

# RECORD of DECISION

## Westside Irrigation District

**BLM**

Worldland Field Office, Wind River/Bighorn Basin District, Wyoming

April 2011



U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANGEMENT  
**RECORD OF DECISION**  
WESTSIDE LAND CONVEYANCE PROJECT  
WYW150992  
BIG HORN AND WASHAKIE COUNTIES, WYOMING

This document records the decision made by the Wyoming Bureau of Land Management (BLM) Wind River/Bighorn Basin District Manager, to convey a portion of public land in Big Horn County and Washakie County, Wyoming to the Westside Irrigation District (WID) in compliance with Public Law 106-485 (Nov. 9, 2000; 114 Stat. 2199). On November 9, 2000, Public Law 106-485 was signed directing the Secretary of the Interior (Secretary), acting through the BLM to convey all right, title, and interest (excluding mineral interest) in approximately 16,500 acres of public land in Big Horn and Washakie Counties, Wyoming, to the WID. On agreement of the Secretary and the WID, acreage may be added to or subtracted from the land to be conveyed as necessary to satisfy any mitigation requirements under the National Environmental Policy Act of 1969 (NEPA). The land to be conveyed is described in the Final Environmental Impact Statements (EIS) for the Westside Land Conveyance Project.

**Purpose and Need for the Proposed Action**

Because the proposed action is specified in Public Law 106-485, the federal purpose and need is brief and very specific. The Applicant's purpose and need statement is broader and reflects the WID's specific land acquisition, development and water supply management needs.

**Decision**

As the Wyoming BLM Wind River/Bighorn Basin District Manager, my decision is to convey the land described below to the WID in accordance with Public Law 106-485.

Under this decision, Alternative 3, Reduced Irrigable Acres, as defined in the Final EIS has been selected. Public Law 106-485 specifies that acreages may be added to or subtracted from the 16,500 acre project area to satisfy mitigation. Based on further analysis and comments received on the Draft EIS, Alternative 3 was evaluated in the Final EIS, in accordance with 40 CFR 1503.4, which states a possible response to comments is to "develop and evaluate alternatives not previously given serious consideration by the agency". Alternative 3 conveys approximately 9,740 acres that are suitable for irrigation and needed for infrastructure; but excluded specific parcels because of special considerations. The excluded parcels address several concerns relating to cultural resources, wildlife migration routes, Wyoming Department of Transportation operations, and a closed landfill. Alternative 3 is the environmentally preferred alternative.

Public Law 106-485 places no restriction on the eventual uses or disposal of the land, and the BLM would exercise no regulatory control after the transfer. The WID has stated it will offer the land for sale for agricultural purposes. The law specifies that proceeds from the conveyance shall be deposited in a special account in the Treasury of the United States and shall be available to the Secretary of the Interior, without a further act of appropriation, for the acquisition of land, and interests in land, in the Worland District in Wyoming, (now the Worland and Cody Field Offices) such that the acquired lands will benefit public recreation, public access, fish and wildlife habitat, or cultural resources. BLM will work closely with Wyoming Game and Fish Department to identify habitat areas to acquire.

### **Connected Actions**

The decision to convey 9,740 acres identified in the Final EIS may trigger additional decisions and management actions. For example, the BLM assumed that these lands would be used for irrigated agriculture, the most likely form of development. Furthermore, it was assumed that the water for irrigation would come from the Bighorn River, based on application filings by the WID in 1974 and 1976 with the Wyoming State Engineer's Office. Depending upon the final project design for irrigation, use of water from the Bighorn River may require additional permits, such as a Section 404 permit under the Clean Water Act (CWA), which could trigger additional analysis by the Army Corps of Engineers for compliance with the National Environmental Policy Act (NEPA). The BLM would be required to take certain actions connected to the land conveyance. By regulation, grazing permittees losing privileges must be provided notice, and be compensated for any improvements on the allotments. Similarly, the conveyance of land must include a provision to protect existing third-party right-of-way holders.

### **Land-use Plan Conformance**

This decision is in conformance with the applicable land-use plan, the 1998 Grass Creek Resource Management Plan which is under revision and consolidation into the Bighorn Basin Resource Management Plan (expected completion in 2012.) With respect to landownership adjustments, the plan provides that "Before any public lands are exchanged or sold ... the BLM will consult with county commissioners and other representatives of local government in the affected areas. Other affected and interested citizens will be given opportunities to comment as well." Appendix 4 of the GCRMP provides guidance regarding conveyance of public lands. It states that "No landownership adjustments would be implemented without a feasibility study, site-specific environmental analyses, and a determination that the sale, exchange, or transfer is in the public interest." It also describes certain categories of land that will not be conveyed, including lands within Wilderness Study Areas, withdrawn lands, and lands with important resource values, such as habitat for threatened or endangered species. The decision also falls within alternatives analyzed in the Draft Bighorn Basin RMP revision.

## **Alternatives**

Four alternatives were analyzed in detail in the FEIS.

### **No Action Alternative**

The no action alternative was analyzed for a baseline comparison with other alternatives; although, it is not an option under Public Law 106-485.

