

**MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE
MOAPA BAND OF PAIUTE INDIANS
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
RESOLUTION OF ADVERSE EFFECTS FOR THE SOUTHERN BIGHORN SOLAR
PROJECTS I AND II
ON THE MOAPA RIVER INDIAN RESERVATION**



**Bureau of Indian Affairs, Western Regional Office
March 23, 2021**

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

WHEREAS, the undertaking before BIA/WRO is approval of a lease and rights-of-way for the Southern Bighorn Solar Projects I and II, a 400 megawatt solar photovoltaic electricity generation facility that will encumber up to 3,600 acres on the Moapa River Indian Reservation and an additional 58 acres for transmission lines and access roads requiring rights-of-way approval from the Bureau of Land Management Southern Nevada District Office (BLM) (hereinafter referred to as the undertaking); and

WHEREAS, BIA/WRO has determined that the Area of Potential Effects (APE) for the direct physical effects of the undertaking will be contained within a 7,112-acre area and the visual, atmospheric, and audible effects are possible in a 5-mile buffer or to the visual horizon, whichever is closer, around the direct physical APE (Attachment A); and

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

WHEREAS, the BLM will grant an easement for right-of-way for an associated transmission line and access road for the undertaking that will encumber up to approximately 58 additional acres and is an Invited Signatory to this Agreement; and

WHEREAS, BLM has designated BIA/WRO as the lead federal agency for the purpose of Section 106 consultation pursuant to 36 CFR 800.2(a)(2); and

WHEREAS, 300MS 8me LLC and 425Lm 8me LLC as the project proponents, intend to construct, operate, and maintain the undertaking under lease terms extending up to a maximum period of fifty (50) years and are Invited Signatories to this Agreement; and

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

WHEREAS, BIA/WRO, in consultation with the Signatories, has determined that the undertaking will cause adverse effects to two historic properties. The Tiffany Mill Site (26CK4348), which was determined by the BIA/WRO, in consultation with the Signatories, to be eligible for listing in the National Register of Historic Places (NRHP) under the Secretary's Significance Criteria Criterion A and a segment of the San Pedro, Los Angeles, and Salt Lake Railroad/Union Pacific Railroad (26CK4429/26CK5685) eligible for listing in the NRHP under the Secretary's Significance Criteria A and D; and

WHEREAS, BIA/WRO, in consultation with the Signatories, has determined that the mitigation of the identical segment of the San Pedro, Los Angeles, and Salt Lake Railroad/Union Pacific Railroad (26CK4429/26CK5685) currently in progress for the Eagle Shadow Mountain Solar Project is adequate to mitigate the adverse effect of the undertaking. Therefore, the Signatories propose no additional mitigation to address the adverse effect of the undertaking on this historic property; and

WHEREAS, BIA/WRO has consulted with the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Fort Mojave Indian Tribe, the Hopi Tribe, the Hualapai Indian Tribe, the Kaibab Band of Paiute Indians, the Las Vegas Paiute Tribe, and the Paiute Indian Tribe of Utah in accordance with 36 CFR 800.3(f)(2); and

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

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

WHEREAS, the Signatories and Invited Signatories will hereinafter be referred to as the consulting parties; and

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

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

STIPULATIONS.

