



**PROGRAMMATIC AGREEMENT  
BETWEEN THE BUREAU OF LAND MANAGEMENT,  
WELLS FIELD OFFICE, AND THE NEVADA STATE  
HISTORIC PRESERVATION OFFICER, REGARDING  
THE GULLEY ALLOTMENT GRAZING PERMIT  
RENEWAL PROJECT**

**WHEREAS**, the Wells Field Office of the Elko District, Bureau of Land Management (BLM), is preparing a plan to conduct range improvement projects on public lands in the Gulley Grazing Allotment, Elko County, Nevada (hereinafter referred to as the “undertaking” as defined in 36 CFR § 800.16[y]); and

**WHEREAS**, the BLM proposes to approve a term permit renewal for the allotment, the undertaking is subject to compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), 54 USC § 306108, and its implementing regulations, 36 CFR § 800; and

**WHEREAS**, the BLM has determined that the undertaking may have an effect upon properties eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to Section 106 of the NHPA, as amended; and

**WHEREAS**, the BLM has consulted with the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR § 800.14(b)(1)(ii), to develop and execute this Programmatic Agreement (PA) and the ACHP has elected not to formally enter consultation on the development of this PA; and

**WHEREAS**, effects to historic properties in the Area of Potential Effect (APE) cannot be fully determined and the Parties desire to enter into this PA to set forth procedures to be followed in satisfaction of the BLM’s Section 106 responsibilities of the NHPA, for the undertakings in the APE (see Appendix A for APE map); and

**WHEREAS**, the undertaking will be implemented over several years; and

**WHEREAS**, this PA covers all aspects of the planning, development, and implementation of the elements of the NEPA documentation and decision for the undertaking including but not limited to spring enclosure fences, a pipeline and trough project, an allotment division fence, and a stream protection fence; and

**WHEREAS**, the general public was invited to comment on the adequacy of the NHPA compliance process through the public review of the EA prior to the signing of the Decision Record, and the BLM did not receive any public comments related to this process; and

**WHEREAS**, the BLM is consulting with the Battle Mountain Band Council, Elko Band Council, Ely Shoshone Tribe, Confederated Tribes of the Goshute Indian Reservation, Shoshone-Bannock Tribes, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, South Fork

Band Council, Te-Moak Tribe of the Western Shoshone Indians of Nevada, Wells Band Council, and the Yomba Shoshone Tribe, concerning properties of traditional, cultural, and religious significance and the Tribes have been invited to be concurring parties to this PA; and

**NOW THEREFORE**, the Signatories agree that implementation of the NEPA decision record and the undertaking shall be administered in accordance with the following stipulations to ensure that historic properties will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership and to satisfy the BLM's NHPA Section 106 responsibilities for all aspects of the undertaking.

## **ROLES AND RESPONSIBILITIES**

The Signatories agree that the BLM will be responsible for implementing phases of this PA including consultation with the Tribes and the SHPO. As necessary, the BLM has the responsibility of consultation with the ACHP.

The Signatories agree that the *STATE PROTOCOL AGREEMENT between The Bureau of Land Management, Nevada, and the Nevada State Historic Preservation Officer for Implementing the National Historic Preservation Act, Revised December 2014* (Protocol), except as amended here, will be used as guidance for this PA. The Protocol is incorporated by reference.

The BLM is responsible for administering this PA. This includes but is not limited to: ensuring that Signatories carry out their responsibilities; overseeing cultural resource work; assembling submissions to the SHPO and the Tribes including reports, determinations of eligibility and effect, and treatment plans; and for seeking SHPO concurrence with agency compliance decisions.

## **AREA OF POTENTIAL EFFECT**

The APE for cultural resources is defined as an area of about 75 acres (maximum) considered for five spring enclosure fences, a 1.5 mile long pipeline and trough, and two of three proposed fence installations (ranging from 3.5 miles to 4.5 miles long) within the 13,162 acre Gulley Allotment. The allotment location and project APE maps are in Appendix A.

The APE was defined to include potential direct and indirect effects to historic properties and properties of traditional cultural and religious importance from any activities associated with the undertaking without regard for land ownership.

The minimum direct APE for the areas proposed for spring enclosure fences, pipeline and trough, and other fences will be the project area plus 100 feet (30 meters) outward in all directions from the perimeter of each area, which could include areas outside the Gulley Allotment boundary.

Based on current data, there are no known historic properties within the indirect APE that will experience visual effects from the proposed undertaking. However, the APE for assessing indirect effects on known historic properties will be the project area plus one mile (1.6 kilometers) outward in all directions from the perimeter of each project area, which would

include some areas outside the Gulley Allotment undertaking area. (Combined with the direct APE, this will hereafter be referred to as the “project APE.”).