### **Alternative 1- Proposed Action Alternative**

This alternative is the legislated proposed action conveying approximately 16,500 acres.

### **Alternative 2- Irrigable Land Alternative**

Alternative 2 would convey only lands suitable for irrigation and needed for infrastructure, which is approximately 11,500 acres.

### **Alternative 3 – Reduced Irrigable Land Alternative- BLM Preferred Alternative**

Alternative 3 would convey only lands suitable for irrigation and needed for infrastructure, but exclude specific areas considered culturally sensitive; part of an important wildlife migration corridor; utilized for WYDOT operations; or contain a known closed landfill.

An alternative that considered a different overall location for the WID was not addressed because Public Law 106-485 specifies the location and land available for conveyance. Selecting a new area was considered non-compliant with the law. Various alternatives for the connected action of developing the WID were considered, but eventually eliminated because of infeasibility or environmental issues. In accordance with Council on Environmental Quality regulations (40 CFR 1505.2(b)) Alternative 3 is identified as the environmentally preferable alternative. The environmentally preferable alternative is the alternative that causes the least damage to the biological and physical environment, and best protects, preserves, and enhances historic, cultural, and natural resources.

### **Rationale for Decision**

The conveyance of public land to the WID is required by Public Law 106-485 and reduces the amount of, use, and access to public lands. However, the Secretary of the Interior will purchase additional land with funds generated from the sale to consider the public interest. Alternative 3 complies with this law as well as minimizes the impacts on environmental resources. The rationale for this conclusion is summarized below.

WID stated that the anticipated use of the conveyed land would be agricultural, therefore Alternative 3 would convey only those lands that are suitable for agricultural development and associated infrastructure. Additionally, Alternative 3 reduces cultural and wildlife impacts by

omitting areas that are known to contain eligible cultural sites, would reduce impacts to wildlife by providing a wider wildlife migration corridor to the Bighorn River than the proposed action, and reduce impacts to winter habitat for big game. The exclusion of these areas would cause substantially less impact than the Proposed Action Alternative (Alternative 1) or Alternative 2, while still meeting project purpose and need. Upon review of the Final EIS, I could identify no severe or unmitigatable impacts or conflicts.

No conflicts with any other law or regulations were identified.

### **Additions to the Final EIS**

The Final EIS stipulates that the procedures to be followed in the conveyance of land would be specified in a Purchase Agreement negotiated between WID and the BLM. This agreement would be valid for a term of five years. The Purchase Agreement for Alternative 3 has been finalized and is provided in Appendix 1 of this ROD.

Similarly, the Final EIS required that the selected alternative will address effects on historic properties through adherence to the Programmatic Agreement Among The USDI Bureau of Land Management, The Wyoming State Historic Preservation Officer, The Westside Irrigation District, The Northern Arapaho Tribe And The Shoshone Bannock Tribe Regarding The Westside Irrigation District Land Transfer (Programmatic Agreement). This agreement is provided in Appendix 2 of this ROD and the associated stipulations are presented in the following section of this ROD.

### **Mitigation and Monitoring**

In this decision, the BLM Preferred Alternative (Alternative 3) is modified by the mitigation measures relating to the transfer of land from public to private ownership found in Chapter 5 of the Final EIS on pages 5-1 through 5-3. Potential voluntary conservation measures that address the connected action associated with the conversion of native land to agriculture use are found in the FEIS on pages 5-3 through 5-6.

In addition to the mitigation specifically discussed in Chapter 5 of the Final EIS, there are stipulations noted in the Programmatic Agreement (Appendix 2), which are summarized below.

The Programmatic Agreement stipulates that the BLM shall ensure that a phased identification and evaluation of cultural resource sites will be conducted based on the priority for the transfer of lands. This requires a test of the Archaeological Landscape Sensitivity model be completed by a qualified geo-archaeologist in accordance to the description within the programmatic agreement. The programmatic agreement provides details regarding: recommendations for subsurface inventory; the evaluation of identified sites for inclusion on the National Register of Historic Places; requirements of the consultants performing the analysis; as well as the content

for and reviews of associated reports. Additionally, the programmatic agreement requires the development of a treatment plan(s) and associated review process for historic properties to mitigate the project's adverse effects on historic properties. A Final Cultural Resource Report for the project will be completed for review by the BLM within 18 months of the completion of the field work. Details regarding the curation of all records and other items and the handling of any human remains discovered during the course of this project will be treated in accordance with the stipulations presented in the programmatic agreement.

## **Public Involvement**

The scoping process for the Westside Irrigation District Land Conveyance Project was conducted from July 19, 2004 to August 19, 2004 through the publication of a brief description of the project in local news outlets, the solicitation of written comments, and open houses held in Worland and Basin on August 3 and 4, 2004, respectively. Based on comments received during this period, the determination was made to prepare an EIS for the project. A Notice of Intent to prepare an EIS was published in the Federal Register on February 22, 2005, which reopened the scoping period extending the comment period to March 25, 2005, although no additional scoping meetings were conducted. Comments and information submitted during the original 2004 scoping process were considered during the development of the EIS.

