

**MEMORANDUM OF AGREEMENT  
AMONG  
THE NEVADA DIVISION OF ENVIRONMENTAL PROTECTION  
AND  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,  
REGARDING CONSTRUCTION OF  
THE ROLLING A WASTEWATER TREATMENT FACILITY  
(UT #2020-6219)**

**WHEREAS**, the Nevada Division of Environmental Protection (NDEP), on behalf of US Environmental Protection Agency, is proposing to issue federal loan funds under the Nevada Clean Water State Revolving Fund (CWSRF) program to Lyon County for the Phase 4 Rolling A Wastewater Treatment Facility Expansion Project (Project). The Project constitutes an undertaking as defined in the National Historic Preservation Act (NHPA) (54 USC § 300320); and

**WHEREAS**, the Project consists of improvements to the Rolling A Wastewater Treatment Facility, construction of rapid infiltration basins at the Aspen Creek site, the replacement of lift station #2, and the installation of a wastewater pipeline; and

**WHEREAS**, the NDEP is responsible for the Section 106 of the National Historic Preservation Act compliance for the Project and the NDEP has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, implementing Section 106 of the NHPA (54 USC § 306108); and

**WHEREAS**, the NDEP has defined the Area of Potential Effect (APE) as the geographic areas within which the undertaking may have direct or indirect effects to historic properties (Attachment 1). The direct physical APE, in which ground disturbance related to the construction of the Project will occur, is an irregularly shaped block totaling 106.6 acres. The visual, audible, and atmospheric APE is comprised of a ½ mile buffer surrounding the direct physical APE and covering a total of 2,183 acres; and

**WHEREAS**, the NDEP, in consultation with the SHPO, determined that the Project will have an adverse effect on one (1) historic property Churchill Road, 26Ly1080, which the NDEP determined is eligible under the Secretary's Significance Criterion A for listing in the National Register of Historic Places (NRHP); and

**WHEREAS**, the NDEP, in consultation with the SHPO, identified two (2) historic properties (26Ly1078 and 26Ly1079) that are in the direct physical APE. However, the NDEP determined that the Project will not have an adverse effect on these resources; and

**WHEREAS**, the NDEP, in consultation with the SHPO, determined that the Project will not have an adverse effect on historic properties in the visual, audible, and atmospheric APE; and

**WHEREAS**, in accordance with 36 CFR § 800.3(f), the NDEP has invited the following federally recognized tribes, with areas of interest in Lyon County, Nevada, to consult regarding the effects of the Project on historic properties: the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation; Reno Sparks Indian Colony; the Washoe Tribe of Nevada and California; the Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch; the Walker River Paiute Tribe of the Walker River Reservation, the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, and the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation (the Tribes). The NDEP received comments from the Washoe Tribe of Nevada and California and they recommended a site monitor be present during trenching activities; and

**WHEREAS**, the Tribes have declined to participate in the resolution of adverse effects; and

**WHEREAS**, the NDEP has consulted with Lyon County, Nevada and it has agreed to sign this Memorandum of Agreement (MOA) as an Invited Signatory; and

**WHEREAS**, the NDEP has consulted with the National Park Service (NPS) and the Oregon-California Trails Association (OCTA) regarding the project and adverse effects to 26Ly1080. Both have elected to participate in the resolution of adverse effects and are invited to sign this MOA as Concurring Parties; and

**WHEREAS**, in accordance with the 36 CFR § 800.3(f), the NDEP has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination and in a letter dated February 11, 2020, the ACHP has declined to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, the Signatories, Invited Signatories, and Concurring Parties (hereinafter collectively referred to as the Parties and individually by name) agree that this MOA may be signed in counterparts and the executed MOA, and each signature, will be effective and binding as if all Parties had signed the same document;

**NOW, THEREFORE**, the NDEP and the SHPO agree that the Project shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

The NDEP shall ensure that the following measures are carried out:

### **I. MITIGATION OF ADVERSE EFFECTS**

- A. The NDEP, in consultation with the SHPO, has finalized an Historic Properties Treatment Plan (HPTP) titled “A Historic Properties Treatment Plan for the Rolling A Wastewater Treatment Facility” dated April 22, 2020 (Attachment 2).
- B. The NDEP shall ensure that Lyon County, through their Cultural Resource Specialist (CRS), completes all activities required in the HPTP.
- C. The CRS shall take all photographs required in the HPTP prior to the initiation of any ground-disturbing activities associated with the Project.
- D. The NDEP shall submit drafts of all photographs required in the HPTP to the SHPO for review and comment. The SHPO will review the draft photographs within five (5) working days of receipt. The SHPO will send comments to the NDEP for action, if needed.
- E. The NDEP or the CRS shall make any edits or changes requested by the SHPO within five (5) days of receipt of SHPO comments.
- F. Upon SHPO acceptance of the post-field documentation described in Stipulation I.C through I.D. NDEP may initiate any part of the Project.
- G. The NDEP shall provide a draft report containing the required elements described in the HPTP to the SHPO within twelve (12) months of the execution of this MOA.
- H. The SHPO shall review the draft report and provide comments back to the NDEP. If the SHPO does not respond within thirty (30) days of their receipt of the document, the NDEP can finalize the report.
- I. The NDEP shall make any SHPO requested changes to the report and return the amended report to the SHPO within 60 days of NDEP receipt of SHPO comments. If the SHPO

does not respond within thirty (30) days of their receipt of the revised document, the NDEP can finalize the report. Once the SHPO concurs that the document is adequate, the NDEP shall finalize the report and submit two final copies to the SHPO and other applicable public repositories including the Lyon County Museum and the Nevada Historical Society.

## **II. DURATION**

This MOA will expire if its terms are not carried out within five (5) years of its execution. Prior to such time, the NDEP may consult with the other Signatory and Invited Signatory to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

## **III. POST-REVIEW INADVERTENT DISCOVERIES**

- A. In the event Lyon County, the CRS, or any construction personnel identify unanticipated cultural resources during construction associated with Project, Lyon County shall notify the NDEP and the SHPO immediately, followed by a report of findings within forty-eight (48) hours in writing. All activities within fifteen (15) meters of the discovery shall cease immediately until authorized to proceed by the NDEP.
1. The NDEP shall ensure the discovery is confirmed, assessed, and recorded as needed under the supervision of a professional meeting the Secretary of Interior's Qualification Standards for archaeology.
  2. If the discovery is an archaeological site, the NDEP shall ensure that the discovery is recorded on an Intermountain Antiquities Computer System form, including appropriate continuation sheets and following SHPO guidelines. The NDEP shall determine eligibility for listing on the NRHP, following the criteria of 36 CFR § 60.4, and consult with the SHPO on that determination. The SHPO shall have seven (7) calendar days from receipt to provide comments on the NDEP's determination.
    - a. If the NDEP, in consultation with the SHPO, determines that the discovered site is not eligible for listing on the NRHP, then no further actions will be required.
    - b. If the NDEP, in consultation with the SHPO, determines that the discovered site is eligible for listing on the NRHP, then the NDEP shall further consult with the SHPO on measures to resolve any adverse effects to the historic property.
  3. If the discovery includes human remains, Lyon County or a contractor employed by the County, shall immediately contact law enforcement officials to assess the nature and age of the human remains. Every effort will be made to ensure the remains are not removed from the discovery location. If the Coroner determines that such removal is necessary, the SHPO will be notified immediately and provided with a 24-hour opportunity to visit the discovery and inspect the location prior to the removal of the remains.

If the Lyon County Coroner determines that the human remains are not from a crime scene or are Native American in origin, the Owner shall immediately contact the SHPO. Following notification, the SHPO will administer the requirements of NRS 383 for remains determined by the Coroner to be Native American in origin. For all other remains, Lyon County shall ensure appropriate reinterment.

