

APPENDIX 3

MEMORANDUM OF AGREEMENT

This page intentionally left blank

49
50 **WHEREAS**, pursuant to 36 CFR 800.2(c)(2) and Executive Order 13175, the BLM and the INF
51 are responsible for government-to-government consultation with Federally recognized Indian
52 tribes. The BLM is the lead Federal agency for all tribal consultation and coordination, and the
53 BLM has consulted with the following Federally recognized tribes: Bishop Paiute Tribe; Utu Utu
54 Gwaitu Paiute Tribe (Benton); Big Pine Band of Paiute-Shoshone; and the non-Federally
55 recognized tribe Mono Lake Kutzadika'a Paiute Indian Community, (Tribes; see Appendix 2);
56 and

57
58 **WHEREAS**, both the Bishop Paiute Tribe and the Big Pine Band of Paiute-Shoshone have
59 actively participated in consultation for this Undertaking and were both invited to be Concurring
60 Parties to this MOA per 36 CFR 800.6(c)(3); and

61
62 **WHEREAS**, the Big Pine Band of Paiute-Shoshone has deferred participation to the Bishop
63 Paiute Tribe, while the Bishop Paiute Tribe has agreed to sign the MOA as a Concurring Party;
64 and

65
66 **WHEREAS**, the BLM and the INF have defined the Undertaking's Area of Potential Effect
67 (APE), as illustrated in Appendix 3, to include an area sufficient to accommodate all of the
68 proposed project facilities under consideration as of the date of the execution of this MOA;
69 studies conducted within the APE are included as Appendices 4 and 5; and

70
71 **WHEREAS**, the BLM and INF (Cooperating Agencies) and the California State Historic
72 Preservation Officer (SHPO) concur that the western Long Valley caldera in Mono County,
73 California, which includes the resurgent volcanic dome area, hot springs, and Mammoth
74 embayment contains a National Register of Historic Places (NRHP) eligible archaeological
75 district called the Casa Diablo Archaeological District (District) that represents pre-contact
76 Native American use of the volcanic field; and

77
78 **WHEREAS**, for the purpose of this undertaking, the Cooperating Agencies and the SHPO
79 concur that all Native American archaeological sites within the APE are considered NRHP
80 eligible contributing properties to the District; and

81
82 **WHEREAS**, the BLM, in consultation with the SHPO has determined that the APE for the CD-
83 IV Project contains potentially NRHP eligible historic properties and non-eligible historic
84 archaeological sites; and

85
86 **WHEREAS**, the Applicant has agreed to avoid any and all potential adverse effects to historic
87 properties through project redesign and the implementation of the enclosed Historic Properties
88 Avoidance Plan (Appendix 6) pursuant to 36 CFR 800.6, which consists of plans to avoid and
89 preserve in place all historic properties as per the Stipulations below; and

90
91 **WHEREAS**, the BLM, in consultation with the INF and the SHPO has determined that the
92 Undertaking as designed will have *No Adverse Effect* on historic properties; and

93
94 **WHEREAS**, because the SHPO has concurred with a determination of *No Adverse Effect*, and
95 because this project is designed to avoid all adverse effects to historic properties it does not meet

96 the threshold for Advisory Council on Historic Preservation (Council) ACHP involvement per 36
97 CFR 800.5; and

98

99 **WHEREAS**, the BLM has consulted with the SHPO pursuant to 36 CFR 800; and

100

101 **WHEREAS**, the BLM and the INF in consultation with the SHPO, have complied with Section
102 106 of the National Historic Preservation Act of 1966 (NHPA) for the Undertaking through
103 execution and implementation of this MOA;

104

105 **NOW, THEREFORE**, the BLM, INF, SHPO, and Applicant (collectively, referred to as
106 Signatories) shall ensure that the Undertaking is implemented in accordance with the following
107 stipulations in order to avoid adverse effects of the Undertaking on historic properties.

108

109

STIPULATIONS

110

111 The BLM and INF shall incorporate the provisions of this MOA and the implementation of
112 measures described in the attached Historic Properties Avoidance Plan (Appendix 6) as
113 conditions of the BLM ROD and the INF ROD for the CD-IV Project, and will ensure that the
114 following measures are carried out in full.

