

**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE BUREAU OF LAND MANAGEMENT, EGAN FIELD OFFICE**  
**AND**  
**THE NEVADA STATE HISTORIC PRESERVATION OFFICER**  
**REGARDING THE KGHM INTERNATIONAL LTD., ROBINSON MINE,**  
**ROBINSON NEVADA MINING COMPANY**

**WHEREAS**, the Bureau of Land Management Egan Field Office (BLM) has determined that the authorization of mining operations at KGHM International Ltd., Robinson Mine, Robinson Nevada Mining Company (RNMC) in White Pine County, Nevada, is an undertaking as defined at 36 CFR 800.16(y) that may have an effect on historic properties eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to Title 54 U.S.C. §300101, et. seq., commonly known as the National Historic Preservation Act of 1966, as amended (NHPA), and Title 54 U.S.C. §306108, commonly known as Section 106 of the NHPA (Section 106); and

**WHEREAS**, effects to historic properties in the Area of Potential Effect (APE) (Appendix A) cannot be fully determined prior to approval for RNMC. The BLM, in consultation with the SHPO, enter into this Programmatic Agreement (PA) to set forth procedures to be followed in satisfaction of BLM's Section 106 responsibilities of the NHPA, for the RNMC in the APE; and

**WHEREAS**, the BLM has defined the Undertaking's area of potential effect (APE) as all geographic areas within which the Undertaking may have direct or indirect effects to historic properties. The APE for ground disturbance has been determined to be approximately 24,000 acres. The BLM also defined an APE for visual effects to historic properties within the view shed of the project. The boundary of the view shed APE is one mile from the proposed action unless otherwise obstructed by natural topographic features. The view shed APE totals approximately 40,000 acres; and

**WHEREAS**, the BLM, SHPO, and the Advisory Council on Historic Preservation (ACHP) are Signatories to a PA entitled *Programmatic Agreement among the Bureau of Land Management, Ely District, Nevada Division of Historic Preservation and Archaeology, and the Advisory Council of Historic Preservation regarding the Treatment of Historic Properties during Mineral Development Associated with the Robinson Mine by Robinson Mining Limited Partnership* that governs all aspects of the development for the RNMC executed in July, 1990; and

**WHEREAS**, in accordance with Stipulation 5.c of the 2012 *National Programmatic Agreement among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, Regarding the Manner in which the*

*BLM Will Meet its Responsibilities under the National Historic Preservation Act*, the BLM has consulted with the Advisory Council for Historic Preservation (ACHP) pursuant to 36 CFR §800.14(b), to develop and execute this PA, and the ACHP, through a letter dated December 9, 2015, has elected not to formally enter consultation on the development of this PA; and

**WHEREAS**, the BLM, the SHPO, and the ACHP wish to terminate the existing Robinson Mine PA effective on the day this document is executed, and the BLM and the SHPO desire to enter into this PA; and

**WHEREAS**, the BLM has invited Robinson Nevada Mining Company (RNMC) to be a Signatory to this PA; and

**WHEREAS**, local Native American Tribes, the Duckwater Shoshone Tribe, the Ely Shoshone Tribe, and the Confederated Tribes of the Goshute in Utah have been invited to be concurring parties to the PA, with formal consultation initiated on October 2, 2015, with a Tribal consultation meeting attended by the Native American Coordinator of the BLM, Ely District. These entities indicated that there were no known issues regarding the project; and

**WHEREAS**, the BLM has notified the public of the Undertaking and has provided members of the public with an opportunity to express their views on the development of the PA and the Section 106 process pursuant to 36 CFR § 800.6(a) (4) and 36 CFR § 800.14(b) (2)(ii) during and concurrent with the public comment process for the draft *Robinson Mine-Plan of Operation Amendment* NEPA No. DOI-BLM-NV-L010-2016-0005-EA for the RNMC; and

**WHEREAS**, the State Protocol Agreement between BLM and SHPO dated December, 2014 (Protocol) is hereby incorporated by reference into this PA; and

**WHEREAS**, the definitions given in the Protocol apply throughout this PA, unless specifically modified below; and

**WHEREAS**, this PA covers all aspects of RNMC mining operations as defined by the APE; and

**NOW, THEREFORE**, the Signatories agree that the RNMC shall be administered in accordance with the following stipulations to ensure that historic properties will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership, and to satisfy BLM's Section 106 responsibilities for all aspects of the RNMC.

