

Categorical Exclusion — Bonnie Springs 15kV line amendment

A. Background

Right-of-way (ROW) grant NEV-60208 was originally issued on July 17, 1963. On March 8, 2012, Nevada Power Company d/b/a NV Energy turned in an amendment application, NEV-60208/C/ to add .017 acres to their existing ROW as part of a Settlement Agreement to resolve an unauthorized use (N-89860). Also included in this NEPA analysis is the need to replace a bent power pole within the existing ROW.

DOI-BLM-NV-S020-2012-0012-CX

BLM Office:

NV - Red Rock - Sloan Canyon NCA FO

LLNVS02000

Lease/Serial/Case File No.:

NEV-60208/C/

Proposed Action Title/Type:

Right-of-way amendment

Location of Proposed Action:

M.D.M., Nevada, T. 22S., R. 58E., section 1, SW1/4NW1/4.

Project is adjacent to the Bonnie Springs sign. Maintenance of utility pole is adjacent to Bonnie Springs Road.

Description of Proposed Action: The need for this right-of-way (ROW) is to resolve an unauthorized use and for maintenance of a bent power pole within an existing ROW. Grant for service wire to customer owned pole with meter to provide power to the Bonnie Springs sign. Services are already existing. The wire is 15kVa, running from exiting pole, P-52742 (authorized under NEV-60208) to the Bonnie Springs sign. ROW would be 10-feet wide by 75-feet in length. Operation would be year round. No temporary work areas needed as this is an existing line. The replacement of the bent utility pole (authorized under NEV-60208, is located in the same general vicinity just off Bonnie Springs road.

B. Land Use Plan Conformance

Land Use Plan Name:

NV - Red Rock Canyon NCA GMP

Date Approved/Amended:

March 20, 2005

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s):

The RRCNCA states ROW are an exclusion area. In rare cases, ROW may be permitted. As this is action is to resolve an unauthorized use, this project would be in conformance with the RMP. Unauthorized Use: "It is BLM policy to identify, abate and prevent unauthorized use of public land. Existing unauthorized uses of public land will be resolved either, through termination, temporary authorization by short-term permit, issuance of rights-of-way, leasing through the Recreation and Public Purposes Act, or other appropriate manner.

C. Compliance with NEPA:

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2 apply.

Comments providing any substantive new information relevant to the analysis and mitigation measures have been incorporated into the Exhibit A stipulations which are attached to this document.

I have reviewed the plan conformance statement and have determined that the proposed action is in conformance with the approved land use plan and that no further environmental analysis is required.

D. Approval and Contact Information

 10/25/12
Date

Mark R. Spencer
Field Manager

Red Rock/Sloan Field Office

Contact Person

Christina Price, Project Manager

Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130
phone: 702-515-5000

Exhibit A
Stipulations N-60208/C/

1.0 Special Stipulations

- 1.1 To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs between March 15th – July 30th.
- 1.2 If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately sized buffer area must be avoided until the young birds fledge.

2.0 General Stipulations

- 2.1. The right-of-way is issued subject to all valid existing rights.
- 2.2. No signs or advertising devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the authorized officer.
- 2.3. The right-of-way shall be maintained in a sanitary condition at all times. Waste materials at those sites shall be disposed of promptly at an approved waste disposal site. "Waste", as used in this paragraph, shall mean all discarded matter of any kind.
- 2.4. Holder shall mark the exterior boundaries of the right-of-way with stake and/or lath at 100 to 200 foot intervals. The intervals may be varied at the time of staking at the discretion of the Authorized Officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the Holder. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed.
- 2.5. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this right-of-way within its authorized limits.
- 2.6. Holder shall maintain the right-of-way in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.

- 2.7. Holder shall maintain copy of the authorization along with stipulations on construction site at all times. In the event that the public land underlying the right-of-way encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2800][2880], including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments.

