

**PROGRAMMATIC AGREEMENT
AMONG THE
DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA;
DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, NEVADA;
DEPARTMENT OF AGRICULTURE, SAN BERNARDINO NATIONAL FOREST;
DEPARTMENT OF DEFENSE, MARINE CORPS LOGISTICS BASE, BARSTOW;
THE COUNTY OF SAN BERNARDINO, CALIFORNIA; CLARK COUNTY, NEVADA;
CALNEV PIPE LINE LLC;
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER;
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE PROPOSED CALNEV PIPE LINE LLC'S CALNEV EXPANSION PROJECT,
THROUGH SAN BERNARDINO COUNTY, CALIFORNIA AND CLARK COUNTY, NEVADA**

WHEREAS, Calnev Pipe Line LLC (Calnev) has applied to Bureau of Land Management (BLM) for a right-of-way (ROW) across BLM managed lands in San Bernardino County, California and Clark County, Nevada to construct the Calnev Expansion Project (CNX) (hereinafter referred to as the "Undertaking" as defined in 36 CFR 800.16[y]), which includes the construction, operation and maintenance of a pipeline system and associated infrastructure managed in accordance with the Federal Land Management and Policy Act (P.L. 94-579); and

WHEREAS, a substantial portion of the Undertaking if approved will be located on public lands managed by the Barstow field Office (BLM Barstow) and the Las Vegas Field Office (BLM Las Vegas) of the Department of the Interior; and

WHEREAS, the BLM has determined that issuing a ROW and Notice to Proceed (NTP) for this Undertaking has the potential to cause effects to historic properties and intends to use this Programmatic Agreement (PA) to comply with the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (NHPA)(P.L. 89-665, as amended; 16 U.S.C. 470f) and Section 110(f) of the same Act (16 U.S.C. 470h-2[f]), including implementing regulations; and

WHEREAS, the BLM is the lead Federal agency and the BLM Barstow is the lead BLM Office for the purpose of compliance with Section 106 of the NHPA and its implementing regulations and the definitions provided at 36 CFR 800.16 and in these stipulations are applicable throughout this PA; and

WHEREAS, the BLM is consulting with the California State Historic Preservation Officer (CA-SHPO) and the Nevada State Historic Preservation Officer (NV-SHPO) (SHPOs); and has consulted with the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR §800.14(b), to develop and execute this PA and the ACHP has elected not to formally enter consultation on the development of this PA in a letter dated September 9, 2011; and

WHEREAS, the BLM is consulting with the San Bernardino National Forest (Forest Service), and the Marine Corps Logistics Base, Barstow (MCLB Barstow), who have all agreed to participate in the Section 106 consultation regarding the Undertaking under the terms of this PA and are Invited Signatories to this PA; and

WHEREAS, Calnev as grantee of the ROW has participated in consultation per 36 CFR 800.2(c)(4) and is willing to carry out the stipulations of this PA under the oversight of BLM and is invited to concur in this PA; and

WHEREAS, the BLM has determined that implementing the Undertaking may have effects on historic properties that cannot be fully determined prior to the Undertaking's approval as Calnev is still in the process of considering different alternatives for the Undertaking; and

WHEREAS, BLM, in consultation with the SHPOs, has determined that a phased (tiered) process for compliance with Section 106 of the NHPA is appropriate for the Undertaking, such that completion of the identification of historic properties, determinations of project effects on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out as part of planning for and prior to issuing any NTP and specific project implementation; and

WHEREAS, The County of San Bernardino (SBCo) is the lead State agency for compliance with the California Environmental Quality Act (CEQA) and has certain responsibilities under State laws and regulations to take into account and mitigate the effects of this Undertaking on historic properties eligible for or included on the California Register of Historical Resources and is coordinating compliance with State law with federal agency responsibilities to comply with Section 106 of the NHPA, and is an Invited Signatory to this PA; and

WHEREAS, this PA does not apply to lands owned or under the management of Indian Tribes (as defined in 36 CFR 800.16[m]) unless an Indian Tribe requests to participate pursuant to Stipulation III.J (Monitoring) of this PA; and

WHEREAS, the BLM is responsible for government-to-government consultation with Indian Tribes for this undertaking and pursuant to section 101(d)(6)(B) of the NHPA, 36 CFR 800.2(c)(2)(ii), the AIRFA, Executive Order 13175, and section 3(c) of the NAGPRA, the BLM has consulted with the Agua Caliente Band of Cahuilla Indians, Chemehuevi Reservation, Colorado River Indian Tribe, Fort Mojave Indian Tribe, Kern Valley Indian Council, Las Vegas Paiute Tribe, Moapa Band of Paiutes, Morongo Band of Mission Indians, Pahrump Paiute Tribe, San Manuel Band of Mission Indians, Serrano Band of Indians, Soboba Band of Mission Indians, The Kawaiisu Tribe, Timbisha Shoshone, and the Twenty-Nine Palms Band of Mission Indians (Tribes) on this Undertaking and this PA, and has invited those Tribes expressing an interest in the Undertaking to concur in this PA, with the further understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM shall continue to consult with these Tribes throughout the implementation of this PA; and

