

RESOLUTION OF THE SUMMIT LAKE PAIUTE COUNCIL
SUMMIT LAKE PAIUTE TRIBE OF NEVADA
OF THE
SUMMIT LAKE PAIUTE RESERVATION

RESOLUTION NO.: SL - 12 - 2009

TITLE: REQUESTING THE SECRETARY OF INTERIOR DECLARE A MORATORIUM UNTIL GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH THE BUREAU OF LAND MANAGEMENT IN NEVADA IS IMPROVED

WHEREAS, the Summit Lake Paiute Tribe, is a modern entity of the Northern Paiute People known, in English, as Lake Trout and Wild Onion Eaters who, for thousands of years, controlled at least 2,800 square miles of land in and around Summit Lake as a tribe with sovereign, unlimited, powers and laws (customs, traditions, usages, etc.); and,

WHEREAS, in 1964, and after much consideration, the members of the Lake Trout and Wild Onion Eaters organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended, adopting, for certain sovereign purposes, the name "Summit Lake Paiute Tribe" with a tribal constitution titled "Articles of Association," the latter which was approved by the Secretary of the U.S. Department of the Interior on January 8, 1965; and,

WHEREAS, over time the members of the Summit Lake Paiute Tribe have regained a small fraction of their historic land base, including the Tribe's reserved lands (Reservation), and the Indian allotments outside the Reservation boundaries; and,

WHEREAS, the Summit Lake Paiute Tribe was a party to, and for limited purposes of being compensated only for the taking of the Tribe's land for a public purpose in violation of the U.S. Constitution's Taking Clause, its traditional territory was subject to a final judgment of the Indian Claims Commission in Northern Paiute Nation, et al. v. The United States of America with the Findings of Fact, Opinions and Orders posted on the *Newsletter/Research Page* of the Tribe's web site (www.summitlaketribe.org); and,

WHEREAS, the Summit Lake Paiute Tribe's Articles of Association grant to the Summit Lake Paiute Council (see Article II, Section 1) certain sovereign powers, including the power to negotiate with federal agencies like the U.S. Department of Interior and others and their respective departments and agencies to improve the welfare and education of tribal members (see Article II, Section 1 (b), (k)); and,

WHEREAS, in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3002, the ownership or control of Native American cultural items which are excavated or discovered on federally managed lands shall

be, among others, in the Indian tribe which has the closest cultural affiliation with such remains or objects (25 U.S.C. 3002(a)(2)(B)) or if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on federally managed public land where the now federally managed land was recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered (25 U.S.C. 3002(a)(C)(1)); and,

WHEREAS, the governing body of the Summit Lake Paiute Tribe has never expressly relinquished control over any Native American human remains, or title to or control over any funerary objects, or sacred objects (see NAGPRA, 25 U.S.C. 3002(e)); and,

WHEREAS, many of the archaeological resources, which could include funerary objects, human remains or sacred objects, collected by Pacific Legacy were taken from the traditional territory, as recognized by final judgments of the Indian Claims Commission or Court of Claims, of this and other Ruby Pipeline affected Tribes; and,

WHEREAS, on October 8, 2009, at a U.S. Department of the Interior, Bureau of Land Management (BLM), called meeting with Ruby Pipeline Project affected federally-recognized Indian tribes, the lead archaeologist for the Nevada BLM Office admitted that the collection permits issued to Pacific Legacy, a subcontractor of EPG, the contractor of Ruby Pipeline LLC, along the proposed Ruby Pipeline construction route and the roads and jeep trails that would access the construction route, were issued in violation of federal law, in that no affected federally-recognized Indian Tribes were consulted with prior to the issuance of the collection permits; and,

WHEREAS, the Summit Lake Paiute Council selected cultural resource monitors hired by Pacific Legacy had taken pictures with the Summit Lake Paiute Tribe's cameras of Pacific Legacy cultural resource staff tagging, bagging, marking the bags with Global Positioning System (GPS) coordinates, and removing same from their resting place within the traditional territory of the Summit Lake Paiute Tribe and other Tribes known to BLM now public lands managed by BLM; and,

