

Memorandum of Understanding
between the Department of the Interior's
Bureau of Land Management, California Desert District
and
the National Park Service

Regarding the Completion of Federal Agency Reviews, including the
National Environmental Policy Act and National Historic Preservation Act Documents for
Southern California Edison's Lugo-to-Victorville Remedial Action Scheme,
Eldorado-to-Lugo-to-Mohave Series Capacitor, and
Transmission Line Rating Remediation Projects

I. Introduction

This Memorandum of Understanding (MOU) serves to expedite the permitting of electric transmission infrastructure. The MOU improves coordination among federal agencies involved in the siting and permitting process. It will improve uniformity, consistency, and transparency by setting forth the roles and responsibilities of these entities when project applicants complete an application to construct electric transmission infrastructure.

The MOU clarifies the roles and responsibilities of the Parties to: (1) coordinate preparation of unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands; (2) coordinate all federal agency reviews necessary for project development and siting, including the Bald and Golden Eagle Protection Act, the Clean Air Act (CAA) the Clean Water Act (CWA), the Endangered Species Act (ESA), the Federal Power Act, the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act, the National Environmental Policy Act (NEPA), and the National Historic Preservation Act (NHPA) (Federal Agency Reviews).

The Agencies have a significant interest in working with constituents and stakeholders to complete permitting for transmission projects and to assess impacts appropriately. Pursuant to statute, the Agencies play different roles in the Federal Agency Review and authorization processes.

This MOU pertains to Federal Agency Reviews for Southern California Edison's (SCE) Lugo-to-Victorville Remedial Action Scheme (LVRAS); Eldorado-to-Lugo-to-Mohave Series Capacitor (ELM); and Transmission Line Rating Remediation (TLRR) projects. The Bureau of Land Management, California Desert District (BLM) will serve as the Lead Agency for completion of Federal Agency Reviews. For NEPA review, the National Park Service (NPS) will serve as a Cooperating Agency. For NHPA review, the NPS will serve as Signatory or as Consulting Party for development of NHPA documents, as required to discharge NPS permitting responsibilities

within NPS jurisdiction for each project. For all other Federal Agency Reviews, the NPS will serve as needed to fulfill NPS permitting responsibilities with NPS jurisdiction.

The Agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's NEPA regulations (40 CFR 1500-1508), Department of the Interior Manual (516 DM 2.5), BLM planning regulations (43 CFR 1601.0-5, 1610.3-1, and 1610.4), the NHPA, and NPS NEPA policies (NPS Director's Order 12 § 4.2, NPS NEPA Handbook 2015).

Nothing in this MOU alters or supersedes the authorities and responsibilities of any of the Parties on any matter under their respective jurisdictions.

Any additional Cooperating Agencies will execute individual cooperative agreements that may be tiered to this Memorandum of Understanding (MOU).

Definitions.

- A. Cooperating Agency means any Federal, State, or local agency or American Indian tribe, that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a Cooperating Agency are described in 40 Code of Federal Regulations (CFR) Part 1501.6. A State or local agency of similar qualifications or a federally recognized American Indian tribe may, by separate agreement with the BLM, become a Cooperating Agency. Additional Cooperating Agencies may be included by executing a cooperative agreement tiered to this MOU.
- B. Lead Agency means the Federal agency having the primary responsibility for preparing the NEPA documents and for complying with the NEPA (42 U.S.C. Section 4321, et seq.) and the regulations established by the Council for Environmental Quality (CEQ) (40 CFR 1500- 1508). The Lead Agency is responsible for coordinating Federal Agency Reviews that meet the standards of analysis required for compliance with Federal and State regulations, as applicable.
- C. Third-Party Contractor means an independent environmental consultant selected by the Lead Agency to prepare Federal Agency Review documents. NEPA regulations (Section 1506.5(c)) authorize the preparation of NEPA documents by contractors paid by the Proponent. Under Section 1506.5(c), the Lead Agency must select and direct the activities of the NEPA Contractor, even though the Proponent pays for the cost of preparing the NEPA documents. The Third-Party Contractor is responsible to the Lead Agency for preparing documents that meet the requirements of NEPA, CEQ NEPA regulations, and applicable agency Federal Agency Review procedures.
- D. Parties are the signatories to this MOU.

