

Attachment 8

Copy of
Programmatic Agreement Among the Federal Energy Regulatory Commission
and the California State Historic Preservation Officers

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FEDERAL ENERGY COMMISSION

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICERS
FOR
MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED
BY ISSUING A LICENSE TO THE
ELSINORE VALLEY MUNICIPAL WATER DISTRICT
AND
THE NEVADA HYDRO COMPANY
FOR THE OPERATION OF THE
LAKE ELSINORE ADVANCED PUMPED STORAGE PROJECT
IN RIVERSIDE COUNTY, CALIFORNIA
(FERC No. 11858-002)**

WHEREAS, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission") proposes to issue a license to the Elsinore Valley Municipal Waster District and The Nevada Hydro Company (hereinafter, "Licensees") to operate the proposed Lake Elsinore Advanced Pumped Storage Project (hereinafter, "Project") as authorized by Part I of the Federal Power Act, 16 U.S.C. Sections 791(a) through 825(r) *as amended*; and

WHEREAS, The Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, "historic properties"); and

WHEREAS, The associated "Final Environmental Impact Statement, Lake Elsinore Advanced Pumped Storage Project, FERC Project No. 11858", dated January 2007, and the "Lake Elsinore Advanced Pumped Storage Project (LEAPS) and Talegra-Escondido Valley-Serrano 500kV Interconnect Project Historic Properties Management Plan, FERC No. 11858-002-California", dated February 2005, provide descriptions of the Elsinore Valley Municipal Waster District and The Nevada Hydro Company's proposal for constructing, maintaining, and operating the Project, area of potential effects, historic properties, and anticipated effects identified as of the date of this Programmatic Agreement; and

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WHEREAS, the U.S. Forest Service, Cleveland National Forest (hereinafter, "CNF"), U.S. Bureau of Land Management (hereinafter, "BLM"), U.S. Marine Corps, Marine Corp Base at Camp Pendleton (hereinafter, "USMC") manages lands within the Project, and have responsibilities for the issuance of permits under the Archeological Resources Protection Act (16 U.S.C. 470aa to 470ll; hereinafter, "ARPA") to the Licensees for archeological work on their lands;

WHEREAS, the Commission has consulted with the California Historic Preservation Officer (hereinafter, "SHPO") pursuant to 36 C.F.R. Section 800.14(b) of the Advisory Council's on Historic Preservation (hereinafter, "Council") regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "Section 106"); and

WHEREAS, the Licensees have participated in the consultation and have been invited to concur in this Programmatic Agreement; and

WHEREAS, the CNF, BLM, and USMC have agreed to participate in the Section 106 consultation regarding the Project under the terms of this Programmatic Agreement, and have been invited to concur in the Programmatic Agreement; and

WHEREAS, the Project may affect lands important to the Pechanga Band of Mission Indians, Pala Band of Mission Indians, Rincon Band of Mission Indians, San Luis Rey Band of Mission Indians, Puama/Yuima Band of Mission Indians, Juaneno Band of Mission Indians of San Juan, Juaneno Band of Mission Indians of Santa Ana, Juaneno Band of Mission Indians-Acjachemen Nation of San Juan, Agua Caliente Band of Cahuilla Indians, Gabrielino/Tongva Tribal Council of San Gabriel and the La Jolla Band of Mission Indians (hereinafter, "Tribes"), and where the Bureau of Indian Affairs (hereinafter, "BIA") has tribal trust responsibilities, and the Tribes and BIA have participated in the consultation and have been invited to concur in this Programmatic Agreement; and;

WHEREAS, the Commission will require the Licensees to implement the provisions of this Programmatic Agreement as a condition of issuing a new license for the Project;

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NOW THEREFORE, the Commission and the SHPO agree that the Project will be administered in accordance with the following stipulations in order to satisfy the Commission's Section 106 responsibilities during the term of the Project's license.

STIPULATIONS

The Commission will ensure that, upon issuing a license for this Project, the Licensees implement the following stipulations. All stipulations that apply to the Licensees will similarly apply to any and all of the Licensees' successors. Compliance with any of the following stipulations does not relieve the Licensees of any other obligations they have under the Federal Power Act, the Commission's regulations, or its license.