WHEREAS, execution of this PA as a concurring party by a Tribe indicates participation as a Section 106 consulting party and acknowledgment that the Tribe's views were taken into consideration, but does not indicate approval of the outcome of the NEPA analysis for the Undertaking nor does it indicate a preference for a specific alternative;

NOW, THEREFORE, the Signatories and Invited Signatories agree that the Undertaking shall be administered in accordance with the terms of this PA to ensure that in order to take into account the effect of the Undertaking on historic properties and to satisfy the Section 106 responsibilities of the BLM, Forest Service, and MCLB Barstow, for all aspects of the Undertaking.

I. ROLES AND RESPONSIBILITIES

A. The Signatories agree that the BLM Barstow Field Office is the lead BLM Office for administering and implementing this PA. This includes but is not limited to consulting and coordinating with other land managing agencies; ensuring that all Signatories carry out their responsibilities; overseeing all cultural resources work; assembling all submissions to the SHPOs including reports, determinations of eligibility and effect, and treatment or data recovery plans; and seeking SHPO concurrence with all agency compliance decisions. The BLM shall be responsible for reviewing reports and participating in making determinations of eligibility, developing treatment options, and determining effects for the Undertaking on both public and private lands.

B. Reporting on and documenting the actions cited above shall conform to BLM 8100 Manual guidance as stipulated in the BLM Cultural Resources Use Permit and Field Authorizations for this Undertaking, and to every reasonable extent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR. 44716-44740), as well as the California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a) December 1989, *Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports*, the Nevada State Historic Preservation Office's *Guidelines for Section 106 Submissions to the Nevada State Historic Preservation Office*, and any specific county or local requirements or report formats as necessary.

C. The BLM shall consult with Indian Tribes whose aboriginal territories included portions of the Undertaking or who have previously expressed interest in undertakings within the APE and include other land managing agencies in those consultations that involve land under the agency's jurisdiction.

D. The San Bernardino National Forest (Forest Service) and the Marine Corps Logistics Base, Barstow (MCLB Barstow) have agreed to participate in the Section 106 consultation regarding the Undertaking and will make determinations of eligibility and project effect and assist in developing treatment options for historic properties within their respective boundaries.

E. The BLM will ensure that Calnev completes a cultural resources inventory. This inventory will include an prefield archival review and on the ground, intensive archaeological inventory (Class III pedestrian survey) of all portions of the Undertaking subject to potential ground disturbance that have not been previously inventoried, or areas where the Federal agencies in consultation with the SHPOs determine the results of previous inventories to be inconclusive or inadequate. The same cultural resource inventory methods shall apply to both private and public lands. Calnev will fund and implement all cultural resources fieldwork, analysis, monitoring, data recovery, analysis, reporting and curation required under this agreement.

II. AREA OF POTENTIAL EFFECTS (APE)

A. Defining the APE

Calnev proposes to construct a 234-mile pipeline from the existing terminal in the City of Colton, California to Bracken Junction on the existing Calnev system in the City of Las Vegas, Nevada. The Undertaking will consist of a new 16-inch pipeline from Colton, California to Las Vegas, Nevada and will incorporate improvements to the Colton Terminal, a new pump station north of Baker, California, new interconnections, new valves and other ancillary modifications. In addition the project will include upgrades to the existing Calnev facilities in Colton, Barstow, and Baker, California; and Cyma and Las

Vegas, Nevada, thereby increasing the capacity of the system to approximately 200,000 barrels per day.

The BLM, in consultation with the SHPOs and other consulting parties, has determined and documented the Calnev APE, which is documented in Appendix B. BLM has defined conventions or standards for survey corridors and survey intensity to adequately identify historic properties that may be affected either directly, indirectly, or cumulatively by this Undertaking. The APE, as defined and documented, is a baseline for additional survey and inventory. Where Tribal Consultation, additional field research or literature review, consultation with interested parties, or other factors indicate that the qualities and values of historic properties that lie outside boundaries of these conventions may be affected directly or indirectly, the APE may be modified in accordance with Stipulation II.B of this PA or through the development of the Treatment or Data Recovery Plan (Stipulation III.C) to provide for consideration of effects to these historic properties. In defining and documenting the APE and conducting additional survey and inventory activities, unless otherwise agreed to and stipulated in the Historic Property Treatment Plan, the following conventions or standards will apply:

1. The APE will apply to federal, state, and private lands included in the main pipeline corridor, terminal improvements, new pump stations, interconnections, valves, staging areas and access roads, the construction zone, extra work areas, and all ancillary facilities or other related infrastructure for this Undertaking.
2. The survey corridor used for purposes of this PA is a 250-foot-wide corridor centered on the construction ROW centerline (i.e., 125 feet on either side of centerline).
3. The survey corridor for access roads outside of the pipeline corridor will be a minimum of 150 feet wide (75 feet on either side of centerline).
4. The survey convention for terminal improvements, new pump stations, interconnections, valves, all ancillary facilities or other related infrastructure, staging areas, or other temporary use areas, will be the footprint of the area plus 100 feet outward in all directions from the perimeter of each area.
5. The convention for all survey activity will meet BLM Manual 8100 guidance for a comprehensive survey (BLM Class III Survey) and be consistent with the guidance and standards of the California Office of Historic Preservation and the NV-SHPO.

