



**PROGRAMMATIC AGREEMENT BETWEEN
THE EGAN FIELD OFFICE OF THE BUREAU OF LAND MANAGEMENT
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE
FOR
THE NEWARK AND HUNTINGTON,
WATERSHED IMPLEMENTATION AND RESTORATION PLAN
WHITE PINE COUNTY, NEVADA**

WHEREAS, the Egan Field Office of the Bureau of Land Management (BLM) is preparing a plan to conduct multiple phased vegetation treatments, range improvements and riparian improvements on +/- 578,000 acres of public lands at various locations within the Newark and Huntington Watersheds, White Pine County, Nevada (hereinafter referred to as the “undertaking” as defined in 36 CFR § 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 CFR § 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, 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 NHPA, for the undertaking in the APE; and

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

WHEREAS, this Programmatic Agreement (PA) covers all aspects of the planning, development, and implementation of the undertaking including but not limited to prescribed fire, tree cutting and removal, chaining and mastication, chemical treatments, weed prevention/treatment, aspen restoration, mowing and seeding, and other mechanized treatments;

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 Wells Band Council, South Fork Band Council, Winnemucca Indian Colony of Nevada,

Battle Mountain Band Council, Skull Valley Band of Goshute Indians, Chemehuevi Indian Tribe, Moapa Band of Paiutes, Cedar City Band of Paiutes, Kaibab Band of Paiute Indians, Las Vegas Paiute Tribe, Shivwits Band of Paiutes, Indian Peaks Band, Confederated Tribes of the Goshute Indian Reservation, Te-Moak Tribes of the Western Shoshone Indians of Nevada, Yomba Shoshone Tribe, Ely Shoshone Tribe, Elko Band Council Te-Moak Tribe of Western Shoshone Indians, Paiute Indian Tribe of Utah, and Duckwater Shoshone concerning properties of traditional cultural and religious significance and the Tribe(s) have been invited to concur on this PA; and Tribal consultation was conducted October 18, 2013 via written notification. There were no comments received from the tribes regarding the proposed Plan and consultation will continue throughout the life of the PA; and

WHEREAS, the BLM has provided information to the public about the undertaking and has invited public comment under NEPA and NHPA; and
NOW THEREFORE, the signatories agree that implementation of the NEPA decision record shall be administered in accordance with the following stipulations to ensure that historic properties will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership and to satisfy the BLM's NHPA Section 106 responsibilities for all aspects of the undertaking.

COMPONENTS OF AGREEMENT

I. ROLES AND RESPONSIBILITIES

The BLM is responsible for administering this PA. This includes, but is not limited to, ensuring the 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. 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, Revised January 2012* (Protocol), except as amended here, will be used as guidance for this PA. This Protocol is incorporated by reference.

II. AREA OF POTENTIAL EFFECT (APE)

The APE for cultural resources is defined as the boundaries of the Newark (482,389 acres) and Huntington (95,139 acres) Watersheds that lie within the Egan Field Office Area of the Ely District, Bureau of Land Management. Appendix A contains maps showing the APE. The proposed projects for the implementation and restoration are found within the Environmental Assessment DOI-BLM-NV-L010-2012-0033-EA document. The APE for each subsequent phase will be designated in a project specific Cultural Resource Inventory Needs Assessment (CRINA) at which time the level of cultural inventory, as well as other special considerations (i.e., National Scenic Historic Trails stipulations, Visual Resource Management) will be determined by the BLM Cultural Resource Specialist. Per the Protocol, each approved CRINA will be sent to SHPO for review.

The APE shall be defined to include potential direct and indirect effects to cultural resources and properties of traditional religious and cultural importance from any activities associated with the undertaking without regard for land ownership. The BLM may amend the APE as needed or as requested by the SHPO or the Tribes without amending the PA proper.

The BLM may amend the APE as needed, or as requested by the SHPO or the Tribe(s), without amending the PA. All consulting parties will receive formal notification of the amended PA. Within thirty (30) calendar days of their receipt of the proposed amendment, any consulting party may request that the PA be amended in accord with the process outlined in Stipulation X. Following BLM receipt of the request, the signatories shall prepare an amendment document.

