

**MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,  
AND THE TRUCKEE MEADOWS WATER AUTHORITY  
REGARDING  
THE WHITES CREEK DIVERSION AND MT. ROSE WATER TREATMENT PLANT,  
WASHOE COUNTY, NEVADA**

**WHEREAS**, the United States Army Corps of Engineers, Sacramento District (hereafter the "Corps") proposes to issue a permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) to the Truckee Meadows Water Authority (hereafter the "TMWA") for the Whites Creek Diversion Project (hereafter the "Undertaking") located in Washoe County, Nevada, identified as the "Project Area" on Maps 1 and 2 in Attachment 1 of this Memorandum of Agreement (hereafter the "MOA"). The Project Area is the permit area for the Undertaking. The Undertaking is therefore subject to review under Title 54 U.S.C. § 306108, commonly known as Section 106 of the National Historic Preservation Act (hereafter the "NHPA"); and

**WHEREAS**, the Undertaking would include de-watering Whites Creek and construction of an infiltration gallery within a 4.3-acre project site, as depicted on Map 3 in Attachment 1 of this MOA. The infiltration gallery will be installed beneath the stream channel and will affect approximately 100 linear feet (0.017 acre) of Whites Creek. The plant site is approximately 4.3 acres and includes an 9,900 square foot building, four parking spaces, an on-site storm water detention pond, designated snow storage area, location sign, and perimeter fencing; and

**WHEREAS**, the Corps, in consultation with the Nevada State Historic Preservation Officer (hereafter the "SHPO") and in accordance with 36 CFR § 800.4(a)(1), has established the Undertaking's Area of Potential Effects (hereafter the "APE") as including all areas to be developed as part of the Undertaking, including all temporary and permanent easements areas and all project-related construction, staging, and access areas. The APE has been expanded to consider the entirety of Site 26Wa2033, depicted as the "Avoidance Area" on Map 4 in Attachment 1 of this MOA. The area subject to direct effects includes the approximately 4.3-acre Project Area. Potential indirect effects were considered for the remainder of Site 26Wa2033 located outside of the Project Area; and

**WHEREAS**, the Corps, in consultation with the SHPO and in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried historic properties within the Undertaking's APE and has determined that 26WA2033 is eligible for listing in the National Register of Historic Places (hereafter the "NRHP") under Criteria C and D; and

**WHEREAS**, the Corps, in consultation with the SHPO, has applied the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and determined that the Undertaking will have an adverse effect on 26WA2033; and

**WHEREAS**, the Corps has considered alternatives to the Undertaking, has chosen to proceed with the Undertaking, and has determined to resolve adverse effects of the Undertaking on 26WA2033 through the execution and implementation of this MOA; and

**WHEREAS**, the Corps has consulted with the Walker River Paiute Tribe (hereafter "WRPT"), Summit Lake Paiute Tribe (hereafter "SLPT"), Reno-Sparks Indian Colony (hereafter "RSIC"), the Pyramid Lake Paiute Tribe (hereafter "PLPT"), and the Washoe Tribe of Nevada and California (hereafter "Washoe") and invited the RSIC and Washoe to participate in this MOA as Concurring Parties (hereinafter referred to collectively as the "Tribes"); and

**WHEREAS**, the TMWA has participated in the consultation and have been invited to participate in this MOA as an Invited Signatory; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (hereafter the "ACHP") of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, the regulations at 36 CFR § 800.6(c)(1-3) identify three types of parties to this agreement: Signatories, Invited Signatories and Concurring Parties (hereinafter referred to collectively as the "Parties"); and

**WHEREAS**, any Invited Signatory that signs this MOA shall have the same rights with regard to seeking amendment or termination as the Signatories per 36 CFR § 800.6(c)(2)(i); and

**NOW, THEREFORE**, the TMWA, the Corps, and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

## **STIPULATIONS**

The Corps shall make this MOA a condition of the permit for the Undertaking and shall ensure that the following measures are carried out by the TMWA to the satisfaction of the Corps:

### **I. DEFINITIONS**

The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this MOA.

### **II. ESTABLISHMENT AND MONITORING OF AVOIDANCE AREAS IN THE APE**

- A. The Corps, in consultation with the SHPO, the TMWA, and the Tribes, designated an avoidance area around 26Wa2033 (hereafter referred to as the "Avoidance Area") as depicted on Map 3 of Attachment 1 to this MOA to ensure protection of the historic property's NRHP values. The Avoidance Area will remain in effect until the Corps, in consultation with the Parties, either determines that the portion of 26Wa2033 within the APE is a non-contributing element of the historic property or the fieldwork portion of the mitigation plan in accordance with Stipulation III has been completed and a Notice to Proceed (hereafter the "NTP") has been issued in accordance with Stipulation IV.C of this MOA.
- B. Upon execution of this MOA, and prior to initiating surface disturbing activities associated with the Undertaking, TMWA's Cultural Resource Specialist (hereafter the "CRS") shall place flagging or high-visibility temporary construction fencing around the Avoidance Area within the Undertaking area.
- C. If the Corps, in consultation with the TMWA, determines that additional avoidance signage is necessary, it should read, "Environmentally Sensitive Area."

- D. The CRS shall monitor the Avoidance Area at least once per week during all construction activities or at least once per month when no construction activity is planned for the Undertaking. Monitoring will ensure that all flagging and/or fencing remain intact and that no disturbances have occurred within the Avoidance Area. The CRS shall provide electronic reports of these inspections to the Corps and the SHPO within five (5) business days of the inspection.
- E. The CRS shall report any disturbances within the Avoidance Area to the Corps and the TMWA within 24 hours of discovery. The Corps shall notify the SHPO within one (1) business day of receipt of the report of an inadvertent disturbance or unauthorized activity within the Avoidance Area.
- F. The TMWA shall ensure that all personnel, employees of all contractors, and any authorized individuals inside the Undertaking area are aware that no ground disturbance is permitted inside the Avoidance Area except that conducted by the CRS until the Corps issues a NTP in accordance with Stipulation IV.C of this MOA.

