Appendix F3.16

Cultural Resources

PROGRAMMATIC AGREEMENT

AMONG
THE DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, NEVADA,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE SOUTHERN NEVADA WATER AUTHORITY

REGARDING NATIONAL HISTORIC PRESERVATION ACT SECTION 106
COMPLIANCE for the

GROUNDWATER DEVELOPMENT PROJECT

in CLARK, LINCOLN, and WHITE PINE COUNTIES, NEVADA

WHEREAS, the Southern Nevada Water Authority ("SNWA" or "proponent"), a joint powers authority and political subdivision of the State of Nevada, proposes to construct and operate a system of regional water supply and distribution facilities in central and eastern Nevada, through a project known as the Clark, Lincoln, and White Pine Counties Groundwater Development Project ("GWD Project" or "Project" or "Undertaking"); and

WHEREAS, the effects of the Project on historic properties cannot be fully determined prior to approval of the Undertaking, and the Bureau of Land Management ("BLM"), as the lead federal agency, is using the regulations at 36 C.F.R. 800.14(b)(1)(i)–(ii) to create this Programmatic Agreement ("Agreement"), and the signatories here to have determined that the review of this Project under section 106 of the National Historic Preservation Act of 1966 ("NHPA") (16 U.S.C. § 470f) ("section 106") and the regulations implementing section 106 at 36 C.F.R. Part 800, may properly and appropriately be governed by this Agreement, negotiated and executed as authorized by 36 C.F.R. § 800.14(b); and

WHEREAS, a substantial portion of the GWD Project will be located on public lands managed by the Ely District Office ("BLM Ely") and the Southern Nevada District Office ("BLM Southern Nevada") of the Nevada Bureau of Land Management of the U.S. Department of the Interior ("BLM Nevada") (together, "BLM"); and

WHEREAS, SNWA has applied to BLM Nevada for issuance of rights-of-way ("ROWs") over said BLM-managed lands in order to construct and operate the main conveyance pipeline, power line, and associated facilities which are described as "Tier 1" of the GWD Project; and

WHEREAS, SNWA has indicated details of future phases ("Future Tiers") of the Project, including future groundwater development and the necessary number and locations of wells, are currently unknown and cannot be determined at this time; and

WHEREAS, the BLM has determined that, because Tier 1 and Future Tiers of the GWD Project will require BLM-issued ROWs, this Project is a federally permitted undertaking subject to the requirements of section 106; and

WHEREAS, in accordance with the National Environmental Policy Act ("NEPA"), the BLM is evaluating SNWA's request for ROW for Tier 1 of the GWD Project along with a range of alternatives which are described in the Draft Environmental Impact Statement (DEIS) for the GWD Project and in Appendix B of this Agreement, and the particular alternative the agency will select is unknown at the time this Agreement was executed and thus effects on historic properties cannot be fully determined prior to the approval of the Tier 1 of the Project; and

WHEREAS, BLM has determined that a phased process for compliance with section 106 is appropriate for the GWD Project, as specifically allowed under 36 C.F.R. § 800.4(b)(2) and 36 C.F.R. § 800.5(a)(3), such that completion of the identification and evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Agreement, as part of planning for and prior to any Notice to Proceed ("NTP") and Undertaking implementation; and

WHEREAS, the BLM is the lead federal agency for compliance with the requirements of section 106 for the GWD Project and BLM has identified the BLM Nevada State Director as the agency official for the Project, having jurisdiction over the Undertaking, and having taken legal and financial responsibility for section 106 compliance in accordance with the Advisory Council on Historic Preservation's ("ACHP") regulations, and further, who may delegate to one or more appropriate BLM officials any responsibility or action required or allowed of an agency official under those regulations; and

WHEREAS, BLM has determined that construction, installation, operation or maintenance of the GWD Project may cause effects to historic properties and accordingly, prior to issuing to the proponent any ROW over BLM-managed lands, BLM will take into account such effects and comply with section 106, through the procedures described in this Agreement, as authorized by and consistent with the BLM's nationwide programmatic agreement titled *Programmatic Agreement Among The Bureau of Land Management, The Advisory Council On Historic Preservation, And the National Conference of State Historic Preservation Officers Regarding the Manner In Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act*, dated February 9, 2012 ("BLM 2012 NPA"), and the Nevada Protocol Agreement titled *The State Protocol Agreement Between the Bureau of Land Management Nevada and the Nevada State Historic Preservation Office for Implementing the National Historic Preservation Act Protocol (as amended 2012),* dated February 3, 2012 (the "Nevada Protocol") between the BLM Nevada and the Nevada State Historic Preservation Officer ("SHPO"), all of which documents, or any valid successor to any of these documents, are incorporated herein by reference; and

WHEREAS, BLM acknowledges that it has consultation responsibilities to Indian tribes regardless of whether the tribe(s) execute concurrence to this Agreement; and

WHEREAS, although no part of the GWD Project will be located on tribal lands, in developing this Agreement in compliance with 36 C.F.R. § 800.14(b)(2)(i) and (f), BLM has made a reasonable and good faith effort to identify and seek consultation with every federally recognized Indian tribe that has religious or cultural ties to, or whose direct ancestors had historic or pre-historic religious or cultural ties to the Project area, and that, because of such ties, may attach religious and cultural significance to historic properties that may be affected by the GWD

Project, (16 U.S.C. § 470a(d)(6)(A) ("Properties of traditional religious and cultural importance to an Indian tribe . . . may be determined to be eligible for inclusion on the National Register.")), and BLM has identified under those criteria the following tribes: Chemehuevi Indian Tribe, Colorado River Indian Tribes, Confederated Tribes of the Goshute Reservation, Death Valley Timbisha Shoshone Band, Duckwater Shoshone Tribe, Ely Shoshone Tribe, Fort Mojave Indian Tribe, Hualapai Indian Tribe, Kaibab Band of the Paiute Indians, Las Vegas Tribe of Paiute Indians, Moapa Band of Paiute Indians, Paiute Indian Tribe of Utah (consisting of the Cedar City Band of Paiutes, Kanosh Band of Paiutes, the Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), Shoshone-Paiute Tribes of the Duck Valley Reservation, Te-Moak Tribe of Western Shoshone Indians (consisting of the Battle Mountain Band, Elko Band, South Fork Band, and Wells Band), and Yomba Shoshone Tribe (the "Identified Indian Tribes"); and

WHEREAS, on February 23, 2007, BLM sent to each of the Identified Indian Tribes a letter explaining the nature of the proposed GWD Project, asking each of those tribes to provide any information they have about properties of traditional religious and cultural significance ("PRCSs"), cultural resources, and historic properties which might be affected by the construction and operation of the GWD Project, and providing with that letter Project maps and contact information for the appropriate BLM contacts; and

WHEREAS, the BLM has initiated formal government-to-government section 106 consultation with each Identified Indian Tribe through the appropriate BLM manager(s) contacting that tribal government, or a person authorized by such government to speak for the tribe on section 106 compliance, offering meetings between a BLM manager and that tribe's designated tribal representative and/or governing body to discuss any concerns the tribe may have regarding: (1) the GWD Project; (2) any historic properties and cultural resources, including PRCSs, that may be affected by the Project; and (3) the tribe's desires to protect any such property(ies) from imprudent or unnecessary public identification or disclosure; and

WHEREAS, the BLM reaffirms its offer to consult regarding the GWD Project with each Identified Indian Tribe that desires to do so, in a manner respectful of both tribal sovereignty and the unique government-to-government relationship between Indian tribes and the United States government; and

WHEREAS, in order to assist BLM's tribal consultation and preparation of the DEIS for the Project, BLM had an ethnographic assessment prepared for the GWD Project by persons meeting the Secretary of the Interior's Standards for ethnography, which included interviews and targeted site visits with the assistance and cooperation of the Identified Indian Tribes, in order to identify cultural resources, PRCSs, and potential PRCSs located in the Project's potential Areas of Potential Effects ("APEs") for direct and indirect effects, as described in the Ethnographic Report, the consultants having conducted such studies, interviews and site visits in 2008 and 2009, and prepared an Ethnographic Report on their work, which has been circulated among the Identified Indian Tribes; and

WHEREAS, BLM has provided to each Identified Indian Tribe a draft copy of this Agreement and has invited each such tribe to comment on and suggest changes to any part of the draft, prior to its being finalized or executed; representatives of several tribes having met with BLM

managers to discuss this Agreement at duly noticed Project-specific consultation meetings on January 12, 2011 in Ely, Nevada, and February 15, 2011 in Las Vegas, Nevada; BLM received comment letters regarding this Agreement from several Identified Indian Tribes during the public comment process for the DEIS for the Project, and has considered those comments during the development of this Agreement; and the Identified Indian Tribes have each been afforded a reasonable opportunity to participate in the development and finalization of this Agreement as it may apply to historic properties of religious and cultural significance to each of those tribes; and

WHEREAS, BLM has invited and encouraged each Identified Indian Tribe to be a concurring party ("Concurring Party") for this Agreement; and

WHEREAS, BLM recognizes that (i) BLM has separate duties (apart from those under the NHPA) to consult with Indian tribes regarding a broad range of traditional religious and cultural locations and resources, including gathering areas, prayer sites, and sacred/ceremonial places, which might be affected by the GWD Project; (ii) such duty to consult exists without regard to eligibility of such properties or resources for inclusion on the National Register of Historic Places (NRHP); and (iii) formal and informal consultation regarding the same has occurred and will continue to occur apart from the consultation and other activities contemplated in this Agreement; and

WHEREAS, BLM sought the views of the public in the development of this Agreement by providing notice and information regarding the Undertaking and its anticipated effects on historic properties, solicited public comment and input on the Agreement during and concurrent with the public comment process for the DEIS for the Project, and has considered those public comments during the development of this Agreement; and

WHEREAS, BLM, in consultation with the SHPO, has identified organizations and agencies with a demonstrated interest in the GWD Project and its potential effects to historic properties, and has invited these organizations and agencies to participate in this section 106 compliance, the following organizations and agencies having responded and expressed their desire to participate: Archeo-Nevada Society, Bureau of Indian Affairs, Great Basin National Heritage Area, National Park Service, Nevada Division of State Lands, Nevada Rock Art Foundation, Preserve Nevada, U.S. Fish and Wildlife Service, and White Pine County, and BLM therefore having designated those organizations and agencies as consulting parties in this review ("Invited Consulting Parties"), consulted with them in the development of this Agreement, and invited them to sign this Agreement as Concurring Parties; and

WHEREAS, BLM has invited representatives of local governments with jurisdiction over the area in which direct effects to historic properties caused by the Undertaking may occur to participate in the development of this Agreement, and invited them to sign this Agreement as Concurring Parties; and

WHEREAS, pursuant to the Nevada Protocol, BLM has consulted with the SHPO in the development of this Agreement, and SHPO will be a signatory ("Signatory"); and

WHEREAS, BLM has invited the ACHP to consult in the development of this Agreement and the ACHP has agreed to participate, has consulted on and been involved in the development

hereof, and will be a Signatory; and

WHEREAS, this Agreement assigns substantial section 106 compliance duties to Project proponent SNWA, and the BLM has invited SNWA both to consult in the development of this Agreement and to be an invited signatory ("Invited Signatory"); and

WHEREAS, SNWA will ask the U.S. Army Corps of Engineers ("Corps") to issue permits under the Clean Water Act for the GWD Project, the Corps has designated BLM as the lead agency for section 106 compliance of the GWD Project, the Corps will require as part of permit conditions that section 106 compliance for the GWD Project be discharged by the BLM under this Agreement, and the Corps has consulted in the development of this Agreement; and

WHEREAS, SNWA has identified known historic and prehistoric cultural resources within the areas of the Project's APEs for visual and direct effects for Tier 1 of the Project by completing and providing to the BLM a Class I inventory of such areas, the report for which is titled "*The Class I Cultural Resources Inventory for the Southern Nevada Water Authority, Clark, Lincoln, and White Pine Counties Groundwater Development Project, Nevada*" (ICF Jones and Stokes, August 2008) ("Class I Inventory"); and

WHEREAS, this Agreement covers all aspects of the construction, installation, operation and maintenance of the facilities of the Tier 1 and Future Tiers of the GWD Project, as such facilities are referenced herein in Stipulation B and more fully described in Appendix B attached hereto, including facilities identified but not yet designed, or whose location has yet to be determined, and those that may be added in the future, all of which facilities will be treated as described herein;

NOW THEREFORE, the Signatories and Invited Signatory agree that the GWD Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the GWD Project on historic properties.