III. STIPULATIONS

The BLM shall ensure that any ethnographic, historic, architectural, and/or archaeological work conducted pursuant to this PA is carried out by, or under the direct supervision of, persons meeting qualifications set forth in the *Secretary of the Interior's Professional Qualifications Standards* (currently available at http://www.nps.gov/history/local-law/arch_stnds_9.htm) and who have been permitted for such work, as necessary, by BLM in Nevada. In addition, the contractors, subcontractors, or other personnel involved with this undertaking will adhere to the *Bureau of Land Management Nevada State Office: Guidelines and Standards for Archeological Inventory, BLM Nevada, January 2012-Fifth Edition*.

A. Identification

1. The BLM, in consultation with the SHPO, shall ensure that appropriate cultural resource identification activities, which may include records research; informant interviews; context development; and archaeological, historic, ethnographic inventory for the APE are conducted in a manner consistent with the Protocol and Guidelines/Standards.
2. Required cultural resource 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 in the manner referenced in the BLM 8120 and 8120H Manuals.

B. Eligibility

1. For each phase of the undertaking within the APE, the BLM shall evaluate cultural resources for eligibility to the NRHP. The BLM, in consultation with the SHPO, will determine NRHP eligibility prior to the initiation of activities that may affect cultural resources, using the Protocol as guidance.
2. The BLM shall ensure the completion of appropriate cultural resource inventories that identify and evaluate cultural resources and preparation of reports in accordance with the Protocol and with the *Bureau of Land Management Nevada State Office: Guidelines and Standards for Archeological Inventory, BLM Nevada, January 2012-Fifth Edition* or any subsequent edition issued by BLM (Guidelines).

C. Treatment

1. The BLM, in consultation with the SHPO, shall ensure that project activities avoid adverse effects to historic properties through project design or redesign, relocation of activities, or by other means in a manner consistent with the Protocol.
2. In avoiding or mitigating effects, the BLM, in consultation with the SHPO, shall determine the precise nature of effects to historic properties identified in the APE, using the Protocol as guidance as well as additional material such as the National Park Service's National Register Bulletins. The BLM shall consult with SHPO in accordance with the BLM 8100 manual for any portion of the undertaking resulting in an adverse effect determination, using the Protocol as guidance.
3. The BLM shall consult with the Tribe(s), or identified tribal members, to evaluate effects to properties of traditional religious and cultural importance. Based on information shared with the BLM, the BLM shall determine the appropriate treatment to avoid or minimize to the extent practicable adverse effects, and consult on these determinations with SHPO and the Tribe(s).
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). Where appropriate, treatment plans shall 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 treatment plan. A notification of completion shall be issued from the BLM Cultural Resource Specialist (assigned to the treatment project) and given to the BLM project manager.
6. The BLM shall ensure that all records and materials; resulting from identification and treatment efforts are maintained until the final treatment report is complete. These materials will then be curated in accordance with 36 CFR. § 79 or 43 CFR § 10, preferably in a facility in Nevada. 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 of this PA. Likewise, this document will be reviewed for potential modification if its utility exceeds its 10-year duration. 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. In the case of an unplanned discovery, the BLM will ensure that provisions in section VI.B of the Protocol and Appendix B of this PA are met.

Prior to initiating any ground disturbing activities within the APE, all parties involved in the project will be notified of discovery procedures as outlined within the Protocol. A BLM designated and qualified cultural monitor will be present during any project field activities.

Activities in the area of discovery will be halted within 100 meters of the discovery, and the discovery shall be appropriately protected until the BLM Authorized Officer issues a Notice to Proceed.