115

116 **I. PROJECT DESCRIPTION, AREA OF POTENTIAL EFFECTS AND RECORDED** 117 **SITES**

118

119 PROJECT DESCRIPTION

120 The CD-IV Project Alternative 3 design of September 19, 2012, as depicted by the Direct APE
121 (Appendix 3) was developed to avoid historic properties. Engineering plans for the CD-IV
122 Project Alternative 3 have not been finalized, and minor adjustments to the Alternative 3 design
123 will be made should project facilities still cross or overlap with historic properties. There is
124 considerable flexibility of location and design for most project facilities (well pads, pipelines,
125 new access roads, transmission line), and the Indirect APE was established to provide flexibility
126 during the planning process to make minor adjustments. Accordingly, a five acre area
127 surrounding each well pad was subject to archaeological survey to accommodate additional
128 design changes to avoid historic properties. Pipeline survey corridors included a 50 meter buffer
129 to allow shifting of the pipeline to avoid historic properties, and a 50 meter area surrounding the
130 Alternative 3 design footprint was included in the BLM expanded inventory area and indirect
131 APE to accommodate changes in design to avoid historic properties.

132

133 AREA OF POTENTIAL EFFECTS

134 The BLM in consultation with the INF and the SHPO has established the Area of Potential Effect
135 (APE) for the Undertaking (Appendix 3). The APE includes an area sufficient to accommodate
136 all of the alternatives considered in the NEPA planning process (termed for the purposes of this
137 MOA the Indirect APE), and the footprint of all proposed project facilities in the Alternative 3
138 project design as of the date of the execution of this MOA, which defines the areas subject to
139 ground disturbing impacts (Direct APE). Accordingly, the APE encompasses all potential
140 ground-disturbing activities and the limits of foreseeable effects to historic properties that may
141 occur later in time, be farther removed in distance, or be cumulative.

142

143 APE CHANGES

144 The BLM may modify the APE, in consultation with the other Signatories to this MOA, without
145 amending the MOA. If it is determined in the future that the undertaking may directly or
146 indirectly affect historic properties located outside the currently defined APE, the BLM, in
147 consultation with the other Signatories to this MOA, shall modify the APE using the following
148 process:

- 149
- 150 i) Any Signatory to this MOA may propose that the APE established herein be modified.
151 The BLM shall notify all Signatories of the proposal to modify the APE and consult
152 for no more than 15 days to reach agreement on the proposal.
153
 - 154 ii) If the BLM agrees to the proposal, then the BLM will prepare a description and a map
155 of the modification to which the Signatories agree. The BLM will keep copies of the
156 description and the map on file for its administrative record and distribute copies of
157 each to the other parties to this MOA within 30 days.
158
 - 159 iii) If the BLM agrees to a modification to the APE that adds a new geographic area, the
160 BLM shall identify historic properties in the new APE area, assess the effects of the
161 undertaking on any historic properties in the new APE, and provide for the resolution
162 of adverse effects to such properties in consultation with the other Signatories.
163
 - 164 iv) If the BLM or other Signatory cannot agree to a proposal for the modification of the
165 APE, then they will resolve the dispute in accordance with Stipulation VI.C.
166

167 Cultural resources identified within the indirect and direct APE are both historic and prehistoric
168 sites; many have both prehistoric and historic components. Following guidance provided by the
169 Office of Historic Preservation, all prehistoric sites, as well as prehistoric components of the
170 multi-component sites, can be considered potentially eligible for the National Register as
171 contributing elements of the Casa Diablo Archaeological District (District) that represents pre-
172 contact Native American use of the volcanic field. Prehistoric sites are thus considered to be
173 historic properties. The BLM identified two (2) historic-period sites that are considered to be
174 eligible for the National Register of Historic Places, and are thus considered to be historic
175 properties. Several sites have both prehistoric and historic components. The Historic Properties
176 Avoidance Plan (Appendix 6) details further site information.
177

