

U.S. ARMY CORPS OF ENGINEERS

ADVERSE EFFECTS, MITIGATION, AND AGREEMENT DOCUMENTS



Council of Texas Archeologists Meeting
Austin, TX
April 6, 2018

Chris M. Parrish
Regulatory Project Manager / Archaeologist
Albuquerque District

"The views, opinions and findings contained in this report are those of the author(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation."

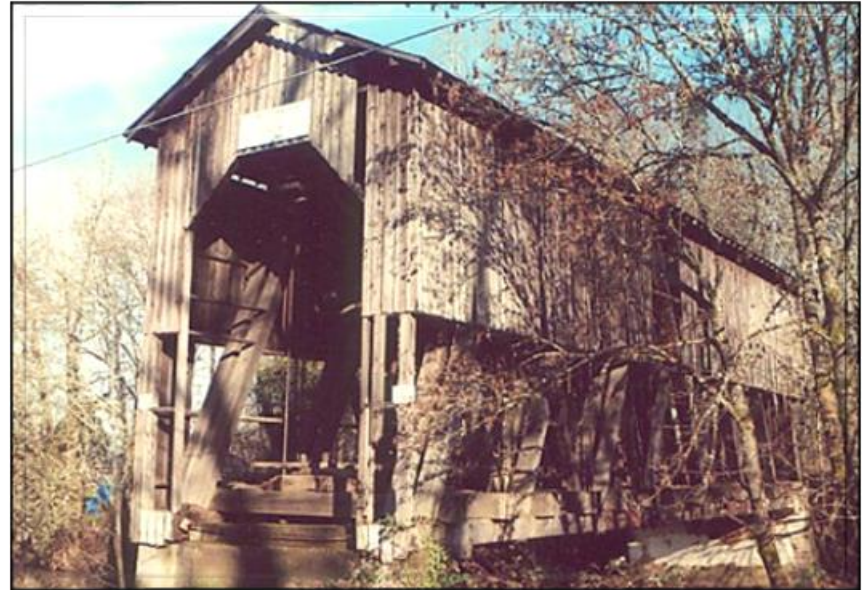


**US Army Corps
of Engineers**



THE REGULATORY PROGRAM AND HISTORIC PROPERTIES

Fulfilling its mission, the Regulatory Program must consider the potential effects of its permitting actions on historic properties in compliance with the NHPA and Corps regulations.



When adverse effects to historic properties cannot be avoided, the Corps consults with the permit applicant and other consulting parties, in a collaborative effort, to develop an agreement document and appropriate mitigation measures.



US Army Corps
of Engineers.



THE REGULATORY PROGRAM AND HISTORIC PROPERTIES

1990 – The OMB Approves the Corps Regulations at 33 CFR Part 325, Appendix C, which establishes the procedures to be followed to fulfill the requirements set forth in Section 106 of the NHPA and other applicable historic preservation laws/Presidential Directives