STIPULATIONS

BLM shall ensure that the following measures are carried out:

A. Roles and Responsibilities

1. Reports. BLM will be responsible for reviewing reports, including but not limited to, inventory reports, recommendations of eligibility for the NRHP, treatment options, and assessments of effects and for completing section 106 compliance for the GWD Project, regardless of the ownership of the lands on which portions or facilities of the Project may be located.

2. Eligibility, Effect, and Treatment/Mitigation. BLM will make determinations of eligibility and findings of effect, and will consult with Identified Indian Tribes, Invited Consulting Parties, and other consulting parties (as defined in Stipulation A.4, below) as part of that process. BLM will document its findings and determinations per 36 C.F.R. § 800.11(e). BLM will also oversee all cultural resource work; assemble and make all submissions to the SHPO, including reports, determinations of eligibility and effect, and treatment or mitigation,

such as data recovery plans; submit copies thereof to Identified Indian Tribes and Invited Consulting Parties as appropriate, and seek SHPO concurrence with all compliance determinations.

a. BLM Ely and BLM Southern Nevada will make determinations regarding NRHP eligibility, Project effects and treatment for their respective areas.

b. BLM Southern Nevada will convey its determinations to BLM Ely.

c. BLM Ely will ensure that all data are compiled and submitted to the appropriate parties and otherwise assure proper conduct of actions described in Stipulations A.1 to A.4.

3. Tribal Consultation. BLM is responsible for consultation with Indian tribes in connection with the GWD Project, including: (1) identifying each federally recognized Indian tribe that attaches religious and cultural significance to historic properties potentially affected by the GWD Project; (2) consulting with all Identified Indian Tribes willing to do so concerning historic properties, including the tribe's eligible PRCSs potentially affected by the GWD Project, and with any other tribes that the BLM identifies in the future; and (3) through consultation, providing all Identified Indian Tribes a full opportunity to identify any concerns about the Project, their views on identification and NRHP eligibility for any historic properties including PRCSs, and allowing that tribe to express its views on the assessment of effects and resolution of adverse effects to such PRCS's that are NRHP eligible, consistent with the procedures contained in the BLM Manual 8120 and the BLM Manual Handbook, H-8120-1: Guidelines for Conducting Tribal Consultation (together, the "BLM 8120 Manual and Handbook"), and, if the BLM 8120 Manual and Handbook are revised or replaced, then consistent with the revised or replaced procedures beginning on their effective date.

4. Other Consulting Parties. BLM will be responsible for identifying individuals and organizations with a demonstrated or known interest and expertise in historic properties and preservation issues in the Project area and consulting with them about the section 106 compliance of the Project ("Other Consulting Parties"). BLM shall invite such persons or organizations it identifies to comment on the Project and participate in the section 106 compliance. BLM may grant consulting party status to any such person or organization that requests such in writing, according to BLM's evaluation of the nature of their legal or economic relation to the Project or affected properties, or their concern for the Project's effects on historic properties.

5. SNWA. SNWA will be responsible for funding, supporting, assisting and conducting, either directly or through qualified consultants or contractors, the procedures for section 106 compliance of the GWD Project as those procedures are provided herein and as directed by BLM, including identification and evaluation of historic properties, records research, inventory, archaeological and above-ground surveys, assessments of effects, treatment as set forth in Stipulation H, required monitoring of construction, and ensuring that all such activities are conducted in a professional manner, consistent with this Agreement and the Nevada Protocol.

a. SNWA will ensure that persons supervising cultural resources work on SNWA's behalf for the Project hold a Nevada BLM cultural resources use permit as appropriate for archaeological inventory and other archaeological investigations.

b. As appropriate, personnel must meet the Secretary of the Interior's Professional Qualifications Standards for Archaeology and Historic Preservation in the relevant area(s) of expertise, such as for archaeology, architectural history, or cultural anthropology.

6. Phased Evaluation. As more fully set forth in Appendix B and the DEIS for this Project, the GWD Project consists of Tier 1 facilities and facilities to be built in Future Tiers. Consequently, SNWA may apply for ROWs, NTPs, or other land-use or Project approvals, for individual GWD Project facilities, or groups or portions of facilities, on a phased basis. The BLM may initiate and complete section 106 compliance for any such phase, and thereafter issue NTPs therefore, separately from, and regardless of the initiation or completion of the section 106 compliance of any other phase of the Project, so long as all such activities are conducted in accordance with this Agreement.

7. Signatories and Concurring Parties. As provided in the ACHP's regulations and herein, the Signatories shall have authority to execute, amend or terminate this Agreement. The Invited Signatory has authority to amend or terminate this Agreement as provided herein. Concurring Parties will concur in the terms of this Agreement and may participate in and benefit here from. The failure or refusal of any party invited to become a Concurring Party will not invalidate or otherwise affect this Agreement. Upon and after execution of this Agreement, each Signatory, Invited Signatory, and Invited Consulting Party, and Identified Indian Tribes that signed or signs this Agreement is a signing party hereto, collectively referred to as the "Signing Parties."

8. Definitions. The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this Agreement. Any terms not defined in 36 CFR § 800.16 shall carry the meaning provided in Appendix A attached hereto, or if not defined therein then in the BLM 2012 NPA and Nevada Protocol, or if not defined in any of these sources, the BLM Manual 8100 Series.

B. The GWD Project

1. Tier 1. Tier 1 of the GWD Project consists of the main pipeline and associated facilities, as more particularly described in Appendix B attached hereto. The majority of these facilities will be located on public lands managed by the BLM, while some will be located on state-owned or privately-owned lands.

2. Future Tiers. Future Tiers of the Project include groundwater development that will include the installation of groundwater wells, collector pipeline facilities, distribution power lines, and other facilities.

3. Definition of Undertaking. The Undertaking for the GWD Project is defined as the construction, installation, operation and maintenance of those Tier 1 and Future Tier facilities described in Appendix B.

C. Areas of Potential Effects ("APEs")

1. Tier 1 APEs. The BLM, in consultation with the SHPO, has determined the APEs for Tier 1 of the Project.

2. Future Tier APEs. The BLM, in consultation with the SHPO, will determine the APEs for Future Tiers of the Project. For Future Tiers, the BLM will also, as it deems appropriate, seek information from Invited and Other Consulting Parties likely to have knowledge of, or concerns with, historic properties in the Future Tier APEs, as provided in Stipulation A. In addition, for Future Tiers, the BLM will seek to gather information from Identified Indian Tribes, as provided in Stipulation A.3, to assist in identifying PRCSs, recognizing that such Indian tribes may be reluctant to divulge specific information regarding the location, nature or activities associated with such sites or properties.

3. Types of APEs. This Agreement addresses the following four types of effects that may be deemed adverse to historic properties: (1) direct effects; (2) visual, audible, or atmospheric effects; (3) indirect effects; and (4) cumulative effects. Examples of adverse effects in 36 C.F.R. § 800.5(a)(2) could be considered as either direct or indirect as defined in this Agreement. The APEs for the GWD Project cover all areas where the GWD Project may directly, visually, indirectly, or cumulatively cause an adverse effect as defined in this Agreement to one or more historic properties.

4. The APE for Direct Effects. The APE for direct effects, including determination of the APE for direct effects as Future Tiers of the Project are defined, will include the areas within the temporary and permanent ROWs granted by the BLM over public lands, or any area of easement, lease, purchase or ROW granted to SNWA on state, private or other federal lands, where any element of the GWD Project is to be located, or where ground-disturbing activities or construction are planned for the GWD Project, which may include but are not limited to: (1) newly constructed or graded access roads; (2) areas identified for the staging of materials or storage of heavy equipment; and (3) areas identified for the excavation or deposition of borrow material.

5. The APE for Visual Effects. The APE for visual effects, including determination of the APE for visual effects as Future Tiers of the Project are defined, to historic properties will be the area from which above-ground Project facilities less than 100 feet in height may be visible,[1] measured as follows: (1) for linear facilities or roads, an area extending outward one mile on either side of the centerline of the ROW, easement or other right of possession granted for such facility or road; and (2) for non-linear facilities, a circular area with a radius of one mile from the center point of such facility.

[1] No structures in excess of 100 feet in height are currently in the plans for the GWD Project, and none are expected in the future.

6. The APEs for Indirect and Cumulative Effects. The APEs for any indirect or cumulative effects (e.g., areas of possible subsidence caused by groundwater pumping), including determination of the APE for indirect or cumulative effect as Future Tiers of the Project are defined, shall be determined by the BLM, in consultation with the SHPO, taking into account the nature, scope and intensity of the potential indirect or cumulative effects to historic properties.

7. Changes to APEs. In consultation with SHPO, the BLM may modify the APE for a given GWD Project facility as BLM determines is reasonable and appropriate under the terms of this Agreement, consistent with the standards of the BLM 2012 NPA, the Nevada Protocol, and the BLM Manual 8100 Series. BLM will provide reasonable prior notification of such action to all Signing Parties and Identified Indian Tribes.

D. Indian Tribes, Consulting Parties and Public Participation

1. Indian Tribes. The BLM has made a reasonable and good faith effort to identify each Indian tribe that has cultural ties to, or whose direct ancestors had historic or prehistoric ties to, GWD Project areas, such that the tribe may attach religious and cultural significance to historic properties in Project APEs as determined by BLM in accordance with the BLM 8120 Manual and Handbook, and the BLM has listed the tribes identified in a Whereas clause above.

a. BLM shall continue to consult with any Identified Indian Tribe, irrespective of whether or not such tribe(s) signed this Agreement, with regard to any historic property(ies) to which such tribe attaches religious and cultural significance that may be affected by the Project. Such consultations may include site visits that BLM determines are reasonably necessary in the scope of this section 106 compliance.

b. BLM will designate those BLM managers who are authorized to speak for and commit the BLM and consult with Indian tribes for section 106 compliance for the Project. Designated BLM managers will contact the Identified Indian Tribes and request that each such tribe identify to the BLM in writing one or more tribal members whom the tribal government authorizes to speak for and commit the tribe and consult with BLM for section 106 compliance involving the Project.

c. The BLM will seek to determine, with the assistance of each Identified Indian Tribe, whether such Identified Indian Tribe attaches religious and cultural significance to one or more historic properties, including PRCSs that may be affected by the GWD Project, and will further seek in consultation with such tribe to identify and assess the eligibility of each such property.

d. The BLM in its discretion may designate as a consulting party any Indian tribe, even if such tribe does not attach religious and cultural significance to a historic property that may be affected by the Project, pursuant to 36 C.F.R. § 800.2(c)(5). Any Indian tribe that is not designated a consulting

party may nevertheless participate in the section 106 compliance by submitting comments to the BLM regarding the Project, by discussing the Project with BLM representatives, by responding to inquiries from BLM managers or staff, or by providing information and the views of that tribe concerning cultural resources or historic properties that will or may be affected by the Project. Any Indian tribal government, or its authorized representative, that expresses to BLM in writing that the tribe does not wish to participate as a consulting party in the section 106 compliance for the GWD Project shall thereafter not be a consulting party for the Project, except that the tribe may rejoin the section 106 compliance as a consulting party at any time by written notice to the BLM.

e. BLM recognizes that Indian tribes may be reluctant to divulge specific information regarding the location, nature or activities associated with historic, prehistoric or spiritual sites and properties. BLM shall address concerns raised by any tribe about confidentiality pursuant to section 304 of the NHPA (16 U.S.C. § 470w-3). BLM will protect such information from public release to the extent allowed by law.

f. Subject to prior BLM authorization, and as allowed by the relevant Indian tribe(s), SNWA, or cultural resource consulting firms working for SNWA, may make contacts with tribes in order to collect information from such tribes for purposes such as identification of historic properties, including PRCSs, for section 106 compliance, but neither SNWA nor any of its consulting firms shall negotiate or make commitments for the BLM, or otherwise exercise, or give the appearance of exercising, BLM's tribal consultation authority, without BLM having obtained express written consent from the relevant tribal government.

g. BLM has invited all Identified Indian Tribes to execute this Agreement as Concurring Parties. Execution of this Agreement as a Concurring Party does not imply endorsement or approval of the GWD Project itself, or limit or restrict in any way the Concurring Party's right to object to, petition against, litigate against or in any other way express or advance critical or negative comments toward, the GWD Project or its proponent.