VI. NOTICES TO PROCEED

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

- A. The BLM, in consultation with the SHPO and in accordance with BLM Manual 8100 direction, has determined that there are:
 1. No historic properties within the APE affected by the current phase of the undertaking; and
 2. No properties of traditional religious or cultural importance within the APE affected by the current phase of the undertaking; or
- B. The BLM, after consultation with the SHPO and in accordance with BLM Manual 8100 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 summary or letter report will be due five working days after completion of field work. A draft report of the identification, recordation, and evaluation will be due to the BLM from any contractor within sixty (60) days after the completion of the fieldwork associated with the activity, unless otherwise negotiated. Treatment or other mitigation plans will be subsequent to this process.
 2. BLM should review and comment on any report submitted by contractors within a minimum of thirty (30) calendar days of receipt. Additional BLM review time shall be conveyed to the contractor in a timely manner. The contractor shall submit to the BLM the revised draft reports within thirty (30) days from receipt of comments.
 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 thirty-five (35) calendar day review and comment period.
 4. If the SHPO fails to respond to the BLM within thirty-five (35) 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 Statutes (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 in accordance with all laws and regulations. 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 CFR § 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 Tribe(s), will be held confidential in accordance with Federal and State law.

IX. DISPUTE RESOLUTION

If any signatory to this PA, any consulting party, or an interested person, objects to any activities proposed pursuant to the terms of this PA, the BLM Egan Field Manager (EFM) shall consult with the objecting party and the SHPO to resolve the issue. If the BLM EFM determines that the objection cannot be resolved, the objecting party 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

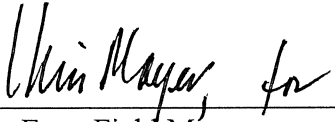
Any signatory to this PA may terminate the PA by providing thirty (30) days advance written notice with cause to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

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:

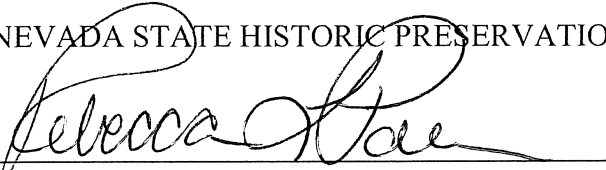
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT



Jill A. Moore, Egan Field Manager

Date 6/18/14

NEVADA STATE HISTORIC PRESERVATION OFFICE



Rebecca Lynn Palmer, State Historic Preservation Officer

Date 7/29/14

CONSULTING PARTIES:

PONY EXPRESS RE-RIDERS

Wendy Anderson, Ride Captain (Ely)

Date _____

* The Lincoln Highway Association and the Oregon-California Trail Associations (OCTA) were invited to be consulting parties but did not respond.

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SIGNATORIES:

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

Jill A. Moore, Egan Field Manager

Date _____

NEVADA STATE HISTORIC PRESERVATION OFFICE

Rebecca Lynn Palmer, State Historic Preservation Officer

Date _____

CONSULTING PARTIES:

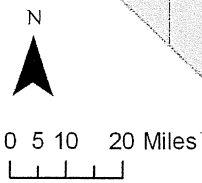
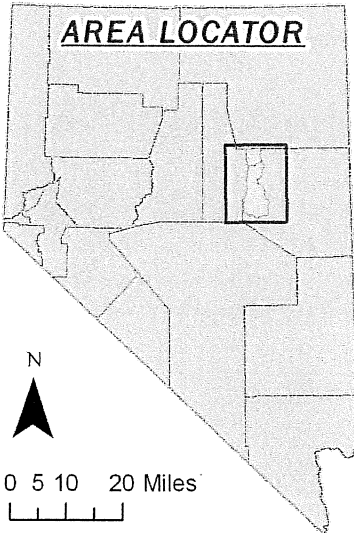
PONY EXPRESS RE-RIDERS

Wendy Anderson, Ride Captain
Wendy Anderson, Ride Captain (Ely)