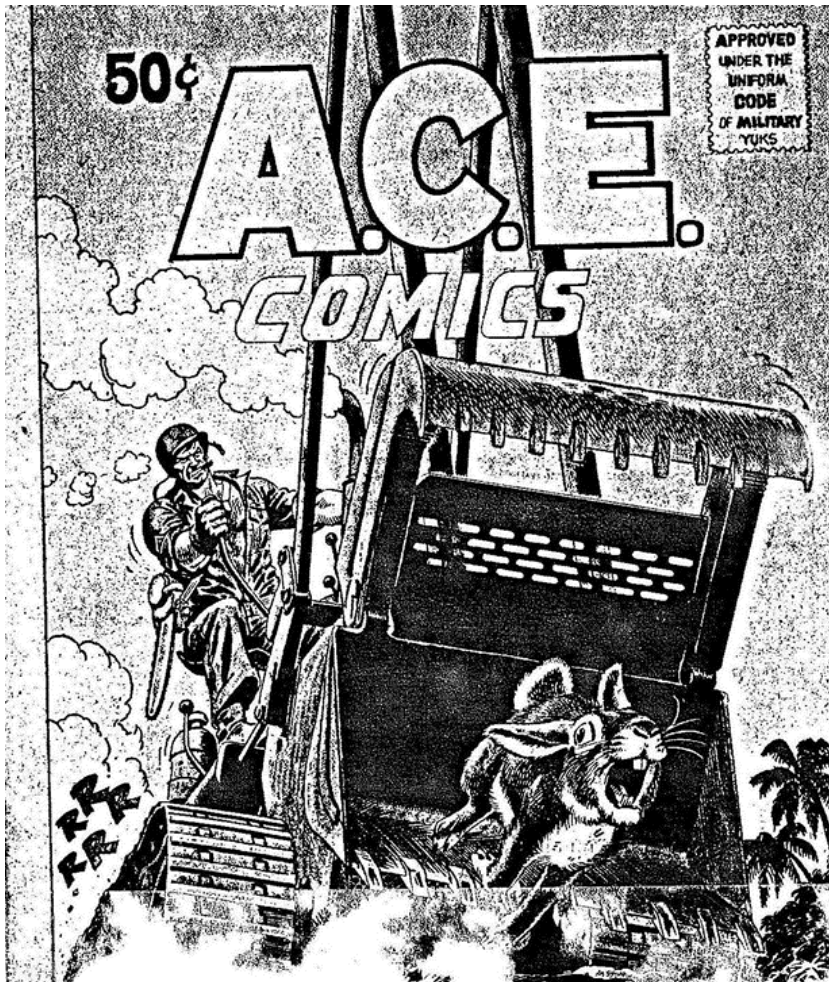


2005 – Revised Interim Guidance for Implementing Appendix C with the Revised Regulations at 33 CFR Part 800

2007 – Clarification of 2005 Revised Interim Guidance



SECTION 7D OF APPENDIX C



If an adverse effect on designated historic properties is found, the district engineer will notify the ACHP and coordinate with the SHPO to seek ways to avoid or reduce effects on designated historic properties.



US Army Corps
of Engineers.



RESOLVING ADVERSE EFFECTS

Actions taken that reduce or compensate for the damage an undertaking has on historic properties.

Consulting parties seek ways to avoid, minimize or mitigate the adverse effects.

Memorandum of Agreement (MOA) or Programmatic Agreement (PA)



US Army Corps
of Engineers.



RESOLUTION OF ADVERSE EFFECTS

Minimization/Mitigation examples:

- Limiting the magnitude of the undertaking
- Re-designing the project
- Rehabilitation or repairing a structure
- Documentation
- Relocation of historic property
- Screening of visual effects
- Data recovery of archeological sites
- Public outreach



US Army Corps
of Engineers.



RESOLUTION OF ADVERSE EFFECTS



US Army Corps of Engineers.



REGULATIONS at 36 CFR § 800.6(b)(1)(i-iv)

If an undertaking will or may adversely affect historic properties, the regulations call for the federal agency to consult with the SHPO/THPO and other parties to negotiate and execute a Section 106 agreement document that sets out the measures the federal agency will implement to resolve those adverse effects through avoidance, minimization, or mitigation.



US Army Corps
of Engineers.



PARTICIPANTS IN THE SECTION 106 PROCESS

Signatories to
the MOA / PA

Concurring
Parties

Other
Interested Parties



US Army Corps
of Engineers.



MEMORANDUM OF AGREEMENT (MOA)

The agreement resulting from consultation that states measures the federal agency will take to avoid or reduce effects on historic properties.

MOAs are normally signed by the federal agencies, SHPO, and applicant. ACHP may sign if they participate in consultation.

Other consulting parties may be invited signatories or sign as concurring parties.



US Army Corps
of Engineers.



CONCURRING PARTIES

A consulting party involved with the development of the MOA / PA that is invited to concur and sign the executed agreement document.

Consistent with 36 C.F.R. § 800.6(c)(3), the refusal of a Concurring Party to sign the MOA / PA does not invalidate the agreement document nor prevent its execution.

Signing the MOA / PA as a Concurring Party does not imply endorsement or approval of the Project.



US Army Corps
of Engineers.



OTHER INTERESTED PARTIES

Parties/Individuals that have a demonstrated legal interest in the Project, or expertise and concern for impacts to historic properties

- State Parks
- Other State Agencies (e.g. DOT)
- Certified Local Governments
- Non-Governmental Organizations (NGOs)
e.g. Alaska Historical Society



US Army Corps
of Engineers.



ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) GUIDANCE

The agency may be required by law to make a final decision on an undertaking within a timeframe that simply cannot accommodate the standard Section 106 process, particularly when the undertaking's area of potential effects encompasses large areas of land or when the undertaking may consist of multiple activities that could adversely affect historic properties.



