

# **Categorical Exclusion — New Authorization for a fiber optic line**

## **A. Background**

NEPA Number: DOI-BLM-NV-S010-2013-0092-CX

June 6, 2002, Nevada Power Company d/b/a NV Energy was granted a Right-of-Way (ROW) for an ADSS Fiber Optic line. The grant was assigned serial number N-75060. On June 6, 2012, the grant expired. Although the grant has expired the fiber optic line is existing and still in use. On November 14, 2012 NV Energy submitted an application for the renewal of the fiber optic line ROW. The new application has been assigned serial number N-91637.

### **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-91637

### **Proposed Action Title/Type:**

ROW application to replace N-75060 for a fiber optic line which expired on June 6, 2012. The application is for an existing ADSS fiber optic line. This is an administrative action to renew the expired grant and no new ROW is being requested. The application is assigned serial number N-91637.

### **Location of Proposed Action:**

The fiber optic line is Located North of the Las Vegas Valley running from near Kyle Canyon Road from the Northwest Substation traveling northwest to near Apex to the Harry Allen Substation.

### **LEGAL DESCRIPTION:**

M.D.M., Nevada 21

T.17 S., R.63 E.,

sec 35 Lots 3 and 4, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$

T.18 S., R.63 E.,

sec 1 SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$

sec 2 Lots 1 and 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$

sec 12 NW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$

sec 13 Lots 7 and 8, NW $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$

sec 14 Lots 1, 2, 9, 10, 16, 19, 21 and 23

sec 15 Lot 4

sec 22 Lots 2, 3, 9, 14, 15, 20 and 21

sec 27 Lots 3, 8, 9 and 13, NW $\frac{1}{4}$ SW $\frac{1}{4}$

sec 33 Lots 1, 5, 7, 8, 12 and 13

sec 34 Lot 2

21 T.19 S., R.63 E.,

sec 4 Lots 2, 13, 15 and 17

sec 5 Lot 8

sec 8 Lots 2, 4 and 6, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$

sec 7 Lots 3,8,11,12 and 17

21 T.19 S., R.62 E.,

sec 11 SE $\frac{1}{4}$ SE

sec 12 N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$

sec 14 NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$

sec 16 N $\frac{1}{2}$ N $\frac{1}{2}$

sec 17 N $\frac{1}{2}$ N $\frac{1}{2}$

sec 18 Lots 5, 6, 7 and 8

21 T.19 S., R.61 E.,

sec 6 Lots 16,17,18 and 19

sec 8 Lots 3, 4, 6, 7, 8 and 9

sec 9 Lots 11, 12, 14, 15 and 16

sec 13 Lots 1, 2, 3 and 4

sec 15 Lots 3, 23 and 22

sec 16 Lots 24 and 25

21 T.19 S., R.60 E.,

sec 1 Lots 7, 8, 10, 11, 12 and 13

sec 2 Lots 5, 6, 7 and 8

sec 3 Lots 5 and 6

sec 4 Lots 5 and 6

sec 5 Lots 5, 9, 10 and 11

21 T.19 S., R.59 E.,

sec 1 Lots 8, 13, 14, 30 and 37

**Description of Proposed Action:**

New Authorization to renew an expired overhead ADSS fiber optic line. Replacing serial number N-75060. All facilities are existing. Fiber Optic is 0.6 inches in diameter and consists of 24 fibers (12 active and 12 inactive reserved for emergency spares - all are solely for the use of NV Energy) The fiber optic is attached to the existing Harry Allen-Northwest 500kV transmission line (N-75025). The ROW for the fiber optic is 130,000 feet long and 10 feet wide for 29.8 acres.

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 this granted by the original authorizations." This ROW is the replacement 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 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 decisions:

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 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 this granted by the original authorizations." This is an administrative action to renew expired grant N-75060 and no additional rights are being 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 B 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**



Vanessa L. Hice  
Assistant Field Manager  
Division of Lands

8/28/13

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

Exhibit A  
Stipulations N-91637

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**1.0 Special Stipulations**

- 1.1 Fence Inspection: Quarterly reports (January-March, April-June, July-September and October-December) for monitoring and repair or tortoise-proof fencing as specified in the table below, shall be submitted to the BLM Las Vegas Field Office and the Nevada Fish and Wildlife Office in Las Vegas. Reports are due within the first 30 days following each quarter (e.g., the report for quarter January-March is due April 30).

