

**PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF RECLAMATION, EASTERN COLORADO AREA OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
COLORADO SPRINGS UTILITIES, AND
THE COLORADO STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE SOUTHERN DELIVERY SYSTEM PROJECT**

WHEREAS, Colorado Springs Utilities, the City of Fountain, Security Water District, and Pueblo West Metropolitan District (Project Participants) intend to develop and construct a water delivery system from Pueblo, Colorado or Fremont County to Colorado Springs, Colorado, for the purpose of providing water to the Project Participants' service areas, called the Southern Delivery System (Project); and

WHEREAS, the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) which owns and operates the Fryingpan-Arkansas Project, proposes to issue long term storage, conveyance, and exchange contracts with the Project Participants to use Fryingpan-Arkansas Project facilities, and is acting as lead Federal Agency for purposes of complying with Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, the project represents a series of undertakings with similar, repetitive effects to historic properties, the effects usually can not be determined before final siting, and Reclamation has consulted with the Advisory Council on Historic Preservation (Council) and the Colorado State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 14; and

WHEREAS, Reclamation has identified and notified the Apache Tribe of Oklahoma, the Cheyenne and Arapaho Tribes of Oklahoma, the Comanche Nation of Oklahoma, the Fort Sill Apache Tribe, the Jicarilla Apache Nation, the Kiowa Tribe of Oklahoma, the Mescalero Apache Tribe, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Northern Ute Tribe, the Pawnee Nation of Oklahoma, the Shoshone Tribe (Eastern Band), the Shoshone-Bannock Tribe, the Southern Ute Indian Tribe, the Ute Indian Tribe, and the Ute Mountain Ute Tribe as Native American tribes that may attach religious and cultural significance to historic properties in the Area of Potential Effect (APE); and

WHEREAS, The Cheyenne and Arapaho Tribes of Oklahoma, the Comanche Nation, the Jicarilla Apache Nation, the Kiowa Tribe of Oklahoma, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, Northern Arapaho Tribe, the Northern Ute Tribe, the Pawnee Nation of Oklahoma, the Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe have requested to be Consulting Parties for this undertaking, according to 36 CFR 800.2(c)(2) and 800.3(f)(2); and these tribes have indicated their interest in this PA and have been invited to sign as Concurring Parties, pursuant to 36CFR 800.6(c)(3)(consulting parties invited to concur in the agreement); and

WHEREAS, Colorado Springs Utilities will be responsible for constructing the Project, will manage the project for the Project Participants, is considered a consulting party under 36 CFR 800.2(c) (4)(applicants for Federal approval are entitled to participate as consulting parties), and has been invited to be a Signatory to this Programmatic Agreement (PA) 36CFR 800.6(c)(2)(iii)(any party that assumes a responsibility in this agreement); and

WHEREAS, Reclamation has limited authority and control once the long term contracts are in place and will not be active with design changes, discoveries of historic properties, and discoveries of Native American Remains on State Lands once the primary treatment (mitigation) report has been accepted (See timeline, Appendix C), and, through this PA, intends that Colorado Springs Utilities will undertake the primary management of historic resources thereafter during construction;

NOW, THEREFORE, Reclamation, the Council, the SHPO, Colorado Springs Utilities (Signatories), and the Concurring Parties agree that the following stipulations shall be implemented in order to take into account the effects of the undertaking on historic properties, and to satisfy all responsibilities under Section 106 of the NHPA.

STIPULATIONS

In coordination with the Signatories and Concurring Parties, Reclamation shall ensure that the following measures are implemented:

I. Identification and Evaluation of Historic Properties

A. Reclamation shall refine the APE, in consultation with the Signatories and Consulting Parties, as the project develops. Modifications to the APE may be made from time to time after consultation with the SHPO.

B. Reclamation, with the cooperation of the Project Participants, will complete pre-field research of previously recorded sites within one mile of the reservoir boundaries, and for the pipelines, a 250 foot corridor for purposes of evaluating the expected resources for the Environmental Impact Assessment, and as a factor in selecting the most appropriate alternative(s). Reclamation will also conduct a cultural resource field inventory within the project boundary to identify and evaluate all historic properties that have the potential to be affected by the project. Certain historic features will be recorded as detailed in Appendix A. Minor geotechnical and other testing may be conducted in areas surveyed but with no historic resources present.

C. If the NRHP eligibility of potentially affected cultural properties cannot be evaluated during field inventory, Reclamation, with the cooperation of the Project Participants, will accomplish the necessary testing to determine eligibility. Site boundaries shall be determined based on artifactual and historical evidence.

