

Environmental Assessment — Right-of-Way for an underground 15kV power distribution line with above ground appurtenances and a Wireless Telecommunications facility

Identifying Information:

DOI-BLM-NV-S010-2012-0102-EA

Title, EA number, and type of project:

Title: LSV Paiute – 15kV underground distribution line and transformer with above ground appurtenances and a Wireless telecommunications facility.

EA Number: DOI-BLM-NV-S010-2012-0102-EA

Type: Right-of-Way (ROW), Short Term Right-of-Way (STR) and Communications use lease

N-91022, N-91022-01 and N-91518

Location of Proposed Action:

The project is located in Northwest of the Las Vegas Valley Just west of US 95 and North of Kyle Canyon Road.

LEGAL DESCRIPTION:

M.D.M., Clark County, Nevada, T. 17S., R. 58E., section 36, S½SE¼.

Name and Location of Preparing Office:

Department of the Interior
Bureau of Land Management
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, NV 89130

Office Number: LLNVS00560

Identify the subject function code, lease, serial, or case file number:

Case file number: N-91022, N-91022-01 and N-91518

Applicant Name:

Nevada Power Company d/b/a NV Energy (Casefile N-91022 & N-91022-01)

Southwestco Wireless LP d/b/a Verizon Wireless (Casefile N-91518)

Purpose and Need for Action:

Description: There are 3 applications for rights-of-ways (ROW) over public lands. NV Energy applied for a ROW for an underground 15kV electrical distribution line with an above ground 50kV transformer and related appurtenances and a short term ROW (STR) for the construction of said power line. Verizon Wireless applied for a ROW for a wireless communication site. The NV Energy power line would provide electrical service to the Verizon telecommunication cell site. The Communication site is necessary to provide microwave backhaul for the Hidden Hills and Spring Mountain communication sites to support improved communication service between Las Vegas and Pahrump along highway 160.

Scoping, Public Involvement and Issues:

Located northwest of the Las Vegas Valley, west of US95 and south of Lee Canyon Rd.

The power line will provide electrical service from an existing power pole, underground for 125 feet to the southeast, to the Verizon telecommunication facility. The ROW for the communication site is necessary to provide microwave backhaul for the Hidden Hills and Spring Mountain communication sites to support improved communication service between Las Vegas and Pahrump along highway 160.

Notification letters have been sent to all adjacent ROW holder to inform them of the projects and any potential conflicts to other facilities or ROW's.

Stipulations will be attached to the right-of-way grant which will include conservation and protection of the natural resources, cultural resources, Threatened and Endangered (T&E) Species, and the environment.

This proposal has been reviewed by the Bureau of Land Management (BLM) resource team members. Their comments and evaluations are included in this environmental assessment.

A summary of this EA is available for review by the public on the internet on the DOI.GOV website under NEPA number: DOI-BLM-NV-S010-2012-0102-EA.

Proposed Action and Alternatives

Description of the Proposed Action:

ALTERNATIVE NUMBER 1: Description: NV Energy applied for a ROW over public lands for an underground 15kV electrical distribution line and an above ground 50kV transformer with related appurtenances. The power line is being requested to provide electrical service to a Verizon wireless telecommunication cell site. The ROW requested is 125 feet in length, 15 feet wide, and approximately 0.04 acres. The STR ROW for the construction of the power line would be 10 feet on either side of the ROW for 125 feet in length, 20 feet wide, and approximately 0.06 acres. Verizon wireless applied for a ROW for a communication facility. The communication site ROW would be 50' x 50' or 0.05 acres and would consist of a 200' tower, prefabricated building with back up diesel generator, cable tray and underground utility service. The purpose of the power line is to provide service to the Verizon Communication Site. The Verizon communication site is necessary to provide microwave backhaul for the Hidden Hills and Spring Mountain communication sites to support improved communication service between Las Vegas and Pahrump along highway 160..

NV Energy is requesting a ROW for 30 years and Verizon Wireless is requesting a ROW for 25 years

RIGHTS-OF-WAYS OR PENDING ACTIONS WITHIN THE PROJECT AREA:

N-62861 — Valley Electric is granted a ROW for a 24.10 mile Power Transmission line. Notification has been sent and no conflicts are anticipated in the project area.

N-73706 — Nevada Bell is granted a ROW for an aerial and underground fiber optic line. Notification has been sent and no conflicts are anticipated in the project area.

N-54351 — Nellis Air Force is granted a ROW for fiber optic communications line. Notification has been sent and no conflicts are anticipated in the project area.

NVCC-18191 & NVCC-18226 — Nevada Department of Transportation is granted a ROW for roads and a material site. Notification has been sent and a letter received from the Department of Transportation states that no conflicts are anticipated in the project area.

N-78395 & N-78395-01 — Southern Nevada Water Authority is a pending ROW for the three lakes water development project. Notification has been sent and no conflicts are anticipated in the project area.

CONSTRUCTION:

Construction of the NV Energy power line (N-91022 & N-91022-01) would take approximately four weeks to complete. All work would be performed in accordance with current electrical safety codes. The work force would include an estimated six to eight people, which will include lineman, laborers and equipment operators. Construction equipment will include trucks, trailers and a backhoe. This translates into an estimated 3 to 4 vehicles.

CONSTRUCTION TIMELINE:

- Dig Trench
- Install conduit, pullbox and pad mounted transformer
- Backfill trench to existing grade
- pull wire in conduit

Construction of the Verizon Wireless Communication site (N-91518) would take approximately 120 days to complete. The work force would consist of an estimated 4 vehicles and 10 people including a single lift truck, concrete truck and other miscellaneous trucks.

CONSTRUCTION TIMELINE:

- Erect any required construction fencing to protect wildlife
- Grade and backfill the site
- Install the concrete foundations and pads
- Dig trenches for power and ground rings
- Install conduits and groundings, backfill trenches
- Stack the tower
- Install the equipment building
- Install cable trays
- Mount antennas to the tower and run cabling from the antennas to the equipment building
- Install perimeter fencing and access gates
- Gravel the compound
- Clean the site
- Install telecommunications equipment in the building
- Test the facility
- Conduct final construction walk and obtain County-issued Certificate of Completion

STABILIZATION/RECLAMATION:

The final phase of construction for NV Energy is cleanup and reclamation. Excess soil excavated from the trench will be used to fill the trench with the excess spread around in the vicinity of the trench area.

