

**MEMORANDUM OF AGREEMENT BETWEEN THE
DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT
Ely District Office, Egan Field Office
and
NEVADA STATE HISTORIC PRESERVATION OFFICER
Regarding the
THE DEMOLITION OF THE ABANDONED KENNECOTT SUBSTATION
WHITE PINE COUNTY, NEVADA**

WHEREAS, the Bureau of Land Management (BLM) has determined that the Undertaking is the demolition of the abandoned Kennecott Substation (Substation), SHPO Resource Number S1206, White Pine County, Nevada; and

WHEREAS, the BLM, in consultation with the Nevada State Historic Preservation Officer (SHPO), has determined that the Substation is eligible under Criterion A for listing in the National Register of Historic Places pursuant to Title 54 U.S.C. §300101 et. seq., commonly known as the National Historic Preservation Act of 1966, as amended; and

WHEREAS, the BLM has defined the Undertaking's area of potential effect (APE) in T16N, R63E, S21 as 0.04 acres on the enclosed map (Figures 1 and 2); and

WHEREAS, BLM, in consultation with SHPO, has determined that the Undertaking will have an adverse effect on the Substation, as described in Cultural Resource BLM Report No. 8111 NV040-15-2099 *Cultural Resource Report, Kennecott Substation Documentation, White Pine County, Nevada*; and

WHEREAS, BLM has consulted with the Ely Shoshone and Duckwater Shoshone Tribes pursuant to 36 CFR § 800, and determined that the Undertaking will not occur within a property of religious and cultural importance to these tribes; and

WHEREAS, BLM has consulted with Mt. Wheeler Power, Inc. (MWP) regarding the effects of the Undertaking on historic properties and has invited them to be a concurring party to this Memorandum of Agreement (MOA);

NOW, THEREFORE, BLM, and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

BLM shall ensure that the following measures are carried out:

I. STIPULATIONS

- A. Mitigation of the Substation shall consist of a full recordation of the structure by an Architectural Historian who meets the qualifications of that position as set forth in the Secretary of Interior Standards in 36 CFR §61; and
- B. Full recordation means recording and reporting of the Substation per the Appendix F of the BLM Protocol for Mitigation Standards for Historical Resources of Local and State Significance; and
- C. The BLM shall ensure that MWP provides funds to support a Cultural Resource Management firm and qualified persons to document and record the Substation prior to its demolition, to write a final report of findings, and to provide project monitoring. The BLM shall provide MWP with a Notice to Proceed (NTP) after the BLM and SHPO have completed a compliance check of the mitigation efforts to ensure that the fieldwork component has been completed. To ensure compliance, the following will be carried out:
 1. The BLM shall review the mitigation summary within three working days of receipt;
 2. The BLM shall provide copies of the mitigation summary to SHPO; and
 3. The SHPO shall review the mitigation summary within three working days of receipt. If SHPO does not respond within three working days, the BLM may assume concurrence and issue the NTP to MWP.

II. DURATION

This MOA will expire if its stipulations are not carried out within five (5) years from its date of execution. At such time, and prior to work continuing on the Undertaking, BLM shall either (a) execute a new MOA pursuant to 36 C.F.R. § 800.6, or (b) extend this MOA. Prior to such time, BLM may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Part VI. below. BLM shall notify the signatories as to the course of action it will pursue.

III. POST REVIEW DISCOVERIES

BLM shall be notified of all unanticipated discoveries as required by the stipulations in Appendix A.

If potential historic properties are discovered or unanticipated effects on historic properties occur, BLM shall implement the Discovery Plan included as Appendix A of this MOA.

IV. MONITORING AND REPORTING

The CRM firm hired by MWP to implement the Undertaking will file a final monitoring report with BLM and SHPO that meets the following requirements:

1. Outlines field procedures employed to ensure appropriate monitoring;
2. The BLM has accepted a summary description of the fieldwork performed as defined in the HPTP;
3. The BLM provide a copy of the summary to SHPO and a reporting schedule for that work;
4. SHPO reviews the summary and concurs or does not respond within two working days of receipt, after which BLM may assume concurrence.

V. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the BLM shall consult with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, then the BLM will comply with the Nevada State Protocol provision as stipulated under BLM-SHPO Dispute Resolution Section XIV.A and XIV.B.

The BLM shall continue to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Advisory Council on Historic Preservation (ACHP).

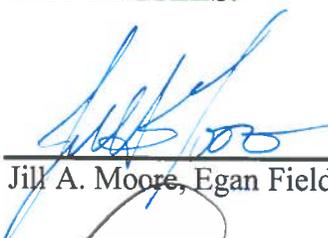
VII. TERMINATION

If any signatory 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 VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, and prior to work continuing on the Undertaking, BLM must either (a) execute an MOA pursuant to 36 CFR §

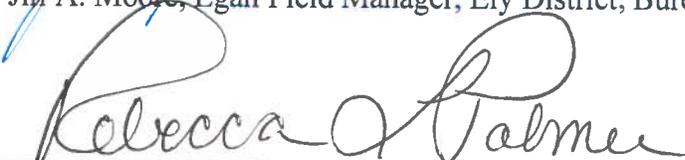
800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BLM shall notify the signatories as to the course of action it will pursue.