## **VI. DISPUTE RESOLUTION**

Should any Party object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the NDEP shall consult with such parties to resolve the objection. If the NDEP determines that such objection cannot be resolved, the NDEP will:

- A. Forward all documentation relevant to the dispute, including the NDEP's proposed resolution, to the ACHP. The ACHP shall provide the NDEP 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 NDEP shall prepare a written response that considers 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 NDEP will then proceed according to the final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the NDEP may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, the NDEP shall prepare a written response that considers any timely comments regarding the dispute from the Parties and provide it and the ACHP with a copy of such written response.
- C. The NDEP's responsibility to carry out all actions subject to the terms of this MOA, which are not the subject of the dispute, remain unchanged.

## **VII. AMENDMENTS**

This MOA may be amended when all Signatories and the Invited Signatory agree to such an amendment in writing. The amendment will be effective on the date a copy signed by all of the Signatories is filed with ACHP.

## **VIII. TERMINATION**

- A. If any Signatory or Invited Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories and Invited Signatory to attempt to develop an amendment per Stipulation VII. If within thirty (30) days (or another period agreed to by all Signatories and Invited Signatory) an amendment cannot be reached, any Signatory or Invited Signatory may terminate the MOA upon written notification to the other Signatories or Invited Signatory.
- B. Once the MOA is terminated and prior to work continuing on the undertaking, the NDEP must 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 NDEP shall notify the Signatories and Invited Signatory as to the course of the action it will pursue.

## **IX. ANTI-DEFICIENCY CLAUSE**

- A. All requirements set forth in this MOA requiring expenditures of the CWSRF funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 USC §1341).

B. No obligation undertaken by the NDEP under the name of this MOA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose.

Execution of this MOA by the NDEP and the SHPO, and implementation of its terms evidence that the NDEP has considered the effects of the undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

