Categorical Exclusion — New Authorization for the renewal of an overhead 12.5kV electrical line

A. Background

NEPA Number: DOI-BLM-NV-S010-2013-0032-CX

November 5, 1982 Nevada Power Company d/b/a NV Energy was granted a Right-of-way (ROW) for an overhead 12.5kV electrical line. The Grant was assigned serial number N-36637. On November 4, 2012 the grant expired. Although the grant has expired, the electrical line still exists and is use, therefore, NV Energy has applied for a new ROW grant to replace the original grant N-36637. The new application for this power line is assigned serial number N-91636.

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-91636

Proposed Action Title/Type:

Right-of-way application to replace ROW grant N-36637 which expired November 4, 2012. Application is for an overhead electrical line. The application is for an administrative action to renew the expired grant. The application is assigned serial number N-91636.

Location of Proposed Action:

The power line is located south of the Las Vegas Valley just outside of Boulder city Nevada. The line is just West of US 93.

LEGAL DESCRIPTION:

M.D.M., Nevada T. 23 S., R. 63 E., sec 11 lot 7

Description of Proposed Action:

New authorization to renew an overhead 12.5kV electrical line. Application will replace serial number N-36637. All facilities are existing. The power line ROW is 10 feet wide x 599.50 feet long and 0.14 acres. All facilities are existing and no additional ROW is being requested and there would be no additional disturbance.

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 right-of-way is a replacement of an expired right-of-way 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 applicable RMP because it is clearly consistent with the following LUP decision(s):

Rights-of-Way Management. Objective: RW-1. "Meet the 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 uder 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 2, Appendix 1, or 516 DM 11.9, E. (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 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 is required.

D. Approval and Contact Information

Christina Price 1-3-2013

Program Manager
Power Project Team
Division of Lands

Date

Contact Person

Cheri B Woodward

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-S010-2013-0032-CX
Section 7 log #: NV-052-13-037

Terms and Conditions of Biological Opinion in Area C
File No. 1-5-97-F-251

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

1. Measures shall be taken to minimize take of desert tortoises due to project-related activities.

   a. The Bureau, or their designee, shall provide a fact sheet to all foremen, workers, and other employees working on the project. The fact sheet will include information on the life history of the desert tortoise, legal protection for desert tortoises, penalties for violations of Federal and State laws, general tortoise activity patterns, reporting requirements, measures to protect tortoises, terms and conditions of the biological opinion, and personal measures employees can take to promote the conservation of desert tortoises. The definition of "take" will also be explained. Workers are encouraged to carpool to and from project site. The fact sheet shall be approved by the Service prior to implementation.

   b. A speed limit of 25 miles per hour shall be required for all vehicles on the project site and unposted dirt access roads.

   c. During construction activities, tortoise burrows should be avoided whenever possible. If a tortoise is found onsite during project activities which may result in take of the tortoise (e.g., in harms way), such activities shall cease until the tortoise moves, or is moved, out of harms way. The tortoise shall be moved by either a qualified tortoise biologist or individual trained in the proper technique of handling and moving desert tortoises. **All workers will also be instructed to check underneath all vehicles before moving such vehicles.** ***Tortoises often take cover under vehicles.***

   d. A tortoise biologist shall not be required onsite during construction activities unless explicitly determined by the Bureau, or Bureau and Service, that an onsite biologist is necessary.

   e. The Fish and Wildlife Service (FWS) must approve the selected consulting firm/biologist to be used by the applicant to implement the terms and conditions of this biological opinion or permit issued by the Bureau. Any biologist and/or firm not previously approved must submit a curriculum vitae and be approved by the FWS before authorized to represent the Bureau in meeting compliance with the terms and conditions of this biological opinion. Other personnel may assist with implementing mitigation measures, but must be under direct field supervision by the approved qualified biologist.

      In accordance with *Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise* (Service 1992), a qualified desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by the Bureau. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign, which should include a minimum of 60 days field experience. All tortoise biologists shall comply with the Service-approved handling protocol (Desert Tortoise Council 1994, revised 1999) prior to conducting tasks in association with terms and

conditions of this biological opinion. In addition, the biologist shall have the ability to recognize and accurately record survey results.

f. The search for, and removal of, tortoises (i.e., clearance) is voluntary, unless explicitly required by the Bureau, or Bureau and Service. If tortoise clearance is not required, applicants or project proponents may voluntarily choose to search for and remove tortoises from lands to be disturbed within the project area. However, applicants/project proponents that voluntarily choose to clear project areas of desert tortoises, shall follow measures required in terms and conditions of this biological opinion. Specific and detailed instructions will be provided on the proper techniques to capture and move tortoises which appear onsite, in accordance with Service-approved protocol. Currently, the Service-approved protocol is Desert Tortoise Council 1994, revised 1999.

g. The project shall not require fencing unless determined by the Bureau, or Bureau and Service, that fencing is necessary. Projects that generally require fencing are large projects with a high level of ongoing activity, such as gravel pits and airports.

