PROGRAMATIC AGREEMENT
BETWEEN
THE SIERRA FRONT FIELD OFFICE OF THE BUREAU OF LAND MANAGEMENT AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE
FOR
THE BUCKSKIN VALLEY VEGETATION MANAGEMENT PROJECT
DOUGLAS AND LYON COUNTIES, NEVADA

WHEREAS, the Sierra Front Field Office of the Bureau of Land Management (BLM) is preparing a plan to conduct vegetation treatments on +/- 7,000 acres of public lands on the eastside of the Pine Nut Mountains in Douglas and Lyon Counties, Nevada (hereinafter referred to as the "undertaking" as defined in 36 C.F.R. § 800.16[y]); and

WHEREAS, the BLM proposes to implement the undertaking to comply with the BLM National Sage-Grouse Habitat Conservation Strategy (November 2004) and the Guidance for Implementation of Federal Wildland Fire Management Policy (February 2009); and implementing these policies is subject to the requirements of the National Environmental Policy Act of 1969 (NEPA); the BLM is responsible for completing NEPA and ensuring that it is in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. § 800; and

WHEREAS, the BLM has determined that the undertaking may have an effect upon 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 Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, the BLM has consulted with the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR §800.14(b), to develop and execute this Programmatic Agreement (PA) and the ACHP has elected not to formally enter consultation on the development of this PA; and

WHEREAS, effects to historic properties in the Area of Potential Effect (APE) cannot be fully determined and the Parties desire to enter into this Agreement to set forth procedures to be followed in satisfaction of the BLM's Section 106 responsibilities of the National Historic Preservation Act, for the Project in the APE, and

WHEREAS the undertaking would be implemented over the course of the next 10 years; and

WHEREAS, this PA covers all aspects of the planning, development, and implementation of the elements of the NEPA documentation and decision for the undertaking including but not limited to fire and vegetation management through partial or complete tree cutting and removal, mechanical vegetation mastication or grinding, slash piling, and vegetation seeding and planting;

WHEREAS, the BLM has consulted with the Yerington Paiute Tribe (Tribe) concerning properties of traditional cultural and religious significance and the Tribe has participated in this consultation and has been invited to concur in this PA; and

NOW THEREFORE, the signatories agree that implementation of the NEPA decision record 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 the BLM's NHPA Section 106 responsibilities for all aspects of the undertaking.

I. ROLES AND RESPONSIBILITIES

The signatories agree that the BLM will be the lead federal agency for implementing phases of this PA including consultation with the Tribe and SHPO. As necessary, the BLM has the responsibility of consultation with the ACHP.

The signatories agree that the *STATE PROTOCOL AGREEMENT between The Bureau of Land Management, Nevada and The Nevada State Historic Preservation Office for Implementing the National Historic Preservation Act, Finalized October 26, 2009* (Protocol), except as amended here, will be used as guidance for this PA. This Protocol is incorporated by reference.

The BLM is responsible for administering this PA. This includes but is not limited to: ensuring that signatories carry out their responsibilities; overseeing cultural resource work; assembling submissions to the SHPO and Tribe including reports, determinations of eligibility and effect, and treatment plans; and for seeking SHPO concurrence with agency compliance decisions.

II. AREA OF POTENTIAL EFFECT

The area of potential effect (APE) for cultural resources is defined as the boundary of the +/- 7,000 acres considered for vegetation and fire management in the Buckskin Valley NEPA documents. The overall APE is shown on the map in Appendix A.

The APE shall be defined to include potential direct and indirect effects to cultural resources and properties of traditional religious and cultural importance from any activities associated with the undertaking without regard for land ownership.

The minimum APE for an area proposed to receive a particular phase of vegetation or fire management will be the area plus 100 feet outward in all directions from the perimeter of each area, which could include small areas outside the Buckskin Valley undertaking area.

Based on current data, there are no known historic properties outside of the direct APE that would have the characteristics that qualify them for listing in the NRHP adversely affected by visual impacts from the proposed action. However, the APE for assessing indirect effects on known historic properties will be the area plus one mile outward in all directions from the perimeter of each area, which would include some areas outside the Buckskin Valley undertaking area.

The BLM may amend the APE as needed or as requested by the SHPO or the Tribe without amending the PA proper. All consulting parties will receive formal notification of the amended APE.

III. STIPULATIONS

The BLM shall ensure that the stipulations of this PA are carried out by its contractors, subcontractors, or other personnel involved with this undertaking.

The BLM 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) and who have been permitted for such work, as necessary, by the BLM Nevada.