Date 3-6-14

APPENDIX A:
AREA OF POTENTIAL EFFECT

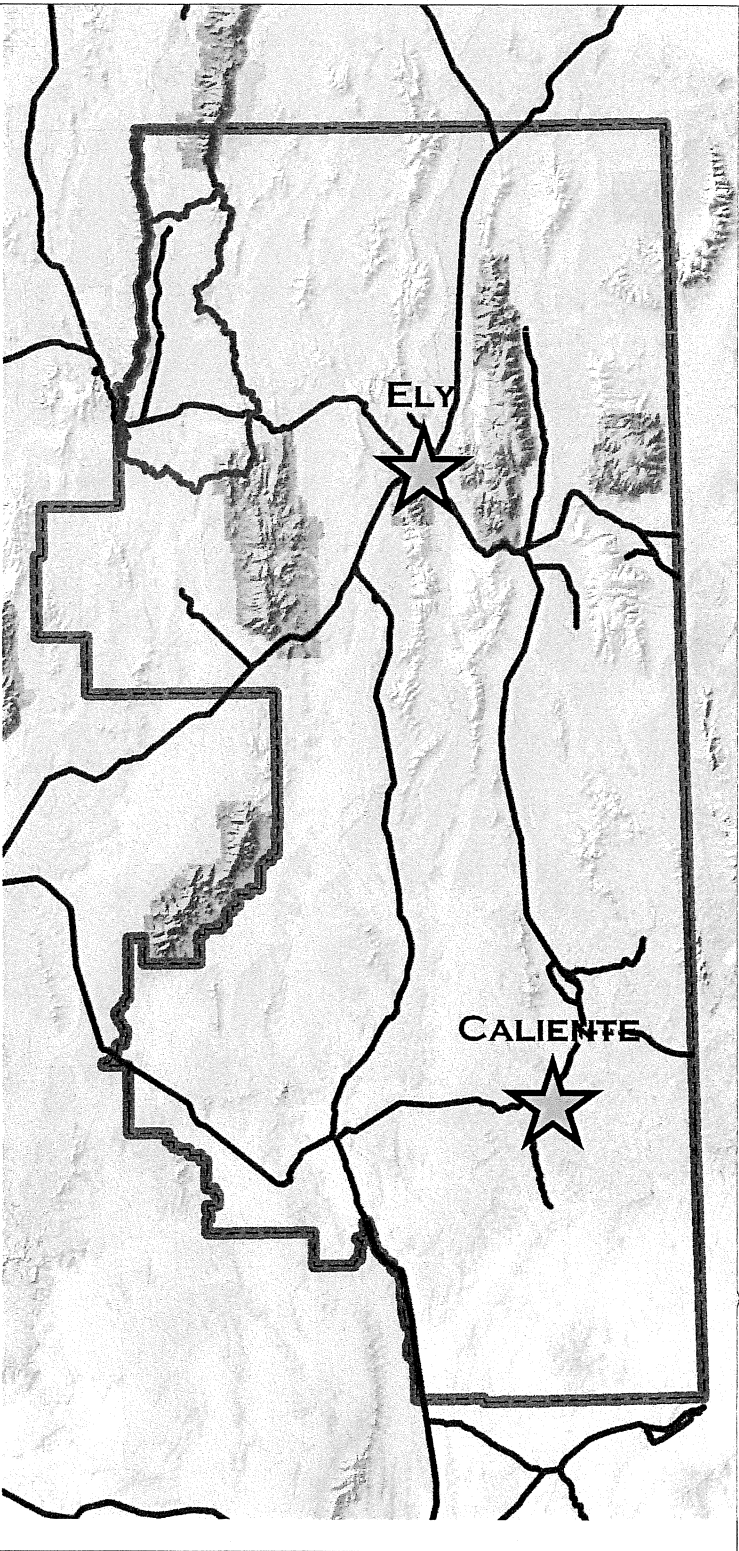
Newark & Huntington Watersheds Location Map