At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

- 2.8. Within 90 days of construction completion, the Holder shall provide the Authorized Officer with data in a format compatible with the Bureau's Arc-Info Geographic Information System to accurately locate and identify the right-of-way:

Acceptable data formats are:

Corrected Global Positioning System files with sub-meter accuracy or better, in UTM NAD 83; Zone 11;
ARCGIS export files on a CD ROM, shapefile, geodatabase.

Data may be submitted in any of the following formats:
ARCGIS interchange, shapefile or geodatabase format.
CD ROM in compressed or uncompressed format.

All data shall include metadata for each coverage, and conform to the Content Standards for Digital Geospatial Metadata Federal Geographic Data Committee standards. Contact the GIS Department at (702) 515-5000.

3.0 Air Quality

- 3.1. The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The Holder shall be responsible for dust abatement within the limits of the right-of-way and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the right-of-way.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder will cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

Prior to relinquishment, abandonment, or termination of this right-of-way, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.

- 3.2. During excavation, backfilling, and contouring, the disturbed soil should be wetted sufficiently in order to effectively reduce airborne dust and reduce soil erosion.

4.0 Cultural

- 4.1. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf on public or Federal lands shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation. Any decision regarding suitable mitigation measures will be made by the Authorized Officer after consulting with the Holder. Holder shall be responsible for the resultant mitigation costs.

5.0 Hazardous Material/Pesticides/Liability

- 5.1. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the right-of-way area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.
- 5.2. The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the right-of-way potentially affecting the right-of-way of which the Holder is aware.
- 5.3. As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the right-of-way.

- 5.4. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the Authorized Officer.

The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year.

Pesticides shall not be permanently stored on public lands authorized for use under this right-of-way.

- 5.5. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the right-of-way), the United States against any liability arising from the Holder's use or occupancy of the right-of way, regardless of whether the Holder has actually developed or caused development to occur on the right-of-way, from the time of the issuance of this right-of-way to the Holder, and during the term of this right-of-way. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the right-of-way.

Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or occupancy of the right-of way regardless of whether the Holder has actually developed or caused development to occur on the right-of-way from the time of the issuance of this right-of-way to the Holder and during the term of this right-of-way.

- 5.6. Mineral material generated, and not needed for the development of the proposed action within the right-of-way site, requires a specific BLM use authorization in accordance with regulations at 43 CFR 3600 prior to the removal of in place excess mineral material. All mineral material needs to be used on site within the right-of-way or stockpiled on site for sale by the BLM.

6.0 Survey Monuments

- 6.1. Holder shall protect all survey monuments found within the authorization area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coast and Geodetic Survey benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If any of the above are to be disturbed during operations, the holder shall secure the services of a Professional Land Surveyor or Bureau cadastral surveyor to perpetuate the disturbed monuments and references using surveying procedures found in the Manual of Instructions for the Survey of the Public Lands of the United States and Nevada Revised Statutes, Chapter 329, Perpetuation of Corners. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monuments, the holder shall be responsible for the survey cost.

7.0 Vegetation/Noxious Weeds/Land surface Treatment/Soil/Water/Riparian

- 7.1. There are no conflicts with any T/E plant species. This project occurs within the designated "low" density zone for cactus and yucca and has been previously disturbed. All cactus and yucca that might be impacted by this action must be disposed of in an off-site trash receptacle.
- 7.2. The Holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The Holder is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods within limits imposed in the right-of-way stipulations.

This action will occur within a previously developed/urban setting in the Las Vegas Valley. The potential for noxious weeds to transfer from the proposed project area to BLM managed multiple use lands elsewhere is negligible; therefore, noxious weeds are not considered to be an issue for the proposed project.

- 7.3. Land surface treatment for areas previously disturbed: Following excavation, trenches will be backfilled with the excavated soil. The soil will be distributed and contoured evenly over the surface of the disturbed area. The soil surface will be left rough to help reduce potential wind erosion.
- 7.4. Land surface treatment for areas previously undisturbed: Strip the top three to six inches of soil material with associated plant material over all surfaces to be disturbed by construction. Stockpile this material along the course of construction will be salvaged and transplanted out of harm's way but still within the right of way. At the conclusion, including trench backfilling and compaction, replace the stockpiled soil with plant debris uniformly back on the surface of the disturbed area.
- 7.5. Soil/Water/Riparian: If work is to occur in Ephemeral channels, need to consult with Army Corp of Engineers (ACOE) and Nevada Department of Environmental Protection (NDEP).

