

**PROGRAMMATIC AGREEMENT
AMONG
THE U. S. FISH AND WILDLIFE SERVICE REGION 1,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
ADMINISTRATION OF ROUTINE FWS UNDERTAKINGS
IN THE STATE OF NEVADA**

RECEIVED

SEP 26 1997

ADVISORY COUNCIL

WHEREAS, the United States Department of Interior, U. S. Fish and Wildlife Service, Region 1 (FWS) manages resources on National Wildlife Refuges, National Fish Hatcheries, and Wildlife Management Areas (FWS land) in Nevada to restore and enhance endangered species, migratory birds, fish, wildlife diversity, and to understand humankind's place in the natural world; and

WHEREAS, the FWS administers programs that provide funds and assistance (FWS programs) for managing wildlife habitat on non-FWS land; and

WHEREAS, the FWS implements, on FWS land and for FWS programs, "routine undertakings" which are listed and described in Appendices A and B; and

WHEREAS, the FWS has determined that implementation of routine undertakings listed in Appendices A and B (and which are the principal subject of this Programmatic Agreement) have little or no potential to affect historic properties; and

WHEREAS, the FWS has consulted with the Advisory Council on Historic Preservation (Council) and the Nevada State Historic Preservation Officer (SHPO) pursuant to section 800.13 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and Section 110 of the same act (16 U.S.C. 470h-2)(NHPA);

NOW, THEREFORE, the FWS the Council, and the SHPO agree that through administration of this Programmatic Agreement the FWS shall satisfy its NHPA responsibilities for its routine undertakings in accordance with the following stipulations.

STIPULATIONS

The FWS will ensure that the following measures are carried out:

I. Qualifications

- A. The FWS will utilize an Historic Preservation Professional(s) (Specialist) to carry out the provisions of the Programmatic Agreement. The Specialist(s) shall meet the qualifications defined in the Secretary of the Interior's Professional Qualifications Standards (43 FR 44738-9).
- B. The FWS will maintain and use the standard IMACS site and survey recordation system that is approved by the Nevada SHPO and compatible with the record repositories at the Nevada State Museum and University of Nevada, Las Vegas. The FWS will not use IMACS short forms.

II. Tribal and Public Participation for Projects on FWS Lands

- A. The FWS will elicit the views of appropriate Tribes (36 CFR 800.2{g}) and other interested groups with regard to the identification and evaluation of properties, and assessment of effects of undertakings on historic properties during the earliest feasible steps of project planning.
- B. The FWS will notify and involve Tribes following established protocols for Government-to-Government consultation, the 1994 USFWS Native American Policy, and procedures that take into account Tribes cultural values, communication methods, and views of their traditional cultural leaders.
 - 1. With the assistance of FWS's Historic Preservation Specialists, each refuge or hatchery manager, complex manager, and/or project leader as appropriate will offer to meet at least annually with the Tribe(s) within its jurisdiction. The purpose of the meeting is to discuss FWS work plans, issues of concern to the Tribe(s), and issues related to historic properties including traditional cultural properties.
 - 2. Each refuge or hatchery manager, complex manager, and/or project leader will send to the Tribe(s) within its jurisdiction copies of all mailings concerning FWS activities that normally go out to the public.

3. Refuge or hatchery managers, complex managers, and/or project leaders, and FWS Historic Preservation Specialists may establish other mechanisms to solicit and consider the views of Tribes on FWS activities, and the identification of historic properties, including traditional cultural properties.

C. The FWS may use II.A. and II.B. to integrate Tribal and public participation conducted for National Environmental Policy Act (NEPA) compliance with NHPA.

III. Project Review

FWS Project leaders are responsible for contacting the Specialist at the earliest feasible time during the planning of an undertaking. The Specialist in consultation with the FWS Project Leader will determine if the proposed action is an "undertaking" pursuant to the definition provided in section 301(7) of the NHPA and 36CFR 800.2(o). In making decisions concerning an undertaking the FWS will take into account comments received during tribal and public participation. If the proposed action meets the definition of an undertaking, the "area of potential effect" (APE), will be determined by the Project Leader and Specialist pursuant to the definition provided at 36 CFR 800.2(c). The FWS shall consider and incorporate into decisions concerning undertakings, comments received during Tribal and Public participation associated with NEPA compliance and Stipulation 2 above. The Specialist will: assess information needs and determine whether the undertaking qualifies under Appendix A or Appendix B and thus qualifies for Programmatic Review described in Stipulation III.A. below. If the Specialist determines that the undertaking does not qualify under Appendix A or B, or is subject to Stipulation III.A.5. below, the FWS will review the undertaking according to the standard Section 106 process (36 CFR 800). The Specialist is responsible for the review of, and determining the finding of effect, for all undertakings that qualify under Appendix A or Appendix B subject to the following.

