

**MEMORANDUM OF AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT,
THE DEPARTMENT OF THE NAVY,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE DIXIE MEADOWS GEOTHERMAL DEVELOPMENT PROJECT
CHURCHILL AND PERSHING COUNTIES, NV**

WHEREAS, on October 30, 2014, ORNI 32, LLC (Proponent) submitted a Revised Utilization Plan for the Dixie Meadows Geothermal Facility for consideration to the Carson City District of the Bureau of Land Management (BLM). The BLM may approve the Utilization Plan making it an Undertaking pursuant to Title 54 U.S.C. § 300101 *et seq.*, commonly known as the National Historic Preservation Act of 1966, as amended (NHPA), and Title 54 U.S.C. § 306108, commonly known as Section 106 of the NHPA (Section 106) and its implementing regulations found at 36 CFR Part 800; and

WHEREAS, the Area of Potential Effect (APE) for the Undertaking consists of 1,934 acres in Churchill and Pershing Counties, Nevada (Attachment A; Figure 1), and consists of the construction and operation of up to two geothermal power plant facilities and associated electrical substations; construction of up to eighteen (18) well pads and associated pipelines, access roads and support facilities; and construction and operation of a 120 kV gen-tie transmission line north to Ormat's Jersey Valley power plant; and

WHEREAS, the BLM, in consultation with the Nevada State Historic Preservation Officer (SHPO) and the Fallon Paiute-Shoshone Tribe (Tribe), has determined that the Undertaking will have an adverse effect on the historic property CrNV-03-10543/CrNV-03-E0286 (Site) that is eligible for the National Register of Historic Places (NRHP) under Criterion A as a historic property with traditional religious and cultural significance to the Tribe. The Site remains unevaluated for the NRHP under Criteria B-D; and

WHEREAS, the BLM, in consultation with the Tribe, has determined that the Site, that consists, in part, of hot springs that tribal members use for cultural, religious, and spiritual purposes, constitutes a "sacred site" under Executive Order No. 13007; and

WHEREAS, the Department of the Navy (Navy) is the surface land owner and has participated in the development of, and is a Signatory to, this Memorandum of Agreement (Agreement); and

WHEREAS, the Proponent has participated in the development of, and is an Invited Signatory to, this Agreement; and

WHEREAS, the BLM is consulting with the Tribe in the development of this Agreement, and the Tribe has elected to participate in the resolution of adverse effects pursuant

to 36 CFR § 800.6(c)(2)(iii) and are invited to sign this Agreement as an Invited Signatory; and

WHEREAS, the BLM has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation and the ACHP has notified the BLM by letter dated February 20, 2018 that it has decided to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii) and will sign this Agreement as a Signatory; and

WHEREAS, the BLM has sought and considered the views of the public pursuant to 36 CFR § 800.6(a)(4) and 36 CFR § 800.14(b)(2)(ii) during the National Environmental Policy Act (NEPA) scoping process over a 30-day period between January and February of 2021. Results of the NEPA public scoping indicated that ten (10) comments were received that pertain to cultural resources; and

WHEREAS, incorporated here, solely as reference, is the Aquatics Resources Mitigation and Monitoring Plan (ARMMP), which details identification of potential changes, impacts, thresholds, and triggers to the hydrological resource at the Site, including potential avoidance, management actions, and mitigation measures. The ARMMP can be found at: https://eplanning.blm.gov/public_projects/75996/200167265/20032780/250038979/Dixie%20Meadows_EA_Appendix_H-ARMMP_508.pdf; and

WHEREAS, the BLM, the SHPO, Navy, ACHP, the Proponent and the Tribe, (hereinafter collectively referred to as the Signatories) agree that this Agreement may be signed in counterparts and the executed Agreement, and each signature, will be effective and binding; and

NOW, THEREFORE, the BLM, the SHPO, the Navy, the Tribe, and the ACHP agree that the Undertaking shall be implemented in accordance with the following measures in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

The BLM shall ensure that the following measures are conducted:

I. ROLES AND RESPONSIBILITIES

A. The BLM will:

1. Administer this Agreement and ensure that all of its stipulations are carried out. This includes, but is not limited to, ensuring that the Signatories and the Proponent carry out their respective responsibilities as stipulated in the Agreement. The Stillwater Field Manager is the BLM Agency Official for the Undertaking. The BLM Agency Official, or their designee, is the Undertaking point of contact for the BLM; and
2. Be responsible for all submissions to the Signatories during the

implementation of this Agreement. Any documents submitted to the SHPO or Signatories not from the BLM will be considered as informational only and will not trigger any compliance timelines or other actions.