**Nevada Department of Environmental Protection**

Name: Greg Lovato

Title: NDEP Administrator

5/28/20

Date

**Nevada State Historic Preservation Office**

Name: Rebecca L. Palmer

Title: State Historic Preservation Officer

06/02/20

Date

**INVITED SIGNATORY:**

**Lyon County**

Name: Vida Keller

Title: Lyon County Board of Commissioners - Chair

Date

**CONCURRING PARTIES:**

**National Park Service**

Name: Aaron Mahr Yáñez

Title: Superintendent National Trails

Date

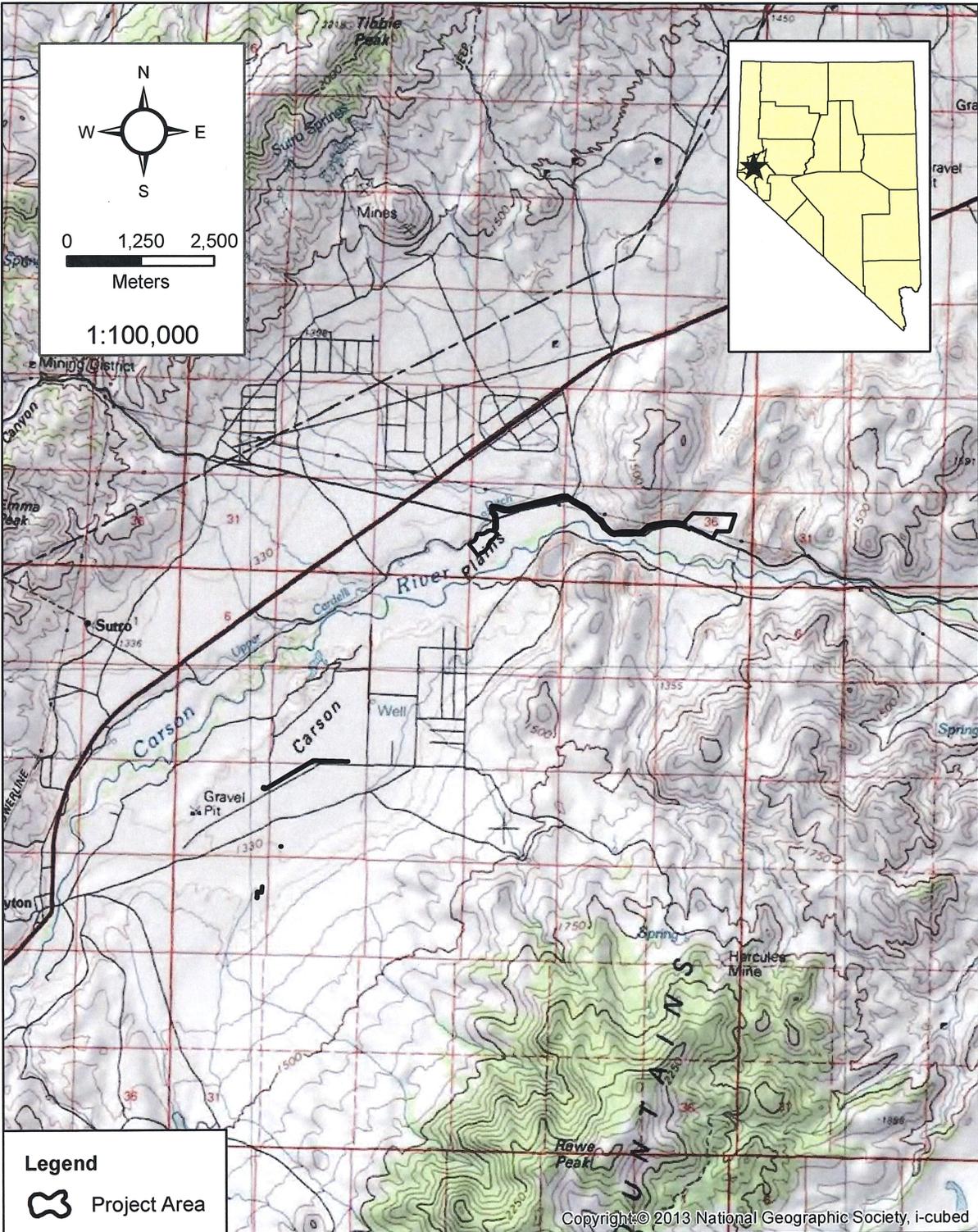
**Oregon-California Trails Association**

