

**Bureau of Land Management  
Winnemucca District Office  
HRFO (W010)**

**Categorical Exclusion**

**CX#: DOI-BLM-NV-W010-2013-0029-CX**

**Date: 1/3/2013**

Lease / Case File / Serial #: N-91622

Regulatory Authority (CFR or Law): 2800

BLM Manual: 2800

Subject Function Code: 2810

Is the project located within a Preliminary Priority Habitat?  Yes  No

Is the project located within a Preliminary General Priority Habitat?  Yes  No

Is the project located within a National Landscape Conservation System feature (NCA, Wilderness, WSA, ISA, Scenic or Historic Trails)?  Yes  No

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1. BLM District Office: Winnemucca District Office

2. Name of Project Lead: Julie McKinnon

3. Project Title: Brill Access Road to private property

4. Applicant: Anthony Brill

5. Project Description: (briefly describe who, what, when, where, why, how)

Mr. Brill submitted an application for a new right-of-way along an existing dirt road, off of Jungo Road, to his private property. This road has been used in the past by people accessing the Atlas Mine.

The access road is approximately 11' wide and approximately 3/10 (1,584') of a mile long, located on the southern side of Blue Mountain. Mr. Brill proposes to complete basic maintenance of the road to keep it passable within the existing footprint. Leveling when necessary and filling in pot holes.

If approved, this right-of-way would be issued for 20 years with a right to renew and/or assign.

Project dimensions (length, width, height, depth): 1,584' x 11'

Total Acres: .04

BLM Acres: .04

Will the project result in new surface disturbance?  Yes  No

**CX#: DOI-BLM-NV-W010-2013- 0029-CX**

**Applicant: Anthony Brill**

**Project Title: Brill Access Road**

Has the project area been previously disturbed?  Yes  No  N/A

If yes, what percent of the project area has been disturbed? 100% . If only part of the project area has been disturbed, indicate disturbed area on map. Describe disturbance (and attach photo of disturbed area if you have one):

6. Legal Description: T. 35 N., R. 35 E., sec. 4, lot 3, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>.

USGS 24k Quad name: Pronto

100k map name: Eugene Mtns.

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

**7. Add project to your version for the NEPA Geodatabase.** Using the NEPA Geodatabase and templates (T:\NV\GIS\_Work\WMDO\Templates) **create PDFs** of 1:24,000 Project Location Map and 1:100,000 general vicinity map. For more guidance, 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 is in conformance with the applicable Land Use Plan (LUP) because it is specifically provided for in the following LUP decision(s):

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 Paradise-Denio MFP is silent on ROWs. In accordance with FLPMA Section 501(1), the BLM are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands...

**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*)
- 516 DM 11.9, (BLM) Realty E. #16: Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

**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 type="checkbox"/>	<input checked="" type="checkbox"/>

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

ESA	BLM	Common ( <i>Scientific</i> ) Name	May Be Affected?	Mitigation for BLM Sensitive Species ( <i>Attach ESA Section 7 Compliance to Form</i> )
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ferruginous hawk ( <i>Buteo regalis</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	western burrowing owl ( <i>Athene cunicularia hypugaea</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	loggerhead shrike ( <i>Lanius ludovicianus</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brewer’s sparrow ( <i>Spizella breweri</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Townsend’s big-eared bat ( <i>Corynorhinus townsendii</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	sage thrasher ( <i>Oreoscoptes montanus</i> )	<input type="checkbox"/> Yes <input checked="" 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?	Recommended Mitigation
black-throated sparrow ( <i>Amphispiza bilineata</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Brewer's blackbird ( <i>Euphagus cyanocephalus</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
canyon wren ( <i>Catherpes mexicanus</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
gray flycatcher ( <i>Empidonax wrightii</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
green-tailed towhee ( <i>Pipilo chlorurus</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
rock wren ( <i>Salpinctes obsoletus</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
sage sparrow ( <i>Amphispiza belli</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
western meadowlark ( <i>Sturnella neglecta</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
vesper sparrow ( <i>Pooecetes gramineus</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

*Mitigation Measures/Remarks:* If the ID team identifies mitigation, include here and copy into any applicable 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. If there are none, **DELETE** this text.)

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)

**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. (This is a NEPA Decision. A separate program implementation decision is necessary.)

Based on regulatory authority or law that allows BLM to take action, it is my decision to allow for implementation of the project, as described, with the mitigation measures identified above and attached as stipulations, conditions of approval, terms of conditions, etc. This is a combined NEPA and program implementation decision.

Authorized Official /s/Vern Graham Date: 2/28/13  
(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 to Vern Graham, 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)).