

PROGRAMMATIC AGREEMENT
BETWEEN THE BUREAU OF LAND MANAGEMENT
AND THE
NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE GRAZING PERMIT RENEWAL OF THE EDWARDS CREEK AND
PORTER CANYON ALLOTMENTS AND CONNECTED ACTIONS
IN CHURCHILL AND LANDER COUNTIES

WHEREAS, the Bureau of Land Management (BLM), Stillwater Field Office (SWFO) proposes to issue a 10-year term grazing permit to Smith Creek Ranch Co., LTD, which would authorize cattle to graze on the Edwards Creek (including the Carson Allotment) and Porter Canyon Allotments and authorize associated range improvement projects (hereafter known as Edwards Porter GPR); and

WHEREAS, the SWFO plans to issue a permit for the grazing allotments and authorizations to implement the range improvements, pursuant to the Taylor Grazing Act of 1934 (as amended), the Federal Land Policy and Management Act of 1975, the Public Rangelands Improvement Act of 1978, thereby making the Edwards Porter GPR an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 C.F.R. § 800; and

WHEREAS, the SWFO has defined the undertaking's area of potential effect (APE) as all lands within the allotment boundaries (listed in Attachment A and shown in Attachment B, respectively); and

WHEREAS, the SWFO has determined that the undertaking may have an effect on historic properties which are eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. § 800; and

WHEREAS, effects to historic properties in the APE cannot be fully determined and the signatory parties desire to enter into this Programmatic Agreement (PA) to set forth procedures to be followed in satisfaction of the BLM's Section 106 responsibilities of the NHPA, for the undertaking in the APE; and

WHEREAS, the SWFO has consulted with the Fallon Paiute Shoshone Tribe and the Yomba Shoshone Tribe, for which cultural resources in the project APE have religious and cultural significance, and has invited the Tribes to sign this PA as Invited Signatories; and

WHEREAS, the Edwards Porter GPR will be designed and implemented over the course of multiple years using phased approaches; and

WHEREAS, the BLM has consulted with the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR §800.14 to develop and execute this PA, and the ACHP has elected not to formally enter consultation on the development of this PA; and

WHEREAS, the BLM has provided information to the public about the undertaking and has invited the public to comment under the NHPA; and.

NOW, THEREFORE, the SWFO and the 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.

I. PURPOSE

The purpose of this PA is to establish an understanding between the SWFO and SHPO as to how the Section 106 consultation process will be implemented with regard to the phased Edwards Porter GPR. The Agreement defines general and specific measures that will be undertaken by the parties to ensure that the mutual objectives and individual requirements of the National Historic Preservation Act are fulfilled.

II. PROJECT DESCRIPTION

The SWFO proposes to issue a 10-year term grazing permit to Smith Creek Ranch Co., LTD, which would authorize cattle to graze on the Edwards Creek and Porter Canyon Allotments. Additionally, within the allotments multiple range improvement projects ranging from small fences being constructed around springs up to 36,000 acres of drill seeding areas are being proposed. Currently proposed projects may change prior to the implementation due to available resources and current range conditions. Therefore, the project will be phased into smaller project activity areas, and be planned and implemented as time and funding allow.

III. STIPULATIONS

A. Identification of Cultural Resources

1. Prior to the initiation of a project, the SWFO shall ensure that appropriate Native American representatives are consulted to identify Native American concerns and properties with religious or cultural importance that may be within the APE for the project.
2. A literature search for a project's area of potential effect (APE) will include but is not limited to a review of: previous field survey and site records; NVCRIS databases; cultural resource overviews; local environmental, archaeological, and historical information (i.e., BLM GLO maps and county and state records).
3. Cultural resource surveys will be conducted for ground disturbing activities, per Section V.A. Determining Information Needed, of the State Protocol Agreement between the Bureau of Land Management, Nevada and the Nevada State Historic Preservation Office for Implementing the National Historic Preservation Act, 2014, Part 1., V, A.

B. Eligibility of Cultural Resources

1. For each phase of the undertaking within the APE, the BLM shall evaluate cultural resources for eligibility to the NRHP. The BLM, in consultation with the SHPO, will determine NRHP eligibility prior to the initiation of activities that may affect cultural resources, using the Protocol as guidance.

