UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

April 19, 2016

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Washoe Tribe of Nevada and California
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Rebecca Palmer
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Julianne Polanco
State Historic Preservation Officer
California Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Mr. Cruz, Ms. Palmer, and Ms. Polanco:

The U.S. Environmental Protection Agency Region 9 (EPA) would like to thank each of you for your comments on the draft protocols sent to you on March 23 for compliance with Section 106 of the National Historic Preservation Act (54 U.S.C. §306108, and it's implementing regulations at 36 C.F.R. Part 800) (NHPA) for Remedial Investigation and Feasibility Study (RI/FS) activities at the Leviathan Mine Superfund Site.

EPA has revised the draft protocols based on the comments of the Washoe Tribal Historic Preservation Office (THPO), the Nevada State Historic Preservation Office, and the California State Historic Preservation Office (collectively, SHPOs).

The RI/FS 2016 Field Season activities with NHPA implications fall into three general categories. For more detail on the proposed activities for each category, please refer to Table 1 (attached): *Summary of 2016 Sampling Tasks/Locations within the Expanded Area of Potential Effect*[1]. Please note that for all activities listed below, Class I records searches are currently in progress, will be completed prior to any field activities, will be utilized by archaeological and tribal monitors in the field to inform sampling location decisions, and will be included in the end-of-month and end-of-year reporting by EPA. The protocols that we have agreed to based on our conversations for an efficient Section 106 consultation for each of those categories are outlined below.

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[1] The Item numbers for the tasks described below track the numbers in the attached Table 1.
[2] Copies would be provided to the land-managing agencies, THPO, and relevant SHPOs.

A. Item #1: Plant/Soil Sampling:

Treat the plant surveys as a "no potential for effect" under 36 C.F.R. 800.3(a) (1), with the following conditions:

1. The plant sampling and soil survey teams are accompanied by an archaeological monitor and a tribal monitor;
2. The sampling activity will avoid all cultural resources;
3. The plant sampling and soil survey team identifies a specific target plant and associated target soil survey location;
4. The archaeological monitor and tribal monitor review the ground surface around the plant and the 3 meters surrounding the soil sample location, noting the location of the plant, any soil sample, and any cultural resources noted during the review;
5. If an archaeological resource or tribal resource is located, the activity will be relocated so as not to disturb a resource; this could involve finding a soil sampling location near the same plant that is 3 meters from any cultural resource, or if that is not possible, a different plant would be selected;
6. All discovered cultural resources shall be recorded regardless of whether the sampling activity has been relocated to avoid it. If there is time, the recordation could occur during sampling activities; if not, a return visit shall be required; and
7. EPA shall provide a monthly letter summary report to the consulting parties[2], with all such information compiled in a final supplemental Class III Inventory report (as a supplement to the Humboldt-Toiyabe National Forest, Cultural Resources Narrative Report for the Leviathan Mine Cultural Resources Inventory, August 2014) to be submitted at the conclusion of the 2016 field season to the land-managing agencies, THPO and SHPOs for review. The monthly report will be provided to the parties within 30 days after the end of the reporting month, and will include a letter summarizing the month's activities and cultural resources found, and the actions taken to avoid any such resources. The monthly report will be accompanied by site records on the relevant SHPO forms, and a map showing the location of the sampling activities and any cultural resources on a USGS 7.5' map or a map approved by the relevant SHPO.

B. Items ## 2, 3, 5, and 6: Soil Investigation for Ore Pile #1, Reference Soil Investigations, River Ranch Soil Investigation, East Fork Carson River Investigation (The protocols for these activities are essentially the same as "A" above, but without the contingency of the soil sampling location being tied to specific plants):

Treat these activities as a "no potential for effect" under 36 C.F.R. 800.3(a) (1), with the following conditions:

1. The sampling teams are accompanied by an archaeological monitor and a tribal monitor;
2. The sampling activity will avoid all cultural resources;
3. The sampling team identifies a specific target sampling location;
4. The archaeological monitor and tribal monitor review the ground surface within 3 meters surrounding the sample location, noting the location of the sample location, and any cultural resources noted during the review;
5. If an archaeological resource or tribal resource is located, the activity will be relocated so as not to disturb a resource;

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6. All discovered cultural resources shall be recorded regardless of whether the sampling activity has been relocated to avoid it. If there is time, the recordation could occur during sampling activities; if not, a return visit shall be required; and
7. EPA shall provide a monthly letter summary report to the consulting parties[2], with all such information compiled into a final supplemental Class III inventory report (as a supplement to the Humboldt-Toiyabe National Forest, Cultural Resources Narrative Report for the Leviathan Mine Cultural Resources Inventory, August 2014) to be submitted at the conclusion of the 2016 field season to the land-managing agencies, THPO and SHPOs for review. The monthly report will be provided to the parties within 30 days after the end of the reporting month, and will include a letter summarizing the month's activities and cultural resources found, and the actions taken to avoid any such resources. The monthly report will be accompanied by site records on the relevant SHPO forms, and a map showing the location of the sampling activities and any cultural resources on a USGS 7.5' map or a map approved by the relevant SHPO.

