Programmatic Agreement
Between
The Bureau of Land Management, Egan Field Office
And
The Nevada State Historic Preservation Officer
Regarding the Midway Gold US Inc. Pancake Range Project

WHEREAS, Midway Gold US Inc. ("Midway") intends to seek authorization from Bureau of Land Management Egan Field Office (BLM) for mining operations at the Pancake Range Project (Pan Project) in Eureka County, Nevada; and

WHEREAS, the BLM has determined that the authorization of mining operations at the Pan Project may have the potential to affect 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 Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, effects to historic properties (as that term is defined in 36 C.F.R. § 800.16(l) (1)) in the Area of Potential Effect (APE) (Appendix A) cannot be fully determined and the signatories desire to enter into this Programmatic Agreement (PA) to set forth procedures to be followed in satisfaction of BLM's Section 106 responsibilities of the National Historic Preservation Act, for the Pan Project in the APE; and

WHEREAS, BLM has consulted with Midway regarding the effects of the undertaking on historic properties and has invited Midway to be a concurring party to this PA; and

WHEREAS, BLM has consulted with Mt. Wheeler Power which is responsible for construction of a transmission line to the Pan Project on lands managed by the BLM, and the BLM has invited Mt. Wheeler Power to be a concurring party to this PA; and

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

WHEREAS, BLM and the SHPO are referred to as the Signatory Parties to this PA; and

WHEREAS, the Duckwater Shoshone Tribe and Te-Moak Tribe of Western Shoshone have been identified as Indian Tribes (Tribes) that may attach religious and cultural significance to historic properties within the APE and the Tribes have been contacted and offered an opportunity to participate as concurring parties to this PA; and

WHEREAS, the BLM will notify the public of the Pan Project and will provide 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 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii) during and concurrent with the public comment process for the draft environmental impact statement (DEIS) for the Pan Project. A copy of the PA will be made available to the public at the Ely Field Office and copies provided to all consulting parties. During this notification period, certain individuals and/or organizations with a demonstrated interest in the APE, such as the local chapter of the Lincoln Highway Association, may participate as consulting parties; and

WHEREAS, BLM has a Nationwide Programmatic Agreement dated February 9, 2012 and a State Protocol Agreement (Protocol) between BLM and the SHPO, that govern all other undertakings and historic properties that may occur within the APE and those agreements are 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 authorized mining operations for the Pan Project; and

NOW, THEREFORE, the Signatory Parties agree that the Pan Project 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 Pan Project.

I. ROLES AND RESPONSIBILITIES

A. BLM is responsible for administering this PA and will ensure that all of its stipulations are carried out. This includes but is not limited to ensuring that all parties carry out their responsibilities; overseeing all cultural resources 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 the Pan Project. The Authorized Officer, or their designee, is the Pan Project point of contact for BLM.

B. Midway's signatory, or their designees, will be the responsible point of contact for the Pan Project and provide BLM with any and all information needed to implement this PA and in Midway's possession or reasonably available to Midway.

C. Midway shall bear the expense of identification, evaluation, and treatment of all historic properties directly or indirectly affected by Pan Project 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. If Midway withdraws project applications, then Midway 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, Tribes, and other consulting parties identified during the implementation of this PA for the Pan Project. Any submission to SHPO or interested parties not from BLM will be considered as informational only and will not trigger any compliance timelines or other actions.

E. 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 draft Secretary of the Interior's Professional Qualification Standards dated June 20, 1997 (62 FR 33707-33723) and who have been permitted for such work on public lands by BLM.

F. Midway, in cooperation with Signatory Parties, 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 Midway's safety and or related job training and project orientation. Midway shall cooperate with BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) on Federal lands and with Nevada Revised Statutes (NRS) 381 and 383 for private lands.

G. Midway will be responsible for costs of rehabilitation or mitigation, and may be subject to penalties under applicable federal, state or local law, should damage to cultural resources inside or outside the APE occur during the period of construction, mine operation or reclamation due to the unauthorized or negligent actions of Midway, their employees, contractors or any other project personnel operating under Midway's supervision, direction, or control.