The Draft EIS was published and released to the public on January 11, 2008. The Notice of Availability appeared in the Federal Register on January 11, 2008 and comments were solicited for the required 45-day comment period. After the publication of the DEIS and based on comments received, the BLM proposed Alternative 3 which was evaluated in the Final EIS. The Final EIS was circulated again to inform interested parties of changes to the document in accordance with 40 CFR 1502.19.

A notice announcing the availability of the Final EIS was published in the Federal Register on February 11, 2011, and parties on the distribution list developed during the NEPA analysis were sent copies of the Final EIS. A 30 day public review period was provided upon publishing the Notice of Availability in the Federal Register.

Comments received on the Draft EIS and how they were considered in preparing the Final EIS were included in Appendix J of the Final EIS.

## **Appeal of Decision**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed form 1842-1 (Appendix 4). If an appeal is filed, a notice of appeal must be filed in the Wyoming State BLM

Office, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003-1828 within thirty (30) days of the date that notice of this decision is published in the Casper Star-Tribune. The appellant has the burden of showing that the decision appealed is in error.

Persons interested in filing a petition for stay pursuant to regulation 43 CFR 4.21(a)(2) -- requesting suspension of the effectiveness of this decision during the time that an appeal is being reviewed by the board -- must file petition with the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43CFR 4.413) at the same time the original documents are filed with this office. If the appellant requests a stay, the appellant has the burden of proof to demonstrate that a stay should be granted.

#### Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification base on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- 4) Whether the public interest favors granting a stay.

THE UNITED STATES OF AMERICA

Department of the Interior

Bureau of Land Management

By \_\_\_\_\_/s/\_\_\_\_\_  
District Manager, Wind River/Bighorn Basin

Date \_\_\_\_11APRIL2011\_\_\_\_

Appendix 1 Purchase Agreement

Appendix 2 Programmatic Agreement among the USDI Bureau of Land Management, the Wyoming State Historic Preservation Officer, the Westside Irrigation District, the Northern Arapaho Tribe and the Shoshone Bannock Tribe Regarding the Westside Irrigation District Land Transfer

**APPENDIX 1**

**PURCHASE AGREEMENT**

## Westside Land Conveyance Project

### PURCHASE AGREEMENT

This Purchase Agreement is made this 11 day of April, 2011, pursuant to Public Law 106-485 and consistent with 43 CFR 2710, between the Secretary of the Interior, acting through the authorized officer of the Bureau of Land Management (BLM) and Westside Irrigation District (WID), Wyoming.

In consideration and completion of the mutual agreements contained herein, the BLM shall convey to the WID, all right, title, and interest (excluding the mineral interest) of the United States in such portions of Federal land in Big Horn County and Washakie County, Wyoming, described in Exhibit A.

This Agreement is legally binding on both the BLM and WID subject to the terms and conditions herein identified and provided.

The BLM is responsible for completing the following:

1. Comply with the terms and conditions of the cultural resources Programmatic Agreement for cultural resources, among the BLM, Wyoming State Historic Preservation Officer, and Westside Irrigation District, dated March 15, 2010
2. Prepare a Mineral Potential Report and Conduct a Phase 1 Environmental Site Assessment to determine the presence of hazardous materials on the lands identified in Exhibit A.
3. The Environmental Impact Statement (EIS) process will complete the National Environmental Policy Act requirements for the disposal.
4. Segregate from mineral location the lands to be conveyed, by publication of a notice in the Federal Register (see 43CFR2711.1-3(d). The segregative effect will terminate upon issuance of a patent or publication in the Federal Register of a termination of the segregation, or 2 years after the date of publication in the Federal Register unless extended by the BLM Wyoming Wind River/Bighorn Basin District Manager prior to the termination date.
5. Once the Record of Decision has been signed and the administrative appeal period has concluded, BLM will initiate an appraisal of the lands identified in Exhibit A to determine Fair

Market Value using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisition, published by the Department of Justice, and the Uniform Standards of Professional Appraisal Practice. A qualified Department of the Interior Appraisal Services Directorate, review appraiser, will review the appraisals to ensure that they are logical, consistent, and meet Federal standards. BLM appraisals are valid for a one year period.

