

**MEMORANDUM OF AGREEMENT  
BETWEEN BUREAU OF LAND MANAGEMENT  
BATTLE MOUNTAIN DISTRICT,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,  
AND  
KLONDEX GOLD & SILVER MINING COMPANY  
REGARDING THE  
FIRE CREEK MINE PROJECT, LANDER COUNTY, NEVADA**

**WHEREAS**, the Bureau of Land Management (BLM) issues permits to Klondex Gold & Silver Mining Company (Klondex) to conduct mining operations within the Fire Creek Mine Plan of Operations (Mine) (Attachment A) in Lander County, Nevada, and the Mine, partly located on federal lands managed by BLM Battle Mountain District, is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 United States Code (USC) § 306108, and its implementing regulations, 36 Code of Federal Regulations (CFR) § 800; and

**WHEREAS**, the BLM and the Nevada State Historic Preservation Office (SHPO) entered into a Memorandum of Agreement (MOA) titled "*Memorandum of Agreement between the DOI Bureau of Land Management – Battle Mountain District and the Nevada State Historic Preservation Officer Regarding the Data Recovery At Fire Creek Archaeological District*" that expired on June 27, 2015 . As the BLM will authorize continued activities at the Mine, BLM and the SHPO are executing this MOA in accord with 36 CFR § 800.6; and

**WHEREAS**, BLM, in consultation with the SHPO, has determined that the Mine may result in an adverse effect to two loci, Locus BW and Locus GM, that BLM has been determined to be a contributing elements of the Fire Creek Archaeological District (FCAD) (26LA3320/CrNV-62-5389) and individually eligible for inclusion in the National Register of Historic Places (NRHP) under Secretary's Significance Criterion d; and

**WHEREAS**, BLM has consulted with Klondex regarding the effects of the Mine on historic properties and has invited them to sign this MOA; and

**WHEREAS**, the BLM has consulted with the Te-Moak Tribe of Western Shoshone and the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone regarding the conduct of archaeological data recovery on the aforementioned historic properties, and the Tribes have declined to participate in this MOA; and

**WHEREAS**, BLM has not invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation because the Mine does not meet the requirements for their participation (as specified in Component 5 of the 2012 National PA among BLM, ACHP, and National Conference of SHPOs); and

**WHEREAS**, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 USC § 3001), are expected to be encountered in the archaeological work; and

**WHEREAS**, the signatories and invited signatory (referred to collectively as Parties or individually as Party) agree that it is in the public interest to expend funds to recover significant information from the historic properties to mitigate the adverse effects of the Mine; and

**NOW, THEREFORE**, the Parties agree that the Mine shall be implemented in accordance with the following stipulations in order to take into account the effect of the Mine on historic properties.

#### **STIPULATIONS**

BLM shall ensure that the following measures are carried out:

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

- A. The cultural resource management (CRM) firm hired by Klondex will meet BLM's and the Secretary of the Interior's Professional Qualifications standards and will complete the testing, recordation, and data recovery as outlined in the historic properties treatment plan (HPTP), accepted by the BLM in consultation with the SHPO (Attachment B).
- B. BLM will ensure that Klondex provides funds to support a CRM firm and qualified persons in the implementation of the treatment plan, including but not limited to, mitigation of archaeological site(s), artifact processing, writing a summary report of findings, writing the draft and final report of findings, and curation of artifacts as set forth in the HPTP.
  - 1. Klondex will fund all of the required work described in the HPTP.
  - 2. Treatment shall proceed in accordance with a schedule developed by Klondex, BLM, and the SHPO, and the level of mitigation required for each property will be guided by the results from testing as set forth in the HPTP.

##### **II. NOTICES TO PROCEED**

Upon execution of this MOA, BLM authorizes Klondex to conduct mining operations in areas outside the historic property boundaries and established buffer zones. Klondex shall avoid any intrusions into the established avoidance area until BLM issues a notice to proceed (NTP) to Klondex for those areas. If post-review discoveries occur, the requirements of Stipulation IV will apply.