A. Programmatic Review

Some undertakings have little or no potential to effect historic properties because of their nature or size, and, therefore, will be reviewed in accordance with Appendices A and B. The streamlined procedures in the following stipulations are designed to reduce unnecessary identification, documentation, and review efforts by the parties to the agreement, while still providing adequate consideration

of historic properties and the qualities that may contribute to their eligibility for the National Register of Historic Places (NRHP).

The Specialist will make the determination as to whether an undertaking qualifies for review under Appendix A or B. The FWS will treat all undertakings that do not qualify under Appendix A or B under the standard review process outlined in 36 CFR 800.

1. Appendix A contains a list of those undertakings which by definition would be considered undertakings, but would have negligible potential to affect historic properties, and therefore do not require a field inspection, monitoring, or other form of cultural resource identification, and do not require consultation with the SHPO except for that called for in Stipulation IV.
2. Appendix B contains a list of those undertakings which, by definition, would also be considered undertakings, but given their limited potential to affect historic properties, case by case review and consultation with the SHPO are not necessary. A Specialist may determine the level of inspection, monitoring, or other identification as necessary in consultation with the SHPO. When the Specialist does not consult with the SHPO on the level of inspection, the Specialist will conduct a record search of the APE and inspect the APE with a 100% survey to identify historic properties.
3. When the FWS inventories the APE of an Appendix B undertaking and no historic properties are found within an undertaking's APE, then the FWS may proceed with the undertaking without further consultation, except for Stipulation IV, Reporting.
4. When the FWS inventories the APE of an Appendix B undertaking and identifies properties which may qualify for the NRHP, the Specialist may find that the undertaking will have "no effect," and the FWS may proceed with the undertaking without making a determination of eligibility pursuant to 36 CFR 800.5 (b), provided that avoidance of all potentially eligible properties is achieved according to the following identification and avoidance procedures.
 - a. The FWS will consult with the appropriate Tribe(s) and

interested persons to identify and determine if traditional cultural properties occur in conjunction with, or in addition to, potential historic properties within the undertaking's APE. Where consultation or an inventory of an APE has revealed the presence of a traditional cultural property that cannot be avoided according to III.A.4.c. below, the FWS will exercise the standard Section 106 process pursuant to 36 CFR 800.4 through 800.6.

- b. A property discovered during identification activities will be documented following the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-44723) and SHPO guidelines. Documentation will include a record of the precise location of the property with its boundaries identified, to ensure that the qualities which make the property significant will be avoided by the undertaking.
 - c. The Specialist will determine, based on the attributes of each identified property and the nature of the undertaking, what avoidance procedures should be implemented. The Specialist will take into account all potential intrusions to the property and, if necessary, impose a buffer zone around the property that will ensure avoidance of the property. The FWS will heed the avoidance measures when implementing the undertaking.
- 5. If the Specialist determines that an Appendix A or B undertaking may have an effect on a historic property the FWS will follow the standard review process under 36 CFR 800 of the NHPA.
 - 6. The FWS will report applications of Appendices A and B pursuant to Stipulation IV.
 - 7. Any party to this Programmatic Agreement may propose to modify the list of undertakings in Appendices A and B. That party will provide written notification to the other parties of the proposed change. Upon agreement of all the parties, the changes will be implemented. Modification of these appendices does not require reconsideration of the entire PA, and is therefore not subject to Stipulation X.

- B. All undertakings not meeting one of the conditions in Appendix A or B will be subject to standard 36 CFR 800 case-by-case review.

IV. Reporting

On or about December 15, following the previous fiscal year in which the process for an Appendix B undertaking was exercised, the FWS shall forward to SHPO identification reports in the format described in Appendix C.

