

**MEMORANDUM OF AGREEMENT  
AMONG  
BUREAU OF RECLAMATION,  
NEVADA STATE HISTORIC PRESERVATION OFFICER,  
PERSHING COUNTY, AND PERSHING COUNTY WATER CONSERVATION DISTRICT  
REGARDING  
THE RESOLUTION OF ADVERSE EFFECTS TO HISTORIC PROPERTIES FOR THE  
TRANSFER OF APPROXIMATELY 995 ACRES OF HUMBOLDT PROJECT LANDS TO  
PERSHING COUNTY IN THE HUMBOLDT SINK, PERSHING COUNTY, NEVADA**

**WHEREAS**, the Bureau of Reclamation (Reclamation) has been directed by the United States Congress through Title VIII of Public Law 107-282, referred to as the “Humboldt Project Conveyance Act” (Act), to convey all right, title, and interest in and to the lands and features of approximately 995 acres within the Humboldt Sink in Pershing County, Nevada, to Pershing County (County);

**WHEREAS**, the transfer of these approximately 995 acres within the Humboldt Sink, hereinafter referred to as “transfer”, constitutes an undertaking, as defined in the National Historic Preservation Act (NHPA) (16U.S.C.470f); and

**WHEREAS**, Reclamation has consulted on this transfer with the Nevada State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and its implementing regulations at 36 CFR Part 800; and

**WHEREAS**, the area of potential effects (APE) for this transfer is the entire approximately 995 acre parcel, found in a portion of T25N R30E and T26N R30E of the Granite Point USGS 7.5’ quadrangle (as shown in Appendix A), slated for transfer to Pershing County; and

**WHEREAS**, Reclamation, in consultation with SHPO, identified seven historic properties (archeological sites 26PE811, 26PE3280, 26PE3282, 26PE3283, 26PE3284, 26PE3288, and 26PE3293) within the APE; and

**WHEREAS**, Reclamation made a finding of an adverse effect to the seven historic properties from the transfer of the approximately 995 acre parcel out of Federal ownership, as described in 36 CFR Part 800.5(a)(2)(vii), and SHPO concurred; and

**WHEREAS**, Reclamation notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect in accordance with 36 CFR Part 800.6(a)(1); and

**WHEREAS**, the ACHP, on October 27, 2010, declined to participate in the negotiation of this memorandum of agreement (MOA); and

**WHEREAS**, Reclamation consulted with the Lovelock Paiute Tribe under NHPA Section 106 and has invited them to sign this MOA as a concurring party; and

**WHEREAS**, Reclamation entered into a Memorandum of Agreement with Pershing County Water Conservation District (PCWCD) identifying roles and responsibilities and payment obligations of the parties for purposes of this transfer; and

**WHEREAS**, the Bureau of Land Management (BLM) issued a twenty year lease in 1942 to Pershing County for Derby Field Airport, prior to Reclamation's withdrawal of the lands in 1956, and continues to renew that lease due to authorities specific to BLM and not to Reclamation, and upon transfer of the lands to Pershing County, this lease will no longer be needed; and

**WHEREAS**, to the best of our knowledge and belief, no human remain, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (26 U.S.C. 3001), are expected to be encountered in the archaeological work; and

**WHEREAS**, the definitions listed in 36 CFR 800.16 are applicable throughout this MOA; and

**NOW, THEREFORE**, Reclamation, SHPO, the County, and PCWCD will ensure that the following terms and conditions will be implemented in compliance with the NHPA to resolve the adverse effects of this undertaking and that completion of these terms and conditions as provided herein will satisfy the Section 106 responsibilities of Reclamation for the undertaking.

