

Appendix E Programmatic Agreement

SF-093-1(010)



STATE OF NEVADA
DEPARTMENT OF CULTURAL AFFAIRS
Nevada State Historic Preservation Office
100 N. Stewart Street
Carson City, Nevada 89701

KENNY C. GUINN
Governor

SCOTT K. SISCO
Interim Director

RONALD M. JAMES
State Historic Preservation Officer

July 22, 2003

Ted P. Bendure
Environmental Program Manager
Federal Highway Administration
705 North Plaza Street Suite 220
Carson City, NV 89701

Dear Mr. ^{Ted}Bendure:

I have reviewed and signed the attached programmatic agreement (PA) for the Boulder City/U. S. 93 Corridor Highway Project. I have kept a copy for SHPO records. Thank you for incorporating SHPO comments into the document.

Sincerely,

A handwritten signature in cursive script that reads "Alice M. Baldrice".

ALICE M. BALDRICA, Deputy
State Historic Preservation Officer

Programmatic Agreement
among
Federal Highway Administration,
Nevada State Historic Preservation Officer,
Nevada Department of Transportation,
National Park Service Lake Mead National Recreation Area,
Bureau of Reclamation,
Western Area Power Administration,
Bureau of Land Management
for the
Boulder City/U.S. 93 Corridor Highway Project

WHEREAS, the U.S. Department of Transportation, Federal Highway Administration (FHWA), proposes to provide financial assistance to the Nevada Department of Transportation (NDOT) for implementation of the Boulder City/U.S. 93 Corridor Highway Project along a new alignment south and east of Boulder City, Nevada; and

WHEREAS, inventories of Historic Properties (defined as properties determined to be eligible for listing on the National register of Historic Places [NRHP]) within the Area of Potential Effect (APE) of the Boulder City/U.S. 93 Corridor Highway Project include an archaeological site inventory and an historic structures inventory (see Appendix A.1),

WHEREAS, a Native American consultation plan was prepared (see Appendix A.2) and, following its preparation, FHWA initiated formal Government-to-Government consultation with Native American groups by sending letters to representatives of seven groups on June 19, 2001 describing the project and the results to date of cultural resource studies, and requesting their response relative to any concerns about cultural resources, traditional religious or cultural properties, or about the overall project, results summarized in a letter submitted to SHPO on August 8, 2001,

WHEREAS, Government-to-Government consultation between the FHWA and Native American groups expressing interest in this project is currently on-going subsequent to the selection of the Preferred Alternative,

WHEREAS, identification and evaluation of effects to Historic Properties: were conducted for all of the proposed alternative alignments for the Boulder City/U.S. 93 Corridor Study, and the portion of the inventories for the Preferred Alternative resulted in the location of 69 sites and historic structures, with 12 sites and historic structures eligible for nomination to the NRHP, and one unevaluated site (Appendix A.3),

WHEREAS, FHWA as the lead Federal agency for compliance with the National Historic Preservation Act (NHPA) (16 United States Code [U.S.C.] 470[f]) has determined that the proposed project may have an effect on properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), and has consulted with the Advisory Council on Historic Preservation (Council) and the Nevada State Historic Preservation Officer (SHPO) pursuant to 36 Code of Federal Regulations (CFR) 800 regulations implementing Section 106 of the NHPA;

WHEREAS, NDOT, the National Park Service Lake Mead National Recreation Area (NPS), The Bureau of Reclamation (Reclamation), Western Area Power Administration (WAPA), and the Bureau of Land Management (BLM) have participated in consultation and have been invited to participate in this Programmatic Agreement (PA); and

WHEREAS, the definitions set forth in 36 CFR 800.16 are incorporated herein by reference and apply throughout this PA;

NOW, THEREFORE, FHWA, NPS, Reclamation, WAPA, BLM, SHPO, and NDOT agree that the proposed undertaking shall be implemented in accordance with the following stipulations to consider the effects of the Boulder City/U.S. 93 Corridor Highway Project on historic properties, and to satisfy FHWA Section 106 responsibilities for all individual aspects of the undertaking:

STIPULATIONS

FHWA shall ensure that the following measures are carried out by, or under the direct supervision of, persons that meet the Secretary of the Interior's Professional Qualification Standards.