The final phase of construction for the Verizon Wireless communication site is Stabilization and rehabilitation. Site grading and contouring, weed barrier placement and graveling of the site is planned. It is expected that any cacti or yucca present can be avoided, however, if necessary, plants will be salvaged for transplant. The site ROW would be fenced to limit access to the ROW.

Description of Alternatives Analyzed in Detail:

NO ACTION ALTERNATIVE NUMBER 2:

Under a “no action” alternative, BLM land would not be made available for issuance of the ROW. No action would result in no communication site for Verizon wireless therefore impeding the cellular service to the Southeastern part of the Las Vegas Valley between Las Vegas and Pahrump. If the ROW for the Communication was denied, there would be no need for the ROW applied for by NV Energy and the NV Energy request for ROW would be withdrawn.

Alternatives Considered but not Analyzed in Detail

ALTERNATIVE NUMBER 3:

No other alternatives were considered.

Conformance

The EA is in conformance with the Las Vegas Resource Management Plan (RMP) decisions RW-1, and RW-1-h, approved October 5, 1998.

- RW-1-“Meet public demand and reduce impacts to sensitive resources by providing an orderly system of development for transportation, including legal access to private inholdings, communications, flood control, major utility transmission lines, and related facilities.”
- RW-1-h- “All public land within the planning area, except as stated in RW-1-c through RW-1-g, are available at the discretion of the agency for rights-of-way under the authority of the Federal Land Policy Management Act.”

Rights-of-ways are allowable on BLM-administered lands per Title V of the Federal Land Policy and Management Act of 1976 and the BLM regulations (43 CFR 2800), at the discretion of the Secretary of the Interior or his/her delegated officer.

Affected Environment:

Supplemental Authority	Not Present	Present/Not Affected	Present/May be affected	Rationale
Air Quality		X		Ensure dust control permit is obtained through DAQEM for all soil disturbing activity of .25 acres or greater, in the aggregate and permit stipulations are in compliance for the duration of the activity.
Area of Critical Environmental Concern (ACEC)		X		The proposed project area is not within an ACEC or any critical desert tortoise habitat.
Cultural/Historical	X			The area has been previously inventoried. To comply with Section 106 of the National Historic Preservation Act (NHPA), the BLM Archaeologist conducted an existing date review of the area of potential effect (APE) according to 36 CFR 800.4. The APE was previously evaluated and results are detailed in BLM Cultural Resource report 5-2560. No historic properties were identified within the APE; no further evaluation is required unless the scope of the undertaking changes. As proposed, the undertaking will have no effect to historic properties.
Paleontological Resources	X			No Fossil-bearing strata will be impacted by the proposed undertaking.
Environmental Justice		X		Any minority of low income group present within the project area would not be disproportionately impacted by health or environmental effects.
Farmlands Prime or Unique	X			There are no prime or unique farmland designations in the District
Noxious Weeds/ Invasive Non-native Species		X		The proposed project has minimal surface disturbance and is not expected to have a significant impact. All actions that occur within the Southern Nevada District are required to follow all stipulations and mitigation measures for weed control standards.
Native American Religious Concerns	X			No properties of religious of traditional significance will be impacted by the proposed undertaking.
Floodplains	X			The proposed action does not occur in a floodplain and will not impact downstream flooding.
Riparian/Wetlands	X			Proposed action does not occur in a wetland/riparian zone.
Threatened, Endangered or Candidate Plant Species	X			No Present.

Threatened Endangered or Candidate Animal Species			X	<p>See EA language below. A copy of the terms and conditions has been uploaded in ePlanning. In addition to the attached terms and conditions, the applicant must also comply with the following measure.</p> <p>1. Trench shall be backfilled or covered at the end of each day during hours of inactivity or the trenches shall be dug in such a manner that the side and/or end walls are contoured to allow any animals that inadvertently fall in, a means to climb out.</p> <p>2. The above ground facility should be fenced with desert tortoise fencing.</p> <p>This notice will serve as the section 7 Determination and no additional paperwork will be provided (Sec 7 Log # NV-052-12-17)</p>
Migratory Birds			X	See EA language below.
Waste-Hazardous/Solid	X			No hazmat issues present. Include standard hazmat stipulations in ROW grant.
Water Quality		X		Temporary impacts to water quality due to activities may occur, but no significant negative long term impacts are expected.
Wild & Scenic Rivers	X			Not present.
Wilderness (Study Area)	X			The proposed action is not located within or adjacent to WSAs, ISAs, or designated Wilderness.
Forests and Rangelands (HFRA only) Woodlands	X			Cactus and yucca may be present within the project impact area. Cactus and yucca are considered government property and are regulated under the Nevada BLM forestry program. If unable to be avoided, all cactus and yucca within permanent and temporary impact areas must be salvaged and replanted in temporary impact areas or undisturbed portions of the project area. Unless otherwise directed by the BLM botanist, all replanted cactus and yucca must be watered and otherwise maintained for a period of one year. To ensure successful salvage and transplant, all cactus and yucca must be salvaged using a contractor (or other approved by the BLM botanist) with at least three years experience salvaging and maintaining plant materials in the Mojave or Sonoran Deserts. The proposed action includes only a small amount surface disturbance; therefore, there will be no impacts to rangeland health.
Human Health and Safety		X		No Issues. Have proponent follow best management practices and health and safety regulations for construction of the power line and communication site.

Other resources of the human environment that have been considered for this environmental assessment (EA) are listed in the table below. Elements that may be affected are further described in the EA. Rationale for those elements that would not be affected by the proposed action and alternative is listed in the table below.