If drilling boreholes, holder needs to follow Nevada Administrative Code (NAC) protocols for drilling.

8.0 Migratory Birds

- 8.1. To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs between March 15th - July 30th.

If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge.

9.0 Threatened and Endangered Wildlife and Plant Species Stipulations

- 9.1. The Holder will comply with the terms and conditions of the **Biological Opinion for this project** on file at the Bureau of Land Management, Las Vegas Field Office and included below.

NEPA#: DOI-BLM-NV-S020-2012-0012-CX
Section 7 log #: NV-052-12-138

Terms and Conditions of Biological Opinion in Area C

File No. 1-5-04-F-526 and BO # 84320-2012-F-0334

REQUEST TO APPEND AN ACTION TO THE PROGRAMMATIC BIOLOGICAL OPINION FOR RED ROCK CANYON NATIONAL CONSERVATION AREA, CLARK COUNTY, NEVADA FILE NO. 1-5-04-F-526

Name of Action: RRCNCA Portal Signs and NV Energy Pole Replacement
Requested by: Amelia Savage **Date:** August 20, 2012
Title: Wildlife Biologist
Agency/Office: BLM / Las Vegas Field Office
Phone No.: (702)515-5278
Species Affected: Desert tortoise (*Gopherus agassizii*) - May affect determination
Critical Habitat Affected: Yes No
(If yes, check one): Not likely to adversely modify Likely to adversely modify

I. **Description of Action and Action Area** (include map)

A. **Proposed Action:**

Portal Signs

The BLM proposes to construct 29 roadside portal signs when entering Red Rock Canyon National Conservation Area (RRCNCA). Six of these signs are along NDOT rights-of-way, and 4 of the signs will create new disturbance. Twenty-three of these signs will be on secondary roads (dirt roads) in previously disturbed areas.

The following discrete actions are a component of the proposed action for the each of the NDOT portal sign (Figure 1):

- **Temporary Fencing-** Secure work area by placing a temporary orange snow fence, supported by T-posts and modified to keep tortoise out, around the perimeter of site. The fence will be placed by hand and the perimeter dimensions will be approximately 30' x 20'.
- **Soil excavation-** The contractor will use a backhoe or had tools to clear the top 8.5" of soil over the area where the signs will be placed. The disturbance will be approximately 3.5'x 12.5'. The top soil will be placed to the side. The sub soil will be compacted with a mechanical compactor.
- **Sign base installment-** Wood forms will be set in the excavation by hand. The sign posts will be set and braced and the reinforcing steel will be set. A cement truck will deliver concrete to the site, and the truck chute will be used to fill the forms. The concrete will cure for no less than 7 days. The forms will then be removed and the sign footings backfilled with surplus materials.
- **Top of sign installment-** The decorative rock and sign panels will be placed by hand.
- **Surplus soil-** The surplus soil will be wasted at the site by spreading it over disturbed areas. The top soil will be spread by hand to blend into existing soil

The following discrete actions are a component of the proposed action for the each of the secondary portal signs (Figure 1):

- **Secondary portal signs-** These signs will either be hand dug, dug with a hand auger or with a small bobcat. All signs will be within previous disturbance.

NV Energy Pole Replacement

NV Energy is proposing to replace a single power pole near the Bonnie Springs property. The pole is currently leaning and needs to be replaced. The process will be completed in a single day. There will be approximately 5 vehicles including 1-boom truck, 1-bucket truck, 1-foreman's truck, 1-digger truck and 1-pole hauler and boom truck combo vehicle.

