



National Park Service
U.S. Department of the Interior

Lassen Volcanic National Park
Date: 06/07/2011

ASSESSMENT OF ACTIONS HAVING AN EFFECT ON CULTURAL RESOURCES

A. DESCRIPTION OF UNDERTAKING

1. **Park:** Lassen Volcanic National Park

2. Project Description:

Project Name: Kings Creek Water Rights Exchange Agreement

Prepared by: Louise Johnson **Date Prepared:** **Telephone:** 530-595-4444

PEPC Project Number: 32706

Locations:

Describe project and area of potential effects (as defined in 36 CFR 800.2[c])

(Refer to the attached Preliminary Exchange Agreement file)

ISSUE: Water Rights Resolution within Lassen Volcanic National Park

Key Points:

* The NPS seeks resolution to a complex series of surface water diversions from within the park to several adjacent landowners in the Warner Valley Area of Lassen Volcanic National Park. * Water is diverted from park land and used by adjacent private landowners for irrigation and personal use in summer use homes. Diversion of surface water occurs at three park locations to adjacent facilities and properties. * Significant manipulation of natural resources has occurred to establish and maintain water diversion features. Water storage tanks and pipes have been constructed within the park.

Background:

* Warner Valley extends from within the southeast part of the park, beyond the park boundary, into adjacent private lands. Water flows most of the year in this valley in Kings Creek, Cold Spring, Sunflower Flat Spring and their associated tributaries. * Mr. David Lee is owner and proprietor of the "Lee Family Property." Lee contends that he inherited a pre-1904 water right with the inheritance of the Lee Family Property. Lee predecessors maintained the water diversion for use on his property up to the present. A license for appropriation and use of water was issued to the Lee's in 1924 from the California Department of Public Works for Kings Creek. This portion of land was then annexed to the park in 1930. * Lee makes a similar assertion that water rights for a diversion of a Juniper Creek tributary stream for areas in Warner Valley known as Sunflower Flat and Cold Springs prior to NPS annexation of the land. Water was to be used for a resort adjacent to the park that that was never developed.

Current Status:

* Mr. Lee holds a valid claim to appropriate from Kings Creek, Cold Springs, and Sunflower Flat. Current licenses show that the licensee is allowed 0.25 cfs from Sunflower Flat, and 0.37 cfs from Cold Springs. However, the NPS has no record of approving the manner in which natural resources have been manipulated to divert water to the adjacent landowners. No approval can be found for private landowners to maintain and improve access roadways, and use mechanized vehicles to access and maintain the diversions. * Natural resource damage in the park includes 0.75 miles of active and abandoned stream channel diversions, access road improvements, invasive/exotic plant introduction, riparian plant trimming and construction of water storage tanks with associated piping. Bulldozers and all-terrain vehicles have been used in park lands to maintain water diversion features.

Resolution:

* The National Park Service seeks to work with Lee to find a suitable remedy to natural resource degradation within the park, while allowing Lee to exercise a valid water right * In June of 2010, a preliminary exchange agreement was entered into by Mr. Lee and the park with resolution scenarios that include several components. * NPS issues a special use permit for conveyance of water use, and land manipulation for Sunflower Flat and Cold Springs water and diversion conveyances. Conditions will be placed on access, land manipulation, types of tools to be used. Water extraction amounts are already regulated by the existing water license. * The water rights owners will quit claim their right to extract water from Kings Creek. * The licensee will establish a water district or association comprised of the current water users. The water district will be the named easement owner. * This scenario was proposed by Mr. Lee.