Other Resources	Not Present	Present/Not Affected	Present/May be Affected	Rationale
Grazing Management	X			The proposed action area is not located in any authorized grazing allotments.
Green House Gas Emissions (Climate Change)		X		Currently there are no emission limits for suspected Greenhouse Gas (GHG) emissions, and no technically defensible methodology for predicting potential climate changes from GHG emissions. However, there are, and will continue to be, several efforts to address GHG emissions from federal activities, including BLM authorized uses.
Minerals		X		Any necessary excavation that produces mineral materials within the ROW must be used within the ROW or stockpiled on site for sale by the BLM.
Socio-Economic Values		X		This project will not disproportionately impact social or economic values.
Soils/Hydrology		X		The proposed action will disturb native soils through the construction of the electrical distribution line itself, as well as through the creation of temporary work areas which would be cleared and leveled. However, the total area of new disturbance is negligibly small. Regardless, BMPs should be implemented to minimize impacts beyond the distribution line. The proposed action includes minimal surface disturbance, there should be no impacts to hydrologic conditions.
Vegetation		X		There are no known occurrences of BLM sensitive species within the area. If there are unknown occurrences of BLM sensitive species within the project site, due to the small amount of disturbance, potential impacts would be negligible.
Visual Resources		X		The proposed project is location within VRM Class III — The objective of this class is to partially retain the existing character of the Landscape. The level of change to the characteristic landscape should be moderate. Management activities may attract attention but should not dominate the view of the casual observer. Changes should repeat the basic elements found in the predominant natural features of the characteristic landscape. This proposed action would not adversely affect the Visual Resources Characteristic area.
Recreation		X		Proposed action would not change current recreation use in this area.

Fish and Wildlife excluding Federally Listed Species		X		Wildlife species in the general area include small mammals, rodents, birds and reptiles. Additionally, the BLM sensitive species western burrowing owl, Mojave shovel-nosed snake, desert glossy snake, Mojave Desert sidewinder may be present in the general area. These species would be displaced as lands are disturbed within the project area. The primary direct impacts of the proposed action on wildlife would be killing or maiming of ground dwelling animals and less mobile species (such as reptiles) during construction, displacement of individuals, the loss and fragmentation of habitat and increased potential for illegal kills and harassments of wildlife. Wildlife species in the general area are common and widely distributed throughout the area and the loss of some individuals and/or their habitat would have a negligible impact on populations of the species throughout the region. Impacts to BLM sensitive species are not anticipated to lead to further decline of the species range wide as the total disturbance for this project is relatively small.

Migratory Birds:

Under the Migratory Bird Treaty Act of 1918 (MBTA) and subsequent amendments (16 U.S.C. 703–711), it is unlawful to take kill, or possess migratory birds. A list of the protected bird species can be found in 50 C.F.R. §10.13. The list of birds protected under this regulation is extensive and the project site has potential to support many of these species, including the BLM sensitive species the western burrowing owl (*Athene cunicularia*). Typically, the breeding season is when these species are most sensitive to disturbance, which generally occurs from March 15 through July 30.

Threatened, Endangered or Candidate Animal Species:

Threatened and endangered species are placed on a federal list by the U.S. Fish and Wildlife Service (USFWS) and receive protection under the Endangered Species Act of 1973, as amended. The only T&E species known to occur in the vicinity of the project area is the threatened desert tortoise (*Gopherus agassizii*) In the Mojave region, the desert tortoise occurs primarily on flats and bajadas with soils ranging from sand to sandy-gravel characterized by scattered shrubs and abundant inter-shrub space for herbaceous plant growth. They are also found on rocky terrain and slopes.

historical survey data indicated that the area surrounding the project site is low density desert tortoise habitat, Area C.

Environmental Effects:

Migratory Birds:

Migratory birds, including the BLM sensitive species the western burrowing owl (*Athene cunicularia*), may be present on the project site. The proponent will be required to adhere to the following mitigation measures:

- 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 washed containing upland species, the season generally occurs between March 15th — July 30th.
- 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.

Threatened, Endangered or Candidate Animal Species:

The above action has a may affect determination for the threatened desert tortoise (*Gopherus agassizii*). This project will have no affect on any other federally listed species of designated critical habitat.

Historical survey data indicates that the area surrounding the project site is low density tortoise habitat. since undisturbed habitat exists in the project site, there is potential for tortoises to wander into the project area. If not noticed and avoided during construction and maintenance activities, desert tortoises could be either injured or killed (by crushing) or harassed (by being moved out of harm's way).

Section 7 Consultation for this project is covered under the Programmatic Biological Opinion (84320–2010–F-0365) contingent on compliance with the terms and conditions for Area C. This project will disturb a total of 0.157 acres of tortoise habitat. the proponent will not be required to pay remuneration fees as this action will disturb less than 0.25 acres of tortoise habitat.

In addition to the attached terms and conditions, the applicant must also comply with the following measure:

1. Trench shall be backfilled or covered at the end of each day during hours of inactivity or the trenches shall be dug in such a manner that the side and/or end walls are contoured to allow any animals that inadvertently fall in, a means to climb out.

Minimization measures in the above mentioned Biological Opinion contain measures to reduce potential impacts to desert tortoises.

Tribes, Individuals, Organizations, or Agencies Consulted:

Table 1. List of Persons, Agencies and Organizations Consulted

Name	Purpose & Authorities for Consultation or Coordination	Findings & Conclusions
Nevada Power Company d/b/a NV Energy	Applicant	Submitted application for a ROW for an underground 15kV distribution line to provide power to a Verizon Wireless Communication site.
Southwestco Wireless LP d/b/a Verizon Wireless	Applicant	Submitted application for a ROW for a wireless communication site.

