

The Humboldt Project Conveyance Act, Title VIII of Public Law 107-282 (the "Conveyance Act"), provides for the conveyance of the right, title and interest of the United States in the Humboldt Project, together with associated water rights and improvements to the State of Nevada, the Pershing County Water Control District ("District"), Lander County and Pershing County. Of the 82,970 acres being transferred, approximately 55% of the acreage scheduled to be transferred is scheduled to go to the State. The lands include a portion of the Battle Mountain Community Pasture, Rye Patch Reservoir lands, and Humboldt Sink lands.

Consistent with provisions of the Conveyance Act, before any transfer of title may occur, the Secretary of the Interior must complete all actions as required under the National Environmental Policy Act of 1969 ("NEPA") and other applicable law. NEPA responsibilities include preservation of important historic, cultural and natural aspects of our heritage. 42 U.S.C. §4331. The Bureau of Reclamation ("Reclamation"), lead agency for the Humboldt Conveyance, is required to comply with the requirements of the National Historic Preservation Act ("NHPA") (Pub L. No. 899-665, as amended) and its implementing regulations (36 C.F.R., part 800), as well as the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act.

The Conveyance Act provides that costs associated with any review required under NEPA shall be paid in equal shares by the Secretary and the entity receiving title to the land or facility. While the State was initially exempted from these expenditures under the Act, with the passage of the Energy and Water Development Appropriations Act of 2004, Public Law 108-137 (the "Appropriations Act"), the State must pay its share of NEPA costs which exceed \$270,000. Included in the NEPA costs are costs associated with cultural resource evaluation and mitigation.

Under Section 106 of the NHPA, federal agencies are required to take into account the effects of their undertaking on historic properties. The federal agency must work with the State Historic Preservation Officer ("SHPO"), as well as other parties, to identify historic properties within the area of potential effects of the federal action. Once the historic properties are identified, the impact of the undertaking must be assessed, and consideration given to alternatives which might lessen or avoid any impact. When adverse effects cannot be avoided, the federal agency will seek measure to reduce or minimize them.

While it would appear that no adverse effect would occur merely from the transfer of title from the United States to the State, the District and the Counties, Section 106 regulations provide that adverse effects on historic properties include the transfer, lease or sale of property out of Federal ownership or control unless there are adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the a property's historical significance. 36 C.F.R. § 800.5.

Estimated costs for the State associated with the cultural resource evaluation and mitigation range from – The financial liability is such that the success of the title transfer comes into question.

EXHIBIT C Lands	Document consists of 6 pages
<input checked="" type="checkbox"/> Entire document provided.	
<input type="checkbox"/> Due to size limitations, pages ____ through ____ provided.	
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us).	
Meeting Date 05/06/04	

A possible solution to the problem might be for the legislature to enact legislation which would create enforceable restrictions and conditions on State lands so that long-term preservation of historic properties would be insured.

Such legislation of necessity would need to provide similar protections to cultural resources. California's Public Resources Code §§ 5097.1 -5097.6 and § 21083.2 provide a starting place for legislation which might adequately address preservation concerns.

PCWCD-Bennie B. Hodges

From: "Laura Schroeder" <schroeder@water-law.com>
To: "PCWCD-Bennie B. Hodges"
Sent: Wednesday, May 05, 2004 7:56 PM
Attach: header.htm; header.htm
Subject: FW: PCWCD

PUBLIC RESOURCES CODE

SECTION 5097-5097.6

5097. As used in this chapter, "state lands" means lands owned by, or under the jurisdiction of, the state or any state agency. It does not include lands owned by, or under the jurisdiction of a city, county, or district, or fire trails under the jurisdiction of the Division of Forestry in the Department of Conservation.

5097.1. Prior to the commencement of construction of any major public works project on any state lands, the state agency proposing to construct the project, or on whose behalf the project is to be constructed, may submit to the State Department of Parks and Recreation general plans sufficient to indicate the nature of the project, its location, and the excavations which will be undertaken in connection with the project.

5097.2. Upon receipt of plans for a proposed construction project upon state lands, the department may conduct an archaeological site survey on the affected state lands in order to determine whether the lands may contain any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological sites, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historical feature. The department shall submit to the state agency, by or on whose behalf the project is to be constructed, its recommendations concerning the preservation, photographing, recording, or excavation for, any archaeological, paleontological, or historical features which may be located upon the lands.

5097.3. The state agency, by or on whose behalf public works are to be constructed on state lands, may undertake such surveys, excavations, or other operations on the state lands as it determines to be necessary to preserve or record any archaeological, paleontological, or historical features, including rock art, which may be located on the lands, after receiving the recommendations of the department, or the state agency may contract with the department to undertake those operations. The department may carry out the operations.

5097.4. No archaeological program conducted by the Department of

Parks and Recreation shall impair, impede or delay any state construction project.

5097.5. (a) No person shall knowingly and willfully excavate upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over the lands. Violation of this section is a misdemeanor.

(b) As used in this section, "public lands" means lands owned by, or under the jurisdiction of, the state, or any city, county, district, authority, or public corporation, or any agency thereof.

5097.6. Expenditures to carry out the purposes of this chapter shall be made only pursuant to legislative appropriation for these purposes or by contract with other state agencies.

Also there is an additional CEQA statute which help protect and assess historical resources.

21083.2. (a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

(b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

(1) Planning construction to avoid archaeological sites.

(2) Deeding archaeological sites into permanent conservation easements.

(3) Capping or covering archaeological sites with a layer of soil before building on the sites.

(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American

culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

(d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

(e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars (\$200) per unit for any of the next 99 units.

(B) One hundred fifty dollars (\$150) per unit for any of the next 400 units.

(C) One hundred dollars (\$100) per unit in excess of 500 units.

(f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(h) As used in this section, "nonunique archaeological resource"

means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

(i) As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.

(j) This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.

(k) Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.

(l) Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.