1. The APE, and Historic Properties Identification, Evaluation & Treatment

- A. The Area of Potential Effect (APE) includes all potential direct and indirect effects to Historic Properties resulting from any activity associated with the Federal undertaking. These activities include:

Construction of the Boulder City/U.S. 93 Corridor Highway Project from Railroad Pass to the Hoover Dam Bypass Nevada Interchange in the vicinity of the Hacienda Hotel and Casino on U.S. 93, along the Preferred Alternative (Alternative D, the Southern Alternative) as specified in the Boulder City/U.S. 93 Corridor Study Final Environmental Impact Statement and Section 4(f) Evaluation.

Ancillary facilities necessary for the construction of the Boulder City/U.S. 93 Corridor Highway Project may include, but are not limited to, frontage roads, flood control facilities, material sources, construction, and/or utility easements and their associated staging areas and access roads.

The APE may be modified at any time during the project by FHWA, in consultation with the appropriate signatory parties. FHWA shall consult with SHPO on revisions to the APE. The SHPO shall respond within thirty (30) days of receipt of written notice of revisions to the APE.

- B. Unevaluated Site: Should the assessment of effects (see below) lead to a determination that site 26CK23/26CK6291, the Sullivan Turquoise Mine, lies within the APE of this undertaking, further ethnographic research and Native American consultations will be undertaken to evaluate the eligibility of site 26CK23/26CK6291, and shall include the assessment of indirect effects to that site. Native American consultations shall include tribes and interested parties as appropriate known to have traditional and/or cultural ties to the vicinity of this site.
- C. Assessment of Effects: Following the development of a sufficient level of engineering design to allow a refinement of the APE, FHWA, in consultation with the appropriate land managing agencies, Native Americans and other interested parties (such as historical societies, etc.) as appropriate, shall assess the effects to sites within the APE. The effects assessment shall include the determination of the boundaries of site 26CK23/26CK6291.

FHWA shall submit its findings of effects to SHPO. Upon receipt of those findings SHPO shall have thirty (30) days to respond.

- D. **Treatment of Historic Properties:** Following SHPO concurrence with the Assessment of Effects resulting from the implementation of the proposed alternative, mitigation measures, as appropriate, shall be developed for Historic Properties that will be affected, in consultation with the appropriate land managing agencies, SHPO, Native Americans and interested parties as appropriate. FHWA shall consult with these parties to ensure the development of an appropriate Treatment Plan to mitigate project-related effects to historic properties. FHWA shall submit a draft Treatment Plan to the appropriate land managing agencies, Native Americans and interested parties as appropriate, for a 30-day review and comment period. If conflicting comments are received, the FHWA shall consult with the parties involved and attempt to resolve the issue. After review comments are considered, FHWA shall submit a final Treatment Plan to SHPO for a 30-day review and comment period. Recommended forms of treatment, if avoidance is not feasible, are discussed in Stipulation 3, below.

A Memorandum of Agreement (MOA) between the Bureau of Reclamation, FHWA, NDOT, BLM, and the SHPO has been executed addressing the treatment of the Railroad Pass Squatters Camp (26CK1169), on Reclamation land. Treatment of any adverse effects to 26CK1169 resulting from the implementation of this project will be carried out in accordance with the stipulations set forth in that MOA.

2. Procedures for New Right-of-Way

- A. FHWA shall ensure that any areas of new right-of-way and/or APE, not previously surveyed shall be surveyed in consultation with the appropriate land managing agencies, Native Americans and interested parties as appropriate. The results of the surveys shall be reported in a manner consistent with the Secretary of the Interior's Standards and Guidelines and other relevant laws, regulations, and/or guidelines. The FHWA shall further ensure that the appropriate land managing agencies, Native Americans and interested parties as appropriate, are given appropriate opportunity to review and comment on draft reports and recommendations resulting from these surveys. Once FHWA has considered these comments, FHWA shall submit the final draft report to SHPO for a 30-day review and comment period.
- B. FHWA shall consult with the SHPO and appropriate agencies regarding any other changes to the project that would necessitate additional efforts to identify historic properties not previously identified in inventories already undertaken for this project.
- C. Identification efforts may extend beyond the geographic limits of the right-of-way of the Preferred Alternative when the resources being recorded extend beyond that right-of-way and with the permission of the land owner.
- D. FHWA shall ensure that all cultural resources located in the APE, including those not previously identified, are evaluated in consultation with SHPO and the appropriate land managing agencies, Native Americans and interested parties as appropriate, for eligibility to the NRHP prior to the initiation of activities that might affect the cultural resources.
- E. To the extent practicable, cultural resource site eligibility determinations shall be based on inventory and background information or other nondestructive evaluative techniques. If