B. Proponent will:

1. Provide a point of contact to all Signatories of this Agreement; and
2. Bear all reasonable expense related to the measures detailed in Stipulation II of the Agreement; and
3. Complete development, review, and finalization of the Historic Properties Treatment Plan (HPTP); enter into a binding and enforceable agreement with the BLM Authorized Officer to complete all of the work stipulated in Stipulation II of this Agreement, including appendices to this Agreement; and fully implement the HPTP; and
4. Provide the BLM Authorized Officer with a letter assuring the BLM that the Proponent will fund and complete all of the required work stipulated in Stipulation II of this Agreement; and
5. Hire a qualified Cultural Resource Management firm (CRM Firm) no later than thirty (30) days after approval of the Undertaking. The CRM Firm shall employ individuals who meet the Secretary of Interior's professional qualifications standards for archaeology, and an ethnographer or cultural anthropologist, and that is permitted, or is qualified to obtain a permit, to work on BLM and Navy Managed Lands in the State of Nevada.

C. Navy will:

1. Coordinate with the Proponent and the Tribe, as necessary, for the construction of the enclosure fence and other plans as outlined in the HPTP.

D. Tribe will:

1. Coordinate with the Proponent, CRM Firm, Navy, and the BLM, to provide information the Tribe deems appropriate for the development and review of the HPTP; and
2. Adhere to the Tribal Monitoring Provisions (Attachment C).

II. RESOLUTION OF ADVERSE EFFECTS:

The BLM, in consultation with the Proponent, has redesigned the Undertaking to avoid or minimize adverse effects to historic properties to the extent practicable. However, the Undertaking may still have an adverse effect to historic properties.

A. Development of an HPTP:

1. The Proponent, through its qualified CRM firm, will prepare an HPTP that is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 CFR § 44716-37).
2. The HPTP will contain, but not be limited to, the following elements:

- a. A plan to compile ethnographic and archaeological information of potential Traditional Cultural Properties (TCPs) located within Dixie Valley; and
- b. Provide a map delineating the research area referred to as Dixie Valley; and
- c. A plan to prepare appropriate site forms recording potential TCPs within Dixie Valley, including evaluations of TCPs for inclusion in the NRHP; and
- d. A plan to prepare necessary forms and develop appropriate documentation sufficient to nominate eligible TCPs to the NRHP; and
- e. A plan to locate and design an enclosure fence around the Site, adequate to protect the Site from new impacts from livestock; and
- f. A plan for the development of educational materials about the Site and to improve access for the Tribe, including Tribal elders; and
- g. A plan to annually assess the health of ethnobotanical plant communities identified at the Site during government-to-government consultation, and:
 - 1) Include an annual monitoring schedule for the duration of the Agreement; and
 - 2) Include at least one (1) Tribal monitor, and
 - 3) Include a reporting provision whereby all relevant ethnobotanical information or data collected by the monitor(s) will be provided to the BLM in an annual letter report.

B. Review of the HPTP:

1. The CRM Firm shall submit the draft HPTP to the BLM within sixty (60) days from when the CRM Firm is hired; and
2. The BLM shall review and comment on the draft HPTP within fifteen (15) calendar days of receipt; and
2. The BLM will provide a hard copy of the draft HPTP to the Tribe, the Navy, and the SHPO, who will be afforded thirty (30) calendar days from receipt to provide the BLM with comments. The BLM will provide the SHPO, via electronic submission, with any comments received from the Tribe within ten (10) calendar days of receipt; and
3. The BLM shall provide all comments on the draft HPTP to the CRM Firm; and
4. The CRM firm shall revise the draft HPTP to address the BLM, Navy, the SHPO and Tribe's comments within thirty (30) calendar days from receipt; and
5. Upon BLM approval of the revised draft HPTP, the BLM shall submit the revised draft HPTP in hard copy to the SHPO, the Navy, and the Tribe for review; and

