Categorical Exclusion — N-35472 — Renew ROW for 12.5kV Overhead electric line near Three Kids Mine

A. Background

NEPA Number: DOI-BLM-NV-S010-2012-0127-CX

June 9, 1982, Nevada Power Company d/b/a NV Energy was granted a Right-of-Way (ROW) for a 12.5kV overhead distribution line. The grant was assigned serial number N-35472. On June 8, 2012, the grant expired. Although the grant has expired, the distribution line still exists and is in use, therefore NV Energy has applied for a renewal of this power line.

BLM Office:

Bureau of Land Management
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130

LLNVS01000

Lease/Serial/Case File No.:

N-35472

Proposed Action Title/Type:

ROW application to renew ROW grant N-35472 which expired June 8, 2012. Application is for an existing 12.5kV overhead distribution power line.

Location of Proposed Action:

Southern Las Vegas Valley in Henderson Nevada, East of Boulder highway, South of Lake Mead Pkwy., Adjacent to Three Kids Mine.

LEGAL DESCRIPTION

M.D.M., Nevada T. 21 S., R. 63 E., sec 35, lots 4, 9 and 10

Description of Proposed Action:

Description: NV Energy is for a ROW to renew N-35472. The ROW is for an overhead 12.5kV distribution power line. The power line is still existing and is in use. The ROW is 10 feet wide x 2,446.06 feet long of 24,460.60 sq. ft. and 0.561 acres. Because the power line is existing, there will be no new disturbance and no construction.

This is a CX per 516 DM 11.9 E. Realty (9) "Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations." This ROW is a renewal of an expired ROW grant with no additional disturbance.

B. Land Use Plan Conformance

Land Use Plan Name:

Las Vegas Resource Management Plan and Final Environmental Impact Statement (RMP), and the Record of Decision for the Approved Las Vegas Resource Management Plan and Final Environmental Impact Statement.

Date Approved/Amended:

RMP dated October 5, 1998.

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions) :

The proposed action is in conformance with the application RMP because it is clearly consistent with the following LUP decision(s):

Rights-of-Way Management. Objective: 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."

Management Direction. Objective: RW-1–h. "All public land within the planning area, excepted as stated in RW1–c through 1–g, are available at the discretion of the agency for rights-of-way under the authority of the Federal Land Policy Management Act."

C. Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9, E. Realty (9) "Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations." This is the renewal of an expired grant and no additional rights are requested.

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 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 us required.

D. Approval and Contact Information

Christina Price 8/29/2012

Program Manager
Power Project Team
Division of Lands

Date

Contact Person

Cheri B Woodward, Realty Specialist
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130
phone: 702–515–5000

1.0 General Stipulations

1.1. The right-of-way is issued subject to all valid existing rights.

1.2. 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.

1.3. 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.

1.4. 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.

1.5. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this right-of-way within its authorized limits.

1.6. 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.

1.7. 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.

1.8. 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.

2.0 Air Quality

2.1. 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.

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

3.0 Cultural

3.1. 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.

4.0 Hazardous Material/Pesticides/Liability

4.1. 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.

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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.

4.6. 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.

5.0 Survey Monuments

5.1. 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.

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

6.1. 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.

6.2. 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.

6.3. 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.

6.4. 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.

6.5. 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.

7.0 Migratory Birds

7.1. 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.

8.0 Threatened and Endangered Wildlife and Plant Species Stipulations

8.1. 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-S010-2012-0127-CX
Section 7 log #: NV-052-12-155

Terms and Conditions of Biological Opinion 1-5-96-F-23R.3

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

1. To implement Reasonable and Prudent Measure Number 1, BLM shall fully implement the following measures to minimize take of desert tortoises due to activities associated with construction or development activities:

a. Applicants or project proponents will search for and remove tortoises from project areas within the programmatic area if (1) survey data indicate that tortoises are present based on observation of live tortoises, recent sign, or active burrows, (2) tortoises may be relocated to secure habitat within 2 miles from the point of capture and barriers will exist to prevent tortoises from re-entering project areas and appear in harm's way, and (3) the tortoises appear to be healthy, unless the Service determines that survey and removal will not contribute toward recovery.

Applicants or project proponents shall contract an authorized desert tortoise biologist to conduct the clearance and removal. Only individuals trained to handle desert tortoises in accordance with Service-approved guidelines shall be authorized to handle desert tortoises, unless they are in imminent danger. Currently, the Service-approved handling guidelines are described in Guidelines for Handling Desert Tortoises during Construction Projects (Desert Tortoise Council 1994, revised 1999). Tortoises shall not be placed on private lands or lands under management by an agency other than BLM, without written permission of the landowner or agency. If unforeseen circumstances occur that would question the survival of tortoises potentially relocated from project areas, BLM shall coordinate with the Service on the disposition of such tortoises.

As no new habitat disturbance would occur during this action, desert tortoise clearance surveys are not required. The proponent is required to have an authorized biologist on call to relocate any desert tortoises that enter the work area. If tortoises are encountered that must be moved out of harm's way, the biologist will contact the BLM wildlife staff at (702) 515-5000 to identify the relocation site or whether the animal will be transferred to the Clark County Tortoise Pick-up Service.

b. If a tortoise is in imminent danger with immediate death or injury likely (such as from an approaching vehicle or equipment), and the tortoise has been given the opportunity to move but has withdrawn in its shell and is not moving, onsite personnel may capture the tortoise and place it in a clean unused cardboard box or similar container. If tortoises are found that cannot be relocated as described in Term and Condition 1.a., Clark County's tortoise pick-up service will be notified immediately. The contained tortoise will be held in the shade or a temperature-controlled environment until removed by the pick-up service.