B. Amending the APE

1. If BLM determines that unforeseen changes to the Undertaking may cause effects to historic properties in a geographic area or areas beyond the extent of the established APE, then BLM shall adjust the APE using the process set forth in Stipulation II.B.2 (below).
2. Any consulting party to this PA may propose that the APE be modified. BLM shall notify all the Signatories and Invited Signatories of the proposal and consult with the SHPOs for no more than 30 working days to reach agreement on the proposal. If the BLM and the SHPOs agree to the proposal, then BLM will prepare a description and a map of the modification and provide to all the consulting parties. Agreement to amend the APE will not require an amendment to the PA. If the BLM and the SHPOs cannot agree to a proposal for the modification of the APE, then they will resolve the dispute in accordance with Stipulation III.I (Dispute Resolution).

III. STIPULATIONS

The BLM, with the assistance of the Signatories, shall ensure that the following stipulations are carried out:

A. Identification

1. The BLM, in consultation with the SHPOs and other consulting parties, shall ensure that Calnev funds all appropriate cultural resources identification activities including inventory; archival records search; informant interviews; archaeological, historic, or ethnographic report preparation; and curation based on the APE for all activity areas or portions thereof in a manner consistent with Section 106 of the NHPA and its implementing regulations.
2. All actions prescribed by this PA that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (PQS) for archaeology, history, or architectural history, as appropriate (48 FR 44739). Nothing in this stipulation, however, may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of properly supervised persons who do not meet the PQS.
3. Each Signatory shall identify interested persons, Tribes, or affected ethnic groups to the BLM. The BLM shall invite identified interested persons, Tribes, or affected ethnic groups to participate as appropriate, in all activities associated with the Undertaking.
4. Required identification activities shall be completed regardless of the ownership (Federal, state, local or private) of the lands involved and Calnev shall be responsible for gaining access to privately held lands through applying all reasonable means available including obtaining right of entry through courts. The BLM Barstow Field Office may issue a notice to proceed (NTP) for any construction segment as prescribed in Stipulation III.G (Notice to Proceed).
5. The BLM shall make a good faith effort to consult with Tribes to identify properties of traditional religious and cultural importance and to inform the agencies of their eligibility and suggest appropriate treatment to avoid adverse effects to historic properties.
6. The BLM shall ensure that Calnev, through its contractors, identify areas within the project APE that have the potential for subsurface deposits and include these areas as designated archaeologically sensitive areas when preparing and implementing a monitoring plan.

B. Eligibility

1. The BLM, in consultation with the SHPOs and other consulting parties, shall evaluate all cultural resources located within the APE for eligibility to the NRHP. Eligibility shall be determined prior to the initiation of activities that may affect cultural resources. Eligibility shall be determined in a manner consistent with Section 106 of the NHPA and its implementing regulations.
2. The BLM, in consultation with the SHPOs, shall consult with appropriate Tribes to evaluate the eligibility of properties of traditional religious and cultural importance.

3. To the extent practicable, eligibility determinations shall be based on inventory information. If the information gathered in the inventory is inadequate to determine eligibility, Calnev, through its contractors and subcontractors, shall conduct limited subsurface testing or other evaluative techniques to determine eligibility.
4. BLM, in consultation with the other Signatories, shall develop testing plans and consolidate all plans into one submission for each state for concurrence from the appropriate SHPO. The BLM shall provide identified interested parties with the same review opportunity as afforded the SHPO. Any proposed testing shall be limited to disturbing no more than 10 percent of the surface area of the resource.
5. If any of the Signatories, Tribes, or other consulting parties disagrees with a decision regarding eligibility, the BLM shall notify all Signatories of the dispute and seek a determination of eligibility from the appropriate SHPO. If the SHPO cannot resolve the dispute, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination shall be considered final.