WHEREAS, NAGPRA prohibits the intentional removal from or excavation of Native American cultural items from federally managed lands for purposes of discovery, study, or removal unless (see 25 U.S.C. 3002(c)) (1) such items are excavated or removed pursuant to a permit issued under section 470cc of title 16 [United States Code] which shall be consistent with this chapter; (2) such items are excavated or removed after consultation with the appropriate Indian tribe; (3) the ownership and right of control of the disposition of such items shall be as provided in 25 U.S.C. (a) and (b); and, (4) proof of consultation or consent under paragraph (2) is shown; and,

- WHEREAS, BLM's collection permit, BLM Form 8151-3, provides no space for the authorizing BLM Federal land manager official to show what Tribes are affected by the collection permit, or in accordance with NAGPRA, 25 U.S.C. 3002(c)(4), "proof of consultation or consent"; and,
- WHEREAS, the Archaeological Resources Protection Act (ARPA), 16 U.S.C. 470cc, consistent with NAGPRA, 25 U.S.C. 3002(c)(1), requires, by use of the mandatory word "shall," notification to Indian tribes of possible harm or destruction of sites having religious or cultural importance "before issuing such permit" (see ARPA, 16 U.S.C. 470cc(c)); and,
- WHEREAS, as the lead archaeologist for the Nevada BLM Office admitted on October 8, 2009, in Winnemucca, Nevada, during the BLM Meeting with Ruby Pipeline Project affected Tribes, in violation of federal law no Tribes were consulted with prior to the issuance of the collection permits required to comply with ARPA, 16 U.S.C. 470cc; and,
- WHEREAS, the governing body of the Summit Lake Paiute Council was never consulted with prior to the issuance of the collection permits and has never approved the taking (collection) of any archaeological resource (using federal law terms) or any funeral or sacred objects (using Tribe terms); and,
- WHEREAS, it seems to the Council that unless the Federal land manager, as used in 16 U.S.C. 470cc(c), meaning the BLM State Office, District and Field Office personnel, knew every inch of this Tribe's traditional territory which was recognized by the final judgment of the Indian Claims Commission as the aboriginal land of this Tribe—in which the objects taken by Pacific Legacy were discovered (25 U.S.C. 3002(a)(C)(1)), such Federal land manager could not have reasonably known that their issuance of the collection permit would not result in harm to, or destruction of, any religious or cultural site before issuing such permit; and,
- WHEREAS, it seems to the Council that the Federal land manager has also violated the Federal government's trust responsibility to this and other Tribes whose territorial or aboriginal lands were recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims (25 U.S.C. 3002(a)(C)(1)) by the issuance of the collection permits since said Federal land managers could not have known every inch of the Tribes' traditional territory and thus could not have reasonably known that their issuance of the collection permit would not result in harm to, or destruction of, any religious or cultural site before issuing such permit; and,
- WHEREAS, the Council believes that there has been an application for a Right-of-Way (ROW) for a Natural Gas Transmission Line known as the Ruby Pipeline across Nevada BLM managed lands and, in accordance by the final judgment of the Indian

Claims Commission or Court of Claims, are a part of Traditional Territory or Aboriginal Lands of the Summit Lake Paiute Tribe and other Indian Tribes, and,

WHEREAS, the Nevada BLM has certain statutory, treaty and trust obligations, and directives from Presidents by Executive Order 13175, and Memorandums of Presidents, including that of President Obama on November 5, 2009, to this and other Tribes, which include government-to-government consultation and coordination prior to making any land management decision regarding the above-described lands it manages; and,

WHEREAS, as admitted by BLM Federal land managers on October 8, 2009, at the BLM meeting with Ruby Pipeline affected Tribes, the Nevada BLM has not followed its consultation and coordination mandate with some Tribes with traditional territory or aboriginal lands in Nevada that were subject to final judgments of the Indian Claims Commission or Court of Claims for this proposed undertaking and action, including illegally authorizing the collection and curation of artifacts from Traditional Cultural Properties and sacred sites (TCP's) on public lands, reportedly numbering nearly 7,000 artifacts; and,