## II. TESTING OF 26WA2033 IN THE APE FOR THE UNDERTAKING

- A. The TMWA, through its CRS and in consultation with the Parties, has developed a testing plan to characterize the subsurface component of 26Wa2033 in the APE for the Undertaking (hereafter the "site component") and to determine if site component contributes to the NRHP-eligibility of 26Wa2033. This testing plan is located in the June 19, 2017, *Archaeological Testing and Historic Properties Treatment Plan for Site 26Wa2033, Washoe County, Nevada*, (hereafter the "HPTP"), prepared by Kautz Environmental Consultants, Inc., which is included as Attachment 2 of this MOA.
- B. The TMWA, through its CRS, shall complete the testing activities prior to the Corps issuing a NTP in accordance with Stipulation IV.B of this MOA.
- C. Within thirty (30) calendar days of the completion of testing, the TMWA, through the CRS, shall provide the Corps with a draft *Evaluation Report* detailing the results of testing activities and provide a NRHP evaluation for the site component.
- D. The Corps shall review and provide any comments on the draft *Evaluation Report* to the TMWA within seven (7) calendar days of receipt.
- E. The TMWA, through its CRS, shall revise the *Evaluation Report* to address the Corps comments within seven (7) calendar days of TMWA's receipt of the comments.
- F. Upon the Corps' approval, the Corps shall submit the *Evaluation Report* and the Corps' determination of NRHP eligibility for the site component to the SHPO for review. The SHPO will have seven (7) calendar days from receipt to provide comments to the Corps. If the SHPO concurs with the determination of eligibility or does not respond, the Corps will consider the determination of NRHP eligibility for site component final.
- G. The Corps shall concurrently provide a copy of the draft *Evaluation Report* to the Tribes as appropriate. The Tribes will have seven (7) calendar days from receipt to provide

comments to the Corps. The Corps shall provide the SHPO with any comments received from the Tribes within seven (7) calendar days of receipt.

- H. The TMWA's CRS will address any comments provided by the SHPO and/or the Tribes as appropriate, and supply a final *Evaluation Report* to the Corps within ten (10) calendar days of TMWA's receipt of those comments.
- I. Upon approval of a final *Evaluation Report* by the Corps, the Corps shall provide final copies of the HPTPs to the SHPO, and the Tribes as appropriate.
- J. If the Corps, in consultation with the SHPO, determines that the site component contributes to the NRHP eligibility of 26Wa2033, the Corps shall notify the TMWA that the mitigation planned in the HPTP (Attachment 2) shall be undertaken in accord with Stipulation III, below.
- K. If the Corps, in consultation with the SHPO, determines that the site component does not contribute to the NRHP eligibility of 26Wa2033, the Corps shall inform the TMWA that the mitigation found in Stipulation III, below, will not be required to address the effect of the Undertaking on 26Wa2033 and the Corps will issue a NTP for the portion of the Undertaking located within the site component in accordance with Stipulation IV.B, below.

### III. TREATMENT OF ADVERSE EFFECTS

- A. The TMWA shall direct its CRS to implement the HPTP (Attachment 2) upon receipt of notification from the Corps pursuant to Stipulation II.J, above.
- B. Within thirty (30) calendar days of completion of fieldwork as defined in the HPTP, the TMWA, through the CRS, shall provide the Corps with a preliminary fieldwork summary report outlining fieldwork activities, sampling, and preliminary findings.
- C. Upon receipt, the Corps shall submit the fieldwork summary electronically to the SHPO for review and comment. The SHPO will have two (2) business days to review the summary and provide comments to the Corps. The Corps shall provide any comments to TMWA's CRS to address.
- D. The TMWA, through the CRS, shall provide the Corps with a draft data recovery and/or mitigation report within nine (9) months of the completion of the fieldwork as defined in the HPTP, unless otherwise negotiated.
- E. The Corps shall ensure that all such reports are consistent with contemporary professional standards and the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (48 CFR 44716-44740).
- F. The Corps shall submit the draft data recovery and/or mitigation report to the SHPO and the Tribes. The SHPO and the Tribes will have thirty (30) calendar days from their receipt to review and comment on the draft report. If no comments are received within the comment period, the Corps may direct the CRS to finalize the report.

- G. TMWA, through the CRS, shall provide the Corps with a final data recovery and/or mitigation report within sixty (60) calendar days.
- H. The Corps shall ensure that all final data recovery and/or mitigation reports resulting from actions pursuant to this MOA will be provided to the SHPO and the Tribes.
- I. The Corps shall ensure that all records and materials resulting from identification and mitigation efforts are held by the CRS until the final data recovery reports are complete. At that time, the CRS will submit all final reports, inventories, and cultural materials resulting from identification and mitigation efforts to the Nevada State Museum. No human remains or associated grave goods shall be subject to curation. The TMWA will pay all curation fees and provide the Corps with a copy of an agreement with, or other written commitment from, a curation facility to accept artifacts from this Undertaking. Any agreements concerning curation will be retained and available for audit for the life of the Undertaking.
- J. Human remains and associated grave goods will be handled according to the provisions of Nevada Revised Statutes Chapter 383.

This MOA is intended to meet the terms found in NRS 383.121 as amended (Chapter 523, Statutes of Nevada 2017, page 3544) for an "existing agreement with a federal agency that was executed pursuant to federal law and that relates to the discovery of prehistoric native Indian human remains or a funerary object". Execution of this MOA means that the provisions for notification found in NRS 383.121, as amended, do not apply. Standard notification requirements found in NRS 383.150 to NRS 383.190, amended, do apply.

#### **IV. INITIATION OF CONSTRUCTION**

Upon execution of the MOA, the Corps may authorize the TMWA to proceed with individual construction activities or areas under any of the following conditions:

- A. The Corps has provided the TMWA with a written determination that the construction activities or areas are not inside the Avoidance Area defined in Stipulation II.A; or
- B. The Corps has provided the TMWA with a written determination that the TMWA has implemented the HPTP in accordance with Stipulation III.A; and
  - 1. The fieldwork phase of the HPTP has been completed; and
  - 2. The Corps has accepted a summary description of the fieldwork performed and a reporting schedule for that work; and
  - 3. The Corps has provided an electronic copy of the summary to the SHPO; and
  - 4. The SHPO has reviewed and accepted the fieldwork summary or the SHPO has not responded within two (2) business days of receipt of the summary.