2. Other and Invited Consulting Parties. BLM will identify and notify persons and organizations interested in the Project's effects to historic properties as provided in Stipulation A.4. In addition, pursuant to the Nevada Protocol (Section IV.F.), and the regulations at 36 C.F.R. § 800.3(f), and in coordination with the processes of Project review under NEPA, the BLM shall: (1) consider all written requests from such individuals and organizations to participate as Other Consulting Parties; and (2) determine which should become Invited Consulting Parties and the scope of consultation, considering the scale of the Undertaking, the intensity and scope of the Project's effects to identified historic properties of expressed interest to the individual or organization, and the scope of federal involvement in the relevant portion or facility of the Project.

3. Public Participation. The public will be afforded an opportunity to participate in the section 106 compliance of the GWD Project, and the BLM shall seek and consider the views of the public when considering effects to historic properties in this review. The public participation process and any release of information shall be conducted in strict conformance with the confidentiality requirements of section 304 of the NHPA (16 U.S.C. § 470w-3), as well as 36 C.F.R. §§ 800.2(d)(1)–(2) and 800.11(c)(1), (3).

a. Development of this Agreement. The BLM directed SNWA to publish at least once per week for two successive weeks a public notice for the GWD Project in the Las Vegas Review Journal and the Ely Times, newspapers of general circulation in the State of Nevada, describing the general nature and scope of the Project, identifying a contact person from whom copies of this Agreement and detailed descriptions of the GWD Project could be obtained, and sought comment from the public on: (1) this Agreement; (2) the identification and assessment of any historic properties that may be affected by the construction or operation of the GWD Project; and (3) potential effects to any historic properties there from. BLM also included a copy of this Agreement and solicited for public comments in the DEIS for this Project (76 Fed. Reg. 34,097). BLM has considered comments received in the development of this Agreement.

b. Sharing Sensitive Information. At the discretion of the BLM, proprietary or sensitive location or other information about historic properties discovered in connection with the GWD Project may be shared with appropriate parties. The BLM shall ensure appropriate protection of sensitive information deemed confidential in accordance with section 304 of the NHPA (16 U.S.C. § 470w-3). BLM may withhold such information. BLM may also enter into information-sharing agreements with any person, group, Indian tribe or entity prior to the release to that party of sensitive information determined to be entitled to such confidential treatment.

E. Identification of Historic Properties

1. Research Design and/or Historic Context. BLM, in consultation with the SHPO, shall ensure that consulting archaeologists and other qualified professionals perform all necessary section 106 identification activities for the GWD Project, and SNWA or its consultant(s) shall prepare a research design and/or historic context consistent with the Secretary of the Interior's Standards and Guidelines.

2. Role of Tribal Consultation in Identification. The BLM will gather information from each Identified Indian Tribe to assist in identifying PRCSs which may be eligible for the NRHP and which may be affected by the GWD Project, or a portion thereof.

3. Role of Other Consultation in Identification. The BLM will solicit information from Other Consulting Parties likely to have knowledge of, or concerns with, historic properties in the APE that may be affected by the GWD Project, or a portion thereof.

4. Class I Inventory. SNWA has identified known historic and prehistoric resources within the APEs for Tier 1 of the Project by completing the Class I Inventory. BLM will ensure that additional or updated Class I inventory is conducted as necessary for the APEs for Future Tiers or phased identification of historic properties in compliance with this Agreement.

5. Ranch Complexes. BLM will ensure that SNWA will inventory and record all ranch complexes more than 40-years old located in the Project APEs for visual and direct effects. For each such ranch complex that the BLM determines, in consultation with the SHPO, will be adversely affected by the Project and meets the criteria for NRHP-eligibility for state or local significance (Class I surveys have not identified any ranch complex in the Tier 1 GWD Project APEs that is of national significance), SNWA will provide treatment by producing full descriptions and photo documentation per standards in Appendices D and/or G of the Nevada Protocol, as may be applicable. Information obtained as a result of the inventory of ranch complexes will be compiled in a stand-alone report.

6. Class III Survey. To build on the identification efforts from the Class I inventory performed by SNWA, BLM, in consultation with the SHPO, shall ensure that SNWA will complete a Class III survey of the Project APEs for direct effects prior to initiation of construction of a given Project facility or phase.

a. Facilities added to the GWD Project in the Future Tiers that will be located completely within areas previously inventoried by a Class III survey for the Project will not require additional survey or identification work, provided the age of such Class III survey is consistent with the requirements of the Nevada Protocol, except for any assessment of effects, mitigation and treatment that may be required or in discovery situations.

b. Facilities added to the GWD Project in the Future Tiers that will be located partially or totally outside of areas previously covered by a Class III survey for the Project must be the subject of a full Class III survey and section 106 compliance under the terms of this Agreement (including development and implementation of evaluation and treatment options, as appropriate) prior to construction of the relevant facilities.

7 Other Types of Identification. BLM may require that SNWA conduct other types of identification, such as field reconnaissance, windshield surveys, and historical research, within the APEs for indirect and cumulative effects for Future Tiers, in consultation with the SHPO.

8. Geomorphology. During the Class III surveys, in areas within the Project APEs for direct effects, a qualified archaeologist with professional experience in geomorphological analysis will assess the potential for buried cultural materials in areas that will be impacted by construction of any GWD Project facility or other planned excavation deeper than two feet. The assessment will attempt to identify areas that contain thick sequences of post-14,000 B.P. deposits that are of a suitable geologic character to bury and preserve cultural zones and thick enough to hide any surface evidence, considering geomorphological evidence and other surface indicators. If the qualified archaeologist determines that a given area showed indication of a high likelihood of buried significant cultural deposits, the archaeologist will make

recommendations to the BLM for additional geomorphological evaluation, or archaeological testing, as may be reasonably indicated. The BLM, in consultation with the SHPO, will determine if additional geomorphological evaluation or archaeological testing is warranted.

9. Private Ownership. Section 106 compliance and reasonable identification efforts shall be performed regardless of the ownership (public or private) of the lands involved, and SNWA shall be responsible for attempting to gain access to non-BLM lands. Where SNWA cannot gain access to such lands for purposes of identification of historic properties in any of the Project's APEs, identification efforts on those lands shall be deferred until access is gained. Failure to gain access to accomplish necessary or appropriate identification, treatment or mitigation may require BLM to consider alternative treatment or mitigation, or to allow deferral of such until access is gained, as provided in 36 C.F.R. § 800.4(b)(2).

10. Disturbed or Dangerous Conditions. In any area in the APEs for direct effects where the ground has been heavily disturbed, or in areas where access is prevented or may be dangerous to survey personnel, the BLM may exempt those portions of the APEs from Class III survey requirements. Notification of these exempted areas will be submitted to SHPO for their information.

11. Non-Linear Sites. Non-linear sites extending out of the APEs for direct effects shall be recorded in their entirety with the exception of very large sites such as town sites, mining complexes, continuous stream/lake terrace sites, or extensive prehistoric quarries or habitation sites. These exceptions shall be approved in advance by BLM Ely and BLM Southern Nevada districts, which will consult with other BLM districts as appropriate.

12. Linear Resources. Linear resources (e.g., railroads, roads, trails, ditches, utility lines, etc.) crossing and extending beyond the APEs for direct effects shall be inventoried 100 meters beyond the project boundaries in each direction, and shall be either recorded or not according to the following criteria:

a. Roads or linear features with: (i) no mention in the BLM Field Office records or not shown on General Land Office ("GLO") plats or other historic maps; (ii) no associated features or dateable artifacts; or (iii) which have lost all integrity through extensive blading, will not be recorded;

b. Roads, linear features, or other resources included on GLO plats but which are not associated with features or dateable artifacts, and do not appear to be significant on the basis of archival data shall be treated as "isolated linear segments." These resources shall be recorded in tabular form and collected data shall include a minimum of two (2) separate GPS points at each end of the linear feature within the APE. Additional data regarding specific "isolated linear segments" encountered during report preparation will be recorded on Intermountain Antiquities Computer System ("IMACS") site forms;

c. Roads or other linear features included on GLO plats (especially named roads) or features known from other archival data to be potentially significant, or which have associated features or dateable artifacts, shall be recorded on IMACS site forms.

13. Crew Chiefs and Supervisors. Archeological crew chiefs and higher-level supervisors will be familiar with the inventory research design and locations of expected historic resources identified in the Class I overview. SNWA will document in the Class III reports efforts made to locate expected but not-encountered sites.

14. Phased Identification and Evaluation. The BLM may use a phased process to conduct identification and evaluation efforts for the review of this Project, because alternatives under consideration for the Project consist of corridors and large land areas, because Future Tiers of the Project as described in Appendix B have not been defined, and because access to some properties is restricted. All identification and evaluation efforts determined and required by BLM as provided in Stipulation K for a given Project portion or area shall be completed prior to issuance of a NTP for construction on that portion or in that area.

15. Deferral of Final Identification and Evaluation. BLM may defer final identification and evaluation of historic properties for alternatives or inaccessible areas as provided herein. SNWA shall first establish the likely presence of historic properties within the APEs for each such alternative or inaccessible area through background research, appropriate consultation and an appropriate level of field investigation as determined by BLM, taking into account the number of alternatives under consideration, the magnitude of the Undertaking and its likely effects, and the views of the SHPO. As specific aspects or locations of an alternative are refined, or as access is gained to an inaccessible area, BLM shall proceed with the identification and evaluation of historic properties in accordance with this Agreement. All identification and evaluation efforts for a given Project portion or area that are deferred under this Stipulation shall be completed prior to issuance of a NTP for construction for that portion or area as provided in Stipulation K.

a. BLM may also use a phased process for identifying and evaluating PRCSs. The Ethnographic Assessment, which BLM used as a resource in the agency's efforts to identify historic properties including PRCSs, identified 76 such locations, 48 of which are in the vicinity of a Project alternative (Appendix B). BLM recognizes that additional PRCSs may be identified during ongoing consultation or through additional research. BLM will further identify and evaluate those locations for NRHP eligibility using a phased process, if the location is in the APE(s) of an alternative ultimately selected for additional Project facilities.

b. Four PRCSs identified in the Ethnographic Assessment or otherwise are within the Tier 1 APEs: [redacted] If these PRCSs are in the alternative selected by BLM, these sites must be further defined and be evaluated for NRHP eligibility. No NTP for activities affecting these sites will be

issued until the section 106 compliance process, as set forth in this Agreement, is complete.

F. Evaluation of NRHP Eligibility

1. Evaluation Prior to Ground Disturbance. BLM, in consultation with the SHPO, shall ensure that all cultural resources identified within the ROW are evaluated for eligibility to the NRHP prior to the initiation of ground-disturbing activities that may affect those historic properties. Eligibility will be determined in a manner compatible with the Nevada Protocol.

2. Evaluation of Properties Visually Affected. For those resources within the APE for visual effects, which have not previously been evaluated for eligibility in the NRHP, except for resources that are or may be eligible for the NRHP only under eligibility Criterion D, SNWA will document, assess, and make recommendations to the BLM regarding the eligibility of such inventoried resources for the NRHP under Criteria A, B and C.

3. Evaluation Data. To the extent practicable, eligibility determinations shall be based on inventory information. If the information gathered in the inventory for archaeology is inadequate to determine eligibility, BLM or GWD Project contractors may conduct limited subsurface probing, or other evaluative techniques, to determine eligibility. Subject to approval by BLM, evaluative testing of archaeological sites is intended to provide the minimum data necessary to define the nature, density, and distribution of materials in potential historic properties, to make final evaluations of eligibility, and to devise treatment options responsive to the information potential of the property.

