

**MEMORANDUM OF AGREEMENT
BETWEEN THE
FEDERAL HIGHWAY ADMINISTRATION-NEVADA DIVISION,
NEVADA DEPARTMENT OF TRANSPORTATION,
NEVADA HISTORIC STATE PRESERVATION OFFICER, AND
THE BUREAU OF LAND MANAGEMENT
REGARDING
THE US 06 / SR 376 REINFORCED CONCRETE BOX RECONSTRUCTION PROJECT
NYE COUNTY, NEVADA
FEDERAL PROJECT #: NHP-006-2(019)/SP-000M(072), NDOT#: 74124,
BLM 6-3300, SHPO #: 2020-6340**

WHEREAS, the Federal Highway Administration (FHWA) and the Nevada Department of Transportation (NDOT) propose to construct NDOT Project E.A. 74124/NDOT NY19-020, to complete betterment work on US06 and SR 376 in Nye County, Nevada. The US 06 / SR 376 project will receive federal-aid funding via FHWA. The highway easements cross land managed by the US Forest Service (USFS) and the Bureau of Land Management (BLM) in Nye County, Nevada (Project). The project will extend or replace existing Reinforced Concrete Boxes (RCBs) along US 6 and SR 376. Thirty-six RCBs will be extended on US 6 from milepost Nye (NY) 2.00 to 52.20, and seven RCBs will be extended on SR 376 from milepost NY 0.00 to 36.50. Project activities may include slope and toe-of-slope grading and slope extensions, adding RCB sections to existing RCBs, constructing new wing walls and new headwalls, and grooming and riprapping (lining the ditch with fist-sized rock) the remaining aprons; and

WHEREAS, FHWA has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 USC § 306108, and its implementing regulations, 36 CFR Part 800 and shall be responsible for ensuring all requirements of this Memorandum of Agreement (MOA) are fulfilled; and

WHEREAS, in accordance with 36 CFR § 800.5(c)(3)(ii)(B), and the *Programmatic Agreement Among the Federal Highway Administration, the Nevada Department of Transportation, the Nevada State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Implementation of Federal-Aid Transportation Projects in the State of Nevada* (2014 PA, amended 2017), FHWA authorizes NDOT to carry out some FHWA's responsibilities and to act as an Invited signatory on this MOA; and

WHEREAS, FHWA and NDOT, in consultation with the Nevada State Historic Preservation Officer (SHPO), the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), have defined the Area of Potential Effects (APE) for the Project, as the term is defined in 36 CFR Part 800.16(d), to be the area illustrated on the attached map and aerial image (Attachment A); and

WHEREAS, FHWA, in consultation with the SHPO, NDOT, the BLM and the Concurring Parties, has determined that the Project may have an adverse effect on site 26NY2713 which has been determined eligible for inclusion in the National Register of Historic Places (NRHP) under the Secretary of Interior's Significance Criterion D; and

WHEREAS, FHWA, in consultation with the SHPO, NDOT, and the Concurring Parties, has determined that the Project may have an adverse effect on site 26NY2159 which has not been fully recorded and is unevaluated for inclusion in the NRHP under the Secretary of Interior's Significance (i.e., A-D inclusive) and that only Locus A has been determined eligible for inclusion in the NRHP under the Secretary of Interior's Significance Criterion D; and

WHEREAS, FHWA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effects and invited the ACHP to participate in the consultation, pursuant to 36 CFR § 800.6(a)(1), in an email dated July 29, 2020 and the ACHP declined to participate in the consultation in an email dated August 18, 2020; and

WHEREAS, FHWA has consulted with, and will continue to consult with, the Duckwater Shoshone Tribe of Nevada, the Timbisha Shoshone Tribe of California, and the Yomba Shoshone Tribe of Nevada as part of the Project and has invited these tribes to be Concurring Parties to this MOA; and

WHEREAS, FHWA has consulted with, and will continue to consult with, the BLM since the Project may have an adverse effect on historic properties on land managed by the BLM and has invited the BLM to be a Signatory to this MOA; and

WHEREAS, the USFS declined to participate further in the consultation in an email dated July 29, 2020; and

WHEREAS, FHWA and NDOT have consulted with interested parties regarding the Project, including members of the public, and state and local agencies; and

WHEREAS, the Signatories, Invited Signatories, and Concurring Parties are hereinafter referred to as the Parties or individually by their name; and

NOW, THEREFORE, FHWA, the SHPO, NDOT and the BLM agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties in compliance with Section 106 of the NHPA.

STIPULATIONS

The FHWA shall ensure that the following stipulations are implemented:

I. MITIGATION

NDOT will undertake the following measures for sites 26NY2713 and 26NY2159 that will resolve adverse effects from the Project. If deemed appropriate, separate plans may be developed for each historic property.

A. HISTORIC PROPERTIES TREATMENT PLAN (HPTP) DEVELOPMENT AND IMPLEMENTATION

1. NDOT (herein after referred to as the Department) will provide Department professional staff that are authorized to complete the mitigation activities through an Excavation Permit authorized by the BLM Nevada State Office under the authority of the Archaeological Resources Protection Act (ARPA). The Department agrees to provide resumes of professional staff (PIs and Crew Chiefs) to the BLM in consideration of the ARPA Permit that meet the Secretary of the Interior's Professional Qualifications standards for Archaeology. The Department professional staff will adhere to the requirements of NRS 381, as necessary.
2. The Department Cultural Resources Section (CRS) will draft an HPTP for the historic properties 26NY2713 and 26NY2159. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 CFR § 44716-37) and follow the guidance provided in the ACHP's Section 106 Archaeology Guidance (www.achp.gov/archguide) (2009).
3. FHWA and NDOT shall submit the draft HPTP as part of the Project to the Parties for review by no later than two (2) years from initiation of the draft HPTP in Stipulation I.A.2 above.
4. The Parties will review and comment on the draft HPTP within thirty (30) calendar days from receipt. If the SHPO and BLM do not respond within thirty (30) calendar days of their receipt, NDOT will finalize the HPTP.
5. FHWA and NDOT shall provide the SHPO with all comments received from the Parties on the draft HPTP within ten (10) calendar days of their receipt.
6. The SHPO will review the other Parties' comments and respond within thirty (30) calendar days of receipt.
7. FHWA and NDOT will ensure that the CRS revises the draft HPTP to address the comments provided by the Parties within thirty (30) calendar days.
8. FHWA and NDOT shall submit the updated draft final HPTP to the Parties as appropriate. The Parties will review and comment on the draft final HPTP within thirty (30) calendar days from receipt. If the Parties do not respond within thirty (30) calendar days from their receipt, NDOT will finalize the HPTP.
9. The final HPTP shall become Attachment B to this MOA.
10. Upon completion of the HPTP, NDOT CRS will execute the provisions of the final HPTP.

11. NDOT shall ensure that the draft report of mitigation results for 26NY2713 and 26NY2159 is submitted to the SHPO by no later than two (2) years from finalization of the HPTP.
12. If the SHPO concurs or does not respond to NDOT within forty-five (45) calendar days from receipt of the draft report of mitigation results, NDOT shall finalize the document.
13. NDOT CRS will revise the draft report of mitigation results to address the comments provided by the SHPO.
14. NDOT shall submit the final report of mitigation results to the SHPO no later than nine (9) months after receiving SHPO comments.

II. NOTICE TO PROCEED FOR GROUND-DISTURBING ACTIVITIES OUTSIDE OF THE AVOIDANCE AREA

- A. Upon execution of this MOA, FHWA and NDOT shall not proceed with ground disturbing activities (construction) in the APE for the Project until the CRS has verified that an Avoidance Area (AA) to protect the historic properties 26NY2713 and 26NY2159 within the APE has been established. The AA for 26NY2713 and 26NY2159 will be defined within the Special Provisions of the advertised project and will be included in the HPTP developed for the historic properties.
 1. NDOT, in consultation with FHWA and the construction contractor, shall ensure that the construction contractor has adequately marked the AA on construction plans and that the AA is protected by orange fencing, or by the means stipulated in the Special Provisions.
 2. FHWA and NDOT, in consultation with the SHPO, shall approve the AA. Once the AA is approved and established per the Special Provisions, NDOT may issue a Notice to Proceed (NTP) for Project activities outside of the AA.