I. HISTORIC PROPERTIES MANAGEMENT PLAN

- A. Within one year of issuing a license for this Project, the Licensees will file for the Commission's approval a final Historic Properties Management Plan (hereinafter, "HPMP") specifying how historic properties will be managed in the Project's area of potential effects, as defined in 36 C.F.R. Section 800.16(d), during the term of this license. During development of the final HPMP, the Licensees will consult with the SHPO as defined in 36 C.F.R. Section 800.2.¹ The Licensees will seek concurrence of the SHPO, CNF, BLM, USMC, BIA, and Tribes in the final HPMP.
- B. "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (*Federal Register*, September 29, 1983, Vol. 48, No. 190, Part IV, pp. 44716-44740; hereinafter, "Secretary's Standards") and the Council and Commission's "Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects" (issued May 20, 2002) will be taken into account in developing the final HPMP. The final HPMP will be developed by or developed under the direct supervision of a person or persons who

¹ All consulting parties need to respond within 30 days of receipt of a request for review of a finding or determination involving the HPMP and during the interim period prior to completion and implementation of the HPMP.

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meet, at a minimum, the professional qualifications standards for architectural history and archeology in the Secretary's Standards (48 *Federal Register* 44738-39).

- C. The final HPMP will, at a minimum, address the tasks listed below. The final HPMP will also specify how each task will be carried out and when it will be completed.
1. Completion of identification of historic properties within the proposed Project's area of potential effects, as described in Lake Elsinore Valley Municipal Waster District and The Nevada Hydro Company's license application for the proposed Project, in addition to any modifications to the proposed Project made by the Commission, including lands or properties outside the Project boundary where project operation or project-related recreational development or other enhancements may cause changes in the character or use of historic properties, if any historic properties exist;
 2. Protection and preservation of historic properties threatened by project construction and other related ground disturbing activities;
 3. Protection and preservation of historic properties threatened by shoreline erosion, water conveyance breaches, other project-related ground-disturbing activities, looting, and vandalism during project operation and maintenance;
 4. Consideration and, where appropriate, adoption of prudent and feasible project alternatives that would avoid adverse effects on historic properties;
 5. Consideration and implementation of appropriate treatment that would mitigate any unavoidable adverse effects;
 6. Consultation with the SHPO regarding identification and evaluation of historic properties, determination of effects, and ways to avoid, minimize or mitigate adverse effects;

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7. Action plan for unanticipated discoveries during project construction.
8. Treatment and disposition of any human remains that may be discovered, taking into account applicable state, local laws, and the Native American Graves Protection and Repatriation Act (NAGPRA; Section 3001 of 25 U.S.C.) on federal land;
9. Discovery of previously unidentified properties during project operations;
10. Public interpretation of the historic and archeological values of the Project;
11. Identification and proposed treatment, avoidance, or mitigation of effects to traditional cultural properties through the development and implementation of a traditional cultural properties treatment plan after consultation with the Tribes and SHPO; and
12. Coordination with the SHPO, CNF, BLM, USMC, BIA, and Tribes during implementation of the final HPMP.

II. HPMP REVIEW AND IMPLEMENTATION

- A. The Licensees will submit the final HPMP, along with documentation of the views of the SHPO, CNF, BLM, USMC, BIA, and Tribes, to the Commission for review and approval.
- B. If the SHPO, CNF, BLM, USMC, BIA, and Tribes have concurred in the final HPMP, and the Commission determines that the final HPMP is adequate, the Commission will forward a copy of the final HPMP, along with the views of the concurring parties, to the Council for filing.
- C. If the SHPO, CNF, BLM, USMC, BIA, and Tribes have not concurred in the final HPMP, or the Commission finds the final HPMP inadequate, the Commission will consult with the objecting party and seek agreement on the final HPMP. If

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concurrence is not reached within 45 days, the Commission will request that the Council enter into the consultation to seek agreement on the final HPMP.

1. If agreement is reached on the final HPMP, the Commission will forward a copy of the revised final HPMP to the Council for filing.
2. If agreement on the final HPMP cannot be reached among the Licensees, Commission, SHPO, CNF, BLM, USMC, BIA, Tribes and the Council; the Commission will request that the Council comment pursuant to Stipulation IV.B of this Programmatic Agreement;

D. The Licensees will, within 30 days on every anniversary of the license issuing, file a report with the SHPO, CNF, BLM, USMC, BIA, and Tribes of activities conducted under the implemented final HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the Licensees will be prepared to that effect, and will satisfy the intent of this stipulation.

III. INTERIM TREATMENT OF HISTORIC PROPERTIES

- A. All consultation under this stipulation will be in accordance with 36 C.F.R. Sections 800.4 and 800.5 with the Licensees acting as the Agency Official.
- B. After a license for the Project has been issued, but before the final HPMP has been approved by the Commission (hereinafter, "the interim"), the Licensees will consult with the SHPO, CNF, BLM, USMC, BIA, and Tribes regarding the effect on historic properties related to any project-related action, including any ground disturbing activity, that may be implemented in the interim.² The Licensees will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 C.F.R. Section 800.5(a)(1).

² Depending on undertaking's scope or location, or types of historic properties affected, the Licensees needs to consult only with the appropriate parties among the whole group of consulting parties listed in this Programmatic Agreement.