Legend

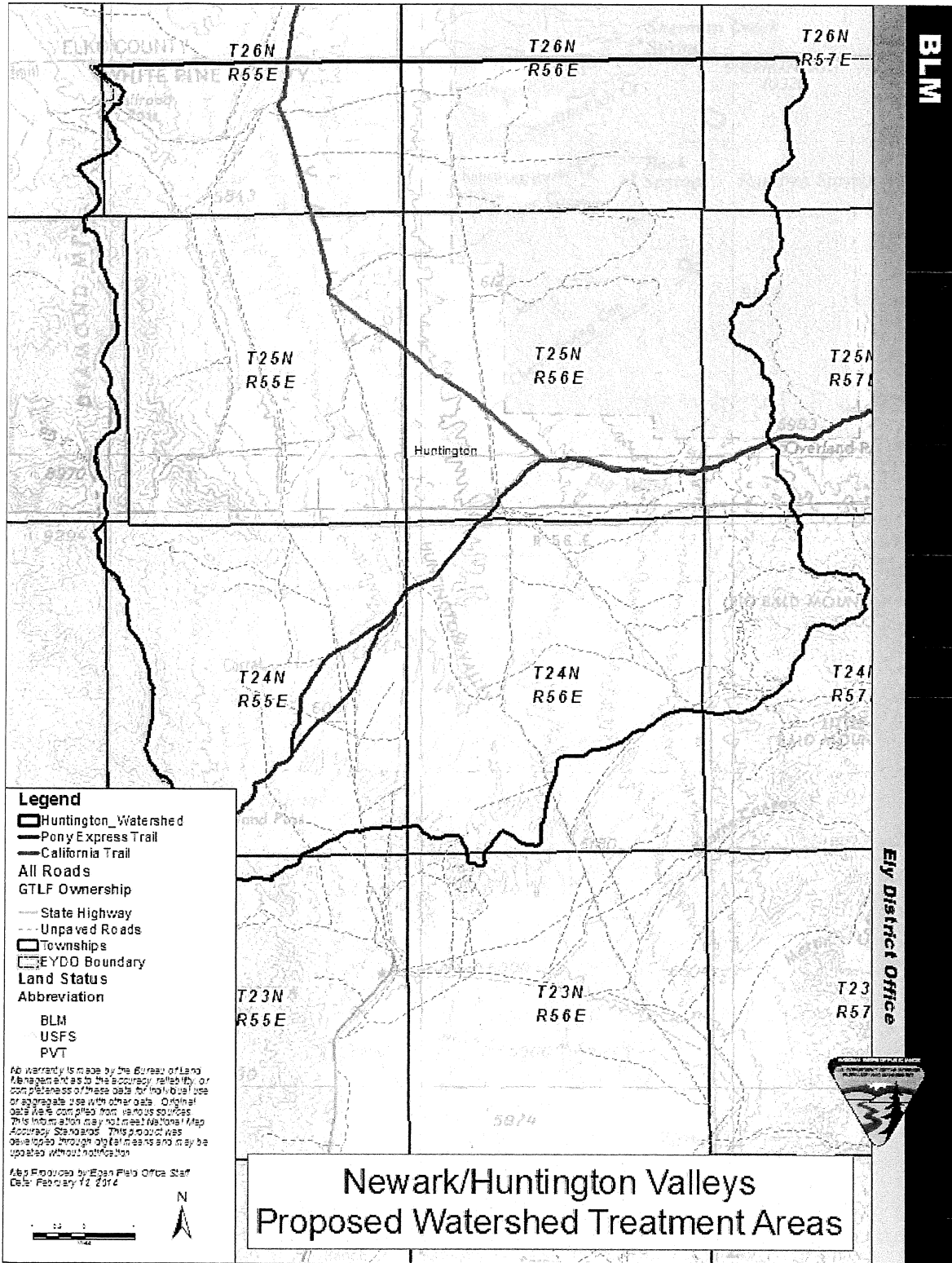
Watersheds

- Huntington
- Newark
- Cities
- Highways
- BLM Ely Dist. Boundary
- Bureau of Land Management
- U.S. Forest Service
- Natl. Park Service
- Bureau of Indian Affairs
- Fish & Wildlife Service
- Dept. of Defense
- Parks
- NV State Lands
- Private