D. Reclamation, with the cooperation and approval of the Project Participants, will prepare a cultural resources inventory report based on the results of this field work and submit the report to the Signatories and Concurring Parties for review and comment regarding the identification of historic properties, their National Register of Historic Places (NRHP) eligibility, and project effects. The reviewers shall either provide written comments to Reclamation within 30 calendar days after receiving the report or will be considered to have “no comment.” Reclamation acknowledges that Native American Consulting Parties possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them. Reclamation will consult with Native American tribes to determine whether there are any tribal religious or cultural properties of significance within the APE.

E. Reclamation, with the cooperation and approval of Colorado Springs Utilities, will prepare a final inventory report incorporating the comments and provide a copy for all Signatories and Concurring Parties.

F. Reclamation, with the cooperation and approval of Colorado Springs Utilities, shall propose determinations of NRHP eligibility for concurrence by the SHPO pursuant to 36CFR 800.4(c). Reclamation shall also provide this finding to the Concurring Parties of this PA.

II. Treatment Plan to Resolve Adverse Effects

A. Reclamation, with the cooperation and approval of Colorado Springs Utilities, will prepare a treatment plan before construction begins on the project that is designed to resolve adverse effects on eligible historic properties within the APE. The treatment plan shall address all characteristics making the properties eligible for inclusion in the NRHP. The treatment plan shall be consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR 68), the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42), and shall take into account the Council's publication *Treatment of Archaeological Properties: A Handbook* (Advisory Council on Historic Preservation 1980). The treatment plan shall contain at least the items specified in Appendix B.

B. Reclamation, with the cooperation and approval of Colorado Springs Utilities, will provide the draft treatment plan to all Signatories and Concurring Parties for review and comment. The Signatories and Concurring Parties shall provide comments to Reclamation within 30 calendar days after receiving the plan. Any comments shall be in writing, with copies provided by Reclamation to other Signatories and Concurring Parties. Any Signatory or Concurring party not commenting within the review period shall be considered to have “no comment” on the plan. Review of the treatment plan may be conducted concurrently with review of the inventory report described in stipulation I, above.

C. Reclamation, with the cooperation and approval of Colorado Springs Utilities, will compile all comments received from the reviewing parties and revise the draft plan

D. Reclamation shall provide the final treatment plan to the SHPO and request the SHPO's concurrence that the plan adequately resolves adverse effects. The SHPO shall respond to Reclamation's request for concurrence within 15 calendar days.

E. Once Reclamation, Colorado Springs Utilities, and the SHPO concur that the final treatment plan is acceptable in consideration of all the comments received, Reclamation shall notify Colorado Springs Utilities to begin implementing the treatment plan. Reclamation, with the cooperation of the Project Participants, will provide a copy of the final treatment plan to all Signatories and Concurring Parties.

III. Treatment Report

A. Colorado Springs Utilities shall prepare a draft treatment report covering all resources in areas expected to be impacted by the Project, after cultural resource field work in the primary treatment plan has been completed. The treatment report shall document the analyses and results of investigations covered by the treatment plan. Colorado Springs Utilities will provide the draft treatment report to Reclamation, and Reclamation will provide copies to all Signatories and Concurring Parties for review and comment. The Signatories and Concurring Parties shall provide written comments to Reclamation within 45 calendar days after all needed information has been received. Any Signatories or Concurring party failing to comment within the review period shall be considered to have "no comment" on the report.

B. Colorado Springs Utilities shall compile all comments received and revise the draft report in accordance with direction provided by Reclamation. Upon concurrence of the final treatment report by the SHPO and acceptance by Reclamation, Reclamation will provide a copy to the Signatories and Concurring Parties.

IV. Modifications to Project Design

A. Modifications of project design that would cause an effect to newly included areas of the APE or other significant sites shall be dealt with in accordance with Stipulations I, II, and III, producing secondary treatment plans and reports. The Signatories and Concurring Parties will receive a copy of all final reports of historic property investigations conducted under this Stipulation.

V. Unanticipated Discovery of Historic Properties

A. If previously unrecorded cultural properties are discovered during construction, the following actions will be assured by Colorado Springs Utilities:

1. Construction shall immediately cease in the area of the discovery and measures will be taken to protect the cultural properties.
2. The discovery shall be reported within two (2) working days to the SHPO and to Reclamation.