6. Notify the U.S. Representative and the U.S. Senators for Wyoming, the Governor of Wyoming, and the County Commissioners for Big Horn and Washakie Counties, of the pending sale.
7. Upon receipt of an approved appraisal, offer the sale of the lands identified in Exhibit A through the Direct Sale process (see 43 CFR 2711.3-3). Purchase of the lands can occur all at once or in a two phased sale which divides the lands into Parcel 1 and Parcel 2. Payment shall be accepted in the form of certified check, postal money order, bank draft, or cashier's check, made payable to the Bureau of Land Management for the amount required in the Notice of Realty Action. The sale of lands must occur within one year of the date of the appraisal, or a new appraisal would be required.
8. Provide notice of acceptance or rejection of the offer to purchase within 30 days after receipt of the offer.
9. Upon receipt of all funds, and all other requirements being satisfied, BLM will convey patent to WID for the lands identified in Exhibit A. The patent shall contain a reservation to the United States for all minerals with the right to explore, prospect, mine, and remove under applicable law and regulations. The patent will also be issued subject to valid existing rights, including but not limited to Rights-of-Ways identified in Exhibit B. After the land is patented, the existing oil and gas leases and associated wells and pipelines shall be subject to regulations applicable to all split estate lands. The patent may contain other terms, covenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest as authorized by section 208 of the Federal Land Policy and Management Act of 1976, and in accordance with 43 CFR, Rights Of Way Regulations.
10. BLM will monitor the funds received in a cost reimbursable account to ensure that all costs are paid by WID prior to conveyance of a patent. No lands will be conveyed until compensation for the loss of authorized grazing range improvements has been made.
11. Proceeds from the sale of public lands to the WID shall be deposited in a suspense account for the future acquisition of lands and interest in lands within the Worland and Cody Field Offices jurisdictions. Such lands will be required to benefit recreation, public access, fish and wildlife habitat, or cultural resources. Lands containing one or more of these resources will be identified through land use planning documents or personal contacts with willing sellers.

The WID is responsible for completing the following:

1. Comply with the terms and conditions of the cultural resources Programmatic Agreement for cultural resources, among the BLM, Wyoming State Historic Preservation Officer, and Westside Irrigation District, dated March 15, 2010.
2. Develop a treatment plan to address historic properties that may be impacted. The plan shall include a description of the properties to be affected, description of the nature of the effects, a description (explanation or rationale) of the treatments proposed, an archaeological research design for the historic properties eligible for the National Register, and a listing of historic properties that will be affected but for which no further treatment is proposed.
3. Conduct a Paleontological inventory on non-alluvial areas of the Willwood Formation that could contain significant fossils. Areas to be inventoried shall be determined by the BLM Regional Paleontologist. See Exhibit C for guidelines.
4. Submit payment in the form of certified check, postal money order, bank draft, or cashier's check, made payable to the Bureau of Land Management for the amount required in the appraisal and Notice of Realty Action. The purchase of lands shall occur within the one year of the appraisal date, or a new appraisal shall be required.

The parties to this agreement, through mutual consent evidenced in writing, can terminate this agreement at any time. This agreement is valid for a period of 5 years beyond which renewal of this agreement may require supplemental NEPA analysis.

IN WITNESS WHEREOF, the parties hereto have signed their names.

THE UNITED STATES OF AMERICA

Department of the Interior

Bureau of Land Management

By \_\_\_\_\_/s/\_\_\_\_\_

Date \_\_\_\_\_11APRIL2011\_\_\_\_\_

District Manager, Wind River/Bighorn Basin

Westside Irrigation District

By \_\_\_\_\_/s/\_\_\_\_\_

Date \_\_\_\_\_12APRIL2011\_\_\_\_\_

President, Westside Irrigation District

EXHIBIT A

Legal Descriptions of Lands to be Conveyed to the Westside Irrigation District  
as a result of Public Law 106-485 (Alternative Three – 9,740.0 acres)

Washakie County, Wyoming (Parcel 1)

T. 48 N., R. 92 ½ W.,

sec. 12, lots 1 - 4, W½E½;

sec. 13, lots 1 - 4, W½E½;

sec. 24, lots 1, NW¼NE¼;

T. 48 N., R. 93 W.,

sec. 2: lots 6 – 11, 13 – 16, S½;

sec. 3: lots 5, 6, 11 – 14, N½SE¼, N½S½SE¼;

sec. 10: S½NE¼, E½E½SW¼, SE¼;

sec. 11: N½, SW¼, SW¼SE¼;

sec. 12: E½E½E½;

sec. 13: NE¼, E½NW¼, S½;

sec. 14: All;

sec. 15: E½, E½E½W½;

sec. 22: N½, N½SE¼;

sec. 23: All;

sec. 24: All;

sec. 25: lots 1, 2, N½, N½SW¼, SE¼SW¼, N½SE ¼;

sec. 26:  $N\frac{1}{2}N\frac{1}{2}$ ,  $N\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$ ,  $N\frac{1}{2}S\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$ ,  $SE\frac{1}{4}NE\frac{1}{4}$ ,  $NE\frac{1}{4}SE\frac{1}{4}$ .

Big Horn County, Wyoming (Parcel 2)

T. 49 N., R. 92 W.,

sec. 18: lots 6 – 9;

sec. 19: lots 5 – 13;

sec. 30: lots 5 – 18;

sec. 31: lots 5, 6.

T. 49 N., R. 93 W.,

sec. 12:  $S\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}$ ,  $S\frac{1}{2}N\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$ ,  $S\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$ ,  $S\frac{1}{2}SE\frac{1}{4}$ ;

sec. 13: All;

sec. 23:  $S\frac{1}{2}NE\frac{1}{4}$ ,  $NE\frac{1}{4}SE\frac{1}{4}$ ;

sec. 24:  $E\frac{1}{2}$ ,  $E\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}$ ;

sec. 25:  $NE\frac{1}{4}$ ,  $E\frac{1}{2}NW\frac{1}{4}$ .