III. NOTICE TO PROCEED FOR GROUND-DISTURBING ACTIVITIES INSIDE OF THE AVOIDANCE AREA

NDOT authorizes the construction contractor to start construction within the AA when an NTP for the AA is issued. An NTP may be issued for the AA after the Signatories have reviewed the summary of fieldwork to ensure that sufficient work has been completed and complies with the requirements outlined in the HPTP. If fieldwork for 26NY2713 and 26NY2159 is not concurrently completed, a separate NTP may be issued for each AA, provided all stipulations (II.A.-G.) are met. To ensure compliance with this stipulation, the following will be carried out:

- A. The CRS will produce a summary of fieldwork within thirty (30) calendar days after the work at NY2713 and/or 26NY2159 has been completed as stipulated in the HPTP.
- B. FHWA, NDOT and the BLM shall review the summary of fieldwork within two (2) working days of receipt and either accept or reject the summary.
- C. If FHWA, NDOT and the BLM reject the summary, the CRS will have fifteen (15) calendar days from receiving the comments to amend the summary.
- D. If FHWA, NDOT and the BLM approve of the summary of fieldwork, NDOT will provide a copy of the summary to the SHPO for review.
- E. The SHPO will review the summary of fieldwork and provide any comments within two (2) working days of receipt. If the SHPO does not respond within two (2) working days of receipt, NDOT will issue the NTP to the construction contractor for work within the AA.
- F. FHWA and NDOT will ensure that the comments provided by the SHPO on the summary of fieldwork are addressed before NDOT issues the NTP to the construction contractor for work within the AA.
- G. Upon receipt of the NTP, the construction contractor will remove the AA.

IV. DURATION

This MOA will expire if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to continuing work on the undertaking, FHWA shall either (a) execute a MOA pursuant to 36 CFR § 800.6, or (b) request, consider, and respond to the comments of the ACHP under 36 CFR § 800.7. Prior to such time, FHWA may consult with the SHPO, BLM, and NDOT to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below. FHWA shall notify the SHPO, BLM, and NDOT as to the course of action it will pursue.

V. MONITORING AND OBSERVING.

The Parties may, at their own expense, observe any actions carried out to comply with this MOA at any time. To the extent practicable, every effort will be made to minimize the number of observers involved. Depending on the activity or area being observed, the observers may be required to attend mandatory safety training prior to entering an active construction area.

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, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

- A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. If the ACHP does not provide its advice regarding the dispute within thirty (30) days of receiving adequate documentation, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision on the dispute, FHWA 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. FHWA will then proceed according to its final decision.
- B. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS

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

VIII. TERMINATION

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 parties to attempt to develop an amendment per Stipulation VII, above. If within ten (10) days (or another time period agreed to by all Signatories and the Invited Signatory) an amendment cannot be reached, any Signatory or the Invited Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing, FHWA must either (a) execute a new 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. FHWA shall notify the Signatories and Invited Signatories as to the course of action it will pursue.

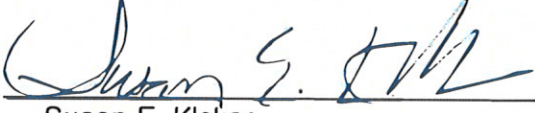
The execution of this MOA by the FHWA, the SHPO, the BLM, and NDOT, together with implementation of its terms, is evidence that FHWA has considered the effects of this Project on historic properties and fully satisfied its obligations under Section 106 of the NHPA and its implementing regulations.

This MOA may be signed by the Signatories using photocopy, facsimile, or counterpart signature pages. FHWA shall distribute copies of the complete MOA to the Signatories and Invited Signatories once the MOA is fully executed.

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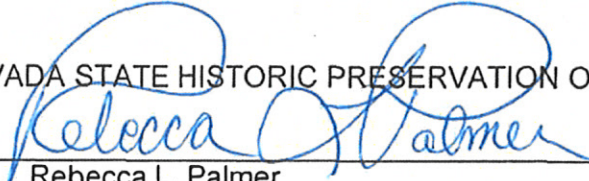
SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION – NEVADA DIVISION

By: 
Susan E. Klekar
Division Administrator

Date: 12/22/2020

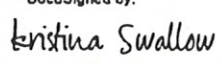
NEVADA STATE HISTORIC PRESERVATION OFFICE

By: 
Rebecca L. Palmer
Nevada State Historic Preservation Officer

Date: 12/23/2020


INVITED SIGNATORIES:

NEVADA DEPARTMENT OF TRANSPORTATION

By: DocuSigned by:

C49843CC2C154F9
Kristina L. Swallow
NDOT Director

Date: 12/21/2020

BUREAU OF LAND MANAGEMENT

By: 
Jon K. Raby
State Director

Date: 1/20/2021

CONCURRING PARTIES:

DUCKWATER SHOSHONE TRIBE OF NEVADA

By: _____
Rodney Mike
Chairman

Date: _____

TIMBISHA SHOSHONE TRIBE OF CALIFORNIA

By: _____
George Gholsen
Chairman

Date: _____

YOMBA SHOSHONE TRIBE OF NEVADA

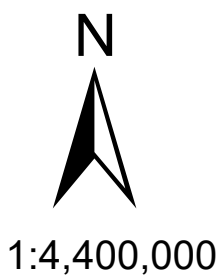
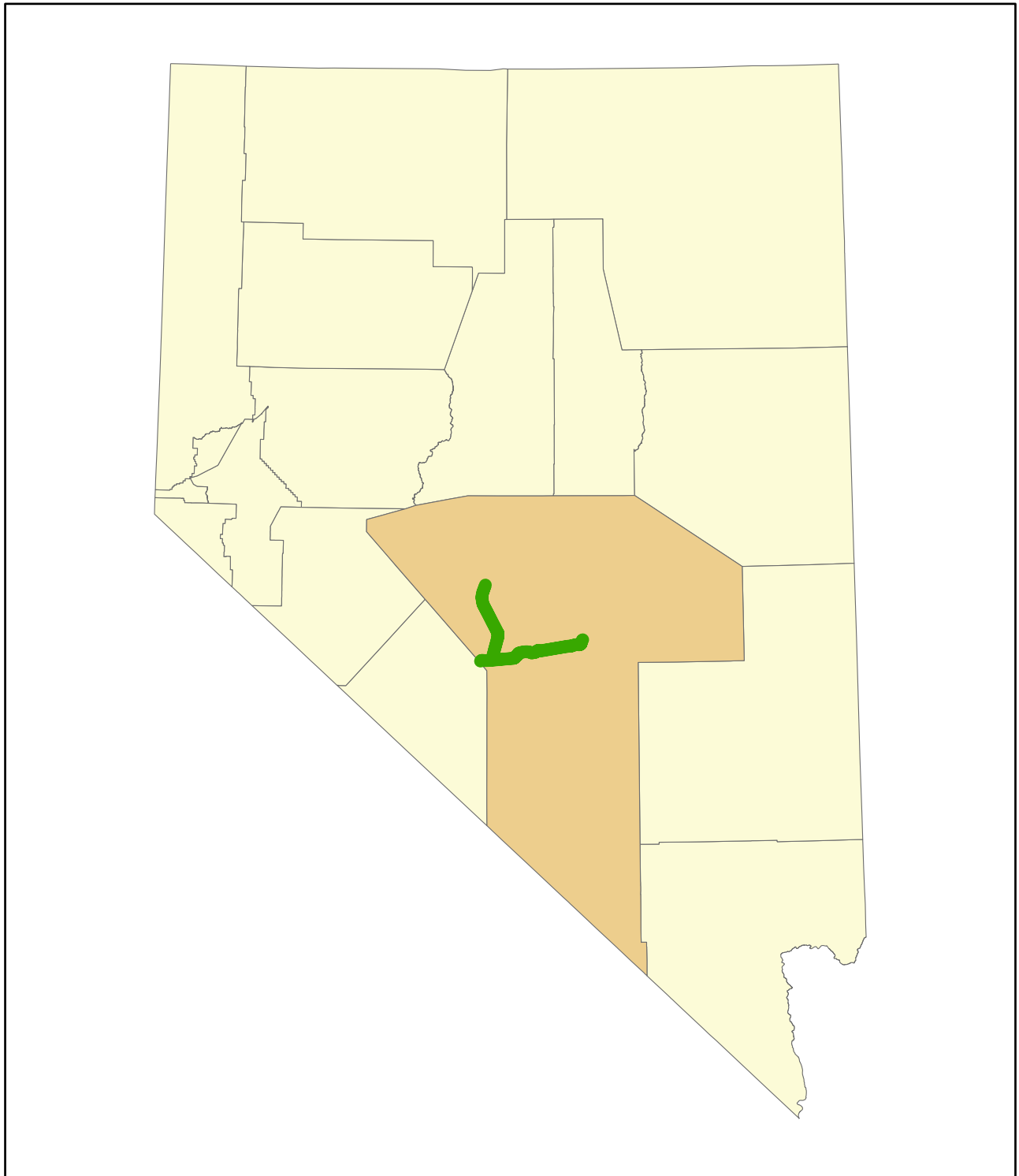
By: _____
Ronnie Snooks
Chairman