- C. The TMWA shall not begin any ground disturbing activities within the boundary of the Avoidance Area until the Corps has provided the TMWA with a written determination that construction activities may proceed within the avoidance area.

## V. POST-REVIEW DISCOVERIES

Stipulations of this MOA are intended to identify and mitigate adverse effects to historic properties. Post-review discoveries of other buried cultural resources are not anticipated; however, if there is a discovery or unanticipated effects on historic properties are identified, the Corps will ensure that provisions included in Attachment 3 of this MOA are satisfied.

## VI. NATIVE AMERICAN CONSULTATION AND MONITORING

The TMWA shall allow Native American monitor(s) to be present during all Undertaking-related ground-disturbing activities in accordance with the provisions in Attachment 3 of this MOA.

## VII. PROFESSIONAL QUALIFICATIONS AND STANDARDS

- A. Professional Qualifications.  
All historic preservation activities implemented pursuant to this MOA shall be conducted by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (hereafter the "PQS") for Archeology, History, or Architectural History, as appropriate (48 FR 44738-39).
- B. Historic Preservation Standards.  
All historic preservation activities carried out pursuant to the MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and National Park Service.
- C. Curation and Curation Standards.  
The Corps shall ensure that the final reports, inventories, and cultural materials, excluding any human remains and/or associated grave goods, resulting from the historic preservation work stipulated in this MOA are curated at the Nevada State Museum in accordance with 36 CFR Part 79.
- D. Documentation Standards.  
The Corps shall ensure that all written documentation prescribed by Stipulation III of this MOA shall conform to the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740), as well as to applicable standards and guidelines established by the SHPO.

## VII ADMINISTRATIVE STIPULATIONS

- A. Confidentiality

The parties to this MOA acknowledge that Historic Properties covered by this MOA are subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103) and 36 CFR § 800.11(c), relating to the disclosure of sensitive archaeological site information and,

having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are consistent with Section 304 of the NHPA, 36 CFR § 800.11(c), and 5 U.S.C. § 552, as amended (Freedom of Information Act).

B. Report Distribution

The Corps shall ensure that copies of all technical reports and studies prepared to satisfy the terms of this MOA are provided upon completion by the TMWA to all parties to this MOA and to the Nevada Cultural Resources Information System (NVCRIS), consistent with requirements of Stipulation III above.

C. Resolving Objections

1. Should any Party to this MOA object at any time in writing to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to the implementation of the MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, the Corps shall immediately notify the other Parties to this MOA of the objection, and shall request their comments on the objection be provided within 15 days following receipt of the Corps' notification, and proceed to consult with the objecting Party for no more than 30 days to resolve the objection. The Corps will honor the request of the other Parties to participate in the consultation and will take any comments provided by those Parties into account.
2. If the objection is resolved during the 30-day consultation period, the Corps may proceed with the disputed action in accordance with the terms of that resolution.
3. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall:
  - a. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.
  - b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the Parties, and provide them and the ACHP with a copy of such written response.
  - c. The Corps' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

4. At any time during the implementation of the terms of this MOA, should an objection pertaining to such implementation be raised by a member of the public, the Corps shall immediately notify the other Parties to this MOA in writing of the objection and consider the objection. The Corps shall consult with the objecting party and, if the objecting party so requests, with the other Parties to this MOA, for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, the Corps will render a decision regarding the objection and notify all Parties to this MOA of its decision in writing. In reaching its decision, the Corps will take into account any comments from the Parties regarding the objection, including the objecting party. The Corps' decision regarding the resolution will be final. The objection will thereby be resolved.
5. The Corps may authorize any action subject to objection under this Stipulation to proceed after the objection has been resolved in accordance with the terms of this Stipulation.

#### D. Amendments

1. Any Party may propose that this MOA be amended, whereupon all Parties to this MOA will consult for no more than thirty (30) days to consider such amendment. The Corps may extend this consultation period, if requested. The amendment process shall comply with 36 CFR § 800.6(c)(1) and § 800.6(c)(7). An amendment will be effective on the date the amendment is signed by the Signatories.
2. The HPTP may be amended by written agreement of all of the Parties without amending the MOA proper.

#### E. Termination

1. If this MOA is not amended as provided for in Stipulation VII.D of this MOA, or if a Signatory or Invited Signatory proposes termination of this MOA for other reasons, the Signatory or Invited Signatory proposing termination shall, in writing, notify the other Parties to this MOA, explain the reasons for proposing termination, and consult with the other Parties to this MOA for at least thirty (30) days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then the Parties shall proceed in accordance with the terms of that agreement. Such consultation shall not be required if the Corps proposes termination because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).
2. Should such consultation fail, the Signatory or Invited Signatory proposing termination may terminate this MOA by promptly notifying the Parties to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if the Corps determines that the Undertaking will nonetheless proceed, then the Corps shall either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The Corps shall notify the Parties as to the course of action it will pursue.

F. Duration

1. Unless terminated pursuant to Stipulation VII.E of this MOA, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the Signatories until the Corps, in consultation with the other Parties, determines that all the terms of this MOA have been satisfactorily fulfilled. Upon a determination by the Corps that all of the terms of this MOA have been satisfactorily fulfilled, the Corps will immediately notify the other Parties to this MOA in writing of its determination that all terms of this MOA have been satisfactorily fulfilled and of the termination of the MOA. Following provision of such notice, this MOA will have no further force or effect.
2. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the date of execution by the Signatories. If the Corps determines that this requirement cannot be met, the Parties to this MOA will consult to reconsider its terms. Reconsideration may include the continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, the Corps will comply with Stipulation VII.E of this MOA, if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
3. If the Undertaking has not been authorized under Section 404 of the Clean Water Act within five (5) years following execution of this MOA by the Signatories, this MOA shall automatically terminate and have no further force or effect. In such event, the Corps shall notify the other Parties in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with 36 CFR Part 800.

