

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

**Categorical Exclusion**

**CX#: DOI-BLM-NV-W010-2013-0031-CX**

**Date: 2/20/2013**

Lease / Case File / Serial #: N-91911

Regulatory Authority (CFR or Law): 3604

BLM Manual:

Subject Function Code: 3075

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: Daniel Atkinson

3. Project Title: National Road Free Use Permit

4. Applicant: U.S. Environmental Protection Agency

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

The U.S. Environmental Protection Agency (EPA) has requested a Free Use Permit (FUP) for the removal of mineral materials from the National Road pit located in T46N, R38E, section 9, Humboldt County, Nevada. This FUP would be in a location that has been authorized for use by the Humboldt County Road Department. The EPA is planning to conduct a Removal Action in the Town of McDermitt to address mercury and arsenic contaminated calcine materials that have been used as fill in multiple locations. This work is being conducted by EPA, using CERCLA (Comprehensive Environmental Response Compensation and Liability Act — aka Superfund) authority. This action will include removal of the calcine material and backfilling using suitable fill. As part of this application, EPA is seeking to obtain approximately 20,000 cubic yards of pit-run sand and gravel from land managed by the BLM. Material from the National Road pit would be mined using a front-end loader or backhoe and hauled using semi trucks with belly-dump trailers. The EPA may need to process the material using a crushing and screening plant to better sort the gravel prior to placement on the roads. The permit term would be for approximately 6 months.

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Project dimensions (length, width, height, depth): Approximately 400' by 400' by 20'

Total Acres: Approximately 3.5 acres. Primarily on previously disturbed area.

BLM Acres: Approximately 3.5 acres. Primarily on previously disturbed area.

Will the project result in new surface disturbance?  Yes  No

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

If yes, what percent of the project area has been disturbed? 90% . 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): There is an existing gravel pit that is the result of previous operations in the area. The EPA would strive to use only previously disturbed areas. Only a small fraction of the proposed operations may affect ground that has not been previously disturbed. See attached aerial photo.

6. Legal Description: T46N, R38E, section 9, within NWSE.

USGS 24k Quad name: McDermitt

100k map name: Quinn River Valley

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

### **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 LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions):

Objective M-3: Provide sand, gravel, and other mineral materials as needed for constructions purposes to federal, state, local government, private industries, and individuals.

### **Part II: NEPA Review**

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

516 DM 11.9, (BLM) F.10 - Disposal of mineral materials, such as sand, stone, gravel, pumice, cinders, and clay, in amounts not exceeding 50,000 cubic yards or disturbing more than 5 acres, except in riparian areas.

**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 ( <i>Scientific</i> ) Name	May Be Affected?	Mitigation for BLM Sensitive Species (The following stipulation(s) is/are recommended to be applied to the authorization) (Attach ESA Section 7 Compliance to Form, if applicable)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	golden eagle ( <i>Aquila chrysaetos</i> )	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Swainson’s hawk ( <i>Buteo swainsoni</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
<input type="checkbox"/>	<input checked="" type="checkbox"/>	sage thrasher ( <i>Oreoscoptes montanus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
<input type="checkbox"/>	<input checked="" type="checkbox"/>	loggerhead shrike ( <i>Lanius ludovicianus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached

**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 (The following stipulation(s) is/are recommended to be applied to the authorization)
green-tailed towhee ( <i>Pipilo chlorurus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached

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black-throated sparrow ( <i>Amphispiza bilineata</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
Brewer's blackbird ( <i>Euphagus cyanocephalus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
canyon wren ( <i>Catherpes mexicanus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
gray flycatcher ( <i>Empidonax wrightii</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
rock wren ( <i>Salpinctes obsoletus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
sage sparrow ( <i>Amphispiza belli</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
western meadowlark ( <i>Sturnella neglecta</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached
vesper sparrow ( <i>Pooecetes gramineus</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Migratory bird. See attached

*Mitigation Measures/Remarks (The following stipulation(s) is/are recommended to be applied to the authorization):*

*In order to avoid potential impacts to breeding migratory birds, a nest survey shall be conducted by a qualified biologist within potential breeding habitat prior to any new surface disturbance proposed during the avian breeding season (March 1<sup>st</sup> through August 31<sup>st</sup>). Surveys must be conducted no more than 10 days and no less than 3 days prior to initiation of disturbance. Surveys must follow established BLM standards and protocols, and should be approved by the BLM biologist prior to being implemented. If active nests are located, the BLM biologist must be notified immediately and appropriate protection measures which may include avoidance or restriction of activities will be established. If no active nests are present in the area surveyed, implementation of the project should commence within 10 days of survey completion.*

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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)

**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.)

Authorized Official       \S\ Vern Graham       Date: 8 Mar 13  
(Signature)

**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, 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

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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)).