- Pole replacement- A new hole will be dug for the replacement pole and that pole will be set. Then the wires will be transferred from the old pole to the new pole. The old pole will be pulled out of the ground and the dirt replaced (with dirt from the new hole).
- Restoration- Cactus and yucca will be salvaged, and the area will be restored after the pole is installed.

Legal Description

Mt. Diablo Meridian,
T. 17 S., R. 58 E. Sec. 16
T. 18 S., R. 57 E. Sec. 1
T. 19 S., R. 58 E. Sec. 23, 24, 27, 29, 32
T. 20 S., R. 58 E. Sec. 5
T. 20 S., R. 59 E. Sec. 17, 32
T. 21 S., R. 59 E. Sec. 4, 17, 19, 27, 31
T. 22 S., R. 58 E. Sec. 6, 17, 18, 28
T. 22 S., R. 59 E. Sec. 20, 22, 39
T. 23 S., R. 58 E. Sec. 9, 11, 24, 25
T. 23 S., R. 59 E. Sec. 8, 33
T. 24 S., R. 59 E. Sec. 4, 5

NV Energy Pole Replacement
T. 22 S., R. 58 E. Sec. 2

B. Habitat quality/suitability:

Desert tortoise

In general, the project area can be described as poor quality tortoise habitat as evidenced by the presence/absence tortoise surveys. The area is situated at approximately 3,400-4,500 feet in elevation and contains the necessary vegetation community for suitable habitat, but habitat suitability is reduced by various impacts. The project's high elevation and transition from creosote-burs age into a blackbrush community is usually associated with very low density tortoise populations.

II. Effects of Proposed Action on the Listed Species

A. General Description of Direct, Indirect and Cumulative Effects

The direct effects associated with this action from clearing of vegetation from the portal signs include the loss of 0.05 acres of potential desert tortoise habitat, and the power pole replacement will cause 0.50 acres of potential desert tortoise habitat disturbance. Tortoise burrows not observed during clearance surveys could be filled in, thereby entombing the occupant. Although no resident desert tortoises were observed within the project area during the pre-project surveys, its proximity to surrounding areas in which tortoises are known to occur suggests there is potential for individuals to wander into the project area. Tortoises have been observed in the area in the past year. Desert tortoises that wander into the project area may be directly harmed (injured or killed) by heavy construction equipment. Displaced tortoises may also wander into the new areas subjecting themselves to increased incidences of predation and illegal harassment.

There will be a minimal amount of new disturbance, and therefore cumulative impacts would be minimal.

B. Amount of Habitat (in acres) and plant communities disturbed:

A total of 0.55 (0.05 for portal signs and 0.5 for NY Energy) acres of creosote-bursage scrub and Mojave mixed scrub habitat with a Joshua tree over story, near the blackbrush ecotone will be disturbed. There are also 0.24 acres of existing disturbance (portal signs) that will be used for this project, totaling 0.79 acres for this project.

C. Description of affected individuals of listed species:

The portal signs project is at approximately 3,400- 4,500 feet in elevation, and the Bonnie Springs Project is at 3,600ft. On May 18, 2012 a BLM wildlife biologist conducted 100% coverage tortoise surveys, and found no tortoise sign in the area. However, there have been sightings of tortoises walking through the campground in the past year.

D. Are there additional effects of the action not considered in the programmatic biological opinion? If so, describe.

None.

III. Measures Proposed to Minimize the Effects of the Proposed Action:

1. *Speed limit:* Within Clark County, the speed limit is 25 miles-per-hour on unposted County roads; this speed will be established for all activities at all times unless otherwise designated.
2. *Vehicles:* All project/event-related individuals shall check underneath stationary vehicles before moving them.

