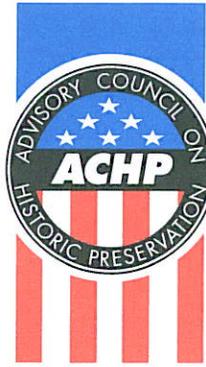


# **APPENDIX E: MEMORANDUM OF AGREEMENT**



Preserving America's Heritage

September 26, 2007

Mr. James L. Caswell  
Director  
Bureau of Land Management  
1849 C Street, N.W.  
Washington, DC 20240

*REF: Memorandum of Agreement Among the Bureau of Land Management, the Arapaho and Roosevelt National Forests/Pawnee National Grassland of the Rocky Mountain Region, USDA, the Ashley National Forest of the Intermountain Region, USDA, the Advisory Council on Historic Preservation, the Wyoming State Historic Preservation Officer, the Colorado State Historic Preservation Officer, the Kansas State Historic Preservation Officer, and Overland Pass Pipeline Company LLC Regarding Adverse Effects to Historic Properties from Construction of the Overland Pass Pipeline in Wyoming, Colorado, and Kansas*

Dear Mr. Caswell:

Enclosed is the executed Memorandum of Agreement for the referenced program. By carrying out the terms of this Agreement, the Bureau of Land Management will have fulfilled its responsibilities under 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.*

If you have any questions, please call Nancy J. Brown at 202-606-8582 or e-mail her at [nbrown@achp.gov](mailto:nbrown@achp.gov).

Sincerely,

Reid Nelson  
Assistant Director  
Federal Property Management Section  
Office of Federal Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004  
Phone: 202-606-8503 • Fax: 202-606-8647 • [achp@achp.gov](mailto:achp@achp.gov) • [www.achp.gov](http://www.achp.gov)

MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ARAPAHO AND ROOSEVELT NATIONAL FORESTS/PAWNEE NATIONAL  
GRASSLAND OF THE ROCKY MOUNTAIN REGION, USDA,  
THE ASHLEY NATIONAL FOREST OF THE INTERMOUNTAIN REGION, USDA  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE WYOMING STATE HISTORIC PRESERVATION OFFICER,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
THE KANSAS STATE HISTORIC PRESERVATION OFFICER,  
AND OVERLAND PASS PIPELINE COMPANY LLC  
REGARDING ADVERSE EFFECTS TO HISTORIC PROPERTIES  
FROM CONSTRUCTION OF THE OVERLAND PASS PIPELINE  
IN WYOMING, COLORADO, AND KANSAS

WHEREAS, Overland Pass Pipeline Company LLC (Overland Pass LLC) has submitted an application for a right-of-way grant on federal lands from the Bureau of Land Management (BLM) in Wyoming in order to construct the Overland Pass Pipeline (undertaking); and

WHEREAS, the BLM has established the area of potential effect (APE) for this undertaking, as defined in 36 CFR § 800.16(d), to include the areas identified in Appendix 1; and

WHEREAS, 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, 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 BLM has determined that the undertaking will have adverse effects on historic properties 48AB18 (Criterion D), 48CR1191 (Lincoln Highway Criteria A and C), 48CR6488 (Criterion D), 48SW1226 (Overland Trail Criteria A and C), 48SW6357 (1868 UPRR Grade Criteria A and C), 5WL1969.49 (Criteria A and C), 14SD00102 (Criterion D), 14SD00103 (Criterion D), 14SD00104 (Criterion D), and 14SD00108/109 (Criterion D), all of which are eligible for listing in the National Register of Historic Places; and

WHEREAS, the BLM has determined that the undertaking will have an adverse effect on historic property 14TO00306, listed in the National Register of Historic Places under Criterion D; and

WHEREAS, the BLM has consulted with the Wyoming State Historic Preservation Officer (SHPO) on its determinations of eligibility and effect pursuant to the State Protocol and the SHPO has concurred with BLM’s determinations; and

WHEREAS, the BLM has consulted with the Colorado SHPO and Kansas SHPO on its determinations of eligibility and effect pursuant to the regulations implementing Section 106 of the NHPA at 36 CFR § 800.2; and the SHPOs have concurred with BLM’s determinations; and