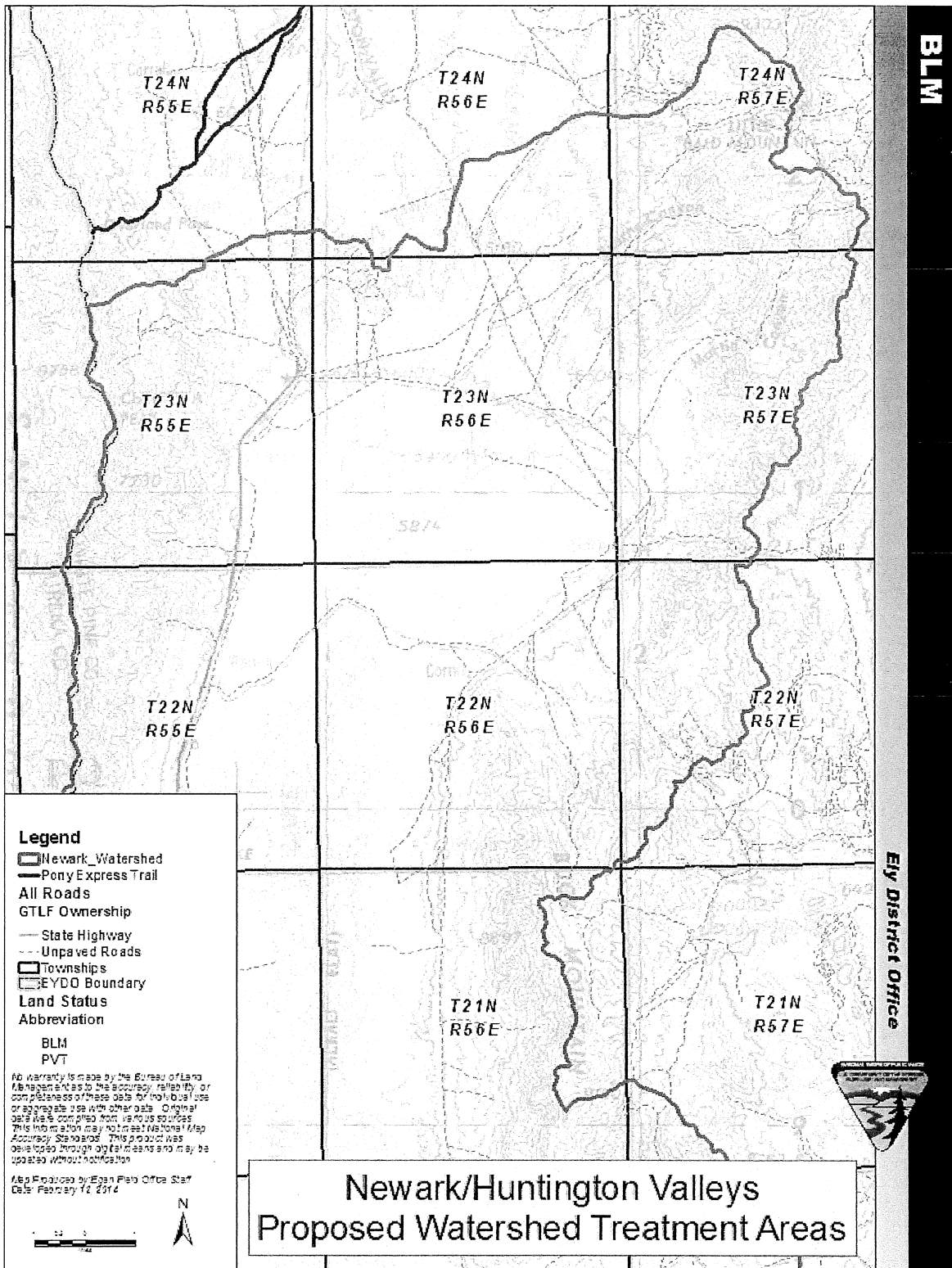


No warranty is made by the Bureau of Land Management as to the accuracy, reliability or completeness of these data for individual use or aggregate use with other data.