this information is inadequate to determine the eligibility of a site or to decide treatment options responsive to the information potential of the property, then limited subsurface testing may be used. Subsurface testing shall be limited to the minimum necessary to provide the data to define the nature, density, and distribution of materials in the site.

- F. If FHWA and a federal land management agency disagree regarding the eligibility of a property for listing in the NRHP, FHWA shall consult with the appropriate parties to resolve the disagreement. If the SHPO and FHWA disagree regarding the eligibility of a property for listing in the NRHP, FHWA shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 800. The Keeper's determination shall be considered final.
 - G. Traditional Cultural Properties (TCPs) shall be identified, evaluated, and treated through consultation with Native American group(s) known to have traditional and/or cultural ties to the area. NDOT may contract for data gathering to assist FHWA in identifying, evaluating, and treating TCPs. However, FHWA shall conduct formal consultations. TCP identification, evaluation, and treatment efforts shall be consistent with National Register Bulletin 38 and any applicable Standards and Guidelines of The Secretary of the Interior.
 - H. Information on the location and nature of all cultural resources shall be held confidential to the extent provided by the NHPA, Native American Graves Protection and Repatriation Act (NAGPRA), and Archaeological Resources Protection Act (ARPA).
 - I. FHWA shall submit the results of all new identification and evaluation efforts, determinations of eligibility and assessments of effects to SHPO for a 30-day review and comment period.
- 3. Measures to Avoid, Minimize, or Mitigate Adverse Effects**
- A. For all historic properties within the APE adversely affected by the project, FHWA, in consultation with SHPO, the appropriate land managing agencies, Native Americans, and interested parties as appropriate, shall ensure that adverse effects to each site are avoided, minimized, or mitigated as appropriate under the applicable regulations and guidelines. This may include, but is not limited to, the development and implementation of Treatment Plans, and/or the documentation of historic structures.
 - B. In assessing effects, FHWA, in consultation with SHPO and appropriate land managing agencies, Native Americans, and interested parties as appropriate, shall determine the precise nature of effects (pursuant to 36 CFR 800.6) on historic properties identified in the APE. All treatment shall be done in a manner consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation.
 - C. To the extent practicable, FHWA, in consultation with SHPO and appropriate agencies, shall ensure that NDOT avoids effects to historic properties through project design, or redesign, relocation of facilities, or by other means in a manner consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation.
 - D. When avoidance is not feasible, FHWA, in consultation with SHPO and the appropriate land managing agencies, Native Americans and interested parties as appropriate, shall ensure that NDOT develops an appropriate treatment plan designed to lessen or mitigate project-related effects to historic properties. For properties eligible under criteria (a)

through (c) (36 CFR 60.4), mitigation, other than data recovery, may be considered in the Treatment Plan(s) (e.g., Historic American Building Survey/Historic American Engineering Record [HABS/HAER] recordation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, Treatment Plans shall include provisions (content and number of copies) for a publication for the general public.

FHWA shall submit a draft Treatment Plan to the appropriate land managing agencies, Native Americans and interested parties as appropriate, for a 30-day review and comment period. If conflicting comments are received, the FHWA shall consult with the parties involved and attempt to resolve the issue. After review comments are considered, FHWA shall submit a final Treatment Plan to SHPO for a 30-day review and comment period.

- E. When data recovery is proposed, FHWA, in consultation with SHPO and appropriate land managing agencies, Native Americans and interested parties as appropriate, shall ensure that NDOT develops a Data Recovery Plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37), Treatment of Historic Properties: A Handbook (ACHP, 1980) and in accordance with the principles found within the Advisory Council Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (June 17, 1999).