Date: _____

ATTACHMENT A

MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, NEVADA HISTORIC STATE PRESERVATION OFFICER, AND THE BUREAU OF LAND MANAGEMENT REGARDING THE US 06 / SR 376 REINFORCED CONCRETE BOX RECONSTRUCTION PROJECT, NYE COUNTY, NEVADA
FEDERAL PROJECT #. NHP-006-2(019)/SP-000M(072). NDOT#: 74124, BLM 6-3300, SHPO #2020-6340


Regional View of the APE



Legend

 Project APE as Inventoried

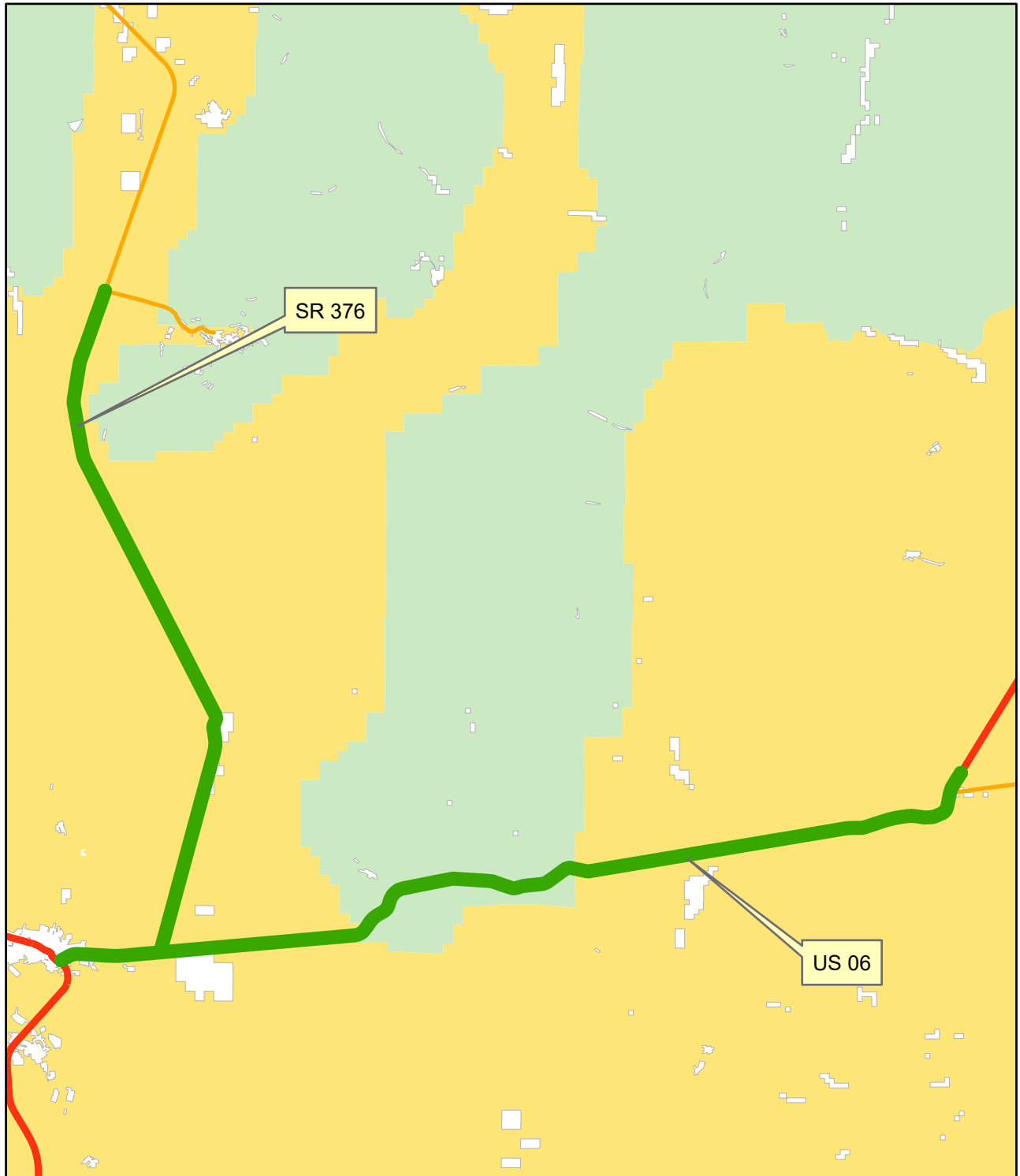
NV_County

 Nevada Counties

COUNTYNAME

 Nye


Land Ownership in the APE



Legend

 Project APE

Route Type

 02-US Highway

 03-State Highway

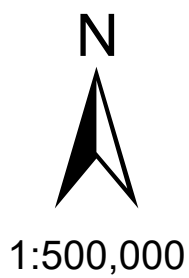
NV Land Ownership

 Bureau of Land Management

 Forest Service

 Private


Aerial View of the APE



Legend

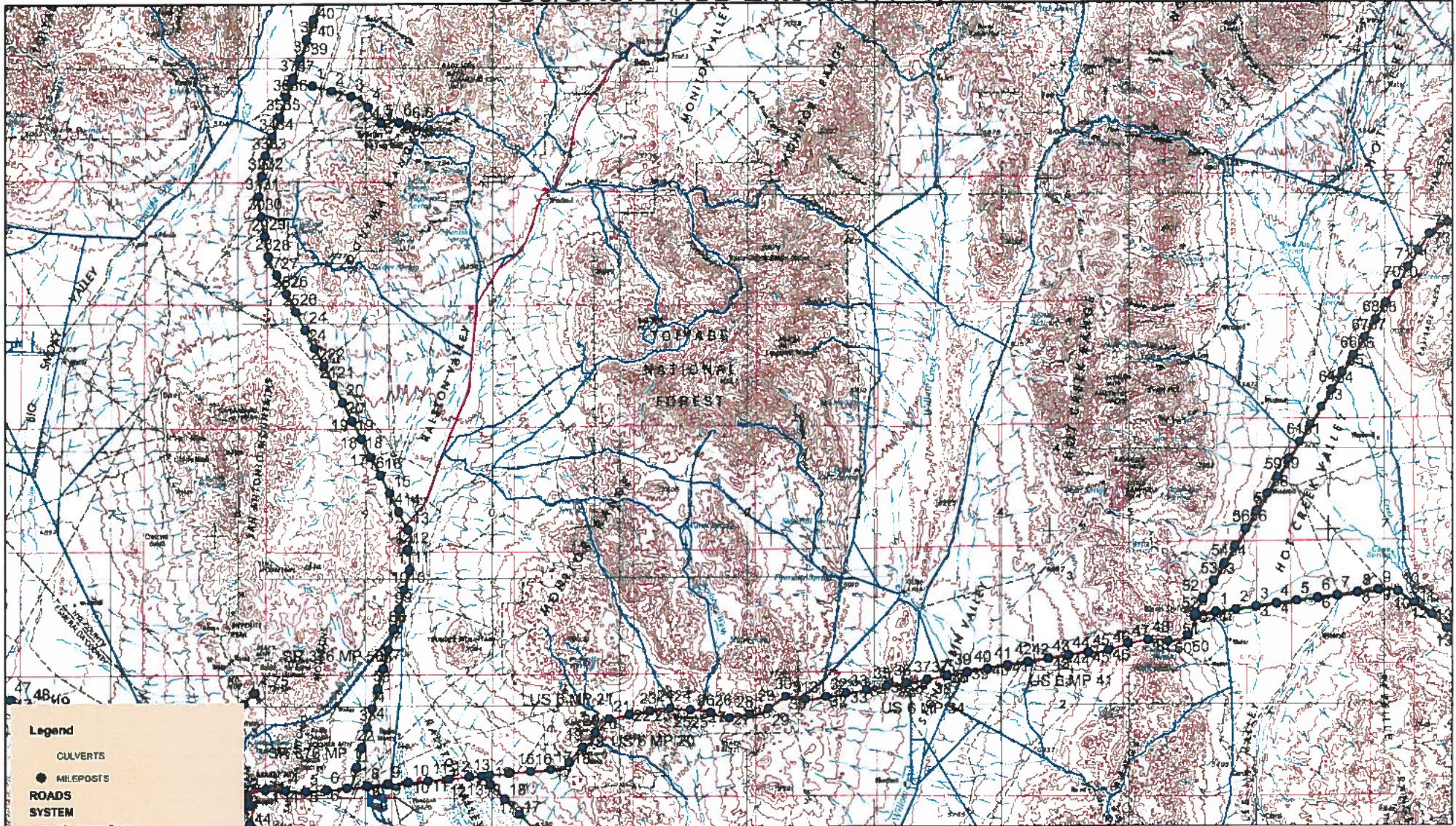