BLM will provide Klondex with an NTP after BLM, in consultation with the SHPO, has the opportunity to review the mitigation for each phase of treatment to ensure compliance with the HPTP. To ensure compliance, the following will be carried out:

- A. The CRM firm hired by Klondex will provide BLM with a summary of fieldwork after the historic property has been mitigated according to the HPTP (Attachment B).
- B. BLM shall review the summary within two (2) working days of receipt and shall notify Klondex that BLM either accepts or rejects the summary.
- C. If BLM approves a summary, BLM shall provide a copy of the summary to the SHPO for review.
- D. The SHPO shall review the summary within two (2) working days of receipt. If the SHPO does not respond within two (2) working days, BLM may assume concurrence and issue the NTP to Klondex for work within the avoidance area.

##### **III. DURATION**

This MOA will expire when the stipulations are completed or five (5) years from the date of its execution, whichever comes first. BLM may consult with all Parties prior to expiration in order to re-examine the terms of the MOA, determine if those terms remain acceptable, and renew the MOA for another period of time not to exceed five (5) years.

#### VIII. AMENDMENT

This MOA may be amended when such an amendment is agreed to in writing by all Parties. The amendment will be effective on the date a copy signed by all of the Parties is filed with the ACHP.

#### IX. TERMINATION

If any Party to this MOA 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 VIII, above. If within thirty (30) days (or another time period agreed to by all Parties) an amendment cannot be reached, any Party may terminate the MOA upon written notification to the other Parties.

Once the MOA is terminated, and prior to work that has been found to have an adverse effect on a historic property, and for which a NTP has not been issued, BLM must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Parties as to the course of action it will pursue.

EXECUTION of this MOA by the Parties and implementation of its terms is evidence that BLM has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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If any historic property remains unmitigated at the time of expiration, and work is planned to continue on the Mine that would adversely affect any historic properties, BLM shall either (a) execute a new MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Prior to such time, BLM may consult with the other Parties to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below. BLM shall notify the Parties as to the course of action it will pursue.

#### **IV. POST-REVIEW DISCOVERIES**

Klondex will notify BLM of all unanticipated discoveries in accord with stipulations in Attachment C of this MOA. If possible historic properties are discovered or unanticipated effects on historic properties found, BLM shall implement additional treatment according to the approved plan(s). Klondex shall avoid all post-review discoveries until BLM issues a NTP in accord with Stipulation III of this MOA.

#### **V. MONITORING AND REPORTING**

- A. The CRM firm hired by Klondex to implement the HPTP, or to provide monitoring, will submit to BLM progress reports as each phase is completed (as indicated in Stipulation I.B.2). This report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in BLM's efforts to carry out the terms of this MOA.
- B. BLM shall provide all Parties with a summary report detailing work carried out pursuant to its terms once each year until all of the stipulations of the MOA have been met. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in BLM's efforts to carry out the terms of this MOA.

#### **VI. DISPUTE RESOLUTION**

Should any Party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, BLM shall consult with such Party to resolve the objection. If BLM determines that such objection cannot be resolved, BLM will:

- A. 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 signatories, and provide them with a copy of this written response. BLM will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, BLM 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 to the MOA, and provide them and the ACHP with a copy of such written response.

BLM's responsibilities to carry out all other actions subject to the terms of the MOA that are not the subject of dispute remain unchanged.

#### **VII. ANNUAL COORDINATION MEETING**

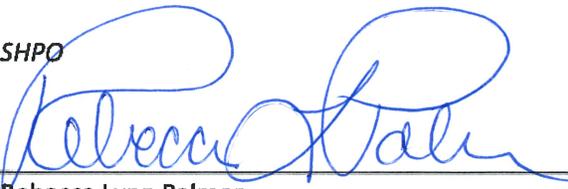
On or about each anniversary of the effective date of this MOA, the Parties will confer and, if it is proposed by a Party, will meet to discuss activities described in this MOA. A Party may invite others to participate in the discussion and meetings.