6. The SHPO, Navy, and the Tribe shall review the draft HPTP within thirty (30) calendar days of receipt. If the SHPO, Navy, and the Tribe do not respond within thirty (30) calendar days, the BLM may finalize the HPTP; and
 7. The BLM shall provide the SHPO, Navy, and Tribe's comments to the CRM Firm to modify the revised draft HPTP; and
 8. The CRM Firm shall submit the draft final HPTP to the BLM for review within thirty (30) days from receipt; and
 9. The BLM shall provide the final HPTP hard copy to the Tribe, the Navy, and the SHPO; and
 10. The HPTP will be attached to the Agreement and titled Appendix D.
- C. The Proponent shall hire at least one (1) archaeological and one (1) tribal monitor during construction on previously undisturbed land only; and
1. Adhere to the attached Tribal Monitor Provisions (Attachment C); and
 2. Provide the BLM with a report of archaeological and tribal monitoring results.
- D. The Proponent will provide the Signatories hard copies of all draft Mitigation Products resulting from the HPTP. Given the nature of the proposed draft Mitigation Products, the Proponent may provide the Mitigation Products to the Signatories as a single submission or as multiple submissions following completion of the document by the CRM Firm.
1. The Signatories will have thirty (30) calendar days from receipt to review and comment on the Mitigation Products. The Signatories will submit their comments to the Proponent; and
 2. The Proponent will have fifteen (15) calendar days to address all comments on the Mitigation Products from the Signatories; and
 3. The Proponent will submit hard copies of the revised Mitigation Products to the Signatories for review and comment. The Signatories will have thirty (30) calendar days from receipt to review and submit comments to the Proponent.
 4. The Proponent will address all comments on the revised Mitigation Products from the Signatories and shall provide hard copies of the final Mitigation Products to the Signatories.

IV. EFFECTIVE DATE AND DURATION

- A. This Agreement shall become effective on the date the Agreement has been executed by the BLM, the Navy, the SHPO, and the ACHP.
- B. The BLM, the Navy, the SHPO, and the ACHP agree that the failure or refusal to sign this Agreement by any party invited to become an Invited Signatory to this Agreement will not invalidate or otherwise affect the Agreement.
- C. The Agreement will expire if its stipulations are not carried out within five (5) years from the effective date.
- D. The BLM shall consult with all Signatories one (1) year prior to the expiration of the Agreement in order to reconsider its terms and amend it in accordance with

Stipulation VIII below.

- E. At the time of expiration, and prior to work continuing 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.

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, BLM shall implement the Discovery and Unanticipated Effects Plan included as Attachment B of this Agreement.

VI. DISPUTE RESOLUTION

- A. If any Signatory objects to any activities proposed pursuant to the terms of this Agreement, the BLM shall consult with the objecting party to resolve the issue within thirty (30) days of receiving such objection.
- B. If the objecting party and the BLM cannot resolve the objection the BLM will:
 - 1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the Signatories. The ACHP shall provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Signatories and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
 - 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the Agreement and provide them and the ACHP with a copy of such written response.
- C. The Signatories shall continue all actions under this Agreement that are not the subject of the dispute.

VIII. AMENDMENTS

This Agreement may be amended when such an amendment is agreed to in writing by the Signatories. The amendment will be effective on the date it is signed by the Signatories. All signed amendments will be filed with the ACHP upon being executed.

IX. TERMINATION

- A. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately provide and statement concerning cause and consult with the other Signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days, or another time period agreed to by all Signatories, an amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories and shall include a statement concerning the cause for proposed termination.
- B. If the Agreement is terminated prior to work completion on the Undertaking, the BLM shall either (a) execute another MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The BLM shall notify the Signatories as to the course of action it will pursue.
- C. If the Proponent sells the Undertaking or otherwise transfers it to another party, the Signatories will determine within ninety (90) days of the sale or transfer if the Agreement will remain in effect, be amended per Stipulation VIII, or be terminated per Stipulation IX. All provisions of the Agreement will remain in effect until such a determination is made.