EXHIBIT B

Rights-of-way Authorizations  
Within the  
Westside Irrigation District Land Conveyance Project

<u>HOLDER</u>	<u>CASE TYPE</u>	<u>SERIAL NUMBER</u>
Red Butte Pipe Line Co. 539 S. Main St. Findlay, OH 45840	Pipe Line	WYB-0013281 WYW-066684 WYW-0022960
Big Horn Canal District PO Box 697 Basin, WY 82410	Irrigation Canal	WYW-059856
PacifiCorp d/b/a Rocky Mountain Power 2840 East Yellowstone Ave. Casper, WY 82609	Power Line	WYW-108430 WYW-136531 WYW-0044411

Express Pipe Line Partnership Pipe Line WYW-128830  
800 Werner Ct #352  
Casper, WY 82601

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Williston Basin Pipeline Pipe Line WYW-0001185  
PO Box 131 WYW-0275301  
Glendive, MT 59330

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BLM-Worland Field Office BLM Road WYW-081757

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Devon Energy Prod. Co LP  
20 N. Broadway #1500  
Oklahoma City, OK 73102-8260 Pipe Line WYW-153873  
(Worland Field –Gathering)

Jack J. Grynberg Access Road WYW-165007  
5299 DTC Blvd. #500  
Greenwood Village, CO 80111

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Cabot Oil & Gas Corp. Access Road WYW-159533  
5 Penn CNTR W Ste 401  
Pittsburgh, PA 15276-0120

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## EXHIBIT C

### Westside Irrigation District Land Conveyance Paleontological Resources - Inventory Requirements

From a paleontological standpoint the most important geologic formation in the area is the Willwood Formation. Because of the Pleistocene overburden that covers much of the area, the Willwood Formation is not visible at the surface over much of the conveyance area. When cultural mitigation commences, a scoping of the area will be performed by a specialist who can legitimately distinguish Willwood Formation bedrock from Pleistocene overburden. The scoping will verify Willwood Formation exposures. If no exposures are found, then no further work needs to be done, other than documenting the finding in project records. If exposures of bedrock are found they will be inventoried, using Global Positioning System, and examined by a qualified paleontologist on the ground.

**APPENDIX 2**

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S.D.I. BUREAU OF LAND MANAGEMENT  
THE WYOMING STATE HISTORIC PRESERVATION OFFICER  
THE WESTSIDE IRRIGATION DISTRICT  
THE NORTHERN ARAPAHO TRIBE AND  
THE SHOSHONE-BANNOCK TRIBE  
REGARDING THE  
WESTSIDE IRRIGATION DISTRICT LAND TRANSFER**

PROGRAMMATIC AGREEMENT

AMONG

THE U.S.D.I. BUREAU OF LAND MANAGEMENT

THE WYOMING STATE HISTORIC PRESERVATION OFFICER

THE WESTSIDE IRRIGATION DISTRICT

THE NORTHERN ARAPAHO TRIBE AND

THE SHOSHONE-BANNOCK TRIBE

REGARDING THE

WESTSIDE IRRIGATION DISTRICT LAND TRANSFER

WHEREAS the Bureau of Land Management (BLM), as lead Federal Agency in accordance with Public Law 106-485 enacted on November 9, 2000, will convey to the Westside Irrigation District (WID) approximately 9,740 acres of land in Big Horn County and Washakie County, Wyoming; and

WHEREAS BLM has established the area of potential effect (APE) as defined in 36 CFR § 800.16(d) to include approximately 9,740 acres in Townships 92 W., 92 1/2 W., and 93 W.; Ranges 48 N. and 49 N. The APE includes those lands to be transferred; and

WHEREAS BLM has determined that conveyance of the described lands will have an adverse effect on properties included in, or eligible for inclusion in the National Register of Historic Places (historic properties) and has requested the comments of the Advisory Council on Historic Preservation (Council) and the Wyoming State Historic Preservation Officer (SHPO) in compliance with section 106 of the National Historic Preservation Act (NHPA), and pursuant to the "Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act" (1997) and the Wyoming State Protocol; and

WHEREAS, the BLM has consulted with the Wyoming State Historic Preservation Officer (SHPO) pursuant to the State Protocol between the Wyoming BLM State Director and the Wyoming State Historic Preservation Officer; and

WHEREAS the Council has elected not to participate; and

WHEREAS BLM has consulted, following procedures contained in BLM Manual 8120 (Tribal Consultation Under Cultural Resource Authorities) and BLM Handbook 8120-1 (General Procedural Guidance for Native American Consultation), with the Blackfeet, Crow, Confederated Salish & Kootenai, Eastern Shoshone, Northern Arapaho, Northern Cheyenne, and Shoshone-Bannock Tribes about the possible effects of the undertaking to properties of traditional religious

and cultural importance to those tribes., While the Northern Cheyenne, Eastern Shoshone, Blackfeet Nation, Crow, and Confederated Salish & Kootenai Tribes chose not to be involved, the Northern Arapaho, and Shoshone-Bannock Tribes have identified such properties in the vicinity, and have requested to sign this agreement as signatories; and