The FWS will submit to the SHPO and the Council on or about December 15 an annual report that describes action pursuant to this agreement including Appendix A and B during the previous Federal fiscal year. The report will be the baseline for discussions at the annual review stipulated in VI below. The reporting period will be the immediately prior fiscal year. The report will include the information listed in Appendix C.

V. Monitoring

The FWS will establish a program to monitor a sample of the undertakings covered by this Programmatic Agreement. The program will include site visitations by a Specialist during and after undertakings to determine the effectiveness of site avoidance and/or other management procedures generated by implementation of this agreement. The FWS will prepare a record of each monitoring event.

VI. Training

A. FWS Staff Training

The FWS, with the Council's and SHPO's assistance as appropriate, will train FWS project leaders, managers, and field personnel to implement this agreement and other aspects of historic preservation laws. The training will include but not be limited to, written guidance, in-house FWS designed training, and as appropriate, training provided by other institutions, including the SHPO, the Council, GSA, Tribes, universities, and historic preservation organizations.

B. Specialist Training

The FWS will provide Specialists with opportunities for historic preservation training and enhancement of professional skills including: participation at professional meetings and conferences, preparation of

research for publication, training sessions, educational courses, details, and special assignments.

VII. Heritage Preservation Program

The heritage preservation program of the FWS will heed Section 110 of NHPA. The FWS will initiate or continue, within the limits of its funding authority, the following measures.

- A. Establish a program to inventory cultural resources and evaluate the eligibility of properties to the National Register of Historic Places. This program will address properties that are not subject to a specific Section 106 undertaking and properties on FWS lands identified and avoided in accordance with this agreement.
- B. Prepare cultural resource context statements, cultural resource overviews, or programmatic determinations of eligibility (or non-eligibility) for classes of properties or units of land managed by the FWS.
- C. Conduct or sponsor public outreach activities for cultural resources.

VIII. Review

The FWS, SHPO, and the Council (if it chooses to participate), will meet on an annual basis in January to review this Agreement, to assess the FWS's progress in implementing it, and to determine whether changes or other actions are necessary.

IX. Dispute Resolution

- A. Should the SHPO or the Council object to the adequacy of carrying out any specifications or action pursuant to this agreement, the FWS shall consult with the objecting party to resolve the objection. If, within 30 days following receipt of the objection, the FWS determines that the objection cannot be resolved, the FWS will forward to the Council all documentation relevant to the dispute. The Council will either:
 - 1. Provide the FWS with recommendations which the FWS will take into account in reaching a final decision regarding the dispute; or

2. Notify the FWS that it will comment pursuant to 36 CFR 800.6, and proceed to comment. Whereupon the FWS will respond pursuant to 36 CFR 800.6.

B. If a Tribe or member of the public objects to the FWS' implementation of any aspect of this agreement, the FWS shall take the objection into account and consult with the objecting party, and as needed with the SHPO, or the Council.

X. Amendments

Any party to this agreement may request that it be amended, whereupon, the parties will consult in accordance with 36 CFR 800.13 to consider the amendment.

XI. Termination

Any party to this agreement may terminate it by providing sixty (60) days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this agreement, or failure to abide by its terms shall require the FWS to exercise the standard 36 CFR 800 process for undertakings that otherwise would be reviewed under this agreement.

XII. Execution and Implementation

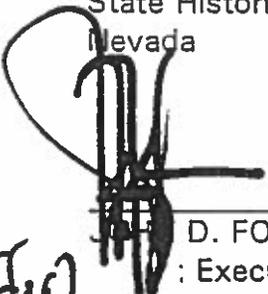
Implementation of this Programmatic Agreement satisfies the FWS Section 106 responsibilities for all FWS undertakings that fall under the terms of the agreement within the state of Nevada. This agreement becomes effective on the date of the last signature below.


for MICHAEL J. SPEAR
Regional Director
Region 1, U. S. Fish and Wildlife Service

6/17/97
Date


RONALD M. JAMES
State Historic Preservation Officer
Nevada

for 7/7/97
Date


JOHN D. FOWLER
: Executive Director
Advisory Council on Historic Preservation

9/3/97
Date

APPENDIX A

Types of Undertakings Requiring Consultation with the Regional Archaeologist/ Historic Preservation Specialist and Otherwise Excluded from Case-by-Case Review and Consultation with the SHPO and Requiring No Cultural Resource Identification Effort (36CFR800.4).