A draft report on mitigation and treatment activities shall be due to FHWA within twelve (12) months after the completion of the fieldwork associated with the activities, unless otherwise negotiated. FHWA shall submit draft reports to the SHPO, and the appropriate land managing agencies, Native Americans, and interested parties, for a 30-day review and comment period. After review comments are considered, FHWA shall submit a final reports to SHPO and the appropriate land managing agencies, Native Americans, and interested parties.

4. Curation

All records, photographs, maps, field notes, artifacts, and other materials collected or developed for any survey and treatment activities will be curated in a facility that meets the standards set forth in 36 CFR Part 79, at the time the final report associated with the activities is accepted by FHWA. All records, photographs, maps, field notes, artifacts, and other materials collected or developed for any survey and treatment activities conducted on NPS and USBR lands will be returned to the appropriate agency for curating. All records, photographs, maps, field notes, artifacts, and other materials collected or developed for survey and treatment activities conducted on other federal and non-federal lands will be curated in a facility approved by FHWA in consultation with the appropriate land managing agency. Curation of records, photographs, maps, field notes, artifacts, and other materials collected from or developed for any treatment activities shall be stipulated in all treatment plans, and shall meet this Stipulation.

5. Human Remains

In the event that human remains are discovered during this project, construction in the immediate vicinity shall be halted and FHWA shall be notified immediately. If human remains and/or associated grave goods are found on federal lands, the appropriate land managing agency shall be notified immediately, and the provisions of NAGPRA (43CFR10) shall be followed. If human remains are found on state or private lands, the notification procedures and provisions of the

Nevada Revised Statute (NRS) 383 shall be followed. FHWA and NDOT shall ensure that any human remains found during this project are treated with respect.

6. Discovery Situations

- A. Prior to initiating any activities within the APE, NDOT will provide FHWA and the appropriate land managing agencies with a list of and schedule for NDOT employees or their consultants who are empowered to halt all activities in discovery situations and who will be responsible for notifying FHWA of any discoveries. At least one of these employees shall be present during all construction activities.
- B. If cultural resources are discovered, undertaking-related activities within 30 meters of the discovery will cease immediately and NDOT shall notify FHWA. FHWA shall notify SHPO, the appropriate land managing agency and appropriate Native American group(s), regarding the nature of the find. A professional archaeologist shall examine the find to determine if it is cultural and to make an initial recommendation of eligibility to the NRHP. If the find is found to be non-cultural, then project activities may be allowed to proceed. If FHWA determines the find to be ineligible in consultation with the appropriate land managing agency, FHWA shall request SHPO concurrence on that determination and proceed with project activities. FHWA shall ensure that the procedures for determining eligibility, assessing effects, and avoidance or treatment outlined in this PA are followed, in consultation with the SHPO and the appropriate land managing agency, Native Americans, and interested parties as appropriate.

1. If FHWA and SHPO agree that a historic property is eligible for listing to the NRHP, FHWA in cooperation with the appropriate land managing agency, Native Americans will evaluate the potential effect to that historic property. If FHWA finds that the project will have an adverse effect to the eligible historic property, then FHWA will either continue to avoid the adverse effects, or will develop a Treatment Plan in consultation with SHPO and appropriate consulting parties. Once a final draft of the treatment plan is completed, the FHWA will submit the plan to the SHPO for review and comment.

2. For such discovery situations, SHPO and the land management agencies agree to handle requests and provide review comments on an expedited basis of not more than five (5) working days from their receipt.

- C. Should disputes arise concerning discovery situations that cannot be otherwise resolved, FHWA shall ask the Council to resolve the dispute. To facilitate this process, FHWA will provide the Council with copies of all information on the discovery. In addition, consultation with the Council shall be by the most expeditious means available, including telephone, e-mail, or fax. The Council shall provide its comments, if any, within three (3) working days of a request, and having received all relevant information, from FHWA.

If the Council fails to respond within three (3) working days of the receipt of a request, FHWA shall presume concurrence with FHWA's findings and recommendations and proceed accordingly.