## STIPULATIONS

BLM will ensure that the following stipulations are carried out:

### I. ROLES AND RESPONSIBILITIES

- A. BLM is responsible for administering this PA. This includes but is not limited to ensuring that all Signatories carry out their responsibilities; overseeing all cultural resource work; and assembling all submissions to the SHPO and consulting parties during the implementation of this PA. The Egan Field Manager is the BLM Authorized Officer for RNMC. The Authorized Officer, or their designee, is the RNMC point of contact for BLM.
- B. RNMC's signatory, or their designees, will be the responsible point of contact for the RNMC and provide BLM with any and all information needed to implement this PA.
- C. RNMC shall bear the expense of identification, evaluation, and treatment of all historic properties directly or indirectly affected by RNMC related activity. Such costs shall include, but not be limited to, pre-field planning, fieldwork, post-fieldwork analysis, research and report preparation, interim and summary report preparation, publications for the general public, costs associated with the preparation of documents and collected artifacts for curation, and the cost of curating project documentation and artifact collections. If RNMC withdraws project applications, then RNMC shall incur no further expense except for completing fieldwork and post-fieldwork activities (production of final inventory, testing and data recovery reports covering the description and analysis of data, and the curation of materials) that has occurred as of the date of withdrawal.
- D. BLM will be responsible for all submissions to SHPO and any other interested parties identified during the implementation of this PA for the RNMC. Any submission to SHPO not from BLM will be considered as informational only and will not trigger any compliance timelines or other actions.
- E. BLM, in consultation with the SHPO, shall ensure that ethnographic, historic, architectural, and archaeological work conducted pursuant to this PA is carried out by or under the direct supervision of persons meeting qualifications set forth in the *Secretary of the Interior's Professional Qualifications Standards* (currently available at [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)) and who have been permitted for such work on public lands by BLM Nevada State Office.
- F. The BLM, in consultation with the SHPO, shall ensure that all work undertaken to satisfy the terms of this PA meets the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716-44742, September 23, 1983) (Standards) and takes into consideration the ACHP's Section 106 Archaeology Guidance (2009; available online at [www.achp.gov/archguide](http://www.achp.gov/archguide)), the *BLM Nevada Guidelines and Standards for Archaeological Inventory, 5<sup>th</sup> edition* (BLM Guidelines) or any subsequent edition issued by the BLM, and any other applicable guidelines or standards.

- G. RNMC, in cooperation with BLM and SHPO, shall provide in-house training to ensure that all its personnel and all the personnel of its contractors and subcontractors are directed not to engage in the illegal collection of historic and prehistoric materials. Subsequent hires will also be required to be subject to similar training. Training can be in association with RNMC's safety and or related job training and project orientation. RNMC shall cooperate with BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470) on Federal lands.
- H. RNMC shall be responsible for costs of rehabilitation or mitigation, and may be subject to criminal penalties, should damage to cultural resources inside or outside the APE occur during the period of construction, mine operation or reclamation due to the unauthorized, inadvertent, or negligent actions of RNMC, their employees, contractors or any other project personnel.
- I. If the RNMC is sold or otherwise transferred to another proponent other than RNMC, the Signatories will determine within 90 days of the sale or transfer if the PA will remain in effect, be amended per Stipulation V, or be terminated per Stipulation VI. All provisions of the PA will remain in effect until such a determination is made.