WHEREAS, the proposed project crosses lands administered by the Arapaho and Roosevelt National Forests/Pawnee National Grassland and Ashley National Forest and they are Signatories to this agreement; and

WHEREAS, the Arapaho and Roosevelt National Forests/Pawnee National Grassland and Ashley National Forest have permitting, and therefore Section 106 responsibilities, and BLM is the lead agency for Section 106 responsibilities; and

WHEREAS, the BLM consulted with the Apache Tribes of Oklahoma, Cherokee Nation, Cheyenne and Arapaho Tribes of Oklahoma, Cheyenne River Lakota Tribe, Comanche Tribe of Oklahoma, Crow Creek Lakota Tribe, Crow Tribe, Eastern Shoshone Tribe, Fort Peck Assiniboine and Sioux Tribes, Jicarilla Apache Tribe, Kaw Nation, Kiowa Tribe, Northern Arapaho Tribe, Northern Cheyenne Tribe, Northern Ute Tribe, Oglala Lakota Tribe, Osage Nation of Oklahoma, Pawnee Nation of Oklahoma, Rosebud Lakota Tribe, Southern Ute Indian Tribe, Shoshone-Bannock Tribe, and Wichita and Affiliated Tribes pursuant to Section 106 of the National Historic Preservation Act; and

WHEREAS, after project redesign and provision for tribal monitoring at selected locations as requested by the tribes, it has been determined through tribal consultation that the proposed undertaking will have no adverse effect on historic properties to which the tribes attach religious and cultural significance, and the results of this consultation are presented in the respective cultural resource inventory reports and Executive Summary Report of Native American Tribal Consultation for the Overland Pass Pipeline Project, March 2006 – August 2007 which are incorporated herein by reference; and

WHEREAS, the BLM has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect and the ACHP has elected to participate and be a Signatory; and

WHEREAS, the BLM has invited Overland Pass LLC to participate in consultation and they are a Signatory to this MOA; and

WHEREAS, Oregon-California Trails Association (OCTA) has requested to be a consulting party in actions affecting the Overland Trail and they are a concurring party to this MOA; and

WHEREAS, the Alliance for Historic Wyoming (AHW) has requested to be a consulting party in actions affecting the Overland Trail and they are a concurring party to this MOA; and

WHEREAS, the States of Colorado, Kansas, and Wyoming, and the SHPOs do not waive their sovereign immunity by entering into this MOA 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 MOA; and

WHEREAS, the Environmental Impact Statement (EIS) and accompanying Best Management Practices (BMPs) described therein are incorporated herein by reference; and

WHEREAS, this MOA represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of the National Historic Preservation Act for adverse effects to historic properties 48AB18, 48CR1191, 48CR6488, 48SW1226, 48SW6357, 5WL1969.49, 14SD00102, 14SD00103, 14SD00104, 14SD00108/109, 14TO00306 caused by the undertaking;

NOW, THEREFORE, the BLM, USDA Forest Service, Wyoming SHPO, Colorado SHPO, Kansas SHPO, ACHP and Overland Pass LLC 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

BLM shall ensure that the following measures are carried out:

### I. MITIGATION OF ADVERSE EFFECTS

The undertaking shall be subject to the following restrictions and requirements:

#### A. On the Ground and On-Site Mitigation

1. Treatment Plans that define mitigation of adverse effects of the proposed undertaking on 48AB18, 48CR1191, 48CR6488, 48SW1226, 48SW6357, 5WL1969.49, 14SD00102, 14SD00103, 14SD00104, 14SD00108/109, and 14TO0030 have been prepared by Overland Pass LLC for each state. Each Treatment Plan identifies the nature of the effects to which each historic property will be subjected and the treatment strategies for mitigating the adverse effects. Each Treatment Plan includes plans for dealing with inadvertent discoveries should they occur. BLM has reviewed Treatment Plans and the WY SHPO, CO SHPO, and Kansas SHPO have concurred. The Treatment Plans are appended to this MOA (Appendices 2-4).
2. BLM shall ensure that these Treatment Plans are carried out by Overland Pass LLC.
3. The BLM shall issue notices to proceed for pipeline construction activities in those areas where Treatment Plan measures are being carried out once all agreed upon Treatment Plan measures relating to those areas have been completed.