II. Purpose

The primary purpose of this MOU is to document the Parties' relative roles, responsibilities, and procedures to be followed in preparing the Federal Agency Reviews for the Project; and to ensure the Federal Agency Reviews are thorough and adequate and satisfy all environmental compliance requirements of the Parties.

Additional document purposes include:

- A. To designate the BLM as the Lead Agency in the Federal Agency Reviews, including the NEPA and NHPA processes.
- B. To designate the NPS as a Cooperating Agency in the NEPA process and as a Participating Agency in the NHPA and other Federal Agency Review processes. The NPS retains responsibility for all NHPA Section 106 determinations within NPS jurisdiction.
- C. To provide a framework for cooperation and coordination between the BLM and the NPS that will ensure successful completion of both NEPA and Federal Agency Review documents in a timely, efficient, and thorough manner.
- D. To recognize that the BLM has the responsibility for supervising the completion of Federal Agency Reviews and SLM-specific NEPA decisions; and that the NPS has the responsibility for providing substantive input to NEPA and other Federal Agency Review processes, such that NPS can use the Lead Agency's documents to fully inform and complete NPS decision-making within NPS jurisdiction. If a Memorandum of Agreement (MOA) is needed for completion of NHPA obligations for any project, the specific roles of the BLM and the NPS under NHPA within each agency's jurisdiction will be enumerated in the MOA.
- E. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the NEPA and NHPA processes.

III. Authorities

The authorities for the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:

- A. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- B. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

Regulations implementing the above BLM authorities:

- A. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
- B. Bureau of Land Management planning regulations (43 CFR 1601 et seq.)

The authorities for the NPS to enter into this MOU include, but are not limited to:

- A. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
- B. Organic Act of 1916 (54 U.S.C. 100101 et seq.)

Regulations implementing the above NPS authorities:

- A. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
- B. National Park Service regulations (36 CFR 1-199)

IV. Roles and Responsibilities

A. BLM NEPA Responsibilities.

1. Through the use of a Third Party contractor (NV5), the BLM will be responsible for the preparation and development of the appropriate NEPA documents. NV5 will coordinate with the BLM and the NPS on the content and structure of the appropriate NEPA documents, with the NPS having final authority on the content associated with the resources within NPS jurisdiction and specific to NPS laws and regulations.
2. The BLM will be responsible for the coordination with the NPS of the content of the Draft and Final NEPA documents. The BLM will be responsible for the BLM decision record or joint decision record. The NPS will be responsible for the NPS decision record if separate decision records are warranted for any project. The BLM's responsibilities include: collaborating with the NPS in determining the purpose of and need for the NEPA documents, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
3. The BLM will lead other Federal Agency Reviews including the Section 7, ESA consultation with the U.S. Fish and Wildlife Service (USFWS), and will ensure that the studies and surveys for the consultations are conducted in accordance with the requirements of the USFWS, and, if required, negotiate any terms and conditions between the USFWS and SCE.
3. To the extent needed to create an adequate joint review process for decision-making within NPS jurisdiction, the BLM will coordinate the comments, recommendations, data, and/or analyses provided in the NEPA process by the NPS, giving particular consideration to those topics on which the NPS is acknowledged to possess special expertise.
4. As requested, the BLM will provide the NPS with copies of documents underlying the NEPA document relevant to the NPS's decision-making responsibilities within NPS

jurisdiction, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final NEPA documents.

B. NPS NEPA Responsibilities.

1. The NPS is a Cooperating Agency in the NEPA process and is recognized to have jurisdiction for all decision-making on NPS-managed lands and special expertise in the following areas:
 - a. NPS laws and regulations,
 - b. Rights-of-way on national park lands, and
 - c. Natural and cultural resources of the NPS
 - d. Impacts on visitor experience.

2. The NPS will provide information, comments, and technical expertise to the BLM regarding those elements of both NEPA documents, and the data and analyses supporting them, in which it has jurisdiction, or special expertise or for which the BLM requests its assistance. The NPS will provide information and be responsible for determining impacts on resources within NPS boundaries on topics including but not limited to:
 - a. Desert tortoise (*Gopherus agassizii*) and desert tortoise critical habitat,
 - b. Wilderness,
 - c. Desert bighorn sheep (*Ovis canadensis nelsoni*),
 - d. California threatened, endangered, and sensitive plant species,
 - e. Archaeological sites and cultural resources,
 - f. Geological and paleontological impacts,
 - g. Air quality, and
 - h. Migratory birds, and
 - i. Visitor experience.