C. Item #4: Reference Groundwater Investigations (New reference well locations):

1. Class III surveys will be performed for the well pads, access and a reasonable buffer (usually 15-30m) around such activities. A tribal monitor will be present during the survey.
2. If the Class III survey and tribal monitor confirm there are no cultural resources within the survey area, then drilling may proceed.
3. If the survey or tribal monitor observes evidence of cultural resources, the drilling team, the archaeologist and the tribal monitor will attempt to re-configure or relocate the drill pad or access to avoid such properties or resources. If it is not possible to relocate the drill pad due to topography or technical concerns (e.g., there is not another suitable location to reach the intended monitoring depth), and EPA deems the well essential, EPA will initiate further consultation with the appropriate SHPO or THPO for such well pad.
4. Monitors are only required during the Class III survey and the initial stripping of the well pad location. In the unlikely event that deeper cultural resources are subsequently discovered during drill pad construction or drilling, all activities will cease at the drilling location, the discovery secured, and EPA contacted to initiate further consultation with the appropriate SHPO/THPO regarding the discovery.
5. EPA shall provide a monthly letter summary report to the consulting parties[2], with all such information compiled into a final supplemental Class III inventory report (as a supplement to the Humboldt-Toiyabe National Forest, Cultural Resources Narrative Report for the Leviathan Mine Cultural Resources Inventory, August 2014) to be submitted at the conclusion of the 2016 field season to the land-managing agencies, THPO and SHPOs for review. The monthly report will be provided to the parties within 30 days after the end of the reporting month, and will include a letter summarizing the month's activities and cultural resources found, and the actions taken to avoid any such resources. The monthly report will be accompanied by site records on the relevant SHPO forms, and a map showing the location of the sampling activities and any cultural resources on a USGS 7.5' map or a map approved by the relevant SHPO.

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We look forward to implementing the 2016 field activities using this agreed upon approach. If you have any questions about these protocols or the RI/FS, please feel free to contact EPA's Remedial Project Manager Lynda Deschambault at (415) 947-4183 or Deschambault.lynda@epa.gov.

Sincerely,

John Lyons
Acting Assistant Director
Superfund Division

Attachment

Cc by Email only:

Kenneth Maas, United States Forest Service
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David Coupe, California Regional Water Quality Control Board, Attorney
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TABLE 1
SUMMARY OF 2016 SAMPLING TASKS/LOCATIONS WITHIN THE EXPANDED AREA OF POTENTIAL EFFECT
Leviathan Mine Site
Alpine County, California

