

**PROGRAMMATIC AGREEMENT AMONG
THE BUREAU OF LAND MANAGEMENT ELKO DISTRICT, U.S. ARMY
CORPS OF ENGINEERS, NEVADA STATE HISTORIC PRESERVATION
OFFICE, AND METROPOLIS IRRIGATION DISTRICT**

WHEREAS, the parties agree that the Bureau of Land Management Elko District (BLM-Elko) will be the lead Federal Agency for compliance with the National Historic Preservation Act [16 U.S.C. 470(f)] for this undertaking; and

WHEREAS, the U.S. Army Corps of Engineers (Corps) will issue permits for the Bishop Creek dam; and

WHEREAS, the BLM-Elko has determined that the Bishop Creek dam demolition and replacement, access road, borrow pits, recreation area, and reservoir and perimeter, situated in Elko County, Nevada will 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 800.13 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, a portion of the California Trail, a National Historic Trail designated under the National Trails System Act (NTSA), passes through the Bishop Creek dam project area; and

WHEREAS, the BLM has invited the Advisory Council on Historic Preservation (Advisory Council) to participate in consultation, but the Advisory Council declined; and

WHEREAS, a Nevada BLM State Protocol agreement (Protocol) exists between the Nevada BLM and the Nevada SHPO that stipulates responsibilities and obligations for compliance with Section 106 of the NHPA; and

WHEREAS, Tribes have been contacted and offered the opportunity to participate in the Section 106 process and will be included throughout the process; and

WHEREAS, this Programmatic Agreement (PA) covers all aspects of planning, construction, installation, and operation associated with the Bishop Creek Dam project, related land-use, and associated facilities and infra-structure; and

NOW THEREFORE, the parties agree that development and operation of the Bishop Creek Dam project and recreation development shall be administrated in accordance with the following stipulations to ensure that historic properties (including prehistoric sites) will be treated to avoid or mitigate effects to the extent practicable regardless of surface ownership and to satisfy BLM Section 106 and NTSA responsibilities for all aspects of the undertaking.

AREA OF POTENTIAL EFFECT

The Area of Potential Effect (APE) shall include all potential direct, indirect and anticipated cumulative effects to cultural resources and Traditional Cultural Properties (TCPs) from any activity associated with the undertaking and operation of the Bishop Creek dam and recreation area. The initial specific APE is described and mapped in Appendix A. At the discretion of the BLM, the APE may be amended and amendments will be handled under the procedures of this agreement.

DEFINITIONS

1. The definitions in the Protocol are applicable throughout this agreement.
2. The Parties means the signatories to this agreement.

STIPULATIONS

The BLM shall ensure that all stipulations of this PA are carried out by the BLM-Elko, SHPO, Metropolis Irrigation District (MID), and all contractors or other personnel.

A. Identification

1. BLM shall identify interested persons and Tribes pursuant to 36 CFR 800 and involve them, as appropriate, in all activities associated with the undertaking. The BLM shall consult with appropriate Tribes to identify properties considered to be TCPs or other locations of cultural importance, and apply the National Register Criteria (36 CFR 63) to determine eligibility for the resources identified by the Tribes.

2. The BLM, in consultation with SHPO, shall ensure that the MID funds an appropriate cultural resource inventory, including appropriate reports, of the APE in a manner consistent with the Protocol.

3. Required inventory shall be completed regardless of the ownership (public or private) of the lands involved and the MID shall be responsible for gaining access to privately held lands. MID's failure to gain access to private lands will result in BLM initiating consultation with the Parties to determine the most appropriate course of action.

4. The BLM shall have the consulting archaeologists conduct records searches of GLO plat maps, the National and State Register of Historic Places, the National Trail System, and conduct a Class I inventory of agency archives to locate potential historic properties within the APE for direct and indirect effects. All areas anticipated to experience direct effects from this project shall be inventoried at Class III intensity. Additional Class III inventories shall be required where historic properties are anticipated to occur (based on the Class I inventory) that might experience indirect or cumulative effects arising from this project.