4. Withdrawal or Disapproval of Project. Should the BLM disapprove Tier 1 or Future Tiers ROW applications, or should SNWA abandon the GWD Project and withdraw the ROW application(s) prior to BLM approval, then any further evaluative testing shall cease, except for completing all post-fieldwork activities that are ongoing as of the date of the withdrawal or disapproval, as determined by BLM.

5. Tribal Consultation. BLM shall seek to consult with each Identified Indian Tribe in accordance with the BLM 8120 Manual and Handbook, concerning the NRHP eligibility of any potentially eligible cultural resource that would be affected by the Project, to which that Indian tribe attaches religious and cultural significance.

6. Eligibility. If BLM determines, in consultation with SHPO, that a property not already listed in, or determined eligible for, the NRHP meets the criteria for NRHP eligibility that property shall be considered eligible for purposes of this section 106 compliance. If BLM determines, in consultation with SHPO, that the eligibility criteria are not met for a given property, that property shall be considered not eligible for the NRHP.

7. Disagreements Regarding Eligibility. Any disagreements regarding eligibility shall be handled in accordance with Stipulation O.3.

8. Consulting Party and Public Comments. Other Consulting Parties and members of the public may at any time submit to BLM comments regarding conclusions,

recommendations or consensus determinations made pursuant to this Stipulation F regarding NRHP eligibility for properties potentially affected by the GWD Project.

G. Assessment of Effects

1. Assessment. BLM, in consultation with the SHPO and any Identified Indian Tribe, shall apply the criteria of adverse effect to historic properties within the Project APEs in accordance with the terms of 36 C.F.R. § 800.5. BLM shall consider any views concerning such effects that have been provided by Other Consulting Parties and the public.

2. Phased Assessment. BLM may use a phased process in applying the criteria of adverse effect, consistent with phased identification and evaluation efforts provided in Stipulations E.14 and 36 C.F.R. § 800.5(a)(3), because alternatives under consideration in this review consist of corridors and large land areas, the alternative for Tier 1 of the Project has not yet been selected, Future Tiers of the Project as described in Appendix B have not yet been defined, and access to some potentially affected properties may be restricted.

H. Treatment of Adversely Affected Historic Properties

1. Consultation. In avoiding, minimizing or mitigating adverse effects to historic properties from the GWD Project, or any facility or portion thereof, BLM, in consultation with SHPO, any Identified Indian Tribe that attaches religious and cultural significance to the adversely affected historic property, and Invited and/or Other Consulting Parties, shall develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties consistent with the terms of 36 C.F.R. § 800.6. All treatment for adversely affected historic properties shall be done in a manner consistent with the Nevada Protocol.

2. Preference for Avoidance. BLM, in consultation with the SHPO, shall ensure that, to the extent reasonably practicable, SNWA will avoid effects to historic properties through project design, redesign, relocation of facilities, or by other means.

3. Historic Properties Treatment Plan ("HPTP"). When avoidance is not feasible or reasonably practicable, BLM, in consultation with the SHPO and in coordination with SNWA, affected Identified Indian Tribes and Invited and/or Other Consulting Parties, shall ensure that an appropriate historic properties treatment plan ("HPTP") is developed to minimize, mitigate or otherwise resolve Project-related effects to historic properties.

a. Consistent with this Agreement, the HPTP will establish an overall approach for mitigation and treatment, identifying key aspects and issues, including programmatic NRHP eligibility issues, post-construction data recovery, tribal consultation and participation, and reporting measures, that will prove crucial in its implementation. The HPTP will review site significance issues and research domains for both prehistoric and historic-era resources, and will identify data recovery treatment options based on site type for prehistoric resources, and theme-specific property type for historic-era resources. The HPTP will present both pre- and post-construction data recovery plans, the latter recognizing that post-

construction data recovery is appropriate for historic properties or portions of historic properties that will not be directly impacted by the Project. The HPTP will propose field and laboratory methods, and will also address cultural resources monitoring procedures and unanticipated discovery situations. The discovery plan in the HPTP will be consistent with, but may expand on, the procedures provided herein and describe the identification, protection, recording, treatment, notification, and reporting procedures associated with unanticipated archaeological finds. The discovery plan will provide a separate discussion for discovery situations involving human remains.

b. For properties eligible under Criteria A through C (36 C.F.R. § 60.4), mitigation and treatment activities other than archaeological data recovery will be considered in the HPTP including, but not limited to, Historic American Building Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) or other appropriate recordation or preparation of an oral history, historic markers, exhibits, interpretive brochures or publications, or similar historic or educational materials. Where appropriate, the HPTP shall include provisions describing the content and number of copies for a publication of treatment materials for the general public.

4. Criteria for Data Recovery. When data recovery is required as a condition of approval, BLM, in consultation with SHPO, shall develop, or ensure that SNWA develops treatment plans that are consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, as revised and updated and *Section 106 Archaeology Guidance* (ACHP, 2009).

5. Curation. BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 C.F.R. Part 79, in BLM-approved facilities in Nevada if possible, or if applicable, in accordance with NAGPRA regulations set forth in 43 C.F.R. Part 10, or any Plan of Action ("POA") pursuant to and in accordance with those regulations that may be executed after this Agreement. All materials slated for curation will be maintained in accordance with 36 C.F.R. Part 79 until the relevant final treatment report is complete and collections are curated or returned to their owners. The BLM and SNWA shall encourage private owners to donate collections obtained from their lands to an appropriate BLM-approved curation facility in Nevada if possible. For ease of future research, BLM will encourage all artifacts collected from this Project to be curated at the same facility in Nevada if possible.

6. Treatment of Properties Visually Affected. For those historic properties which are in the visual APE that the BLM determines, in consultation with the SHPO, are eligible for the NRHP under one or more of those three criteria and are either previously undocumented or insufficiently documented, SNWA will record each such property with full descriptions and photo documentation to current standards, including SHPO standards or Appendices D and/or G of the Nevada Protocol, as may be applicable.

7. Tribal Consultation. BLM shall consult with each Identified Indian Tribe in accordance with the BLM 8120 Manual and Handbook, and with the SHPO, to develop treatment options for adversely affected historic properties, including PRCSs.

8. Final Reports. BLM shall ensure that all final reports resulting from treatment will be provided to the SHPO, and made available to Identified Indian Tribes that attach religious and cultural significance to the treated property, and to Concurring Parties. All such reports shall be consistent with contemporary professional standards and the Department of Interior's Format Standards for Final Reports of Data Recovery Programs (42 Fed. Reg. 5,377–79).

I. Unanticipated Discoveries

1. Construction-Related Unanticipated Discoveries.

a. Authorized Personnel. Prior to initiating construction of the GWD Project or portion thereof, SNWA will provide to BLM, and to other Signing Parties that so request, a list of its employees and contractors authorized to halt ground-disturbing activities in specified areas in discovery situations. At least one such authorized person will be present in the area during all ground-disturbing activities for the GWD Project, and that person will be responsible for notifying BLM of any qualifying discoveries.

b. Cessation of Activities. If previously unidentified cultural resources, other than isolates as identified by a qualified archaeologist, are discovered during construction of the GWD Project, all Project ground-disturbing activity within 100 meters (325 feet) of the discovery shall cease immediately, SNWA or its authorized representative shall immediately secure the location of the discovery to prevent vandalism or other damage. Ground-disturbing activity in that area shall be suspended until BLM has evaluated the discovery, notified Signing Parties, assured the completion of any necessary mitigation or treatment measures for historic properties, and issued a written NTP.

c. Notification. SNWA shall notify BLM of the discovery immediately either by written or electronic communication (email or fax), or orally followed by written or electronic confirmation.

d. Evaluation. Upon notification of a discovery, BLM shall make an assessment of the discovery's significance, integrity and eligibility for the NRHP (including pertinent criteria) within 48 hours of notification, or sooner if feasible. The BLM may make the eligibility assessment, and a determination of appropriate course of action, based upon a concise preliminary description and recommendation for the discovery from a qualified archaeologist. Alternatively, the BLM, in consultation with SHPO, may assume the newly discovered property is eligible for the NRHP and will specify the pertinent NRHP significance criteria.

i. If BLM determines the discovery is not a historic property, BLM shall notify SHPO and Identified Indian Tribes that the BLM determines may attach traditional religious and cultural significance to the affected property of the discovery by e mail, fax or telephone within 48 hours of discovery, including BLM's determination of non-eligibility for the NRHP. The SHPO and Identified Indian Tribe(s) shall have 48 hours to respond to BLM to notification with any objections. The BLM must take any objections received during that time into account in determining how to proceed.

ii. If BLM determines the discovery is a historic property, BLM shall notify SHPO and Identified Indian Tribes that the BLM determines may attach traditional religious and cultural significance to the affected property of the discovery by email, fax or telephone within the 48 hours of discovery including BLM's determination of eligibility for the NRHP (including significance criteria, if eligible), and of BLM's determination of options for avoidance, minimization of adverse effects and proposed actions to resolve adverse effects to historic properties. The SHPO and Identified Indian Tribe(s) shall have 48 hours to respond to the notification from BLM. The BLM shall take into account comments and recommendations received within the specified time period from SHPO and Identified Indian Tribe(s) regarding eligibility and proposed actions, and then determine the appropriate actions to avoid, minimize or resolve adverse effects.

e. Implementation of Measures to Avoid, Minimize or Resolve Adverse Effects. The BLM shall ensure those measures it deems appropriate to avoid, minimize or resolve adverse effects are implemented. The SHPO and Identified Indian Tribes that the BLM determines may attach traditional religious and cultural significance to the affected property shall be provided with a report of actions taken after completion.

f. Resumption of Activities. After notification and consideration of comments from SHPO, SNWA, and affected Identified Indian Tribes, the BLM shall ensure actions to resolve adverse effects to any discovered historic property are implemented. The BLM shall provide to the SHPO and Identified Indian Tribe(s) a report of the actions after completion.

i. After notification and consideration of comments from SHPO and affected Identified Indian Tribes, if BLM determines the discovery does not involve a historic property, the BLM shall issue written authorization for resumption of activities.

ii. BLM may request or gather additional information as it deems necessary, and may approve the restarting of some or all suspended

activities based upon the information and recommendation received, and BLM may conditions the restarting of suspended activities as it deems appropriate.

iii. Suspended construction activities in the area of the discovery may resume when BLM notifies SNWA either by written or electronic communication (email or fax), or orally followed by written or electronic confirmation, that objectives of the fieldwork phase of mitigation are achieved and activities can resume.

g. Reporting.

i. For discovered isolates, SNWA will provide documentation to BLM in the final monitoring report.

ii. For unanticipated discoveries, the reporting archeologist will prepare and transmit to BLM a written report of the discovery and recommendations within 30 days or as otherwise determined by the BLM.

iii. BLM shall require that reports of mitigation efforts are completed in a timely manner and that they conform to the standards of the Department of Interior's Format Standards for Final Reports of Data Recovery Program (42 Fed. Reg. 5,377–79). Drafts of such reports shall be submitted to the SHPO, for a 45-day review and comment period as stipulated in Stipulation J and as provided in the Nevada Protocol. BLM shall submit final reports to the SHPO, Identified Indian Tribes that attach traditional religious and cultural significance to the affected property, and Concurring Parties for informational purposes.

2. Post-Construction-Related Unanticipated Discoveries.

a. Maintenance and Repair. If previously unidentified cultural resources, except isolates as identified by a qualified archaeologist, are discovered as a result of ground-disturbing maintenance and repair within the GWD Project ROWs, the process identified in paragraphs I.1.a through I.1.g above will be implemented.

b. Groundwater Development. If unanticipated indirect effects to cultural resources known or determined to be historic properties are indicated from SNWA's groundwater development (e.g., possible subsidence caused by groundwater pumping), BLM shall determine whether such effects are reasonably attributable to the GWD Project. If adverse effects to cultural resources known or determined to be historic properties are determined by BLM to be attributable to the GWD Project, BLM shall conduct consultation seeking to avoid, minimize, mitigate or resolve those adverse effects.