US Army Corps
of Engineers.



PROGRAMMATIC AGREEMENT (PA)



The PA will detail treatments to avoid, minimize, or mitigate adverse effects to historic properties caused by the Project.



US Army Corps
of Engineers.



PLANS IN THE AGREEMENT DOCUMENT

- Historic Properties Treatment Plan
- A Plan for the Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony
- A Discovery Plan
- A Monitoring Plan



US Army Corps
of Engineers.



MITIGATION PHILOSOPHY



- Avoidance and Minimization
- Balanced and reasonable
- Commensurate with impacts

Stakeholders want relevant, nuanced, collaborative mitigation with tangible products that speak to their concerns.

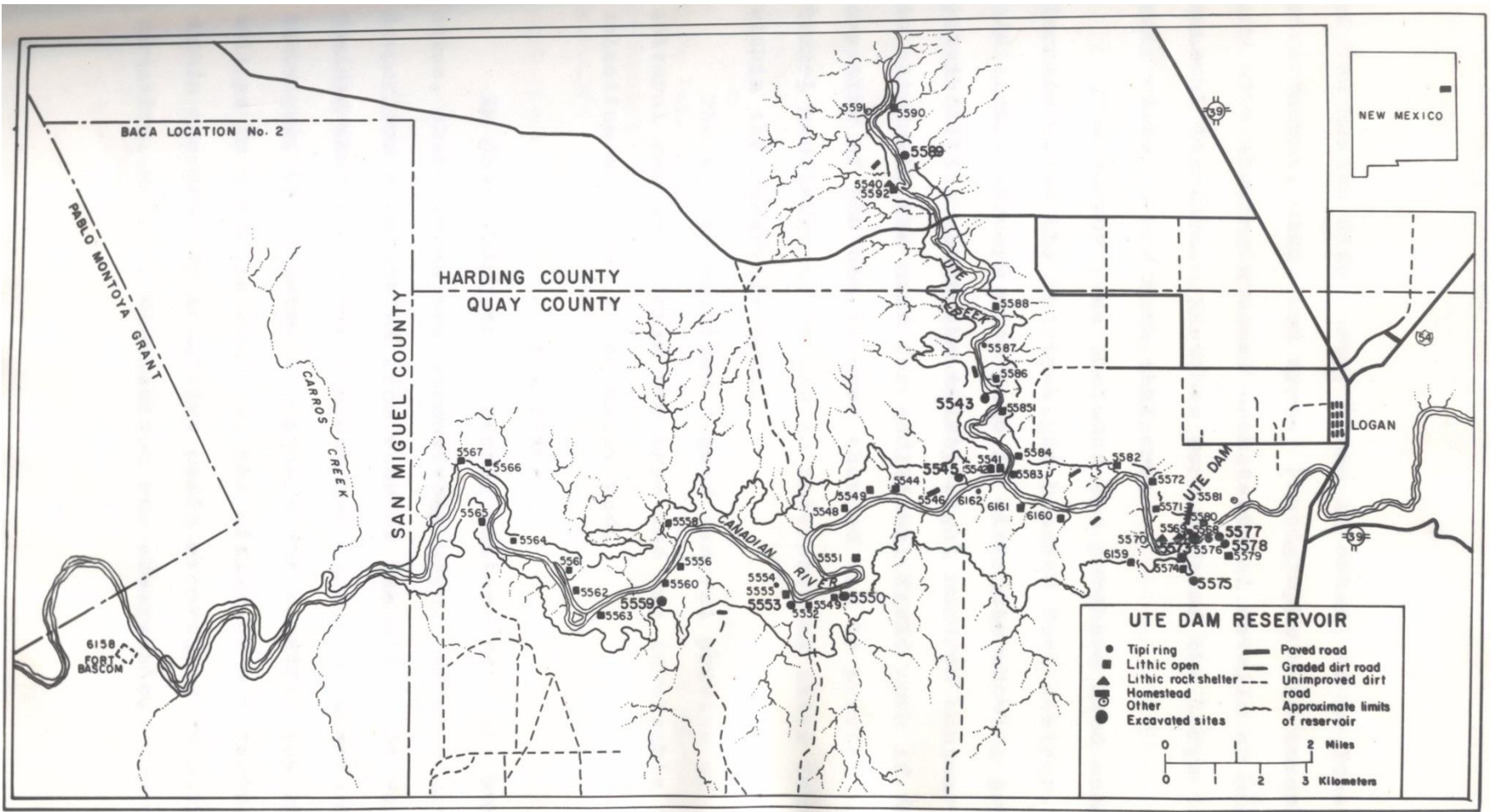
Mitigation measures should also be focused on the community where the impacts to historic properties occurs.