EXECUTION of this Agreement by the BLM, the ACHP, the Navy, and the SHPO and implementation of its terms evidence that the BLM has taken into account the effects of this Undertaking on historic properties.

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REGARDING THE DIXIE MEADOWS GEOTHERMAL DEVELOPMENT PROJECT
CHURCHILL COUNTY, NV**

Signatories:

Bureau of Land Management, Carson City District Office




Ken Collum, Carson City District Manager

08/16/2021

Date

Department of the Navy



E.L. Morrison, Captain, U.S. Navy, Commanding Officer

09/02/2021

Date

Advisory Council on Historic Preservation

Reid Nelson, Acting Executive Director

Date

Nevada State Historic Preservation Officer



Rebecca L. Palmer, State Historic Preservation Officer

09/02/2021

Date

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CHURCHILL COUNTY, NV**

Signatories:

Bureau of Land Management, Stillwater Field Office

Ken Collum, Carson Cit, District Manager

Date

Department of the Navy

E.L. Morrison, Captain U.S. Navy Commanding Officer

Date

Advisory Council on Historic Preservation



Reid Nelson, Acting Executive Director

9/7/2021
Date

Nevada State Historic Preservation Officer

Rebecca L. Palmer, State Historic Preservation Officer

Date

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CHURCHILL COUNTY, NV**

Invited Signatories:

ORNI 32, LLC

Connie Stechman

Connie Stechman, Authorized Representative

08/17/2021

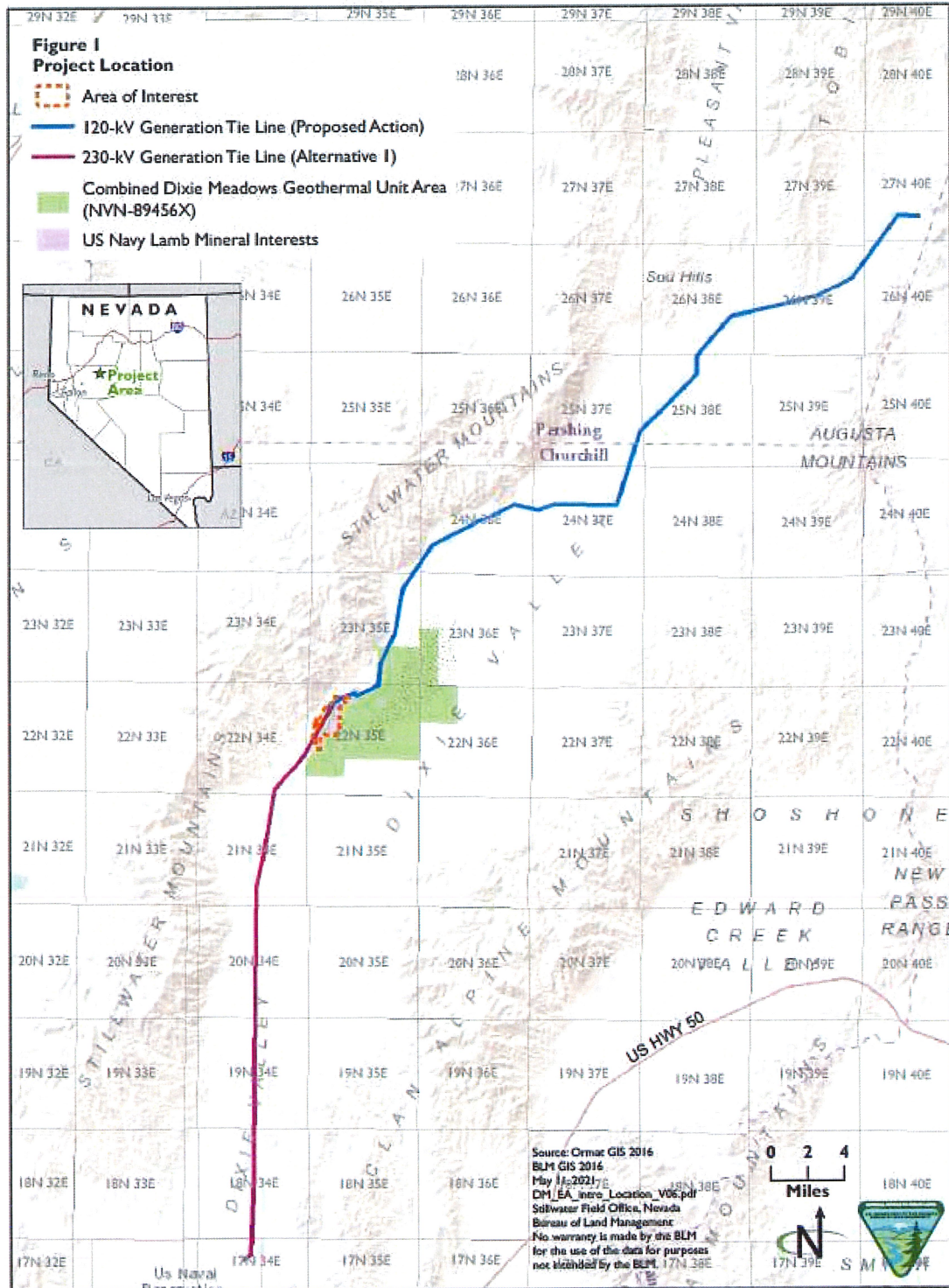
Date

Fallon Paiute-Shoshone Tribe

Yvonne Mori, Fallon Paiute-Shoshone Tribal Chairman

Date

ATTACHMENT A: AREA OF IMPLEMENTATION



ATTACHMENT B: DISCOVERY AND UNANTICIPATED EFFECTS PLAN

A. Unanticipated Discovery of Cultural Resources

- i. If previously unknown cultural resources are discovered, the BLM shall comply with 36 CFR § 800.13(b).

B. Unanticipated Effects of Historic Properties

- i. For unanticipated effects to historic properties, other than the Site, the BLM shall comply with 36 CFR § 800.13(b).
- ii. If changes in the conditions at the Site meet the thresholds and triggers for a significant change, as identified in the ARRMP's Potential Impacts (3.6), and Baseline Conditions and Thresholds (3.8.1 and 3.8.2); and, if the adaptive management response and mitigation, as described in Section 3.8 and Section 3.9 of the ARMMP, have not mitigated the significant change to the hydrological conditions at the Site:
 1. The BLM will preliminarily assess if the significant change in hydrological conditions constitutes an additional adverse effect to the Site; and
 2. BLM will send a Preliminary Assessment, including a description of the unanticipated effect and mitigation recommendations ("Preliminary Assessment") to the other Signatories; and
 3. The other Signatories shall provide comments to all Signatories on the Preliminary Assessment within fifteen (15) working days of receipt. If the BLM does not receive the Signatory's comments within fifteen (15) working days, the BLM may finalize the Preliminary Assessment and make a final determination; and
 4. The BLM will address all comments on the Preliminary Assessment received from the Signatories in a written response to all Signatories; and
 5. The BLM may then make a final determination whether there are adverse effects to the Site and what actions, if any, the Proponent and/or BLM shall take in response to mitigate the additional adverse effect.

ATTACHMENT C: TRIBAL MONITOR PROVISIONS

For the Undertaking subject to this Agreement, monitors will be required by the BLM during construction, for previously undisturbed land only. The Proponent shall bear the expense of Tribal Monitors and compensation to Tribal Monitors will be an agreement reached between the Tribe and the Proponent. The following provisions apply:

1. *Tribal Monitors.* The Proponent shall hire at least one Tribal Monitor during initial surface disturbance. Tribal monitors are not required for surface disturbance on previously disturbed and reclaimed areas.
2. *Availability of Tribal Monitors.* The Proponent is responsible for the hiring and compensation of Tribal Monitors. The Proponent will make a good faith attempt to schedule Tribal Monitors with at least seven (7) calendar days prior notice.
3. *No Authority to Halt Approved Proponent Activity.* While Tribal Monitors do not have the authority to halt construction activities, if a Tribal Monitor notes that an activity may affect a Cultural Resource of importance to the Tribe during construction, the Tribal Monitor shall inform the Proponent Official authorized to stop work and the designated BLM representative, as well as the CRM Contractor, if present. Refer to 36 CFR § 800.13(b) for the process to cease work and the BLM notification of and resolution to unanticipated discovery of cultural resources.