G. Effective Date

This MOA will take effect immediately upon full execution by the Corps and the SHPO.

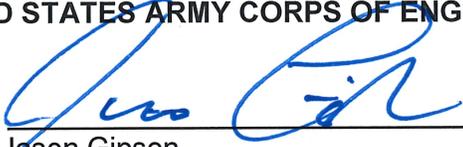
**EXECUTION** of this MOA by the Corps and the SHPO and implementation of its terms, shall evidence that the Corps has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that the Corps has taken into account the effects of this Undertaking on historic properties.

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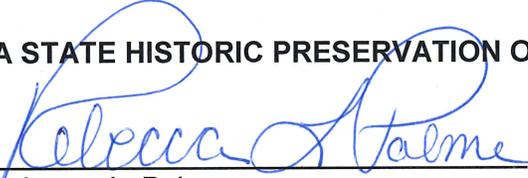
**MEMORANDUM OF AGREEMENT  
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THE NEVADA STATE HISTORIC PRESERVATION OFFICER.  
AND THE TRUCKEE MEADOWS WATER AUTHORITY  
REGARDING  
THE WHITES CREEK DIVERSION PROJECT AND MT. ROSE WATER TREATMENT  
PLANT,  
WASHOE COUNTY, NEVADA**

**SIGNATORY PARTIES:**

**UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT**

Name:  Date: 4/26/18  
Jason Gipson  
Title: Chief, Utah-Nevada Section

**NEVADA STATE HISTORIC PRESERVATION OFFICER**

Name:  Date: 04/27/18  
Rebecca L. Palmer  
Title: State Historic Preservation Officer

**INVITED SIGNATORY PARTY:**

**TRUCKEE MEADOWS WATER AUTHORITY**

Name:  Date: 4/25/18  
John Enloe  
Title: Authorized Representative

**MEMORANDUM OF AGREEMENT  
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PLANT,  
WASHOE COUNTY, NEVADA**

**CONCURRING PARTIES:**

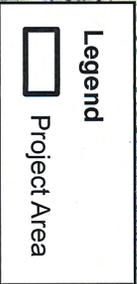
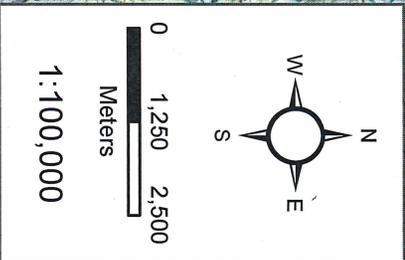
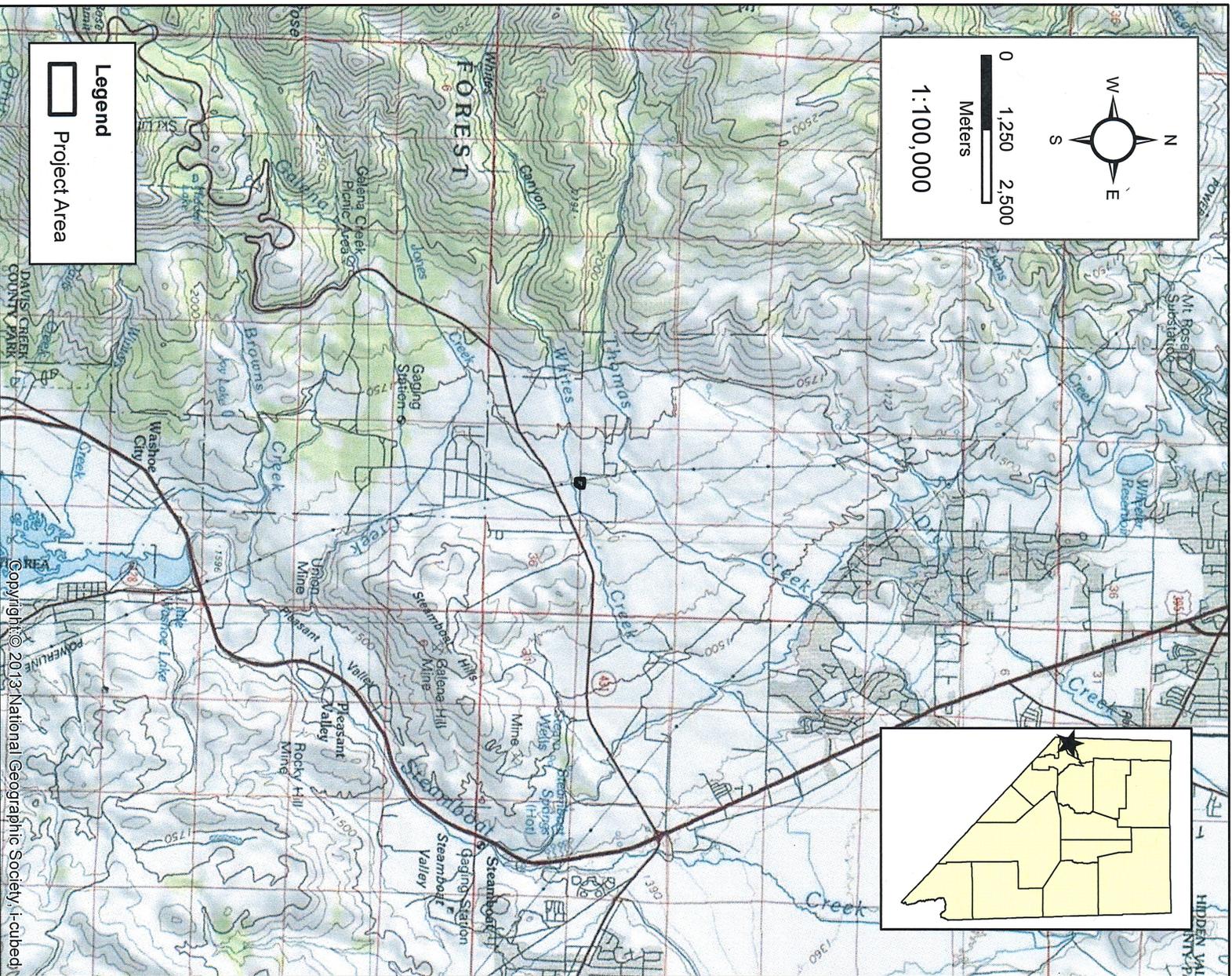
**RENO SPARKS INDIAN COLONY**