3. Reclamation, with the assistance of the Project Participants, shall submit a proposed eligibility determination and site-specific treatment consistent with the primary treatment plan and in accordance with Stipulation II.A above.

B. Reclamation (or after the primary Treatment Report is accepted, Colorado Springs Utilities, hereafter termed Reclamation/Colorado Springs Utilities) shall conclude consultation with the SHPO within five (5) working days of delivery of the treatment proposal regarding the discovery and proposed treatment. On SHPO's agreement that the proposed site-specific treatment of the discovered cultural resource is acceptable, Colorado Springs Utilities shall begin implementing the treatment. Construction may proceed after application of the agreed treatment.

C. If the discovered historic property is near an area identified by a Native American tribe as a Traditional Cultural Property (TCP), as described in *National Register Bulletin 38*, Reclamation/Colorado Springs Utilities will consult with the Concurring tribes regarding the proposed treatment before consulting with the SHPO pursuant to Stipulation V.B above. The tribe(s) shall provide comments to Reclamation/Colorado Springs Utilities within 15 calendar days. Any tribe failing to comment within the review period shall be considered to have concurred with the proposed treatment.

VI. Unanticipated Discovery of Human Remains

A. In the event that human remains or funerary objects are discovered on Federal land Colorado Springs Utilities or its contractors will immediately cease construction in the area of the discovery and take steps to protect the discovery. Colorado Springs Utilities shall notify the Federal Agency by telephone within 24 hours of discovery, followed by written confirmation. If it is determined by an archaeologist or physical anthropologist that the human remains or funerary objects are of Native American origin, the Federal Agency shall notify and consult with appropriate Native American tribes to determine treatment and disposition measures in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA). Non-Native American remains will be handled according to the procedures of the Federal Agency. After any necessary consultations, the Federal Agency will authorize a resolution to the situation, which shall address resumption of construction. This clause shall be in effect for the duration of project construction. Details on who to contact for each agency will be included in the treatment plan.

B. In the event that Native American burials/human remains are discovered on state, county, municipal or private lands in Colorado during the Project, the provisions in CRS 24-80-1301 to 1305 (Unmarked Human Graves), and subsequent regulations by the Colorado State Archaeologist (8CCR 1504-7) shall be followed. These regulations identify methods and procedures for the recovery, analysis, and disposition of human remains and associated funerary objects that reflect concerns and/or conditions identified as a result of consultations among the SHPO and those groups claiming cultural affiliation with the remains or objects.

VII. Curation

All materials and records resulting from the testing and treatment program that are from Project Participants, Reclamation, state, county, or municipal lands will be curated at the Colorado Springs Pioneer Museum, or other repository jointly agreed upon by the owner and the SHPO, except as specified after consultations under Stipulation VI, above. Actions on other Federal lands will be coordinated with the Agency in advance. Private landowners will be requested to donate materials to the Colorado Springs Pioneer Museum or other repository jointly agreed upon by the owner and the SHPO. In no case will artifacts be removed from the ground prior to having a signed curation agreement with a museum or curation facility approved by the SHPO, except for a private landowner who wishes to retain possession of materials from his or her land, but is willing for the materials to be studied and recorded. All materials to be returned to private land owners will be maintained in accordance with 36 CFR 79 until their analysis, including photographic documentation of all materials, is complete.

VIII. Other Terms and Conditions

A. Any Signatory may request that this PA be modified, amended or terminated by notifying all the other Signatories and Concurring Parties in writing. The request must specify the reason for the modification, amendment or termination. Within 30 calendar days after receiving the notice, Reclamation shall consult with the other Signatories regarding the request and, if necessary, draft an amendment to the PA and distribute it to the Signatories and Concurring Parties. The Signatories and Concurring Parties shall have 30 calendar days to sign the amendment after receiving it. If no response is received within the thirty day period the amendment shall be deemed to be accepted by that party. If agreement cannot be reached, any of the Signatories may request the participation of the Council to assist in resolving the dispute.

B. 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, Reclamation shall consult with such party to resolve the objection. If Reclamation determines that such objection cannot be resolved, Reclamation will:

1. Forward all documentation relevant to the dispute, including Reclamation's proposed resolution, to the Advisory Council on Historic Preservation (ACHP). The ACHP shall provide Reclamation 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, Reclamation shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. Reclamation will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, Reclamation may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Reclamation shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and

concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

3. It is Reclamation's responsibility to ensure the Colorado Springs Utilities carries out all actions required by the terms of this MOA that are not the subject of the dispute and remain unchanged.