J. Procedures and Time Frames

1. SNWA Submissions to BLM. BLM shall review and comment on any report submitted by SNWA within 35 calendar days of receipt, unless BLM agrees to comment in a shorter time, or requests additional time. BLM may issue a NTP for a given GWD Project element or portion immediately after BLM finds that the conditions in Stipulation K are met.

2. Final Report Deadlines. Unless otherwise agreed, SNWA shall submit final reports to BLM by the following deadlines:

   a. A draft final report of all identification/inventory and evaluation efforts within nine (9) months of the completion of the fieldwork associated with the activity.

   b. A draft final report of all supplementary evaluation activities within twelve (12) months of the completion of the fieldwork associated with the activity.

   c. A draft final report of all treatment or other treatment activities within twenty-four (24) months of the completion of the fieldwork associated with the activity.

3. SHPO Consultation. Except for unanticipated discovery situations, BLM shall submit the results of all identification or evaluation reports, treatment plans, and final draft reports to the SHPO for a 45-calendar day review and comment period, measured from the date of SHPO receipt. This review period includes 10 calendar days for SHPO to review and consider comments provided by Identified Indian Tribes and Concurring Parties, as identified in Stipulation J.4, below.

4. Identified Indian Tribes and Concurring Parties. Concurrent with any SHPO submission (except in unanticipated discovery situations), BLM shall provide copies of draft reports to Identified Indian Tribes and Concurring Parties which have information-sharing agreements with BLM Nevada and attach religious and cultural significance to the affected property, for a 35-calendar day review and comment period. BLM will consider any comments received within the 35-calendar-day comment period, and will provide copies of those comments to SHPO. BLM shall provide to all Identified Indian Tribes and Concurring Parties copies of the final report within 45 days after it is received from SNWA, consistent with Stipulation D.3.b.

5. Timeline for Curation. Materials and artifacts to be curated (defined in Stipulation H.5) will be sent to a facility in Nevada, if possible, approved by the BLM that reasonably meets the procedural, security and quality standards in 36 C.F.R. Part 79, or to the owner, within 15 days of when the final report associated with that activity is accepted by the BLM. If materials and artifacts are subject to NAGPRA, BLM will manage those materials and artifacts in accordance with 43 C.F.R. Part 10, or according to any applicable POA executed after this Agreement. SNWA will provide to BLM copies of records confirming curation or transfer of possession within five business days of acceptance by the curatorial facility or owner.

K. Notices to Proceed ("NTPs")

When the BLM issues a ROW for the GWD Project or for any facility, element or portion thereof, the ROW issued for such application shall provide for the issuance of a NTP. The NTP may be issued for the entire Project or portions thereof, after fulfillment of one of the following conditions:

1. BLM, in consultation with the SHPO, determines that no historic properties will be affected by construction of the facility or project portion described in the ROW application; or

2. BLM, in consultation with the SHPO, determines that construction of the GWD Project facility or Project portion described in the ROW application will have no adverse effect to historic properties; or

3. BLM, in consultation with the SHPO, Identified Indian Tribes, and Concurring Parties, determines that an appropriate treatment plan for the facility or portion described in the ROW application has been implemented, and the following have all occurred:

   a. The fieldwork phase of the treatment plan has been completed; and

   b. BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work; and

   c. BLM shall provide a copy of the summary to SHPO; and

   d. The SHPO shall review the summary. If the SHPO concurs or does not respond within two working days of receipt, BLM shall assume concurrence and issue the NTP.

L. Monitoring and Tribal Monitoring

1. BLM/SHPO Monitoring. BLM and the SHPO may monitor actions carried out pursuant to this Agreement. BLM at its discretion may also allow monitoring by Invited or Other Consulting Parties.

2. Archaeologist Monitoring. BLM, in consultation with the SHPO, may identify areas of construction for facilities or portions of the Project that will require monitoring by a BLM-approved archaeologist. Areas requiring archeological monitoring shall be identified in the Class III survey and the geomorphological study. Work in areas so identified cannot proceed without a monitor in place, and the monitor shall be empowered to stop work as necessary to protect historic properties.

3. Tribal Monitoring. In recognition of requests by several Identified Indian Tribes in the development of this Agreement to provide for tribal monitoring, an Identified Indian Tribe which attaches religious and cultural significance to a historic property in the APEs for direct effects, including eligible PRCSs that may be directly and adversely affected by construction of the GWD Project in Tier 1 or Future Tiers, will be provided an opportunity to monitor that construction. A tribal monitor shall be designated by an Identified Indian Tribe which attaches

religious and cultural significance to a historic property in the APEs, and shall satisfy safety requirements and other appropriate qualifications. Tribal monitors shall report any concerns to the on-site archaeologist or the SNWA employee or contractor or authorized to halt ground-disturbing activities. Tribal monitors shall provide weekly written reports to the BLM.

M. Contact Persons

BLM will maintain a current list of contact persons for the Signing Parties and Identified Indian Tribes and will provide it to any of the parties if requested.

N. Other Considerations

1. Qualified Persons to Perform or Supervise Work. BLM shall ensure that historic, architectural, ethnographic, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of, persons meeting qualifications set forth in the Secretary of the Interior's Professional Qualification Standards or who have been permitted for such archaeological work on public lands by the BLM.

2. Personnel Shall Not Engage in Illegal Collection or Damage to Historic Resources. SNWA, in cooperation with BLM and the SHPO, shall ensure that all its personnel, and all the personnel of its contractors and their subcontractors, that will perform work on the GWD Project, including any visitors, are directed not to engage in the illegal collection, damage or vandalism of historic and prehistoric resources. SNWA shall cooperate with the BLM to ensure compliance with Archaeological Resources Protection Act (ARPA) for facilities and portions of the Project located on public lands, and with Nevada Revised Statutes 381.195 to .227 (Nevada State Antiquities Law of 1959) for facilities and portions of the Project located on state lands.

3. Mitigation Costs and Possible Enforcement Action for Unauthorized Damage to Historic Properties. Should damage to historic properties occur during the period of construction, installation, operation or maintenance of the Project due to any unauthorized intentional, inadvertent or negligent actions on the part of the SNWA, their employees, contractors or any other Project personnel, SNWA shall be responsible for costs of required rehabilitation or mitigation. In addition, BLM may refer or pursue any investigative or enforcement action allowed or required under federal law, including under ARPA.

4. SNWA's Responsibilities in Case of ROW Application Withdrawal Prior to Decision. If the BLM disapproves an application(s) for a ROW, or if SNWA abandons or withdraws any pending application for ROW prior to a BLM decision, then SNWA shall incur no further expense for evaluation or treatment for any cultural properties, except SNWA must complete, and submit a report for any inventory, treatment or post-fieldwork activities already initiated and ongoing at the time of the withdrawal, termination or disapproval, as identified by the BLM. In the case of inventory, a complete report with completed site forms would be required. For evaluation, mitigation or treatment, a report on the completed work with full analysis and curation of materials would be required.

5. SNWA's Responsibilities in Case of Project Termination after Issuance of NTP(s). In the event SNWA terminates the GWD Project after BLM has issued one or more

NTPs, SNWA shall complete and submit reports for any inventory or treatment activity already initiated and ongoing for a given Project portion at the time of termination where such completion is expressly required under the terms of the applicable NTP.

6. Activities Outside the ROW. Identification, evaluation, assessment, mitigation and treatment efforts may extend beyond the geographic limits of the ROW as described herein when the historic property being considered extends beyond the ROW, and that area is reasonably, legally and safely accessible to SNWA and its consultants for any such activity. In most cases, no identification, evaluation, assessment, mitigation or treatment efforts will be required in areas outside of the ROW, beyond that necessary to review records and gather historic data for the completion of the section 106 compliance process as provided herein. In cases involving historic properties eligible for the NRHP under Criteria A, B, or C, mitigation may extend beyond the ROW or easement boundary, but only as provided herein, and such treatment or mitigation may be conducted after commencement or conclusion of construction, as BLM in its discretion may approve.

7. Discovered Human Remains or NAGPRA Cultural Items. The BLM shall ensure that any human remains, funerary objects, items of cultural patrimony, or sacred objects, encountered during the GWD Project are treated with the respect due such materials. Native American human remains and associated grave offerings found on federal land will be handled according to the provisions of NAGPRA and its implementing regulations (43 C.F.R. Part 10), or any applicable POA pursuant to and in accordance with those regulations executed after this Agreement. Native American human remains and associated grave offerings found on state or private land will be handled according to the provisions of Nevada Revised Statutes Chapter 383 (Historic Preservation and Archaeology). All other instances of discovered human remains not addressed by Federal or state laws will be managed as determined by BLM, in consultation with SHPO, ensuring treatment with respect due such human remains and related materials.

O. Dispute Resolution

1. Consultation to Resolve Disputes. If any Signing Party to this Agreement objects to any activities proposed pursuant to the terms of this Agreement, BLM shall consult with the objecting party, SNWA, and the other Signatories to resolve the issue.

2. State Director. The BLM Nevada State Director will have the authority to make a final determination for any objection (except for disagreements on NRHP eligibility, findings of effect, or treatment) that cannot be resolved by local consultation.

3. Keeper of the National Register ("Keeper"). Disagreements on recommendations, conclusions or consensus determinations, of NRHP eligibility that cannot be resolved through the dispute resolution process will be resolved by the Keeper. The Signatories acknowledge that any Identified Indian Tribe that disagrees with the BLM and SHPO determination regarding NRHP eligibility may ask the ACHP to request BLM obtain a determination by the Keeper.

4. ACHP. Issues relating to BLM's findings of effect, resolution of adverse effects or their treatment, which cannot be resolved with BLM to the satisfaction of the disputing party(ies), may be referred to the ACHP for review and comment.

5. Pending Resolution. Pending resolution of a dispute addressed under this stipulation, the Signatories shall continue with those actions under this PA that are not the subject of dispute.

P. Two-Year Review Discussions

1. Schedule of Review Discussions. BLM shall invite the Signing Parties to discuss this Agreement at least once every two years on or about the anniversary of the effective date of this Agreement, or more frequently as may be determined by the BLM to be necessary or appropriate. At the request of a Signing Party, the BLM may convene a discussion in less than two years. Discussions may be deferred if there are no active cultural resources-related activities associated with the Project, as agreed by the Signatories.

2. Purpose of Review Discussions. Each such discussion will assess and evaluate the performance of this Agreement in: (1) completing the section 106 compliance process for the GWD Project as provided in this Agreement; (2) identifying and protecting historic properties, including historic properties or PRCSs of religious and cultural significance to one or more Identified Indian Tribes, potentially affected by the Project; and (3) facilitating the participation and involvement of Identified Indian Tribes, interested parties and the public, and further, such discussion may address the possible improvement or streamlining of procedures under this Agreement, or any other issues of concern or implementation regarding this Agreement.

Q. Amending This Agreement

Any Signing Party that determines that any term of this Agreement will not be, is not being, or cannot be carried out, or that sees the need for an amendment to improve or clarify the functioning of this Agreement or for any other reason, may consult with the Signatories to attempt to develop an amendment or agree on another way to resolve the issue. If after 30 days from initiation of consultation, agreement among the Signatories on an amendment cannot be reached, consultation on the amendment may be abandoned with no effect on this Agreement, or any Signatory or Invited Signatory may terminate the Agreement upon 30-day's written notification to the other Signatories as provided in Stipulation R. This Agreement will remain in effect, and the section 106 compliance process for the GWD Project will be unaffected, during the period of consideration of a proposed but unadopted amendment.

R. Terminating This Agreement

Any Signatory or Invited Signatory to this Agreement may terminate the Agreement by providing 30-days written notice to the other Signatories and Invited Signatory, provided that the Signatories and Invited Signatory shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

S. Execution and Duration

1. Effect. Execution and implementation of this Agreement evidences that the BLM has satisfied its section 106 responsibilities for all actions associated with the construction, installation, operation or maintenance of the GWD Project.

2. Alternative. In the event that the Signatory or Invited Signatory does not carry out the requirements of this Agreement, or if it is terminated, section 106 compliance for any portion of the GWD Project requiring a BLM ROW shall be governed by the provisions of the Nevada Protocol.

