PROGRAMMATIC AGREEMENT BETWEEN
THE SCHELL FIELD OFFICE OF THE BUREAU OF LAND MANAGEMENT
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE
FOR
THE SOUTH STEPTOE VALLEY WATERSHED RESTORATION PLAN
WHITE PINE COUNTY, NEVADA

WHEREAS, the Schell Field Office of the Bureau of Land Management (BLM) is preparing a plan to conduct multiple phased vegetation treatments on +/- 92,500 acres of public lands at various locations within the Steptoe Valley Watershed, White Pine County, 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 all relevant Federal regulations, policies, and laws; and implementing these policies 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 BLM is responsible for conducting Native American Tribal consultation on a government to government level and ensuring that it is in compliance with the BLM Manual Handbook, H-8120-1, Guidelines for Conducting Tribal Consultation, the tribes consulted were the Ely Shoshone Tribe, the Duckwater Shoshone Tribe and the Confederated Tribes of the Goshute Reservation; and

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

WHEREAS, this Programmatic Agreement (PA) covers all aspects of the planning,

development, and implementation of undertaking including but not limited to fire, prescribe fire, tree cutting and removal, chaining, herbicide treatments, weed prevention and treatment, aspen restoration, and seeding;

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 *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 utilized 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 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 boundaries of the +/- 92,500 acres considered for vegetation and fire management in the Steptoe Valley Watershed Restoration Plan NEPA documents. The overall APE and phase I APE are shown on the maps in Appendix A. The APE for each subsequent phase will be designated in the Cultural Resource Inventory Needs Assessment. Per the Protocol, each approved Cultural Resource Inventory Needs Assessment will be sent to SHPO.

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.

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 Blue Mass undertaking area.

The BLM may amend the APE as needed or as requested by the SHPO or the Tribes without amending the PA proper.

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 that those who require permits for such work by the BLM Nevada have them.

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 Tribes and affected tribal members to identify properties of traditional religious or cultural importance.

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 Tribes 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 Tribes.

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 Nevada BLM's *Cultural Resources Inventory General Guidelines, 4th edition* (January 1990), or the latest edition issued by BLM Nevada (Guidelines) at the date of implementation of each phase.

C. Treatment

1. To the extent practicable, the BLM shall ensure that project activities avoids adverse affects 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.

3. The BLM shall consult with the Tribes, 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 would determine the appropriate treatment to avoid or to minimize to the extent practicable adverse effects, and consult on these determinations with SHPO and the Tribes.

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 may include provisions (content and number of copies) for a publication for the general public.

5. The BLM, in consultation with the SHPO, shall 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 field records, artifacts and samples (soil, carbon…) collected during the identification, recordation and any treatment efforts are maintained until the final treatment report is complete. All artifacts will be 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 B 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 the required mitigation is complete and activities can resume.

VI. NOTICES TO PROCEED

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

A. The BLM, in consultation with the SHPO, has determined that

1. either there are no historic properties within the APE or through project design all historic properties will be avoided for the current phase of the undertaking; and

2. in consultation with the Tribes, no properties of traditional religious or cultural importance were identified within the APE for the current phase of the undertaking; or

B. The BLM, after consultation with the SHPO and in the case of properties of traditional religious or cultural importance, the Tribes, 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 report of the identification, recordation, evaluation, treatment or other mitigative activities will be due to the BLM from any contractor within three (3) 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.

3. The BLM shall submit the results of identification, recordation, 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 SHPO fails to respond to the BLM within 30 calendar days of the certified 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 Tribes (pending official request and a Memorandum of Understanding Information Sharing Agreement with the BLM is in place at the time of request). 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 respect. 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 the identification, evaluation, and any treatment of historic properties directly or indirectly affected by project-related activity. Such costs may 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 provided by and considered proprietary by the Tribes, 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 Schell Field Office (SFO) Manager shall consult with the objecting party and the SHPO to resolve the issue. If the BLM SFO Manager determines that the

objection cannot be resolved, they shall request the assistance of the BLM Nevada Deputy Preservation Officer and the Ely District Manager to resolve the objection. The BLM Ely District Manager's 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.