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NEVADA STATE HISTORIC PRESERVATION OFFICER (SHPO)  
AND  
KLONDEX GOLD & SILVER MINING COMPANY  
REGARDING THE  
FIRE CREEK MINE PROJECT, LANDER COUNTY, NEVADA**

**SIGNATORIES:**

*BLM, Battle Mountain District, Mount Lewis Field Office*

  
\_\_\_\_\_  
Jon Sherve 8/11/2017  
Field Manager, Mount Lewis Field Office Date

*SHPO*  
  
\_\_\_\_\_  
Rebecca Lynn Palmer 09/26/2017  
Nevada State Historic Preservation Officer Date

**INVITED SIGNATORIES**

*Klondex Gold & Silver Mining Company*

\_\_\_\_\_  
Date  
Klondex Gold & Silver Mining Company

**CONCURRING PARTIES**

*Te-Moak Tribe of Western Shoshone*

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Te-Moak Tribe of Western Shoshone Date

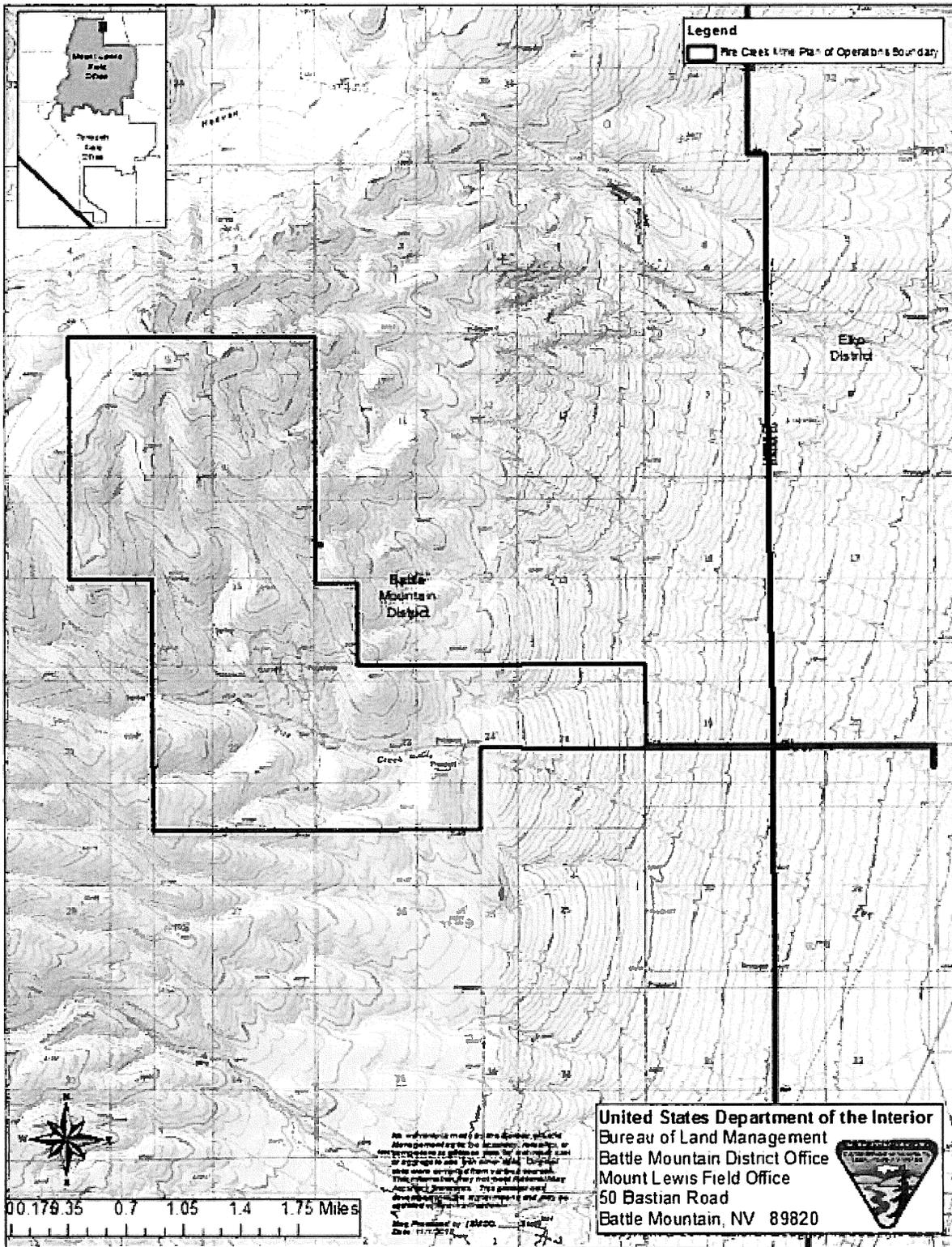
*Battle Mountain Band of the Te-Moak Tribe of Western Shoshone*