3. *Vehicle traffic:* Shall be restricted to existing access roads, unless otherwise authorized by BLM and the Service.
4. *Litter-control:* Will be implemented and enforced by the project proponent or BLM. Trash containers shall remain covered, must be raven-proof, and emptied frequently enough to prevent overflow of materials. Trash, litter, project debris, etc. shall be transferred to a designated solid waste disposal facility. Vehicles hauling trash must be secured to prevent litter from blowing out along the road.
5. *Tortoise mortality/injury:* BLM wildlife staff (702/515-5000) and the Service (702/515-5230) must be notified of any desert tortoise death or injury due to the project implementation by close of business on the following work day. In addition, the Service's Division of Law Enforcement shall be notified in accordance with the reporting requirements of this biological opinion.
6. *Tortoise activity:* The period of greatest tortoise activity is generally defined as March 1 - Oct 31. However, unseasonably warm weather and/or precipitation outside this period may result in tortoise activity, particularly by hatchling and juvenile tortoise, and thus warrant adherence to requirements established for periods of greater activity. Similarly BLM may determine that additional measures are appropriate for projects planned for the end or beginning of either period if conditions are suitable for desert tortoises to be active.
7. *Education Program:* A BLM/Service-approved biologist (as defined below) shall present a tortoise education program to all foremen, workers, permittees and other employees or participants involved on projects covered under this opinion. The program will consist of either a presentation or fact sheet as determined by project level consultation between BLM and the Service. The program or fact sheet will include information on the life history of the desert tortoise, legal protection for desert tortoises, penalties for violations of Federal and State laws, general tortoise activity patterns, reporting requirements, measures to protect tortoises. terms and conditions of the biological opinion, and personal measures employees can take to promote the conservation of desert tortoises. The definition of "take" will also be explained. Workers and project associates will be encouraged to carpool to and from the project sites. Specific and detailed instructions will be provided on the proper techniques to capture and move tortoises which appear onsite if appropriate, in accordance with Service-approved protocol. Currently, the Service-approved protocol is Desert Tortoise Council 1994, revised 1999.
8. *Biologist approval:* BLM and Service wildlife staff must approve the biologists to be used to implement the terms and conditions of the biological opinion, or permit issued by BLM. Any biologist and/or firm not previously approved must submit a statement of qualifications in the Service-developed format and be approved by the wildlife staff before authorized to represent BLM in meeting compliance with the terms and conditions of the biological opinion. Other personnel may assist with implementing conservation measures, but must be under direct field supervision by the authorized biologist.

9. **Biologist qualifications:** In accordance with *Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise* (Service 1992), an authorized desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by BLM and the Service. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign, which should include a minimum of 60 days field experience. All tortoise biologists shall comply with the Service-approved handling protocol (Desert Tortoise Council 1994, revised 1999). In addition, the biologist shall have the ability to recognize and accurately record survey results and must be familiar with the terms and conditions of the biological opinion that resulted from project level consultation between BLM and the Service.
10. **Tortoise in harm's way:** If a tortoise is found within the project/activity site in harm's way, all potentially harmful activity shall cease until the tortoise moves or is moved out of harm's way by an authorized biologist. If a desert tortoise is in *imminent danger*, the tortoise shall be moved out of harm's way and on to adjacent BLM land, using techniques described in the tortoise education program.
11. **Moving tortoises:** Tortoises that are moved offsite and released into undisturbed habitat on public land, must be placed in the shade of a shrub, in a natural unoccupied burrow similar to the hibernaculum in which it was found, or in an artificially constructed burrow in accordance with the tortoise handling protocol. Tortoises encountered shall be treated in a manner consistent with the appropriate measures in this biological opinion.
12. **Permits:** All appropriate State and Federal permits, including NDOW and Service permits for handling desert tortoises or their Parts, must be acquired by the tortoise biologists or other personnel before project initiation and prior to handling any desert tortoise or their parts, or conducting any activity requiring a permit.
13. **Project oversight:** A BLM representative(s) shall be designated who will be responsible for overseeing compliance with the reasonable and prudent measures, terms and conditions, reporting requirements and reinitiation requirements contained in this biological opinion. The designated representative shall provide coordination among the permittee, project proponent, BLM, and the Service.
14. **Desert tortoise burrows:** Will be avoided whenever possible: if not, the burrow will be cleared in accordance with the measures set forth in this biological opinion.
15. **Heat stress:** Desert tortoises encountered experiencing heat stress will be placed in a tub, by an authorized tortoise biologist, with one inch of 76-90oP water for at least 20 minutes or until heat stress symptoms are no longer evident.
16. **Temperature restrictions:** Desert tortoises shall be treated in a manner to ensure that they do not overheat, exhibit signs of overheating (*e.g.*, gaping, foaming at the mouth, etc.) or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Desert tortoises shall be kept shaded at all times until it is safe to release