h. Desert tortoises encountered experiencing heat stress will be placed in a tub by a qualified tortoise biologist with one inch of water in an environment with a temperature between 76 degrees F and 95 degrees F for several hours, until heat stress symptoms are no longer evident.

i. Tortoises and nests found shall be relocated by a qualified tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999). Burrows containing tortoises or nests will be excavated by hand, with hand tools, to allow removal of the tortoise or eggs.

j. Tortoises that are moved offsite and released into undisturbed habitat on public land, must be placed in the shade of a shrub, in a natural unoccupied burrow similar to the hibernaculum in which it was found, or in an artificially constructed burrow in accordance with Desert Tortoise Council (1994, revised 1999).

k. Desert tortoises moved during the tortoise inactive season or those in hibernation, regardless of date, must be placed into an adequate burrow. If one is not available, one will be constructed in accordance with Desert Tortoise Council (1994, revised 1999). During mild temperature periods in the spring and early fall, tortoises removed from the site will not necessarily be placed in a burrow.

2. Measures shall be taken to minimize predation on tortoises by ravens drawn to the project area.

   This will involve a litter-control program. This program will include the use of covered, raven-proof trash receptacles, removal of trash from the construction site to the trash receptacles following the close of each work day, and proper disposal of trash in a designated solid waste disposal facility. Vehicles hauling trash to the landfill and leaving the landfill must be secured to prevent litter from blowing out along the road.

3. Measures shall be taken to minimize destruction of desert tortoise habitat, such as soil compaction, erosion, or crushed vegetation, due to project-related activities.

a. If possible, overnight parking and storage of equipment and materials, including stockpiling, shall be within previously disturbed areas or areas to be disturbed.

b. All vehicle traffic will be restricted to existing access roads where possible. New access roads will be created only when absolutely necessary and only when approved by the Bureau.

c. Project activity areas will be clearly marked or flagged at the outer boundaries before the onset of construction. All activities shall be confined to designated areas. Blading of vegetation will occur only to the extent necessary and shall be limited to areas designated for that purpose by the Bureau.

d. Remuneration fees apply to future disturbance in tortoise habitat. Past disturbance or disturbance on land not considered to be tortoise habitat by a tortoise biologist, and approved by the Bureau, are not assessed a tortoise remuneration fee. Remuneration fees will be used to fund management actions which are expected to benefit the desert tortoise. Actions may involve: Habitat acquisition; population or habitat enhancement or protection; research that increases our knowledge of desert tortoise biology, habitat requirements, or factors affecting habitat attributes; reducing loss of individual animals, documenting the species' current status and trend, and preserving distinct population attributes or any other action described in the Management Oversight Group's report titled *Compensation for the Desert Tortoise* (Hastey, et al. 1991) or Recovery Plan.

4. Measures shall be taken to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and consultation reinitiation requirements contained in the biological opinion.

a. The project applicant shall notify the Bureau at least 10 days before initiation of the project. Notification shall be made to the Bureau=s wildlife staff at (702) 515-5000.

b. The Bureau wildlife staff (702/515-5000) and Service (702/515-5230) must be notified of any desert tortoise death or injury due to the project implementation by close of business on the following work day.

c. All appropriate NDOW permits or letters of authorization shall be acquired prior to handling desert tortoises and their parts, and prior to initiation of any activity that may require handling tortoise.

d. The project proponent must submit a document to the Bureau within 30 days of completion of the project showing the number of acres disturbed; remuneration fees paid; and number of tortoises taken, which includes capture and displacement, killed, injured, and harassed by other means, during implementation of programmatic actions.

e. For tortoise removals in Clark County, the applicant shall make prior arrangements with Clark County's tortoise pickup service (702/593-9027) at least 10 days prior to the commencement of tortoise collection. Outside Clark County, initial notification shall be made to the Bureau as stated in Term and Condition **4.a.** above.

All necessary information sheets and forms shall be completed by the proponent. Attachment A must be completed and returned to the BLM within 30 days of completion of construction. These forms 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: 1-5-97-F-251
Species: desert tortoise (Gopherus agassizii)

Project Name: New Authorization for renewal of overhead 12.5kV electrical line
Case File No: N-91636 (formerly N-36637), DOI-BLM-NV-S010-2013-0032-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 must avoid or remove tortoises from lands to be disturbed within the project area.

☐ Area B mandatory desert tortoise clearance survey
☐ Area C mandatory desert tortoise clearance survey
☐ Area C voluntary desert tortoise clearance survey conducted
☐ Area C voluntary desert tortoise clearance survey not conducted

Date(s) clearance survey(s) conducted: _____
Number of desert tortoises observed: _____
Number of desert tortoise burrows observed: _____
Number of desert tortoises injured: _____
Number of desert tortoises killed: _____
Number of desert tortoises removed from the project site: _____

(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 #: _____

If desert tortoises were encountered, attach a summary of each action. This summary shall include: date encountered; whether the animal was avoided, injured, killed, or moved out of harm's way; and if the animal was handled, please identify where the animal was relocated to.

Deliver this completed form and required supplemental information 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.

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