EXECUTION of this MOA by BLM and SHPO, and implementation of its terms evidence that BLM has taken into account the effects of this Undertaking on historic properties.

SIGNATORIES:



Jill A. Moore, Egan Field Manager, Ely District, Bureau of Land Management 9/17/15
DATE



Rebecca L. Palmer, Nevada State Historic Preservation Officer 9/22/15
DATE

CONCURRING PARTY:

Robinson, President, Mt. Wheeler Power, Inc. DATE

Appendix A

Discovery Plan

If unanticipated cultural resources are discovered during project related activities, construction shall be halted within 100 meters of discovery, and the BLM Authorized Officer shall be contacted immediately. A letter report and appropriate documentation will be provided to BLM within three (3) working days by the CRM contractor. The CRM contractor will ensure that activities associated with the Undertaking within 100 meters of the discovery's site boundaries are halted and the discovery is appropriately protected, until the BLM Authorized Officer issues a NTP. A qualified CRM firm may be tasked to examine the discovery, and to report and provide recommendations to BLM. The BLM will make a determination of eligibility and forward the documentation and determination to the SHPO for comment. The SHPO shall provide concurrence and/or comments to BLM within two (2) working days. After receipt of SHPO concurrence or comments, BLM shall provide the CRM firm with further instructions (i.e., the area is released for the Undertaking, additional mitigation will be required, etc.).

All discoveries will be thoroughly documented using IMACS forms, consistent with Nevada BLM policy.

1. Unanticipated discoveries, including isolated finds, will be recorded and included in the final report.
2. Unanticipated discoveries determination by BLM, with concurrence by SHPO, to be eligible for nomination to the NRHP shall be documented using the IMACS long form as described in the *Guidelines and Standards for Archaeological Inventory, BLM Nevada, January 2012 - Fifth Edition*.
3. Unanticipated discoveries determination by BLM, with concurrence by SHPO, to be not eligible for nomination to the NRHP may be documented using the short IMACS form as described in the *Guidelines and Standards for Archaeological Inventory, BLM Nevada, October 2011 - Fifth Edition*.

Inadvertent Discoveries of Native American Human Remains

As guided by the Nevada BLM State Office cultural program lead, language within the NAGPRA law, and BLM District and Field Office cultural staff, the following are the steps in dealing with the discovery of Native American human remains on public lands administered by the Ely BLM District Office when those remains are discovered as a direct result of land management actions or a land disturbing project in progress.

Discovering individual(s) must notify the land manager immediately of the discovery via phone and then with written confirmation. The land manager or their designated representative will ensure that activities associated with the Undertaking within 100 meters of the discovery's site boundaries are halted and the discovery is appropriately protected, until the BLM Authorized Officer issues a NTP.

1. The site and immediate area around the site must be protected until the land manager can respond to the situation. Work may resume once a recovery plan is agreed upon by the federal agency and any participating Tribal entities and successfully implemented. Federal officials must still comply with Title 54 U.S.C. §300101 et. seq., commonly known as the National Historic Preservation Act of 1966, as amended (NHPA), and Title 54 U.S.C. §306108, commonly known as Section 106 of the NHPA (Section 106) and the Nevada State Protocol Agreement Part 1, Section VI, B..
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 the remains are indeed those of a 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 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. Out of the personal communication attempts, those who decide they want to be involved will be sent a letter 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.
4. After all the recognized Tribes have received their letters (sent certified), local and regional newspapers will be contacted and a notice is published in the public notices section for seven (7) days. After the first seven (7) days expire, the ad will be run again 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 newspapers must give a rough location of the discovery site along with the discovery situation and provide contact information. Specifics that might compromise the integrity of the site are not to be included.
5. 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 in writing the documentation supporting their claim. BLM must determine who is most affiliated with the remains. It is BLM's responsibility to determine who is most closely related to the discovered remains.
6. Recognized Tribal entities are given 30 days to respond to the letter they received via certified mail. It may take the Tribes more than 30 days to gather their supporting information, but they must at least respond within 30 days of the notice of discovery to BLM with their intentions.

7. After the second round of notices in the local and regional newspapers are over (total of 14 days for both notices), BLM must wait 30 days from the date of the last publication day to receive any other claims of cultural affiliation.
8. Once all claims of cultural affiliation are received in writing, meetings will be 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 will decide how to properly transfer physical custody of the remains.
9. The above procedures and responsibilities are given in a general sense. For further details please see the inadvertent discoveries section of NAGPRA.