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

I. HISTORIC PROPERTIES TREATMENT PLAN

- A. BIA/WRO, in consultation with the consulting parties, shall ensure that 300MS 8me LLC and 425LM 8me LLC retains an architectural historian meeting the Secretary of the Interior's Professional Qualifications standards appropriate to the historic property, develops and implements the fieldwork portion of a Historic Properties Treatment Plan (HPTP) to avoid, minimize, or otherwise mitigate adverse effects to the Tiffany Mill Site before initiating any improvements associated with the undertaking. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44737).
- B. The HPTP will include, but not be limited to:
 - 1. Documentation of the mill site will be similar to Level II documentation, consisting of an historic context; and archival-quality photographs of the setting and landscape as associated with the Union Pacific/San Pedro, Los Angeles, and San Pedro Railroad; and
 - 2. A proposed schedule for cultural resource tasks, and a schedule for the submission of draft and final reports/documentation to the Signatories; and
 - 3. A plan for the conclusion of mitigation in the event that the undertaking is suspended or terminated that stipulates the procedures to be followed; and
 - 4. Preparation of a Draft Mitigation and Documentation Report and review process, as well as proposed timelines.
- C. Review and Comment on the HPTP.
 - 1. 300MS 8me LLC and 425LM 8me, LLC through their qualified consultant, shall submit a draft HPTP to BIA/WRO.
 - 2. Upon receipt of the draft HPTP, BIA/WRO will review the document and provide comments within thirty (30) calendar days to 300MS 8me LLC and 425LM 8me LLC.
 - 3. 300MS 8me LLC and 425LM 8me LLC shall address all BIA/WRO comments and submit any necessary draft updates within thirty (30) calendar days to BIA/WRO.
 - 4. BIA/WRO shall submit the draft HPTP document concurrently to all

consulting parties for review. All consulting parties shall have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO. If a consulting party does not respond to the submission within the review period, BIA/WRO may finalize the HPTP.

5. BIA/WRO shall ensure that any timely written comments received from the consulting parties are addressed during the preparation of the final draft HPTP.
6. BIA/WRO shall submit the final draft HPTP to all consulting parties. The consulting parties shall have thirty (30) calendar days from receipt to review the comments made by other consulting parties, review the revisions, and provide comments to BIA/WRO. If a consulting party fails to respond, BIA/WRO may finalize the HPTP.
7. BIA/WRO shall ensure that 300MS 8me LLC and 425LM 8me LLC will address any timely written comments from the consulting parties on the final draft document during the preparation of the final HPTP.
8. BIA/WRO shall issue an authorization to proceed with the implementation of the HPTP to 300MS 8me LLC and 425LM 8me LLC once consultation on the HPTP is complete and prior to construction. Fieldwork authorization will be contingent upon obtaining the necessary permits.
9. BIA/WRO shall ensure that copies of the final HPTP are provided to all consulting parties.

II. FIELDWORK SUMMARY

A. 300MS 8me LLC, and 425LM 8me LLC, through its qualified consultant responsible for the work, will prepare and submit a draft Fieldwork Summary with draft photographs. This summary and photographs will be submitted for review prior to any project work that might affect the setting and feeling of the Tiffany Mill Site. At a minimum, the draft Fieldwork Summary Report shall contain, but not be limited to:

1. A discussion of the field methods for photographing and documenting the Tiffany Mill Site; and
2. A site map showing the locations where photographs were taken; and
3. Draft photographs of the resource and setting produced in accord with the terms of the HPTP.

B. Review of the draft Fieldwork Summary with draft photographs.

1. Upon receipt of the draft Fieldwork Summary and the draft photographs, BIA/WRO will review the document and provide comments to 300MS 8me LLC, and 425LM 8me LLC; and
2. 300MS 8me LLC, and 425LM 8me LLC shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO; and

3. BIA/WRO will distribute the revised draft Fieldwork Summary and draft photographs to the SHPO for review. The SHPO will have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). If the SHPO fails to respond to the request for review, BIA/WRO will finalize the document. Once the Fieldwork Summary and draft photographs have been approved, project construction can proceed; and
4. BIA/WRO will address any comments received from the SHPO.
5. If BIA/WRO revises the draft Fieldwork Summary, BIA/WRO will distribute the revised document to all Signatories. All Signatories will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIA/WRO; and
6. BIA/WRO shall ensure that any timely written comments received are addressed during the preparation of the final documents.

III. MITIGATION REPORT

A. 300MS 8me LLC, and 425LM 8me LLC, through its qualified consultant responsible for the work, will prepare and submit a draft Mitigation Report within nine (9) months after the completion of all fieldwork. At a minimum, the draft Mitigation Report shall contain, but not be limited to:

1. A discussion of the methods and treatments applied to the Tiffany Mill Site, with an assessment of the degree to which these methods and treatments followed the requirements of the HPTP along with a justification of all deviations, if any, from the approved HPTP; and
2. Site plans for the Tiffany Mill Site depicting all features; and
3. Discussion of further documentation and/or analyses to be conducted, including any proposed changes in the methods or levels of effort from those proposed in the HPTP; and
4. Draft photographs of the resource and setting produced in accord with the terms of the HPTP.