List of Preparers

Table 2. List of Preparers

Name	Title	Responsible for the Following Section(s) of this Document
Cheri B Woodward	Realty Specialist	Introduction, Purpose and Need, Scoping, Land/Access
Lisa Christianson	Environmental Protection Specialist	Air Quality, Greenhouse Gas Emissions
Katie Kleinick	Wildlife Biologist	Botanist, Forest Initiative, Healthy (Cactus/Yucca), Threatened, Endangered or Candidate (Plant Species), Vegetation Excluding listed species, Livestock Grazing, Rangeland Health Standards, Woodland and Forestry, Vegetation.
Susanne Rowe	Archaeologist	Cultural Resources, Native American Religious concerns, Paleontology
Katie Kleinick	Natural Resource Specialist	Fish & Wildlife, Migratory Birds, Threatened, Endangered or Candidate (Animal Species)
Boris Poff	Hydrologist	Floodplains, Hydrolic condition, Riparian/Wetlands, Soils, Water Resources/Quality (Drinking/Surface/Ground), Wetlands/Riparian Zones, Wild & Scenic Rivers
Amelia Savage	Wildlife Biologist	Fish & Wildlife, Migratory Birds, Threatened, Endangered or Candidate (Animal Species)
George Varhalmi	Geologist	Geology/Mineral Resources/Energy Production
Marilyn Peterson	Recreation Specialist	Recreation
Krystal Johnson	Wild Horse and Burro Specialist	Farmlands, Prime or Unique
Billy Williams	Natural Resource Specialist	Invasive Species/Noxious Weeds
John Evans	Planning and Environmental Coordinator	Environmental Justice
Greg Marfill	Fire Management Specialist	Fire Management
Sendi Kalcic	Wilderness Planner	Area with Wilderness Characteristics

Exhibit A
Stipulations N-91022 & N-91022-01

1.0 Special Stipulations

- 1.1 Trench shall be backfilled or covered at the end of each day during hours of inactivity or the trenches shall be dug in such a manner that the side and/or end walls are contoured to allow any animals that inadvertently fall in, a means to climb out.
- 1.2 The above ground facility should be fenced with desert tortoise fencing.

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.

Case Number: N-91022, N-901022-01, N-91518
NEPA Project #: DOI-BLM-NV-S010-2012-0102-EA
Sec. 7 Log #: NV-052-12-137

Terms and Condition of Programmatic Biological Opinion

File No. **84320-2010-F-0365**

In order to be exempt from the prohibitions of section 9 of the Act, the Bureau must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1. To implement Reasonable and Prudent Measure Number 1 **Applies towards lands and realty, ROWs, and mining actions and other activities that involve vehicle and equipment use, excavations, or blasting**, the Bureau shall fully implement the following measures:

- 1.a. *Field Contact Representative*—A Field Contact Representative (FCR) (also called a Compliance Inspection Contractor) is generally designated for each contiguous stretch of construction activity for linear projects or isolated work areas for non-linear projects. The FCR will serve as an agent of BLM and the Service to ensure that all instances of non-compliance or incidental take are reported. BLM has discretion over approval of potential FCRs; however, those who also may be acting as authorized desert tortoise biologists, and must also be approved by the Service (see Term and Condition 1.d). All FCRs will report **directly** to BLM and the Service.

The FCR, authorized desert tortoise biologist, and monitors (see Term and Condition 1.c.) shall have a copy of all stipulations when work is being conducted on the site and will be responsible for overseeing compliance with terms and conditions of the ROW grant, including those for listed species. BLM shall ensure the FCR and authorized desert tortoise biologists have authority to halt any activity that is in violation of the stipulations. The FCR shall be on site year-round during all project activities.

Within 3 days of employment or assignment, the project proponent and BLM shall provide the Service with the names of the FCR.

- 1.b. *Authorized desert tortoise biologist*—All authorized desert tortoise biologists (and monitors) are agents of BLM and the Service and shall report directed to BLM and the proponent concurrently regarding all compliance issues and take of desert tortoises; this includes all draft and final reports of non-compliance or take. The initial draft report shall be provided to BLM and Service within 24 hours of the observation of take or non-compliance.

An authorized desert tortoise biologist will be assigned to each piece/group of large equipment engaged in activities that may result in take of desert tortoise (*e.g.*, clearing, blasting, grading, lowering in pipe, hydrostatic testing, backfilling, recontouring, and reclamation activities) and other work areas that pose a risk to tortoises. BLM may use their discretion to require a monitor instead of an authorized desert tortoise biologist to monitor equipment that is low risk to tortoises.

Authorized desert tortoise biologists, monitors, and the FCR (see Term and Condition 1.a.) shall be responsible for ensuring compliance with all conservation measures for the project. This responsibility includes: (1) enforcing the litter-control program; (2) ensuring that desert tortoise habitat disturbance is restricted to authorized areas; (3) ensuring that all equipment and materials are stored within the boundaries of the construction zone or within the boundaries of previously-disturbed areas or designated areas; (4) ensuring that all vehicles associated with construction activities remain within the proposed construction zones; (5) ensuring that no tortoises are underneath project vehicles and equipment prior to use or movement; (6) ensuring that all monitors (including the authorized desert tortoise biologist) have a copy of the required measures in their possession, have read them, and they are readily available to the monitor when on the project site.

An authorized desert tortoise biologist will serve as a mentor to train desert tortoise monitors and will approve monitors if required. An authorized desert tortoise biologist is responsible for errors committed by desert tortoise monitors. An authorized desert tortoise biologist shall record each observation of desert tortoise handled in the tortoise monitoring reports. Information will include the following: location (GPS), date and time of observation, whether the desert tortoise was handled, general health and whether it voided its bladder, location desert tortoise was moved from and location moved to, unique physical characteristics of each tortoise, and effectiveness and compliance with the desert tortoise protection measures. This information will be provided **directly** to BLM and the Service.

Potential authorized desert tortoise biologists must submit their statement of qualifications to the Service's Nevada Fish and Wildlife Office in Las Vegas for approval, allowing a minimum of 30 days for Service response. The statement form is available on the internet at:

http://www.fws.gov/nevada/desert_tortoise/auth_dt_form.htm.

Prior to final approval to begin work on the project, the authorized desert tortoise biologists will have read the required measures (terms and conditions and other stipulations) and have a copy of the measures available at all times while on the project site. BLM shall provide the appropriate agency contact for the project to the Service and the Service will include the forms with approval letters. Biologists and monitors should be visibly identifiable on the project site, which may include use of a uniquely designated hardhat or safety vest color.

- 1.d. *Desert tortoise monitor*—Desert tortoise monitors assist an authorized desert tortoise biologist during surveys and serve as apprentices to acquire experience. Desert tortoise monitors ensure proper implementation of protective measures, and record and report desert tortoises and sign observations in accordance with Term and Condition 1.c. They will report incidents of noncompliance to the authorized desert tortoise biologist or FCR. No monitors shall be on the project site unless supervised by an authorized desert tortoise biologist or approved by the BLM.