XII. EXECUTION

The execution of this PA and implementation of its terms is 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

Jay M Rainfal Acting

Mary D'Adversa, Schell Field Office Manager

Date 9/22/11

NEVADA STATE HISTORIC PRESERVATION OFFICER

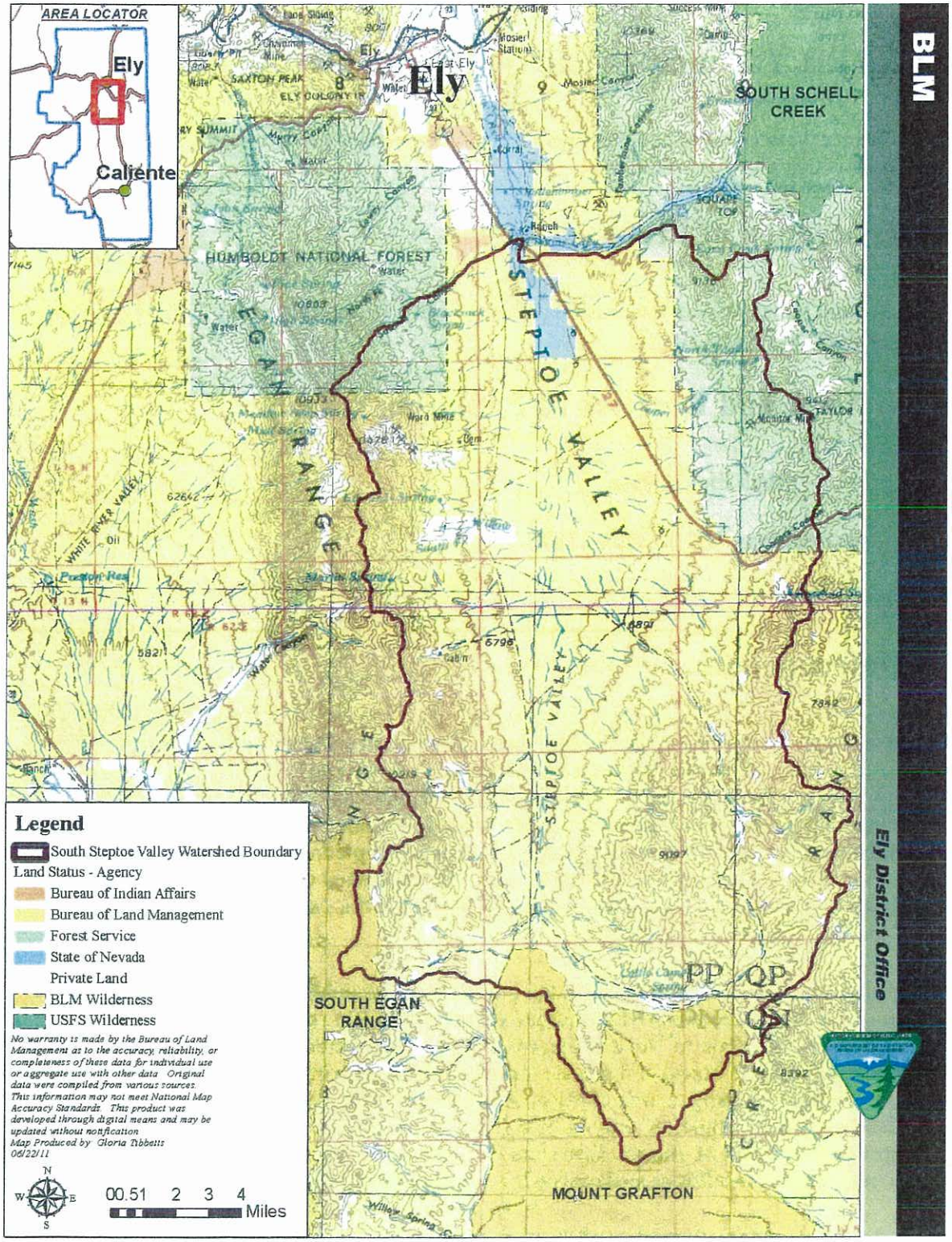
Ronald M. James

Ronald M. James, SHPO

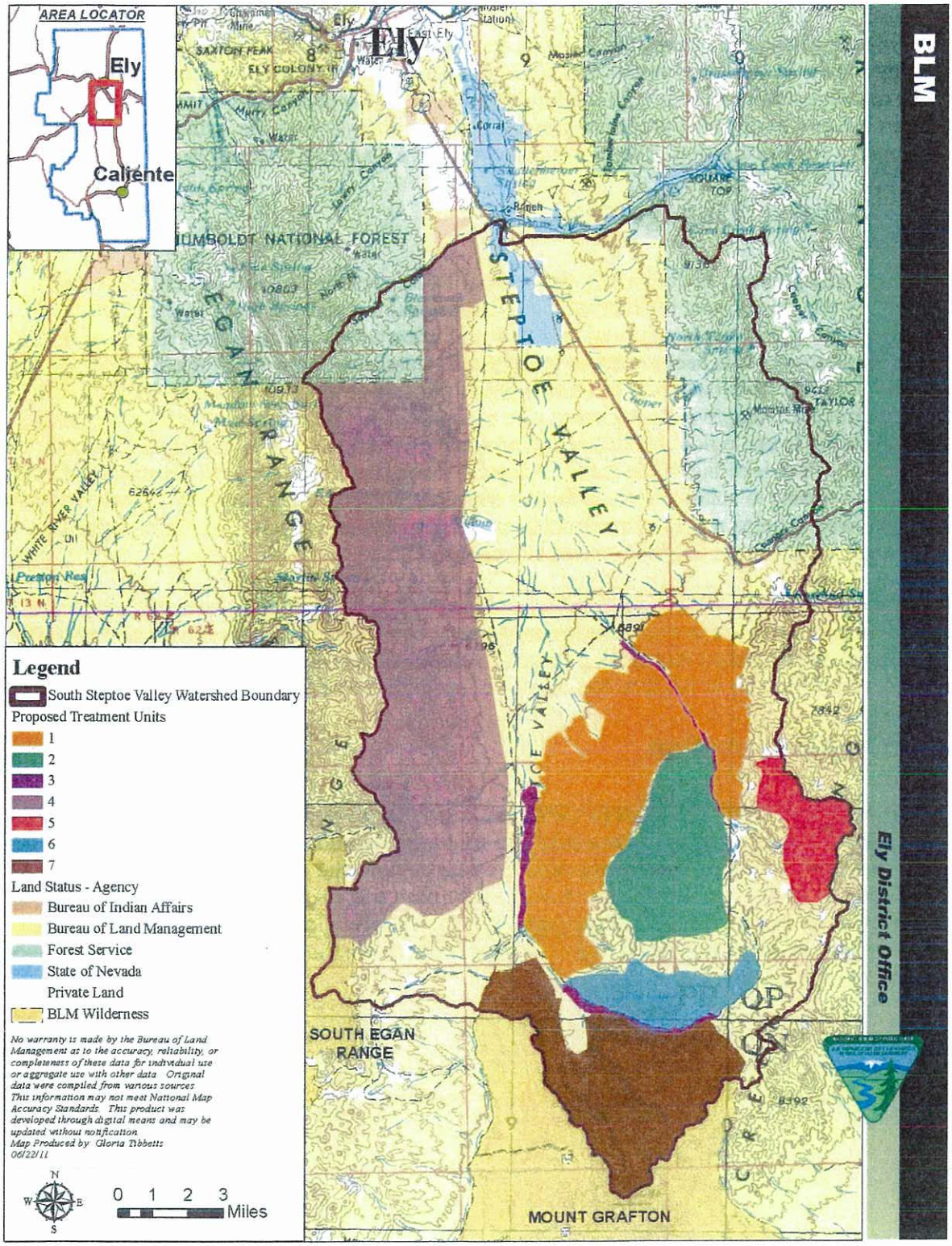
Date 9-27-11

APPENDIX A:

AREA OF POTENTIAL EFFECT



Map 1. South Steptoe Valley Watershed Project Area



Map 2. Proposed Action Treatment Units

APPENDIX B:

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 Tribes, 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 will assess the resource. At a minimum, the assessment will 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 Tribes 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 43 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.