C. Treatment of Historic Properties

1. The SWFO shall consult with the SHPO to determine the effect of the undertaking to historic properties identified within the APE.
2. The SWFO shall avoid effects to historic properties to the extent feasible through project design or redesign.
3. In the case that a historic property cannot be avoided by project activities, then the property will be mitigated in consultation with the SHPO, the Tribes, and other interested parties.
4. For properties eligible under NRHP criteria (A) through (C), mitigation other than data recovery may be considered in the treatment plan (e.g., oral history, historic markers, interpretive brochures or publications).
5. The BLM shall, in consultation with the SHPO, ensure that the fieldwork portions of any treatment plan (using BLM staff or contractors and subcontractors) are completed prior to initiating any activities that may affect historic properties located within the area covered by the treatment plan.
6. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are maintained until the final treatment report is complete and then curated in accordance with 36 CFR § 79 or 43 CFR § 10.

D. Reporting

1. The BLM shall ensure the completion of appropriate cultural resource inventories that identify and evaluate cultural resources and preparation of reports in accordance with the Protocol and with the BLM Nevada's Guidelines and Standards for Archaeological Inventory, 5th edition (January 2012), or any subsequent edition issued by the BLM (Guidelines).
2. All reports resulting from identification, evaluation, monitoring, and treatment will be submitted to the SHPO for review prior to implementation of individual projects.
3. The SHPO shall respond within 35 calendar days of receipt with comments on report contexts, site eligibility, and project effect.
4. If the SHPO does not respond within the designated time limit, the SWFO may assume SHPO concurrence and can proceed with their proposed course of action.
5. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to the Tribes.

IV. DURATION

This Agreement will expire if its stipulations are not carried out within ten (10) years from the date of its execution. At such time, and prior to work continuing on the undertaking, the SWFO shall either (a) execute an Agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the SWFO may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation VII below. The SWFO shall notify the signatories as to the course of action it will pursue.

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the SWFO shall implement the unanticipated discovery plan included as Attachment C of this Agreement.

VI. DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including the SWFO's proposed resolution, to the ACHP. The ACHP shall provide the SWFO 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, the SWFO shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. The SWFO 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, the SWFO may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the SWFO shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.

C. The SWFO's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS

Any party to this Agreement may request that this Agreement be amended, whereupon the Signatories will consult to consider such amendment.

VIII. TERMINATION

If any 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 VII, 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 Agreement upon written notification to the other signatories.

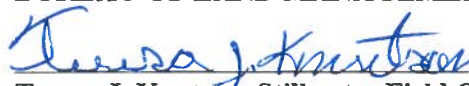
Once the Agreement is terminated, and prior to work continuing on the undertaking, the SWFO must either (a) execute an Agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The SWFO shall notify the signatories as to the course of action it will pursue.

IX. EXECUTION

Execution of this Agreement by the SWFO and the SHPO and implementation of its terms are evidence that the SWFO has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

BUREAU OF LAND MANAGEMENT, STILLWATER FIELD OFFICE

 Date 1/14/2016
Teresa J. Knutson, Stillwater Field Office Manager

NEVADA STATE HISTORIC PRESERVATION OFFICE

 Date 2/9/16
Rebecca L. Palmer, State Historic Preservation Officer

INVITED SIGNATORIES:

Fallon Paiute Shoshone Tribe

_____ Date _____
[Chairman Len George]

Yomba Shoshone Tribe

_____ Date _____
[Chairman James Birchim Jr]

ATTACHMENT A

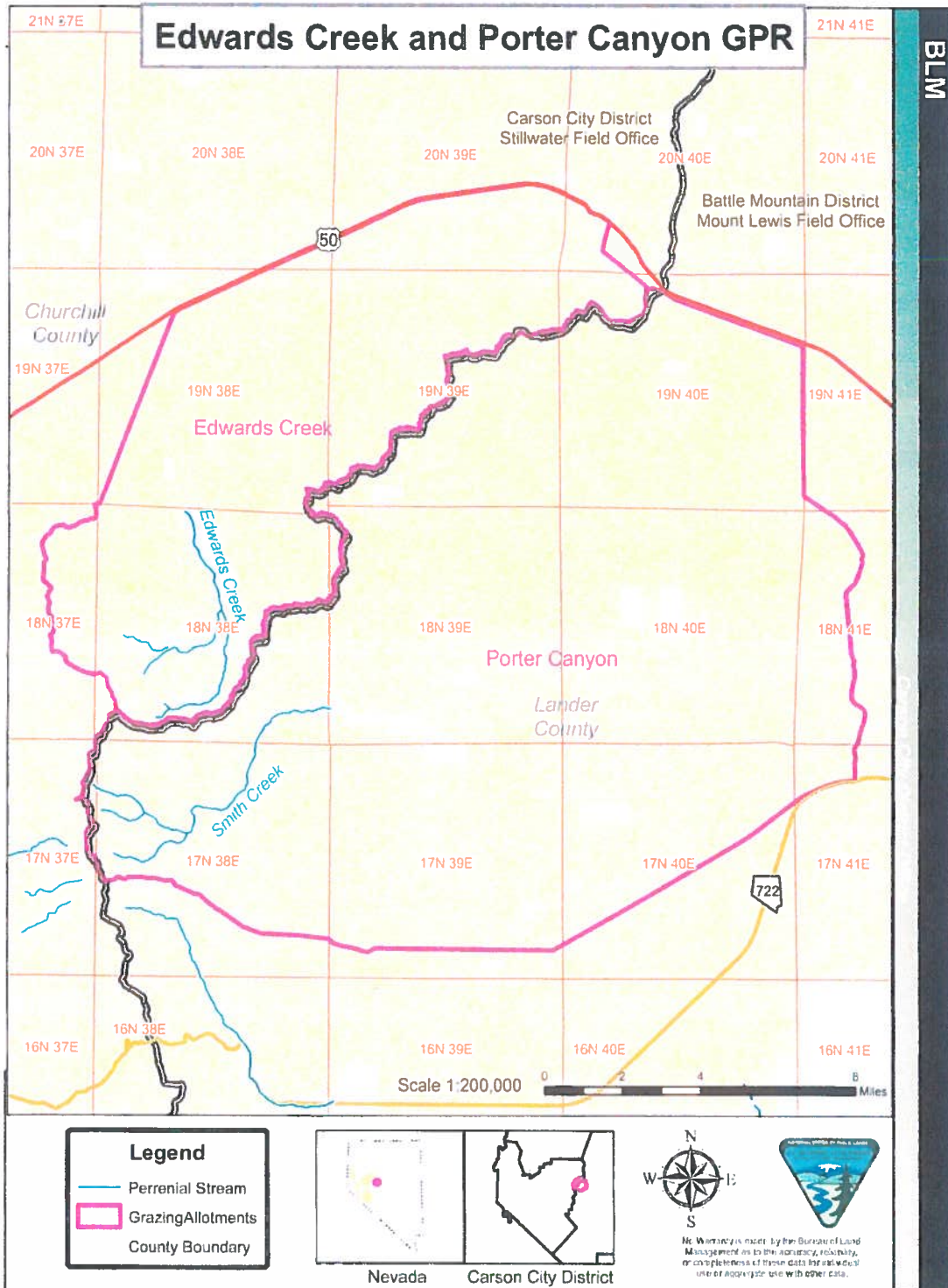
Edwards Creek Allotment (including the Carson Allotment) Legal Description:

T. 20 N., R. 40 E., Sections: SW 1/4 Section 29; 30-32
T. 20 N., R. 39 E., Sections: SE 1/4 Section 22; S 1/2 Section 23; S 1/2 Section 24; 25-28; NE 1/4 Section 29; S 1/2 Section 29; SE 1/4 Section 30; 31-36
T. 20 N., R. 38 E., Sections: S 1/2 Section 35; 36
T. 19 N., R. 40 E., Sections: 5-6; N 1/2 Section 7; N 1/2 Section 8
T. 19 N., R. 39 E., Sections: N 1/2 Section 1; SW 1/4 Section 1; 2-11; N 1/2 Section 12; NW 1/4 Section 14; N 1/2 Section 15; SW 1/4 Section 15; 16-21; NW 1/4 Section 28; 29-30; N 1/2 Section 31
T. 19 N., R. 38 E., Sections: 1-3; S 1/2 Section 4; E 1/2 Section 8; 9-17; SE 1/4 Section 19; 20-29; E 1/2 Section 30; 31-36
T. 18 N., R. 39 E., Sections: W 1/2 Section 6; W 1/2 Section 7; NW 1/4 Section 18
T. 18 N., R. 38 E., Sections: 1-12; N 1/2 Section 13; N 1/2 Section 14; SW 1/4 Section 14; 15-22; W 1/2 Section 23; 27-30; NE 1/4 Section 31; N 1/2 Section 32; N 1/2 Section 33; NW 1/4 Section 34
T. 18 N., R. 37 E., Sections: S 1/2 Section 1; SE 1/4 Section 2; E 1/2 Section 11; 12; 13; E 1/2 Section 14; E 1/2 Section 23; 24; N 1/2 Section 25