If a desert tortoise is immediately in harm's way (*e.g.*, certain to immediately be crushed by equipment), desert tortoise monitors may move the desert tortoise then place it in a designated safe area until an authorized desert tortoise biologist assumes care of the animal.

Desert tortoise monitors may not conduct field or clearance surveys or other specialized duties of an authorized desert tortoise biologist unless directly supervised by an authorized desert tortoise biologist or approved to do so by the Service; "directly supervised" means an authorized desert tortoise biologist has direct sight and voice contact with the desert tortoise monitor (*i.e.*, within approximately 200 ft of each other).

Within 3 days of employment or assignment, the project proponent and BLM shall provide the Service with the names of desert tortoise monitors who would assist an authorized desert tortoise biologist.

- 1.e. *Desert tortoise education program*—A desert tortoise education program shall be presented to all personnel on site during construction activities by an agency or authorized desert tortoise biologist. The Service, BLM, and appropriate state agencies shall approve the program. At a minimum, the program shall cover desert-specific Leave-No-Trace guidelines, the distribution of desert tortoises, general behavior and ecology of this species, sensitivity to human activities, threats including introduction of exotic plants and animals, legal protection, penalties for violation of State and Federal laws, reporting requirements, and project measures in this biological opinion. All field workers shall be instructed that activities must be confined to locations within the approved areas and their obligation to walk around and check underneath and vehicles and equipment before moving them (or be cleared by an authorized desert tortoise biologist). In addition, the program shall include fire prevention measures to be implemented by employees during project activities. The program shall instruct participants to report all observations of desert tortoise and their sign during construction activities to the FCR and authorized desert tortoise biologist.

- 1.f. *Vehicle travel*— Project personnel shall exercise vigilance when commuting to the project area to minimize risk for inadvertent injury or mortality of all wildlife species encountered on paved and unpaved roads leading to and from the project site. Speed limits will be clearly marked, and all workers will be made aware of these limits. On-site, personnel shall carpool to the greatest extent possible.

During the desert tortoise less-active season (generally November through February), vehicle speed on project-related access roads and in the work area will not exceed 25 mph. All vehicles and construction equipment will be tightly grouped.

During the more-active season (generally March through October), and if temperatures are above 60 but below 95 °F for more than 7 consecutive days, vehicle speed on project-related access roads and in the work area will not exceed 15 mph. All vehicles and construction equipment will operate in groups of no more than three vehicles. An authorized desert tortoise biologist and desert tortoise monitor will escort or clear ahead of vehicles and equipment for ROW travel. The escort will be on foot and clear the area of tortoises in front of each traveling construction equipment group (see *Desert tortoise clearance*). The escort will use a recreational vehicle with ground visibility (*e.g.*, UTV); however, at least one authorized desert tortoise biologist and one desert tortoise monitor must ride together and survey both sides of the vehicle. The speed/pace will be determined by an authorized desert tortoise biologist and shall be slow enough to ensure adequate inspection.

New access and spur road locations will be sited to avoid potentially active tortoise burrows to the maximum extent practicable.

- 1.g. *Unauthorized access*—BLM shall ensure that unauthorized personnel, including the public and off-duty project personnel, do not travel on project-related temporary access roads, to the greatest extent practicable.

During the more-active season (generally March through October), and if temperatures are above 60 but below 95 °F for more than 7 consecutive days, project- and non-project-related activities on all access roads that intersect the ROW will be monitored and logged. During construction, the ROW will be fenced at public roads that intersect the ROW. Signs will say that access on the ROW is strictly prohibited except by authorized personnel and that violators will be prosecuted.

- 1.h. *Desert tortoise clearance*—Prior to surface-disturbing activities, authorized desert tortoise biologists potentially assisted by desert tortoise monitors, shall conduct a clearance survey to locate and remove all desert tortoises from harm's way including areas to be disturbed using techniques that provide full coverage of all areas (Service 2009). During the more-active season, clearance surveys will be conducted either the day prior to, or the day of, any surface-disturbing activity. During the less-active season, clearance surveys will be conducted within 7 days prior to any surface-disturbing activity. No surface-disturbing activities shall begin until two consecutive surveys yield no individuals.

An authorized biologist shall excavate all burrows that have characteristics of potentially containing desert tortoises in the area to be disturbed with the goal of locating and removing all desert tortoises and desert tortoise eggs. During clearance surveys, all handling of desert tortoises and their eggs and excavation of burrows shall be conducted solely by an authorized desert tortoise biologist in accordance with the most current Service-approved guidance (currently Service 2009). If any tortoise active nests are encountered, the Service must be contacted immediately, prior to removal of any tortoises or eggs from those burrows, to determine the most appropriate course of action. Unoccupied burrows shall be collapsed or blocked to prevent desert tortoise entry. Outside construction work areas, all potential desert tortoise burrows and pallets within 50 ft of the edge of the construction work area shall be flagged. If the burrow is occupied by a desert tortoise during the less-active season, the tortoise shall be temporarily penned (see Term and Condition 1.k.). No stakes or flagging shall be placed on the berm or in the opening of a desert tortoise burrow. Desert tortoise burrows shall not be marked in a manner that facilitates poaching. Avoidance flagging shall be designed to be easily distinguished from access route or other flagging, and shall be designed in consultation with experienced construction personnel and authorized biologists. All flagging shall be removed following construction activities.

An authorized desert tortoise biologist will inspect areas to be backfilled immediately prior to backfilling.

- 1.i. *Desert tortoise in harm's way*—Any project-related activity that may endanger a desert tortoise shall cease if a desert tortoise is found on the project site. Project activities may resume after an authorized desert tortoise biologist or desert tortoise monitor (see restrictions in Term and Condition 1.d.) removes the desert tortoise from danger or after the desert tortoise has moved to a safe area on its own.

During the more-active season and if temperatures are above 60 but below 95 °F for more than 7 consecutive days, at least 1 monitor shall be assigned to observe spoil piles prior to excavation and covering.