C. Reclamation's active role in the cultural resources investigations of the project will end on acceptance by the SHPO of the primary treatment report. Colorado Springs Utilities will assume active management, keeping Reclamation informed of consultations, finds, and reports prepared under this agreement. For design changes occurring after the primary treatment report is completed and accepted by the SHPO, Reclamation's role will be assumed by Colorado Springs Utilities and Reclamation will no longer **actively** participate in the activities covered by this PA. Reclamation will help mediate disputes between the Signatories or Consulting Parties, help resolve discoveries on Federal lands, and participate in the annual meetings that are described below in Stipulation VIII, F.

D. Reclamation shall ensure that all historic preservation work conducted pursuant to this PA is carried out by or under the direct supervision of a person or persons meeting at a minimum the standards set forth in the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9).

E. Reclamation shall ensure all cultural resource investigations on state, county and municipal lands that are carried out pursuant to the PA are properly permitted by the SHPO pursuant to C.R.S. 24-80-401 and C.R.S. 24-80-1301.

F. An annual meeting shall be held to discuss progress toward meeting the terms of this agreement. All Signatories and Concurring Parties shall be informed of the meeting and invited to attend.

G. Termination. If Colorado Springs Utilities determines that it cannot implement the terms of this agreement, or if a signatory determines that the agreement is not being properly implemented, such party may propose to the other signatories to this agreement that it be terminated, in accordance with 36 C.F.R. §800.6(c)(1) and (8).

1. The party proposing to terminate this agreement shall so notify all parties to this agreement, including the Signatories and concurring parties, explaining the reasons for termination and affording the parties at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

2. If after the expiration of thirty (30) days (or such greater time period as may be agreed upon by all signatories) an agreement to avoid termination cannot be reached, the signatory may terminate this agreement by so notifying all parties in writing.

3. Should this agreement be terminated, Reclamation shall either:

(a) Consult in accordance with 36 C.F.R. §800.6 to develop a new MOA; or

(b) Request the comments of the ACHP pursuant to 36 C.F.R. §800.7.

H. If any provision of this Agreement shall be found to be illegal, the remaining provisions of this Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken for as long as it remains illegal

I. This Agreement with attachments constitutes the entire agreement among the parties and supersedes all previous written or oral communications, understandings, and agreements among the parties unless specifically stated herein. This Agreement may only be amended by a written agreement signed by Reclamation, Colorado Springs Utilities, and the SHPO. Email and all other electronic (including voice) communications shall not constitute “written agreements” for purposes of this paragraph.

Execution of this PA, its subsequent filing with the Council, and implementation of its terms, evidences that Reclamation has afforded the Council an opportunity to comment on the Project and its effects on historic properties and has, therefore, taken the effects of the undertaking into account, and has satisfied its Section 106 responsibilities for all individual actions of this undertaking.

SIGNATORIES

BUREAU OF RECLAMATION, EASTERN COLORADO AREA OFFICE

By: _____ Date: _____

Title: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

Title: _____

COLORADO STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

COLORADO SPRINGS UTILITIES

By: _____ Date: _____

Title: _____

CONCURRING PARTIES

CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA

By: _____ Date: _____

Title: _____

COMANCHE NATION

By: _____ Date: _____

Title: _____

JICARILLA APACHE NATION

By: _____ Date: _____

Title: _____

KIOWA TRIBE OF OKLAHOMA

By: _____ Date: _____

Title: _____

NORTHERN ARAPAHO TRIBE

By: _____ Date: _____

Title: _____

NORTHERN CHEYENNE TRIBE

By: _____ Date: _____

Title: _____

NORTHERN UTE TRIBE

By: _____ Date: _____

Title: _____

PAWNEE NATION OF OKLAHOMA

By: _____ Date: _____

Title: _____

SOUTHERN UTE TRIBE

By: _____ Date: _____

Title: _____

UTE MOUNTAIN UTE TRIBE

By: _____ Date: _____

Title: _____

Appendix A
Evaluation of Historic Features

The following project specific guidelines with regard to the documentation of certain historic features present within the SDS study area were defined and agreed upon by Reclamation and the Colorado SHPO at a meeting on June 23, 2004:

- A. Proposed Jimmy Camp Creek Reservoir
 - a. Historic sites recorded within the Banning-Lewis Ranch can be recorded as separate sites; they do not need to be recorded as part of a larger Banning-Lewis Ranch site. It should be indicated on the site form that WCRM believes the site is likely part of the Ranch (see item I.C. below).
 - b. The historic Jimmy Camp Trail should be recorded as a separate site.
 - c. Historic features such as fence segments and road segments (other than the trail) should not be recorded as sites, but should be discussed in the report narrative with a map that shows their general location.

