementation of this Agreement evidences that the BIA/WRO has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment on the undertaking and its effects.

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 will distribute copies of all signed pages to the Signatories once the Agreement is executed in full.

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**SIGNATORY PARTIES:**

**APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE**

By: RODNEY MCVEY Digitally signed by RODNEY MCVEY  
Date: 2021.10.28 07:00:12 -07'00' Date \_\_\_\_\_  
Regional Director

**APPROVED: SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION**

By: *Bill* Date 10/22/21  
Chairman, Shoshoni-Paiute Tribes of the Duck Valley Reservation

**APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE**

By: *Rebecca Palmer* Date 01/04/2022  
State Historic Preservation Officer



## **Appendix A**

### **Affected Properties Maps**

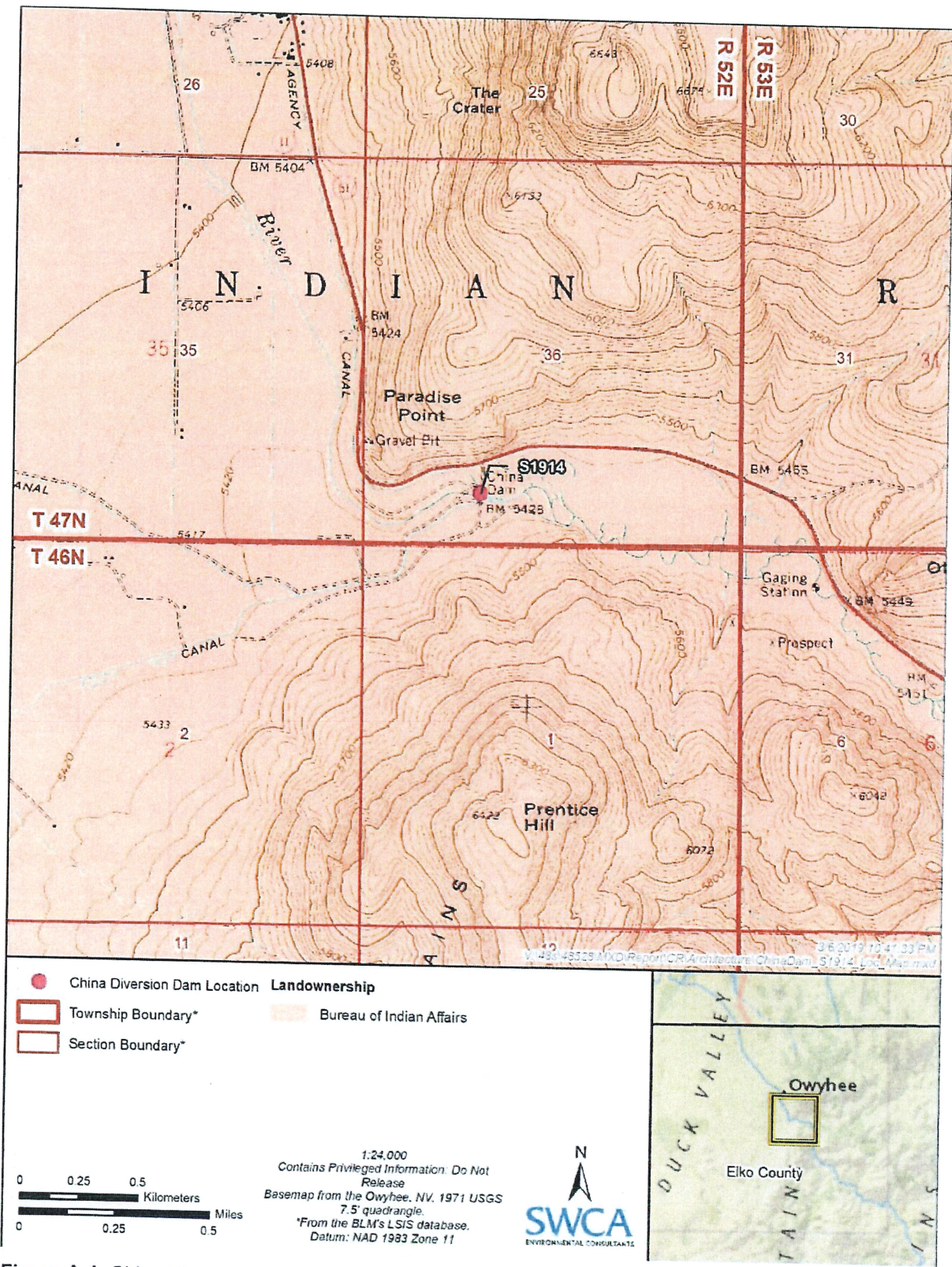


Figure A-1. China Diversion Dam location map.





Figure A-2. China Diversion Dam sketch map including 100-foot buffer.