C. Treatment of Historic Properties

1. In avoiding or mitigating effects, the BLM, in consultation with the appropriate SHPO and other consulting parties, shall determine the precise nature of effects to historic properties identified in the APE. The BLM shall ensure that Calnev, through its contractors, prepares a comprehensive Treatment, or Data Recovery Plan as appropriate. The BLM will seek SHPO concurrence on the adequacy of the plan. The BLM shall provide identified interested parties with the same review opportunity as afforded the SHPOs.
2. To the extent practicable and consistent with safety and good engineering design, the Signatories shall ensure that Calnev avoids effects to historic properties through project design, or redesign, relocation of facilities, or by other means. If avoidance is not practicable, the BLM, in consultation with the Signatories, appropriate Tribes, and other consulting parties shall ensure that Calnev prepares an appropriate Treatment or Data Recovery Plan designed to lessen or mitigate project-related effects to historic properties.
3. For properties eligible under 36 CFR Part 800.4 Criteria (A) through (C), mitigation other than data recovery may be considered in the Treatment Plan (e.g., HABS/HAER recordation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, Treatment Plans shall include provisions for an educational publication that is suitable for release to the general public.
4. When data recovery is proposed, the BLM, in consultation with the appropriate SHPO and other consulting parties, shall ensure that Calnev develops a Data Recovery Plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37) and Treatment of Historic Properties: A Handbook (Advisory Council on Historic Preservation 1980). The SHPOs and other consulting parties will have 30 working days to review the plan(s).
5. The BLM shall ensure that Calnev, through its contractors, implements and completes the fieldwork portions of any formal Treatment or Data Recovery Plan for any given historic property prior to initiating any activities that may affect that historic property.

6. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA be provided to the SHPOs, other Signatories, Tribes, and other consulting parties subject to confidentiality limitations.

7. To the extent permitted under § 5097.98 and § 5097.991 of the California Public Resources Code, the materials and records resulting from the actions cited Stipulation I.1 (Roles and Responsibilities) and located on nonfederal lands shall be curated in accordance with 36 CFR 79. Where Federal lands are involved, all records and materials resulting from the actions cited in paragraph A of this stipulation shall be curated in accordance with 36 CFR 79 and the provisions of the NAGPRA, 43 CFR 10, as applicable. Unless otherwise agreed to, BLM will attempt to have all collections curated at one location appropriate to each State.

8. If cultural materials are recovered from private lands, BLM will seek to have the materials donated through a written donation agreement to be curated with other cultural materials. All curated materials shall be accompanied by appropriate records including but not limited to detailed catalog/inventory.

9. No human remains will be curated. If any human remains are discovered in the course of the Undertaking, the remains and associated grave goods found on Federal land will be handled according to the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR 10). Human remains and associated grave goods on private land shall be handled according to the provisions of the CEQA Guidelines Section 15064.5 (e) (1) and the provisions of the California Health and Safety Code or Nevada statute NRS 383, as appropriate.

D. Discovery Situations

1. Prior to initiating any activities within the APE, Calnev shall provide the Signatories with a list of, and schedule for, Calnev employees, contractors, and subcontractors qualified as described in Stipulation III.A.1 (Identification) above, and empowered to halt all activities in a discovery situation and who shall be responsible for notifying BLM of any discoveries. At least one of these employees shall be present during all CNX initial grading and trenching/excavation into undisturbed ground in areas designated as archaeologically sensitive (see Appendix A).

2. As soon as there is a discovery or unanticipated effect situation, all CNX-related activities shall halt in the immediate vicinity of the discovery and thereafter be directed away from an area at least 100 feet in all directions from the point of discovery. Calnev through its contractors shall immediately notify BLM Archaeologist, Jim Shearer, of the situation.

3. The BLM shall notify the SHPOs, Federal agencies, Tribes, and other consulting parties as appropriate within one working day of being notified of the discovery or unanticipated impact, and consider their initial comments on the situation. BLM shall also initiate the procedures outlined in Appendix A. Within one working day after its initial notification, the BLM shall notify all Signatories and other consulting parties, of the decision to either allow CNX activities to proceed or to require further evaluation or mitigation. Calnev may proceed with construction activities one working day after receiving notification from the BLM unless the BLM subsequently notifies Calnev not to proceed.

4. If, in consultation with the Signatories, the BLM determines that mitigation for discoveries or unanticipated impacts is required, the BLM shall solicit comments from the Signatories, Tribes, and other consulting parties, as appropriate, to develop mitigation measures. The Signatories, Tribes, and other consulting parties, as appropriate, shall be allowed one working day to provide BLM with comments to be

considered when BLM decides on the nature and extent of mitigation efforts. Within five working days of initial SHPO notification, the BLM shall inform all Signatories of the nature of the mitigation required, and ensure that such mitigation actions are implemented before allowing CNX activities to resume in the area of discovery.

5. The BLM shall ensure that reports of mitigation efforts for discovery situations 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). BLM shall submit draft reports to the SHPOs for review and comment as set forth in Stipulation III.E.3 (Time Frames) of this PA. BLM shall submit final reports to the SHPOs, other Signatories, and other consulting parties for informational purposes subject to confidentiality limitations.