Listed below are FWS undertakings that will be excluded from case-by-case review and consultation with the SHPO. These undertakings require no inspection of the APE because they have little or no potential to affect historic properties. A Specialist (Stipulation I) will make the determination (pursuant to Stipulation III) whether the undertaking meets one or more of the following conditions and can be excluded from inspection and case-by-case review and consultation with the SHPO.

The Specialist will document the decision that an undertaking qualifies under this Appendix and is excluded from case-by-case review. The documentation will be kept on file by the FWS Regional Archaeologist. The FWS will submit to the SHPO and the Council an annual report (Stipulation IV) of the number and types of undertakings excluded from case-by-case review. The report will be prepared in the format outlined in Appendix C.2.

The Specialist, at their discretion, may decide to follow standard Section 106 review procedures (36CFR800) for any undertaking listed herein. The Specialist may also decide to review an undertaking listed herein under the provisions of Appendix B.

1. Revegetation that does not involve scarification or excavation of the surface, such as broadcast seeding and pushing saplings into the ground.
2. Removal of plants through cutting, mowing, herbicides, manual uprooting with hand tools, and burning when existing features (ditches, levees, roads, water) contain the fire and there is no excavation of fire lines.
3. Encroachment thinning using hand methods to lop branches and cut small trees and brush, and leaving debris on the ground or yarding by hand.
4. Continuing routine maintenance of wetlands and farm fields within existing the flood zone or plow zone by mowing, discing, ripping, leveling, burning, flooding, herbicide application, planting, and grazing, provided that the continued maintenance does not exceed the spatial dimensions, or differ significantly, from the previous routine maintenance practice.

5. Installation of wildlife habitat structures including goose baskets, bird houses, nesting platforms, raptor perches, and guzzlers that require no ground disturbance.
6. Roadwork that does not increase the width or depth of previous disturbance, including:
 - A. Maintenance within the existing road profile, and does not exceed the dimensions of the previous disturbance, such as grading, cleaning inboard ditches, repairing, brushing, or replacing culverts, guards, and gates.
 - B. Decompacting (ripping), water barring, and out-sloping non-native road surfaces.
 - C. Installation of signs, markers, safety features (e.g. guardrails), gates, posts, and cattle guards within or alongside existing roadways or trails.

All roads, trails, or components thereof that qualify or may qualify as an historic property are not included in this provision.

7. Installing, replacing, maintaining, or enhancing bridges, fish screens, culverts, pumps, power poles, and other water control structures (e.g., risers) in existing non-native road surfaces, dikes, levees, or ditches where the facility itself is not a historic property or more than 50 years old.
8. Conducting data collection or emplacing monitoring equipment that involves no access roads or heavy equipment, and is less than 1 square meter of surface ground disturbance per acre, unless within an eligible or potentially eligible historic property or areas considered likely to contain historic properties. Such activities could include stream gages, weather stations, animal traps, and other monitoring or transmitting devices.
9. Restoration of stream channels by removing blockages of brush, trees, and sediment, or by placement of in-stream structures (e.g., boulders, stumps, logs, plantings), fish-cover devices, and spawning gravels, as long as restoration stays within the active stream channel.
10. Use of existing material source sites where no lateral expansion of the source will occur.

11. Construction of small, above-ground structures within existing facilities, where the location of the proposed structure has been previously disturbed, where no excavation or grading is required, and where there is no potential to effect properties that are eligible or potentially eligible to NRHP. Such structures include, but are not limited to: rearing pens, above-ground storage tanks, loading docks, sanitation devices, visitor registers, lighting, and kiosks.
12. Maintaining, repairing, or modifying existing projects, facilities and other infrastructure, or programs that are less than 50 years old or have been determined "not eligible" to the NRHP. This does not include actions that disturb ground beyond the area of original disturbance or impact cultural resources eligible or potentially eligible for inclusion on the NRHP.
13. Updating interiors of FWS facilities (e.g., wiring, plumbing, floor covering, etc.) that does not alter the exterior of the facility and does not alter the interior architectural design of the facility. This does not include updating or modification of facilities that are eligible or potentially eligible for inclusion on the NRHP.