 Project APE as Inventoried

Route Type

 02-US Highway

 03-State Highway

US6/SR376 RCB Extension Project

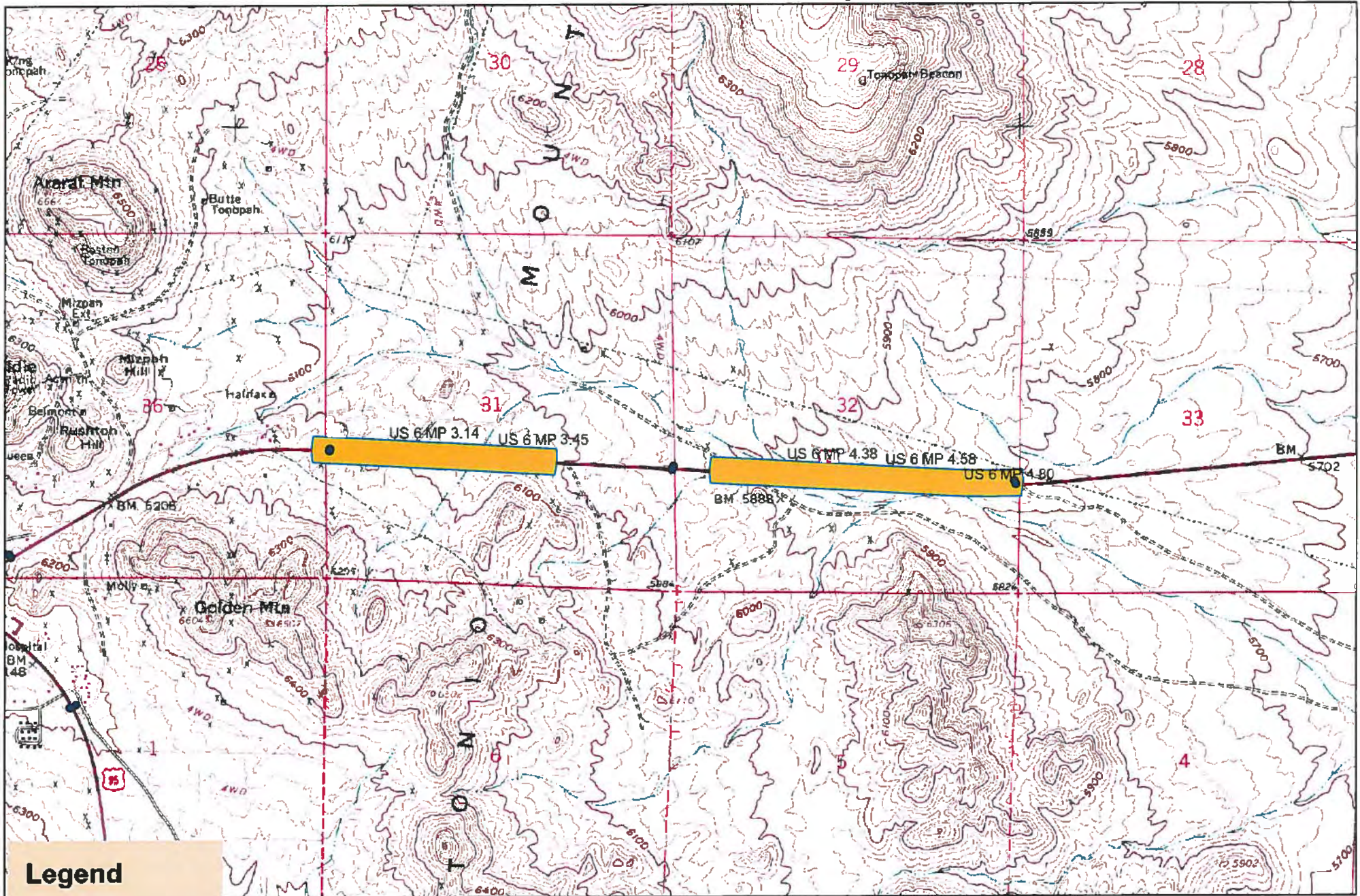


- Legend**
- CULVERTS
 - MILEPOSTS
 - ROADS SYSTEM**
 - AR - Access Route
 - CD - Collector Distributor
 - ES - Escape Ramp
 - FC - Functionally Classified Other System
 - FH - Forest Highway
 - FR - Frontage Road
 - IR - Interstate
 - OS - Off System Local Roads
 - RC - Route Connector
 - RM - Ramp
 - RP - Roadside Park
 - SO - State Owned
 - SP - State Park
 - SR - State Route
 - TI - Truck Inspection Station
 - US - US Route

1 inch = 6.85 miles



US 6/SR 376 RCB Extension Project



Legend

- MILEPOSTS
- CULVERTS
- Project APE



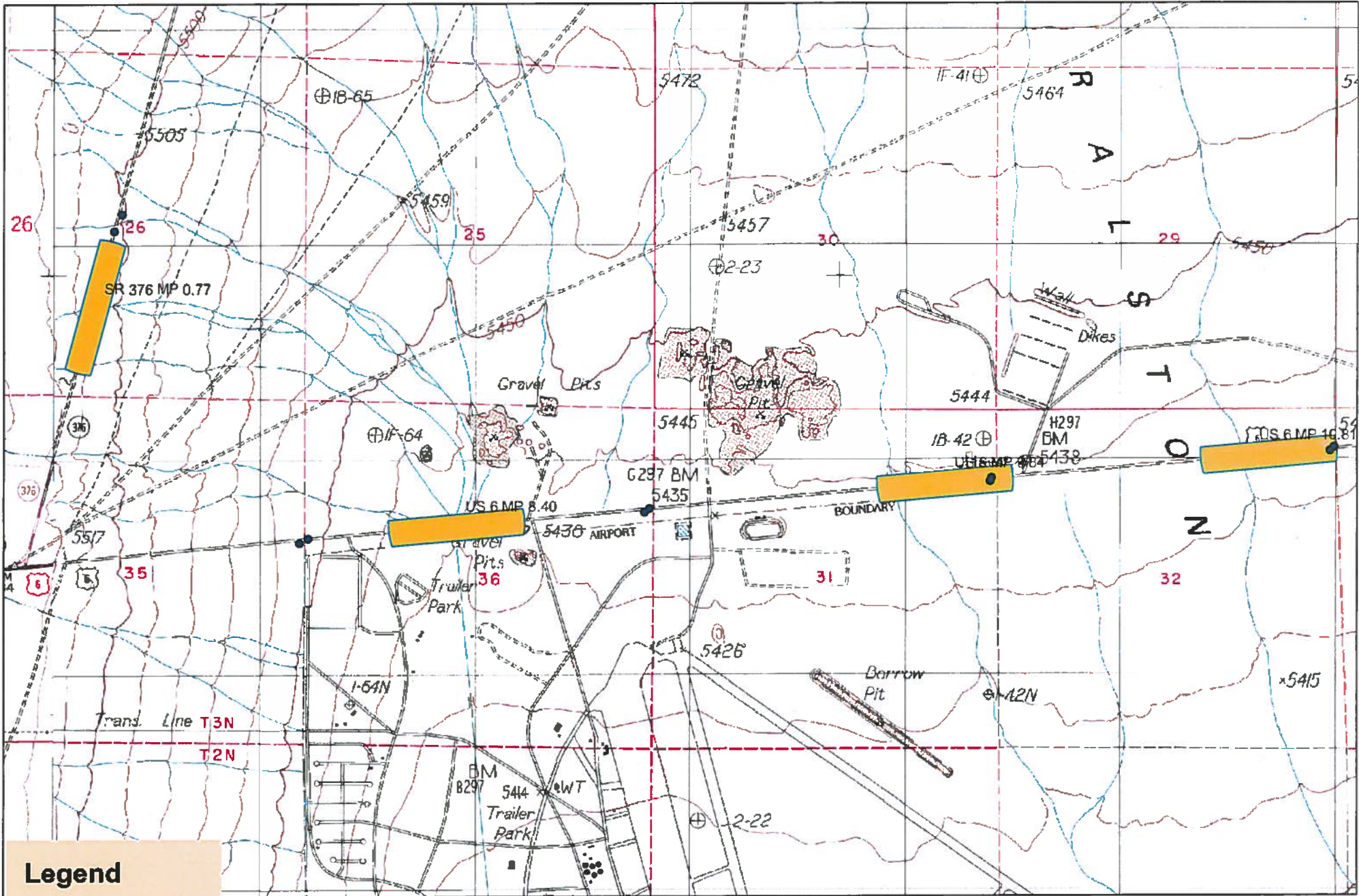
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1:24,000 Scale