## II. PROCESS

### A. IDENTIFICATION OF HISTORIC PROPERTIES

1. BLM shall consult with interested parties and Tribes as identified through the Section 106 process, as appropriate, in all activities carried out under this PA associated with the Project. Identification and evaluation of historic properties shall be conducted on all lands identified within approved Plans of Operation and subsequent amendments on RNMC.
2. Cultural resource inventories shall be completed at Class III (no wider than 30m) spacing intervals unless otherwise approved by BLM. BLM may require inventory spacing intervals less than 30m, as appropriate.
3. BLM shall require the consulting archaeologists conduct records searches of General Land Office (GLO) plat maps, BLM's Master Title Plats/Historic Index, the GLO Land Records website ([http://www.glorerecords.BLM\\_SWFO.gov/](http://www.glorerecords.BLM_SWFO.gov/)), the Nevada State Lands Patent Database Query (<http://www.lands.nv.gov/patents/patents.htm>), the Nevada Cultural Resources Information System (NVCRIS), the National and State Register of Historic Places, National Trail System, historic maps, BLM and SHPO cultural resources records, and pertinent historic records/publications and maps to identify historic properties as a part of the identification process.
4. Required identification activities shall be completed on both Federal and private lands owned by RNMC. For privately held lands not owned by RNMC, RNMC shall exercise reasonable effort to obtain access from the landowner for the purpose of conducting inventory, eligibility, and adverse effects analysis.

“Reasonable effort” for this purpose is defined as seeking to obtain landowner consent on reasonable, negotiated terms, without resorting to any formal legal process or proceedings. After all such reasonable efforts have been made, if access cannot be obtained to private land not owned by RNMC and after consulting with BLM, RNMC shall use existing data to determine the types of resources that might be present and anticipated effects. Upon BLM determination that the intention of this section has been satisfied, BLM Authorized Officer may issue a Notice to Proceed (NTP) for any construction segment as prescribed in Stipulation II.G.

5. Contractors will submit any and all information concerning historic properties located in the RNMC APE to the BLM. RNMC shall protect, secure, and restrict access to this sensitive information to RNMC’s designated point of contact. RNMC shall not share this information with others without prior written consent from the appropriate BLM Officer.

## **B. ELIGIBILITY**

1. BLM, in consultation with SHPO, shall evaluate all cultural resources identified in the APE for eligibility to the NRHP based on the following document: *Historical Context for the Robinson Mining District, White Pine County, Nevada*, (Stoner 2004). This document shall be reviewed for adequacy every five years or by the request of a Signatory, whichever comes first.
2. BLM shall consult with the appropriate Tribes to evaluate the eligibility of properties of traditional religious and cultural importance within the APE.
3. A separate report will be prepared to document historic properties with standing architectural resources that qualify for the National Register under Criteria A, B, or C in order to expedite SHPO review. Recording and reporting of architectural resources shall follow the most recent edition of *Guidelines for Recording and Reporting Architectural Resources in Nevada, 2014*, available from the BLM Ely District Office upon request.
4. To the extent practicable, NRHP eligibility determinations shall be based on documented inventory information. If the information gathered in the inventory is inadequate to determine eligibility, RNMC, through its contractor, may be required to conduct limited subsurface testing or other evaluative techniques to determine eligibility. Subject to approval by BLM, in consultation with SHPO, evaluative testing is intended to provide the minimum data necessary to define the nature, age, and distribution of materials in potential historic properties, to make final evaluations of eligibility, and to inform the development of a treatment plan should data recovery be deemed necessary. BLM requires RNMC’s cultural resource contractor be approved for a testing Cultural Resources Use Permit (CRUP) prior to subsurface probing, testing, data recovery or surface material collection.

5. If any of the Signatories, Tribes, or other consulting parties disagree regarding eligibility of a cultural resource, BLM and SHPO shall work together with Tribes and consulting parties (when appropriate) to seek a resolution on the determination of eligibility. If the dispute cannot be resolved, BLM shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 63.2. The Keeper's determination will be considered final.
6. Eligibility will be determined prior to the initiation of activities that may adversely affect those cultural resources. Eligibility will be determined in a manner consistent with the Protocol. The required evaluation activities shall be completed on Federal or private lands owned by RNMC. If RNMC cannot gain access to private land not owned by RNMC after a reasonable effort is made, the historic property shall remain unevaluated. Cultural resources may remain unevaluated for the NRHP only with approval by BLM in consultation with SHPO.