- 1.j. *Handling of desert tortoises*—Desert tortoises shall only be moved by an authorized desert tortoise biologist or desert tortoise monitor (see restrictions in Term and Condition 1.d.) solely for the purpose of moving the tortoises out of harm's way. During construction, operation, and maintenance, an authorized desert tortoise biologist shall pen, capture, handle, and relocate desert tortoises from harm's way as appropriate and in accordance with the most current Service-approved guidance. No tortoise shall be handled by more than one person. Each tortoise handled will be given a unique number, photographed, and the biologist will record all relevant data on the Desert Tortoise Handling and Take Report (Appendix E) to be provided to BLM in accordance with the project reporting requirements.

Desert tortoises that occur aboveground and need to be moved from harm's way shall be placed in the shade of a shrub, 150 to 1,640 ft from the point of encounter. In situations where desert tortoises must be moved more than 1,640 ft (500 m), translocation procedures may be required. Translocation would likely result in a level of effect to the desert tortoise that would require the appended procedures.

If desert tortoises need to be moved at a time of day when ambient temperatures could harm them (less than 40 ° F or greater than 95° F), they shall be held overnight in a clean cardboard box. These desert tortoises shall be kept in the care of an authorized biologist under appropriate controlled temperatures and released the following day when temperatures are favorable. All cardboard boxes shall be discarded after one use and never hold more than one tortoise. If any tortoise active nests are encountered, the Service must be contacted immediately, prior to removal of any tortoises or eggs from those burrows, to determine the most appropriate course of action.

Desert tortoises located in the project area sheltering in a burrow during the less-active season may be temporarily penned in accordance with Term and Condition 1.k. at the discretion of an authorized desert tortoise biologist. Desert tortoises should not be penned in areas of moderate to heavy public use, rather they should be moved from harm's way in accordance with the most current Service-approved guidance (currently Service 2009).

Desert tortoises shall be handled in accordance with the Desert Tortoise Field Manual (Service 2009). Equipment or materials that contact desert tortoises (including shirts and pants) shall be sterilized, disposed of, or changed before contacting another tortoise to prevent the spread of disease. All tortoises shall be handled using disposable surgical gloves and the gloves shall be disposed of after handling each tortoise. An authorized desert tortoise biologist shall document each tortoise handling by completing the Desert Tortoise Handling and Take Report (Appendix E).

- 1.k. *Penning*—Penning shall be accomplished by installing a circular fence, approximately 20 ft. in diameter to enclose and surround the tortoise burrow. The pen should be constructed with 1-inch horizontal by 2-in vertical, galvanized welded wire. Steel T-posts or rebar should be placed every 5 to 6 ft. to support the pen material. Pen material will extend 18 to 24 in aboveground. The bottom of the enclosure will be buried 6 to 12 in or bent towards the burrow, have soil mounded along the base, and other measures implemented to ensure zero ground clearance. Care shall be taken to minimize visibility of the pen by the public. An authorized desert tortoise biologist or desert tortoise monitor shall check the pen at a frequency to ensure that the desert tortoise is secure and not stressed. No desert tortoise shall be penned for more than 48 hours without written approval by the Service. Because this is a new technique, all instances of penning or issues associated with penning shall be reported to the Service within 3 days (see Appendix E).
- 1.l. *Temporary tortoise-proof fencing*—All construction areas, including open pipeline trenches, hydrostatic testing locations, and tie-in work shall be fenced with temporary tortoise-proof fencing (*e.g.*, silt fencing) or inspected by an authorized desert tortoise biologist periodically throughout and at the end of the day and immediately the next morning. BLM and the Service will determine the appropriate length of open trench that will be allowed on the project.

Fencing will be designed in a manner that reduces the potential for desert tortoises and hatchlings to access the construction areas. Thus, the lower 6 to 12 in of fencing will be folded outward (*i.e.*, away from the construction area and towards the direction a tortoise would approach the work area), and covered with sufficient amount of soil, rocks, and staking to maintain zero ground clearance and secure the bottom section of material. An authorized desert tortoise biologist will check the integrity of the fencing every 2 hours and ensure that there are no breaches in the fencing and no desert tortoises pacing the fence. After the fencing is erected and secure, the inside will be cleared by an authorized desert tortoise biologist. The fencing must remain closed during any construction activities.

- 1.m. *Permanent tortoise-proof fencing*—Tortoise-proof fencing shall be installed around the boundary of permanent aboveground facilities that require regular monitoring and maintenance and other areas as directed by the BLM or Service. Fence specifications will be consistent with those approved by the Service (Service 2009). Tortoise guards shall be placed at all road access points where desert tortoise-proof fencing is interrupted, to exclude desert tortoises from the facility. Gates shall provide minimal ground clearance and deter ingress by desert tortoises. Permanent tortoise-proof fencing along the project area shall be appropriately constructed, monitored, and maintained. Fencing shall be inspected in accordance with Table 15 and reports prepared in accordance with Term and Condition 7.c. unless modified by the Service. Monitoring and maintenance shall include regular removal of trash and sediment accumulation and restoration of zero ground clearance between the ground and the bottom of the fence, including re-covering the bent portion of the fence if not buried.

Table 15. Desert tortoise fence inspection requirements

Condition	Minimum Requirements
First week following fence installation; tortoises active	Inspect fence perimeter, tortoise guards, and gates twice per day, timed to occur when tortoises may be pacing the fenceline.
First week following fence installation; tortoises inactive	Inspect fence perimeter, tortoise guards, and gates once per day.
Beginning the second week following fence construction, tortoises active	Inspect fence perimeter, tortoise guards, and gates once per day.
Beginning the second week following fence construction, tortoises inactive	Inspect fence perimeter, tortoise guards, and gates once per month.
Following major storm event, tortoises active	Inspect fence perimeter, tortoise guards, and gates within 48 hours.
Following major storm event, tortoises inactive	Inspect fence perimeter, tortoise guards, and gates within 72 hours.
Breach in fence observed, tortoise guard or gate requires maintenance, tortoises active	Repair within 48 hours of breach occurrence.
Breach in fence observed, tortoise guard or gate requires maintenance, tortoises inactive	Repair within 1 week of breach occurrence.