WHEREAS BLM has consulted with the Westside Irrigation District (WID) and they have elected to participate in consultation and to be signatories to this Programmatic Agreement and they have accepted; and

WHEREAS all signatories to this PA agree to maintain confidentiality of all cultural resource data pursuant to Section 304(a) of the National Historic Preservation Act and Section 9(a) of the Archaeological Resources Protection Act, not to release such data to parties who are not signatories to this agreement, and to take measures to prevent inadvertent release of such data; and

WHEREAS, the National Programmatic Agreement, STATE PROTOCOL Between the Wyoming BLM State Director and the Wyoming State Historic Preservation Officer (hereinafter "State Protocol"), executed on March 8, 2006, is incorporated herein by reference; and

WHEREAS, the signatories do not waive their sovereign immunity by entering into this PA, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this PA;

NOW, THEREFORE, BLM and SHPO agree that the Westside Irrigation District Land Transfer proposed undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties and to satisfy all section 106 NHPA responsibilities for all aspects of the project.

## STIPULATIONS

The BLM shall ensure that the following measures are carried out prior to the transfer of lands out of Federal ownership:

- I. Phased Identification and Evaluation of cultural resource sites will be conducted based on the priority for the transfer of the lands.
  - A. A test of the Archaeological Landscape Sensitivity model will be completed by a qualified geo-archaeologist. Surface manifestations of cultural sites including known historic properties within areas identified in Volume 3 of the Cultural Resource Inventory Report in the Archaeological Landscape Sensitivity model as High or Very High Sensitivity will be backhoe tested to determine if additional buried cultural materials are present. The geo-archaeologist will use these results to evaluate the model and determine if additional subsurface inventory is needed to address buried historic properties within the areas to be transferred.
    1. All cairns will be tested to determine if human remains are present.
    2. The geo-archaeologist will provide the BLM with a written plan detailing how and where testing will be conducted. This plan will be consistent with the guidance found at: <http://www.blm.gov/style/medialib/blm/wy/programs/cultural/docs.Par.5970.File.dat/testing-guide.pdf>
    3. The BLM will provide the testing plan to the SHPO for a fifteen (15) day review period; the BLM may assume SHPO concurrence if comments are not provided within that time frame. Should the SHPO not concur with the testing plan, the BLM and SHPO will consult to resolve any issues.

- B. All additional subsurface inventory recommendations will be reviewed by the signatories to this agreement. The signatories will determine the extent to which the recommendations will be implemented. The signatories will consult under stipulation VIII. to resolve any disputes.
- C. All sites identified and tested during I. A. and B. will be evaluated for the National Register of Historic Places (National Register) in accordance with the State Protocol.
- D. The consultants performing the items in I. A., B. and C. shall obtain the required permits prior to initiating the work. The work will be consistent with the Secretary of the Interior's Standards and Guidelines for Identification of Historic Properties (48 FR 44720-23). Reports will be provided to the BLM for distribution to the parties to this agreement every two weeks documenting progress in the implementation of the Testing Plan. These reports will include:
1. dates of field work included in the report;
  2. crew members involved in the field work;
  3. type and amount of inventory performed;
  4. very brief summary of the results of the work during the period covered by the report;
  5. concerns or comments of the project principal investigator.
- E. One report will be prepared documenting the results of all Testing Plan efforts. The document will be prepared following the "Wyoming State Historic Preservation Office Format, Guidelines, and Standards for Class II and Class III Reports" and the "Secretary of the Interior Standards for Archaeology and Historic Preservation" found at [http://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](http://www.nps.gov/history/local-law/arch_stnds_0.htm). WID, as the project proponent, shall provide the BLM with copies of the report to all parties to this agreement. BLM shall ensure that the report documenting the inventory results, historic properties evaluation recommendations, and other related historic properties investigations is distributed to the other signatories to this agreement for review.

- F. The BLM will provide the signatories with the Testing Plan Report for a 30 calendar day review. If the signatories do not respond within 30 days, the BLM will deem a non-response as concurrence with the findings and recommendations made in that report. If any signatory does not concur with the findings and recommendations, the BLM will consult with the signatories to resolve those issues. The signatories will consult under stipulation VIII. to resolve any disputes.
  
- G. The BLM will meet with the signatories to the PA and discuss treatment options available for the historic properties affected by the transfer of these lands based on the Testing Plan report. These discussions will include but not be limited to recovery of scientific information, retention in Federal ownership, alternative site location or other measures. The BLM will provide WID with the results of these discussions for incorporation into the Treatment Plan required in Section II.