### C. TREATMENT

1. BLM shall ensure that RNMC avoids adverse effects to historic properties, whenever practical, through project design, or redesign, relocation of facilities, or by other means in a manner consistent with the Protocol.
2. When avoidance is not practical and data recovery is proposed to minimize or mitigate project related adverse effects to historic properties, BLM, in consultation with the SHPO, shall ensure that RNMC, through its contractor, develops a Historic Properties Treatment Plan (HPTP) 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* (Advisory Council on Historic Preservation 1980) and Section 106: Archaeology Guidance (ACHP 2009) as well as agency standards. The required mitigation activities shall be completed regardless of the ownership (Federal or private lands owned by RNMC) of the lands involved. If RNMC cannot gain access to private lands not owned by RNMC through reasonable efforts, only the portions of the historic property directly affected by the project shall be treated. BLM shall submit HPTPs to SHPO for review. Concurrently, BLM shall provide Tribes and other consulting parties, as appropriate, with copies of HPTPs with a fifteen (15) day review opportunity.
3. For historic properties eligible under criteria A through C, BLM will consider, in consultation with SHPO, mitigation other than data recovery in the HPTP (e.g., oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, the HPTP shall include provisions (content and number of copies) for a publication for the general public.

4. Pursuant to Stipulation F, BLM shall ensure as a condition of approval/special stipulation on any authorization or Notice to Proceed (NTP) that RNMC, through its contractor, shall implement and complete the fieldwork portions of any final HPTP prior to initiating any activities that may affect those historic properties.
5. BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 CFR 79 in an approved curation facility in Nevada. As defined in the Native American Graves Protection and Repatriation Act (NAGPRA), Native American human remains, associated funerary objects, and objects of cultural patrimony will be handled in accordance with 43 CFR 10. All materials collected will be maintained in accordance with 36 CFR 79 or 43 CFR 10, until the final treatment report is complete and collections are curated and/or returned to their owners. RNMC, or their contractor, shall provide proof of a current curation agreement to BLM within two (2) weeks of BLM acceptance of the final reports.
6. BLM shall provide to SHPO, and other consulting parties as appropriate, all draft archaeological reports resulting from actions pursuant to this PA. Tribes with Data Sharing Agreements may receive a report upon request. All such reports shall be consistent with the Department of Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Final reports shall be submitted to the SHPO and other consulting parties as appropriate in both paper and electronic copies and will include digital copies of all associated data (e.g. GPS files, GIS data layers, digital photographs, etc.).

#### **D. OTHER CONSIDERATIONS**

1. Identification, evaluation, and treatment efforts may extend beyond the geographic limits of the APE when the resources being considered extend beyond the boundary of the construction activities.
2. No identification, evaluation, or treatment efforts will occur beyond that necessary to gather data for the completion of the Section 106 process as agreed to in this PA.
3. Information on the location and nature of all cultural resources or information considered proprietary by a Tribe will be held confidential to the extent provided by Federal and state law.

## E. OBSERVATION AND MONITORING

1. Any Signatory may observe actions carried out pursuant to this PA, provided that personnel undertaking observation activities shall comply with all applicable RNMC mine safety and health rules and requirements when visiting the mine. To the extent practicable, all observation activities conducted by SHPO, Tribes, or other consulting parties will attempt to minimize the number of observers involved in RNMC.
2. Any areas that BLM, in consultation with the SHPO, identifies as sensitive will be monitored during related construction activities by a qualified individual (Monitor). Monitors shall be empowered to stop work to protect resources if that work is inconsistent with the terms of this PA or any corresponding treatment or monitoring plan.