## **Stipulations**

### **I. TREATMENT OF HISTORIC PROPERTIES**

A. Treatment Plan. Reclamation will prepare a draft historic property treatment plan (Treatment Plan) to guide the resolution of adverse effects to and the recovery of significant information from the seven historic properties (archeological sites 26PE811, 26PE3280, 26PE3282, 26PE3283, 26PE3284, 26PE3288, and 26PE3293) found within the APE. The draft Treatment Plan will be consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*, and the ACHP on *Historic Preservation's Treatment of Archeological Properties: A Handbook*. The Treatment Plan will specify research problems or questions to be addressed with an explanation of their relevance and importance; and the field and laboratory analysis methods to be used and how they apply to these particular types of resources and the research needs.

1. Within 90 (ninety) calendar days from execution of this MOA, Reclamation will submit a draft Treatment Plan to SHPO, the County, PCWCD, and the Lovelock Paiute Tribe for a 30 (thirty) calendar day review period. Failure of the reviewing parties to comment within the specified time frame may be considered by Reclamation to constitute acceptance of the draft plan and will not preclude issuance of the final report.

2. Reclamation will consider all comments and incorporate them into a final Treatment Plan, to be completed within 45 (forty-five) calendar days of completion of the draft review period.

Reclamation will provide a copy of the final Treatment Plan to SHPO, the County, PCWCD, and the Lovelock Paiute Tribe.

3. Reclamation will ensure the Treatment Plan is implemented as finalized.

B. Fieldwork. Within 7 (seven) calendar days of finalization of the Treatment Plan, Reclamation will complete a fieldwork schedule. Upon acceptance of the fieldwork schedule by Reclamation and issuance of an Archaeological Resources Protection Act permit, Reclamation will issue a notice to proceed to their contractor for the fieldwork. All fieldwork identified in the Treatment Plan will be completed within 90 (ninety) calendar days of a notice to proceed to Reclamation's contractor. The above timelines are subject to delay outside the control of Reclamation.

C. Preliminary Report. Within 90 (ninety) calendar days of the completion of the fieldwork, a preliminary report, summarizing fieldwork methods and demonstrating completed efforts at each site as described in the Treatment Plan, will be drafted for review.

1. Reclamation will submit a draft Preliminary Report to SHPO for a 30 (thirty) calendar day review period. Failure of SHPO to comment within the specified time frame may be considered by Reclamation to constitute SHPO's acceptance of the draft report and will not preclude issuance of the final report.

2. Should SHPO provide comments within the 30 (thirty) calendar day review period, Reclamation will address SHPO's comments in a revised Preliminary Report and will submit the revised Preliminary Report to SHPO within 30 (thirty) calendar days of the receipt of comments. SHPO will have 7 (seven) calendar days from receipt to provide comments on the revised Preliminary Report.

3. Should SHPO disagree that the fieldwork was sufficiently completed according to the Treatment Plan, Reclamation and SHPO will work together to identify any additional fieldwork. Reclamation will ensure such additional fieldwork is completed and provide a revised Preliminary Report to SHPO for concurrence. SHPO will provide written concurrence on the adequacy the additional fieldwork to Reclamation within 7 (seven) calendar days of receipt of the revised Preliminary Report.

D. Mitigation Report. Reclamation will complete a draft mitigation report detailing the results of implementation of the Treatment Plan within 3 (three) years of the execution of this MOA.

1. Reclamation will provide a draft of the Mitigation Report to SHPO, the County, PCWCD, and the Lovelock Paiute Tribe for a 30 (thirty) calendar day review period. Failure of SHPO to comment within the specified time frame may be considered by Reclamation to constitute SHPO's acceptance of the draft report and will not preclude issuance of the final report.

2. Reclamation will consider all comments and incorporate them into a final Mitigation Report. Reclamation will provide the final Mitigation Report to SHPO, the County, PCWCD, and the Lovelock Paiute Tribe, within 90 (ninety) calendar days of receipt of comments on the draft report.

E. Public Education. Upon completion of the final Mitigation Report, Reclamation will ensure results are disseminated to the professional community and the public through professional conferences, published journals, or other community outreach media as appropriate to the nature of and results of the treatments, determined in consultation with SHPO.