US 6 Map 1



US 6/SR 376 RCB Extension Project



Legend

- MILEPOSTS
- CULVERTS
- Project APE



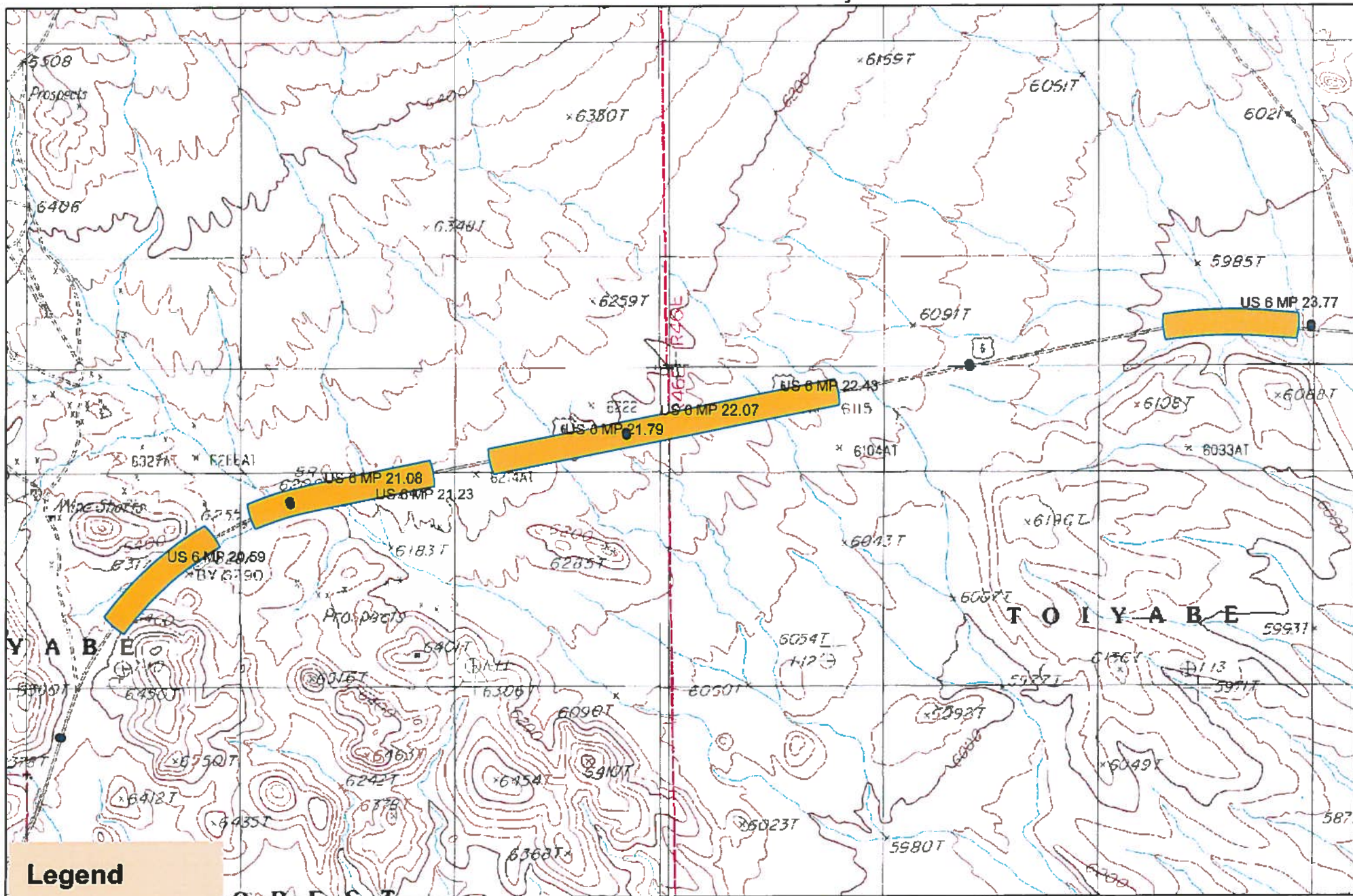
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1:24,000 Scale

US 6 Map 2



US 6/SR 376 RCB Extension Project



Legend

- MILEPOSTS
- CULVERTS
- Project APE



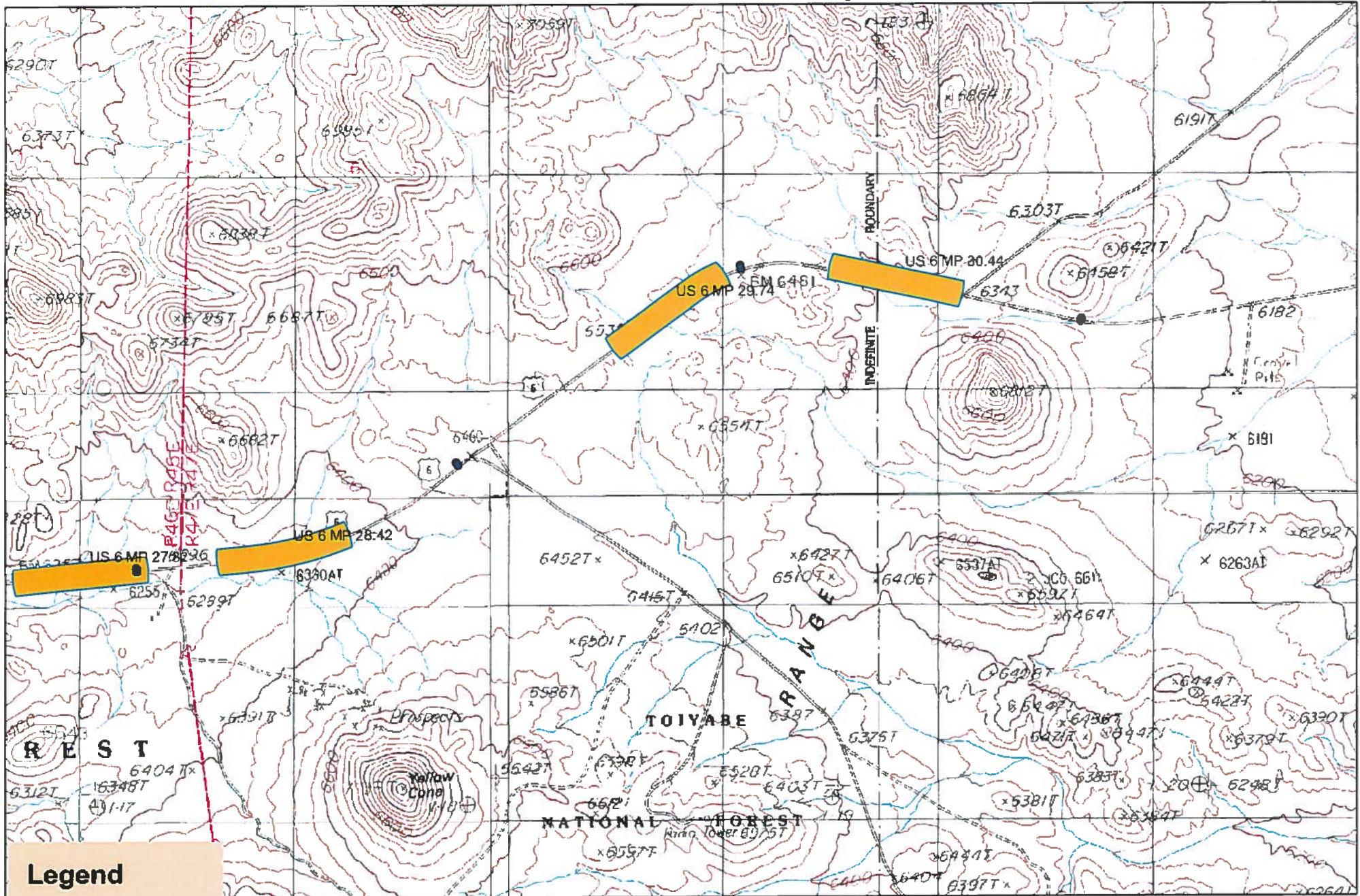
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1:24,000 Scale