178 **II. TREATMENT OF POTENTIAL EFFECTS**

- 179
- 180 A. The Applicant has agreed to avoid and protect identified resources through preservation
181 measures that include project redesign, fencing during and after construction, and
182 monitoring by qualified archaeologists and tribal monitors. Details of the methods for
183 site avoidance are described in detail in the Historic Properties Avoidance Plan
184 (Appendix 6). “Qualified archaeologist” is defined as BLM or INF archaeologists, or
185 archaeologists hired by the Applicant that meet Secretary of the Interior standards for
186 archaeologist (VI.A.1.), and are approved by the BLM or INF.
187
 - 188 B. A report describing the steps taken to carry out the terms and intent of this MOA and the
189 requirements described within the Historic Properties Avoidance Plan (Appendix 6), and

190 associated monitoring log will be completed by qualified archaeologists with
191 contributions from Tribal monitors as appropriate.

192 **III. REPORTING REQUIREMENTS**

- 193
- 194
- 195 A. The BLM shall ensure that all final reports resulting from actions pursuant to this MOA
196 are provided to the INF, the SHPO, and other requesting MOA signatories. The BLM
197 shall ensure that all reports are responsive to contemporary professional standards and
198 follow the Secretary of the Interior’s *Standards and Guidelines for Archaeological*
199 *Documentation* (as amended and annotated).
- 200
- 201 B. Reporting shall be completed within twelve (12) months following completion of the
202 project.
- 203
- 204 C. Within the twelve month period, a draft technical report will be prepared and submitted
205 to the SHPO detailing the implementation of the MOA and Historic Properties Avoidance
206 Plan. The SHPO will have 30 days from receipt of the draft technical report to submit
207 written comments. At the end of the 30 day comment period, the BLM will take into
208 account comments received and issue the final technical report.

209 **IV. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

- 210
- 211
- 212 A. In the event of an inadvertent discovery of human remains of Native American origin, all
213 work within 50 feet of the discovery shall immediately cease. The BLM and INF will
214 immediately be notified.
- 215
- 216 B. The BLM or INF shall notify the county coroner/medical examiner, as applicable, and
217 consult with the appropriate tribe(s) regarding treatment of the remains in accordance
218 with applicable Federal and State of California laws, following the protocols described in
219 the Historic Properties Avoidance Plan (Appendix 6).
- 220
- 221 C. If the identified human remains could be adversely affected by the proposed project, the
222 BLM will coordinate with construction personnel to re-design the proposed project to
223 avoid any adverse effect on the discovery.
- 224
- 225 D. For inadvertent discoveries of human remains on federal lands, Signatories to this MOA
226 agree that Native American burials and related items are subject to the provisions of the
227 Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 43 CFR
228 10, as applicable, as detailed in the Historic Properties Avoidance Plan (Appendix 6).
229 Should these discoveries be made on private lands, the discovery will be treated in
230 accordance with the requirements of 7050.5(b) of the California Health and Safety Code
231 and any other applicable laws and regulations.

232 **V. DISCOVERIES AND UNANTICIPATED EFFECTS**

- 233
- 234
- 235 A. If the BLM, INF or SHPO determine that implementation of the Undertaking will affect a
236 previously unidentified property that may be eligible for the National Register, or affect a
237 known historic property in an unanticipated manner, the BLM or INF will address the

238 discovery, or unanticipated effect, in accordance with the procedures outlined in 36 CFR
239 800.13 and the attached Historic Properties Avoidance Plan (Appendix 6). The BLM,
240 INF, and SHPO at their discretion may hereunder assume any discovered prehistoric
241 property to be eligible for inclusion in the National Register, and will evaluate any historic
242 period resource; and that compliance with this stipulation shall satisfy the requirements of
243 36 CFR 800.13(a)(2). Pursuant to 36 CFR 800.13, the BLM will notify the SHPO and
244 Native American consulting groups within forty-eight (48) hours of the discovery. The
245 notification shall describe the actions proposed by the BLM to resolve the adverse effects.
246 The SHPO shall respond within forty-eight (48) hours of the notification. The BLM will
247 ask the Signatories to also respond within forty-eight (48) hours of the notification
248 pursuant to 36 CFR 800.13. The BLM shall take into account their recommendations, and
249 then carry out the appropriate actions. The Signatories agree that only cultural resources
250 determined or assumed to be eligible for the National Register will be subject to further
251 consideration under terms of the MOA. A detailed Inadvertent Discovery Plan is included
252 in the Historic Properties Avoidance Plan (Appendix 6) and incorporated herein.
253