## **II. PROFESSIONAL STANDARDS**

A. All historic preservation activities implemented pursuant to this MOA will be carried out by or under the direct supervision of a person or persons meeting, at a minimum, *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines for Professional Qualifications Standards* (48 FR 44738–44739) in the appropriate disciplines.

## **III. POST-REVIEW DISCOVERIES**

A. In the event that unanticipated archaeological or historic resources are identified prior to the transfer, Reclamation will immediately be notified orally followed by a report of findings within 48 hours by certified mail. All activities within 50 feet of the discovery will cease immediately until authorized to proceed by Reclamation.

1. Reclamation will ensure the discovery is confirmed, assessed, and recorded by a professional archaeologist or other appropriate expert that meets the professional qualifications in Stipulation II of this MOA.

2. If the discovery is an isolated artifact, it will be documented by location, description, and photographs. Reclamation will provide copies of the documentation to SHPO and to the Lovelock Paiute Tribe. No further action will be required for these types of discoveries.

3. If the discovery is a site, the discovery will be recorded on an Intermountain Antiquities Computer System form, including appropriate continuation sheets, following SHPO guidelines (available at [www.nevadaculture.org](http://www.nevadaculture.org)). Reclamation will determine eligibility for listing on the National Register of Historic Places (NRHP), following the criteria at 36 CFR 60.4, and consult with SHPO and the Lovelock Paiute Tribe on that determination. SHPO and the Lovelock Paiute Tribe will have 7 (seven) calendar days from receipt to provide comments on Reclamation's determination.

a. If Reclamation's determination, in consultation with SHPO and the Lovelock Paiute Tribe, is that the discovered site is not eligible for listing on the NRHP, then no further actions will be required.

b. If Reclamation's determination, in consultation with SHPO and the Lovelock Paiute Tribe, is that the discovered site is eligible for listing on the NRHP (a historic property), then Reclamation will further consult with SHPO and the Lovelock Paiute Tribe on measures to resolve any adverse effects to the historic property. Reclamation will ensure all agreed upon resolutions are completed prior to the transfer.

#### **IV. DISCOVERY OF HUMAN REMAINS**

A. In the event that human remains are discovered within the APE prior to the transfer, Reclamation must be immediately notified orally, followed by a report of findings within 48 hours by certified mail. All activities within 100 feet of the discovery will cease immediately and the remains must be protected until authorized to proceed by Reclamation.

B. Native American human remains or burials encountered on Reclamation land will be subject to the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.). In that event, Reclamation will conduct tribal consultation in accordance with the federal regulations at 43 CFR Part 10 and Reclamation Manual Directives and Standards *Inadvertent Discovery of Human Remains on Reclamation Lands* (LND07-01).

#### **V. CONFIDENTIALITY OF SENSITIVE HISTORIC RESOURCES**

The parties acknowledge that disclosure of the location of archeological resources may expose those resources to damage, depredation or theft, and therefore the parties agree to use their best efforts, consistent with applicable law, to protect from public disclosure the location of archeological resources in the APE.

#### **VI. CURATION**

Reclamation will ensure that materials and records resulting from implementation of the Treatment Plan are curated in accordance with and at a facility meeting the requirements of 36 CFR Part 79 and the Department of the Interior's Departmental Manual Part 411 *Managing Museum Property*.

#### **VII. NOTICE TO PROCEED WITH TRANSFER ACTIVITIES**

Upon written concurrence from SHPO that fieldwork has been completed according to the Treatment Plan, Reclamation may proceed with actions required to implement the transfer. Reclamation will ensure additional work required under the Treatment Plan continues through completion as required in this MOA.

#### **VIII. DISPUTE RESOLUTION**

A. Should any signatory party to this MOA object at any time in writing to Reclamation regarding the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to implementation of the MOA, or to any document prepared in accordance with and subject to the terms of the MOA, Reclamation will consult with the objecting party to resolve the objection. Reclamation will immediately notify the other parties of the objection, and the results of consultation with the objecting party, if the objection is resolved.