6. Any disputes or objections arising during a discovery situation that cannot be resolved by the BLM Field Office and appropriate SHPO (CA or NV) shall be referred to the respective BLM State Office for resolution. The BLM State Office decision shall be considered final.

7. Construction-related activities in the area of the discovery that require mitigation shall be halted until Calnev is notified by the Jim Shearer, the BLM authorized officer, in writing via electronic mail that mitigation is complete and activities can resume.

E. Time Frames

1. Reports: BLM shall review and comment on any pre-construction or post-construction report submitted by Calnev within 30 working days of receipt. BLM shall consolidate all comments and send them to Calnev or the appropriate SHPO as needed.

2. Consultation with consulting parties other than SHPOs: Prior to SHPO consultation, and concurrent with their own review period, the BLM shall submit the results of all identification and evaluation efforts, and Treatment Plans to other Federal/local agencies, Tribes and other BLM-identified consulting parties for a 30 working day review and comment period.

3. SHPO Consultation: After review by the other Signatories, Tribes, and other consulting parties, BLM shall submit the results of all identification, evaluation, and treatment efforts, including discovery situations, and Treatment or Data Recovery Plans to the SHPOs for a 30 working day review and comment period.

4. If any Signatory to this PA or other consulting party fails to respond to the BLM within 30 working days of the receipt of a submission, the BLM shall presume they do not object with the findings and recommendations as detailed in the submission and proceed accordingly.

5. Reports: A draft final report of all identification, evaluation, treatment or other mitigation activities shall be due to the BLM from Calnev within twelve months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.

6. Curation: All reports, records, photographs, maps, field notes, artifacts (subject to curation), and other materials collected or developed for any identification, evaluation, or treatment activities shall be curated in facilities in each State approved by the Signatories (pursuant to that facility's curation guidelines) at the time the final report associated with that activity is accepted by the BLM, except for materials and artifacts from private land that must be returned to the landowners if they do not wish to donate them.

F. Financial Assurance

1. Calnev shall post a surety bond or an acceptable form of financial assurance with the BLM in an amount sufficient to cover all post-fieldwork costs associated with inventory, implementing a Treatment Plan, Data Recovery Plan, or other cultural resources management activities, as negotiated by Calnev when they contract for services in support of this PA. Such costs may include, but are not limited to post-fieldwork analyses, research and report preparation, interim and summary reports preparation, and the curation of project documentation and artifact collections in an approved curation facility. The surety bond shall be posted or an acceptable form of financial assurance shall be provided prior to BLM issuing any NTP.
2. The surety bond or financial assurance shall be subject to forfeiture if the post-fieldwork tasks are not completed within the period established by the treatment option selected. The BLM shall notify Calnev that the surety bond or financial assurance is subject to forfeiture and shall allow Calnev 30 working days to respond before forfeiture action is taken by the BLM.
3. The surety bond or financial assurance shall be released, in whole or in part, as specific post-fieldwork tasks, including final disposition of all collections, are completed and accepted by the BLM, and the contractor has been paid.

G. Notices to Proceed

After compliance with Stipulation III.A.3 (Identification), the BLM, in consultation with the other Signatories, may issue NTP to Calnev for individual construction segments as defined by Calnev in its Construction Plan, under any of the following conditions:

1. The BLM and appropriate SHPO have determined that there are no cultural resources within the APE for the construction segment; or
2. The BLM and appropriate SHPO have determined that there are no historic properties within the APE for the construction segment; or
3. The BLM after consultation with the appropriate SHPO, other agencies, and other consulting parties has implemented an adequate Treatment Plan for the construction segment, and:
 - a. The fieldwork phase of the treatment option that is required prior to construction has been completed; and
 - b. The BLM has accepted a summary description of the fieldwork performed, summary of the results, and a reporting schedule for that work; and
 - c. BLM has provided a copy of the summary to the appropriate SHPO; and
 - d. If the SHPO concurs or does not respond within two working days of receipt, BLM shall assume concurrence and issue the NTP; and
 - e. Calnev has posted a surety as set forth in Stipulation III.F (Financial Assurance) for post-fieldwork costs of the Treatment Plan.

H. Other Considerations

1. Calnev, in cooperation with the BLM and the SHPOs, shall ensure that all its personnel and all the

personnel of its contractors and subcontractors are directed not to engage in the illegal collection of historic and prehistoric materials. Calnev shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) on Federal lands, with Nevada statute NRS 383 and CEQA, PRC Section 21000 *et seq.*, and the California Code of Regulations (CCR) Title 14, Chapter 3, Section 15000 for private lands.

2. Calnev shall bear the expense of identification, evaluation, and treatment of all cultural resources directly or indirectly affected by the Undertaking. Such costs shall include, but not be limited to, pre-field planning, fieldwork, post-fieldwork analysis, research and report preparation, interim and summary report preparation, publications for the general public, and the cost of curating Undertaking documentation and artifact collections.