3. The NPS will prepare NPS-specific decisions for each NEPA document, to be included in a joint decision document or issued separately, as needed.

4. The NPS is responsible for determination of impacts and effects upon NPS resources, and for determining appropriate mitigation measures. Within NPS jurisdiction and areas of specific expertise, the NPS may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the NEPA documents and supporting documents. (See also Section C.4.)

C. BLM NHPA Responsibilities.

1. The BLM is required to consider effects to historic properties from these undertakings in accordance with Section 106 of the NHPA. The BLM fulfills its NHPA compliance responsibilities through the BLM National Programmatic Agreement (NPA) with the Advisory Council on Historic Preservation (ACHP) and the National Council of State

Historic Preservation Officers (NCSHPOs), and through the BLM California State *Protocol Agreement*¹ with the California State Historic Preservation Officer (SHPO).

2. The BLM will use the BLM California State *Protocol Agreement* to complete Section 106 review of these undertakings.
3. The BLM is the Lead Agency for compliance with Section 106 of the NHPA, including consultation with the SHPO. The BLM will forward all NPS findings and determinations to be considered in this Section 106 review.
4. The BLM will coordinate with the NPS on all Section 106 compliance activities within the NPS jurisdiction. NPS staff will approve all information (including area of potential effect, level of identification, determinations of National Register of Historic Places eligibility, and findings of effect) regarding NPS resources related to SCE's LVRAS, ELM, and TLRR projects.
5. If use of the BLM California State *Protocol Agreement* would not meet the conditions of the NPS National Programmatic Agreement, the BLM, the NPS, and the SHPO will consult regarding an appropriate compliance process that will meet requirements of all agencies.

D. NPS NHPA Responsibilities.

1. The NPS will serve as a Signatory or Consulting Party in the NHPA process, as required to fulfill NPS NHPA responsibilities within NPS jurisdiction, and is recognized to have special expertise in the following areas:
 - a. NPS laws and regulations,
 - b. 2008 Nationwide Programmatic Agreement between the NPS and the ACHP, and
 - c. Historic and pre-historic cultural resources of the NPS.
2. As the steward of cultural resources for the Mojave National Preserve and for the Old Spanish National Historic Trail, the NPS will review all Section 106 questions pertaining to the NPS resources and will review all NHPA documents. The NPS retains responsibility for all Section 106 determinations within NPS jurisdiction.
3. NPS staff will complete all Section 106 obligations pertaining to NPS resources according to NPS standards and the NPS National Programmatic Agreement, while participating in joint Agency NHPA consultation with the SHPO.
4. If use of the BLM California State *Protocol Agreement* would not meet the conditions of the NPS National Programmatic Agreement, the BLM, the NPS, and the SHPO will

State Protocol Agreement Among the California State Director of the Bureau of Land Management and the California State Historic Preservation Officer, and the Nevada State Historic Preservation Officer, Regarding the Manner in Which the Bureau of Land Management Will Meet Its Responsibilities Under the National Historic Preservation Act and the National Programmatic Agreement Among the BLM, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers (2014).

consult regarding an appropriate compliance process that will meet the requirements of all agencies.

E. Responsibilities of Both Parties.

1. The Parties agree to participate in all Federal Agency Review processes in good faith and make all reasonable efforts to resolve disagreements.
2. Should any milestone or time frame become unattainable by either Party, each Party agrees to notify the other Party with as much advanced notice as possible about the potential delay in the schedule, and make every effort possible to reschedule the milestone deadline such that it is attainable in a reasonable timeframe.
3. Each Party agrees to fund its own expenses associated with the NEPA and NHPA processes.
5. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).
6. Each Party is responsible for Government-to-Government consultation with Indian tribes regarding the undertakings. The Parties agree to coordinate the Government-to-Government consultation where possible, including holding joint meetings, sending joint consultation letters, and informing the other Party of any significant, project-specific information gathered during any individual Government-to-Government consultation meeting held without the other Party.

V. Other Provisions

- A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
- B. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.
- C. Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of Federal Agency Review completion, environmental analysis, or Participating Agency representation, including officials, employees, or third party contractors, having a financial interest in the outcome of each Federal Agency Review. Questions regarding potential conflicts of interest should be referred to DOI or BLM Headquarters or Field Ethics Counselors for resolution.