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Arlan Melendez  
Title: Chairperson

**WASHOE TRIBE OF NEVADA AND CALIFORNIA**

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Neil Mortimer  
Title: Chairperson

ATTACHMENT 1  
Area of Potential Effects/Permit Area

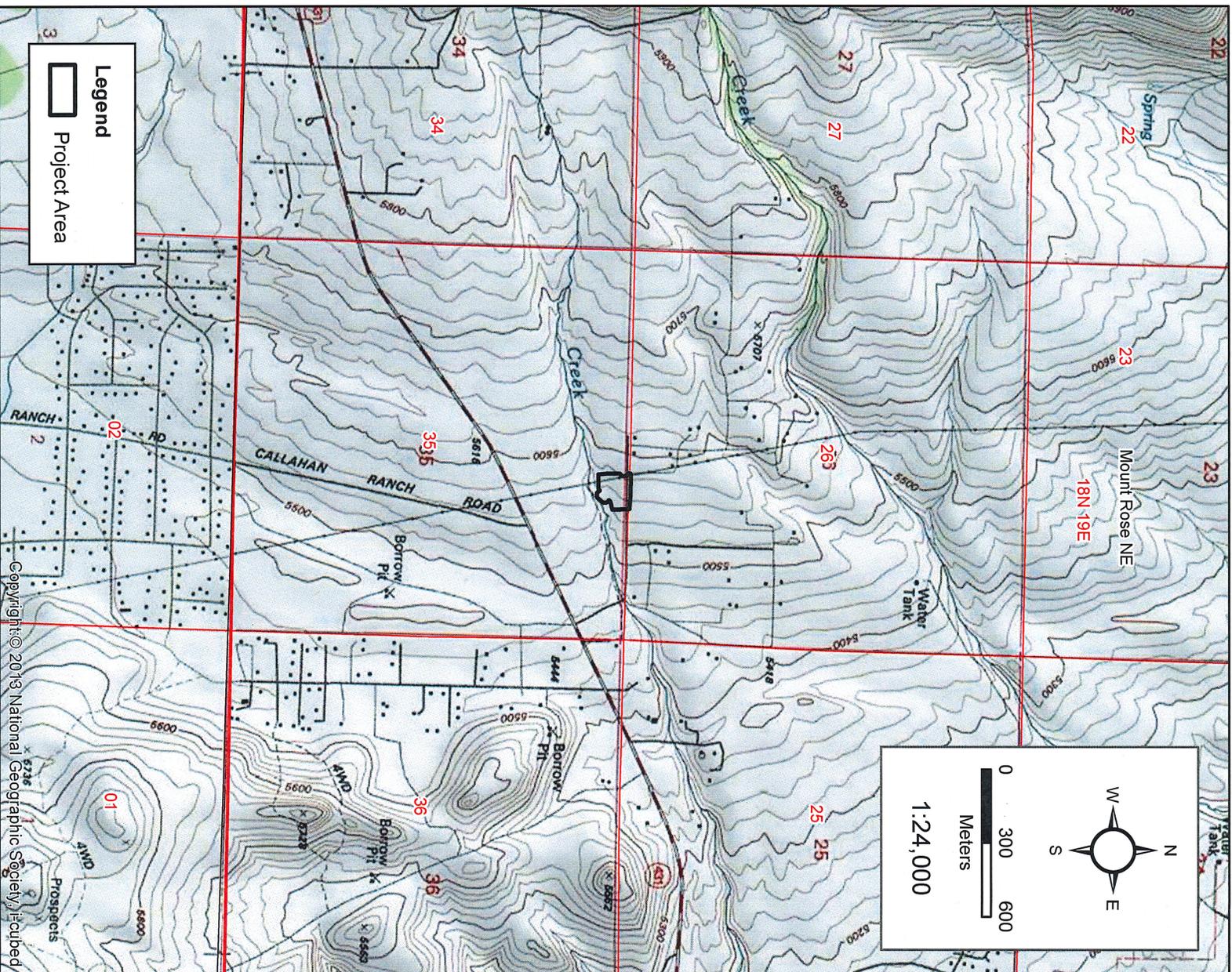


Map 1 - Project Vicinity Map  
 Base Map: USGS 1:100,000 Carson City, Nev., 1979.  
 T.18N., R.19E., Sections 26 and 35, Datum (NAD 83,  
 meters)  
 Project: Whites Creek Diversion Project (KEC-1048)