#### B. Compensatory Mitigation

As a result of adverse effects to the visual setting, Overland Pass LLC will provide to BLM 10 concrete trail markers for Segments 48SW1226\_61 and 48SW1226\_132 of the Overland Trail in Wyoming. The markers will be 4-inch by 4-inch concrete posts that indicate the name and location of each trail segment. These markers will be positioned and installed by the BLM and public interest groups on BLM-managed lands.

#### C. Public Outreach

Within three (3) years of the completion of pipeline construction, Overland Pass LLC shall, in consultation and cooperation with the BLM and the SHPOs, prepare and disseminate a public outreach report in accordance with the terms set forth in the "Overland Pass Pipeline Project Outline for Public Report" attached hereto as Appendix 5.

In the event that: (i) during construction, additional historic properties are discovered requiring additional data recovery, and (ii) the BLM (in consultation with the Signatories) determines that the public report should be expanded to cover such additional data recovery, then the Signatories shall discuss and mutually agree upon the scope of any additions to the public report and the appropriate cost to Overland Pass LLC for such additions. Upon such mutual agreement, this MOA shall be amended in writing pursuant to the terms of Article V herein.

All Signatories and concurring parties to this MOA will be given the opportunity to consult as to the format and content of the report, and the BLM, after consultation with the relevant SHPOs, will approve the final report.

## II. DISCOVERIES

If any cultural materials are discovered during construction, the appropriate state specific Discovery Plan will be implemented. Discovery Plans are defined within the state specific Treatment Plans (Appendices 2-4), and have been reviewed by BLM and accepted by WY SHPO, CO SHPO, and Kansas SHPO.

## III. AVOIDANCE OF INADVERTENT EFFECTS

To minimize unauthorized collecting of archaeological material or vandalism to known archaeological sites, Overland Pass LLC and their contractors, and all construction personnel, will attend mandatory training and be advised of the significance of cultural resources and the relevant federal regulations intended to protect them. This training will be conducted by the project archaeological consultant and will take place prior to any construction activity.

## IV. DISPUTE RESOLUTION

### A. Signatories and Concurring Parties Objections

1. If there is an objection by any Signatory or concurring party to this MOA (parties) to the manner in which the terms of the MOA are implemented, the objecting party will notify the Rawlins BLM Field Manager (Field Manager) in writing of the objection. The Field Manager will notify all other parties of the objection. All Signatories and concurring parties will consult to resolve the objection.
2. If the objection cannot be resolved among the parties to the agreement, the matter shall be referred to the BLM Wyoming State Director (State Director). The State Director may consult with the BLM Preservation Board on the matter or refer the matter to the ACHP per Stipulation IV(A)(3). If the State Director chooses to consult with the BLM Preservation Board, the State Director will notify all parties of the recommendations of the BLM Preservation Board. At any party's request within 15 days of this notification, all parties will consult regarding the recommendations of the BLM Preservation Board. If all parties and BLM agree on how to resolve the objection, BLM will proceed as agreed. If the objection

cannot be resolved, the State Director will refer the matter to the ACHP per Stipulation IV(A)(3).

3. BLM shall forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide BLM 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, BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and other parties, and provide them with a copy of this written response. BLM will then proceed according to the final decision of the State Director.

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

B. Public Objections

The Field Manager shall consider public objections to the manner in which the terms of the MOA are implemented. If the objection cannot be resolved to the satisfaction of the BLM and the objecting party, the Field Manager shall request the parties to this MOA to provide their opinion on the matter. Prior to making a final decision on the matter, the Field Manager shall take into account all the opinions received within 15 days of the request.

- C. 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 MOA.

V. AMENDMENT

Any party to this agreement may request that the other parties consider amending it if circumstances change over time and warrant revision of the stipulations. Amendments shall be executed in writing and shall go into effect upon signature by all parties in the same manner as the original MOA.

VI. TERMINATION

- A. Signatories to this MOA may initiate termination by providing written notice to the other parties of their intent. After notification by the initiating Signatory, the remaining parties 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 this 60 day period, unless all the parties 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 in Wyoming. In Colorado and Kansas, BLM shall refer to 36 CFR 800.6 regulations to address any remaining adverse effects to historic properties treated under this agreement.