3. Effective and Expiration Dates. This Agreement shall become effective on the date on which the Agreement has been executed by all Signatories, and shall remain in effect up to a term of 50 years, or until terminated as provided in Stipulation R. This Agreement shall be reviewed a minimum of every 10 years as described in Stipulation S.8 below. The failure or refusal of any Invited Indian Tribe or Invited Consulting Party to sign this Agreement will not invalidate or otherwise affect this Agreement.

4. Signatures in Counterpart. This Agreement may be signed in counterparts and the executed Agreement, and each signature, will be effective and binding just as if all Signing Parties had signed the same document. Each Signatory and the Invited Signatory shall transmit five counterpart copies of the respective signature page signed by that party to BLM. BLM will provide the ACHP with the Agreement and an original copy of other Signatories and the Invited Signatory signature pages. The ACHP may then execute the Agreement and shall transmit four copies of its signature page signed by the ACHP to BLM.

5. Copies of Signature Pages. After all Signatories and the Invited Signatory have signed the final Agreement, BLM shall prepare and distribute to each Signatory, other than the ACHP, and to the Invited Signatory one copy of the final Agreement containing the original counterpart signatures of all Signatories and the Invited Signatory.

6. Signatures by Concurring Parties. Each Concurring Party may sign a counterpart copy of the final Agreement and transmit one copy of the Agreement originally signed by that party to BLM. BLM will notify each Signing Party when any Identified Indian Tribe or Invited Consulting Party becomes a Concurring Party by signing this Agreement. BLM will transmit to each Signing Party a copy of this Agreement containing photocopy(ies) of the signatures of all Signing Parties as of that time. A Concurring Party can terminate its participation and concurrence in this Agreement by notifying BLM in writing. BLM will notify each Signing Party of that termination.

7. Master Copy. BLM will maintain at least one master copy (or set of copies) of this executed Agreement with all of the original signatures of all Signing Parties. BLM shall prepare and distribute to all Signing Parties a copy of the full Agreement containing a copy of each signed signature page of any of the Signing Parties.

8. Review. The Signatories shall review this Agreement at a minimum of every ten (10) years to determine if any amendments are necessary. Six months before each tenth anniversary of the execution of this Agreement, BLM will invite the Signing Parties, Identified Indian Tribes, and Concurring Parties to discuss this Agreement. If changes to this Agreement are necessary, it shall be amended as described in Stipulation Q or can be terminated as described in Stipulation R.

9. Renewal. The Signatories may renew this Agreement, either with or without any amendments that may be adopted as provided in Stipulation Q, by written agreement executed by the Signatories. SNWA will be invited to be an Invited Signatory for any renewal of this Agreement. All Signing Parties, Identified Indian Tribes, and Invited Consulting Parties will be invited to concur in any renewal of this Agreement. One year prior to the end of the term of this Agreement, BLM will invite the Signing Parties, Identified Indian Tribes, and Concurring Parties to discuss whether this Agreement should be renewed.

SIGNATORIES

BUREAU OF LAND MANAGEMENT

By: _____ Date: June 8, 2017
Name: Amy Lueders
Title: BLM Nevada State Director

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: 6/29/12

Name: John M. Fowler

Title: Executive Director

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: 6-15-2012

Name: Ronald M. James

Title: Nevada State Historic Preservation Officer

INVITED SIGNATORY

SOUTHERN NEVADA WATER AUTHORITY

By: _____ Date: 5-17-12
Name: Pat Mulroy
Title: General Manager

APPROVED AS TO FORM:

_____
Dana Walsh, Deputy Counsel

CONCURRING PARTIES

BLM has invited the Identified Indian Tribes and Invited Consulting Parties to concur in this Agreement. Those that agree to do so will sign this Agreement and be acknowledged as a Concurring party.

ARCHAEO-NEVADA SOCIETY

By: _____ Date: _____
Name: Kevin Rafferty
Title: Chair

BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By: _____ Date: _____
Name: Bryan Bowker
Title: Regional Director

CHEMEHUEVI INDIAN TRIBE OF THE CHEMEHUEVI RESERVATION

By: _____ Date: _____
Name: Charles Wood
Title: Chair

COLORADO RIVER INDIAN TRIBES OF THE COLORADO RIVER INDIAN RESERVATION

By: _____ Date: _____
Name: Eldred Enas
Title: Chair

CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION

By: _____ Date: _____
Name: Ed Naranjo
Title: Chair

DEATH VALLEY TIMBISHA SHOSHONE BAND OF CALIFORNIA

By: _____ Date: _____
Name: George Gholson
Title: Chair

DUCKWATER SHOSHONE TRIBE OF THE DUCKWATER RESERVATION

By: _____ Date: _____
Name: Virginia Sanchez
Title: Chairwom an

ELY SHOSHONE TRIBE OF NEVADA

By: _____ Date: _____
Name: Alvin Marques
Title: Chair

FORT MOJAVE INDIAN TRIBE OF ARIZONA, CALIFORNIA AND NEVADA

By: _____ Date: _____
Name: Tim Williams
Title: Chair

GREAT BASIN NATIONAL HERITAGE AREA PARTNERSHIP

By: Dan Gooch Date: 7-16-2012

Name: Dan Gooch

Title: Director

GREAT BASIN NATIONAL PARK

By: _____ Date: _____
Name: Andrew Ferguson
Title: Park Superintendent

HUALAPAI INDIAN TRIBE OF THE HUALAPAI INDIAN RESERVATION, ARIZONA

By: _____ Date: _____
Name: Wilfred Whatoname, Sr.
Title: Chair, Hualapai Tribal Council

KAIBAB BAND OF THE PAIUTE INDIANS OF THE KAIBAB INDIAN RESERVATION

By: _____ Date: _____
Name: Manuel Salva
Title: Chair

LAS VEGAS TRIBE OF PAIUTE INDIANS OF THE LAS VEGAS INDIAN COLONY

By: _____ Date: _____
Name: Tonia Means
Title: Chair

MOAPA BAND OF PAIUTE INDIANS OF THE MOAPA RIVER INDIAN RESERVATION

By: _____ Date: _____
Name: William Anderson
Title: Chair

NEVADA DIVISION OF STATE LANDS

By: _____ Date: _____
Name: James R. Lawrence
Title: Adm inistrator

NEVADA ROCK ART FOUNDATION

By: _____ Date: _____
Name: Angus Quinlan
Title: Executive Director

PAIUTE INDIAN TRIBE OF UTAH

By: _____ Date: _____
Name: Jeanine Borchardt
Title: Chairwom an

PRESERVE NEVADA

By: _____ Date: _____
Name: Senator Richard Bryan
Title: Chair

SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION

By: _____ Date: _____
Name: Robert Bear
Title: Chair

TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

By: _____ Date: _____
Name: Bryan Cassadore
Title: Chair

U.S. FISH AND WILDLIFE SERVICE

By: _____ Date: 7/6/12
Name: Ted Koch
Title: Nevada State Supervisor

YOMBA SHOSHONE TRIBE OF THE YOMBA RESERVATION

By: _____ Date: _____
Name: David Smith
Title: Vice-Chair

WHITE PINE COUNTY

By: _____ Date: _____
Name: Gary Perea
Title: Comm issioner

Appendix A

Glossary of Terms

1. **Adverse effect.** An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the NRHP.

2. **Archaeological site.** *See* "Site."

3. **Area of potential effects (APE).** The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

4. **ARPA.** The Archaeological Resources Protection Act of 1979 (16 U.S.C. §§ 470aa–470mm).

5. **Class I Inventory.** A Class I inventory comprises a review of agency and SHPO database records (including the Nevada Cultural Resources Inventory System ("NVCRIS")), GLO plat maps, the BLM's Master Title Plats/Historic Index, the National and State Registers of Historic Places, National Historic Trails and historic maps, and an intensive review of agency archives, pertinent historic records and publications.

6. **Class III survey.** A continuous, intensive survey of an entire target area, aimed at locating and recording all archaeological properties that have surface indications, by walking close-interval parallel transects until the area has been thoroughly examined. Class III methods vary geographically, conforming to the prevailing standards for the region involved.

7. **Concurring Party/Parties**. Singularly or collectively, any Identified Indian Tribe and Invited Consulting Party that has chosen to sign this Agreement.

8. **Consultation.** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 compliance process.

9. **Cultural resource.** A definite location of human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structures, or places with

important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups (Cf. "traditional cultural property"; see "definite location"). Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit described in the BLM Manual. They may be but are not necessarily eligible for the NRHP. (*See* "historic property.")

10. **Cumulative effects.** Effects on a historic property which result from the incremental impact of an undertaking, such as the GWD Project, when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

11. **Definite location.** Having discernible, mappable, more or less exact limits or boundaries, on a scale that can be established by a survey crew using conventional sensing and recording equipment, by an informant's direct on-the-ground indication, or by precise placement in a documentary source (*see* "cultural resource").

12. **Effect.** An alteration of the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP.

13. **Direct effects.** Effects that are caused by an undertaking such as the GWD project and which occur at the same time and place.

14. **Historic property.** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of religious and cultural importance to an Indian tribe that meet the NRHP criteria for eligibility.

15. **HPTP.** Historic Properties Treatment Plan.

16. **Identified Indian Tribe.** A federally recognized Indian tribe that that has religious or cultural ties to, or whose direct ancestors had historic or pre-historic religious or cultural ties to, GWD Project areas, and based on such ties, may attach religious and cultural significance to historic properties, including PRCSs that may be affected by the GWD Project.

17. **Indian tribe.** An Indian tribe, band, nation or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

18. **Indirect effects.** Effects that are caused by an undertaking, such as the GWD Project, and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate.

19. **Invited Consulting Party/Parties**. Organizations and agencies having responded and expressed their desire to participate in this Agreement, including Archeo-Nevada Society, Bureau of Indian Affairs, Great Basin National Heritage Area, National Park Service, Nevada Division of State Lands, Nevada Rock Art Foundation, Preserve Nevada, U.S. Fish and Wildlife Service, and White Pine County.

20. **Invited Signatory.** SNWA.

21. **Isolate artifact.** A single artifact or pieces from a single artifact, i.e., ten pieces of glass from a single bottle. An isolate artifact is considered single and unassociated when separated by 30 meters or more from any other artifact. For example, two flakes of the same or different raw material separated by 29 meters would be documented as a site. Ten pieces of glass from a single bottle spread across 31 meters would be an isolate. Isolates will not be recorded on a site form, but will be listed in a table designated by number, description, and location.

22. **Isolated or unassociated feature.** A single feature unassociated with other features or artifact scatters that are undateable; e.g., a prospect pit, a claim marker, an adit, or a shaft. An isolated or unassociated feature is considered single and unassociated when separated by 30 meters or more from any other feature or artifact. If these features are elements to a historic district, they are not isolated or unassociated. In addition, if an isolated feature is unique because of its construction (elaborate stonework claim marker) or distinctive qualities, the feature has to be evaluated for eligibility. Isolated features that have potential data (fire hearth) need to be evaluated for eligibility. Isolated or unassociated features need not be recorded on a site form, but will be listed in a table designated by number, description, and location.

23. **Keeper.** The Keeper of the National Register of Historic Places. The Keeper is the individual who has been delegated the authority by the Secretary of the Interior to list properties and determine their eligibility for the NRHP.

24. **NAGPRA.** The Native American Graves Protection and Repatriation Act (25 U.S.C. §§ 3001–3013).

25. **NRHP.** The National Register of Historic Places maintained by the Secretary of the Interior.

26. **NRHP criteria.** Criteria developed by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 C.F.R. § 60.4).

27. **NHPA.** The National Historic Preservation Act of 1966 (16 U.S.C. § 470 *et seq.*).

28. **NTP.** Notice to Proceed.

29. **Other Consulting Parties.** Individuals and organizations with a demonstrated or known interest and expertise in historic properties and preservation issues in the Project area.

30. **PRCS.** A property of religious and cultural significance.

31. **Property of Religious and Cultural Significance.** A property identified by a tribe as having religious and cultural significance to that tribe.