H. If the Pan Project is sold or otherwise transferred to another proponent other than Midway, the Signatory Parties will determine within 90 days of the sale or transfer if the PA will remain in effect, be amended per Stipulation XIII, or be terminated per Stipulation XIV. All provisions of the PA will remain in effect until such a determination is made.

II. IDENTIFICATION OF HISTORIC PROPERTIES

A. BLM shall identify interested persons through the NEPA process and involve interested parties, as appropriate, in all activities carried out under this PA associated with the undertaking.

B. Midway, through its contractor, shall ensure that cultural resources inventories are conducted on all lands identified within the approved Pan Project APE (Appendix A) for direct effects in accordance with the Protocol.

C. The APE for assessing indirect effects (visual, audible, and atmospheric) will be the direct disturbance area plus one mile outward in all directions from the perimeter of the APE. The indirect APE may extend beyond the one-mile convention to encompass properties that have traditional religious and cultural importance to Indian tribes or other geographically extensive historic properties such as trails or roads, when effects have been determined to extend beyond this distance. The assessment of visual effects will incorporate a Geographic Information System (GIS) viewshed assessment as well as BLM Visual Resource Management (VRM) concepts. Midway through its consulting archaeologist will obtain data from methods outlined in Stipulation II E, to identify historic properties outside of the direct APE that would be adversely affected by visual impacts from the Pan Project or its associated transmission line. The BLM will consult with Indian tribes to identify any properties of traditional religious and cultural importance that might be affected by the implementation of the Pan Project and its associated transmission line.

D. Any amendments on the Pan Project and future exploration outside the Pan Project APE will be surveyed following BLM Class III Standards to identify historic properties.

E. BLM shall have 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.glorecords.BLMSWFO.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 Registers of Historic Places, National Trail System, historic maps, BLM and SHPO cultural resources records, and pertinent historic records/publications and maps to identify historic resources within the APE. The above list is not exclusive and should include other sources if identified by any Signatory Party.

F. The required identification activities shall be completed by Midway's consulting archaeologist or other qualified individuals as necessary. After all reasonable efforts have been made, if access cannot be obtained to private land and after consulting with BLM, Midway through its qualified contractor 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, the BLM Authorized Officer may issue a Notice to Proceed (NTP) for any construction segment as prescribed in Stipulation VII.

III. ELIGIBILITY

A. BLM, in consultation with SHPO and other consulting parties as necessary, shall evaluate all cultural resources recorded under this PA for eligibility to the NRHP based on an existing approved historic context or one that will be prepared.

B. BLM shall consult with the appropriate Tribes to evaluate the eligibility of properties of traditional religious and cultural importance within the APE.

C. A separate report will be prepared to document historic properties with standing architectural resources in order to expedite SHPO review.

D. To the extent practicable, NRHP eligibility determinations shall be based on documented inventory information and information provided by Tribes and other consulting parties. If the information gathered in the inventory, or in interviews with Tribes and other consulting parties, is inadequate to determine NRHP eligibility, Midway, 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 for archaeological resources 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 Midway's consulting archaeologist be approved for a testing Cultural Resource Use Permit (CRUP) prior to subsurface probing, testing, data recovery or surface material collection.

E. If any of the Signatory Parties, Tribes, or consulting parties disagree regarding the eligibility of a cultural resource, the Signatory Parties shall work together with Tribes or 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 C.F.R. § 63.2. The Keeper's determination will be considered final.

F. BLM shall determine, in consultation with Tribes or other consulting parties as necessary, the NRHP eligibility of all cultural resources that will be affected by Pan Project activities prior to initiation. BLM will determine NRHP eligibility in a manner consistent with the Protocol. Cultural resources may remain unevaluated for the NRHP only with the approval by BLM in consultation with SHPO.

IV. TREATMENT

A. BLM shall ensure that Midway avoids adverse effects to historic properties, whenever reasonably practical, through project design, or redesign, relocation of facilities, or by other means in a manner consistent with the Protocol.

B. When avoidance is not practical and data recovery is proposed to lessen or mitigate project related adverse effects to historic properties eligible under criterion D, BLM, in consultation with the SHPO, shall ensure that Midway, through its consulting archaeologist, develops a Historic Properties Treatment Plan (Plan) 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 the ACHP's Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites dated June 17, 1999. The required mitigation activities shall be completed regardless of land ownership. BLM may concurrently submit this document to other consulting parties, as BLM deems appropriate. These consulting parties shall have fifteen (15) days from their receipt to review the document. BLM will forward all comments received by consulting parties to the SHPO.