5. Time frames for completing identification activities are found in Stipulation H.

B. Eligibility

1. The BLM, in consultation with SHPO, shall ensure that all cultural resources located within the APE are evaluated for eligibility to the NRHP prior to the initiation of activities that may affect cultural properties. Eligibility will be determined by the BLM in consultation with the SHPO for all cultural resources within the APE.

2. To the extent practicable eligibility determinations shall be based on inventory information. If the inventory information is inadequate to determine eligibility, MID through its contractors, may be required by BLM to conduct limited subsurface probing or other evaluative techniques to determine eligibility. Subject to approval by the BLM, in consultation with SHPO, evaluative testing is intended to provide the minimum data necessary to define the nature, density, distribution, age, and integrity of materials in potential historic properties, to enable final evaluations of eligibility, and to devise treatment options responsive to the information potential and basis for eligibility of the property. Any testing shall be limited to disturbing less than 25% of the surface area of the site or property.

3. If any of the parties disagree with the eligibility determinations in any inventory or testing report, the BLM shall notify all parties and enter into further consultation about eligibility with SHPO. If the BLM and SHPO disagree regarding eligibility, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 800.4. The Keeper's determination will be considered final.

4. The Keeper has 45 days to make a determination of eligibility. Other time frames for completing evaluation activities are found in Stipulation H.

C. Treatment

1. In avoiding or mitigating effects, the BLM, in consultation with SHPO, tribes and interested persons, shall determine the precise nature of effects (pursuant to 36 CFR 800.9) to historic properties identified in the APE. All treatment shall be done in a manner consistent with the Protocol.

2. To the extent practicable, BLM, in consultation with SHPO, MID and interested persons, shall ensure that MID avoids effects to historic properties through project design, redesign, relocation of facilities, or by other means in a manner consistent with the Protocol.

3. When avoidance is not feasible, the BLM, in consultation with SHPO, MID and interested persons, shall ensure that MID and their permitted cultural resource contractors develops an appropriate treatment plan designed to lessen or mitigate project-related effects to historic properties. For properties eligible under criteria (b) through (c) (36 CFR 60.4) mitigation other than data recovery may be considered in the treatment plan (e.g., HABS/HAER documentation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, treatment plans shall include provisions for public involvement and dissemination of information. For properties eligible under criteria (a) any effects to the sites eligibility would automatically be adverse.

4. When data recovery is proposed, the BLM, in consultation with SHPO, shall ensure that MID or its contractor develops a data recovery plan that is consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37) and the Advisory Council's recommended approach for consultation on recovery of significant information from archaeological sites.

5. Upon completion of consultation process, the BLM shall ensure that MID through its cultural resource contractor(s), implements the fieldwork portions of any final treatment plan prior to initiating any activities that may effect historic properties.

6. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 CFR 79 in BLM-approved facilities in Nevada. Copies of reports and records shall also be provided with BLM Elko and the SHPO. Cultural resource contractors shall provide copies of correspondence with the curatorial facility confirming the receipt of collections and records as part of the final reports. All materials collected will be maintained in accordance with 36 CFR 79 until the final report is complete and the collections and documentation are turned over to the curatorial facility.

7. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to the SHPO, and made available to other interested persons. All such reports shall be consistent with contemporary professional standards, including the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (42 FR 5377-79), Nevada BLM, and Nevada SHPO report guidelines.

8. Time frames for completing treatment activities are found in Stipulation H.

D. Discovery Situations

1. When previously unknown cultural resources are discovered, or known historic properties are affected in an unanticipated manner, undertaking related activities within 100 meters of the discovery will cease immediately and MID shall notify the BLM authorized officer. Prior to initiating any activities within the APE, MID will provide the parties with the name and contact information the MID representative empowered to halt all activities in discovery situations and who will be responsible for notifying BLM of any discoveries. A MID representative will be present during all project related activities.

2. The BLM shall notify the SHPO and consider SHPO's comments on the discovery. Within two working days of the discovery, the BLM shall notify MID, the SHPO and identified interested persons of the BLM's decision to either allow undertaking related activities to proceed or to require mitigation.