A. Identification

1. The BLM, in consultation with the SHPO, shall ensure that appropriate cultural resource identification activities, including records research; informant interviews; context development; and archaeological, historic, or ethnographic inventory for the APE are conducted in a manner consistent with the Protocol.

2. Required identification activities shall be completed for the APE regardless of the ownership (public or private) of the lands involved and BLM shall be responsible for gaining access to privately held lands.

3. The BLM shall make a good faith effort to consult with the Tribe and affected tribal members to identify properties of traditional religious or cultural importance. Tribal consultation procedures are specified in Appendix B.

B. Eligibility

1 For each phase of undertaking within the APE, the BLM shall evaluate cultural resources for eligibility to the NRHP. The BLM will determine NRHP eligibility prior to the initiation of activities that may affect cultural resources, using the Protocol as guidance.

2. The BLM shall consult with the Tribe or identified affected tribal members to evaluate the NRHP-eligibility of properties of traditional religious and cultural importance. Based on information shared with the BLM, the BLM would determine the NRHP eligibility of identified properties, and consult on these determinations with SHPO and the Tribe.

3. The BLM shall ensure that appropriate cultural resource inventories that identify and evaluate cultural resources are completed and that appropriate reports are prepared in accordance with the Protocol and with the BLM Nevada's *Cultural Resources Inventory General Guidelines, 4th edition* (January 1990), or any subsequent edition issued by the BLM (Guidelines).

C. Treatment

1. To the extent practicable, the BLM shall ensure that project activities avoid adverse effects to historic properties through project design, or redesign, relocation of activities, or by other means in a manner consistent with the Protocol.

2. In avoiding or mitigating effects, the BLM, in consultation with the SHPO, shall determine the precise nature of effects to historic properties identified in the APE, using the Protocol as guidance. The BLM shall consult with SHPO and the Tribe for any portion of the undertaking resulting in an adverse effect determination, using the Protocol as guidance.

3. The BLM shall consult with the Tribe, or identified affected tribal members, to evaluate effects to properties of traditional religious and cultural importance. Based on information shared with the BLM, the BLM shall determine the appropriate treatment to avoid or minimize to the extent practicable adverse effects, and consult on these determinations with SHPO and the Tribe.

4. For properties eligible under NRHP criteria (a) through (c), mitigation other than data recovery may be considered in the treatment plan (e.g., Historic American Buildings Survey/Historic American Engineering Record recording, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, treatment plans shall include provisions (content and number of copies) for a publication for the general public.

5. The BLM shall, in consultation with the SHPO, ensure that the fieldwork portions of any treatment plan (using BLM staff or contractors and subcontractors) are completed prior to initiating any activities that may affect historic properties located within the area covered by the plan.

6. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are maintained until the final treatment report is complete and then curated in accordance with 36 C.F.R. § 79 or 43 C.F.R. § 10. BLM will encourage private owners to donate collections from their lands to the federal repository housing the public records and materials.

IV. DURATION

This PA shall remain in effect for ten (10) years from the date of its execution. If proposed actions in the APE are not completed prior to such time, the BLM may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Section X below. The BLM shall notify the signatories as to the course of action it will pursue.

V. POST-REVIEW DISCOVERY SITUATIONS

Stipulations of this PA and the Protocol are intended to identify and treat cultural resources that are eligible for inclusion in the NRHP. 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) and Appendix C of this PA are met.

Prior to initiating any ground disturbing activities within the APE, all BLM employees, contractors, and subcontractors empowered to halt activities in a discovery situation shall be informed about who to contact and under what time frame. At least one of these individuals will be present during any project field activities.

Activities in the area of the discovery will be halted until the BLM Authorized Officer provides written authorization that mitigation is complete and activities can resume.

VI. NOTICES TO PROCEED

When appropriate, and in consultation with the other signatories and in compliance with the PA stipulations, the BLM may issue Notices to Proceed (NTP) for individual project phases, under the following conditions:

A. The BLM, in consultation with the SHPO and the Tribe, has determined that there are

   1. no historic properties within the APE affected by the current phase of the undertaking; and

   2. no properties of traditional religious or cultural importance within the APE affected by the current phase of the undertaking; or

B. The BLM, after consultation with the SHPO and the Tribe, has implemented an adequate treatment plan for the current phase of the undertaking, and

   1. the fieldwork phase of the treatment option has been completed; and

   2. the BLM has prepared or accepted a summary description of the fieldwork performed and a schedule for reporting that work; and

   3. the BLM shall provide a copy of the summary to SHPO; and

   4. the 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

   5. the BLM shall not begin any ground disturbing activities within the boundaries of any historic property until a NTP is issued for the property; and

   6. a partial NTP may be issued for portions of the APE that are outside of the area that may affect historic properties.