FHWA shall take any Council comment into account, and FHWA shall notify the Council and SHPO, and any consulting party, of its resolution of the issue.

The parties may continue all actions under this agreement that are not the subject of the dispute (if any).

- E. FHWA shall ensure that reports of mitigation efforts for discovery situations are completed in a timely manner and conform to the Department of Interior's Standards and Guidelines for Archaeology and Historic Preservation. Drafts of such reports shall be submitted to SHPO, appropriate agencies, and appropriate Native American groups for a 30-day review and comment period. Final reports shall address review comments and shall be submitted to appropriate land managing agencies, SHPO, Council, and interested persons as appropriate for information purposes.
- F. NDOT activities in the area of the discovery will be halted until FHWA notifies NDOT that mitigation is complete and activities can resume.

7. Dispute Resolution

- A. If SHPO, the land managing agency, or any appropriate group(s) and individuals object within 30 calendar days to any action taken by FHWA pursuant to this PA, FHWA shall immediately consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:
 - Provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding the dispute; or
 - Notify FHWA that it will comment pursuant to applicable regulations and proceed to comment. Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with reference to the subject of the dispute.
- B. At any time during implementation of the measures stipulated in this PA should an objection to any such measure or its manner of implementation be raised by a member of the public, FHWA shall take the objection into account and consult, in an appropriate manner as needed, with the objecting party, the appropriate land managing agency, SHPO, and/or the Council to resolve the objection.
- C. Any recommendation or comment provided by the Council shall be understood to pertain only to the subject of the dispute; FHWA's responsibility to carry out all actions under this PA that are not the subjects of the dispute shall remain unchanged.

8. Amendment

Any party to this PA may request that it be amended, whereupon the parties to this PA will consult to consider such amendment, as appropriate.

9. Termination

Any party to this PA may terminate it by providing 30 days written notice to the other parties, provided that the parties consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, FHWA

shall comply with the regulations in effect at the time with regard to all individual aspects of the undertaking that would otherwise be considered under the terms of this PA.

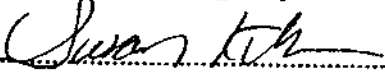
This PA will terminate upon the fulfillment of all stipulations herein.

10. Failure to Carry out the Terms of this PA

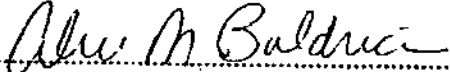
In the event FHWA does not carry out the terms of this PA, FHWA shall comply with the regulations in effect at the time with regards to all individual aspects of the undertaking that would otherwise be considered under the terms of this PA.

Execution and implementation of this Programmatic Agreement evidences that FHWA has satisfied its Section 106 responsibilities for all individual aspects of the undertaking. In the event of termination, FHWA shall comply with the regulations in effect at the time with regard to all individual aspects of the undertaking that would otherwise be considered under the terms of this PA.

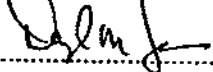
Approved: Federal Highway Administration

By:  7/8/03
Susan Klekar, Division Administrator, FHWA Date

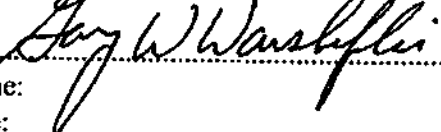
Approved: Nevada Historic Preservation Office

By:  7/22/03
Alice M. Baldrice, Deputy, State Historic Preservation Officer Date

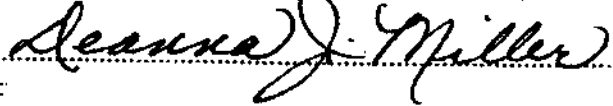
Concur: Nevada Department of Transportation

By:  7/8/03
Daryl James, Chief, Environmental Services Division, NDOT Date

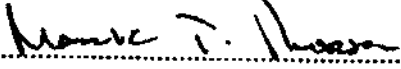
Concur: National Park Service, Lake Mead National Recreation Area

By:  7/11/03
Name: Date
Title:


Concur: United States Department of The Interior, Bureau of Reclamation

By:  7/11/03
Name: Date
Title:

Concur: United States Department of The Interior, Bureau of Land Management

By:  7/14/03
Name: Date
Title:

Concur: Western Area Power Administration

By:  7/15/03
Name: Date
Title:

APPENDIX A

Cultural Resource Site Inventories

Blair, L.M., J.R. Wedding, W.J. White and J. Ambos. A Cultural Resource Investigation of Proposed Routes For The Boulder City/U.S. 93 Corridor Study. Harry Reid Center for Environmental Studies. July, 2001.