them. No desert tortoise shall be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95°F (35°C). Ambient air temperature shall be measured in the shade, protected from wind, at a height of 2 inches (5 centimeters) above the ground surface. No desert tortoise shall be captured if the ambient air temperature is anticipated to exceed 95°F (35°C) before handling and relocation can be completed. If the ambient air temperature exceeds 95°F (35°C) during handling or processing, desert tortoises shall be kept shaded in an environment that does not exceed 95°F (35°C), and the animals shall not be released until ambient air temperature declines to below 95°F (35°C).

17. *Reporting:* The project proponent, permittee, or project lead if an internal action, must submit a document to BLM wildlife biologist within 30 days of completion of the project showing the number of acres disturbed, remuneration fees paid, and number of tortoises observed or taken, which includes capture and displacement, killed, injured, or harassed by other means, during implementation of programmatic actions.
18. *Previous disturbance:* Overnight parking and storage of equipment and materials, including stockpiling, shall be within previously disturbed areas or within areas cleared by a tortoise biologist to minimize habitat destruction.
19. *Project boundaries:* Project activity areas will be clearly marked or flagged at the outer boundaries before the onset of construction. All activities shall be confined to designated areas. When new access routes have been identified for development, routes will be flagged by the tortoise biologist prior to surface disturbance.

Proposed Measures for Actions Involving New Ground Disturbance (NDOT portal Signs and NV Energy pole replacement):

20. *Blading of vegetation:* Will occur only to the extent necessary and shall be limited to areas designated for that purpose by BLM or tortoise biologist.
21. *Fees:* (NV Energy only) Prior to issuance of authorization, and prior to any surface-disturbing activity associated with the proposed project, the project proponent shall pay a remuneration fee of \$810 for each acre of surface disturbance, if paid prior to March 1, 2012. This rate will be indexed annually for inflation based on the Bureau of Labor Statistics Consumer Price index for All Urban Consumers (CPI-U). Information on the CPI-U can be found on the internet at <http://stats.bls.gov/news.release/cpi.nws.htm>. An exception is made if the disturbance for the project is less than 0.25 acre of disturbance or for activities that result in a long term benefit for the species (*e.g.*, trail realignment to minimize habitat impacts). Fees shall be submitted as directed in the attached form (Attachment C).
22. *Notification:* The project applicant/BLM lead shall notify BLM wildlife staff at least 10 days before initiation of the project. Notification shall be made to BLM's wildlife staff representative responsible for NEPA review of the project at (702) 515-5000.
23. *Clearance:* All project areas, staging areas, etc. will be cleared of tortoises by a BLM/FWS approved biologist immediately before the start of ground disturbance using 100-percent coverage survey techniques. Burrows found outside the area to be disturbed will be flagged

and avoided. Clearance will involve excavating nests; relocating eggs; flagging avoidable burrows; collapsing unavoidable; unoccupied burrows; and relocating tortoises in accordance with the Service-approved protocol for handling desert tortoises (Desert Tortoise Council 1994, revised 1999). If disturbance is planned to occur during a period when tortoise are not anticipated to be active, surveys may be conducted earlier as determined during project specific consultation. Once the area is initially cleared of tortoises, an on-call authorized biologist is needed in case a tortoise wanders into the project area.

- NDOT Portal Signs project- The temporary fencing will be installed, the area will then need to be cleared of tortoises. Once the concrete base dries the area will need to be cleared of tortoises again.

24. All open trenches will be covered nightly to avoid any tortoise or other wildlife mortality.

Following Termination of Ground Disturbing Activities:

25. *Restoration:* Temporary disturbance areas will be restored.