US 6 Map 5



US 6/SR 376 RCB Extension Project

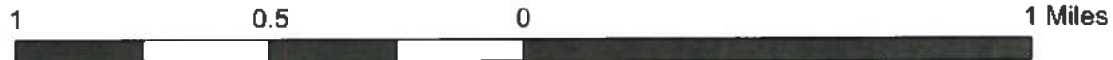


Legend

- MILEPOSTS
- CULVERTS
- Project APE



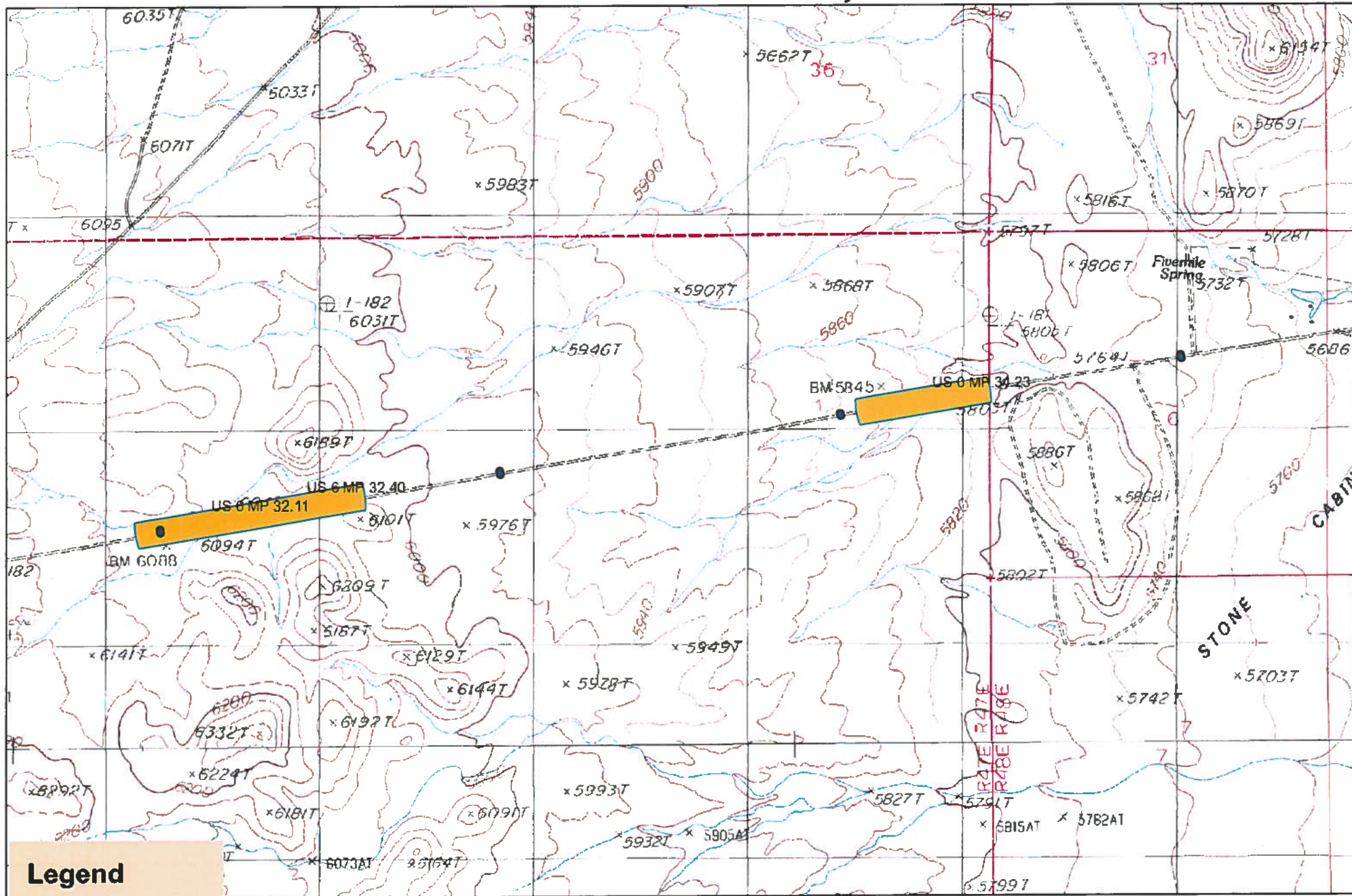
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1:24,000 Scale