- E. Documenting disagreement or inconsistency. Where the NPS and/or the BLM and one or more Agency disagree on significant elements of any Federal Agency Review process (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include the substance of the Participating Agency's views in the Draft NEPA documents and the Proposed Final NEPA documents. The BLM will also describe substantial inconsistencies between the proposed action(s) and the objectives of state, local, or tribal land use plans and policies.
- F. Management of information. The NPS acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the FOIA and other federal statutes. The NPS agrees not to release these materials to individuals or entities other than the Parties to this MOU.
- G. Confidentiality. The NPS agrees to maintain the confidentiality of information and documents shared between the NPS and the BLM pursuant to the preparation of each Federal Agency Review document. These confidentiality provisions apply to all communications, including email messages, "notes to file," meeting notes, letters, reviews, evaluations, and to all documents created or shared as part of the collaboration established by this MOU.
- H. Conflict resolution. All participants agree to resolve conflicts expeditiously. The parties may employ an agency conflict resolution services office to assist in the resolution of conflicts. Conflicts will be resolved within sufficient time to enable completion of decisions within the deadlines established by the Lead Agency in consultation with the relevant Parties. If a conflict cannot be resolved between the parties expeditiously, the parties will follow the conflict resolution process established in the Nine-agency Transmission MOU of 2009.

VI. **Agency Representatives**

Each Party will designate a representative and alternate representative, as described in Attachment B, to ensure coordination between the NPS and the BLM during the Federal Agency Review processes. Each Party may change its representative at will by providing written notice to the other Party (emails notices are considered written notice).

VII. **Administration of the MOU**

- A. Approval. This MOU becomes effective upon signature by the authorized officials of the NPS and the BLM.
- B. Amendment. This MOU may be amended through written agreement of all signatories.
- C. Termination. If not terminated earlier, this MOU will end when all final decision records have been issued for the three projects, Any Party may end its participation in this MOU by providing written notice to other Party.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

National Park Service
Pacific West Region
333 Bush St, #500
San Francisco, CA 94104

March 14, 2018

Kevin Hendricks, Acting Deputy Regional Director

Bureau of Land Management
California Desert District Office
22835 Calle San Juan de Los Lagos
Moreno Valley, CA 92553

Beth Ransel, District Manager

Attachment A

Opportunities for Agency Participation for each NEPA document

N/A	NEPA document Stage	Potential Activities of Cooperating Agencies within their jurisdiction and/or acknowledged areas of expertise
1	Identify issues	Identify coordination requirements based on agency plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums with the BLM; collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies.
2	Develop planning criteria	Provide advice on proposed planning criteria.
3	Collect inventory data	Identify data needs; provide data and technical analyses within the agency's expertise.
4	Formulate alternatives	Collaborate with the BLM in developing alternatives. Suggest land allocations or management actions to resolve issues.
5	Estimate effects of alternatives	Review effects analysis within the agency's jurisdiction and expertise; identify direct, indirect, and cumulative effects within the agency's jurisdiction and expertise; determine mitigation measures for adverse effects within the agency's jurisdiction
6	Select the preferred alternative; issue Draft NEPA document (if required)	Collaborate with the BLM in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on administrative draft document. The agency may provide written, public comments on draft if desired.
7	Respond to comments	As appropriate, review comments within the agency's expertise and provide assistance in preparing responses.
8	Issue Proposed Final NEPA document	Action reserved to the BLM
9	Sign Decision Record or Record of Decision	Both agencies will jointly sign the DR or RODs; or sign their own respective decision documents.

Attachment B

Agency Representatives for Federal Agency Reviews

Bureau of Land Management

Primary Representative: Beth Ransel, District Manager, California Desert District
(951) 697-5200, bransel@blm.gov

Alternate Representative: Greg Miller, Deputy District Manager - Resources, California Desert District, (951) 697-5216, gmiller@blm.gov

National Park Service

Primary Representative: Lara Rozzell, Energy Program Manager
Pacific West Regional Office
(415) 623-2205, lrozzell@nps.gov

Alternate Representative: Debra Hughson, Chief, Science & Resource Stewardship
Mojave National Preserve
(760) 252-6105, debra_hughson@nps.gov