US Army Corps
of Engineers.



THE UTE LAKE RANCH PROJECT



THE UTE LAKE RANCH PROJECT

Project description:

This Development consists of 10 miles of asphalt roadways, an 18-hole golf course, 733 single-family homes, and several recreational facilities.



US Army Corps
of Engineers.



THE UTE LAKE RANCH PROJECT

The Corps, SHPO, and Applicant signed an MOA for the mitigation of adverse effects to historic properties (i.e. data recovery).



After implementation of the testing and data recovery plan, lawsuits between the developers resulted in uncertain plans for future development and associated archaeological investigations (i.e. MOA compliance).



US Army Corps
of Engineers.



THE UTE LAKE RANCH PROJECT

Resolution:

The minority shareholder obtained an order from a County District Court appointing Cordes and Company (C&C) the receiver and custodian of the ULRP property.

C&C transferred ownership of the cultural materials recovered during data recovery within ULRP to Eastern New Mexico University (ENMU)



C&C execute a 10-year Access Agreement whereby ENMU staff/students have ongoing access to identified historic properties located within the property.

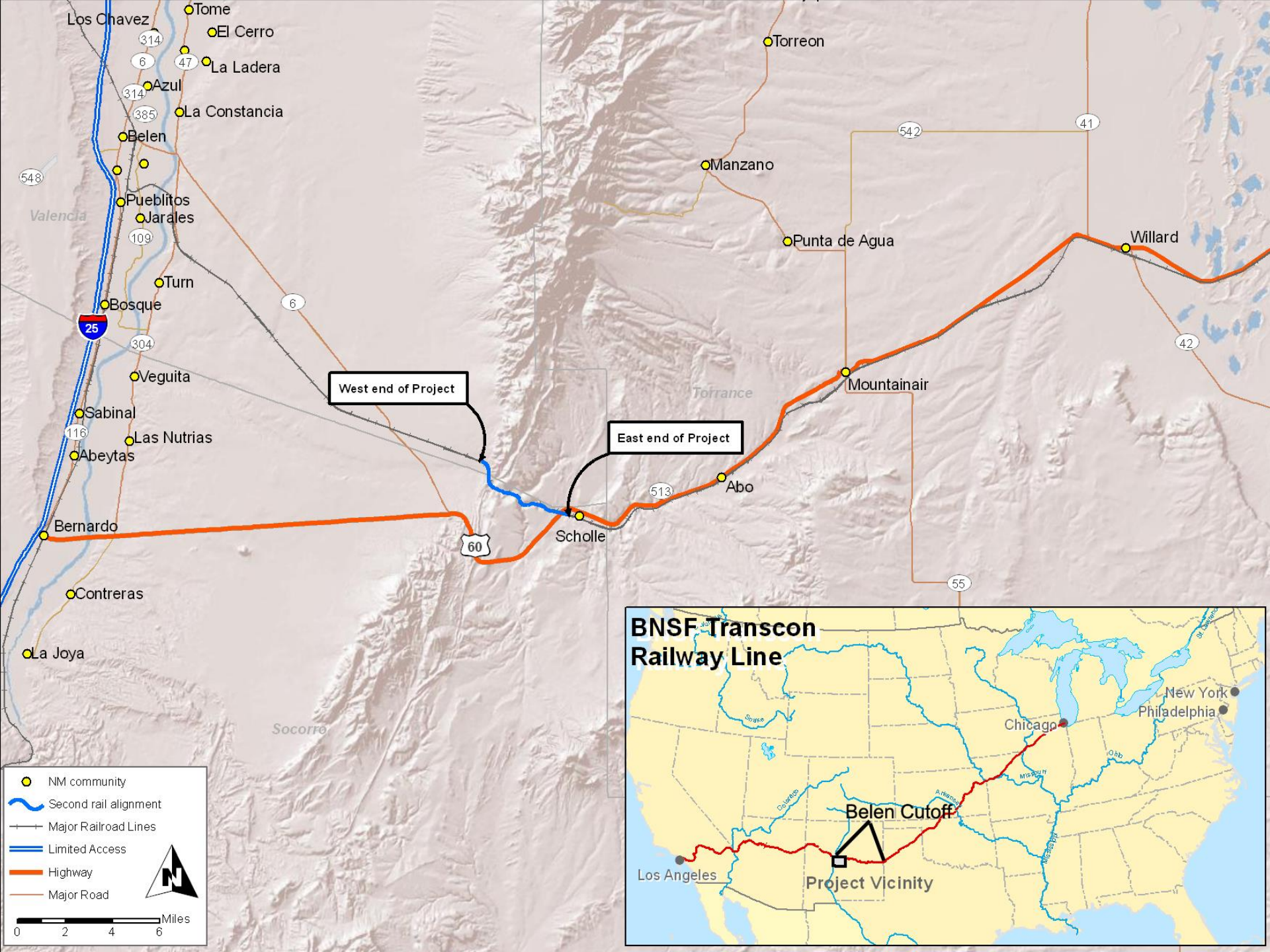








US Army Corps
of Engineers.





THE ABÓ CANYON DOUBLE-TRACK PROJECT





-  NM community
-  Second rail alignment
-  Major Railroad Lines
-  Limited Access
-  Highway
-  Major Road

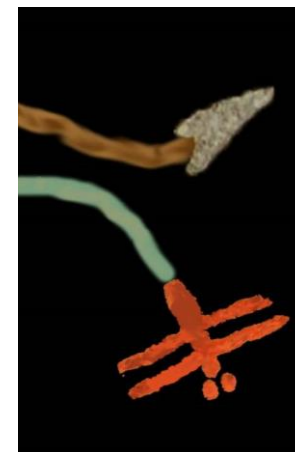






MITIGATION FOR HISTORIC PROPERTIES

- Data Recovery
- Archival Research and Oral Histories
- Popular Report: *Ho! To the Land of Sunshine*
- Educational Website



HO! TO THE LAND OF SUNSHINE : A HISTORY OF THE BELEN CUTOFF



EDUCATIONAL WEBSITE



Cultures & Histories of the
American Southwest



http://www.southwestcrossroads.org/footpath.php?footpath=8_4_0&tab=document