- 1.n. *Wildlife escape ramps*—Earthen plugs, with wildlife escape ramps on either side of the plug, will be provided in open trench segments at no greater than every 0.25 mi. These distances will be reduced if the FCR and authorized desert tortoise biologist determine that the plug/escape ramp spacing is insufficient to facilitate animal escape from the trench. Any tortoise that is found in a trench or excavation shall be promptly removed by an authorized desert tortoise biologist in accordance with the most current Service-approved guidance. If the authorized desert tortoise biologist is not allowed to enter the trench for safety reasons, the alternative method of removal must have prior approval by the Service.

- 1.o. *Dust control*—Water applied to for dust control shall not be allowed to pool outside desert-tortoise fenced areas, as this can attract desert tortoises. Similarly, leaks on water trucks and water tanks will be repaired to prevent pooling water. An authorized desert tortoise biologist will be assigned to patrol each area being watered immediately after the water is applied and at approximate 60-minute intervals until the ground is no longer wet enough to attract tortoises if conditions favor tortoise activity.
- 1.p. *Power transmission projects*—Transmission line support structures and other facility structures shall be designed to discourage their use by raptors for perching or nesting (e.g., by use of anti-perching devices) in accordance with the most current Avian Power Line Interaction Committee guidelines (see terms and conditions 2.b and 2.c.).
- 1.q. *Timing of construction*—When possible, the project proponent schedules and conducts construction, operation, and maintenance activities within desert tortoise habitat during the less-active season (generally October 31 to March 1) and during periods of reduced desert tortoise activity (typically when ambient temperatures are less than 60 or greater than 95 °F).

All vehicles and equipment that are not in areas enclosed by desert tortoise exclusion fencing will stop activities in desert tortoise habitat during rainfall events in the more-active season (generally March 1 to October 31), and if temperatures are above 60 but below 95 °F for more than 7 consecutive days. The Field Contact Representative (FCR) or designee will determine, in coordination with the BLM and Service, when it is appropriate for project activities to continue.

2. **RPM 2:** To implement Reasonable and Prudent Measure Number 2 Predator Control , the Bureau shall fully implement the following measures:
 - 2.a. *Litter control, applies to all projects*—A litter control program shall be implemented to reduce the attractiveness of the area to opportunistic predators such as desert kit foxes, coyotes, and common ravens. Trash and food items will be disposed of properly in predator-proof containers with predator-proof lids. Trash containers will be emptied and construction waste will be removed daily from the project area and disposed of in an approved landfill.
 - 2.b. *Deterrence*—The project proponent will implement measures to discourage the presence of predators on site (coyotes, ravens, etc.), including elimination of available water sources, designing structures to discourage potential nest sites, and use of hazing to discourage raven presence.

2.c. *Monitoring and predator control*—Projects that may create nest sites for ravens: The project proponent will monitor for the increased presence of ravens and other potential human-subsidized predators in the vicinity of the project area. A qualified biologist (not necessarily an authorized desert tortoise biologist) shall conduct monthly nest surveys of potential nest sites (*e.g.*, power transmission towers/poles) during the raven breeding season (generally February 1 to April 30) and document the presence of all nests and the species using them. During these monthly surveys, an authorized biologist will also document any sign of predation of desert tortoises below the nest and in the vicinity of the transmission line. If sign of predation is found under a nest, control measures will be implemented in coordination with the Service. The frequency of these nest surveys may be modified as agreed upon by BLM and the Service.

3. **RMP3:**To implement Reasonable and Prudent Measure Number 31 **Impacts to Desert tortoise habitat**, the Bureau shall fully implement the following measures:

3.a. *Habitat protection plans*—BLM shall ensure that the applicants develop and implement an approved fire prevention and response plan, erosion control plan, and a weed management plan approved by BLM prior to surface disturbance.

3.b. *Restoration plan*—BLM shall ensure that the applicant develop and implement a restoration/reclamation plan. The plan will describe objectives and methods to be used, species of native plants and/or seed mixture to be used, time of planting, success standards, actions to take if restoration efforts fail to achieve the success standards, and follow-up monitoring. The plan will be prepared and approved prior to the surface disturbance phase of the project. Reclamation will be addressed on a case-by-case basis.

3.c. *Minimizing new disturbance*—Cross-country travel outside designated areas shall be prohibited. All equipment, vehicles, and construction materials shall be restricted to the designated areas and new disturbance will be restricted to the minimum necessary to complete the task (*e.g.*, such as construction of one-lane access roads with passing turnouts every mile rather than a wider two-lane road).

All work area boundaries shall be conspicuously staked, flagged, or otherwise marked to minimize surface disturbance activities.

3.d. *Weed prevention*—Vehicles and equipment shall be cleaned with a high pressure washer prior to arrival in desert tortoise habitat and prior to departure from areas of known invasive weed and nonnative grass infestations to prevent or at least minimize the introduction or spread these species.

- 3.e. *Chemical spills*—Hazardous and toxic materials such as fuels, solvents, lubricants, and acids used during construction will be controlled to prevent accidental spills. Any leak or accidental release of hazardous and toxic materials will be stopped immediately and cleaned up at the time of occurrence. Contaminated soils will be removed and disposed at an approved landfill site.
- 3.f. *Residual impacts from disturbance*—BLM shall collect remuneration fees to offset residual impacts to desert tortoises from project-related disturbance to desert tortoise habitat.

Remuneration fees will be used for management actions expected to promote recovery of the desert tortoise over time, including management and recovery of desert tortoise in Nevada. Actions may involve habitat acquisition, population or habitat enhancement, increasing knowledge of the species' biological requirements, reducing loss of individual animals, documenting the species status and trend, and preserving distinct population attributes. Fees will be used to fund the highest priority recovery actions for desert tortoises in Nevada.

The current rate is \$810 per ac of disturbance, as indexed for inflation, effective March 1, 2012. The next adjustment will become effective March 1, 2013. The fee rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31st of each year, becoming effective March 1st. Fees assessed or collected for projects covered under this biological opinion will be adjusted based on the current CPI-U for the year they are collected. Information on the CPI-U can be found on the internet at: <http://stats.bls.gov/news.release/cpi.nws.htm>.