WHEREAS, it appears to the Council that Nevada BLM has not ensured that the subcontractor of Ruby Pipeline who made the permit application has properly and professionally secured, protected and curated such artifacts, by allowing them to be held without assurances normally required under chain of custody standards in the field of archaeology; and,

WHEREAS, it appears that Nevada BLM has created double standards relative to the standards it allows Pacific Legacy to unilaterally make (i.e., keeping what the Council believes could be and are sacred objects in mere motel rooms) while requiring that Ruby Pipeline affected Tribes adhere to higher standards (i.e., "The BLM welcomes tribal input pertaining to other facilities that might be appropriate for curation of the materials recovered in association with Pacific Legacy's work" (see Letter, at page 2, Item/Paragraph Number 213, Ron Wenker, State Director, Nevada, to Chairman Warner Barlese, Summit Lake Paiute Tribe, In Reply Refer To: 8160 (NV933), dated Nov. 12, 2009)); and,

WHEREAS, the Tribe received the November 12, 2009 response of the BLM State Director, Nevada, on November 16, 2009, to the eight questions developed by those persons attending the BLM's Meeting on October 8, 2009, in Winnemucca, Nevada; and,

WHEREAS, the Tribe is still waiting for the BLM State Director, Nevada, to schedule the second meeting he promised during the BLM Listening Session in Reno, Nevada, which was not addressed in his November 12, 2009, letter to Chairman Warner Barlese; and,

WHEREAS, some of the answers of the BLM State Director, Nevada, to the eight questions identified above seem inadequate. For example, some persons at the October 8, 2009, BLM Meeting in Winnemucca took offense to calling the BLM's *Cultural Resources Inventory General Guidelines* a "Red Book" because of the inference it was a derogatory phrase for Native American or American Indian, or a racist device, and asked that the phrase "Red Book" not be used or repudiated, even though the cover of the *Cultural Resources Inventory General Guidelines* is red colored paper. The Council suggests the BLM State Director, Nevada, end this issue by issuing instructions that BLM employees avoid the phrase "Red Book" and change the color of the paper cover; and,

WHEREAS, the Nevada BLM has maintained its own *Cultural Resources Inventory General Guidelines*, published in 1990, without any updating as to the laws, court cases Executive Orders and Memorandums from the sitting President. The Council suggests the *Cultural Resources Inventory General Guidelines* be updated with the input of Nevada Tribes; and,

WHEREAS, although not one of the eight questions developed on October 8, 2009 at the BLM meeting with Ruby Pipeline affected Tribes, there were verbal requests from those attending the meeting that they be allowed to inspect the impounded cultural artifacts sitting in motel rooms across the street and in a motel room in Cedarville, California. The Minutes of the October 8, 2009 BLM Meeting should reveal such requests. Contrary to the statement in the letter to Chairman Warner Barlese from BLM State Director, Nevada, that the minutes of the October 8, 2009 BLM Meeting with Ruby Pipeline affected Tribes was enclosed in the letter, they were not, apparently, inadvertently omitted. The Council believes all interested Ruby Pipeline affected Tribes should be given an opportunity to inspect the impounded cultural artifacts, especially since this Tribe and the others may be able to identify sacred objects among them that would prove that harm or destruction of religious or cultural sites, in violation of 16 U.S.C. 470cc(c), occurred; and,

WHEREAS, since it appears no one among the BLM's Federal land managers has greater expertise than members of the Ruby Pipeline affected Tribes in identifying what are sacred objects, funerary objects, and objects of cultural patrimony, it seems that BLM Nevada should grant the October 8, 2009 verbal requests of those attending the BLM Meeting to inspect the impounded cultural artifacts, especially since this Tribe and the others may be able to identify sacred objects among them that would prove that harm or destruction of religious or cultural sites, in violation of 16 U.S.C. 470cc(c), occurred; and,

WHEREAS, the Council believes that other Tribes have repeatedly requested that ethnographic studies be commissioned to reveal Traditional Cultural Properties (TCP's) BEFORE a land management decision is made for the routing of such a Right-of-Way (ROW). BLM should honor such requests; and,