## F. NOTICES TO PROCEED

BLM may issue NTP to RNMC for individual construction segments as defined by RNMC in their Plans, under any of the following conditions:

1. BLM, in consultation with SHPO, have determined that there are no cultural resources within the APE for that construction segment; or
2. BLM, in consultation with SHPO, have determined that there are no historic properties within the APE for the construction segment; or
3. BLM, in consultation with the SHPO, Tribes, and other consulting parties as appropriate, has implemented an adequate HPTP for the historic properties affected by the construction segment; and
  - (a) RNMC has posted a surety as set forth in Stipulation H. 1; and
  - (b) The fieldwork phase of the treatment option has been completed; and
  - (c) BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work; and
  - (d) BLM shall provide an electronic copy of the summary to SHPO; and
  - (e) SHPO shall review the summary and if the SHPO concurs or does not respond within two working days of receipt, BLM shall assume concurrence and issue the NTP; and
  - (f) RNMC shall not begin any ground disturbing activities within the boundary of any historic property until BLM issues a NTP for the property.

## **G. TIME FRAMES**

1. BLM will review and comment on any report submitted by RNMC, through its contractor, within thirty (30) calendar days of receipt.
2. BLM shall submit the results of all identification, evaluation, effects assessment, and treatment efforts, including discovery situations, and HPTPs to the SHPO. The SHPO will have thirty-five (35) calendar days from their receipt to review and comment on any submission. In the event SHPO does not respond within thirty-five (35) calendar days from its receipt, BLM shall assume SHPO concurrence.
3. A draft final report of all identification, evaluation, treatment activities will be due to BLM from RNMC within nine (9) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated. Final reports will be due sixty (60) days after receiving BLM comments.

## **H. SURETY BONDS**

1. Based on a written detailed cost estimate submitted by the Cultural Contractor and agreed to by RNMC and BLM, RNMC will post a surety bond with the BLM, not to exceed \$500,000 to cover all costs associated with all data recovery fieldwork, analysis, research and report preparation, interim and summary reports, and curation of project documentation and artifact collections in an approved curation facility anticipated to run concurrently from the signing date of the PA to one calendar year from the signing date. The surety shall be posted prior to BLM issuing any NTP.
2. Portions of the surety bond posted shall be subject to forfeiture if the data recovery project tasks are not completed within the time period established by the treatment option selected; provided, however, BLM and RNMC may agree to extend any such time periods. BLM shall notify RNMC that the surety is subject to forfeiture and shall allow RNMC thirty (30) calendar days to respond before action is taken to forfeit the surety.
3. The surety bond may be increased or decreased annually based on a written detailed cost estimate submitted to the BLM by RNMC for concurrently running data recovery projects anticipated for the following year. If the amount of concurrently running data recovery projects exceeds what is presented in the Cultural Contractor's cost estimate, the BLM shall meet with RNMC to increase the bond amount prior the required annual surety bond adjustment date.

## J. POST-REVIEW DISCOVERY SITUATIONS

Stipulations of this PA are intended to identify and mitigate adverse effects to historic properties. Unplanned discoveries of buried cultural resources are not anticipated. In the case of an unplanned discovery, the BLM will ensure that provisions in the Protocol (Section VI.B-C) and the following stipulations are met.

1. When previously unidentified cultural resources are discovered or an unanticipated impact situation occurs, all RNMC related activities within 100 meters of the discovery/impact will cease immediately. RNMC, through its contractor or its authorized representative, shall secure the location to prevent vandalism or other damage. RNMC or its authorized representative shall immediately notify the BLM Authorized Officer of the discovery followed by written confirmation. RNMC and BLM shall suspend activity at the location until the discovery has been evaluated and any necessary mitigation measures completed.
2. BLM shall notify SHPO, Tribes, and other consulting parties as appropriate, within one (1) working day of the discovery or unanticipated impact notification, and consider their initial comments on the situation. Within two (2) working days after initial discovery, BLM shall notify SHPO or other parties, of the decision to either allow RNMC activities to proceed or to require further evaluation and/or mitigation.
3. If BLM determines, in consultation with SHPO, that mitigation for discoveries or unanticipated impacts is required, BLM shall solicit comments from SHPO, Tribes, and other consulting parties, as appropriate, to develop mitigating measures. SHPO, Tribes, and other consulting parties, as appropriate, will have two (2) working days to provide BLM with comments on the nature and extent of mitigative efforts. Within seven (7) working days of initial SHPO notification, BLM will inform SHPO of the nature of the mitigation required, and ensure that such mitigative actions are implemented before allowing RNMC activities to resume through issuing a NTP.
4. BLM shall ensure that reports of mitigation efforts for discoveries or unanticipated impacts are completed in a timely manner and conform to the Department of Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). BLM shall submit drafts of such reports to the SHPO for a fifteen (15) day review and comment period. BLM will submit final reports to the SHPO, other Signatories, Tribes, and other consulting parties, as appropriate for informational purposes.
5. Any disputes or objections arising during a discovery or unanticipated impact situation regarding the treatment of historic properties that cannot be resolved by BLM and SHPO shall be referred to the Nevada BLM State Office Deputy