US 6 Map 7

US 6/SR 376 RCB Extension Project

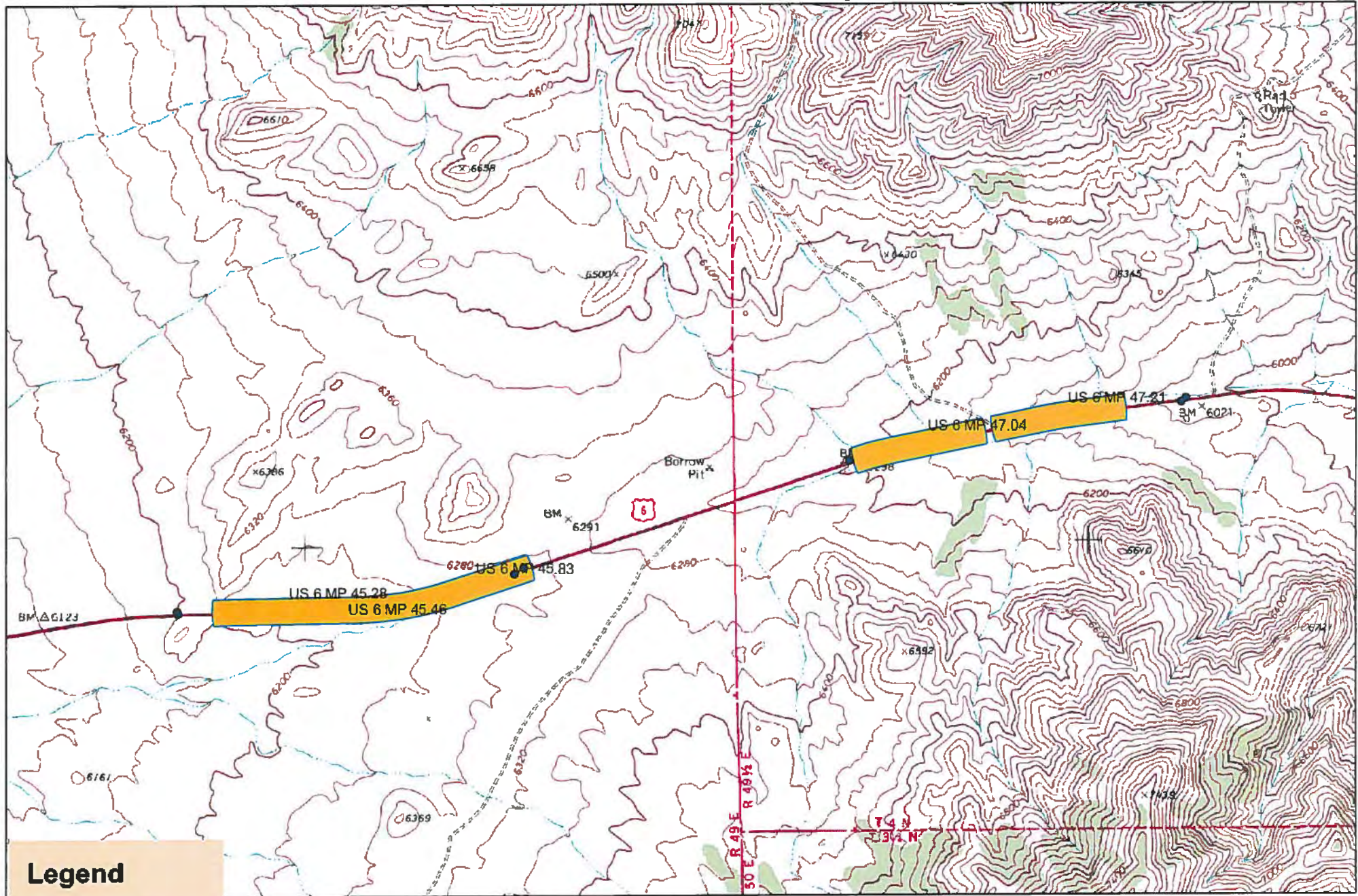


Legend

- MILEPOSTS
- CULVERTS
- Project APE



US 6/SR 376 RCB Extension Project



Legend

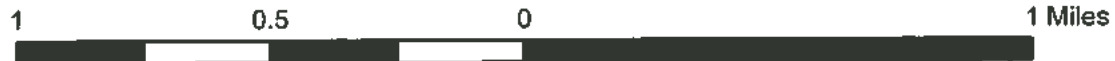
- MILEPOSTS
- CULVERTS
- Project APE



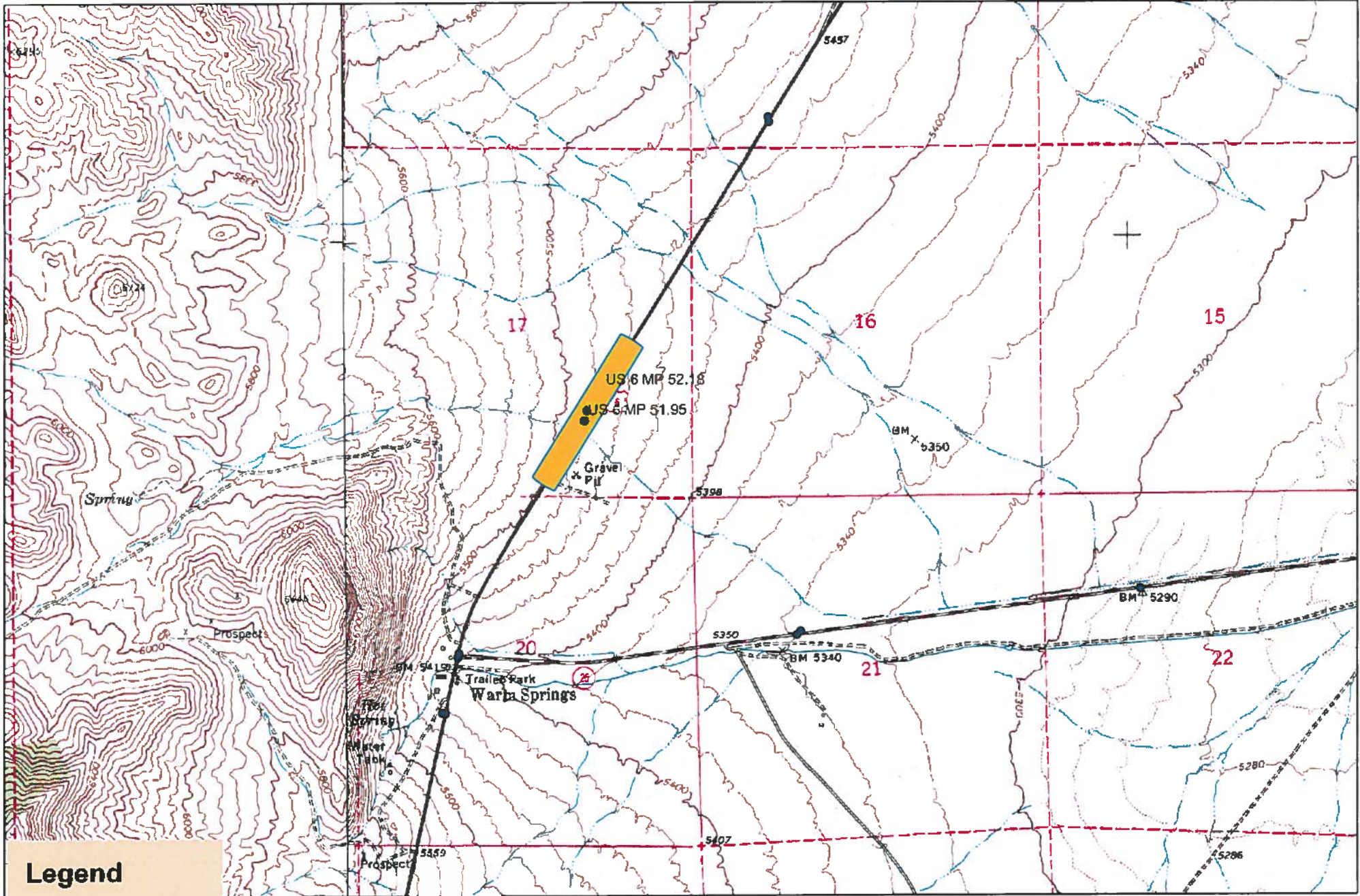
1 in = 2,000 ft

1:24,000 Scale

US 6 Map 10



US 6/SR 376 RCB Extension Project



Legend

- MILEPOSTS
- CULVERTS
- Project APE



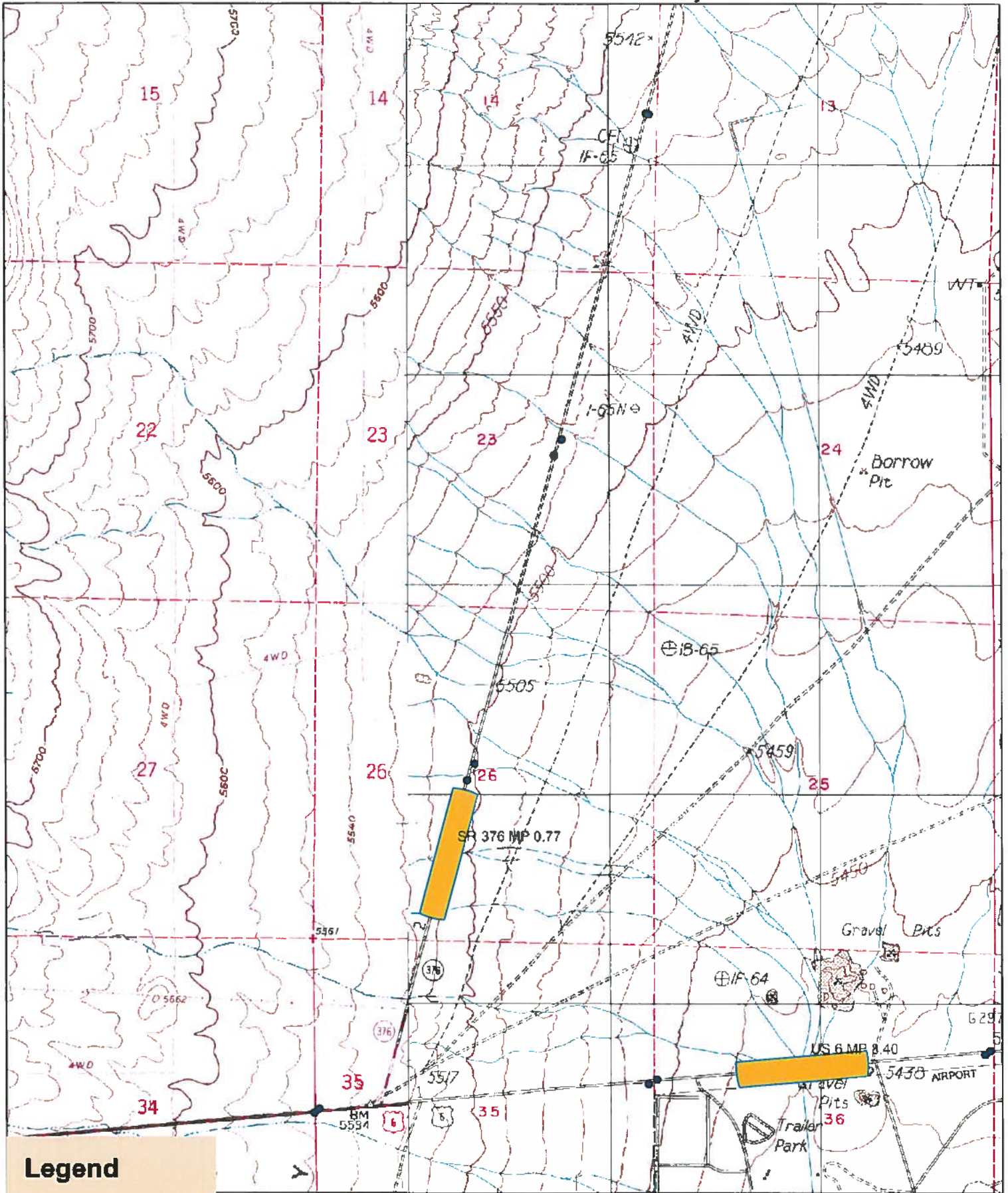
1 in = 2,000 ft



1:24,000 Scale

US 6 Map 11

US 6/SR 376 RCB Extension Project



Legend

- MILEPOSTS
- CULVERTS
- Project APE



1 in = 2,000 ft

1:24,000 Scale

SR 376 Map 1

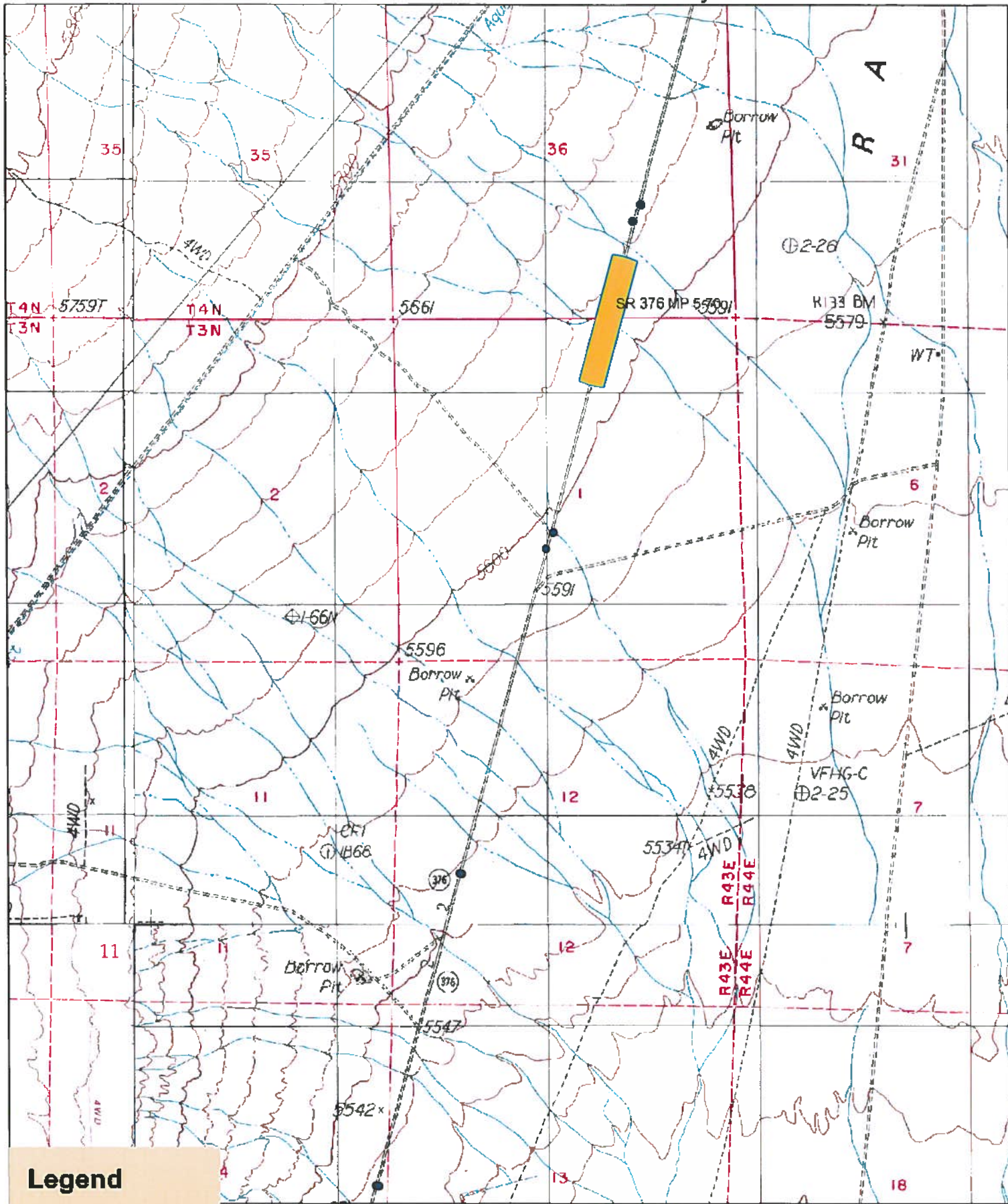
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0.5

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1 Miles