3. The identification, evaluation, and treatment of cultural properties directly affected by the Undertaking shall be limited to CNX related rights-of-way, including all temporary rights-of-way for construction.

4. BLM, through consultation with appropriate Tribes, shall identify, evaluate, and mitigate properties of traditional religious and cultural importance. Calnev may contract for data gathering to assist the BLM in identifying, evaluating, and treating these properties. BLM will conduct any formal consultation, as needed, in consultation with the other Signatories. Properties of traditional religious and cultural importance identification, evaluation, and treatment efforts shall be consistent with Section 106 of the NHPA and its implementing regulations.

5. Information on the location and nature of all cultural resources, and all information considered proprietary by Tribes, shall be held confidential to the extent provided by Federal and state law.

6. The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the Undertaking are treated with the respect due such materials. In coordination with this PA, Native American human remains and associated grave goods found on Federal land shall be handled according to the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR 10). Human remains and associated grave goods on private land shall be handled according to the provisions of the CEQA Guidelines Section 15064.5 (e) (1) and the provisions of the California Health and Safety Code or Nevada statute NRS 383, as appropriate.

7. Calnev, under the direction, guidance, and approval of BLM in consultation with other consulting parties as appropriate, shall prepare an Operations and Maintenance Plan to continue protection of cultural resources that have the potential to be affected during routine operations and maintenance activities of the pipeline after construction is completed.

I. Dispute Resolution

1. Should the Signatories or Invited Signatories object at any time to the manner in which the terms of this PA are implemented, the BLM will immediately notify the other Signatories and Invited Signatories and request their comments on the objection within 30 working days.

2. If the objection can be resolved within the consultation period, the BLM may authorize the disputed action to proceed in accordance with the terms of such resolution.

3. If at the end of the 30 working day consultation period, the objection cannot be resolved through such consultation, the BLM will forward all documentation relevant to the objection to the ACHP per 36

CFR 800.2(b)(2). Any comments provided by the ACHP within 30 working days after its receipt of all relevant documentation will be taken into account by the BLM in reaching a final decision regarding the objection. The BLM will notify the Signatories, Invited Signatories, and Concurring Parties in writing of its final decision within 14 calendar days after it is rendered.

4. The BLM's responsibility to carry out all other actions under this PA that are not the subject of the objection will remain unchanged.

5. At any time during implementation of the terms of this PA, should an objection pertaining to the PA be raised by a concurring party or a member of the interested public, the BLM shall immediately notify the Signatories, Invited Signatories, and other concurring parties, consult with SHPOs about the objection, and take the objection into account. The other consulting parties may comment on the objection to the BLM. The BLM shall consult with the objecting party (parties) for no more than 14 calendar days. Within 7 working days following closure of consultation, the BLM will render a decision regarding the objection and notify all parties of its decision in writing. In reaching its final decision, the BLM will take into account all comments from the parties regarding the objection. The BLM shall have the authority to make the final decision resolving the objection. Any dispute pertaining to the NRHP eligibility of historic properties or cultural resources covered by this PA will be addressed by the BLM per 36 CFR 800.4(d)(1)(ii).

6. If there are any disagreements or objections that cannot be resolved through further consultation as stated in Stipulation III.I.3 (Dispute Resolution), the BLM will forward all documentation relevant to the objection to the ACHP per 36 CFR 800.2(b)(2). Any comments provided by the ACHP within 30 working days after its receipt of all relevant documentation will be taken into account by the BLM in reaching a final decision regarding the objection. The BLM will notify the Signatories, Invited Signatories, and Concurring Parties in writing of its final decision within 14 calendar days after it is rendered.

J. Monitoring

1. Although any PA Signatory may monitor the work, to the extent practicable, all monitoring activities shall be done to minimize the number of monitors involved in the Undertaking. All monitors must comply with all applicable regulations and project training, safety and mitigation requirements.

2. Any areas that the BLM, in consultation with the SHPOs, appropriate Federal agency, Tribe, or other consulting party identifies as sensitive shall be monitored by an appropriate cultural resources professional who meets the standards described in Stipulation III.A.1 (Identification) above or tribal representative during construction activities that may affect the area. Treatment Plans shall contain Monitoring Plans as needed. Both archaeological monitors and tribal monitors shall be empowered to stop work in the specific area of concern to protect resources.

K. Amending the Agreement

1. Any party to this PA may at any time propose amendments, whereupon all parties shall consult for no more than 30 working days to consider such amendments pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). This PA may be amended only upon written agreement of the Signatories and Invited Signatories.