## II. Treatment Plan for Historic Properties

Upon completion of Stipulation I. G. under the BLM's direction, the WID will develop a Treatment Plan(s) which sets forth means to mitigate the project's adverse effects to historic properties. This treatment plan will address all adverse effects to historic properties. The measures to be implemented will be sensitive to the concerns of American Indian tribes raised during the consultation processes. Comments received under Stipulation I. G. will be addressed in preparation of the treatment plan. The treatment plan will be in conformance with the principles in Part I and the recommendations in Part II of the Advisory Council's "Treatment of Archaeological Properties: A Handbook" and the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (Federal Register, Vol. 48 No. 190, September 29, 1983, pp. 44716-44742). The treatment plan(s) will include, but not be limited to:

- A. Specification of all historic properties and portions of historic properties to be adversely affected by the project, including a description of the nature of the effects;
  
- B. A detailed description of the treatments proposed for historic properties eligible for the National Register under criteria (a), (b), and/or (c) at 36 CFR Part 60.4 or portions of

such properties, with an explanation or rationale provided for the choice of the proposed treatments;

- C. An archaeological research design will be developed for historic properties that are eligible for the National Register under criterion (d) found at 36 CFR Part 60.4. The research design will specify and explain the following:
1. research questions to be explored with the data recovery efforts;
  2. data needed to explore the questions posed;
  3. sites and portions of each of those sites to be further investigated;
  4. methods to be used to collect data needed to explore the research questions posed;
  5. justification of the appropriateness of the chosen research questions;
  6. process to be followed to address unanticipated discoveries during implementation of the research design, including the discovery of human remains;
  7. proposed disposition of the recovered materials and records;
  8. timing for the preparation and distribution of reports;
  9. a listing of all historic properties that will be adversely affected by the project for which no further treatment is proposed, with a justification or rationale;
  10. an explanation of the methods for involving the interested public in the data recovery, and for disseminating the results of the data recovery to the interested public. These methods will be consistent with the Archaeological Resources Protection Act, Native American Graves Protection and Repatriation Act, and the Freedom of Information Act.

### III. Review of the Treatment Plan(s)

- A. The BLM will review the Treatment Plan(s) provided by WID to assure that it addresses the concerns of the signatory and concurring parties. The Treatment Plan(s) shall then be submitted to the signatories for their review. WID, as the project proponent, will provide copies of treatment plans for all signatories. The signatories shall have **30 calendar days** to comment on the Treatment Plan(s). If any signatory fails to comment within the review period the BLM shall consider that non-commenting signatory

concurr. Based on the comments received during this review, the BLM will determine if revisions are required and direct WID to make any necessary revisions.

B. The revised Treatment Plan(s), if required, shall be submitted to the BLM. The BLM will assure that the necessary changes have been incorporated and then forwarded to the signatory parties for their review and comment. Copies of revised treatment plans for distribution to parties to this agreement will be provided by WID. The reviewing parties shall have **15 work days** to comment on the revised Treatment Plan(s). If any signatory fails to comment within the review period the BLM shall consider that non-commenting signatory concurs.

C. The final decision on the acceptability of the treatment plan(s) will be made by the BLM. Upon BLM acceptance of the Treatment Plan(s), BLM shall provide authorization to proceed with the implementation of the Treatment Plan. This authorization will include Archaeological Resources Protection Act (ARPA) excavation and removal permits for Federal lands. Termination of the project after initiation of the Treatment Plan will require completion of work in progress, and amendment of the Treatment Plan as described below. Amendments to the Treatment Plan(s) will be incorporated by written agreement among the BLM, the SHPO, and the WID. Amendments to the appropriate ARPA permits will be included in the approval of the amendments. Reports will be provided to the BLM, for distribution to the signatory parties every two weeks documenting progress in the implementation of the Treatment Plan. These reports will include:

1. dates of mitigation work included in the report;
2. historic properties at which treatment was conducted;
3. type and amount of treatment performed;
4. very brief summary of the results of the treatment during the period covered by the report;
5. concerns or comments of the project principal investigator.

#### IV. Documentation of Treatment

A report will be prepared to document the results of the Treatment Plan(s) within an eighteen month period upon completion of the fieldwork. This report will be the Final Cultural Resource Report for the project. The report will contain a synthesis of all the information gained during the project. Following review by the BLM and incorporation of BLM's comments as needed by WID, copies of the report will be provided by WID to the BLM for distribution to and review by signatories to this Agreement.

V. Curation

- A. The BLM shall ensure that curation of all records and other items resulting from identification and data recovery efforts is completed in accordance with 36 CFR Part 79, and with the provisions of the Native American Graves Protection and Repatriation Act (PL 101-601) (NAGPRA). Curation costs will be the responsibility of the project proponent. Documentation of the curation of these materials shall be provided to the BLM within 60 calendar days of acceptance of the Final Cultural Resource Report for the Project.

VI. Human Remains

If human remains are found during the course of this project an observer will be posted at the location at all times, at the expense of the project proponent, until the BLM determines the observer is no longer needed. The observer will record the time, date, names and affiliations of all visitors to the location. The BLM will contact the County Coroner and the appropriate law enforcement organizations. The BLM shall ensure that any human remains encountered during the course of this undertaking are treated in a respectful manner. No activities will be allowed in the vicinity of the discovery until written authorization is provided by the BLM. Where the human remains are determined to be of non-criminal origin and not of interest to law enforcement officials the BLM shall follow the procedures of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR Part 10). If it can be determined that the remains are not Native American BLM will consult with descendants or identifiable ethnic groups that may be related to the remains to determine disposition of the remains.