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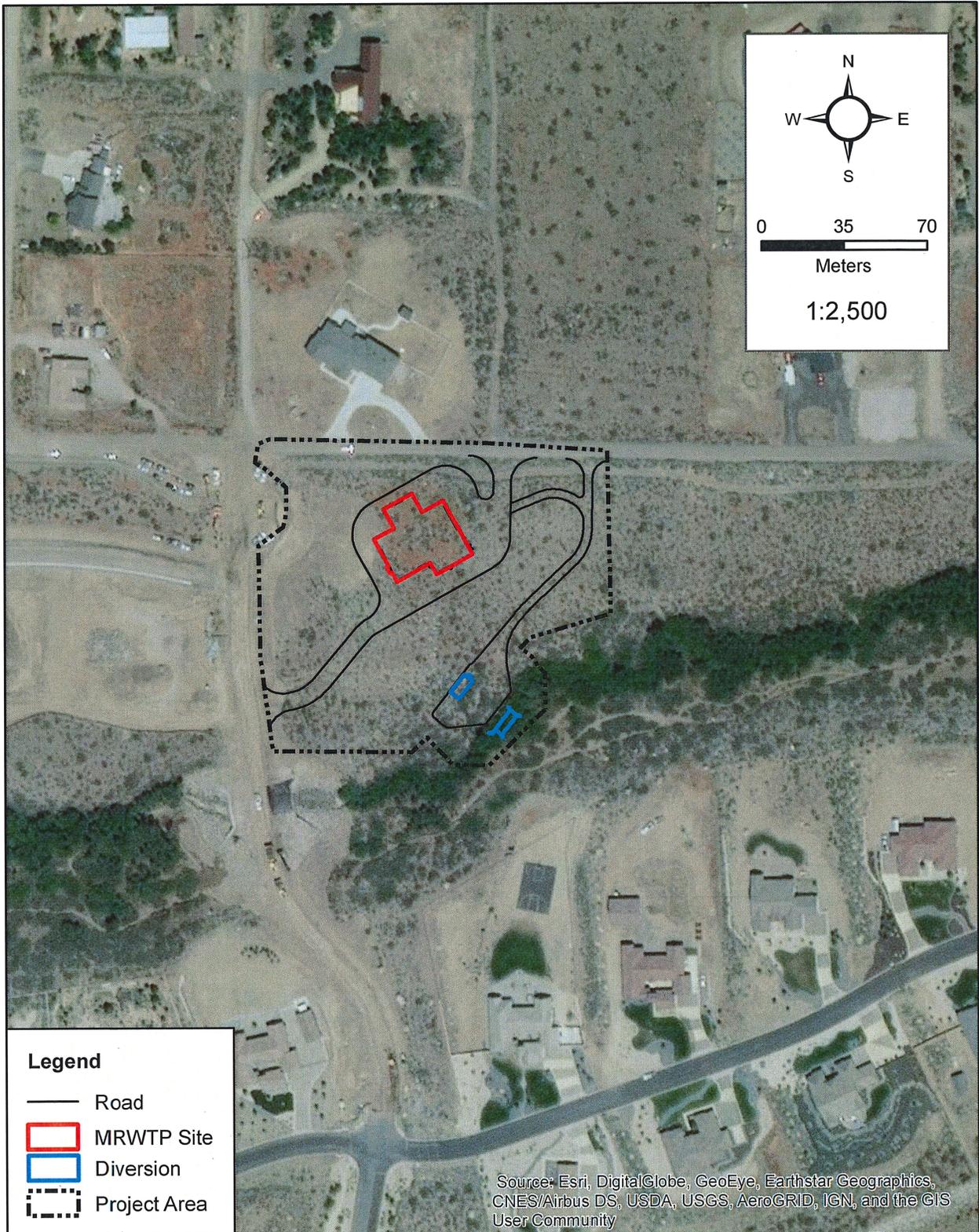




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Map 2 - Project Location Map  
 Base Map: USGS 7.5' Mount Rose NE, Nev., 1994,  
 T.18N., R.19E., Sections 26 and 35, Datum (NAD 83,  
 meters)  
 Project: Whites Creek Diversion Project (KEC-1048)





**Legend**

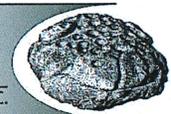
- Road
- MRWTP Site
- Diversion
- Project Area

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**Map 3 - Project Elements**

Base Map: World Imagery Provided by ESRI Online.  
 T.18N., R.19E., Section 35, Datum (NAD 83, meters)  
 Project: Whites Creek Diversion Project (KEC-1048)

**kautz**  
 ENVIRONMENTAL CONSULTANTS, INC.



This attachment contains information that may be exempt from  
Freedom of Information Act requests.

Please consult the appropriate federal agency to obtain this information.

ATTACHMENT 2  
Historic Properties Treatment Plan

This attachment contains information that may be exempt from  
Freedom of Information Act requests.

Please consult the appropriate federal agency to obtain this information.

## Attachment 3

### Cultural Resources Monitoring and Unanticipated Discovery Plan (Plan)

Archaeological monitoring of ground-disturbing activities will be conducted in accordance with the following Plan. Participants referenced in this Plan include the Truckee Meadows Water Authority (TMWA), United States Army Corps of Engineers, Sacramento District (Corps), TMWA's construction management firms, the Cultural Resources Specialist (CRS), the Washoe Tribe of Nevada and California, the Pyramid Lake Paiute, the Reno-Sparks Indian Colony, TMWA's lead construction company, and the Nevada State Historic Preservation Officer (SHPO). To allow for clear communication among all participants, each organization should designate a Point of Contact (POC) to receive and transmit all cultural resources-related communications.

#### A. Worker Environmental Awareness Training

The TMWA shall ensure that all persons working in the field are provided with archaeological and cultural resource awareness training and that subsequent hires will be required to be trained prior to operating in the field. Training can be in association with the TMWA's safety and/or related job training and project orientation. The TMWA shall cooperate with the SHPO to ensure compliance with the Nevada Revised Statutes (NRS 381) for the project.

#### B. Designation of a Cultural Resources Specialist (CRS)

Prior to the start of any project-related ground disturbance, the TMWA will identify a lead CRS. The CRS will possess training and background conforming to the Secretary of Interior's Professional Qualifications Standards, as published 36 CFR Part 61. In addition, the CRS shall have the following qualifications:

1. The CRS's qualifications shall be appropriate to the needs of the resources and shall include a background in anthropology, archaeology, history, or a related field; and
2. At least three years of archaeological or historic, as appropriate, resources mitigation and field experience in Nevada; and
3. At least one year of experience in a decision-making capacity on cultural resources projects in Nevada and the appropriate training and experience to knowledgeably make recommendations regarding the significance of cultural resources.

#### C. Construction Monitoring and Reporting

For the purposes of this plan, archaeological construction monitoring is defined as on-the-ground, close-up observation of construction related ground disturbance by a Cultural Resources Monitor (CRM) who is empowered in a discovery situation to halt all activities in the immediate vicinity of the discovery with a buffer of 15 meters to ensure protection of the discovery. CRMs shall have the following qualifications:

1. A BS or BA degree in anthropology, archaeology, historical archaeology or a related field and one year's experience monitoring in Nevada; or
2. An AS or AA degree in anthropology, archaeology, historical archaeology, or a related field, and two years of experience monitoring in Nevada; or
3. Enrollment in upper division classes pursuing a degree in the fields of anthropology, archaeology, historical archaeology, or a related field, and two years of monitoring experience in Nevada.