US 6/SR 376 RCB Extension Project



Legend

- MILEPOSTS
- CULVERTS
- Project APE



1 in = 2,000 ft

1:24,000 Scale

SR 376 Map 2

1

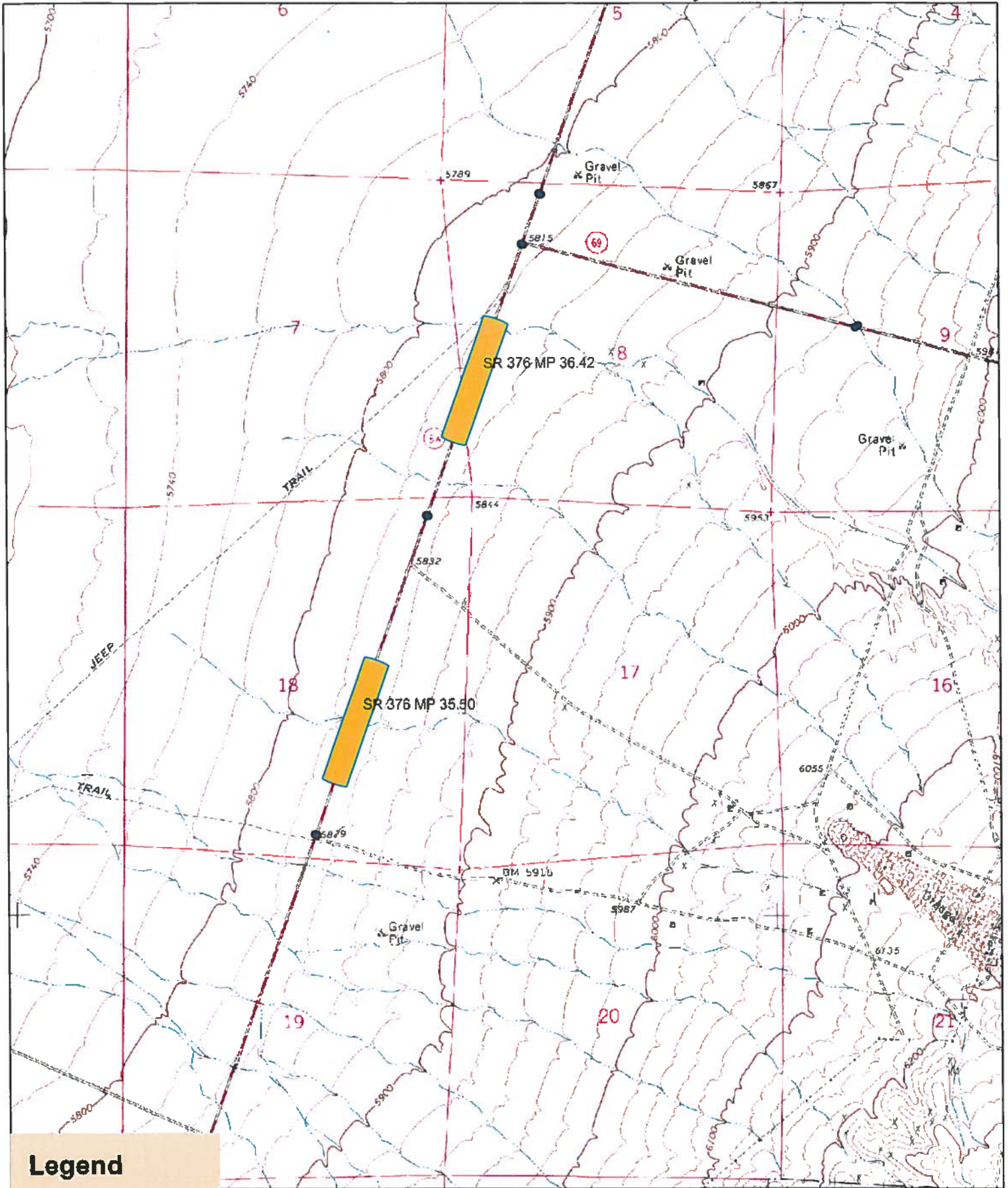
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1 Miles



US 6/SR 376 RCB Extension Project



Legend

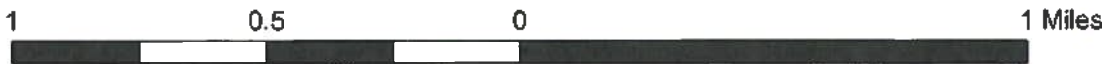
- MILEPOSTS
- CULVERTS
-  Project APE



1 in = 2,000 ft

1:24,000 Scale

SR 376 Map 5



ATTACHMENT B
HISTORIC PROPERTIES TREATMENT PLAN

MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, NEVADA HISTORIC STATE PRESERVATION OFFICER, AND THE BUREAU OF LAND MANAGEMENT REGARDING THE US 06 / SR 376 REINFORCED CONCRETE BOX RECONSTRUCTION PROJECT, NYE COUNTY, NEVADA
FEDERAL PROJECT #: NHP-006-2(019)/SP-000M(072), NDOT#: 74124, BLM 6-3300, SHPO #2020-6340