WHEREAS, the Council is aware of the letter the BLM State Director, Nevada, wrote to the Federal Energy Regulatory Commission (FERC) following BLM's review of the FERC's Administrative Final Environmental Impact Statement (AFEIS), asking for an additional 60 days to cure the deficiencies in FERC's AFEIS believing that 60 days was sufficient to cure all the identified deficiencies in the AFEIS. This Council believes, based on the facts set forth in the letter of the BLM State Director, Nevada, to FERC that more than 60 days is required, and that six months or more should have been asked for; and,

WHEREAS, because it is this and other Tribe's TCPs, sacred objects, sacred sites, etc., at risk of pollution and other risks the Council has but one choice,

THEREFORE BE IT RESOLVED, that the Summit Lake Paiute Council requests that the Secretary of the United States Department of Interior declare a moratorium on BLM's proposed action set forth in the letter the BLM State Director, Nevada, to the Federal Energy Regulatory Commission (FERC) following BLM's review of the FERC's Administrative Final Environmental Impact Statement (AFEIS), asking for an additional 60 days to cure the deficiencies in FERC's AFEIS until such time as the Ruby Pipeline affected Tribes have been engaged in a mutually-accepted protocol on a government-to-government consultation and such consultation is completed.

CERTIFICATION

I, JERRI LYNN BARLESE, Secretary/Treasurer of the Summit Lake Paiute Council, hereby certify that the above Resolution, No. SL -12- 2009, was brought before the Summit Lake Paiute Council at a duly held meeting on the 21st day of November, 2009, with a quorum present, with the following votes to enact the Resolution: 3 FOR, 0 AGAINST; and 0 ABSTAINING, with the Council Chairman presiding and not voting, and that this Resolution has not been rescinded, revoked or amended.

November 21, 2009
Date


Jerri Lynn Barlese, Secretary/Treasurer
Summit Lake Paiute Council

*Mary Figarella - BLM
861-6429*



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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Reno, Nevada 89520-0006
<http://www.blm.gov/nv/st/en.html>
OCT 27 2009

*329-0503
To Rose from
Peter Smith
11/2/09*

In Reply Refer to:
2880 (NVN-084650, OR-64807, UTU-82880, WYW-171168)

Ms. Lauren H. O'Donnell
Division of Gas and Environmental Monitoring
Federal Energy Regulatory Commission
888 First Street NE Room 61-42
Washington D.C. 20246

Dear Ms. O'Donnell:

I am Ron Wenker, the Bureau of Land Management (BLM) State Director for Nevada. As you may know, I have been designated the BLM official who will sign the Record of Decision (ROD) and authorize the Right-Of-Way (ROW) for the proposed Ruby Pipeline Project. First, I want to thank the Federal Energy Regulatory Commission (FERC) for your timely and expeditious processing of the Ruby Pipeline Environmental Impact Statement (EIS), and as we head towards the final EIS I am forwarding several concerns that we feel need to be addressed prior to finalizing this document.

On behalf of the BLM, U. S. Forest Service (Forest Service) and U. S. Bureau of Reclamation (Reclamation), I must express our collective concerns that the administrative final environmental impact statement (AFEIS) for the Ruby Pipeline Project, as currently written, does not adequately address or analyze our expressed concerns regarding potential impacts to cultural resources, wildlife (sage grouse, pygmy rabbit) and their habitats, and does not adequately analyze (compare and contrast) the direct, indirect and cumulative impacts of the three alternatives. The AFEIS also does not adequately address or analyze concerns expressed by the cooperating agencies or Native Americans.

This letter serves as the Bureau's formal notice to the FERC that the analysis presented in the AFEIS is not adequate for the BLM to sign a ROD for a ROW grant and associated temporary use permits on Federal lands. While we feel the AFEIS has deficiencies, we do believe that these sections of the AFEIS can easily be corrected, which will result in a legally supportable and defensible document. Therefore, we are requesting an additional 60 days to initiate and complete field work, reporting, reports, and analysis for the final EIS to ensure the document can support a ROD for a ROW. Also, it should be noted that our drop-in comments will be submitted under separate cover.