3. Has the area of potential effects been surveyed to identify cultural resources?

☒ **No**

☐ **Yes**

Source or reference:

Check here if no known cultural resources will be affected. (If this is because area has been disturbed, please explain or attach additional information to show the disturbance

☒ **was so extensive as to preclude intact cultural deposits.)**

4. Potentially Affected Resource(s):

5. The proposed action will: (check as many as apply)

☐ **Destroy, remove, or alter features/elements from a historic structure**

☐ **Replace historic features/elements in kind**

☐ **Add non-historic features/elements to a historic structure**

☐ **Alter or remove features/elements of a historic setting or environment (inc. terrain)
Add non-historic features/elements (inc. visual, audible, or atmospheric) to a historic
setting or cultural landscape**

☐ **Disturb, destroy, or make archeological resources inaccessible**

☐ **Disturb, destroy, or make ethnographic resources inaccessible**

☐ **Potentially affect presently unidentified cultural resources**

☐ **Begin or contribute to deterioration of historic features, terrain, setting, landscape**

_____ elements, or archeological or ethnographic resources
No _____ Involve a real property transaction (exchange, sale, or lease of land or structures)
_____ Other (please specify): _____

6. Supporting Study Data:

(Attach if feasible; if action is in a plan, EA or EIS, give name and project or page number.)

B. REVIEWS BY CULTURAL RESOURCE SPECIALISTS

The park 106 coordinator requested review by the park's cultural resource specialist/advisors as indicated by check-off boxes or as follows:

No Reviews From: Curator, Archeologist, Historical Architect, Historian, 106 Advisor, Other Advisor, Anthropologist, Historical Landscape Architect

C. PARK SECTION 106 COORDINATOR'S REVIEW AND RECOMMENDATIONS

1. Assessment of Effect:

☒ No Historic Properties Affected ☐ No Adverse Effect ☐ Adverse Effect

2. Documentation Method:

☐ **A. STANDARD 36 CFR PART 800 CONSULTATION**

Further consultation under 36 CFR Part 800 is needed.

☐ **B. STREAMLINED REVIEW UNDER THE 2008 SERVICEWIDE PROGRAMMATIC AGREEMENT (PA)**

The above action meets all conditions for a streamlined review under section III of the 2008 Servicewide PA for Section 106 compliance.

APPLICABLE STREAMLINED REVIEW Criteria
(Specify 1-16 of the list of streamlined review criteria.)

☐ **C. PLAN-RELATED UNDERTAKING**

Consultation and review of the proposed undertaking were completed in the context of a plan review process, in accordance with the 2008 Servicewide PA and 36 CFR Part 800.

Specify plan/EA/EIS:

☐ **D. UNDERTAKING RELATED TO ANOTHER AGREEMENT**

The proposed undertaking is covered for Section 106 purposes under another document such as a statewide agreement established in accord with 36 CFR 800.7 or counterpart regulations.

Specify: _____

☐ E. COMBINED NEPA/NHPA Document

Documentation is required for the preparation of an EA/FONSI or an EIS/ROD has been developed and used so as also to meet the requirements of 36 CFR 800.3 through 800.6

☒ F. No Potential to Cause Effects [800.3(a)(1)]

☐ G. Memo to SHPO/THPO

☐ H. Memo to ACHP

3. Additional Consulting Parties Information:

Additional Consulting Parties: No

4. Stipulations and Conditions:

Following are listed any stipulations or conditions necessary to ensure that the assessment of effect above is consistent with 36 CFR Part 800 criteria of effect or to avoid or reduce potential adverse effects.

5. Mitigations/Treatment Measures:

Measures to prevent or minimize loss or impairment of historic/prehistoric properties:
(Remember that setting, location, and use may be relevant.)

No Assessment of Effect mitigations identified.

D. RECOMMENDED BY PARK SECTION 106 COORDINATOR:

Compliance Specialist:

NHPA Specialist

Sean Eagan _____ **Date:** _____

E. SUPERINTENDENT'S APPROVAL

The proposed work conforms to the NPS *Management Policies* and *Cultural Resource Management Guideline*, and I have reviewed and approve the recommendations, stipulations, or conditions noted in Section C of this form.

Signature

Superintendent: _____ **Date:** _____

Mary Martin