Name: John Winner

Title: National Preservation Officer

Date

Attachment 1  
Project Maps



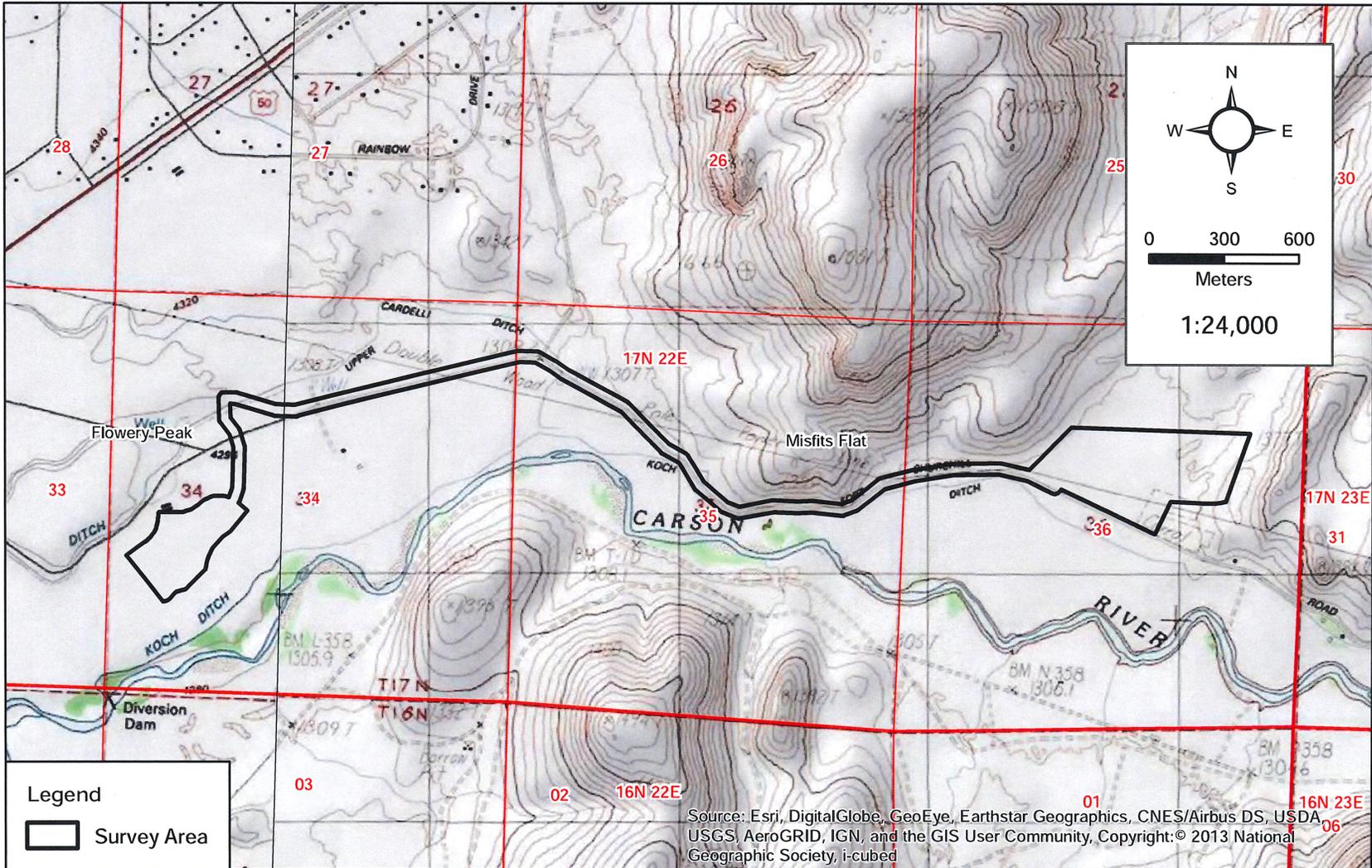
**Legend**

 Project Area

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Map 1 - Project Vicinity Map  
 Base Map: USGS 1:100,000 Carson City, Nev., 1979. T.16-17N., R.22E., Sections 8, 17-19, 34-36, Datum (NAD 83, meters)  
 Project: MOA Regarding the Rolling A Wastewater Treatment Facility Lyon County, Nevada (KEC-1151)  
 Author: Kautz Environmental Consultants  
 Date Produced: 02/28/2020