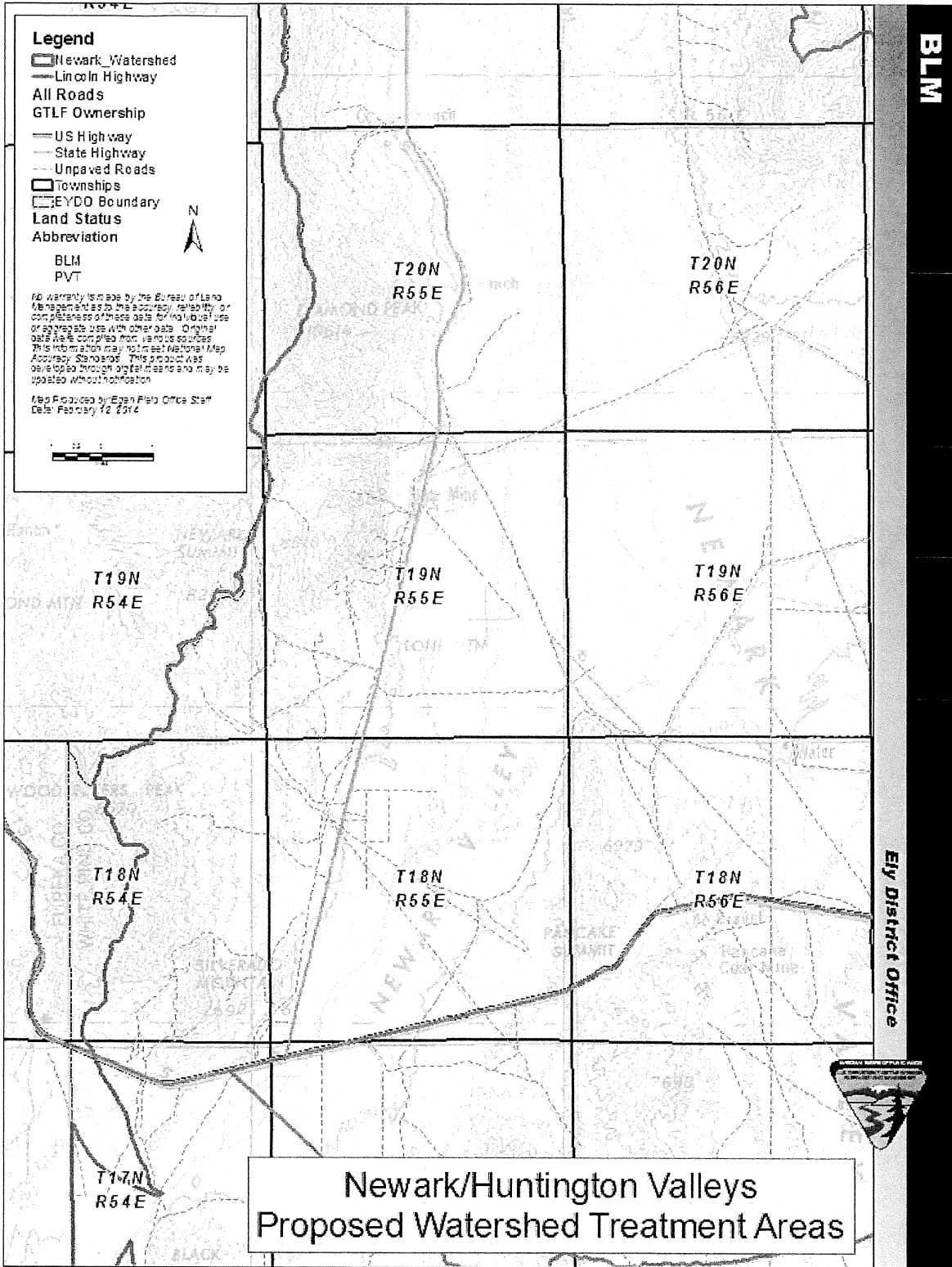
Map Produced by: Egan Watershed Staff on 8/3/2010