<b>Condition</b>	<b>Minimum Requirements</b>
First week following fence installation; tortoises active	Inspect fence perimeter, tortoise guards, and gates twice per day, timed to occur when tortoises may be pacing the fence line.
First week following fence installation; tortoises inactive	Inspect fence perimeter, tortoise guards, and gates once per day.
Beginning the second week following fence construction; tortoises active	Inspect fence perimeter tortoise guards, and gates once per day.
Beginning the second week following fence construction; tortoises inactive	Inspect fence perimeter, tortoise guards, and gates once per month
Following major storm event; tortoises inactive	Inspect fence perimeter, tortoise guards, and gates within 72 hours
Breach in fence observed, tortoise guard or gate requires maintenance; tortoises active	Repair within 48 hours of breach occurrence
Breach in fence observed, tortoises guard or gate requires maintenance; tortoises inactive	Repair within 1 week of breach occurrence

**2.0 General Stipulations**

- 2.1. The ROW is issued subject to all valid existing rights.
- 2.2. 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.
- 2.3. The ROW 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.

- 2.4. Holder shall mark the exterior boundaries of the ROW 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.
- 2.5. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this ROW within its authorized limits.
- 2.6. Holder shall maintain the ROW in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.
- 2.7. 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 ROW 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 ROW, 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 ROW, 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.
- 2.8. 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 ROW:

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.

### 3.0 Air Quality

- 3.1. 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 ROW 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 ROW.

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 ROW, 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.

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

### 4.0 Cultural

- 4.1. 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.

## 5.0 Hazardous Material/Pesticides/Liability

- 5.1. 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 ROW 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.
- 5.2. The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the ROW potentially affecting the ROW of which the Holder is aware.
- 5.3. 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 ROW.
- 5.4. 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 ROW.

- 5.5. 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 ROW, regardless of whether the Holder has actually developed or caused development to occur on the ROW, from the time of the issuance of this ROW to the Holder, and during the term of this ROW. 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 ROW.

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 ROW regardless of whether the Holder has actually developed or caused development to occur on the ROW from the time of the issuance of this ROW to the Holder and during the term of this ROW.

- 5.6. Mineral material generated, and not needed for the development of the proposed action within the ROW 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 ROW or stockpiled on site for sale by the BLM.

## 6.0 Survey Monuments

- 6.1. 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.

## 7.0 **Vegetation/Noxious Weeds/Land surface Treatment/Soil/Water/Riparian**

- 7.1. 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.
- 7.2. The Holder shall be responsible for weed control on disturbed areas within the limits of the ROW. The Holder is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods within limits imposed in the ROW stipulations.

This action will occur within a previously disturbed setting partially within 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. Weed mitigation measures from the original authorization still apply.

- 7.3. 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.
- 7.4. 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 ROW. At the conclusion, including trench backfilling and compaction, replace the stockpiled soil with plant debris uniformly back on the surface of the disturbed area.
- 7.5. 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.

## 8.0 **Fish and Wildlife**

- 8.1. Wildlife species in the general area include small mammals, rodents, birds and reptiles. These species may be found in the adjacent undisturbed lands and could wander into the proposed project area. Although there is no new surface disturbance associated with this project, primary direct impacts of the proposed action on wildlife would be mortality resulting from maintenance activities. Wildlife species in the general area are common and widely distributed throughout the area and the loss of some individuals and/or their habitat would have a negligible impact on populations of the species throughout the region.

## 9.0 Migratory Birds

- 9.1. 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.

## 10.0 Threatened and Endangered Wildlife and Plant Species Stipulations

- 10.1. 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.

### Terms and Condition of Biological Opinion in Area B

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. A qualified tortoise biologist, or designee of the Bureau, shall present a tortoise-education program to all foremen, workers, and other employees working on the project. The program 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 will be encouraged to carpool to and from project sites. The program shall be approved by the Service prior to implementation. 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.
  - 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 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. The Bureau must approve the selected consulting firm/biologist to be used by the applicant to implement the terms and conditions of the 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 Bureau before authorized to represent the Bureau in meeting compliance with the terms and conditions of the 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 the biological opinion. In addition, the biologist shall have the ability to recognize and accurately record survey results.

- e. 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.
- f. 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.
- g. 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).

- h. 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.