3. If, in consultation with the SHPO, BLM determines that mitigation is appropriate, the BLM shall solicit comments from the SHPO and interested persons, as appropriate, to develop mitigating measures. The SHPO and other interested persons, as appropriate, will be allowed two working days to provide BLM with comments to be considered when the BLM makes a decision on extent of mitigation efforts. BLM will determine the mitigation required within seven working days of BLM's notification to MID of the need for mitigation, notify the SHPO and interested persons of its decision and ensure that such mitigative actions are implemented.

a. Any disputes or objections arising during a discovery situation that cannot be resolved by the BLM and SHPO shall be referred to the Advisory Council for comment.

1. BLM will provide the Advisory Council with copies of information on the discovery. Consultation with the Advisory Council shall be by the most expeditious means available, including telephone, e-mail, or fax.

2. The Advisory Council shall provide its comments, if any, within three working days of a request and all relevant information from the BLM.

3. If the Advisory Council fails to respond within three working days of the receipt of a request, the BLM shall presume the concurrence with the BLM's findings and recommendations, and proceed accordingly.

4. Any Advisory Council comment will be taken into account by the BLM. The BLM will notify the Advisory Council, SHPO and objecting party of its resolution of the issue.

5. The parties may continue all actions under this Agreement that are not the subject of the dispute.

4. The BLM shall ensure that reports of mitigation efforts for discovery situations are completed in a timely manner and conform to the Department of Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Drafts to such reports shall be submitted to the SHPO for review in compliance with the Protocol and as stipulated in Section H. Final reports shall be submitted to the SHPO and interested persons for informational purposes.

5. MID activities in the area of the discovery will be halted until MID is notified by the BLM that mitigation is complete and activities can resume.

E. Other Considerations

1. The BLM shall ensure that cultural resources and Tribal consultation work conducted pursuant to this PA is carried out by, or under the direct supervision of persons meeting the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards (36 CFR 61) and who have been permitted by the BLM and Nevada State Museum to work in Nevada. All cultural resource contractors employed by MID will secure the necessary permits to work on state, private and public lands.

2. MID, in cooperation with the BLM and the SHPO, shall ensure that all its members or personnel and all the personnel of its contractors are directed not to engage in illegal collection of artifacts or historic properties prior to treatment. MID shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act (16 U.S.C. 470), NHPA and NTSA on public lands and with applicable state law for state and private lands (NRS 383).

3. With the exception of the Metropolis Canal, MID shall bear the expense of identification, evaluation, and treatment of all cultural properties directly or indirectly affected by activities associated with the Bishop Creek Dam project and related improvements. Such costs shall include, but not be limited to, pre-field planning, fieldwork, post-fieldwork analysis, research and report preparation, interim and summary report preparation, draft and final report preparation, public information, and the costs of curating project documentation and artifact collections. BLM agrees to complete the inventory, documentation and treatment for the Metropolis Canal prior to maintenance and improvement work on this Canal, and prior to completion of the replacement Dam.

4. Identification, evaluation and treatment efforts may extend beyond the geographic limits of the right-of-way or APE when the resources being considered extend beyond the limits.

5. TCPs will be identified, evaluated and treated through consultation with appropriate interested and recognized Tribes. MID can contract for data gathering to assist the BLM in identifying, evaluating and treating TCPs. Any formal consultation will be done by the BLM. TCP identification, evaluation and treatment efforts shall be consistent with BLM Manual 8160 and its associated handbook.

6. Information on the location and nature of all cultural resources, and all information considered to be proprietary by Tribes, will be held confidential to the extent provided by NHPA, Native American Graves Protection Act (NAGPRA), and ARPA.

7. BLM shall ensure that any human remains, grave goods, items of cultural patrimony and sacred objects encountered during the undertaking are treated with the respect due such materials. In coordination with this PA, human remains and associated grave goods found on public land will be handled according to the provisions of NAGPRA and its implementing regulations (43 CFR 10). Human remains and associated grave goods found on state and private lands will be handled according to the provisions of Nevada state law (NRS 383).