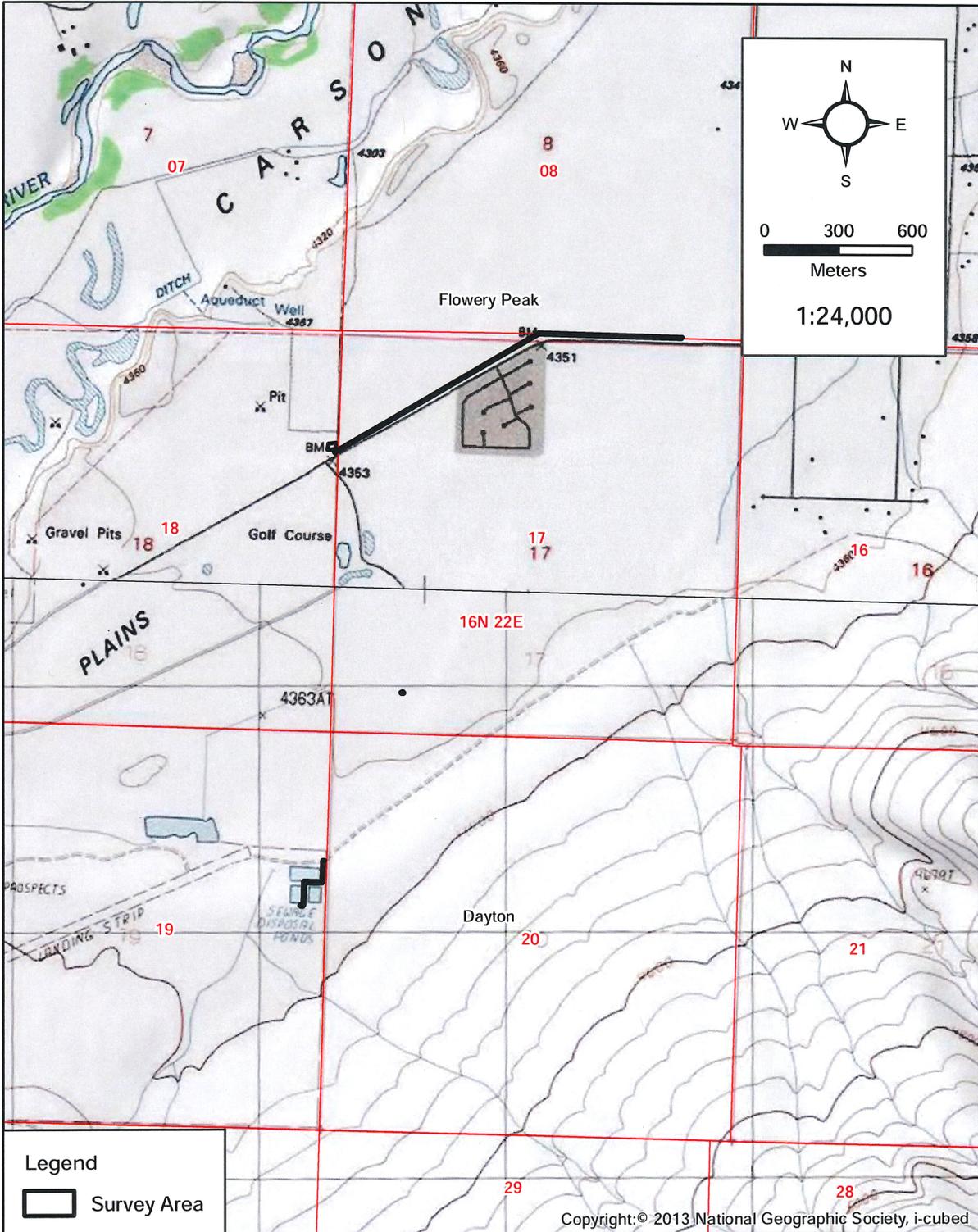




Map 2 - Project Area Map  
 Base Map: USGS 7.5' *Flowery Peak, Nev.*, 1994. and *Misfits Flat, Nev.*, P. E. 1985. T.17N., R.22E., Sections 34-36, Datum (NAD 83, meters)  
 Project: MOA Regarding the Rolling A Wastewater Treatment Facility Lyon County, Nevada (KEC-1151)  
 Author: Kautz Environmental Consultants  
 Date Produced: 02/28/2020

**kautz**  
 ENVIRONMENTAL CONSULTANTS, INC.





Map 3 - Project Area Map  
 Base Map: USGS 7.5' Flowery Peak, Nev., 1994. and Dayton, Nev., 1956.  
 T.16N., R.22E., Sections 8 and 17-19, Datum (NAD 83, meters)  
 Project: MOA Regarding the Rolling A Wastewater Treatment Facility Lyon  
 County, Nevada (KEC-1151)  
 Author: Kautz Environmental Consultants  
 Date Produced: 02/28/2020



Attachment 2  
Historic Property 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.