*The fencing for this project has already been erected.*

**Following Fence Construction:** Prior to the commencement of project activities, all desert tortoises shall be removed from the site. A qualified biologist shall oversee the survey for and removal of tortoises using techniques providing 100-percent coverage of all areas. Two complete passes of 100-percent coverage will be accomplished. All desert tortoise burrows, and other species burrows which may be used by tortoises, will be examined to determine occupancy of each burrow by desert tortoises. Tortoise burrows shall be cleared of tortoises and eggs, and collapsed. Any desert tortoises or eggs found in the fenced area will be removed under the supervision of a qualified tortoise biologist in accordance with Service protocol.

- i. After a project has been fenced and a tortoise clearance completed, if the operator encounters a desert tortoise in imminent danger, the operator shall move the tortoise out of harm's way and on to adjacent Bureau land. If the tortoise cannot be avoided or moved out of harm's way on to Bureau land, it shall be placed in a cardboard box or other suitable container and held in a shaded area until the Clark County pickup service or Bureau personnel can retrieve the tortoise.
- j. On phased development projects, the operator may have the option with concurrence of the Bureau of initially fencing less than the total project acreage. The fenced area will be enlarged as the disturbance expands. To ensure that no tortoises are harmed, each new segment of fence will be constructed under the provision described in Terms and Conditions **1.k.** and **1.l.** above. Payment of the mitigation fee identified in Term and Condition **3.d.** below, will be required prior to surface disturbance of each phase.
- k. The operator shall inspect the fencing at least on a quarterly basis, to insure that it is in compliance with the standards described in Term and Condition **1.k** and **1.l.** above, and shall perform maintenance when needed including removing trash, sediment accumulation, and other debris. Temporary fencing shall be removed at the end of the construction activity. Permanent fencing may be removed upon termination and reclamation of the project, or when it is determined by the Bureau and Service that the fence is no longer necessary. Monitoring and maintenance shall include regular removal of trash and sediment accumulation and restoration of zero ground clearance between the ground and the bottom of the fence, including re-covering the bent portion of the fence if not buried.
- l. Where the Bureau allows or requires the installation of a temporary tortoise-proof fence, the fence shall include as much of the proposed construction site as feasible.

This may in some cases require the installation of temporary fencing along access routes. Typical fence design should consist of 1-inch mesh or 1-inch horizontal by 2-inch vertical mesh (hardware cloth or plastic) and be installed flush with ground and extend at least 18 inches above ground. Temporary tortoise-proof fencing should not be buried.

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 which have been cleared by a tortoise biologist. If not possible, areas for overnight parking and storage of equipment shall be designated by the tortoise biologist which will minimize habitat disturbance.
  - b. All vehicle traffic will be restricted to existing access roads. New access roads will be created only when absolutely necessary and only when approved by the Bureau. Routes for new access roads will be flagged by the tortoise biologist prior to surface disturbance.
  - 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 or tortoise biologist.
  - 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.

e. Payment of a remuneration fee, currently set at \$705.00 per acre, will be required for all projects *prior* to issuance of the lease, permit, notice to proceed, or other Bureau authorization, with the following exceptions:

- (1) R&PP leases may be issued prior to payment of remuneration fees. Payment of fees on R&PP leases may be deferred until immediately prior to surface disturbance. If the R&PP project consists of phased development of the lease area, fees will be paid for each phase immediately prior to surface disturbance.
- (2) Because many mining plans of operation are phased in over a number of years, remuneration fees may be collected prior to the beginning of each phase.
- (3) Other projects, such as parks, that are built in phases will be assessed the remuneration fee at the beginning of each phase.
- (4) Projects impacting less than 0.25-acres will not be assessed a remuneration fee. The 0.25-acres refers to the total project area and does not apply to each phase of a project.
- (5) Mineral material sales and leases will be charged a fee of 25 cents per cubic yard up to the equivalent of \$682.00 per acre of disturbance, or will be assessed \$682.00 per acre for each phase of disturbance, at the discretion of the Bureau.
- (6) Range and wildlife projects impacting less than 0.25-acres per allotment will be exempt from fees. The Bureau and Service shall decide on appropriate offsite habitat enhancement activities on a case-by-case basis for projects impacting more than 0.25-acres. All activities on an allotment count toward the cumulative acreage total for the allotment or wildlife project. Range projects will include fences, pipelines, water hauls, and spring developments.
- (7) Unless the Bureau determines that lands proposed for disposal are exempt from mitigation fees under the *Clark County Desert Conservation Plan* (CCDCP; 1992), remuneration fees for land disposal actions will not be required under the biological opinion; consequently, no incidental take will be authorized in association with such actions. Once transferred out of Federal ownership, the owner must comply with the terms of the CCDCP in order to be covered under the incidental take permit issued to Clark County (PRT-801045), or apply for their own incidental take permit under section 10(a)(1)(B) of the Act. Consistent with Bureau policy, the legal title of lands leased under the R&PP Act shall not be transferred out of Federal ownership until appropriate remuneration fees have been collected as specified in Terms and Conditions 3.f. and 3.g. below.