VII. MONITORING AND REPORTING

A. Any signatory may monitor actions carried out pursuant to this PA. To the extent practicable, monitoring activities should minimize the number of monitors involved in the undertaking.

B. Reporting

1. A draft final report of the identification, evaluation, treatment or other mitigative activities will be due to the BLM from any contractor within nine (9) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.

2. BLM should review and comment on any report submitted by contractors within 30 calendar days of receipt.

2. Prior to SHPO consultation, the BLM shall submit the results of identification, evaluation, and treatment efforts, including discovery situations, and treatment plans to the Tribe, and other identified interested persons, for a 30 calendar day review and comment period.

3. After review by the Tribe, and interested parties, the BLM shall submit the results of identification, evaluation, and treatment efforts, including discovery situations, and treatment plans to the SHPO for a 30 calendar day review and comment period.

4. If the Tribe, SHPO, or other interested person fails to respond to the BLM within 30 calendar days of the receipt of a submission, the BLM shall presume concurrence with the findings and recommendations as detailed in the submission and proceed accordingly.

5. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to the SHPO and the Tribe. All such reports shall be consistent with contemporary professional standards and the *Department of Interior's Formal Standards for Final Reports of Data Recovery Programs* (48 Federal Register 44716-44740).

VIII. OTHER CONSIDERATIONS

A. The BLM shall 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. All parties shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470), as amended, on public lands and with Nevada Revised Statute (NRS) 383 for private lands.

B. The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking are treated with the respect due such materials. In coordination with this PA, human remains and associated grave goods found on public land will be handled according to the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., and its implementing regulations (43 C.F.R. § 10). Human remains and associated grave goods on private land will be handled according to the provisions of NRS 383.

C. The BLM shall bear the expense of identification, evaluation, and treatment of historic properties directly or indirectly affected by project-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, and the cost of curating project documentation and artifact collections.

D. Information on the location and nature of cultural resources, and information considered proprietary by the Tribe, will be held confidential to the extent provided by Federal and state law.

IX. DISPUTE RESOLUTION

If any signatory to this PA, or an interested person, objects to any activities proposed pursuant to the terms of this PA, the BLM shall consult with the objecting party and the SHPO to resolve the issue. If the BLM determines that the objection cannot be resolved, it shall request the assistance of the BLM Nevada Deputy Preservation Officer to resolve the objection. The BLM Nevada Deputy Preservation Officer decision will be considered final.

The signatories may continue all actions under this PA that are not in dispute.

X. 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.

XI. TERMINATION

Any signatory to this PA may terminate the PA by providing thirty (30) days advance written notice with cause to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

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

SIGNATORIES:

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

Linda J. Kelly, Sierra Front Field Office Manager

Date August 18, 2011

NEVADA STATE HISTORIC PRESERVATION OFFICER

Ronald M. James, SHPO

Date 1 September, 2011

CONCURRING PARTY:

YERINGTON PAIUTE TRIBE

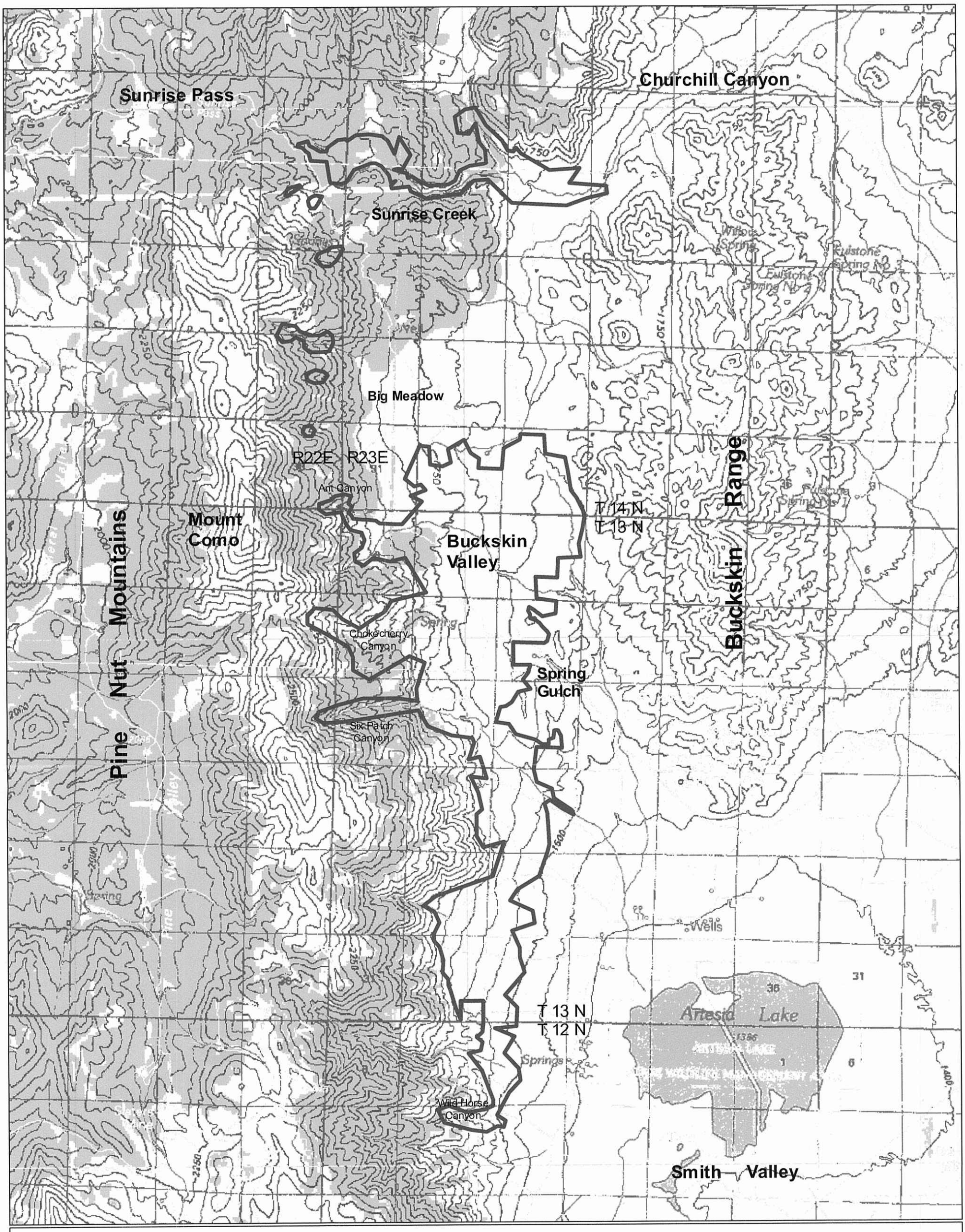
8/26/11

Linda Howard, Chairman

Date

APPENDIX A: AREA OF POTENTIAL EFFECT

The overall APE (project location) for the Buckskin Valley Vegetation Management Project

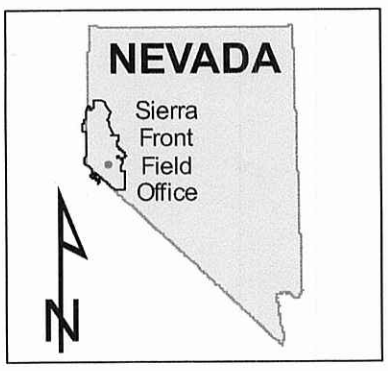


Map 1. Buckskin Valley VegetationTreatments EA -- Topographic Overview

United States Department of the Interior
Bureau of Land Management
Sierra Front Field Office
Carson City District Office
5665 Morgan Mill Rd.
Carson City, NV. 89701
(775) 885-6000

Project Area, 7,000 acres total

USGS 7.5' Quads:
39119a4 Mount Como
38119h4 Pine Nut Valley



0 0.5 1 2 Miles

1:70,000

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. June 2011 sw

APPENDIX B: TRIBAL CONSULTATION PROCEDURES

I. Identification of Parties for Consultation

Consultation on the proposed action was initiated in January 2011, following the procedures described below. Parties for consultation were identified by a cultural resources specialist from the BLM Sierra Front Field Office of the Carson City District who has experience with tribal consultation in the area. A letter was sent to the Yerington Paiute Tribe, the federally recognized tribe with cultural and natural resources interest in the Buckskin Valley region. After follow-up discussions of the APE and the initial phase of proposed action, a consultation meeting was hosted in the field by the BLM with members of the Yerington Paiute Tribe in May 2011. Comments received from the Tribe during the consultation were incorporated into the project's NEPA documentation and this PA.

Additional consultation will be initiated for implementation of each phase of action over the life of the NEPA decision record and this PA, and for any action identified in initial consultation as of interest to the Tribe, traditional cultural and religious leaders, and other interested tribal organizations or members.

Based on a written request, any federally recognized tribe may be included in this PA as a concurring party.

II. Consultation Methods

The methods of the BLM contacting, communicating, and coordinating with the Tribe will include letters, telephone calls, and/or face-to-face meetings, as appropriate and necessary to afford the Tribe the opportunity for input.