2. To implement Reasonable and Prudent Measure Number 2, BLM shall fully implement the following measures minimize destruction of desert tortoise habitat, such as soil compaction, erosion, or crushed vegetation:

a. The boundaries of project areas shall be flagged or marked and all equipment, vehicles, and construction materials will remain within the project site or authorized areas. Staging areas will be located in previously disturbed areas whenever possible. Cross-country travel and travel outside authorized areas will be prohibited.

3. To implement Reasonable and Prudent Measure Number 3, BLM shall fully implement the following measure to minimize injury or mortality of desert tortoises during handling and/or removal from BLM lands within the action area:

a. 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. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign. As a guideline, an authorized biologist should have 60 field days of experience. In addition, the biologist shall have the ability to recognize and accurately record survey results.

b. All burrows found during clearance surveys within areas proposed for disturbance, whether occupied or vacant, will be excavated by an authorized desert tortoise biologist and collapsed or blocked to prevent desert tortoise reentry. All burrows will be excavated with hand tools to allow removal of desert tortoises or desert tortoise eggs. All desert tortoise handling and excavations, including nests, will be conducted by an authorized desert tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999).

c. All located desert tortoises and desert tortoise eggs will be relocated offsite 300 feet to 2 miles into adjacent undisturbed habitat. Tortoises found aboveground will be placed under a bush in the shade. A tortoise located in a burrow will be placed in an existing unoccupied burrow of the same size and orientation as the one from which it was taken. If a suitable natural burrow is unavailable or the occupancy status of the burrow is in question, an authorized desert tortoise biologist will construct one of the same size and orientation as the one from which it was removed using the protocol for burrow construction in Section B-5-f (Desert Tortoise Council 1994, revised 1999).

d. Any tortoise found within one hour before nightfall will be placed in a separate clean cardboard box and held in a cool, predator-free location. The box will be covered and kept upright at all times to minimize stress to the tortoise. Each box will be used once and then disposed of properly. The tortoise will be released the next day in the same area from which it was collected and using the procedures described above. Each tortoise will be handled with new disposable latex gloves. After use, the gloves will be properly discarded and a fresh set used for each subsequent tortoise handling.

e. 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).

f. Project activities that may endanger a tortoise will cease if a tortoise is found on a project site. Project activities will resume after an authorized desert tortoise biologist removes the tortoise from danger or after the tortoise has moved to a safe area on its own volition.

g. A desert tortoise education program may be required on an action-specific basis if BLM biologist or Service believe that project personnel will encounter desert tortoises. The program would be presented to all personnel onsite during construction activities. This program would contain information concerning the biology and distribution of the desert tortoise, desert tortoise activity patterns, its legal status and occurrence in the proposed project area, the definition of "take" and associated penalties, measures designed to minimize the effects of construction activities, the means by which employees can facilitate this process, and reporting requirements to be implemented when tortoises are encountered.

4. To implement Reasonable and Prudent Measure Number 4, BLM shall fully implement the following measures to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements contained in this biological opinion:

All necessary information sheets and forms shall be completed by the proponent. The proponent must complete Attachment A and return it to the BLM within 30 days of completion of construction. This form will be modified as necessary with the Service's concurrence.

Attachment A

DESERT TORTOISE SECTION 7 COMPLIANCE FORM

Entire form is to be completed by the project proponent and delivered to the Bureau of Land Management within 30 days of project completion

Biological Opinion File Number: 1-5-96-F-023.R3
Species: desert tortoise (Gopherus agassizii)

Project Name: Renewal ROW for 12.5 kV overhead electric line
Case File No: N-35472 (DOI-BLM-NV-S010-2012-0127-CX)
Acreage of Disturbance Authorized: 0
Acreage Actually Disturbed: _____
Fees Assessed: 0 Rate: n/a

In accordance with this biological opinion, applicants or project proponents may voluntarily choose to search for and remove tortoises from lands to be disturbed within the project area.

☐ Desert tortoise survey conducted Date(s): _____

☐ Voluntary desert tortoise survey conducted

☐ No desert tortoise survey conducted

☐ Migratory bird survey conducted Date(s): _____

Number of desert tortoises injured: _____
Number of desert tortoises killed: _____
Number of desert tortoises removed from the project site: _____
Number relocated to adjacent habitat within 2 miles: _____
Number transferred to the Clark County Tortoise Pick-up Service: _____

(Provide a report detailing all tortoise encounters and what happened to the animals. This report will include age class, gender, and health of each animal, maps showing where each tortoise was captured and later relocated, and the air temperature during the relocation.)

Company and persons who conducted the survey and removal[1]:

Company: _____

Name: _____

Address: _____

_____

Phone: _____

State Permit #: _____

Deliver this completed form to:

Bureau of Land Management
Division of Renewable Resources
4701 N. Torrey Pines Drive
Las Vegas, NV 89130
(702) 515-5000

If you have questions, call the BLM's Wildlife staff at (702) 515-5000. *Revised 07/13/2005*

---

[1] BLM approval of biological monitors/surveyors required. Submit resumes for review/approval at least 15 days prior to construction.