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Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Date

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**ATTACHMENT A: MAP OF MINE PLAN OF OPERATIONS**



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## **ATTACHMENT B: HISTORIC PROPERTIES TREATMENT PLAN**

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## **ATTACHMENT C: UNANTICIPATED DISCOVERIES PLAN**

### **Discoveries Plan for the Mine**

The boundary for the FCAD, 26LA3320/CrNV-62-5389, has not been finalized. Therefore, the boundaries may expand as additional inventories are performed and the historic properties treatment plan (HPTP) is implemented. It is probable, given the high density of loci known for the FCAD, that isolated finds or additional loci may be identified during the implementation of the Mine. These unanticipated cultural resources may have the potential to contribute significant information to our understanding of the FCAD.

Unanticipated cultural resource discoveries located during the Mine, whether inside or outside the current FCAD boundary, will be reported by the CRM firm to BLM within 24 hours of the discovery. A follow-up letter and supporting documentation, including NRHP eligibility recommendations, shall follow within three (3) working days of the discovery. BLM will make determination of eligibility and forward the documentation and determination to the SHPO for concurrence within two (2) working days of receipt. SHPO shall provide concurrence and/or comments to BLM within two (2) working days. After receipt of SHPO concurrence or comments, or after the SHPO review period has elapsed, BLM shall provide the CRM firm with further instructions (e.g., notice to proceed with normal activities or prepare amended HPTP, etc.).

Discoveries will be documented using Intermountain Antiquities Computer System (IMACS) site forms following current Nevada BLM inventory guidelines. If a locus is determined to be a contributing element to the archaeological district by BLM, in consultation with the SHPO, the locus will be incorporated into an amendment to the HPTP (Attachment B) and treated in a manner consistent with the objectives of this MOA. Documentation of unanticipated cultural resource discoveries will be as follows:

1. Unanticipated discoveries that are determined to be isolated finds will be recorded and included in a final isolate report.
2. Discoveries determined by BLM, in consultation with the SHPO, to be non-contributing elements to the eligibility of the FCAD shall be documented using the Nevada IMACS short form.
3. In the case of unanticipated discoveries that involve contributing elements to the eligibility of the archaeological district, loci shall be documented using the Nevada IMACS forms, and the SHPO will be provided a copy.

### **Inadvertent Discoveries of Native American Human Remains**

As guided by the Nevada BLM State Office cultural program lead, language within the Native American Graves Protection and Repatriation Act (NAGPRA), and BLM District and Field Office cultural staff, the following steps would be taken upon the discovery of Native American human remains on public lands administered by the Battle Mountain BLM District Office as a direct result of the Mine:

1. Klondex must notify BLM immediately of the discovery via telephone followed by written correspondence. The site and immediate area around the site must be protected until the BLM can respond to the situation. All work is to cease until further notice from the BLM. Work may resume once a recovery plan is agreed upon by the BLM and any participating Tribal entities and successfully implemented, which may include, but is not limited to, leaving the burial in place or full excavation.