Item	Task	Description of Ground Disturbance Activity	Approximate Number of Locations	Ideal Dates for Implementation	Applicable Work Plan/TSAP	Approval Status	Property Ownership
1	Plant/Soil (On-Property, Off-Property, and Reference Areas): select plants located in the expanded APE	Collect plant and soil samples at locations outside the floodplain for following plants: • Mule's Ear • Mormon Tea • Common Snowberry • Pinyon Pine The location of the soil sample depends on where the plant is found. Soil Samples will be collected from 0 to 2.0 feet. Several holes may be needed to collect a composite sample if more than one plant is to be collected.	California: 10 Nevada: 4	• Woolly Mules Ear: June 1-July 15 • Mormon Tea: June 1-August 31 • Common Snowberry: July 1-August 31 • Pinyon Pine: September 1-November 1	On-Property, Off-Property, Reference Area FRI Work Plan - Plant and Habitat Related Soil Sampling, submitted 2/5/16	Direction to implement with comment. Revised Work Plan Pending U.S. EPA Review	Either USFS, BIA, or Private (depending on where the plant is discovered) Mountaineer and Cottonwood Creeks are on USFS owned land Bryant Creek is either on private, USFS, or BIA land
2	Soil Investigation (Off-Property Area): Ore Pile #1	Collect soil samples from 0 to 6.0 feet.	California: 0 Nevada: 5	July/August	Off-Property Area FRI Work Plan, Revised Addendum No. 2; 3/3/16 Status Update for Investigation of Suspected Ore Piles	U.S. EPA approval with comments 8/5/13	Private (5)
3	Reference Soil Investigations (On-Property and Off-Property Study Areas): • terrestrial soil (on property); • ore-pile reference soil (off property)	Terrestrial Soil: Collect soil samples from 0 to 6.0 feet at 48 locations. Ore-pile Reference Soil: Collect samples from 0 to 2.0 feet at 16 locations.	California: 48 Nevada: 16	July/August	Preliminary Draft Final Reference Area FRI Work Plan, submitted 3/3/16	Pending technical discussion scheduled on 3/28/16, and submittal and approval of final on 4/4/16 Note: U.S. EPA provided approval to implement with comments on 7/10/15	RWQCB (48): Sample IDs: WP-379 through WP-426 Private(13): Sample IDs: OP-03(A-H), OP-05 (A-E) BIA (8): Sample IDs: OP-04(A-H)
4	Reference Groundwater Investigations - new reference well locations	• LOC-37: Blade access road ~700 ft. x ~20 ft. from existing access road. Construct drill pad ~20 ft. x ~60 ft. Anticipated borehole size: 8-in. dia. by ~150 ft. • LOC-38S & 38D: Locations expected on the shoulder of the road. Construct drill pad in previously disturbed and surveyed area (~20 ft. ft. x ~60 ft.). Anticipated borehole size: 8-in. dia. by ~50 ft. and ~125 ft. (Note: Location surveyed as part of original APE) • LOC-42: Use bulldozer to cut ~400-ft. by ~20 ft. through exposed bedrock. Construct drill pad ~20 ft. x ~60 ft.	California: up to 8 Nevada: 0	June through October	Preliminary Draft Final Reference Area FRI Work Plan and 2016 Drilling Work Plan both documents submitted on 3/3/16.	Pending EPA review and technical discussion on 3/28/16, and submittal and approval of Final Reference Area FRI Work Plan on 4/4/16	USFS (6): Potential Location IDs: LOC-38S, LOC-38D, LOC-39, LOC-40S, LOC-40D, and LOC-41 RWQCB (2): Potential location IDs: LOC-37, LOC-42

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TABLE 1
SUMMARY OF 2016 SAMPLING TASKS/LOCATIONS WITHIN THE EXPANDED AREA OF POTENTIAL EFFECT
Leviathan Mine Site
Alpine County, California

Item	Task	Description of Ground Disturbance Activity	Approximate Number of Locations	Ideal Dates for Implementation	Applicable Work Plan/TSAP	Approval Status	Property Ownership
		Anticipated borehole size: 8-in. dia. by ~50 ft. • LOC-39: Prepare drill pad adjacent to the road (~20 ft. x ~80 ft.). Anticipated borehole size: 8-in. dia. by ~150 ft. • LOC-40S & ~40D: Locations expected on the shoulder of the road. Construct drill pad ~20 ft. x ~80 ft. Anticipated borehole size: 8-in. dia. by ~65 ft. and ~125 ft. • LOC-41: Blade access road ~300 ft. by ~20 ft. from existing access road. Construct drill pad ~20 ft. x ~80 ft. Anticipated borehole size: 8-in. dia. by: ~125 feet.					
5	River Ranch Soil Investigation (Supplemental Study Area and Reference Study Area): limited soil sampling locations in the expanded APE	RRU-001 through RRU-015: Collect soil samples from 0.0 to 0.5 feet bgs. RR-55 through RR-61: Collect soil samples from 0.0 2.0 feet. RR-58: Collect soil samples from 2.0 to 4.0 and 4.0 to 6.0 feet.	California: 10 Nevada: 12	July	Final TSAP for FPXRF Surveys and Sampling for Laboratory Analysis, Final Revised/Accelerated River Ranch Soil Investigation Approach; RTC and transmittal of final TSAP submitted to U.S. EPA, on 11/12/15	Pending U.S. EPA review	BIA (8): Sample IDs: RR-57 through RR60 and RRU-11 through RRU-15 Private (3): Sample IDs: RR-55 RR-56, and RR-61 USFS (10): Sample IDs: RRU-01 through RRU-10
6	East Fork Carson River Investigation (Supplemental Study Area)	Collect soil samples at eight transects. Each transect will have three locations. Each location will be sampled from 0 to 0.5 feet, 1.5 to 2.0 feet and 5 to 6 feet. On two transects, one additional soil cores will be collected from 0.0 to 6.0 feet each.	California: 12 Nevada: 12	August/September (when the stage of the river is low)	Draft Off-Property Area FRI Work Plan Addendum No. 4, TSAP for Fluvial Deposits Sampling in the East Fork Carson River; submitted to U.S. EPA on 1/8/16	Pending U.S. EPA Review	Private (3): Sample Transect TR-41 USFS (21): Sample Transects TR-35 through TR-40 and TR-42

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