Inadvertent Discoveries of Non-Native American Human Remains

In the case of discoveries involving non-Native American human remains, the project will immediately cease, including demolition activities in the immediate area. Discovering individual(s) must immediately notify the BLM Field Office Manager and/or BLM archaeologist of the discovery via phone and then with written confirmation. The contract monitor will ensure that activities associated with the Undertaking within 100 meters of the discovery's site boundaries are halted and the discovery is appropriately protected, until the BLM Authorized Officer issues a NTP.

The site and immediate area around the site must be protected until BLM can respond to the situation. All work is to cease until further notice from the land manager. The BLM Field Office Manager or the BLM archaeologist shall notify Ely District Managers, the County Sheriff, and SHPO 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.

BLM will discuss the appropriate treatment of remains with the County Sheriff, and the SHPO. Discussions should result in an agreement between all parties before work continues. Once disposition of the remains has been resolved, the BLM will notify the proponent and/or the CRM firm that work may continue.

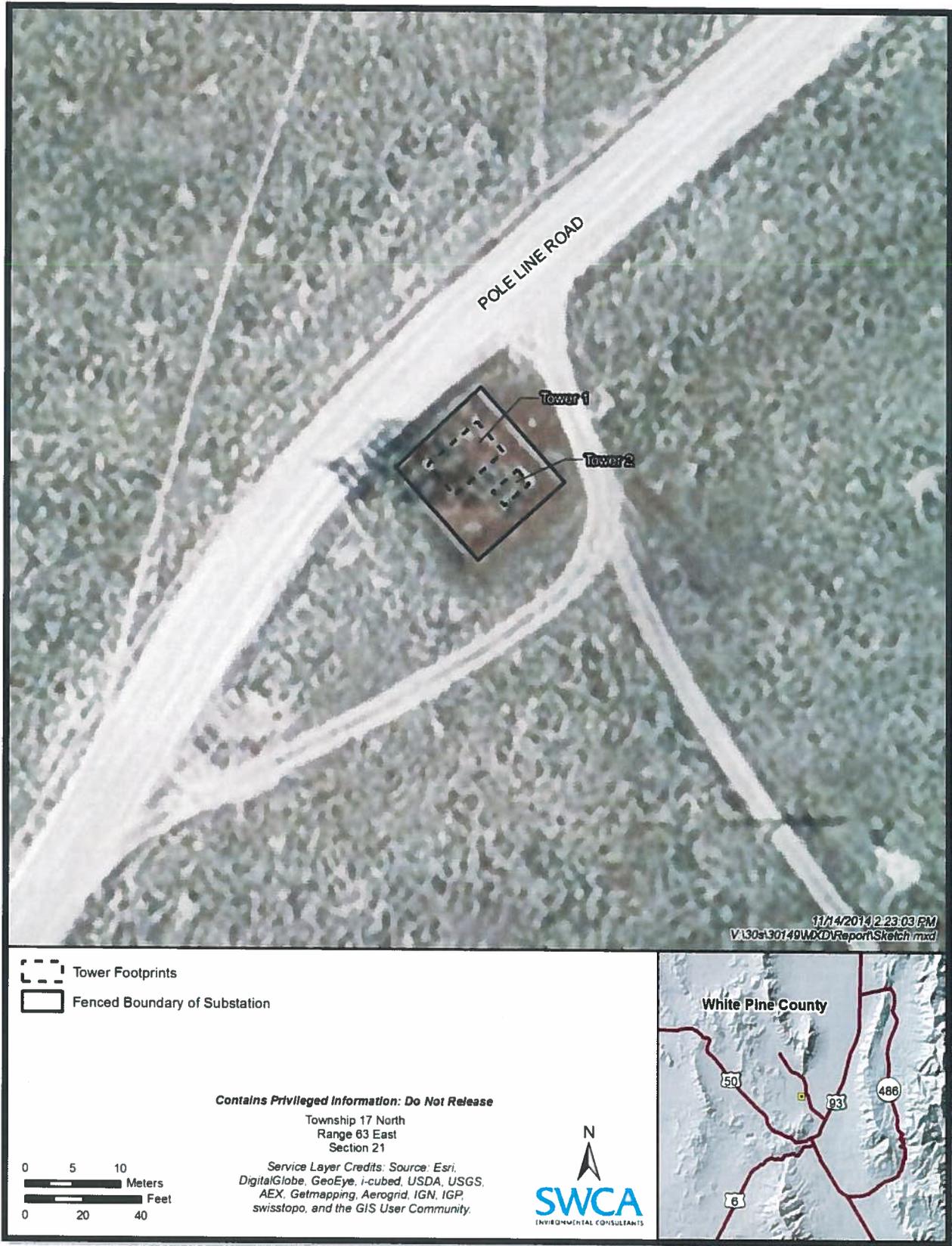


Figure 2. Aerial view and sketch map of Kennecott substation showing location of the site.