The BLM, in consultation with the SHPO may amend the APE as requested by the SHPO, without amending the PA proper and any amendments will be handled under the terms of this Agreement. (Fuller discussion of amendment provisions appears below in Stipulation I.)

## STIPULATIONS

The BLM shall ensure that the following are implemented:

### A. Identification

1. The BLM shall identify interested persons and Tribes and involve them, as appropriate, in all activities associated with the undertaking. Notification of the general public will consist of newspaper articles and general interest letters. Tribes will be notified by mail and field trips will be conducted as appropriate.
2. The BLM shall ensure that appropriate cultural resource inventories are completed and that appropriate reports are prepared. These inventories will be prepared in accordance with the Protocol and Nevada BLM’s *Guidelines and Standards for Archaeological Inventory* (5<sup>th</sup> edition, January 2012) or any subsequent edition issued by the BLM.
3. Previously recorded archaeological sites more than 20 years old will be updated on Nevada IMACS forms.
4. Non-linear sites extending outside the APE will be completely recorded unless the BLM, in consultation with the SHPO, Tribes, and any consulting parties, as appropriate, determines that a less than complete recording is sufficient for evaluation.
5. Linear sites will be recorded outside of the APE to the extent necessary to determine resource eligibility.

### B. Tribal Consultation

1. Properties to which Tribes attach religious or cultural significance will be identified, evaluated, and treated through consultation with appropriate Tribes. Identification, evaluation, and treatment efforts shall be consistent with BLM Manual 8160 and associated Handbook.
2. Information considered proprietary by Tribes will be held confidential to the extent provided by Federal law.

### C. National Register Evaluation

1. The BLM will write a historic context covering expected historic properties. The completed context will be submitted to SHPO for a 30 calendar day review.

2. The BLM shall be responsible for reevaluating previously recorded cultural resources within the project APE using this historic context.
3. The information collected in the inventory process may be inadequate for determining cultural resource site eligibility. In such cases, the BLM may, after obtaining SHPO's concurrence, develop an evaluation plan, which may include subsurface testing as outlined in Section V. of the Protocol.
4. In developing a subsurface evaluation plan, the BLM shall ensure that any testing is limited to defining the nature, density, and distribution of materials in potential historic properties. Testing is intended to provide minimum data necessary to make final evaluations of NRHP eligibility and to devise appropriate treatment options in accordance with Section V.B of the Protocol.
5. The BLM's documentation of inventory and evaluation results, including eligibility determinations, shall be forward to the SHPO with a request for concurrence for a 35 calendar day review.
6. The BLM shall ensure that all cultural resources located within the APE are evaluated for NRHP eligibility prior to initiation of activities that may affect historic properties.
7. If the SHPO and the BLM disagree regarding the NRHP eligibility of cultural resources, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 800.4. The Keeper's determination will be considered final.

#### D. Mitigation

1. The BLM, in consultation with the SHPO and other consulting parties, as appropriate, shall seek to avoid historic properties through design of specific projects or relocation to the extent practical.
2. If reasonable and feasible project redesign cannot be accomplished, and thus avoidance not attained, the BLM, in consultation with the SHPO, and other consulting parties, shall ensure the development of an appropriate treatment plan designed to lessen or mitigate project related effects to historic properties.
3. When archaeological data recovery is the preferred treatment option for an eligible property or properties, the BLM shall develop a treatment plan based on an appropriate research design and submit the treatment plan to the SHPO for a 35 calendar day review and comment period. Data recovery plans shall be consistent with the Secretary of Interior's *Standard and Guidelines for Archaeology and Historic Preservation* (48 FR 11716-37) and shall conform to the Protocol and Guidelines noted in Stipulation A.2.
4. If the SHPO or a consulting party objects to all or part of the proposed treatment plan, the BLM shall attempt to resolve the objection pursuant to Stipulation H.1. Upon completion

of the consultation process, the BLM shall ensure that the treatment plan and any modifications to it resulting from the negotiations are implemented.

5. The BLM shall ensure that all records, photographs, maps, field notes, artifacts, and other materials resulting from identification and treatment efforts are curated, in accordance with 36 CFR 79, in the Nevada State Museum.

#### E. Reporting Requirements

1. For inventories conducted under this PA the BLM will provide the SHPO with project documentation consistent with the current *BLM Nevada State Office Standards and Guidelines for Archaeological Inventory* (archaeological resources), and the current edition of *Guidelines for Recording and Reporting Architectural Resources in Nevada* for architectural resources.