The current rate of \$705.00 per acre will be indexed for inflation as described in Term and Condition 3.g. below.

- f. For Community Sand and Gravel Sales: Fees will be assessed on the basis of cubic yards of material removed from project site. A fee of 25 cents per cubic yard will be applied until such time as the fees collected are equal to \$705.00 per acre for each acre of surface disturbance, or the equivalent rate as indexed for inflation. The fee shall be paid directly to the Bureau while purchasing mineral materials at the Las Vegas District Office. The fee shall be deposited directly into the Bureau's 5320 account.
- g. For Projects Other Than Community Sand And Gravel Pits (including mineral material sales): Prior to issuance of the permit, right-of-way grant, lease (except R&PP leases), notice to proceed, or approval of any action to be covered under the biological opinion, and prior to any surface-disturbing activity associated with the proposed project, including R&PP leases, the project proponent shall pay a remuneration fee of \$682.00 for each acre of surface disturbance. For phased projects (e.g., mineral material sales), fees will be paid prior to surface disturbance associated with each phase. This rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31 of each year, beginning January 31, 1998. Fees assessed or collected for projects covered under this biological opinion after January 31st of each year will be adjusted based on the CPI-U. Information on the CPI-U can be found on the Internet at: <http://stats.bls.gov/news.release/cpi.nws.htm>.

This fee will be paid directly to the Desert Tortoise Public Lands Conservation Fund (Account Number 730-9999-2315), administered by Clark County or any other administrator approved by the Bureau and Service. The administrator serves as the banker of these funds and receives no benefit from administering these funds. These funds are independent of any other fees collected by Clark County for desert tortoise conservation planning.

The payment shall be accompanied by the **Section 7 Fee Payment Form**, (Attachment) and completed by the payee. The project proponent or applicant may receive credit for payment of such fees and deduct such costs from desert tortoise impact fees charged by local government entities. Payment shall be by certified check or money order payable to Clark County Treasurer (or other administrator named by the Bureau and Service), and delivered to:

Clark County Habitat Conservation Plan Administrator  
Department of Comprehensive Planning  
Clark County Government Center, Third floor  
500 South Grand Central Parkway  
Las Vegas, Nevada 89155- 1712



Attachment A

SECTION 7 FEE PAYMENT FORM

**\*\*PAYMENT CAN NOT BE ACCEPTED WITHOUT FORM\*\***

Entire form is to be completed by project proponent

Biological Opinion File Number: \_\_\_\_\_

U.S. Fish and Wildlife Service Office that Issued the Opinion:  
Nevada Fish and Wildlife Office, Reno, Nevada

Species: Desert tortoise (*Gopherus agassizii*)

Project: \_\_\_\_\_

Case File No: \_\_\_\_\_

Amount of Payment Received: \$ \_\_\_\_\_

Total Payment Required: \$ \_\_\_\_\_

Date of Receipt: \_\_\_\_\_

Check or Money Order Number: \_\_\_\_\_

Number of Acres to be Disturbed: \_\_\_\_\_

Project Proponent: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Authorizing Agencies: \_\_\_\_\_

Make checks payable to: Clark County Treasurer

Deliver check to: Clark County Desert Conservation Program  
c/o Dept. of Air Quality and Environmental Management  
Clark County Government Center  
500 So. Grand Central Parkway, first floor (front counter)  
Las Vegas, Nevada 89106  
(Contact: Sandy Helvey at (702) 455-5821)  
Acct. No. 730-9999-2315

If you have questions, you may call the Southern Nevada Field Office of the U.S. Fish and Wildlife Service at (702) 515-5230.

revised 4/27/04

