B. If Reclamation determines that the objection cannot be resolved within 30 (thirty) calendar days of receipt of the written objection, Reclamation will forward all documentation relevant to the objection to the ACHP for comment, pursuant to 36 CFR 800.2(b)(2).

1. Should the ACHP provide comments, Reclamation will consider those comments and those of any consulting party in reaching a final decision for the objection. Reclamation will notify in writing the ACHP and signatory parties to this MOA of the final decision.

2. Should the ACHP decline to comment, Reclamation will consider consulting party comments regarding the objection and render a decision. Reclamation will notify in writing signatory parties to this MOA of the final decision.

C. Other actions or tasks in this MOA that are unassociated to the objection or that will not impact the disputed action or task may proceed during the dispute.

## **IX. ANTI-DEFICIENCY ACT**

Any requirement for the payment or obligation of funds by the U.S. Government established by the terms of this MOA will be subject to availability of appropriated funds. No provision in this MOA will be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341.

## **X. AMENDMENTS**

Any party to this MOA may request, in writing to Reclamation, that the MOA be amended. Reclamation will consult with all signatories to this MOA to reach a consensus on the proposed amendment and execute a form of amended MOA. Where no consensus can be reached, the MOA will not be amended. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## **XI. TERMINATION**

A. Any signatory to this MOA may terminate it by providing 30 (thirty) calendar days written notice to the other parties, provided that the signatories and concurring parties consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

B. In the event of termination, Reclamation will continue consultations to comply with NHPA Section 106 and the regulations at 36 CFR 800 with regard to this Transfer.

## **XII. DURATION**

A. Effective Date. This MOA will take effect on the date of the last of Reclamation, the SHPO, the County, and PCWCD to execute the MOA.

B. Duration of the MOA. Unless terminated pursuant to Stipulation XI above, this MOA will be in effect until Reclamation, in consultation with SHPO, determines that all of its terms have been satisfactorily fulfilled. Reclamation will notify all signatory parties in writing that the terms have been fulfilled and that the MOA is terminated. This MOA will be null and void if its

terms are not carried out within five years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

**EXECUTION** of this MOA by Reclamation, SHPO, the County, and PCWCD, and its transmittal to the ACHP and subsequent implementation of its terms and conditions evidences that Reclamation has satisfied its responsibilities under NHPA Section 106.

**SIGNATORY PARTIES:**

BUREAU OF RECLAMATION

By: Donal R. Glaser Date: April 28, 2011  
Donald R. Glaser, Regional Director, Mid-Pacific Region

ACTING FOR

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: Rebecca Palmer Date: 5/16/11  
for Ronald M. James, State Historic Preservation Officer

PERSHING COUNTY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Please identify signatory and title

PERSHING COUNTY WATER CONSERVATION DISTRICT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Please identify signatory and title

**CONCURRING PARTY:**

LOVELOCK PAIUTE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Please identify signatory and title

terms are not carried out within five years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

**EXECUTION** of this MOA by Reclamation, SHPO, the County, and PCWCD, and its transmittal to the Council and subsequent implementation of its terms and conditions evidences that Reclamation has satisfied its responsibilities under NHPA Section 106.

**SIGNATORY PARTIES:**

BUREAU OF RECLAMATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Donald R. Glaser, Regional Director, Mid-Pacific Region

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ronald M. James, State Historic Preservation Officer

PERSHING COUNTY

By: Dan Blaylock, Chairman Date: March 16, 2011  
Please identify signatory and title

PERSHING COUNTY WATER CONSERVATION DISTRICT

By: Bernie Hodges sec. / MGR Date: MARCH 17 2011  
Please identify signatory and title

**CONCURRING PARTY:**

LOVELOCK PAIUTE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Please identify signatory and title



**APPENDIX A  
AREA OF POTENTIAL EFFECTS**



Far Western

**Area of Potential Effect.** Transfer parcel is approximately 995 acres in the Humboldt Sink, in the vicinity of Derby Field, in Pershing County, Nevada.