The reviewers received the DFEIS on October 5, 2009. Cooperating agency staff was given until October 26, 2009 to provide final comments on this document. FERC provided the following guidance for reviewing the DFEIS:

"Keep in mind that the main purpose of this review is to catch egregious omissions or misrepresentations, and add specific wording based on your agency needs and requirements. It is very important to be as specific as possible in your comments. If you have a particular concern about specific data or a particular write-up, please provide specific information or wording to correct the data or write-up."

The comments provided in this submittal express numerous concerns about omissions or inaccuracies in the DFEIS. Since we have been tasked with providing specific text for inclusion in the FEIS, we need time to acquire and assess missing data and develop text to characterize the effect of the preferred alternative. In the following paragraphs, I have detailed the specific concerns and sections of the DFEIS that need additional work, as well as estimated timeframes for finalizing work that must be completed prior to issuance of a Record of Decision. There are specific items which are needed for a complete FEIS and, in turn, there are specific items needed for the ROW.

Outstanding Cultural Resources Issues that will Require Additional Time to Analyze

The DFEIS contains information that is not justifiable in terms of its accuracy. Many of the reports that are noted in the DFEIS as submitted by September 30 have still not been submitted. This includes:

- The centerline report for Wyoming, including access roads, staging and ancillary areas;
- Addendum reports for ancillary areas and workers' camp area in Nevada (crews are still in the field); and
- Visual resources report and geoarchaeology report for Nevada

The revised centerline and addendum reports for Nevada and Oregon are still in review.

Preliminary results for Oregon suggest substantial flaws with the background research and failure to identify known sites within the project corridor.

The numbers of sites and their National Register Historic Places (NRHP) eligibility status have not been verified. Furthermore, the need exists to complete the four Memorandums of Agreement (MOA's) between FERC, the BLM, and the Wyoming, Utah, Nevada and Oregon State Historic Preservation Offices (SHPO), ethnographic studies and complete the Section 106 process. Although ethnographic studies are currently being conducted with tribes within the project area, no information on Traditional Cultural Properties has been presented to agency reviewers for review.

The project schedule for issuance of a ROD has not been tempered with an understanding of where FERC and BLM are within the Section 106 process. No headway has been made on draft SHPO MOAs for the project and no discussions of potential mitigations have occurred. As we have previously noted, BLM cannot issue a ROD without the SHPO MOAs.

Special Status Species

BLM is working in concert with the U. S. Fish and Wildlife Service (FWS) and State wildlife agencies to prepare a Greater Sage Grouse/Pygmy Rabbit Conservation/Mitigation Plan, Endangered Species Act (ESA) Mitigation Plan and a Migratory Bird Treaty Act Memorandum of Agreement. All three documents were referenced in the AFEIS and it was disclosed they would be available upon publication of the FEIS. FERC has indicated they will become a condition of approval and BLM will make them part of the plan of development, thus a condition of approval. However, the BLM feels that, while there has been significant progress toward finalizing these documents, they are not complete. These documents have and continue to be interagency and with the needed review, modifications and finalization by agency personnel, along with a Solicitor review, more time is needed and requested. As an estimate, these documents will be entailing an additional 30 days of work to meet the needs of BLM and the ROD.

FERC intends to seek a "not likely to adversely affect" determination for any listed species or critical habitat, except for some Colorado River species that will be affected by depletion of water from hydrostatic testing. FERC will need to get FWS concurrence, and they will seek that once the FEIS and Biological Assessment (BA) are issued (at the same time). FERC will need to initiate formal consultation upon issuance of FEIS and this will include a BA for the FWS. In turn, FWS will then follow its section seven process for determining if they have enough information to formally consult and, subsequently, develop a Biological Opinion (BO). Although the FWS has ensured that a BO will be timely, BLM cannot issue a ROD until the BO is released. The FWS has 120 days to issue a BO from the time they receive the BA.

Effects to Visual Resources

Inadequacies in the visual resource analysis in the DEIS resulted in BLM establishing a third-party contract with Logan Simpson Design (LSD), Inc. to conduct field work and develop a technical report as well as "drop-in text" for the EIS. While this work was complete under the guidance of local, state, and national BLM visual resource specialists, the draft report and drop-in text were only recently completed and are currently under review by agency staff. Once comments are submitted, LSD will then need to incorporate comments and resubmit the updated draft for an expedited final review. This process will require an additional 30 days to complete in order to meet the needs of BLM and the ROD.