Title(s): Construction of the Belen Cutoff

Author(s): Southwest Crossroads Spotlight; William Penner

Description: A brief history of the construction of the Belen Cutoff and its effects.

Excerpt: The Atchison, Topeka and Santa Fe Railway (commonly known as the AT&SF) formed in Kansas in the mid-nineteenth century with plans to build a railroad to Colorado and New Mexico. The AT&SF crossed into New Mexico via...



US Army Corps
of Engineers.



HISTORIC CONTEXT FOR RAILROAD INFRASTRUCTURE IN NEW MEXICO

The BNSF replaced three historic railroad bridges that were determined to be structurally deficient.



A CWA Section 404 Permit was required because the bridges are located within waters of the U.S.

Mitigation involves the development of a historic context for railroad infrastructure in New Mexico.



US Army Corps
of Engineers.



HISTORIC CONTEXT FOR RAILROAD INFRASTRUCTURE IN NEW MEXICO

MILESTONE 1: RESOURCE IDENTIFICATION AND PROPERTY/STRUCTURE TYPE OVERVIEW

MILESTONE 2: HISTORIC CONTEXT REGARDING THE DEVELOPMENT OF RAILROADS IN NEW MEXICO

MILESTONE 3: IDENTIFY IMPORTANT STRUCTURE TYPES ASSOCIATED WITH THE RAILROADS IN NEW MEXICO

MILESTONE 4: IDENTIFY PERIODS OF SIGNIFICANCE



US Army Corps of Engineers.



SUMMARY/KEY POINTS

The Corps Regulatory Program requires the mitigation of adverse effects to historic properties from permitted actions

The mitigation requirements should provide benefits to the community in which the impacted resources(s) are located



We are accountable to the Public. What we do is for EVERYONE!



US Army Corps
of Engineers.



QUESTIONS?



CONTACT INFORMATION

Jimmy Barrera (817) 886-1729

James.e.barrera@usace.army.mil

Jerry Androy (409) 766-3821

Jerry.L.Androy@usace.army.mil

Chris Parrish (505) 342-3374

Christopher.M.Parrish@usace.army.mil



US Army Corps
of Engineers.