Preservation Officer (DPO) for consultation. The Nevada BLM State Office shall be given seven (7) days to provide BLM with comments.

6. RNMC related activities in the area of the discovery will be halted until RNMC is notified by the BLM Authorized Officer in writing that mitigation is complete and activities can resume.

### **III. DISPUTE RESOLUTION**

1. If any Signatory or consulting party to this PA objects to any activities proposed pursuant to the terms of this PA, BLM shall consult with the objecting party and SHPO to resolve the issue. If the BLM determines that the objection cannot be resolved, it shall request the assistance of the BLM State Office Deputy Preservation Officer to help resolve the objection. The BLM State Office decision shall be considered final.
2. The Signatories may continue all actions under this PA that are not the subject of the dispute.

### **IV. DURATION**

This PA shall become effective on the date of the last signature below, and shall remain in effect for a period of ten years or until terminated as provided in Stipulation VI. If RNMC does not initiate the Project within the ten (10) year period, this PA will automatically terminate.

### **V. AMENDMENT**

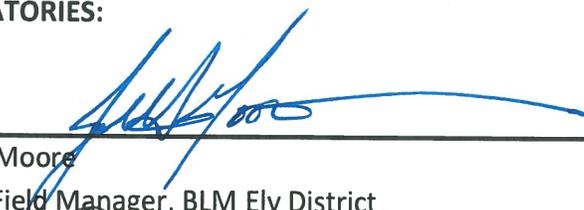
Any Signatory to this PA may request that this PA be amended, whereupon the Signatories will consult to consider such amendment. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

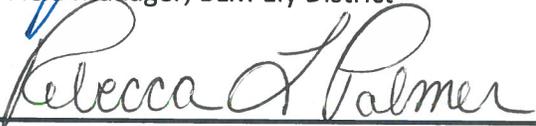
### **VI. TERMINATION**

Any Signatory may terminate this PA by providing written notice with cause to the other party. After notification by the initiating party, the other Signatory shall have thirty (30) calendar days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. If such consultation fails, the termination will go into effect at the end of this thirty (30) calendar-day period, unless both parties agree to a longer period. The Signatories shall be required to meet any and all current or outstanding obligations the Signatories assumed under the terms of the PA.

**EXECUTION** of this PA and implementation of its terms evidences that the BLM has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

  
\_\_\_\_\_  
Jill A. Moore  
Egan Field Manager, BLM Ely District  
Date 6/14/16

  
\_\_\_\_\_  
Rebecca L. Palmer  
Nevada State Historic Preservation Officer  
Date 6/20/16

**Invited Signatory:**

\_\_\_\_\_  
General Manager  
KGHM International Ltd., Robinson Mine, Robinson Nevada Mining Company  
Date