Since the project is less than 0.25 acres, tortoise fees will not be collected.

4. **RMP 7:** To implement Reasonable and Prudent Measure Number 7 **Compliance and Reporting**, the Bureau shall fully implement the following measures:
- 7.a. *Desert tortoise deaths*—The deaths and injuries of desert tortoises shall be investigated as thoroughly as possible to determine the cause. The Service and appropriate state wildlife agency must be verbally informed immediately and within 5 business days in writing (electronic mail is sufficient). The Authorized Desert Tortoise Biologist shall complete the Desert Tortoise Handling and Take Report (Appendix E).

- 7.b. *Non-compliance*—Any incident occurring during project activities that was considered by the FCR, authorized desert tortoise biologist, or biological monitor to be in non-compliance with this biological opinion shall be immediately documented by an authorized desert tortoise biologist. Documentation shall include photos, GPS coordinates, and details on the circumstances of the event. The incident will be included in the annual report and post-project report.
- 7.c. *Fence inspection*—Quarterly reports (January-March, April-June, July-September, and October –December) for monitoring and repair of tortoise-proof fencing as specified in Table 15, shall be submitted to the Service’s Nevada Fish and Wildlife Office in Las Vegas. Reports are due within the first 30 days following each quarter (e.g., the report for quarter January-March is due April 30).
- 7.d. *Project reporting requirements*—Quarter, annual, and comprehensive final project reports will be submitted to BLM and the Service’s Nevada Fish and Wildlife Office in Las Vegas. Annual reports will cover the calendar year and are due April 1st of the following year (e.g., the annual report for calendar year 2013 is due April 1, 2014). Quarterly reports are due 15 calendar days following the quarter. Final project reports are due within 60 days following completion of the project or each phase of the project.

The Programmatic Biological Opinion Report to the Fish and Wildlife Service (Appendix G) will be used for quarterly, annual, and final project reports, and shall include all Desert Tortoise Handling and Take Reports (Appendix E). If available, GIS shape files will be included.

- 7.e. *Operation and maintenance*—A written assessment report shall be submitted annually to the Service outlining the operation and maintenance activities that occurred over the past year.

Report to include: It will include frequency of implementation of minimization measures, biological observations, general success of each of the minimization measures. All deaths, injuries, and illnesses of endangered or threatened species within the project area, whether associated with project activities or not, will be summarized in the annual report. The report is due April 1 of each year.

- 7.f. *Restoration monitoring*—Vegetation restoration success shall be monitored by project proponent and reported to BLM and the Service. Monitoring will include both qualitative and quantitative data collection and analysis. Monitoring frequency and parameters for restoration success will be described in the required restoration/reclamation plan.

APPENDIX E. DESERT TORTOISE HANDLING AND TAKE REPORT

If a desert tortoise is killed or injured, immediately contact the U.S. Fish and Wildlife Service and BLM, by phone at the numbers below and complete Section 1 of the form. Completed forms should be submitted to the BLM and Fish and Wildlife Service:

Bureau of Land Management
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
702-515-5000
U.S. Fish and Wildlife Service
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130

Project Name:	Report Date:
Fish and Wildlife Service Append File No.- 84320-	
Authorized Desert Tortoise Biologist: _____ Employed by:	
Section 1: Complete all information below if a desert tortoise is injured or killed in addition to initial contact described above.	
If tortoise was injured <input type="checkbox"/> or killed <input type="checkbox"/> (check appropriate box):	
Date and time found: _____ Found by: _____ GPS location (NAD 83): easting: _____ northing: _____ No. of photos taken: _____ Disposition: _____ _____ _____	
Attach report with photos that describe in detail, the circumstances and potential cause of injury or mortality. For injuries include name of veterinarian and detailed assessment of injuries.	

Section 2: Complete all information below for each desert tortoise handled.

All instances of desert tortoise handling must be reported in this section and be included in the quarterly, annual, and final project reports.

Desert tortoise number: _____

Date and time found: _____ Sex of tortoise: _____

Air temperature when found: _____ Air temperature when released: _____

Tortoise activity when found: _____

Handled by: _____ Approx. carapace length _____

GPS location (NAD 83) found: easting: _____ northing: _____

GPS location released: easting: _____ northing: _____

Approximate distance moved: _____

Did tortoise void bladder; if so state approximate volume and actions taken:

Post handling or movement monitoring and observations:

Section 3: Complete for each tortoise burrow penned.

All instances of desert tortoise penning must be reported in this section and be included in the quarterly, annual, and final project reports.

Date and time of pen construction:

Began: _____ Completed: _____

Date and time pen removed:

Pen constructed by:

Why was tortoise penned?

How frequently was pen monitored?

Observations of desert tortoise behavior including time and date of observation:

Include photos of pen and burrow with report.

APPENDIX G. PROGRAMMATIC BIOLOGICAL OPINION (FILE NO. 84320-2010-F-0365) REPORT TO THE FISH AND WILDLIFE SERVICE

The information below should be completed by BLM or the Authorized Desert Tortoise Biologist for the project/action. Reports for all appended actions are required annually (due March 1 of each year for prior calendar year activities) and upon completion of the project/action.

- Annual Report Project Completion Report

1. Date: _____

2. Fish and Wildlife Service File No (for appended actions): 84320-_____

3. Species and critical habitat affected:

- Desert tortoise Desert tortoise critical habitat

Other (identify): _____

4. Project/action status:

- Not begun In progress* Completed date _____

If in progress, state approximate percent complete: _____

5. Desert tortoise habitat disturbed:

Non-critical habitat		Critical habitat	
Proposed disturbance (ac)	Actual disturbance (ac)	Proposed disturbance (ac)	Actual disturbance (ac)

6. Habitat of other species disturbed (identify species, non-critical, and critical habitat affected below):

7. Summary of individual desert tortoises taken (appended action):

	Desert Tortoise:		
	Adults	Juveniles	Eggs
Exempted			
Actual			

Describe other individuals taken:

8. Name of authorized desert tortoise biologists and monitors on the project and the dates they were on the project.

9. Describe all non-compliance issues and events.