32. **Secretary.** The Secretary of the United States Department of the Interior.

33. **SHPO.** *See* State Historic Preservation Officer.

34. **Signatories.** BLM, ACHP, and SHPO.

35. **Signing Party/Parties.** Singularly or collectively, the Signatories, Invited Signatory, Invited Consulting Parties, and Identified Indian Tribes that sign this Agreement.

36. **Site.** A location where one can reasonably infer from physical remains or other physical evidence that a purposeful human activity took place. The minimum criterion for defining archaeological sites, requiring use of the IMACS site record, is that sites should contain remains of past human activity that are at least 50 years old.

37. **State Historic Preservation Officer ("SHPO").** The official appointed or designated pursuant to section 101(b)(1) of the NHPA to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

38. **THPO.** Tribal Historic Preservation Officer.

39. **Traditional cultural property ("TCP").** A historic property that is eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. A traditional cultural property may qualify for the NRHP if it meets the criteria and criteria exceptions at 36 C.F.R. § 60.4. *See* National Register Bulletin 38.

40. **Tribal Historic Preservation Officer ("THPO").** The tribal official appointed by the tribe's chief governing authority, or designated by a tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the NHPA.

37. **Undertaking.** (1) A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval; (2) The undertaking for the GWD Project is generally defined as the construction, installation, operation and maintenance of those Tier 1 and Future Tier facilities described in Appendix B. The particular facilities will be defined in conjunction with site-specific agency actions.

Appendix B

Proposed GWD Project Facilities and Anticipated Future Facilities

The following lists summarize the currently proposed and anticipated future facilities that are part of the GWD Project and covered under this Agreement.

Tier 1: Proposed GWD Project Facilities

SNWA has requested ROWs from the BLM to construct the following proposed facilities:

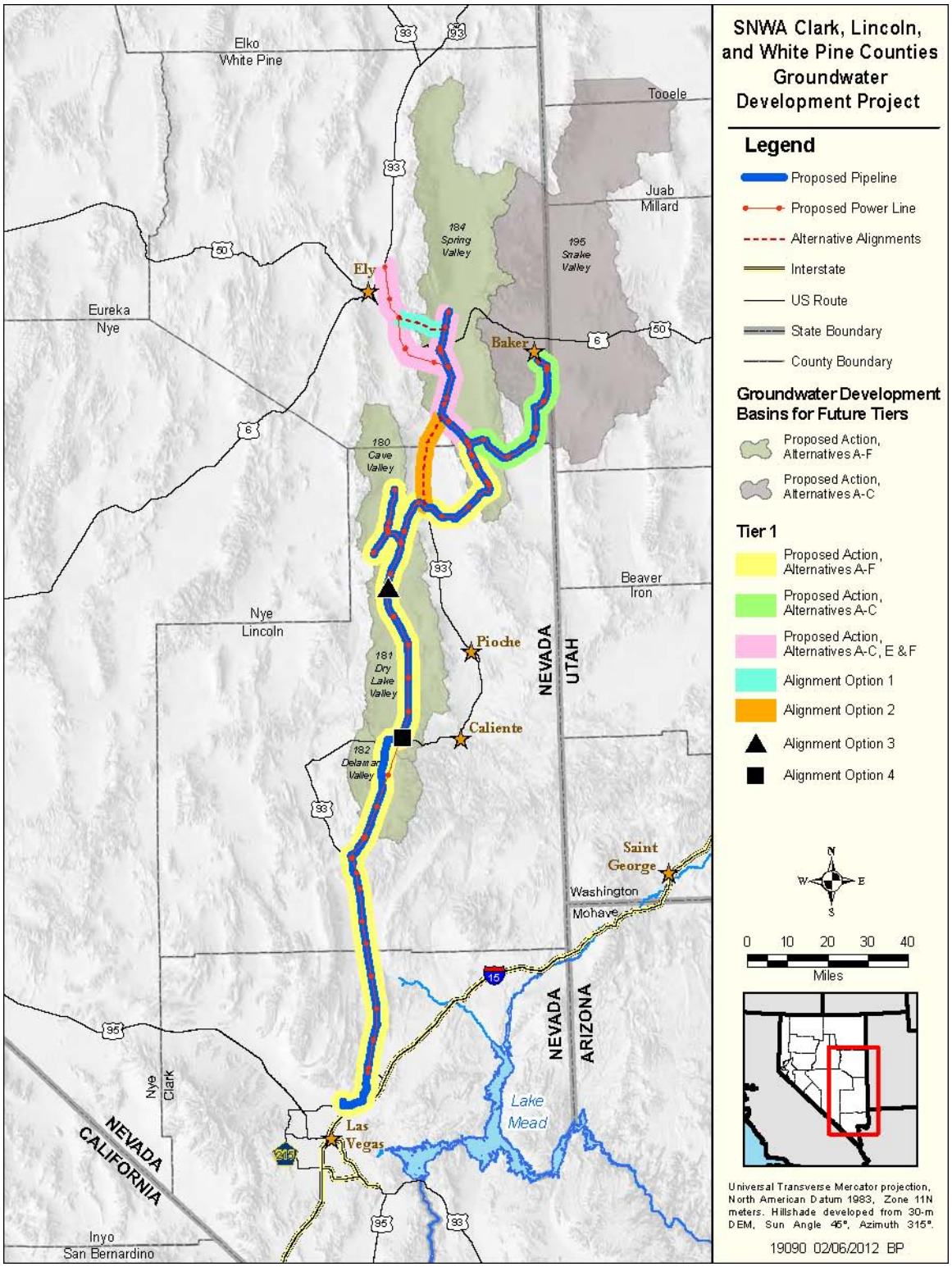
- Pipelines – approximately 306 miles of buried water pipelines, between 30 and 96 inches in diameter
- Pumping Stations – 5 pumping station facilities
- Regulating Tanks – 6 regulating tanks, each approximately 3 to 10 million gallons in capacity
- Pressure Reducing Stations - 3 facilities
- Buried Storage Reservoir – a 40 million gallon buried storage reservoir
- Water Treatment Facility– a 165 million gallon per day facility
- Power Facilities – approximately 323 miles of 230 kilovolt (kV), 69 kV, and 25 kV overhead power lines, 2 primary electrical substations (230 to 69 kV), 5 secondary substations (69 to 25 kV)
- Temporary and permanent access roads
- Alternatives to Tier 1 of the Proposed Project that are being considered by BLM are described in the attached map.

Future Tiers: Anticipated Future GWD Project Facilities

Future facilities will be required to develop permitted groundwater rights and convey them to the primary conveyance facilities. The final locations of the groundwater production wells and associated facilities to convey water into the primary system have not yet been determined. The wells will be located based on several factors, which include but are not limited to geology, hydrology, well interference studies, environmental issues, existing senior water rights, and proximity to main and lateral pipelines. Production well locations are also subject to approval by the Nevada Division of Water Resources, Office of the State Engineer (Nevada State Engineer). Since the specific location of these facilities cannot currently be identified, SNWA has not yet requested ROW for them from the BLM. However, assumptions regarding the number of wells, length of collector pipelines, and other needed facilities have been made by SNWA so that BLM can conduct a programmatic-level environmental impact analysis of construction and operation of future facilities in addition to the site-specific analysis of proposed ROWs for primary facilities.

SNWA anticipates that future facilities will include:

- Groundwater Production wells – estimated between 144 and 174 wells
- Collector Pipelines – estimated between 177 and 434 miles, 10 to 30 inches in diameter
- Pumping Stations - 2 facilities
- Power Facilities – estimated between 177 and 434 miles of 25kV overhead power lines, 2 secondary substations, and 3 hydroturbine energy recovery facilities.


SNWA Clark, Lincoln, and White Pine Counties Groundwater Development Project
Legend
Proposed Pipeline
Proposed Power Line
Alternative Alignments
Interstate
US Route
State Boundary
County Boundary
Groundwater Development Basins for Future Tiers
Proposed Action, Alternatives A-F
Proposed Action, Alternatives A-C
Tier 1
Proposed Action, Alternatives A-F
Proposed Action, Alternatives A-C
Proposed Action, Alternatives A-C, E & F
Alignment Option 1
Alignment Option 2
Alignment Option 3
Alignment Option 4
0 10 20 30 40
Miles
Universal Transverse Mercator projection, North American Datum 1983, Zone 11N meters. Hillshade developed from 30-m DEM, Sun Angle 45°, Azimuth 315°.
19090 02/06/2012 BP
Elko
White Pine
Tooele
Juab
Millard
Eureka
Nye
Beaver
Iron
Nye
Lincoln
Washington
Mohave
Nye
Clark
Inyo
San Bernardino
184 Spring Valley
195 Snake Valley
180 Cave Valley
181 Dry Lake Valley
182 Delamar Valley
Ely
Baker
Pioche
Caliente
Saint George
Las Vegas
Lake Mead
NEVADA
UTAH
NEVADA
ARIZONA
NEVADA
CALIFORNIA

The following letters were submitted by some tribes concerning the Programmatic Agreement.

Letter 1 – submitted by the Ely Shoshone Tribe, Confederated Tribes of the Goshute Reservation, and Duckwater Shoshone Tribe on May 7, 2012

Letter 2 – Received from the Paiute Indian Tribe of Utah on March 29, 2011

CONFEDERATED TRIBES
of the
GOSHUTE RESERVATION
P.O. BOX 6104
IBAPAH, UTAH 84034
PHONE (435) 234-1138
FAX (435) 234-1162

May 7, 2012

Penelope Dunn Woods
Project Manager
Nevada Groundwater Projects Office
Bureau of Land Management
1340 Financial Blvd
Reno, NV 89520-0006

Sent via pdf email and parcel post

RE: Comments on the revised Draft Programmatic Agreement for the Treatment of Historic Properties for NHPA Section 106 Review of the Proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project (ref 2800 (NV910), N-78803)

Dear Ms. Woods,

The Confederated Tribes of the Goshute Reservation ("CTGR"), Ely Shoshone Tribe, and Duckwater Shoshone Tribe ("Tribes") have reviewed the revised Draft Programmatic Agreement ("Draft PA") for the SNWA GWD Project. The Tribes cannot consider signing the Draft PA without substantial changes in content and decision-making powers of the signatories and concurring parties. We note that a number of our proposed revisions in a previous draft were rejected and not included in the current draft. We also note that the process outlined in the Draft PA is insufficient where the BLM, BIA, and other federal agencies withdrew from the Nevada State Engineer's SNWA groundwater application proceeding heard in the Fall of 2011 through stipulations entered without Tribal consultation. As you know, these stipulations forced the Tribes to participate in the state administrative proceeding without the assistance of the federal government, and the stipulations were used to oppose and prejudice the Tribes' protests to protect our cultural resources and water resources. The federal agencies, particularly the BIA, must withdraw from the stipulations re-engage in the SNWA licensing proceeding in order to protect Tribal interests in a meaningful way. To date, the federal agencies have failed to respond to the Tribes' written requests (submitted months ago) for the federal agencies to

withdraw from the stipulations and address their re-filing in the recent State Engineer's proceeding by SNWA to prejudice the Tribes' protests to the SNWA groundwater applications.

Our specific comments and suggested changes are detailed below.