254 VI. ADMINISTRATIVE STIPULATIONS

255 A. STANDARDS

- 256 1. *Professional Qualifications.* All activities prescribed by Stipulations II, III, IV, and V
257 of this MOA shall be carried out under the authority of the BLM by or under the
258 direct supervision of a person or persons meeting at a minimum the Secretary of the
259 Interior's *Professional Qualifications Standards (PQS)* (48 Fed Reg. 44,738-44,739)
260 (PQS) in the appropriate disciplines. Nothing in this stipulation may be interpreted to
261 preclude the BLM or any agent or contractor thereof, from using the services of
262 persons who do not meet the PQS who are supervised by persons who meet the PQS.
263
264
- 265 2. *Historic Preservation Standards.* All activities prescribed by Stipulations II, III, IV,
266 and V of this MOA shall reasonably conform to applicable standards and guidelines
267 established by the *Secretary of the Interior's Standards and Guidelines for*
268 *Archaeology and Historic Preservation* (48 Fed Reg. 44,716-44,740) and SHPO
269 guidelines.
270
271
- 272 3. *Curation and Curation Standards.* The BLM, in coordination with the INF, shall
273 ensure that, to the extent permitted by applicable federal law, the materials and
274 records resulting from the activities prescribed by Stipulations II, III, IV, and V of
275 this MOA are curated in accordance with 36 CFR 79.
276

277 B. CONFIDENTIALITY

278 Signatories to this MOA acknowledge that historic properties covered by this MOA
279 are subject to the provisions of Section 304 of the National Historic Preservation Act
280 of 1966 relating to the disclosure of archaeological site information and having so
281 acknowledged, will ensure that all actions and documentation prescribed by this
282 MOA are consistent with Section 304 of the National Historic Preservation Act of
283 1966.
284
285

286 C. RESOLVING OBJECTIONS

- 287
- 288 1. Should the SHPO object to the manner in which the terms of this MOA are
- 289 implemented, the BLM and INF will consult with the SHPO to resolve the objection.
- 290 If the BLM determines that the objection cannot be resolved, the BLM shall forward
- 291 all documentation relevant to the dispute, including the BLM’s proposed resolution to
- 292 the Council for their assistance in resolving the dispute. In the event the Council
- 293 provides timely advice or comments, the BLM, prior to reaching a final decision on
- 294 the dispute, shall prepare a written response that takes into account the
- 295 recommendation or comment provided by the Council pertaining to the subject of the
- 296 dispute, and provide them a copy of this written response.
- 297
- 298 2. The BLM’s responsibility to carry out all actions under this MOA that are not the
- 299 subject of a dispute will remain unchanged.
- 300
- 301 3. The BLM may authorize any action subject to objection under this stipulation to
- 302 proceed after the objection has been resolved in accordance with the terms of this
- 303 stipulation.
- 304
- 305 4. At any time during implementation of the measures stipulated in this MOA, should an
- 306 objection pertaining to such implementation be raised by a member of the public, the
- 307 BLM shall notify the parties to the MOA in writing of the objection and take the
- 308 objection into consideration. The BLM shall consult with the objecting party and, if
- 309 the objecting party so requests shall also consult with the SHPO, for no more than 15
- 310 days. Within ten (10) days following closure of this consultation period, the BLM
- 311 will render a decision regarding the objection and notify all Signatories of its decision
- 312 in writing. In reaching its decision, the BLM will take into account any comments
- 313 from the Signatories regarding the objection, including the objecting party. The BLM
- 314 decision regarding the resolution of the objection will be final.
- 315

316 D. AMENDMENTS

317

318 Any Signatory may propose that this MOA be amended, whereupon the Signatories will

319 consult for no more than 30 days to consider such amendment. The amendment process

320 shall comply with 36 CFR 800.6(c)(1) and 800.6(c)(7). This MOA may be amended only

321 upon the written agreement of the Signatories. If it is not amended, this MOA may be

322 terminated by any Signatory in accordance with Stipulation VI.E.