Associated Cultural Resource Experts. Boulder City / U.S. 93 Corridor Study Historic Structures Survey. September, 2002.

Wedding, J.R., and W. G. White. A Cultural Resource Investigation of Proposed Routes For The Boulder City/U.S. 93 Corridor Study. Addendum I Responses to SHPO Comments. Harry Reid Center for Environmental Studies. October, 2001.

Native American Consultation

During the initial stages of project development, HRC assembled a plan for Native American Consultation (Blair and Lawrence, 2000, Native American Consultation Plan For The Boulder City / U.S. 93 Corridor Study). Based on that plan, FHWA initiated formal Government-to-Government consultation with Native American groups with an affinity to the Eldorado Valley. FHWA started the consultation process by sending letters to representatives of seven tribes or groups on June 19, 2001, informing them of the project and the results to date of cultural resource studies, and requesting their response relative to any concerns about cultural resources, traditional religious or cultural properties, or about the overall project. The groups contacted were

The Las Vegas Paiute Tribe

The Pahrump Paiute Tribe

The Moapa Business Council (Moapa Paiute)

Chemehuevi Indian Tribe

AhaMaKav Cultural Society of the Fort Mojave Indian Tribe

Colorado River Indian Tribes

Fort Mojave Indian Tribe

Four recipients had no response to FHWA's letter request for consultation, and three requested additional work and/or information. After review, FHWA determined that these requests will be addressed prior to implementation of the preferred alternative and subsequent to a final determination of effects from that implementation on historic properties. Consultations with appropriate Native American groups are on-going and will include Puebloan groups that may have interest in the unevaluated site identified in Stipulation 1B of this PA.

Historic Properties Identified Within The APE of The Preferred Alternative

Site Number	Name*	Facility Ownership	Land Management Agency or Land Ownership
26CK23/6291	Turquoise Mine	N/A	National Park Service
26CK1169/ 3024/5413	Railroad Pass Squatters' Camp	N/A	Bureau of Reclamation; Bureau of Land Management
26CK5414	Boulder City Branch Railroad	State of Nevada	Bureau of Reclamation
26CK6237	Los Angeles Bureau of Power and Light Transmission Line 2 (Hoover-Mead 230 kV Line #7)	Western Area Power Administration	Western Area Power Administration; City of Boulder City; National Park Service
26CK6238	Los Angeles Bureau of Power and Light Transmission Line 1 (Hoover-Mead 230 kV Line #8)	Western Area Power Administration	Western Area Power Administration; City of Boulder City; National Park Service
26CK6240	Metropolitan Water District Line 1 (Hoover- Mead 230 kV Line #4 & #5)	Western Area Power Administration	Western Area Power Administration; City of Boulder City; National Park Service
26CK6242	Los Angeles Bureau of Power and Light Transmission Line Transmission Line 3 (Hoover- Mead 230 kV Line #6)	Western Area Power Administration	Western Area Power Administration; City of Boulder City; National Park Service
26CK6246	Old Highway 95	Clark County	Bureau of Land Management
26CK6249	Southern California Edison North Transmission Line (Hoover- Mead 230 kV Line #2)	Southern California Edison	City of Boulder City
26CK6250	Southern California Edison South Transmission Line (Hoover- Mead 230 kV Line #3)	Southern California Edison	City of Boulder City
26CK6251	Hoover-Basic South Transmission Line (Hoover- Mead 230 kV Line #1)	Western Area Power Administration	Bureau of Reclamation; City of Boulder City; National Park Service
26CK6270	Prehistoric Lithic Reduction Site	N/A	City of Boulder City
26CK6277	Historic Mining Camp	N/A	City of Boulder City

* Western Area Power Administration designations in parentheses