CRMs report directly to the CRS on a daily basis. The CRM watches for any kind of archaeological remains that are exposed during ground-disturbing construction activities. The CRM will be responsible for:

1. The definition and identification of any discovered cultural or archaeological find.
2. Halting all construction in the vicinity of a discovery and the prescribed buffer area in order to evaluate the discovery.
3. The preparation of a daily log of construction activities observed and any archaeological discoveries made.
4. The preparation a daily report and daily email for the CRS.

The CRS will be responsible for:

1. The immediate supervision and assignment of CRMs.
2. The determination as to whether any newly discovered cultural materials can be treated as eligible for listing in the NRHP for the purposes of the Undertaking in accordance with Section E, below.
3. Ensuring that either they or the CRMs will be equipped with basic archaeological field equipment necessary to record and map discovered sites and photograph the finds. A full suite of field gear needed to recover cultural materials will be brought on site as required. If necessary, the CRS will arrange with the construction superintendent's field office to cache frequently needed gear or supplies.
4. Determinations of the number of CRMs needed taking into account such factors as number of active ground-disturbing work areas, archaeological sensitivity, and proximity to known resources.
5. The preparation of a monitoring report at the conclusion of monitoring to be provided to the TMWA and the Corps in an electronic format.

A POC for the lead construction company will be designated prior to construction and will be responsible for providing a weekly construction schedule detailing the next week's planned activities to the project engineering firm for the purpose of scheduling the CRM monitor(s) and Native American monitor(s) (addressed in Section H, below). The construction schedule will describe work locations, depths of anticipated excavations, and estimated duration of construction activities. Recognizing that construction can be dynamic, notification of any need for a monitor will be provided to the project-engineering firm no less than 48 hours prior to the commencement of construction.

#### D. Discoveries of Materials Less Than 45 Years of Age

All of the materials listed below are less than 45 years of age and, unless of exceptional significance as determined by the CRM/CRS, are considered not eligible for the NRHP and do not merit recordation or mitigation if discovered during monitoring or construction. If there is any doubt regarding the age of a historic-period find, the TMWA and CRS will discuss this with the CRM when given notice of the find. The following materials will not be recorded:

1. Plastic products limited to Styrofoam® and other foamed polystyrene products, Velcro®, Teflon®-coated cookware, polyvinylchloride (PVC) pipe, high-density polyethylene, polypropylene, polyimide, thermoplastic polyester, linear low density polyethylene, liquid crystal polymers, and products marked with resin codes,
2. Cans made from aluminum or bi-metal, or those with pull-tab or push-tab (metal or plastic) openings,
3. Aluminum foil containers,
4. Synthetic tires and car parts unless determined to be over 45 years in age or found in association with resources over 45 years in age,
5. Modern electronics (CD players, VCRs, electronic appliances, personal electronics, computers, printers),
6. Compact disks, floppy computer disks, magnetic tape media,
7. Unidentifiable metal fragments not found in association with other historic materials,
8. Rubberized metal, and
9. Clothing or shoes made of plastic or synthetic materials unless determined to be over 45 years in age or found in association with resources over 45 years in age.

CRMs shall have sufficient familiarity with historic-era resources prior to monitoring at the project location to differentiate materials that are more than 45 years of age from more recent materials.

#### E. Discoveries of Materials 45 Years of Age or Older

The CRS shall ensure that all cultural resources more than 45 years in age will be recorded on appropriate forms, mapped, and photographed.

Previously unidentified cultural resources more than 45 years in age in categories Section E.2 below will be treated as eligible under the Secretary of Interior's Criterion D for the purposes of the Undertaking and will be mitigated in the manner described in Section E.1 below. Cultural resources not included in categories Section E.2 or Section E.3 will be evaluated for their NRHP eligibility consistent with Section F, below. Any deposits containing human remains will not be treated using the process outlined in Section E.1.

1. Mitigation for discoveries treated as eligible for the purposes of the Undertaking (Section E2):
  - a. The CRS/CRM shall halt construction in the immediate vicinity of the discovery with a buffer of 15 meters to ensure protection of the discovery.
  - b. The CRS shall record the discovery on the Nevada Intermountain Antiquities Computer System (IMACS) form.
  - c. The CRS shall ensure that each form is accompanied by a location map and photographs of the discovery.
  - d. The CRS shall not collect artifacts found in discoveries described in Section E.2.
  - e. The CRS shall notify TMWA's Construction Manager that construction may resume.
  - f. The CRS shall submit the required IMACS form for each individual discovery as an attachment to the next Cultural Resources Weekly Compliance Report.
  
2. The following classes of prehistoric archaeological resources shall be treated as eligible for the NRHP under the Secretary of Interior's Criterion D for the purposes of the Undertaking:
  - a. Small, sparse (less than three pieces per square meter) lithic scatters.
  - b. Sparse occurrences of fragments of fire-affected rock weighing less than 15 grams (less than three pieces per square meter, with no other cultural constituents within 1 square meter).
  - c. Small clusters (less than 0.5 meter x 0.5 meter in horizontal extent) of unidentifiable, unworked, and not fire-affected shell or bone (whole or fragmented) not in association with artifacts or other cultural materials.
  - d. Isolated (not found within 30 meters of other artifacts) prehistoric artifacts.
  
3. The following classes of historic archaeological resources shall be treated as not eligible for the NRHP under the Secretary of Interior's Criterion D for the purposes of the Undertaking and no further consideration will be required if discovered:
  - a. Roadside disposal of debris or refuse.
  - b. Unmodified bovine, or other domesticated animal bone.
  - c. Small, isolated artifact concentrations (fewer than five artifacts or the fragments of one object) with no subsurface deposit.
  - d. Deposits of concrete, brick or other building materials not *in situ*.
  - e. Metal, concrete or ceramic pipes, conduits, or culverts not *in situ*.
  - f. Isolated (not found within 30 meters of other artifacts) historic artifacts.