#### F. Implementation of Range Improvement Projects

1. No range improvement projects will proceed until the BLM, in consultation with the SHPO, has made determinations of eligibility and effects on cultural resources prior to each phase of the undertaking. Also, the BLM may issue notices to proceed for individual projects under conditions outlined in Section VI.B.2-4 of the Protocol.

#### G. Discovery Situations

1. Cultural resources, not previously identified, which are discovered while conducting project activities, shall be subject to this PA. If such cultural resources are discovered, all project activities within 30 meters of the discovered resources will cease immediately.
2. The BLM shall notify the SHPO, Tribes, and other consulting parties, and consider the SHPO's initial comments on the discovery, and ensure that provisions in Protocol (Section VI.B) are met.
3. If, in consultation with the SHPO, the BLM determines mitigation is appropriate, the BLM shall solicit comments from the SHPO, Tribes and consulting parties, as appropriate, on suitable mitigation as provided in Section V.F of the Protocol. Any comments shall be provided to the BLM within two (2) working days.
4. If mitigation is required, all project activities within 100 meters of the affected property in the area will be halted until mitigation is complete.
5. Any disputes or objections arising during a discovery situation that cannot be resolved by the BLM and SHPO shall be referred to the ACHP for comment.
  - a. To facilitate this process, the BLM will provide the ACHP with copies of all information on the discovery. In addition, consultation with the ACHP shall be by the most expeditious means available, including telephone, e-mail, or fax.

- b. Any ACHP comments will be taken into account by the BLM and the BLM will notify the ACHP, the SHPO and any objecting party of its resolution of the issue.
  - c. The parties may continue all actions under this PA that are not the subject of the dispute.
6. The BLM shall ensure that reports on 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 Programs (42 FR 5377-79).
- a. Draft final reports shall be submitted to the SHPO for a 35 calendar day review and comment period.
  - b. Final reports shall be submitted to the SHPO and other interested persons, as appropriate.
7. Human Remains:
- a. Human remains and associated artifacts may be discovered during project implementation. If human remains are discovered under any circumstances, all work will stop and no activities will take place within 100 meters of the discovery. The human remains will be secured and protected until such time as the BLM Authorized Officer has approved the appropriate disposition of the remains in accordance with applicable local, State, and Federal statutes.
  - b. The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, or sacred objects encountered during project implementation are treated with the respect due such materials.
8. Curation: All records, photographs, maps, field notes, artifacts, and other materials collected or developed for any identification, evaluation, or treatment activities will be curated by the BLM under the Nevada BLM contract with the Nevada State Museum.

#### H. Dispute Resolution

- 1. If any party to this PA, or an interested person, objects to any activities proposed pursuant to the terms of this PA, the BLM shall consult with the objecting party and the SHPO to resolve the issue. If the BLM determines that the objection cannot be resolved, the BLM shall request the assistance of the ACHP to help resolve the objection.
- 2. The BLM may continue all actions under this PA that are not the subject of the dispute.

#### I. Amendment

- 1. Any Signatory to this PA may request that the PA be amended, whereupon the Signatories will consult to consider such an amendment. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

J. Termination

1. Any Signatory to this PA may terminate the PA by providing 30 days notice to the other Signatory, provided that the parties will consult during the period prior to termination to seek agreement on amendment(s) or other actions that would avoid termination.

K. Execution

1. Execution and implementation of this PA evidences that the BLM have satisfied their Section 106 responsibilities for all actions associated with undertaking.
2. In the event that the BLM does not carry out the requirements of this PA, the BLM shall comply with 36 CFR 800 with regard to individual projects.
3. This PA shall become effective on the date of the last signature below, and shall remain effective, unless terminated as provided in Stipulation J., until the project is completed or ten (10) years from the effective date, whichever comes first.

**SIGNATORIES:**

**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT**

By: Melanie Peterson Date: 9/10/15  
 Melanie A. Peterson, Field Manager, Wells Field Office

**NEVADA STATE HISTORIC PRESERVATION OFFICE**

By: Rebecca Palmer Date: 9/15/15  
 Rebecca L. Palmer, State Historic Preservation Officer

**CONCURRING PARTIES:**

**BATTLE MOUNTAIN BAND COUNCIL**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**ELKO BAND COUNCIL**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**ELY SHOSHONE TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**CONFEDERATED TRIBES OF THE GOSHUTE INDIAN RESERVATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**SOUTH FORK BAND COUNCIL**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:



**TE-MOAK TRIBE OF THE WESTERN SHOSHONE INDIANS OF NEVADA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**WELLS BAND COUNCIL**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**YOMBA SHOSHONE TRIBE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

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APPENDIX A

GULLEY ALLOTMENT LOCATION MAP

AND

PROPOSED PROJECT LOCATION APE MAP



# GULLEY ALLOTMENT PROPOSED PROJECT APE MAP