- B. Proposed Williams Creek Reservoir
 - a. The erosion control berms are likely 50 years old, however, they do not need to be recorded as sites. These should be discussed in the report narrative with a map that shows their general location.
 - b. Historic features such as fence segments, road segments, irrigation ditches and stock ponds should not be recorded as sites. They should be discussed in the report narrative with a map that shows their general location.

- C. Pipeline Link between the Proposed Reservoirs
 - a. The northern portion of the area was part of the Banning-Lewis Ranch. Therefore, resources should be documented as outlined above for Jimmy Camp Creek.
 - b. The resources located in the central and southern portions of the link should be documented as outlined above for Williams Creek.

- D. Study Area south of the Proposed Williams Creek Reservoir
 - a. The erosion control berms are likely 50 years old, however, they do not need to be recorded as sites. These must be discussed in the report narrative with a map that shows their general location.
 - b. Historic features such as fence segments, road segments, irrigation ditches and stock ponds should not be recorded as sites, but should be discussed in the report narrative with a map that shows their general location.

Appendix B
Contents of Treatment Plan

- A. The property, properties, or portions of properties where treatment will be carried out;
- B. Any property, properties, or portions of properties that will be destroyed or altered without treatment;
- C. The results of previous research relevant to the project;
- D. The research problems or questions to be addressed through treatment, with an explanation of their relevance and importance;
- E. The field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to the properties and research needs;
- F. The methods to be used in artifact, data and other records management, including curation of recovered materials and records in accordance with 36 CFR 79;
- G. Explicit provisions for disseminating the research findings to professional peers and the public in a timely manner;
- H. Procedures for monitoring, evaluating and treating discoveries of unexpected or newly identified historic properties during construction of the project, including necessary consultation with other parties; and,
- I. A Collection Plan that will indicate how and when artifacts are to be collected. Historic artifacts, (nails, for example) rapidly become redundant when machine made parts are found. The Collection Plan should specify the number of each size and style to be collected as representative of the finds for historical data, and the type of prehistoric artifacts to be collected. For example, fire-cracked rock can be sampled rather than completely collected.

Appendix C
Approximate Timeline

Time Schedule for Construction

- Colorado Springs Utilities has determined that Phase 1 facilities must be operational in 2012; therefore, construction has been scheduled in the period from 2008 through 2011.

Phase 1 construction includes Raw Water Intake (not including the Arkansas/Otero facilities and groundwater), Raw Water Pipelines and Pump Stations, conventional Water Treatment Plant, Finished Water Conveyance, exchange facilities for Alternative 5 only, and Return Flow Pipelines and Pump Stations for Alternatives 3 and 4. For Alternatives 1 and 7, Phase 1 also includes construction of terminal storage at Jimmy Camp Creek Reservoir (JCCR), and an extension of the FVA pipeline to the SDS pipeline.

- For Alternatives 2 through 6, Terminal Storage is constructed in 2015 through 2017 and is operational in the year 2018. Terminal Storage is considered Phase 2 but is constructed earlier than the balance of Phase 2 work.

- Springs Utilities has determined that Phase 2 facilities must be fully operational in 2025, with the exception of the Arkansas/Otero and groundwater facilities, which are required to be operational by 2027 and 2029, respectively.

Phase 2 construction includes construction of the Arkansas/Otero facilities for Alternatives 1 and 7, groundwater for Alternative 1, Water Treatment and Finished Water Conveyance expansions, Exchange Storage and Exchange Conveyance for Alternatives 1, 2, 6 and 7. For the Phase 2 facilities operational by 2025, construction has been scheduled for the period of 2020 through 2024. For the Arkansas/Otero and groundwater facilities, construction is assumed to occur over a 2 year period, 2025-2026 and 2027-2028 respectively.

The alternatives are:

- Alternative 1 No Action
- Alternative 2 Proposed Action
- Alternative 3 Wetland Alternative
- Alternative 4 Arkansas River Alternative
- Alternative 5 Fountain Creek Alternative
- Alternative 6 Downstream Intake Alternative
- Alternative 7 Highway 115 Alternative