**Concurring Parties:**

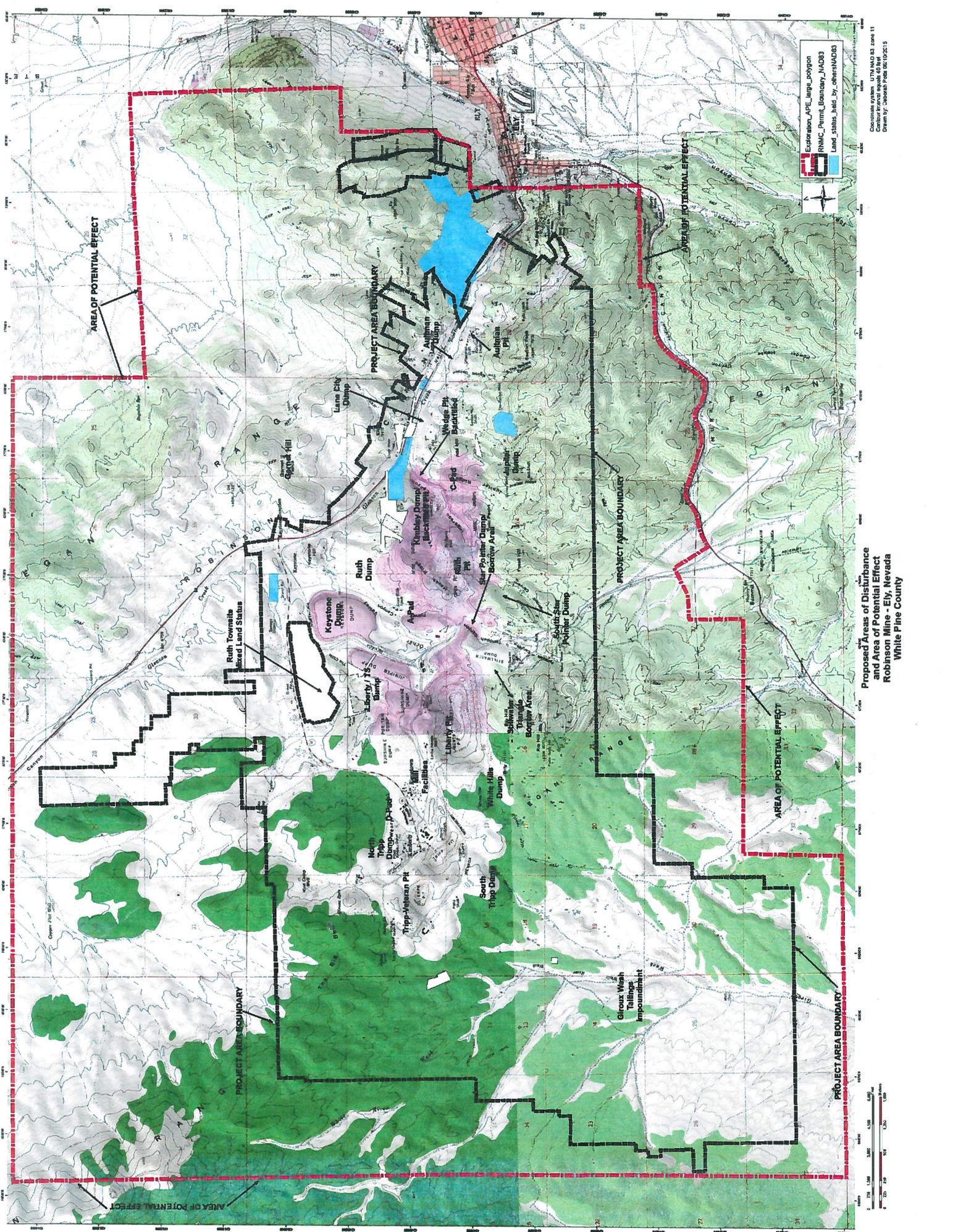
\_\_\_\_\_  
Chairman  
Duckwater Shoshone Tribe  
Date

\_\_\_\_\_  
Chairman  
Ely Shoshone Tribe  
Date

\_\_\_\_\_  
Chairman  
Confederated Tribes of the Goshute  
Date

**Appendix A**

**Robinson Nevada Mining Company Area of Potential Effect**



Proposed Areas of Disturbance  
and Area of Potential Effect  
Robinson Mine - Ely, Nevada  
White Pine County

Coordinate system: NAD 83 zone 11  
 Contour interval: 20  
 Drawn by: Cheyenne Pelt 06/10/2015

Legend:

- Exploration\_APE\_large\_polygon
- RWMC\_Permit\_Boundary\_MAD03
- Land\_Status\_Used\_By\_others\_MAD03