#### F. Post-Review Discoveries Requiring NRHP Evaluation

In the event that construction activities reveal previously unidentified cultural resources that are not described in the categories found in Sections E.2 and E.3, the following procedures shall be implemented:

1. The CRM/CRS and TMWA's Construction Manager shall ensure that all ground-disturbing construction activity will cease within a 15 meter radius around the entirety of the discovery.
2. The TMWA and/or CRS shall ensure that the discovery is adequately fenced or flagged and that remains protected until the Corps provides TMWA with a written determination that construction activities may proceed.
3. The CRS shall notify the Corps' POC no later than 24 hours following the time of discovery.
4. The CRS will initiate an evaluation of the discovery and within 24 hours the CRS shall provide a NRHP eligibility recommendation for the discovery to the Corps that will include a site record and a summary report of the testing operations.
  - a. Evaluations of cultural resources will be made, if possible, from the data collected during monitoring or auger probing. If additional information is needed to evaluate the NRHP eligibility of a discovery, limited testing by hand excavation units (0.5 x 0.5 meter, 1 x 1 meter) will be conducted until sufficient information is collected to allow for a NRHP evaluation.
  - b. All testing operations will cease upon collection of sufficient data to allow for a NRHP evaluation.
5. The Corps, within two (2) working days of receipt of the notification of the discovery, shall notify the SHPO, and the Washoe Tribe of Nevada and California, the Pyramid Lake Paiute, the Reno-Sparks Indian Colony (collectively, the Tribes), as appropriate, of the discovery and provide a NRHP eligibility determination for the discovery.
6. The SHPO, and the Tribes, as appropriate, shall have seven (7) working days from receipt to comment on the Corps' determination of NRHP eligibility for the discovery. If no timely response is received, the Corps will proceed in accordance with the determination.
7. If the Corps, in consultation with the SHPO and the Tribes, determines that a discovery is not eligible for the NRHP the Corps will provide TMWA with a written determination that construction activities may proceed within the discovery and avoidance area, as defined in Section F.1, within two (2) working days.
8. If the Corps, in consultation with the SHPO and the Tribes, determines that a discovery is a historic property and cannot be avoided by Undertaking redesign, the Corps shall direct the TMWA, through its CRS, to develop a historic properties treatment plan (HPTP) that

is consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716-44742, September 23, 1983) (Standards) and that takes into consideration the ACHP's Section 106 Archaeology Guidance (2009; available online at [www.achp.gov/archguide](http://www.achp.gov/archguide)), and any other applicable guidelines or standards.

9. The Corps will review and comment on any or all draft HPTPs within thirty (30) calendar days of receipt.
10. The Corps shall provide comments on any or all draft HPTPs to TMWA and TMWA, through its CRS, shall revise any or all of the draft HPTPs to address the Corps' comments within ten (10) calendar days of TMWA's receipt of those comments.
11. Upon the Corps' approval of any or all HPTPs, the Corps shall submit the draft HPTPs to the SHPO for review.
12. The Corps shall concurrently provide a copy of the draft HPTP(s) to the Tribes, as appropriate.
13. The SHPO, and the Tribes, as appropriate, shall provide comments to the Corps within thirty (30) calendar days of receipt of any or all draft HPTPs. The Corps shall then provide any SHPO or Tribe comments to TMWA's CRS and all Tribe comments to the SHPO. If no comments are received within the comment period, TMWS's CRS may proceed with finalization of the HPTP(s).
14. TMWA's CRS will address any comments provided by the SHPO or the Tribes and supply final HPTPs to the Corps within ten (10) calendar days of TMWA's receipt of the comments.
15. Upon approval of a final HPTP by the Corps, the Corps shall provide final copies of the HPTP to the SHPO, and the Tribes, as appropriate, and authorize TMWA to initiate treatment measures included in the finalized HPTP.

#### G. Avoidance Areas for Post-Review Discoveries

Avoidance areas will consist of the entirety of the previously unidentified cultural resource and will include a 15-meter buffer around the resource. The avoidance areas will be physically marked on the ground with survey lath and high visibility fencing. Maps illustrating the avoidance areas will be provided to participants of this Plan to aid in the avoidance of sensitive resources until the discovery is addressed in accordance with Sections E and/or F, above, or Section I, below.

## H. Native American Participation

The TMWA will make provisions for the participation of Tribal monitor(s) during ground-disturbing activities. The Tribal monitor(s) will be designated by the Washoe Tribe of Nevada and California, Pyramid Lake Paiute, and/or the Reno-Sparks Indian Colony to represent those Tribe(s) onsite. Each Tribe participating in the project will provide the TMWA with a POC to receive all monitoring related communication. If Native American artifacts are encountered during ground disturbance, the Tribal monitor will act as a liaison between archaeologists, developers, contractors, and public agencies, to ensure that cultural features are treated appropriately. Construction will not occur until the affected Tribe is given notice by the TMWA that ground disturbance is planned in undisturbed soil and given the opportunity to monitor that ground disturbance.

A Tribal monitor will also be invited to be on site during all data recovery and mitigation efforts. Notification of the need for a tribal monitor will be provided no less than 48 hours prior to the commencement of work. Tribal monitors will be responsible for providing monitoring updates to the Tribe(s) they are representing.

## I. Human Remains

Human remains may be discovered during project construction and/or during archaeological excavations. Human remains and associated grave goods will be handled according to provisions of the appropriate state statutes with guidance provided by the SHPO and the Corps.

1. In the event that human remains are discovered, the CRM/CRS and/or TMWA's Construction Manager shall halt all construction activity within 15 meters of the discovery. No further activity will take place within this buffered area until the TMWA receives written notice to proceed from the Corps.
2. The CRS will immediately notify the TMWA, the SHPO, the Corps, and the Washoe County Sheriff by telephone followed by written notification of the discovery. The TMWA will provide 24-hour on-site security, if deemed appropriate. Protection of the buffered area will remain in place until the SHPO and the Corps have approved appropriate disposition of the human remains and any associated grave goods in accordance with applicable state statutes.