1. The Draft PA provides that the SNWA, BLM, SHPO, USACE, and ACHP have full decision-making powers as to treatment of historic properties. The Draft PA provides the Tribes no decision-making ability or authority whatsoever on the eligibility of historic properties, adverse impacts on historic properties, or how adverse impacts should be avoided, minimized or mitigated. Instead, the decisions and authority to determine eligibility, adverse impacts, and other issues is left to SNWA, BLM, SHPO, USACE, ACHP, not the Tribes themselves who actually have used historic sites since time immemorial. The Draft PA states that BLM will be "providing . . . Indian Tribes a full opportunity to identify any concerns . . . ." The Draft PA states that it is "allowing the tribe to express its views . . . ." Thus, the Draft PA states that the Signatories will "allow" the Tribes to express their views, but will not provide any decision-making powers to the very people that hold these historic sites important in their culture and traditions. The Draft PA eliminates the Tribes' full and reasonable opportunity for participation in the Section 106 process.
2. The Tribes must be signatory parties to the Draft PA with full decision-making powers. The Tribes must be able to modify and amend the Draft PA, provide final determinations of adverse impacts on historic properties, and make any decisions regarding this Draft PA that affect the treatment of historic properties or the implementation of the PA. In its current form, the Draft PA proposes the Tribes as Concurring Parties with no decision-making powers.
3. The Draft PA must state that the Tribes shall have full and final decision-making powers regarding historic properties of cultural and religious importance, such as eligibility and adverse effects determinations.
4. The GWD Project EIS makes predictions on how the Project will impact particular resources, including impacts on historic properties. The Draft PA must articulate the impacts on historic properties under the various alternatives proposed in the GWD Project EIS. The PA can simply state that only the alternative selected under the EIS/DR will hold applicable for the PA.
5. The Draft PA states that the effects on historic properties cannot be fully determined prior to Tier 1 approval of the Project (Page 2, Paragraph 1). While the full adverse effects on historic properties may not be realized or able to be determined until the effects actually occur, the BLM's approval of ROWs and other project components does not change the ability to predict the effects of the Project – effects that have been determined at least partially already in the GWD Project DEIS.
6. The Draft PA at Page 3 Paragraph 3 states that the BLM has initiated formal government-to-government consultation with the Tribes when in fact this is false. The Draft PA must state that the BLM or other Signatories shall not claim that government-to-government consultation with the Tribes has occurred without a resolution of the Tribal Council and with participation of Tribal attorneys. The BLM must ensure that the consultation that occurs in is accordance with the Tribes' consultation policies so that the Tribes understand that a particular meeting is viewed as a consultation.

7. The Draft PA asks the Tribes to sign an agreement where effects on cultural sites is not known or cannot be determined, where the SNWA GWD Project is not yet fully identified or designed, where the SNWA GWD Project specific project component locations are not yet determined, etc. The Draft PA must state the impacts on historic properties based on the EIS analyses and any other relevant information to determine effects.
8. The Draft EA must state that any and all information relevant to the Section 106 process, such as cultural resource inventories and other environmental data shall be provided to the Tribes for use in determining eligibility, adverse effects determinations, etc.
9. The Draft PA states that the BLM has undergone sufficient government-to-government consultation with our Tribes when in fact BLM has consistently failed to undergo appropriate government-to-government consultation thus far on this SNWA GWD Project. To be clear, appropriate and sufficient government to government consultation has not occurred to date.

Specific changes for the Stipulations:

10. Stipulation A.1. BLM and the Tribes shall share the responsibility, especially in reviewing inventory reports, determining NRHP eligibility, treatment options, and assessments of effects.
11. Stipulation A.2. BLM and the Tribes shall both make recommendations of eligibility and findings of effect. The Tribes shall review and approve of cultural resource documents prior to submission to SHPO.
12. Stipulation A.3. Tribal Consultation shall not be stated to have occurred or initiated in any documents whatsoever regarding the Section 106 compliance process. None of the Signatories shall use the PA to prejudice the Tribes in any way and in any forum. It must be clear that SNWA may not use he PA directly or by inference in any proceeding to prejudice the Tribes. The document should state that it may not be admitted as evidence in any proceeding without the Tribes' consent.
13. Stipulation A.5. SNWA will be responsible for funding to the Tribes to facilitate meaningful Tribal participation in the PA process.
14. Stipulation A.7. See comments above. Also, the majority of the Signatories shall have the collective authority to execute, effectuate, and amend this Agreement. The Invited Signatory shall have no authority to terminate this Agreement.
15. Stipulation C.1. The BLM and Tribes, in consultation with SHPO, shall determine the APEs for Tier 1 of the Project.
16. Stipulation C.2. The BLM and the Tribes, in consultation with SHPO, shall determine the APEs for Future Tiers of the Project.
17. Stipulation C.4. APE for direct effects must also include Tribal lands and must also allow for inclusion of other areas of importance that may be impacted by groundwater drawdown.
18. Stipulation C.6. The APEs for indirect and cumulative effects, including determination of those APEs shall be determined by the BLM and the Tribes in consultation with SHPO.
19. Stipulation C.7. BLM and the Tribes may enlarge or diminish the APE as the BLM and Tribes deem reasonable and appropriate.

20. Stipulation D.1.b. Designated BLM managers will contact the Tribes and request that each such tribe identify to the BLM in writing one or more tribal representatives whom the tribal government authorizes to speak for and commit the tribe and consult with BLM on section 106 matters for the GWD Project.
21. Stipulation D.1.c. BLM and the Tribes will identify and assess the eligibility of each historic property that the Tribes attach religious and cultural significance.
22. Stipulation D.1.f. SNWA or cultural resource consulting firms working for SNWA may contact the Tribal Council and tribal attorneys in order to determine a tribal representative(s) who may submit information to consulting firms. Under no circumstances whatsoever shall communications between the Tribes and SNWA, or SNWA's consulting firms, be used to claim government-to-government consultation under NHPA.
23. Stipulation D.1.h. Prior to and following the execution of this Agreement, none of the Signatories shall use the Draft PA or final PA to prejudice the Tribes.
24. Stipulation E.1. BLM and the Tribes, in consultation with SHPO, shall ensure that consulting archaeologists, appropriate tribal representatives, and other qualified professionals perform all necessary section 106 identification activities for the GWD Project, and the SNWA or its consultants shall prepare a research design approved by the Tribes consistent with Secretary of Interior Standards and Guidelines for each separate facility or portion of the GWD Project.
25. Stipulation E.4. The Class I inventories must be approved by the Tribes.
26. Stipulation E.6. Class III field surveys shall include 2-3 Tribal monitors. Class III survey reports/documents shall be drafted within input from the Tribes and the documents must be approved by the Tribes.
27. Stipulation E.7. A qualified archaeologist and appropriate tribal representatives will evaluate areas for the potential for buried cultural materials. The archaeologist and tribal representatives will make appropriate recommendations to the BLM based on their findings.
28. Stipulation E.11. Inventories shall extend 250 meters beyond the project boundaries in each direction.
29. Stipulation E.14. Final identification and evaluation of historic properties that have cultural and religious importance (prehistoric, lithic, and historic resources) must be approved by the Tribes.
30. Stipulation F.1. BLM and the Tribes will ensure that all cultural resources within the ROW are evaluated for eligibility <u>prior</u> to ground disturbance.
31. Stipulation F.3. This provision must be made subject to approval by the BLM and the Tribes.
32. Stipulation F.6. The BLM and the Tribes shall jointly conclude eligibility status.
33. Stipulation F.7. If the BLM, the Tribes, and SHPO disagree regarding National Register eligibility of a property, formal determination of eligibility shall be sought by the Keeper of the National Register.
34. Stipulation G.1. The BLM and the Tribes, in consultation with SHPO, shall jointly apply the criteria of adverse effect. Final determinations of adverse effects shall be made by the Tribes for historic properties that have attached cultural and religious significance, including prehistoric, lithic, and historic concentration areas.
35. Stipulation H.1. BLM and the Tribes shall jointly determine the nature of effects to such

properties. The Tribes will have final determination powers of treatment for adversely affected historic properties that have attached religious and cultural significance as determined by the Tribes.

36. Stipulation H.3. The HPTP must be approved by the Tribes.
37. Add Stipulation H.8. Penalties. If SNWA and/or any of its consultants or contractors have been determined to have removed cultural resources from their place of origin, a penalty of $2500 per day shall be remitted to the Tribes until the resources have been returned to their place of origin. BLM will be responsible for appropriate investigations on such matters and SNWA and its consultants/contractors shall fully cooperate in such investigations.
38. Stipulation I.1.a. Qualified archaeologists' recommendations of whether previously unidentified cultural resources are isolates or not will be submitted to the BLM and the Tribes. The Tribes will review those recommendations and provide the final determination of whether cultural resources are isolates.
39. Stipulation I.1.b. BLM will notify the Tribes of discoveries immediately after they receive notice from SNWA.
40. Stipulation I.1.c. BLM and the Tribes shall jointly make an assessment of the discovery's significance, integrity, and eligibility. BLM may make a determination of an appropriate course of action based on recommendation of qualified archaeologist and the Tribes.
41. Stipulation I.2.b. BLM and the Tribes shall jointly determine whether unanticipated indirect effects are reasonably attributable to the GWD Project.
42. Stipulation J.1. Must omit the last sentence of this stipulation as it is inappropriate here.
43. Add Stipulation J.6. Notification to Tribes. The BLM shall notify the Tribes of the materials and artifacts to be curated. The Tribes will make the final determination of whether particular materials and artifacts of cultural and religious significance will be curated or turned over to the Tribes.
44. Stipulation K1.a. BLM and the Tribes, in consultation with SHPO, jointly determine that no historic properties will be affected by the Project.
45. Stipulation K.1.b. BLM and the Tribes, in consultation with SHPO, jointly determine that the Project will have no adverse effects on historic properties.
46. Stipulation K.1. The NTP may be issued only for the particular ROW application, or project element after the fulfillment of one at least two (2) of the following conditions a, b, and c.
47. Stipulation L.3. The Tribes will monitor direct and indirect effects on applicable historic properties within the APEs. All costs associated with tribal monitoring shall be the responsibility of SNWA.
48. Stipulation N.3. Any damage to historic properties that impacts the Tribes cultural and religious uses of the properties shall be appropriately mitigated by SNWA as determined by the Tribes. SNWA shall be responsible for all associated mitigation costs.
49. Stipulation N.6. In cases involving historic properties eligible under Criteria A, B, or C, mitigation may extend beyond the ROW within any part of the APEs as determined by the BLM and the Tribes. Mitigation and/or implementation of treatment plans shall be conducted at a time determined jointly by the BLM and Tribes.
50. Stipulation N.7. All other instances of discovered human remains not addressed by Federal or state laws will be determined by the BLM and Tribes, managed by the BLM.

These comments are a summary and are not exclusive and comprehensive of Tribal concerns related to the proposed SNWA GWD project. We welcome the opportunity to have actual and meaningful consultation with the BLM, BIA, and other interested federal agencies. The federal government has an important trust responsibility to address the Tribes' concerns through meaningful consultation between Tribal leaders and federal decision-makers at the highest levels. If the PA is ultimately published with the EIS for this project, we request that this letter and other Tribal comments in opposition be published as well. The public has a right to know why interested Tribes did not sign the draft PA.

Sincerely,

Ed Naranjo, Chairman
Confederated Tribes of the Goshute Reservation

Virginia Sanchez, Chairperson
Duckwater Shoshone Tribe

Alvin Marques, Chairman
Ely Shoshone Tribe

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THE PAIUTE INDIAN TRIBE OF UTAH
440 North Paiute Drive • Cedar City, Utah 84721 • (435) 586-1112

REC'D - BLM - NSO
MAR 28 2011
9:00 A.

March 24, 2011

Dear Ms. Woods,

The Paiute Indian Tribe of Utah is writing in response of the proposed draft Programmatic Agreement (PA). On February 15, 2011, the Paiute Indian Tribe of Utah members attended this meeting held in Las Vegas, Nevada. The decision has been made that the Paiute Tribe will not be signatories to the Programmatic Agreement (PA) for the Ground Water Development Project. Based on the scope of the project, the location(s) of the GWD Project, the length of time the GWD Project has been going on and the proximity of the GWD Project to the Tribe's Reservation.

The Draft Programmatic Agreement lists the four signatories parties, Bureau of Land Management (BLM), U.S. Army Corps of Engineers, Advisory Council on Historic Preservation (ACHP) and Nevada State Historic Preservation Officer (SHPO) who have equal standing within the document to make these decisions that pertain to the conditions that are identifies in the Programmatic Agreement. The concern the tribes have is we do not have similar opportunity to have equal standing.

As for the people that went out on the field visits, they did not feel that they went to places that should have been visited. But to sites that are already recorded, or they felt rushed and it was unacceptable to them because the important information that was given was insufficient and not documented the way they felt it should have been.

Sincerely,

Dorena Martineau

Dorena Martineau
Cultural Resources
Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84721