B. Review of the draft Mitigation and Documentation Report.

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

- have thirty (30) calendar days from receipt to review the revisions and provide comments to BIA/WRO; and
6. BIA/WRO shall ensure that any timely written comments received are addressed during the preparation of the final document.

IV. PROFESSIONAL QUALIFICATION STANDARDS

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

V. REVIEW OF PUBLIC OBJECTIONS

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

VI. AMENDMENT

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

VII. DISPUTE RESOLUTION

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

- A. Forward all documentation relevant to the dispute, including BIA/WRO's proposed resolution, to the ACHP in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide BIA/WRO with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision

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

- B. If the ACHP does not provide any comments regarding the dispute within thirty (30) days after receipt of adequate documentation, BIA/WRO may render a decision regarding the dispute and proceed accordingly. Prior to reaching its decision, BIA/WRO shall prepare a written response that will take into account all written comments regarding the dispute from the consulting parties and provide them and the ACHP with a copy of such a written response.
- C. It is the responsibility of the BIA/WRO to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

VIII. DURATION AND TERMINATION

This Agreement will expire if its stipulations are not carried out within five (5) years from execution of the last Signatory signature on the Agreement or until BIA/WRO, in consultation with the consulting parties, determines that all of its terms have been satisfactorily fulfilled whichever comes first.

If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI, above. If an amendment cannot be reached, any Signatory or Invited Signatory may terminate the Agreement upon written notification to the other Signatories. Within thirty (30) days following termination, the BIA/WRO shall notify the parties if it will initiate consultation to execute an Agreement with the Signatories and Invited Signatory under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly.

IX. EXECUTION OF THIS AGREEMENT

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

Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The BIA/WRO will distribute copies of all signed pages to the consulting parties once the Agreement is executed in full.

SIGNATORY PARTIES:

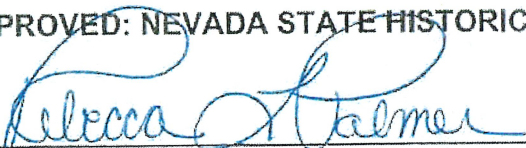
APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By: RODNEY MCVEY Digitally signed by RODNEY MCVEY
Date: 2021.03.23 13:28:26 -07'00' Date _____
Deputy Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By:  Date 4-22-21
Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE


By:  Date March 30, 2021
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:


APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT

By: ANGELITA BULLETTTS Digitally signed by ANGELITA BULLETTTS
Date: 2021.04.16 08:16:46 -07'00' Date _____
District Manager