F. Site Stewardship and Monitoring

1. The BLM, SHPO, Corps and interested persons may monitor actions and results covered by this Agreement.

2. Any areas that the BLM, in consultation with SHPO, identifies as culturally sensitive or as historic properties that are avoided and do not undergo treatment, will be monitored by the BLM, MID's permitted cultural consultant(s), or Tribal representatives. Monitoring of at least some of these sensitive sites or historic properties shall continue after construction in areas with recreational and other reservoir related development. Post-construction monitoring may involve the parties listed above and trained Nevada site stewards. Treatment plans will contain monitoring plans as needed.

G. Notices to Proceed

Notices to Proceed (NTP) will be issued by the BLM to MID for individual construction segments or phases defined below, under any of the following conditions:

(a) the BLM and SHPO have determined that all historic properties within the APE for the project phase that can be avoided; or

(b) MID's cultural resource consultants have completed the fieldwork for a treatment plan, reviewed and approved by BLM and SHPO; the BLM has accepted a summary description of the fieldwork and a reporting schedule for that work.

(c) Water may not be impounded behind the new replacement dam until the final report documenting whatever cultural resource treatments are required within the reservoir is accepted by BLM.

Construction and development segments or phases are as follows (but may not be accomplished in this sequence):

- 1) Access road,
- 2) Existing dam demolition,
- 3) New (replacement) dam construction, associated borrow pits and work areas;
- 4) Recreation area,
- 5) Irrigation canal restoration or replacement,
- 6) Reservoir filling with water, and
- 7) Reservoir and recreation area use.

H. Time Frames

1. Reports: The BLM shall review and comment on any report submitted by MID's cultural resource consultant(s) within 30 calendar days of receipt.
2. Consultation with Interested Persons: Prior to SHPO consultation, the BLM shall submit the reports and plans for inventories, treatments, and discovery situation treatments to identified interest persons for a 30 calendar day review and comment period.
3. SHPO Consultation: The BLM shall submit the reports and plans for all inventories, treatments, and discovery situation treatments to the SHPO for a 30 calendar day review and comment period.
4. If any party to the PA or other interested person fails to respond to the BLM within 30 days of the receipt of a submission, the BLM shall presume concurrence with the BLM's findings and recommendations as detailed in the submission and proceed accordingly.
5. Report: Draft Final Reports of all inventory, evaluation, treatment or other mitigation activities will be provided by MID's cultural resource consultant within 9 months after the completion of the fieldwork associated with the activity, unless otherwise negotiated. The Revised Final Reports will be due within 30 calendar days of receipt of comments from the BLM on Draft Final Reports.
6. Curation: All records, photographs, maps, field notes, artifacts, and other materials collected or developed during inventory, evaluation, treatment or other mitigation activities will be curated in a facility approved by the BLM. MID's cultural resource consultant will turn over the collections to the curatorial facility once the Final Report has been accepted by BLM, and provide confirmation from the curatorial facility for receipt of collections. In addition, a copy of all photographs, maps, field notes, reports, and other lab and field records will be provided for storage at the BLM Elko District office. This set of records should include both paper copies and digital copies of all the records listed above.
7. The above time frames do not apply to discovery situations. Discovery time frames are specified in Stipulation D.

I. Dispute Resolution

1. If any party to this PA or an interested person objects to any activities proposed pursuant to the terms of this PA, the BLM shall consult with the objecting person or party and the SHPO to resolve the issue. If the BLM determines that the objection cannot be resolved, the BLM shall request the assistance of the Advisory Council to help resolve the objection.
2. Within 30 days of receipt of the request for assistance and all pertinent documentation, the Advisory Council will either:
 - a. advise the BLM that the Advisory Council concurs with the BLM's proposed final decision, whereupon the BLM will respond to the objection accordingly; or
 - b. provide the BLM with recommendations which the BLM will take into account in reaching a final decision regarding the dispute; or
 - c. notify the BLM that the Advisory Council will comment pursuant to 36 CFR Section 800.6(b) and proceed to comment. Any Advisory Council comment provided in response to such as request will be taken into account by the BLM in accordance with Section 800.(6)(c)(2) with reference to the subject of the dispute.