C. For properties eligible under criteria A through C, as defined in National Park Service Bulletin #36, mitigation other than data recovery may be considered (e.g., oral history, historic markers, exhibits, interpretive brochures or publications, etc.). When appropriate, the Plan shall include provisions (content and number of copies) for a publication for the general public.

D. 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) materials will be handled in accordance with 43 CFR Part 10. All materials collected will be maintained in accordance with 36 CFR Part 79 or 43 CFR Part 10, until the final treatment report is complete and collections are curated and/or returned to their owners. Midway, or its consulting archaeologist, shall provide proof of a current curation agreement to BLM within two (2) weeks of BLM acceptance of the final reports.

E. BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to SHPO and Tribes or other interested persons as appropriate. All such reports shall be consistent with contemporary professional standards and the Secretary of Interior's Formal Standards for Final Reports of Data Recovery Programs (48 FR 447716-44740). Final reports will be submitted 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.).

V. OTHER CONSIDERATIONS

A. 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. No identification, evaluation, or treatment efforts will occur beyond that necessary to complete the Section 106 process as agreed to in this PA.

B. Information on the location and nature of all cultural resources or information considered proprietary by a Tribe will be held confidential by the BLM to the extent provided by Federal and state law. BLM will not disseminate this information beyond what is required to complete the Section 106 process as agreed to in this PA.

VI. MONITORING

A. Any Signatory Party may monitor actions carried out pursuant to this PA. To the extent practicable, every effort will be made to minimize the number of monitors involved in the undertaking.

B. Any areas that BLM, in consultation with the SHPO, identifies as sensitive will be monitored during construction related 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.

VII. NOTICES TO PROCEED (NTP)

BLM may issue an NTP to Midway for individual construction segments as defined by Midway in their Pan Project plans, under any of the following conditions:

A. BLM, in consultation with SHPO, has determined that there are no cultural resources within the APE for that construction segment; or

B. BLM, in consultation with SHPO, has determined that there are no historic properties within the APE for the construction segment; or

C. BLM, after consultation with the SHPO and other consulting parties, has implemented an adequate Treatment Plan for the properties affected by the construction segment; and

1. Midway has posted a surety as set forth in Stipulation IX; and

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

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

4. BLM shall provide an electronic copy of the summary to SHPO; and

5. SHPO will 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.

D. Midway shall not begin any ground disturbing activities within the boundary of any historic property until a NTP is issued for the property or construction segment encompassing that property.

VIII. TIME FRAMES

A. BLM will review and comment on any document submitted by Midway, through its consulting archaeologist, within thirty (30) calendar days of receipt.

B. BLM will submit the results of all identification, evaluation, effects assessments, treatment efforts, including discovery situations, and Treatment or Data Recovery Plans to the SHPO. The SHPO shall have thirty (30) calendar days from their receipt to review and comment on any submission.

C. A draft final report of all identification, evaluation and treatment activities will be due to BLM from Midway 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.

IX. SURETY BONDS

A. Based on a written detailed cost estimate submitted by the consulting archaeologist and agreed to by Midway and BLM, Midway will post a surety bond with BLM in an amount sufficient to cover all post-fieldwork costs associated with the inventory; implementing a Treatment Plan, Data Recovery Plan, or other cultural resource management activities. Such costs may include, but are not limited to post-fieldwork analyses, research and report preparation, interim and summary reports preparation, and the curation of project documentation and artifact collections in an approved curation facility. The surety shall be posted prior to BLM issuing any NTP. Additional surety bonds may be required by BLM to cover any of the issues associated with implementation of the PA.

B. The surety bond posted shall be subject to forfeiture if the post-fieldwork tasks are not completed within the time period established by the treatment option selected. BLM and Midway may agree to extend any such time periods. BLM will notify Midway in writing that the surety is subject to forfeiture and will allow Midway thirty (30) calendar days to respond before action is taken to forfeit the surety. If, during those thirty (30) days, Midway takes action to complete the post-fieldwork tasks, the bond shall not be forfeited.