It is recommended that the proposed action be appended to the Red Rock Canyon National Conservation Area Biological Opinion (1-5-04-F-526).

Signature: _____

(Agency Representative)

Title: _____

Date: _____

Attachment 1

SECTION 7 LAND DISTURBANCE FEE PAYMENT FORM

Biological Opinion File Number: 84320-2012-F-0334, 1-5-04-F-526
 Biological Opinion Issued By: Nevada Fish and Wildlife Office, Reno, Nevada
 Species: Desert Tortoise (Gopherus Agassizii) (Mojave population)
 Project Name : Bonnie Springs 15kV Line Amendment
 Case File No: NEV-60208C
 Project Proponent: NV Energy
 Phone Number: _____

<u>Payment Calculations</u>	Clark County		County		County	
	Critical habitat	Non-critical habitat	Critical habitat	Non-critical habitat	Critical habitat	Non-critical habitat
# acres anticipated to be disturbed on federal land		0.52				
Fee rate (per acre)		810				
Total cost/habitat type (per county)	\$ -	\$ 421.20	\$ -	\$ -	\$ -	\$ -
Total cost per county	\$ 421.20		\$ -		\$ -	

Total Payment required (all counties): 421.20

Amount paid: _____ Date: _____ Check/Money Order#: _____

Authorizing Agencies: Bureau of Land Management, Las Vegas, Nevada

Make check payable to: Bureau of Land Management

Deliver check to: Physical Address
 Bureau of Land Management
 Attn: Information Access Ctr.
 1340 Financial Blvd.
 Reno, Nevada 89502

Credit Card Payments: Contact BLM State Office Public Room at 775-861-6500
 For BLM Public Room

Process check to:
 Contributed Funds-All Other
 WBS: LVTFFX000800
 7122 FLPMA
 All other Res. Dev. Project and Management

Please provide a copy of this completed payment form and the payment receipt to NV-930m Attn: T&E Program Lead

Remarks: LLNV934000 L71220000.JP0000 LVTFFX000800 Desert Tortoise Conservation Program

**T&E Program Lead will provide a copy to the appropriate District Office(s)

C. EFFECTS OF THE ACTIONS

There are no additional effects to the desert tortoise beyond those analyzed in the PBO. Refer to the section *Effects of the Proposed Action on the Listed Species* of the PBO.

D. CONCLUSION

After reviewing the current status of the desert tortoise, the environmental baseline for the project area, the effects of the proposed action and the cumulative effects, it is the Service's biological opinion that the proposed action is within the scope of the PBO issued to the Red Rock National Conservation Area and is therefore, not likely to jeopardize the continued existence of the Mojave desert tortoise. This action is hereby appended to the PBO.

INCIDENTAL TAKE STATEMENTS

A. AMOUNT OR EXTENT OF TAKE EXEMPTED

Based on the analysis of effects provided above, minimization measures, and anticipated project duration, implementation of the proposed project is anticipated to result in the following take:

Red Rock NCA Portal Signs along US-159		Project File No.: 84320-2012-F-0333	
Exempted Mortality, Injury, and Destruction	Exempted Harassment: Capture and Removal	Anticipated Habitat Loss (acres)	
		Critical	Non-critical
0	1	0	0.05

Red Rock NCA Replacement of Bonnie Springs Power Pole		Project File No.: 84320-2012-F-0334	
Exempted Mortality, Injury, and Destruction	Exempted Harassment: Capture and Removal	Anticipated Habitat Loss (acres)	
		Critical	Non-critical
0	1	0	0.5

This take is a subset of the 351 desert tortoises and 5,000 acres of desert tortoise non-critical habitat anticipated to be affected by programs, including Transportation system (trails and roads), in the programmatic incidental take statement of BLM's September 29, 2004, PBO (File No.1-5-04-F-526).

B. RECOMMENDATIONS FOR ADDITIONAL PROJECT-SPECIFIC RPMs

The Service does not have any additional recommendations at this time.