2. Amendments to this PA shall take effect on the dates that they are fully executed by the Signatories.

L. Terminating the Agreement

1. Only Signatories and Invited Signatories may terminate this PA. If this PA is not amended as provided for in Stipulation III.K (Amending the Agreement) or if a Signatory or Invited Signatory proposes termination of this PA for other reasons, the Signatory or Invited Signatory proposing termination shall notify the other Signatories and Invited Signatories in writing, explain the reasons for proposing termination, and consult for no more than 30 working days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the Signatories and Invited Signatories shall proceed in accordance with that agreement.
3. Should such consultation fail, the Signatory or Invited Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories and Invited Signatories in writing.
4. Should this PA be terminated, then the BLM, as lead for the other federal land managing agencies, shall either consult in accordance with 36 CFR 800.14(b) to develop a new Agreement or request the comments of the ACHP pursuant to 36 CFR 800.4-800.6.
5. Beginning with the date of termination, the BLM shall ensure that until and unless a new PA is executed for the actions covered by this PA, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

M. Variances

It is understood that all construction needs cannot be anticipated in advance of project construction, and that areas required for additional work space, access roads, ancillary facilities, reroutes, etc., may be identified at any time following the acceptance of the inventory report by the Signatories. Any newly identified construction needs which would result in ground disturbing activities outside of the surveyed areas identified in the Inventory Report shall result in the submission of a request for variance review by the BLM.

1. The BLM shall determine the APE of all variance areas including the proposed physical construction impacts, indirect, and cumulative effects.
2. All variance areas shall be subject to an Existing Data Review, and a Class III, Intensive Field Inventory, and a completed Inventory Report.
3. If no cultural resources are present within the variance APE, the results of the Existing Data Review and Class III inventories shall be reported prior to any access or use. The BLM shall provide an expedited review of the variance request, not to exceed 14 calendar days following receipt, and shall provide Calnev with written approval of the variance by electronic mail. BLM shall provide all Signatories, Invited Signatories, and Concurring Parties, as appropriate, with copies of the completed Inventory Report in accord with this PA.
4. If cultural resources are present within the variance APE, an Inventory Report shall be prepared and submitted to BLM, the appropriate SHPO, and the other consulting parties for review. Understanding that variance requests may be necessary in the midst of construction activities, the agencies shall provide an expedited review within 14 calendar days or less. If no objections to the variance are received, at the end

of the 14 calendar day period, BLM shall provide Calnev with written approval of the variance via electronic mail. If objections are received, additional consultation regarding the variance shall ensue in accordance with the provisions of this PA.

N. Duration of this Agreement

1. Unless the PA is terminated pursuant to Stipulation III.L (Terminating the Agreement) above, another agreement executed for the Undertaking supersedes it, or the Undertaking itself has been terminated, this PA will remain in full force and effect until BLM, in consultation with the other Signatories and Invited Signatories, determines that construction of all aspects of the Undertaking has been completed and that all terms of this PA and any subsequent tiered agreements have been fulfilled in a satisfactory manner. Upon a determination by BLM that construction of all aspects of the Undertaking has been completed and that all terms of this PA and any subsequent tiered agreements have been fulfilled in a satisfactory manner, BLM will notify the other Signatories and concurring parties of this PA in writing of the agency's determination. This PA will terminate and have no further force or effect on the day that BLM so notifies the other Signatories to the PA.

2. This PA will expire if the Undertaking or the stipulations of this PA have not been implemented within five (5) years from the date of its execution. At such time, and prior to work commencing on the Undertaking, the BLM shall either (a) execute a MOA 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 BLM may consult with the other consulting parties to reconsider the terms of the PA and amend it in accordance with Stipulation XIV above. The BLM shall notify the Signatories and Invited Signatories as to the course of action it will pursue within 30 working days.

3. This PA shall become effective on the date of the last signature below, and shall remain in effect for a period of ten (10) years; or until terminated as provided in Stipulation III.L (Terminating the Agreement); or until the completion of all actions associated with the Undertaking, whichever is longest.

O. Withdrawal or Addition of Parties from/to the PA

1. **Withdrawal of BLM:** If for some reason BLM should decide to withdraw from the Undertaking or for some reason the Undertaking is altered to no longer require BLM action or involvement, BLM shall inform the other Signatories to this PA of its intention to withdraw as soon as is practicable. Upon receipt of BLM's notification of its withdrawal from the Project, BLM will consult with the Signatories and Invited Signatories to determine whether there is still an undertaking as defined under 36 CFR 800, whether another Federal agency shall become the acting lead agency for the purpose of implementing this PA, or whether this PA should be terminated. The final decision to terminate this PA, or to initiate consultation under Stipulation III.K (Amending the Agreement) to amend this PA to designate another Federal agency as the lead agency, shall rest with the BLM. The withdrawal consultation and decision process of this stipulation shall not exceed a period of 60 working days from the BLM's notification of the other Signatories.

2. **Withdrawal of Consulting Parties:** After the selection of the alternative corridor or issuance of BLM's Record of Decision (ROD), should an Invited Signatory or Concurring Party determine that its participation in the Undertaking and this PA is no longer warranted, the Party may withdraw from participation by informing the BLM of its intention to withdraw as soon as is practicable. BLM shall inform the other consulting parties to this PA of the withdrawal.