C. The surety bond shall be released, in whole or in part, as specific post-fieldwork tasks, including final disposition of all collections, are completed and accepted by BLM.

X. POST-REVIEW DISCOVERY SITUATIONS

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

A. When previously unidentified cultural resources are discovered or an unanticipated impact situation occurs, all Pan Project related activities within 100 meters of the discovery/impact will cease immediately. Midway, through its contractor or its authorized representative, shall secure the location to prevent vandalism or other damage. Midway or its authorized representative shall immediately notify the BLM Authorized Officer of the discovery followed by written confirmation.

B. BLM will notify SHPO, Tribes, and other consulting parties as appropriate, within one (1) working day of being notified of the discovery or unanticipated impact, and consider their initial comments on the situation. Within two (2) working days after initial discovery, BLM will notify SHPO, Tribes, and other consulting parties as appropriate, of the decision to either allow Pan Project activities to proceed or to require further evaluation and/or mitigation.

C. If, in consultation with SHPO, Tribes, and other consulting parties, BLM determines 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. BLM will afford SHPO, Tribes and other consulting parties, as appropriate, two (2) working days of receipt to provide BLM with comments to be considered when BLM decides 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. BLM will ensure that such mitigative actions are implemented before allowing Pan Project activities to resume.

D. BLM will 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). Drafts of such reports shall be submitted to the SHPO for a fifteen (15) day review and comment period. Final reports shall be submitted to the SHPO, Tribes and consulting parties, as appropriate for information purposes.

E. Any disputes or objections arising during a discovery or unanticipated impact situation will follow the procedures in Stipulation XI.

F. Pan Project activities in the area of the discovery or unanticipated impact will be halted until Midway is notified by the BLM Authorized Officer in writing that mitigation is complete and/or activities can resume.

XI. DISPUTE RESOLUTION

A. If any Signatory Party, Tribe, or other consulting party, 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 within thirty (30) days of receiving such objection.

B. A consulting party can request participation by the ACHP should consultation not resolve the issue.

C. If there is an objection by SHPO to the manner in which the terms of this PA are implemented, SHPO shall notify the Egan Field Manager in writing of the objection. BLM will consult with SHPO to resolve the objection. If BLM determines that the objection cannot be resolved, it will request consultation by the BLM Nevada State Office to help resolve the objection. The BLM Nevada State Office shall have the authority to make the final decision in such dispute resolution.

D. For all post-review discovery disputes, the Egan Field Manager shall request consultation by the BLM Nevada State Office to help resolve the objection. The BLM Nevada State Office shall have seven (7) days to provide the Egan Field Manager with comments.

E. The Signatory Parties shall continue all actions under this PA that are not the subject of the dispute.

XII. DURATION

This PA shall become effective on the date of the last Signatory Party's signature below and shall remain in effect for a period of ten years or until terminated as provided in Stipulation XIV. If the project has not been initiated within the ten year period, this PA will automatically terminate.

XIII. AMENDMENT

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

XIV. TERMINATION

Any Signatory Party may initiate consultation for termination of this PA by providing written notice to the other Signatory Party. After notification by the initiating party, the other Signatory Party 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 Signatory Parties shall be required to meet all current or outstanding obligations the Signatory Parties assumed under the terms of the PA. In the event that this PA is terminated, the BLM will comply with the provisions of the current Protocol and applicable NHPA regulations.

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:

Doris A. Metcalf (acting) 7/30/2012

Egan Field Manager Date

Rebecca Palmer 8/3/12

for Ronald M. James Date

Nevada State Historic Preservation Officer

Concurring Parties:

Thomas Williams Date

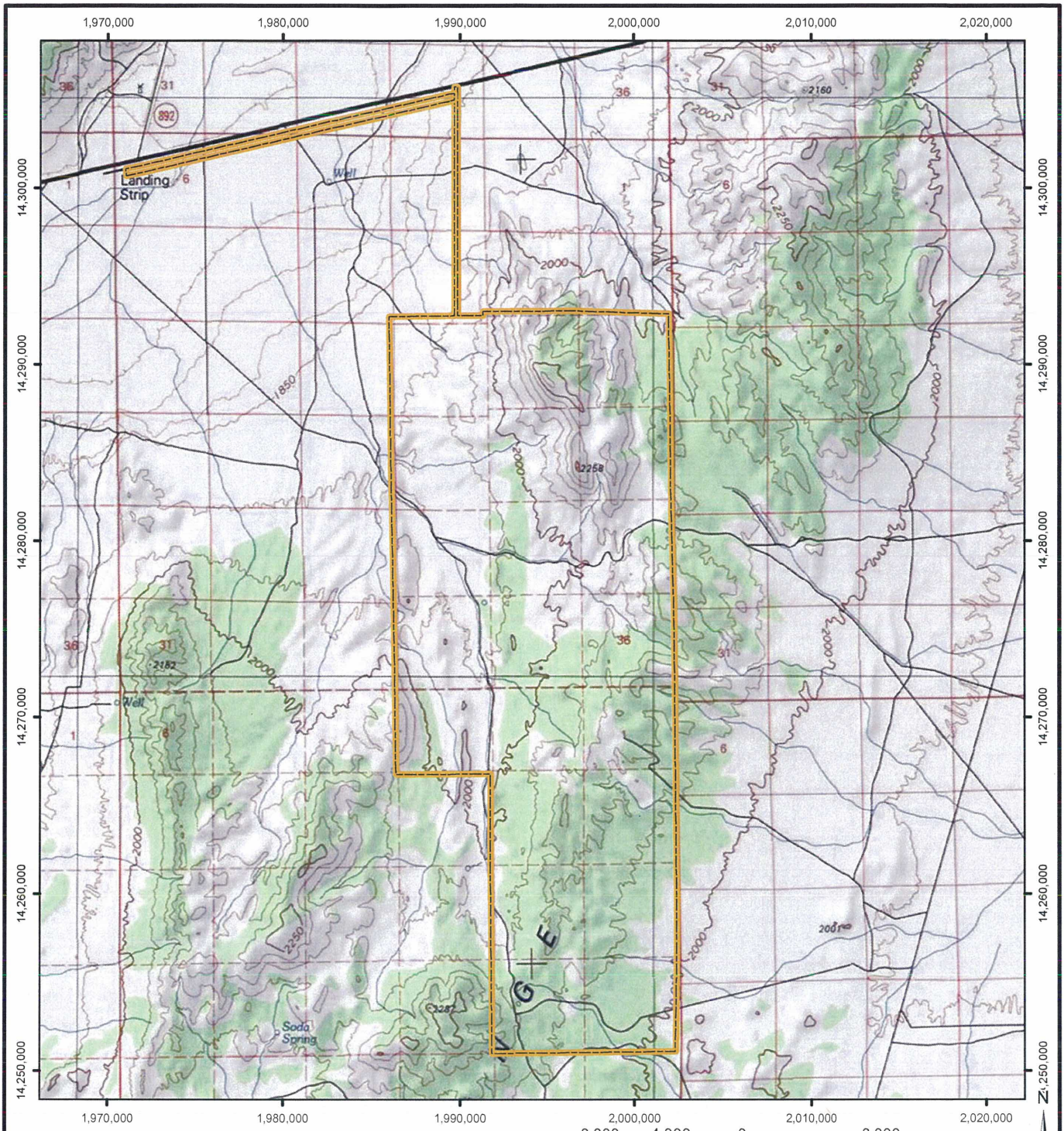
Vice President of Environmental Affairs

Midway Gold US Inc.

Mt. Wheeler Power Company Date

Te-Moak Tribe of Western Shoshone Tribal Chairman Date

Duckwater Shoshone Tribal Chairman Date



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LEGEND

Plan Boundary

The Pan Project APE for direct effects is defined as the lands within the boundaries of the Plan of Operations and the access road/corridor.

REFERENCES

Coordinate System: NAD 1983 UTM Zone 11N.

MIDWAY GOLD

DESIGN	AR	7/3/2012	FILE No. 12_01_01_01_0027_ArchBndys.mxd
GIS	AR	7/3/2012	SCALE AS SHOWN REV 0
CHECK	TW	7/3/2012	APPENDIX A
REVIEW	AB	7/3/2012	

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