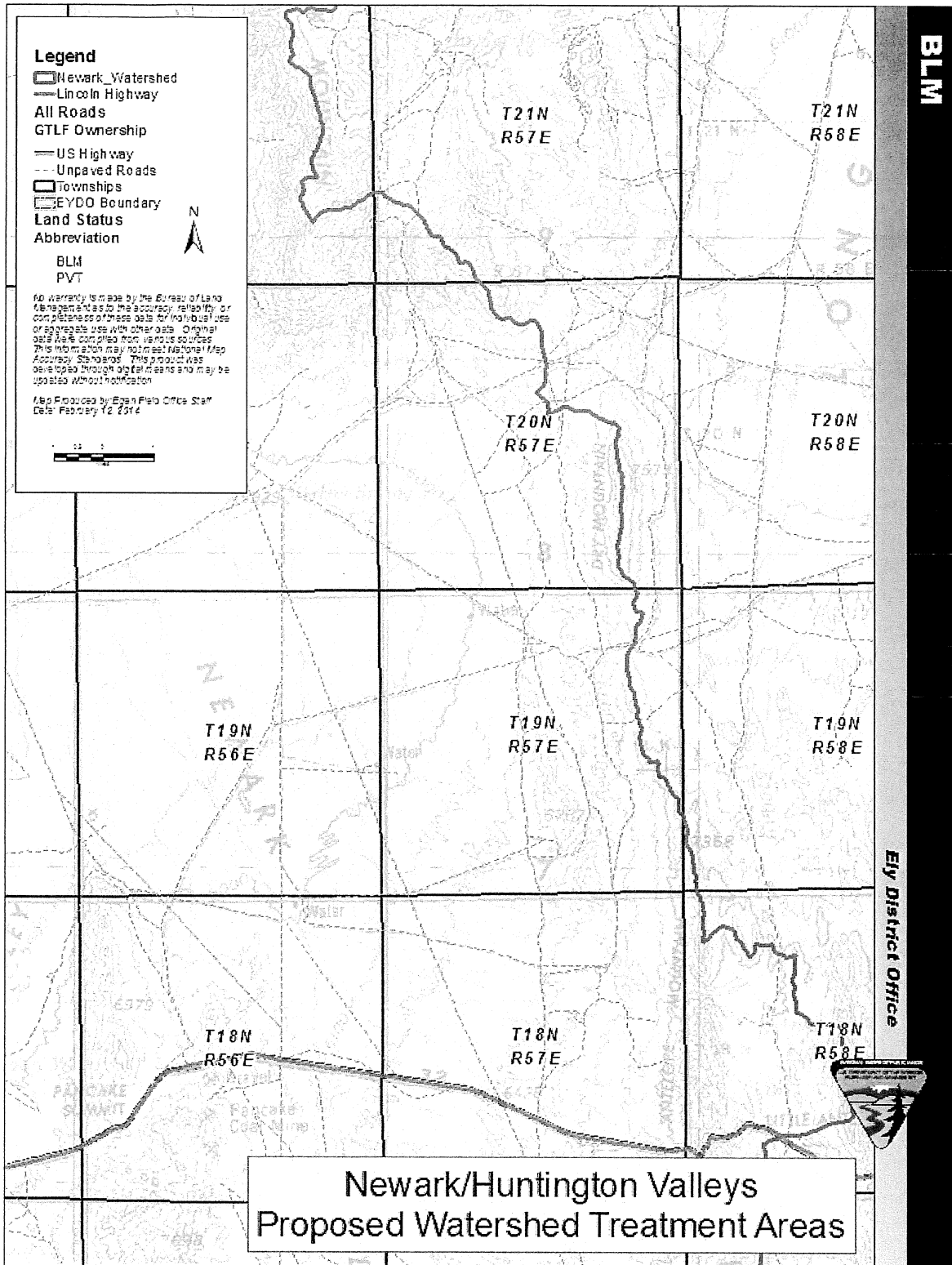
Huntington Watershed



Newark Watershed



Newark Watershed



Newark Watershed

**APPENDIX B:
DISCOVERY AND UNANTICIPATED EFFECTS 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 Federal Regulation 43 CFR §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 a notice to proceed is issued.