3. **Addition of Consulting Parties:** After the selection of the alternative corridor or issuance of BLM's ROD, should the scope of the Undertaking or APE change in such a way to involve lands managed by other state, federal, or tribal entities not already party to this agreement, BLM will invite the new party to participate in this PA, notify the other consulting parties, and amend this PA as necessary pursuant to Stipulation III.K (Amending the Agreement) of this PA.

4. In the event that the Signatories do not carry out the requirements of this PA or it is terminated, the BLM will comply with the provisions of Section 106 of the NHPA and its implementing regulations.

P. Effective Date

This PA shall take effect on the date that it has been fully executed by the Signatories. Any amendments or attachments to this PA shall take effect on the dates they are fully executed by the Signatories, or such other self-executing dates as may be described in those documents.

Q. Executing the Agreement

Execution and implementation of this PA evidences that the BLM, Forest Service, and MCLB Barstow have satisfied their Section 106 responsibilities for all actions associated with the Undertaking. The Signatories to this PA represent that they have the authority to sign for and bind the entities on behalf of whom they sign.

SIGNATORIES:

U.S. BUREAU OF LAND MANAGEMENT, CALIFORNIA

BY: _____
State Director, California

DATE _____

U.S. BUREAU OF LAND MANAGEMENT, NEVADA

BY: _____
State Director, Nevada

DATE _____

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: _____
State Historic Preservation Officer

DATE: _____

NEVADA STATE HISTORIC PRESERVATION OFFICER

BY: Rebecca A. Palmer
State Historic Preservation Officer, Deputy

DATE: 12/28/12

INVITED SIGNATORIES:

US DEPARTMENT OF AGRICULTURE – FOREST SERVICE

BY: _____
Forest Supervisor

DATE: _____

US DEPARTMENT OF DEFENSE – DEPARTMENT OF THE NAVY (USMC)

BY: _____
TITLE:

DATE: _____

SAN BERNARDINO COUNTY, CALIFORNIA

BY: _____
TITLE:

DATE: _____

CLARK COUNTY, NEVADA

BY: _____
TITLE:

DATE: _____

CONCURRING PARTIES:

CALNEV PIPE LINE LLC

BY: _____
TITLE:

DATE: _____

APPENDIX A: DISCOVERY AND UNANTICIPATED EFFECTS PROCEDURES

In the event that previously unknown cultural resources are discovered within the Area of Potential Effect (APE) of the Undertaking, or should the Undertaking directly or indirectly effect cultural resources in an unanticipated manner, the following actions, at a minimum, shall be initiated by the BLM in consultation with the Signatories:

1. Calnev shall halt all activities in the immediate vicinity of the discovery and all actions shall be directed away from an area at least 100 feet in all directions from the point of discovery.
 - a. Calnev shall notify BLM and the appropriate SHPO immediately. BLM shall have a cultural resources specialist, with the proper expertise for the suspected resource type, on-site as soon as possible, but no later than within one working day.
 - b. If there is a cultural resources monitor at that location or in the general area of the discovery, BLM shall call that person in to assess the find.
 - c. BLM shall initiate consultation with the appropriate parties as set out in Stipulation III.D.3 of the PA.
 - d. In the event that a cultural resources specialist or other necessary persons are not immediately available, BLM may require Calnev through its contractors to cover and/or otherwise protect the resource until such time that the appropriate parties can be present for inspection and/or evaluation.
2. Upon arriving at the site of the discovery, the cultural resources specialist shall assess the resource. The assessment shall include:
 - a. The nature of the resource (e.g., number and kinds of artifacts, presence/absence of features). This may require screening of already disturbed deposits, photographs of the discovery, and/or other necessary documentation.
 - b. The spatial extent of the resource. This may require additional subsurface testing, mapping or inspection, as is appropriate to the resource.
 - c. The nature of deposition/exposure. This may require interviews with construction personnel, other persons having knowledge concerning the resource or, in rare instances, the expansion of existing disturbances to establish the characteristics of the deposits.
3. Discoveries and unanticipated effects to known resources shall be managed according to the provisions of this PA. After consultation with the appropriate parties, BLM shall make a determination of eligibility, treatment and effect. If necessary, BLM, in consultation with the appropriate parties, shall ensure that Calnev, through its contractor, prepares and implements a treatment plan following the guidance provided in this PA.
4. Any human remains, grave goods, items of cultural patrimony, and sacred objects encountered in a discovery, or unanticipated effect situation, shall be handled according to 36 CFR 10 or California or Nevada State laws as appropriate.
5. All CNX activities in the area of the discovery, or unanticipated effect, shall be halted until Calnev is notified by the BLM via electronic mail that mitigation is complete and activities can resume.

APPENDIX B: AREA OF POTENTIAL EFFECTS (APE) FOR THE CALNEV PIPELINE PROJECT