VII. Phased Transfer of Lands

- A. Lands on which the phased identification and evaluation steps in I.A. have been completed and the signatories to this agreement concur that no historic properties are present may be transferred to WID, except where such transfer would not provide access to lands retained by the BLM.
  
- B. Lands on which work in sections I. through V. have been completed may be transferred to WID, except where such transfer would not provide access to lands retained by the BLM.

#### VIII. Dispute Resolution

- A. If there is an objection by any Signatory to the manner in which the terms of this PA are implemented, the objecting Signatory will notify the Field Manager in writing of the objection. The Field Manager will notify all other Signatories of the objection. All Signatories will consult to resolve the objection.
  
- B. Resolution of the objection will be documented in a written amendment to this PA to be signed by all Signatories. If a Signatory fails to respond within 30 days of receipt of the written amendment, such non response will be deemed concurrence with the amendment and the amendment will go into effect. If resolution of the objection does not require amendment to the PA, this decision will be documented in writing and provided to all Signatories.
  
- C. If the objection cannot be resolved among the Signatories, the matter shall be referred to the BLM State Director. The BLM State Director may consult with the BLM Preservation Board on the matter. The BLM State Director will notify all Signatories and Concurring Parties of the recommendations of the BLM Preservation Board. Within 15 days of notification, any Signatory may request consultation among all Signatories regarding the recommendations of the BLM Preservation Board. The final decision for resolution of the objection by any Signatory shall be made by the BLM State Director.

- D. The BLM Field Manager shall consider non-signatory objections to the manner in which the terms of the PA are implemented. If the objection cannot be resolved to the satisfaction of the BLM and the objecting party, the BLM Field Manager shall request the Signatories to provide their opinion on the matter. Prior to making a final decision on the matter, the BLM Field Manager shall take into account all the Signatory opinions received within 15 days of the request.
  
- F. Nothing in this Section shall be construed or interpreted as a waiver of any judicial remedy that would be available to any party to this PA.

#### IX. Amendment

Any Signatory may request that the other Signatories consider amending this PA if circumstances change over time and/or warrant revision of this PA. Except in the case of amendments addressing resolution of disputes pursuant to Section IV of this PA, amendments shall be executed in writing and shall be signed by all signatories in the same manner as the original PA.

#### X. Termination

- A. Any Signatory to this PA may initiate termination by providing written notice to the other parties of their intent. After notification by the initiating Signatory, the remaining Signatories shall have 60 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. If such consultation fails, the termination will go into effect at the end of the 60-day period, unless all the Signatories agree to a longer period.
  
- B. In the event of termination, the BLM shall refer to the Wyoming State Protocol to address any remaining adverse effects to historic properties treated under this agreement.

#### XI. Sunset Terms

- A. This PA will remain in effect for 5 years.
  
- B. The BLM will ensure the PA will be reevaluated every year by all Signatories, or until the Agreement has been terminated or fully complied with.

#### General Provisions

- A. Entirety of Agreement. This PA, consisting of eight (8) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
  
- B. Prior Approval. This PA shall not be binding upon any party unless signed by all Signatories before performance begins as described under the terms of this PA.
  
- C. Severability. Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

Execution of this Memorandum of Agreement and implementation of its terms is evidence that the BLM has taken into account the effects of Westside Irrigation District Land Transfer.

Signatures. In witness whereof, the parties to this PA through their duly authorized representatives have executed this PA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last Signatory's signature affixed to this page.

Execution of this Memorandum of Agreement and implementation of its terms is evidence that the BLM has taken into account the effects of Westside Irrigation District Land Transfer.

Signatures. In witness whereof, the parties to this PA through their duly authorized representatives have executed this PA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last Signatory's signature affixed to this page.

**Signatories:**

Bureau of Land Management, Worland Field Office

Karla Bird  
Karla Bird, Field Manager

Date: 2/11/2010

Bureau of Land Management, Wyoming State Office

Bill Hill  
Bill Hill, Deputy State Director, Resource Policy and Management

Date: 2/23/10

Wyoming State Historic Preservation Office

Mary Hopkins  
Mary Hopkins, Interim State Historic Preservation Officer

Date: 3/15/2010

Westside Irrigation District

Hugh Miller  
Hugh Miller, President

Date: 2-12-10

Approved as to Form:  
Wyoming Attorney General's Office

Donald Gerstein #31513  
Donald Gerstein, Senior Assistant Attorney General

Date: 3/9/10

**Invited Signatories:**

Northern Arapaho Tribe

\_\_\_\_\_  
Mr. Harvey Spoonhunter, Chairman

Date: \_\_\_\_\_

Shoshone-Bannock Tribes

\_\_\_\_\_  
Alonzo Coby, Chairman

Date: \_\_\_\_\_

The BLM's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

WYW150992