2. Local law enforcement must also be notified of the discovery, and it must be determined by a qualified individual whether or not the site is part of a crime scene or associated with a crime.
3. Once it is determined that the remains are indeed those of an historic or prehistoric Native American and the site is not associated with a crime scene, all tribes who are associated culturally with the area must be contacted via personal communication by BLM within three (3) days. BLM must determine which tribes want to be involved in the NAGPRA process or who may claim cultural affiliation and subsequent ownership. Consultation and notification can include lineal descendants, Tribal officials and staff, and other community members. It is BLM's goal to attempt to identify and notify the closest living lineal descendants.
4. After the personal communication attempts, those who decide they want to be involved will be sent a letter by BLM describing the events leading to the discovery, will be updated as to the status of the discovery site and the status of any conflicting project activities, and will be invited to attend a meeting to discuss any claims of cultural affiliation and custody transfer procedures. The tribe, family, or community member with the most conclusive documentation supporting their claim of cultural affiliation most likely will receive the remains.
5. After all recognized tribes receive their notifications letters (which will be sent by certified mail), local and regional newspapers will be contacted, and a notice will be published in the public notice section(s) for seven (7) days. After the first seven (7) days, the advertisement will be run for a second time in the same newspapers for another seven (7) days. This is to allow any other group or individual not contacted via the initial tribal notification an opportunity to provide BLM with a claim of cultural affiliation. The notice in the newspaper(s) must give a rough location of the Native American human remains discovery along with the discovery situation and provide contact information for BLM. Specifics that might compromise the integrity of the site are not to be included in any announcements.
6. Any group or individual can submit a claim of cultural affiliation, and they do not have to be attached to a recognized tribal entity. Any tribal entity, group, or individual who claims cultural affiliation must provide BLM with the written documentation supporting their claim. BLM must determine who is most likely to be most closely affiliated with the discovered remains.
7. Recognized tribal entities will be given thirty (30) days to respond to the letter they received via certified mail. It may take the tribes more than thirty (30) days to gather their supporting information, but they must at least respond within thirty (30) days of the notice of discovery to BLM with their intentions to provide supporting information about a claim.
8. After the end of the second round of notices in the local and regional newspapers, BLM must wait thirty (30) days from the date of the last day of publication to receive any other claims of cultural affiliation.
9. Once all claims of cultural affiliation are received in writing, meetings are scheduled with the claimants. Once BLM feels that they have received everyone's information and all claims of cultural affiliation are final, BLM will determine which individual or group has the most legitimate claim. Once the new "owner" of the remains is identified, BLM and the owner decide how to properly transfer physical custody of the remains.
10. The above procedures and responsibilities are given in a general sense. For further details, please see the inadvertent discoveries section of NAGPRA.

#### **Discoveries of Non-Native American Human Remains**

- E. In the case of discoveries involving non-Native American human remains, Klondex will immediately cease all ground-disturbing work for the Mine within 30 meters of the discovery and contact the BLM archaeologist. The BLM archaeologist shall notify the Battle Mountain District Manager. The BLM shall notify the county sheriff and the SHPO of the discovery. BLM shall protect the find from any additional disturbance until the BLM issues a NTP for the avoidance area. The project leader shall discuss the appropriate treatment of the remains with the BLM archaeologist and/or the field office manager, county sheriff, and the SHPO. BLM shall provide the SHPO, Klondex, and the county sheriff, if necessary, with a written summary of the agreement. The SHPO shall review the summary within two (2) working days of receipt. If the SHPO does not respond within two (2) working days, BLM may assume concurrence and issue the NTP to Klondex for work within the avoidance area.