Porter Canyon Allotment Legal Description:

T. 19 N., R. 41 E., Sections: SW 1/4 Section 31
T. 19 N., R. 40 E., Sections: S 1/3 Section 3; NW 1/4 Section 4; S 1/2 Section 4; S 1/2 Section 5; SE 1/4 Section 6; 7; N 1/2 Section 8; 9-11; S 1/2 Section 12; 13-36
T. 19 N., R. 39 E., Sections: S 1/2 Section 11; S 1/2 Section 12; 13-15; E 1/2 Section 21; 22-28; E 1/2 Section 29; SW 1/4 Section 29; 31-36
T. 19 N., R. 38 E., Section: 36
T. 18 N., R. 41 E., Sections: W 1/2 Section 5; 6-8; W 1/2 Section 17, 18-19; W 1/2 Section 20; W 1/2 Section 29; 30-32
T. 18 N., R. 40 E., Sections: 1-36
T. 18 N., R. 39 E., Sections: 1-36
T. 18 N., R. 38 E., Sections: 13-14; 23-26; E 1/2 Section 27; 31-36
T. 17 N., R. 41 E., Sections: W 1/2 Section 5; 6; N 1/2 Section 7
T. 17 N., R. 40 E., Sections: 1-12; NW 1/4 Section 13; N 1/2 Section 14; SW 1/4 Section 14; 15-21; N 1/2 Section 22; N 1/2 Section 29; 30; NW 1/4 Section 31
T. 17 N., R. 39 E., Sections: 1-30; N 1/2 Section 31; N 1/2 Section 32; N 1/2 Section 33; N 1/2 Section 34; N 1/2 Section 35; N 1/2 Section 36
T. 17 N., R. 38 E., Sections: 1-19; N 1/2 Section 20; 21-26; N 1/2 Section 27; SE 1/4 Section 27
T. 17 N., R. 37 E., Sections: E 1/2 Section 1; E 1/2 Section 12; E 1/2 Section 13

ATTACHMENT B



ATTACHMENT C

Unanticipated Discovery Situations

Previously unidentified and unanticipated cultural resources discovered while conducting project activities shall be subject to the terms of this Agreement.

1. If a previously unidentified cultural resource is discovered, all surface disturbing activities within 200 feet of that resource shall cease. Within five (5) days of discovery, the SWFO shall notify the SHPO that a discovery situation exists. Available information regarding the resource, including an eligibility determination, shall be provided to the SHPO as part of that notification. The SHPO may offer comments within ten (10) days of the notification by the SWFO, if they choose.
2. At the conclusion of the ten (10) day comment period, the SWFO shall consider the SHPO's comments and determine that:
 - a. The discovered cultural resource is not eligible to the NRHP; or
 - b. the discovered cultural resource is, or is likely to be eligible to the NRHP. In such cases, the SWFO also shall determine whether or not the cultural resource:
 - 1) was impacted by project activities prior to the resource's identification, and that the impact was of such a nature or magnitude to require mitigation; or
 - 2) would be impacted if the approved activity were allowed to proceed.
3. If the cultural resource is not eligible to the NRHP, or is eligible but will not be impacted, the SWFO shall notify the SHPO and any other interested parties immediately of its decision and the SWFO shall allow the activity to proceed.
4. If the SWFO determines that project impacts have caused a need for mitigation, or if the historic property would be impacted by the approved activity, the SWFO would not allow the activity to proceed within 200 feet of the historic property until such time as appropriate mitigation actions have been conducted.
5. The SWFO shall ensure that the discovery of Native American remains will be managed in accordance with Native American Graves Protection and Repatriation Act of 1990.