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- 1. If the Licensees and SHPO agree that the activity will not adversely affect historic properties, the Licensees may proceed in accordance with any agreed-upon treatment measures or conditions. If the Licensees and the SHPO do not agree, the matter will be resolved in accordance with Stipulation IV of this Programmatic Agreement.**

- 2. If either the Licensees or SHPO determines that the activity may have an adverse effect, they will consult with the other appropriate parties to develop a strategy for avoiding, minimizing, or mitigating adverse effects. If the Licensees and SHPO can reach agreement, the Licensees will implement the agreed-upon strategy. If they disagree, the Licensees will submit the matter to the Commission in accordance with Stipulation IV of this Programmatic Agreement.**

IV. DISPUTE RESOLUTION

- A. If at any time during implementation of this Programmatic Agreement and the resulting final HPMP, the SHPO, CNF, BLM, USMC, BIA, Tribes or the Council object to any action or any failure to act pursuant to this Programmatic Agreement or the final HPMP, they may file written objections with the Commission.**
 - 1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection. The Commission may initiate on its own such consultation to remove any of the Commission's objections.**

- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Council and request that the Council comment. Within 30 days after receiving all pertinent documentation, the Council will either:**
 - 1. Provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or**

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2. Notify the Commission that it will comment pursuant to 36 C.F.R. Section 800.7(c)(1) through (c)(3) of the National Historic Preservation Act, and proceed to comment.
- C. The Commission will take into account any Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

V. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT

- A. The Commission, Licensees, SHPO, CNF, BLM, USMC, BIA, Tribes, or the Council may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. Section 800.14(b) to consider such amendment.
- B. The Commission or the SHPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, Licensees, SHPO, CNF, BLM, USMC, BIA, Tribes, and the Council consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. Sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

Execution of this Programmatic Agreement evidences that the Commission has satisfied its responsibilities pursuant to Section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues the license for the Project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or Project.

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FEDERAL ENERGY REGULATORY COMMISSION

By: Ann F. Miles Date: Feb. 8, 2007
Ann F. Miles
Director, Division of Hydropower Licensing



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CALIFORNIA STATE HISTORIC PRESERVATION OFFICER


By: _____ Date: _____

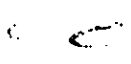
**Milford Wayne Donaldson
California State Historic Preservation Officer**



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CONCUR: THE NEVADA HYDRO COMPANY

By:  Date: 2/19/07
Rexford Wait
Vice President



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CONCUR: ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By: _____ Date: _____
Ronald Young
General Manager

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CONCUR: U.S. FOREST SERVICE, CLEVELAND NATIONAL FOREST

By: _____ Date: _____

Tina Terrell
Forest Supervisor

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**CONCUR: U.S. BUREAU OF LAND MANAGEMENT, CALIFORNIA STATE
OFFICE**

By: _____ Date: _____

Mike Pool
State Director

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CONCUR: U.S. MARINE CORPS, MARINE CORP BASE, CAMP PENDLETON

By: _____ Date: _____

Col. John C. Coleman
Commanding Officer

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CONCUR: U.S. BUREAU OF INDIAN AFFAIRS, PACIFIC REGIONAL OFFICE

By: _____ Date: _____

Clay J. Gregory
Regional Director

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CONCUR: PALA BAND OF MISSION INDIANS

By: _____ Date: _____
Robert Smith
Chairperson



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CONCUR: RINCON BAND OF MISSION INDIANS

By: _____ Date: _____
John Currier
Chairperson

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CONCUR: SAN LUIS REY BAND OF MISSION INDIANS

By: _____ Date: _____

Richard Estrada
Chairperson

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CONCUR: PAUMA/YUTMA BAND OF MISSION INDIANS

By: _____ Date: _____
Christobal C. Devers
Chairperson

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CONCUR: JUANENO BAND OF MISSION INDIANS, ACJACHEMEN NATION

By: _____ Date: _____

Sonia Johnston
Tribal Chair

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CONCUR: AGUA CALIENT BAND OF CAHULLA INDIANS

By: _____ Date: _____

Richard Milanovich
Chairperson

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CONCUR: LA JOLLA BAND OF MISSION INDIANS

By: _____ Date: _____
Tracy Lee Nelson
Chairperson

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CONCUR: JUANENO BAND OF MISSION INDIANS

By: _____ Date: _____

David Belardes

Chairman

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CONCUR: JUANENO BAND OF MISSION INDIANS, ACJACHEMEN NATION

By: _____ Date: _____

Anthony Rivera
Chairman



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CONCUR: GABRIELENO/TONGVA TRIBAL COUNCIL OF SAN GABRIEL

By: _____ Date: _____
Anthony Morales
Tribal Chairperson