



**CX#: DOI-BLM-NV-W010-2012-0041-CX**

**Applicant: Daniel Tams**

**Project Title: Access corner crossings**

USGS 24k Quad name: Rose Creek

100k map name: Winnemucca

Land Status: BLM X Private \_\_\_\_\_ Other \_\_\_\_\_

**7. Create PDFs of 1:24000 Project Location Map and 1:100,000 general vicinity map. (See S:\NEPA\NEPA\_2012\NEPA 2012 Templates\Proposed Action\CX Proposed Action Form and Instructions**

**Part I: Plan Conformance Review**

The proposed Action is subject to the:

- Paradise-Denio Management Framework Plan
- Sonoma-Gerlach Management Framework Plan
- Black Rock Desert-High Rock Canyon Emigrant Trails NCA and Associated Wilderness and Other Contiguous Lands in Nevada RMP

*(The Proposed Action has been reviewed for conformance with this plan (43 CFR 1610.5, BLM Manual 1617.3).*

**Part II: NEPA Review**

Categorical Exclusion Review: This Proposed Action qualifies as a categorical exclusion under:

43 CFR 46.210 DOI Implementation of NEPA of 1969, Listing of Departmental Categorical Exclusions *(formerly 516 DM2 Appendix 1)* (Define Exclusion – see lists available at: S:\NEPA\_2010\NEPA Templates 2010\CX\CX Lists\ DOI CXs)

516 DM11.9, (BLM) E. Realty # 17: (Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.)

**ESA and BLM Sensitive Status Species**

Evaluation Criteria	Yes	No
1. Are species listed under the Endangered Species Act likely to occur in the project area? If yes, list the species in Table 1 below. Verify with USFWS or use approved list.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Are BLM NV Sensitive Species, based upon the current IM, likely to occur in the project area? If yes, list the species in the Table 1 below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Could the proposed action result in “take” under the Migratory Bird Treaty Act? If yes, attach appropriate mitigation measures.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Table 1. Special Status Species that may occur in the project area:**

ESA	BLM	Common (Scientific) Name	May Be Affected?	Mitigation for BLM Sensitive Species (Attach ESA Section 7 Compliance to Form)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Western Burrowing owl <i>(Athene cunicularia)</i>	<input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No	See mitigation for MBTA (Table 2)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Loggerhead shrike <i>(Lanius ludovicianus)</i>	<input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No	See mitigation for MBTA (Table 2)

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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sage thrasher ( <i>Oreoscoptes montanus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See mitigation for MBTA (Table 2)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brewer's sparrow ( <i>Spizella breweri</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See mitigation for MBTA (Table 2)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sand cholla ( <i>Grusonia pulchella</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	It is the responsibility of the Applicant to notify the Project lead and BLM biologist of the proposed disturbance date (s). Plant surveys will be required to determine presence of this plant. Surveys will be conducted by a BLM biologist within thirty (30) days prior to proposed disturbance activity date.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Townsend's big-eared bat ( <i>Corynorhinus townsendii</i> ) <i>Myotis spp.</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Bats have been identified as being in the area. However, the nature of the proposed activity should have no discernible impact upon them.
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	

**Table 2 Migratory Bird Treaty Act Consideration**

Potential MBTA Species w/in the Project Area Common ( <i>Scientific</i> ) Name	May Be Affected?	Proposed Mitigation
<p>The following is a representative, but not inclusive list of migratory birds that may utilize the proposed project area.</p> <p>Black-throated sparrow (<i>Amphispiza bilineata</i>)                      Gray flycatcher (<i>Epidonax wrightii</i>)                      Green-tailed towhee (<i>Pipilo chlorurus</i>)                      Horned lark (<i>Eremophila alpestris</i>)                      Prairie falcon (<i>Falco mexicanus</i>)                      Rock wren (<i>Salpinctes obsoletus</i>)                      Sage sparrow (<i>Amphispiza belli</i>)                      Vesper sparrow (<i>Pooecetes gramineus</i>)                      Western meadowlark (<i>Sturnella neglecta</i>)                      California quail (<i>Callipepla californica</i>)                      Red tailed hawk (<i>Buteo jamaicensis</i>)                      Mourning dove (<i>Zenaida macroura</i>)</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>It is the responsibility of the Applicant to notify the BLM project lead and biologist of the proposed survey date.</p> <p>Land clearing or other surface disturbance associated with the proposed action would be conducted outside of the migratory avian breeding season, whenever feasible, to avoid potential destruction of active bird nests. Nests are considered active if they contain eggs or young or if evidence of reproductive behavior (i.e. mated pairs, courtship displays, territorial defense, carrying nesting materials, transporting food, etc.) is observed (MBTA 1918). When surface disturbance must be created during the migratory avian breeding season (March 1 – August 31), a survey performed by a BLM biologist would be conducted for active nests. This survey would be conducted no more than ten (10) days prior to and no less than one (1) day prior to proposed disturbance activities. If active nests are located, disturbance activities may be postponed, a protective buffer may be established, or other appropriate protective measures would be instituted to avoid disturbance to the nest or reproductive behaviors until the nests are no longer active. The start and end dates of the seasonal restriction may be based upon site-specific information such as species, elevation, and weather patterns which affect breeding chronology. The Applicant must notify the BLM biologist a <i>minimum</i> of fifteen (15) work days prior to the proposed disturbance date to allow time for survey coordination.</p>

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The Proposed Action has been reviewed to determine if any exceptions described in 43 CFR 46.215 Categorical Exclusions: Extraordinary Circumstances apply. (See attached page)

*Mitigation Measures/Remarks: (if there are any applicable mitigation measures, including any standard stipulations, conditions of approval, terms of conditions, etc. that would be attached to the permit, state "See Attached" and attach a copy to the CX.)*

**Part III: DECISION** I have reviewed this plan conformance and NEPA compliance record and have determined that the proposed project is in conformance with the approved land use plan and that no other environmental analysis is required. Project authorization is subject to mitigation measures identified above.

Remarks reserved for authorized officer:

Authorized Official  /s/Michael Truden Date:  8/14/2012  
(Signature)

Pursuant to 2805.13, a right-of-way grant is effective after both the applicant and the BLM sign it, which carries the full force and effect of the decision. Full force and effect means that the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. Immediate implementation is an option, not a requirement, of the decision.

**Administrative Review or Appeal Opportunities**

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing Michael Truden, Field Manager, Humboldt River , Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).