Effects to Wilderness Resources

Deficiencies in the wilderness resources analysis in the DEIS resulted in BLM tasking a consultant (SWCA) to conduct research and develop a technical report as well as "drop-in text" for the AFEIS. Inventories for wilderness characteristics were conducted for the Oregon section of the Ruby Pipeline and a draft should be available for review this week (October 26, 2009). While this work was conducted by local BLM wilderness resource specialists, the draft report and drop-in text will need to be reviewed for adequacy. Once comments are submitted, SWCA will then need to incorporate comments and resubmit the updated draft for an expedited final review. The BLM anticipates it will take approximately 30-45 days to complete the wilderness characteristics inventory and associated processes.

BLM has also recently determined that the entirety of the proposed route and alternatives needs to be assessed for wilderness characteristics. Local BLM district/field office staff with the assistance of SWCA will be required to examine and update existing inventories. SWCA will then provide a technical report and drop-in text that assesses impacts to wilderness resources. This text will need to be reviewed by agency staff and updated for final submittal to the FEIS. This process will require field time and write up time within the office. In addition, the information must be sent to Merjent for insertion into the FEIS and analysis. Again, the wilderness characteristics inventory and associated processes will take an additional 30-45 days of work to meet the needs of BLM.

Analysis of Cumulative Effects and Connected Actions

The AFEIS needs to explain why actions are not connected actions for purposes of NEPA and how cumulative impacts have or will be considered.

The DFEIS indicates that the Ruby Pipeline Project would require construction of facilities that do not fall under the Commission's jurisdiction. In previous drafts, BLM has inquired whether these actions will be addressed as part of the proposed action and fully analyzed, or as part of a separate NEPA documents. BLM cannot provide drop-in text that resolves these questions and it is important that the agencies see the answers to these questions before an FEIS is released to the public.

The cumulative impacts section does an acceptable job of identifying cumulative actions but it presents a re-description of the proposal with the assurance that mitigating measures would ensure that impacts (the nature or magnitude of which aren't described) would be "minimized" or acceptable. Agency reviewers are unprepared to provide drop-in analysis of cumulative effects and they need an opportunity to review revised text. Thus, in order for the FEIS to support the ROD, this information and review must occur. In the past several years, the lack of a robust discussion of cumulative effects has resulted in successful legal challenges in the Department of Interior (DOI) EIS's.

Identification and Analysis of Effects from Access Roads and Ancillary Facilities

The specific road plans are lacking in the AFEIS and should be identified with alternatives for all of the BLM access routes so the impacts can be analyzed and mitigated. Otherwise, what is assumed for the analysis of environmental consequences? In addition, the ancillary facilities plans are also lacking and are not addressed in the DFEIS and need to be identified, analyzed and mitigated. The agencies need an opportunity to review an analysis of effects for the final suite of access roads and ancillary facilities and currently this is unavailable.

Mitigation

The AFEIS continually refers to agreements in progress that are voluntary and where Ruby commits to following the agreement unless Ruby finds a reason not to do so (see 4-96 2nd Paragraph).

Unless these agreements are finalized and describes Ruby's ability to reject actions, then conclusions regarding the effectiveness of the agreements and the actual impacts to wildlife cannot be made with confidence. There is a lack of analysis of residual impacts after mitigation

is applied. FERC needs to provide updated text for the cooperating agencies to review relative to this issue. This information is needed by the BLM for the FEIS and ROD.

Plan of Development

For the past several months, the POD continues to be dynamic and changing and will until the ROD is signed. Currently, the appendices to the AFEIS are actually the draft Plan of Development (POD) and are still under development between Ruby Pipeline and BLM. FERC is not recognizing the appendices as a component of the analysis within the AFEIS. We need this finalized for the FEIS and analysis and not at the ROD stage because the POD is not a NEPA analysis. Section 4.0 of the AFEIS is the environmental analysis of the affected resources with much of the analysis being derived from the appendices. As such, without further opportunity to better define the POD and resulting appendices to the AFEIS, the FEIS may not provide adequate analysis for BLM to formalize a decision on whether to issue a ROW grant.