## VII. SUNSET TERMS

- A. This MOA shall remain in effect for five (5) years from its date of execution by the Signatories or until completion of the work stipulated, whichever comes first, unless extended by agreement among the Signatories.
- B. The BLM will ensure the MOA will be reevaluated and amended if necessary every two years by all parties, or until the stipulations have been completed.

## GENERAL PROVISIONS

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

Execution of this Memorandum of Agreement and implementation of its terms evidence that BLM has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment on the undertaking, its effects, and resolution of adverse effects.

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

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## **Appendix 5**

### **Overland Pass Pipeline Project Outline for Public Report**

Overland Pass Pipeline Company LLC (Company) will present the results of the Overland Pass Pipeline project (Project) to the general public in book form. The objective of the book is to enable a wide audience, with a range of education and interest levels, to gain an understanding of why archaeology was part of the Project, how resources were identified, and what knowledge was gained as a result of the Project. The book will be illustrated with photographs, maps, and other graphics.

The Company will prepare 350 printed copies of the book and distribute them to interested parties and institutions in the area of the Project. The Company will consult with the Memorandum of Agreement signatories and consulting parties to assist in identifying the distribution list for the book. Copies will be provided by the Company to the Native American tribes identified by BLM as potentially having an interest in the Project. To make the information available to a larger audience, electronic copies will also be made available by the Company for distribution.

The book will include descriptions and interpretation of resources and information gleaned from the work conducted in Colorado, Wyoming, and Kansas. Special attention will be focused on the twelve historic properties that will be adversely affected by the project. A discussion of Native American tribal groups who may be connected with sites along the Project will also be included. Finally, the book will direct the reader to sources of additional information on cultural resource management (CRM), archaeological methods and techniques, and prehistory of the region. It will identify and list contact information for agencies and organizations that are resources for public information concerning historic preservation.

The Company will promote the book through informational mailings to relevant archaeologists, schools, museums, heritage management agencies, professionals, and other interested parties as identified by the BLM, Forest Service and SHPOs.

The Company will make electronic versions of the book available to the Signatories who will have the right to reproduce and distribute additional copies. Signatories may also post the document on their respective websites.

#### **Overland Pass Pipeline Project and Cultural Resources**

The book will begin with a brief description of the Project and the cultural resource studies conducted for the project. This text will present information on the general location of the pipeline, why the pipeline is needed, and what companies are its proponents. This section will include an overview of why cultural resource studies were undertaken as part of the project.

#### **Archaeology and Construction Sites**

A brief discussion of cultural resource management will form the basis for a discussion of the various kinds of archeological work. A brief overview of cultural resource management laws including NHPA, NEPA, Executive Order 11593, and NAGPRA will be presented. A focus of this discussion will be on how these CRM laws apply to the Project.

**Archaeological Methods**

The methods employed by archeologists in the field and laboratory will be presented. This discussion will address questions such as: How do archeologists find sites? How do they determine how old the sites are? How do archeologists glean information from soil, artifacts, and other archaeological data? The basics of archaeological survey, mapping and recording sites, testing and excavation, and laboratory methods will be discussed. The text will include a discussion of stone tool technology and how archeologists learn about behavior from stone artifacts. This section will be concise, providing enough information regarding these methods for a general audience without elaborating into academic detail.

**Results**

An overview of both the prehistory and history of the project area will be presented. This will be followed by a general discussion of the results of the cultural resource investigations conducted for the Project. Sites examined during the archeological studies for the Project will be used to illustrate this discussion wherever possible. A more detailed synopsis of the resources that will be adversely affected by the project will follow; these sites will include the Denver Pacific and Union Pacific Railroads, the Overland Trail, the Lincoln Highway, and the seven prehistoric data recoveries in Wyoming and Kansas.

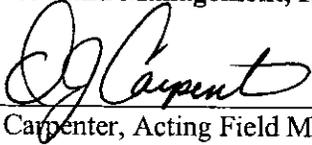
**Conclusions**

The report will include a concluding section that summarizes what was learned from the project and provides a comparative analysis of the results of the cultural resource investigations in Wyoming, Colorado, and Kansas.

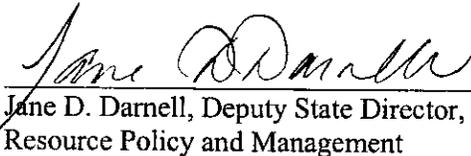
The effective date of this MOA is the date of the last Signatory signature affixed to these pages.