323

324 E. TERMINATION

- 325
- 326 1. If this MOA is not amended as provided for in Stipulation VI.D., or if any Signatory
- 327 proposes termination of this MOA for other reasons, the Signatory proposing
- 328 termination shall, in writing, notify the other Signatories, explain the reasons for
- 329 proposing termination, and consult with the other Signatories for at least 30 days to
- 330 seek alternatives to termination. Such consultation shall not be required if the BLM
- 331 proposes termination because the Undertaking no longer meets the definition set forth
- 332 in 36 CFR 800.16(y).
- 333

- 334 2. Should such consultation result in an agreement on an alternative to termination, then
335 the Signatories shall proceed in accordance with the terms of that agreement.
336
- 337 3. Should such consultation fail, the Signatory proposing termination may terminate this
338 MOA by promptly notifying the other Signatories in writing. Termination hereunder
339 shall render this MOA without further force or effect.
340
- 341 4. If this MOA is terminated hereunder, and if the BLM determines that the Undertaking
342 will nonetheless proceed, then the BLM shall either consult in accordance with 36
343 CFR 800.6 to develop a new MOA or request the comments of the Council pursuant
344 to 36 CFR 800. Beginning with the date of termination, the BLM shall ensure that
345 until and unless a new MOA is executed for the CD-IV Project, individual
346 undertakings shall be reviewed in accordance with 36 CFR 800.4 through 800.6.
347

348 F. DURATION OF THE MOA 349

- 350 1. Unless terminated pursuant to Stipulation VI.E., or unless it is superseded by an
351 amended MOA, this MOA will be in effect following execution by the Signatories
352 until the BLM, in consultation with the INF and the SHPO, determines that all of its
353 stipulations have been satisfactorily fulfilled. This MOA will terminate and have no
354 further force or effect on the day that the BLM notifies the INF and the SHPO in
355 writing of its determination that all stipulations of this MOA have been satisfactorily
356 fulfilled.
357
- 358 2. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following
359 the date of execution by the SHPO. Near the end of the five (5) year period, the
360 MOA will be reviewed, modified as necessary, and extended at the parties' discretion.
361 If the BLM determines that this requirement cannot be met, the Signatories to this
362 MOA will consult to reconsider its terms. Reconsideration may include continuation
363 of the MOA as originally executed, amendment or termination. In the event of
364 termination, the BLM will comply with Stipulation VI.E.4 if it determines that the
365 Project will proceed notwithstanding termination of this MOA.
366
- 367 3. If the Project has not been implemented within five (5) years following execution of
368 this MOA by the SHPO, and if the MOA has not been terminated, then the signatories
369 shall initiate consultation no less than six (6) months prior to the expiration of this
370 MOA to reconsider its terms. Reconsideration may include a continuation
371 (extension) of the MOA as originally executed, amendment, or termination.
372

373 G. EFFECTIVE DATE 374

375 This MOA shall take effect on the date that it has been executed by the SHPO.
376
377

378 **SIGNATORIES:**

379

380 U.S. BUREAU OF LAND MANAGEMENT

381

382 By:  Date: 08/08/2013

383 Steven L. Nelson

384 Bishop Field Manager

385

386 INYO NATIONAL FOREST

387

388 By:  Date: 8/8/13

389 Edward E. Armenta

390 Forest Supervisor

391

392 CALIFORNIA OFFICE OF HISTORIC PRESERVATION

393

394 By:  Date: 8/9/13

395 Carol Roland-Nawi, Ph.D.

396 State Historic Preservation Officer

397

398

399 **INVITED SIGNATORIES:**

400

401 ORNI 50 LLC

402

403 By:  Date: 8/8/13

404 Connie Stechman

405 Assistant Secretary, Ormat Nevada Inc., Managing Member ORNI 50 LLC

406


407

408 **CONCURRING PARTIES:**

409

410 GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

411

412 By:  Date: 8/8/2013

413 Theodore D. Shade

414 Air Pollution Control Officer

415

416 BISHOP PAIUTE TRIBE

417

418 By:  Date: 8/9/13

419 Dale "Chad" Delgado

420 Chairman, Bishop Paiute Tribe