APPENDIX B

Types of Undertakings Requiring Consultation with the Regional Archaeologist/ Historic Preservation Specialist and Otherwise Excluded from Case-by-Case Review and Consultation with the SHPO, but will be subject to a Cultural Resource Identification Effort (36CFR800.4).

Listed below are FWS undertakings that will be excluded from case-by-case review and consultation with the SHPO. Although they have limited potential to affect historic properties, the FWS will ensure that the APEs of the undertakings will be inspected according to Stipulation III. A Specialist will make the determination whether the undertaking meets one or more of the following conditions and can be excluded from case-by-case review and consultation with the SHPO.

The Specialist will document the decision that an undertaking qualifies under this Appendix and is excluded from case-by-case review. The documentation will be kept on file by the FWS Regional Archaeologist. The FWS will inventory these undertakings according to Stipulation III. Following the inventory of an undertaking that qualifies under this Appendix, the FWS will submit to the SHPO a report that contains information listed in Appendix C.1. In addition, the FWS will submit to the SHPO and the Council an annual report (Appendix C.2.) on the number and types of undertakings excluded from case-by-case review.

The Specialist, at their discretion, may decide to exercise the standard Section 106 review process for any undertaking listed herein.

1. Wetland restoration.
 - a. Restoring, through excavation and/or change in water management, historic topography or natural water flow to former wetlands that are now farm fields or pastures that have been previously laser leveled, cultivated, disced, or ripped to eliminate hardpan, or tiled.
 - b. Removing, replacing, and constructing water impoundments and conveyance structures such as dikes, levees, dams, culverts, gates, canals, or ditches when the structures themselves are not potentially eligible to the NRHP.
2. Revegetation that involves mechanical scarification or excavation of the soil.
3. All fence construction. The APE will include areas that will sustain concentration or trailing of livestock as a result of fence construction.

4. Decompacting (ripping), water barring, and out-sloping native road surfaces when the structures themselves are not potentially eligible to the NRHP.
5. Restoration of stream channels with heavy equipment and vehicles that excavate access routes, meander loops, and other areas outside the active stream channel.
6. Excavations for emplacing or removing tile, ditches, fire lines, dikes, levees, pipes, pipelines, cables, power poles, fiber optic lines, when the structures themselves are not potentially eligible to the NRHP.
7. Discing, seed drilling, or other disturbance of rangeland, pasture, other native surfaces, and farmland below the plow zone.
8. Prescribed burns in uplands and any fire lines that require excavation.
9. Roadwork or maintenance that exceeds the dimensions of previous disturbance or occurs at any road, trail, or component thereof that qualifies or may qualify as an historic property.
10. Erection of hunting or viewing blinds on the surface of the ground.

APPENDIX C

Format Standards for Reports Prepared Pursuant to Stipulation IV.

1. Following each identification effort for Appendix B undertakings the FWS will prepare a report documenting that effort. The report will consist of the following data fields, supporting maps, and site forms.

Name: Name & type of undertaking (from Appendix A or B), field contact.

Location: FWS unit, county, USGS map, geographic unit, legal location.

APE: Description, size (acres).

Background: Pertinent environmental, historical, and archaeological information (record search) affecting the kinds of cultural resources that are present and that are expected.

Inventory: Field methods, intensive or sample, acres or linear meters surveyed, field methods, field crew.

Map: Showing APE, area surveyed, sites.

Results: If applicable, historic properties identified, eligibility to the NRHP, site numbers, site forms.

Avoidance: If applicable, describe avoidance measures.

Monitoring: Recommendation, if necessary.

Signatures: Author, SHPO.

2. The FWS will produce an annual report containing the following:

A. A table of undertakings that were treated under Appendix A and B. The table will include the following:

Name: Name and type of undertaking (from list in Appendix A or B), field contact.

Location: FWS unit, County, USGS map reference, legal location.

APE: Size (acres).

Maps: Showing undertaking, APE, historic properties, if applicable.

Results: of identification effort (for Appendix B projects)

Avoidance: If applicable, describe avoidance and findings of monitoring.

B. A description of actions that mark progress towards the goals outlined in Stipulation II (Tribal and Public Participation), Stipulation VI (Training) and Stipulation VII (Heritage Preservation Program).

C. An assessment of the effectiveness of the PA, including an estimate of increases in management efficiency and a discussion of problems or issues for improvement.