A. Letter Contact

The BLM Authorized Officer or designated party will prepare a letter to the Tribe as early as possible in the process explaining the proposed project or phase of activity and indicating that this will begin a formal government-to-government consultation process. The letter will be prepared to ensure that Tribes are part of the initial contact and scoping process. The letter initiating the consultation will be signed by the BLM Authorized Officer.

The proposed activity will be explained in sufficient detail to allow for the Tribe to determine its level of interest, if any. The scope of work, a proposed schedule, and any significant activities, such as planned field visits or a decision date, will be included in the written document.

B. Follow-up Telephone Contact

The Authorized Officer or designated party will follow-up the initial letter with telephone contacts after 10 working days after the letters have been mailed. Information from these telephone contacts will be documented in a telephone log format. This telephone log will be kept up to date and will become part of the project record. Any follow-up action recommended by the Tribe will be noted.

C. Planned Meetings

1. The Authorized Officer or designated party will meet with designated tribal leaders and/or designated tribal representatives as soon as possible upon request of the Tribe in order to discuss the proposed project, a specific project phase, or related issues.

2. Meetings will take place on the YPT reservation, in the field at the location of proposed actions, or at other mutually agreed upon locations in order to minimize costs to tribal members and to ensure maximum participation.

3. Meeting dates will be coordinated with designated tribal points of contact at least 10 working days prior to the meeting date.

4. The meeting will be confirmed by a letter to the tribal leadership, with a copy furnished to the designated tribal cultural committee lead or point of contact. The letter will include a purpose statement, a proposed agenda, and a list of agency attendees.

5. Meeting summaries will be prepared within 5 working days following the meeting and will be distributed to the tribal leadership and other appropriate parties in draft. Comments from these tribal representatives will be incorporated as appropriate before finalizing the notes. Final meeting notes will be distributed within 10 working days following distribution of the draft notes.

D. Concluding Consultation

After reasonable and good faith efforts to address and resolve issues, the BLM Authorized Officer, in consultation with the signatories, will determine the appropriate point of closure of the consultation on the proposed action or phase of the project. Closure of a phase of consultation will be provided by the BLM, in writing, to the tribal leadership and representatives. If ongoing consultation is productive, the BLM and the Tribe will make that determination and outline the appropriate scope, level, and process for its continuance. (Ongoing consultation may include such things as continued staff-to-staff coordination, weekly project phase reporting, and/or participation of tribal monitors)

APPENDIX C: DISCOVERY AND UNANTICIPATED IMPACTS PROCEDURES

In the event that previously unknown cultural resources are discovered within the area of potential effects of the undertaking, or should known resources be directly or indirectly impacted in an unanticipated manner, the following actions, at a minimum, would be initiated by the BLM in consultation with the signatories:

1. All activities will halt in the immediate vicinity of the discovery and all actions will be directed away from an area at least 100 meters in all directions from the point of discovery.

    a. A BLM cultural resources specialist (CRS) will be notified immediately by the contractors or BLM staff working on the project. The BLM will ensure that a CRS, with the proper expertise for the suspected resource type, is on-site as soon as possible.

    b. The BLM will initiate consultation with the appropriate parties, including the SHPO, other federal agencies, the Tribe, and interested parties as appropriate.

    c. In the event that a CRS or other necessary persons are not immediately available, BLM may be required to cover and/or otherwise protect the resource until such time that the appropriate parties can be present for inspection and/or evaluation.

2. Upon arriving at the site of the discovery, the CRS shall assess the resource. At a minimum, the assessment shall include:

    a. The nature of the resource (e.g., number and kinds of artifacts, presence/absence of features). This may require screening of already disturbed deposits, photographs of the discovery, and/or other necessary documentation.

    b. The spatial extent of the resource. This may require additional subsurface testing, mapping or inspection, as is appropriate to the resource.

    c. The nature of deposition/exposure. This may require interviews with construction personnel, other persons having knowledge concerning the resource or, in rare instances, the expansion of existing disturbances to establish the characteristics of the deposits.

3. Discoveries and unanticipated impacts to known resources will be managed according to the provisions of this PA and the Protocol. After consultation with the appropriate parties, BLM shall then make a determination of eligibility, treatment and effect. If necessary, BLM, in consultation with the SHPO, the Tribe and appropriate parties, shall ensure that a treatment plan is prepared following the guidance provided in this PA.

4. Any items covered by NAGPRA encountered in a discovery, or unanticipated impact situation, will be handled according to 36 C.F.R. § 10 or Nevada state laws, as appropriate.

5. All implementation activities in the area of the discovery will be halted until the BLM documents in writing that identification and treatment is complete and activities can resume.