

FIRST AMENDMENT
PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT, BUREAU OF RECLAMATION,
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE SALT WELLS ENERGY PROJECTS

WHEREAS, the Salt Wells Energy Projects Programmatic Agreement (PA) between the Bureau of Land Management (BLM), the Bureau of Reclamation (Reclamation), and the Nevada State Historic Preservation Officer (SHPO) was executed on October 5, 2010. BLM is the lead federal agency for the implementation of this PA.

WHEREAS, Reclamation requires further clarification of Reclamation's responsibilities under this PA; and

WHEREAS, BLM will send a copy of this executed amendment to the ACHP; and

NOW THEREFORE, in accordance with Section V of the Agreement, BLM, Reclamation, NPS, and SHPO agree to amend the Agreement as follows:

1. Add the following clauses:

WHEREAS, the BLM has authority to manage the subsurface estate, including geothermal resources, on Reclamation withdrawn lands while Reclamation retains surface management. Reclamation will issue a license for surface occupancy for the construction and maintenance of the 230kV transmission line where it crosses Reclamation withdrawn and acquired lands, and may issue additional licenses for surface activities related to this project.

WHEREAS, the BLM has determined that the Pony Express National Historic Trail will be adversely affected by the proposed undertakings and has notified the National Park Service National Trails Intermountain Region office (NPS). The NPS has elected to participate in the development of Treatment Plan(s) to mitigate adverse effects; and

2. Amend the following clause to read as follows:

NOW, THEREFORE, the signatories BLM, Reclamation, NPS, and SHPO, agree that construction of the SWEP shall be administered in accordance with the following stipulations to ensure that historic properties will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership and to satisfy BLM, NPS, and Reclamation Section 106 responsibilities for all aspects of the undertaking.

3. Amend Stipulation III.B.1 so it reads as follows:

The BLM, in consultation with Reclamation, for resources on Reclamation land, and the SHPO, shall evaluate all cultural resources located within the APE for eligibility to the NRHP.

Eligibility will be determined prior to the initiation of activities that may affect cultural resources. Eligibility will be determined in a manner consistent with the Protocol.

4. Amend Stipulation III.C.1 so it reads as follows:

BLM shall submit the results of all identification, evaluation, effects assessment, and treatment efforts to avoid adverse effects, including discovery situations, to Reclamation, for historic properties on Reclamation land, to the National Park Service (NPS) for the Pony Express National Historic Trail (NHT), and the SHPO. The SHPO, NPS for result regarding the Pony Express NHT, and Reclamation, for results regarding Reclamation land, will have fifteen (15) calendar days from their receipt to review and comment on any submission.

5. Amend Stipulation III.C.2 so it reads as follows:

When avoidance is not feasible and mitigation is proposed to lessen project- related adverse effects to historic properties, the BLM, in consultation with Reclamation, for data recovery on Reclamation land, in consultation with NPS for a treatment plan on the Pony Express NHT, and the SHPO, shall ensure that the Proponent(s), through its contractor, develop a Data Recovery/Treatment Plan (Plan) that is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37), Treatment of Historic Properties: A Handbook (Advisory Council on Historic Preservation 1980) and ACHP's Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites dated June 17, 1999. BLM shall submit the Plan to SHPO, to Reclamation, for Plans on Reclamation land, and to NPS for Plans on the Pony Express NHT with a fifteen (15) day review and comment period. At the same time, the BLM shall provide the Tribe and interested parties, as appropriate, with a copy of the Plan with the same fifteen (15) day review opportunity as afforded the SHPO.

6. Amend Stipulation III.C.6 so it reads as follows:

Pursuant to Section H, the BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 CFR 79 in an approved curation facility in Nevada. As defined in the Native American Graves Protection and Repatriation Act (NAGPRA) materials will be handled in accordance with 43 CFR 10. All materials collected will be maintained in accordance with 36 CFR 79 or 43 CFR 10, until the final treatment report is complete and collections are curated and/or returned to their owners. The Proponent(s) or their contractor shall provide proof of curation to the BLM from the curatorial facility within two (2) weeks of BLM acceptance of the final reports. Collections and associated records recovered from Reclamation lands belong to Reclamation and will be delivered to Reclamation for accessioning and inventory. Reclamation will enter into a curation agreement with a Nevada facility that meets 36 CFR 79 for curation of collections from Reclamation land.

7. Amend Stipulation III.D.3 so that it reads as follows:

The BLM shall notify and consult with the SHPO, Reclamation, Tribe, and interested parties as appropriate, within one (1) working day of being notified of the discovery or unanticipated impact, and consider their initial comments on the situation. Within two (2) working days after initial discovery, the BLM shall notify all signatories or other parties, of the decision to either allow SWEP activities to proceed or to require further evaluation and/or mitigation.

8. Amend Stipulation III.D.5 so it reads as follows:

Pursuant to Section H, the BLM shall ensure that reports of mitigation efforts for discoveries or unanticipated impacts are completed in a timely manner and conform to the Department of Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Drafts of such reports shall be submitted to the SHPO and Reclamation for discoveries or unanticipated impacts on Reclamation land, for a fifteen (15) day review and comment period. Final reports shall be submitted to the SHPO, other signatories, Tribe, and interested persons, as appropriate for informational purposes.

9. Amend Stipulation III.D.6 so it reads as follows:

Any disputes or objections arising during a discovery or unanticipated impact situation regarding the treatment of historic properties that cannot be resolved by BLM and SHPO shall be referred to the Nevada BLM State Office or to Reclamation for Reclamation lands for resolution. The Nevada BLM State Office or Reclamation, for Reclamation land, decision will be considered final.

10. Amend Stipulation IV.1 so it reads as follows:

If there is an objection by any signatory to the manner in which the terms of this PA are implemented, the objecting signatory will notify the Stillwater Field Manager in writing of the objection. The Stillwater Field Manager will notify all other signatories of the objection. All signatories will consult to resolve the objection. If the BLM determines that the objection cannot be resolved, it shall request assistance of the BLM Nevada State Office or Reclamation for Reclamation land to help resolve the objection. The final decision for resolution of the objection by any signatory shall be made by the BLM State Director or the Reclamation's authorized official.

11. Amend Stipulation VII.2 so it reads as follows:

In the event that the signatories do not carry out the requirements of this PA or it is terminated, the BLM will remain the lead Federal agency for this Project and comply with the provisions of the Protocol.

Signatures:

Bureau of Land Management, Stillwater Field Office



Teresa Knutson, Field Manager

06/14/2011
Date

Nevada State Historic Preservation Officer



Ronald M. James, State Historic Preservation Officer and Historian

6-15-2011
Date

Bureau of Reclamation, Lahontan Basin Area Office



Kenneth Parr, Area Manager

6/7/11
Date