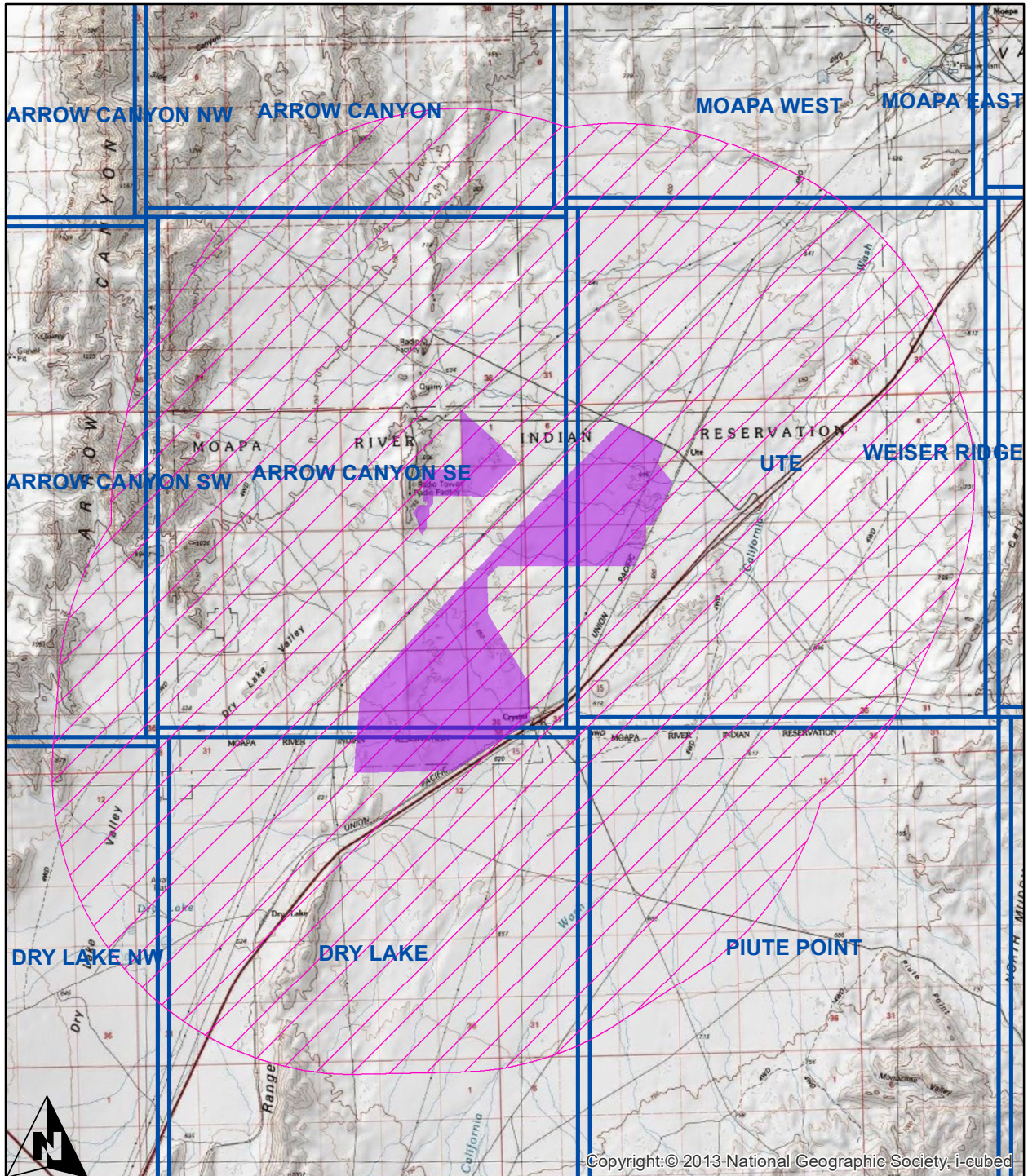
APPROVED: 300MS 8me LLC

By:  Date March 25, 2021
President
Thomas Buttgenbach

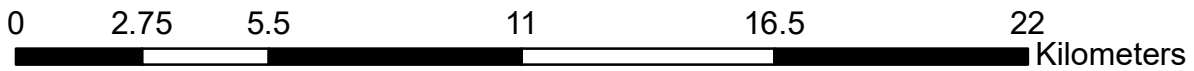
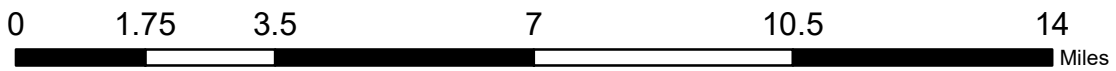
APPROVED: 425LM 8me LLC

By:  Date March 25, 2021
President
Thomas Buttgenbach

Attachment A



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Southern Bighorn Solar Class III Inventory
 Direct and Indirect APE Overview Map
 BIA Project Number 2019-113
 Knight & Leavitt Associates, Inc.
 Map by A. J. Thompson - March 8, 2021

- Project Area/Direct APE
- 5 Mile Radius/Indirect APE
- 7.5 Minute USGS Topographic Maps