Even though FERC uses a phased approach, many studies, reports, and consultations are still underway and there is no indication when they will be complete. Specific measures can't be identified until the reports are complete. BLM cannot make an "informed" decision until all reports and plans are complete or are at least until we receive a more detailed review and are part of the record. This informed decision must be based on an adequate and supported NEPA analysis.

We believe all of these issues can be resolved. However, it will require additional time for review. Accordingly, BLM requests additional time to review these issues and provide FERC with the information for inclusion in the FEIS. BLM will provide its review and drop-in language for the FEIS no later than January 1, 2010. So that this request will not unduly compromise the schedule, BLM will provide FERC with the information as it becomes available.

Thank you for the opportunity to review and comment on the AFEIS. Based on this review, the comments and concerns must be considered and incorporated, and an extension of time granted in order to rely on the FEIS for the ROW which will be signed by me. Thanks for your understanding and support.

If you have any questions, please feel free to contact Mark Mackiewicz at 433-636-3616.

Sincerely,

/s/ Ron Wenker

Ron Wenker
State Director, Nevada

bc: Oregon/Washington State Office
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WO350 (Mackiewicz)

NV912,dsanchez,dl,10/26/09,ruby_pipeline_to_ferc



United States Department of the Interior



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RECEIVED
NOV 16 2009

In Reply Refer To:
8160 (NV933)

NOV 12 2009

Chairman Warner Barlese
Summit Lake Paiute Tribe
1708 H. Street
Sparks, NV 89431

DISTRIBUTED
Date 11/16/09 By JW
Original Ron J
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Dear Chairman Barlese:

As you know, the Bureau of Land Management (BLM) hosted a meeting on October 8, 2009, at the Winnemucca Inn, in Winnemucca, Nevada to provide information about the Ruby Pipeline project. I have enclosed a copy of the meeting notes and sign-in sheets for your reference, and distribution to others from your tribe who were unable to attend the meeting.

This meeting presented an opportunity for representatives from the tribes to caucus and discuss concerns regarding the Ruby Pipeline project, and for the Nevada State Office's protocol for tribal consultation and permitting of cultural resources survey on BLM Lands in Nevada. The topic of Pacific Legacy's collection of artifacts in association with their pedestrian survey of the proposed Ruby Pipeline alternatives was of particular concern. The caucus resulted in a list of questions that were presented to the BLM Nevada State Office, which I would like to address in numerical order of their presentation in this letter:

209. *Do you repudiate the term "Red Book?"*

The term, "Red Book" has been used colloquially by those inside and outside the agency for almost twenty years to refer to the *Cultural Resources Inventory General Guidelines* (fourth edition, 1990). The origin of the name derives from the red cover of the original issue of the manual.

210. *Are you open to consulting with tribes on a government-to-government, meaningful and timely basis on the Ruby Pipeline Project?*

As the BLM affirmed in its letter to the tribes impacted by the Ruby Pipeline project dated January 26 2009, the BLM is committed to conducting robust government-to-government consultation on the Ruby Pipeline project. The BLM recognizes consultation can take many forms and occur at multiple levels. To this end, the BLM has made concerted outreach efforts to cultural resources representatives, elders and leaders from tribes who ascribe cultural patrimony to lands within the BLM's jurisdiction. The BLM has attended multiple meetings of tribal councils to make presentations and answer questions about the project, to learn about tribes' concerns regarding the proposed pipeline, and will continue to do so throughout the progression of project planning. Furthermore, the BLM also has hosted two information

sessions on the project to provide tribes the opportunity to voice concerns about the project. The BLM commits to provide agency representation at any tribal council meeting when attendance is requested, and looks forward to the opportunity to continue productive government-to-government dialogue with the tribes for this project.