3. The Parties to this PA may continue all actions under this PA that are not the subject of the dispute.

J. Amendment

Any party to this PA may request that this PA be amended, whereupon the Parties will consult to consider such amendment.

K. Termination

Any party to this PA may terminate the PA by providing 30 days notice to the other Parties, provided that the Parties have consulted to seek agreement on amendments or other actions that would avoid termination.

L. Execution

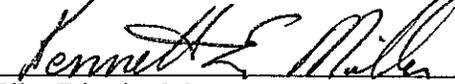
1. Execution and implementation of this PA evidences that the federal agencies have satisfied their Section 106 responsibilities for all actions associated with the construction and development of the Bishop Creek Dam Project.

2. In the event that the Parties do not comply with this PA or it is terminated, this project would exceed the Protocol's thresholds for internal review and require consultation with the SHPO and Advisory Council.

3. This PA is in effect on the date of the last signature below, and will be in effect until terminated, or the undertaking is completed, or ten years from the last date below.

CONSULTING PARTIES:

BUREAU OF LAND MANAGEMENT

By: 
Elko District Manager

Date: 5/31/08

NEVADA STATE HISTORIC PRESERVATION OFFICE

By:  Deputy SHPO

Date: 6/5/08

U.S. ARMY CORPS OF ENGINEERS

By: 

Date: 5-12-08

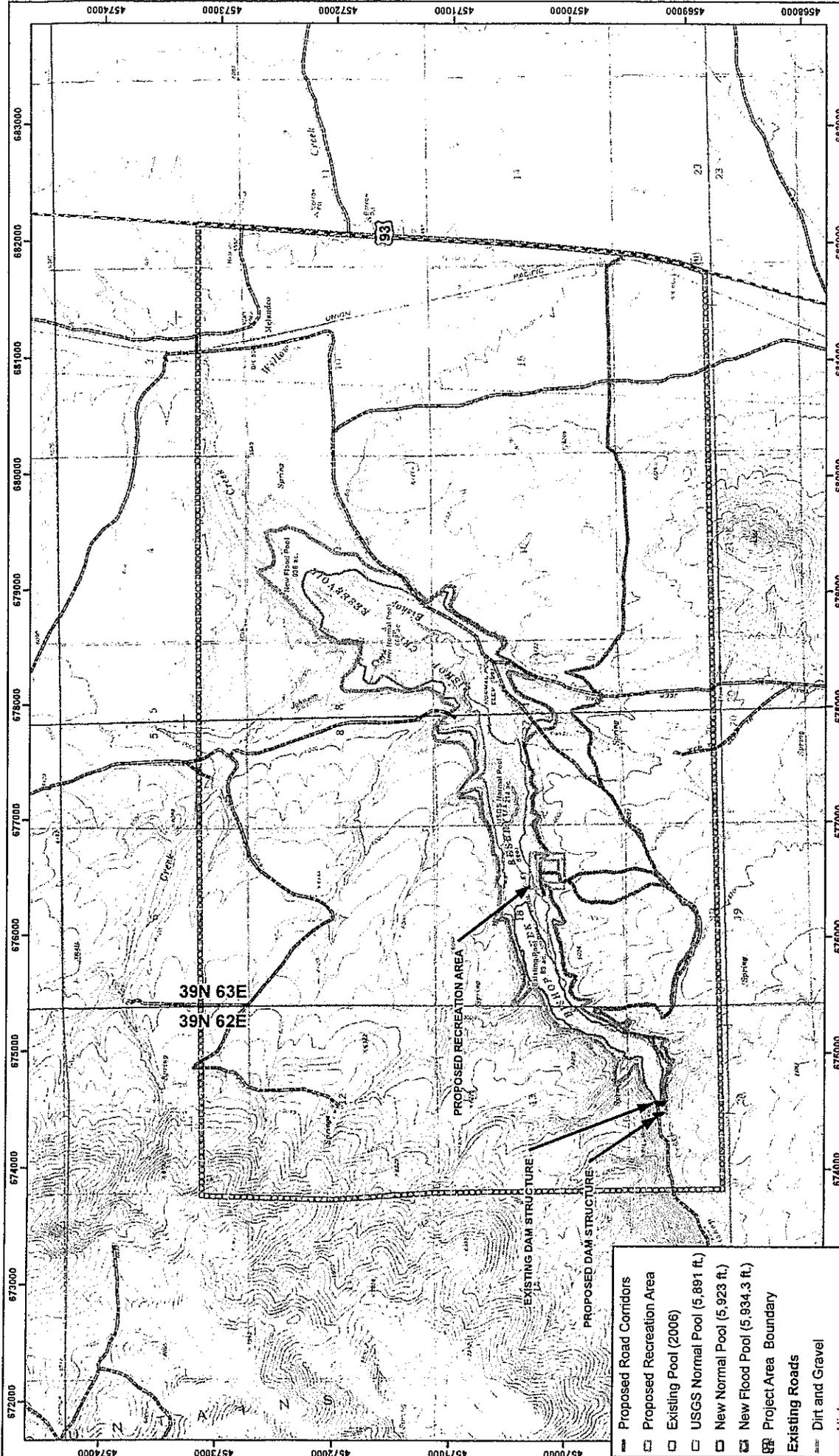
CONCURRING PARTY:

METROPOLIS IRRIGATION DISTRICT

By: 

Date: 4-15-08

APPENDIX A: MAPS DEFINING THE PROJECT A.P.E.



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|--|--|---------------------------------|---|
| SRK Consulting Engineers and Scientists | DESIGN: RSS CHECKED: GNB FILE NAME: BSLN_Fig2_Proj_Area_RSS_20070516.mxd | REVIEWED: GNB DATE: 10/11/07 | PROJECT TITLE METROPOLIS IRRIGATION DISTRICT IRRIGATION RESTORATION PROJECT |
| | DRAWING NAME Figure 2 | | |
| GRID: UTM ZONE 11 NAD 83 US FEET | | | PROJECT SITE 170301 |
| IF THE ABOVE BAR DOES NOT SCALE 1 INCH, THE DRAWING IS ALTERED | | | REVISIONS A |

- Proposed Road Corridors
- Proposed Recreation Area
- Existing Pool (2006)
- USGS Normal Pool (5,891 ft.)
- New Normal Pool (5,923 ft.)
- New Flood Pool (5,934.3 ft.)
- Project Area Boundary
- Existing Roads
- Dirt and Gravel
- Highways
- Landowner
- Bureau of Land Management
- Private



JIM GIBBONS
Governor

MICHAEL E. FISCHER
Department Director

STATE OF NEVADA
DEPARTMENT OF CULTURAL AFFAIRS
State Historic Preservation Office
100 N. Stewart Street
Carson City, Nevada 89701
(775) 684-3448 • Fax (775) 684-3442
www.nvshpo.org

RONALD M. JAMES
State Historic Preservation Officer

MEMO

Date: November 5, 2008

To: Bryan K. Fuell
Manager
BLM Wells Field Office
3900 East Idaho St.
Elko, NV 89801

From: Rebecca R. Ossa, Architectural Historian

Re: Report: A Final Historic Preservation Treatment Plan for Bishop Creek Dam

2008 NOV 12 PM 7:30
RECEIVED

This is a formal response to BLM correspondence to our office dated October 3, 2008 (received October 6th) regarding the adequacy of the above treatment plan. The SHPO recommends the inclusion of the following:

- Large format photographic documentation of the demolition of the dam. Photos of the demolition should be taken so when viewed as a collection, they show the progressive demolition of the dam, its inner materials and workings, and any other relevant or detail information.

Please note that the final report format should be a single sided unbound copy with photographic prints, negatives, etc.

If you have any questions, please let me know at 775-684-3441 or via email at: rossa@nevadaculture.org.