**Signatories:**

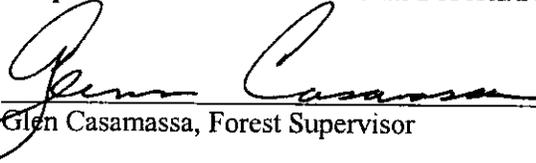
**Bureau of Land Management, Rawlins Field Office**

  
\_\_\_\_\_  
Dennis Carpenter, Acting Field Manager      9/20/07  
Date

**Bureau of Land Management, Wyoming State Office**

  
\_\_\_\_\_  
Jane D. Darnell, Deputy State Director,  
Resource Policy and Management      9-24-07  
Date

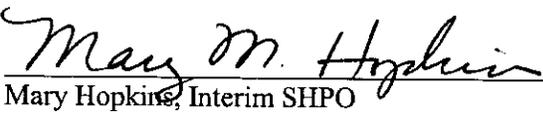
**Arapaho and Roosevelt National Forests/Pawnee National Grassland**

  
\_\_\_\_\_  
Glen Casamassa, Forest Supervisor      9-21-07  
Date

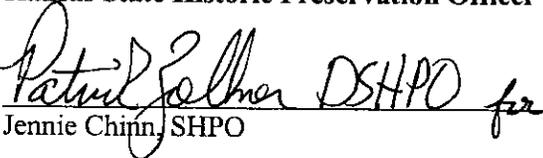
**Ashley National Forest**

  
\_\_\_\_\_  
Kevin B. Elliot, Forest Supervisor      21 SEP 07  
Date

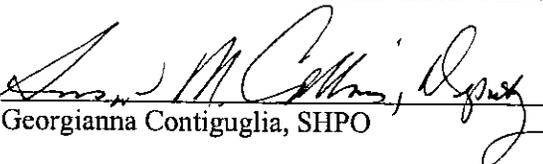
**Wyoming State Historic Preservation Officer**

  
\_\_\_\_\_  
Mary Hopkins, Interim SHPO      9/24/07  
Date

**Kansas State Historic Preservation Officer**

  
\_\_\_\_\_  
Jennie Chinn, SHPO      9-21-07  
Date

**Colorado State Historic Preservation Officer**

  
\_\_\_\_\_  
Georgianna Contiguglia, SHPO      9-25-07  
Date

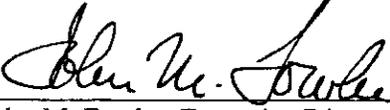
**Overland Pass Pipeline Company, LLC.**

By: ONEOK NGL Pipeline, L.P., its Operator

By: ONEOK Pipeline Holdings, L.L.C., its general partner

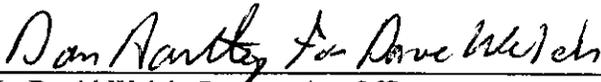
 9/22/07  
Wes Christianson, Vice President, Date  
Natural Gas Liquids Operations

**Advisory Council on Historic Preservation**

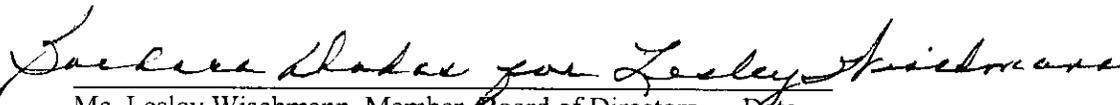
 9/24/07  
John M. Fowler, Executive Director Date

**Concurring Parties:**

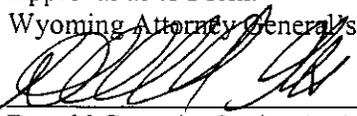
**Oregon-California Trails Association**

 9/24/07  
Mr. David Welch, Preservation Officer Date

**Alliance for Historic Wyoming**

 9/20/07  
Ms. Lesley Wischmann, Member, Board of Directors Date

Approval as to Form:  
Wyoming Attorney General's Office

 #16018 9/29/07  
Donald Gerstein, Senior Assistant Attorney General Date

**Appendices:**

1. Maps of project area identifying APE
2. Wyoming Treatment Plan
3. Colorado Treatment Plan
4. Kansas Treatment Plan
5. Overland Pass Pipeline Project Outline for Public Report