211. *Will you allow every tribe to immediately (today) examine the circumstances of the “chain of custody” for the artifacts collected on the Ruby Pipeline project and an opportunity to continue to monitor the collection?*

The BLM Nevada State Office has informed Pacific Legacy of the tribes’ concerns regarding the disposition of the artifacts collected in conjunction with the Ruby Pipeline survey. Pacific Legacy is the cultural resources contractor/BLM permittee for the proponent in Nevada. At this time, the artifacts will remain in Pacific Legacy’s custody in their secured facilities in Nevada. Currently a limited number of obsidian artifacts remain out of state for analysis. The BLM will coordinate with Pacific Legacy to provide a full reporting of the possession and location of all artifacts from their point of collection (including in situ field provenience) to their current disposition.

212. *Will you allow each interested tribe to immediately review the catalogue of all collected artifacts on the Ruby Pipeline project?*

The records presented to the BLM indicate that approximately 2,800 artifacts have been collected by Pacific Legacy on BLM lands in conjunction with the Ruby Pipeline survey. BLM will provide any tribe requesting catalog information, full inventory of all artifacts collected. I have asked the District Managers in Winnemucca and Elko to further enhance the open dialogue with all tribes within Nevada regarding the review the catalogue of all collected artifacts. These offices will be contacting each tribe to set up separate meetings for the review of the catalogue.

213. *Will you allow a favored tribal curatorial repository of the collected artifacts?*

The BLM’s responsibility to provide appropriate curation of artifacts recovered from BLM-managed public lands is mandated by the Archaeological Resources Protection Act (ARPA). ARPA establishes the federal ownership of archaeological materials recovered from federal lands, and charges the Secretary of the Interior with identification of repositories that will curate collections recovered from an ARPA-permitted project. Such repositories must meet standards found in 36CFR79 (Curation of Federally-owned and Administered Archaeological Collections). The Nevada State Museum in Carson City meets these requirements, and has been identified by Pacific Legacy and accepted by BLM Nevada for curation of materials recovered during the Ruby Pipeline inventory. The BLM welcomes tribal input pertaining to other facilities that might be appropriate for curation of the materials recovered in association with Pacific Legacy’s work.

214. *Does the Winnemucca District Manager (Gene Seidlitz) feel that tribal consultation has occurred for all (underlined) pertinent and germane permits for the proposed Ruby Pipeline project in the Winnemucca District?*

Formulation of a work plan involving artifact collection and numerous other issues for the Class III inventory of the Ruby Pipeline Project followed well-established procedures developed in the Elko District Office some years ago. These were extended to the full length of the route under the administration of BLM Nevada to include the Winnemucca District Office area as well. It has not been standard practice in the past to initiate tribal notification prior to implementation of work plans such as that developed for the Class III inventory of the Ruby project. However, based on information from several tribes, I am fully aware of the extent of tribal concern over BLM Nevada’s artifact collection

practices during Class III inventory. Accordingly, in mid-August I directed that all such collection during Class III inventories be halted. I also asked Tom Burke, cultural resources program lead here in the Nevada State Office, to draft explicit guidance on authorizing artifact collection, including procedures for tribal notification. I will be providing tribal governments with a draft of that guidance and soliciting formal comments prior to its implementation.

7. *Will you allow the tribes here today to be empowered with the agenda, issues and circumstances for the next meeting with the tribes?*

The BLM respects the sovereignty of tribal nations and believes that government-to-government consultation should occur on terms acceptable to the tribes and to the BLM. This should include written development of a mutually agreeable agenda, date and location whenever possible. The BLM commits to providing agency representation at tribal council meetings or other venues that provide the best means of disseminating project information and soliciting input from tribal decision makers.

8. *How many Rights-of-Way have been issued for the Ruby Pipeline Project in Nevada?*

BLM has not issued any rights-of-way for the Ruby Pipeline Project in Nevada or any other state.

In closing, I want to take this opportunity to thank you for your continued active participation in government-to-government dialogue regarding the important issues surrounding the BLM's permitting of Rights of Way for the proposed Ruby Pipeline project. The BLM will continue to consult with tribes to identify their concerns, and will take that information into account during the decision-making process.

If you would like to discuss any of the responses provided in this letter, please contact Mark Mackiewicz at (435) 636-3616 or Tom Burke at (775) 861-6415.

Sincerely,



Ron Wenker
State Director, Nevada

cc: List attached