

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

Categorical Exclusion

CX#: DOI-BLM-NV-W010-2012- 0058-CX

Date: 9/4/2012

Lease / Case File / Serial #: N-91378

Regulatory Authority (CFR or Law): 2800

BLM Manual: 2800

Subject Function Code: 2870

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

1. BLM District Office: Winnemucca District Office

2. Name of Project Lead: Julie McKinnon

3. Project Title: Jakes Creek Well Right-of-Way proposal

4. Applicant: Humboldt County Road Dept.

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

Humboldt County Road Dept. has submitted an application for a right-of-way (R/W) to construct water well near Jake's Creek and Midas Roads.

The water well site would be a 250' x 250' site to include a well, pump, portable diesel generator and a 12'x12' fenced holding pond to be lined with an HDPE liner and an access road from Jake's Creek Road to the well site. The well head would be connected to a standpipe for direct fill to water trucks with the pond as a secondary source. The proposed location for this well would allow the County to have a water source available in an area where currently there is not a water source nearby and they have to truck water when they perform any maintenance activities. This site was chosen because recently the BLM authorized a permit to Humboldt County to use the mineral material source in this area to

maintain roads.

In 2010, Humboldt County was issued a land use permit from the BLM along with permission from Newmont Mining Co. to prospect for and use the material source at an existing gravel pit near Jake's Creek and the Midas Road. Newmont Mining Co. owns the private minerals. The proposed location of the water well is within the previously permitted area. The County has applied to the Nevada Division of Water Resources for water rights.

The BLM would issue the R/W for a period of 20 years with the right to renew. When the R/W is no longer needed the County would be required to reclaim area and cap the well per Nevada laws.

Project dimensions (length, width, height, depth): 250' x 250' and an access road of approximately 400' in length by 20' in width.

Total Acres: 1.61

BLM Acres: 1.61

Will the project result in new surface disturbance? Yes No

Has the project area been previously disturbed? Yes No N/A *The particular location of the proposed water well does not appear to have been disturbed other than by fire and a couple of existing roads and power line in the vicinity.*

If yes, what percent of the project area has been disturbed? 0% . 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): This area was previously surveyed for migratory birds

6. Legal Description: T. 38 N., R. 44 E., sec. 18, SW $\frac{1}{4}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$.

USGS 24k Quad name: Knolls

100k map name: Osgood Mountains

Land Status: BLM surface Private minerals 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 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) Grants of rights-of-way wholly within the boundaries of other compatibly developed rights-of-way.

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 (<i>Attach ESA Section 7 Compliance to Form</i>)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Western burrowing owl <i>(Athene cuniculariaa hypugaea)</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Per Project Description Language, that, "...holding pond to be lined with an HDPE liner..." Wildlife would be attracted to the standing water source. Unless the pond is totally enclosed in mesh-like material, terrestrial species could go through, under or over fencing materials and drowned if accidentally submerged in ponded water and are unable to get out. Unless the pond is totally enclosed, recommend that, 1) coarse-textured liner is used; 2) escape ramp(s) (e.g. inverted V-shaped piece of expanded metal with one-foot wings at approx. 30 degree angle, in place from bottom to top of pond) is secured; and 3) pond slopes are constructed in a manner to allow for wildlife ingress and egress from "12-foot by 12-foot" holding pond.
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	

Table 2 Migratory Bird Treaty Act Consideration

Potential MBTA Species w/in the Project Area Common (<i>Scientific</i>) Name	May Be Affected?	Recommended Mitigation
See attached lists.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See recommendation for BLM Sensitive Species.

	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	

Wildlife Species List

Lower Sagebrush/Grassland Steppe, Northeastern Nevada

Birds

Turkey Vulture
 Bald Eagle
 Northern Harrier
 Swainson's Hawk
 Red-tailed Hawk
 Ferruginous Hawk
 Rough-legged Hawk
 Golden Eagle
 American Kestrel
 Merlin
 Prairie Falcon
 Cray Partridge
 Chukar
 Sage Grouse
 Mourning Dove
 Great Horned Owl
 Burrowing Owl
 Short-eared Owl
 Common Nighthawk
 Broad-tailed Hummingbird
 Northern Flicker
 Gray Flycatcher
 Ash-throated Flycatcher
 Say's Phoebe
 Western Kingbird
 Horned Lark
 Barn Swallow
 Black-billed Magpie
 American Crow
 Common Raven
 Rock Wren
 Mountain Bluebird
 American Robin
 Sage Thrasher
 Loggerhead Shrike
 Northern Shrike
 European Starling
 Brewer's Sparrow
 Vesper Sparrow
 Lark Sparrow
 White-crowned Sparrow
 Lapland Longspur
 Red-winged Blackbird
 Western Meadowlark
 Brewer's Blackbird
 Brown-headed Cowbird

Cathartes aura
Haliaeetus leucocephalus
Circus cyaneus
Buteo swainsoni
Buteo jamaicensis
Buteo regalis
Buteo lagopus
Aquila chrysaetos
Falco sparverius
Falco columbarius
Falco mexicanus
Perdix perdix
Alectoris chukar
Centrocercus urophasianus
Zenaidura macroura
Bubo virginianus
Athene cunicularia
Asio flammeus
Chordeiles minor
Selasphorus platycercus
Colaptes auratus
Epidonax wrightii
Myiarchus cinerascens
Sayornis saya
Tyrannus verticalis
Eremophila alpestris
Hirundo rustica
Pica pica
Corvus brachyrhynchos
Corvus corax
Salpinctes obsoletus
Sialia currucoides
Turdus migratorius
Oreoscoptes montanus
Lanius ludovicianus
Lanius excubitor
Sturnus vulgaris
Poocetes gramineus
Chondestes grammacus
Amphispiza belli
Zonotrichia leucophrys
Calcarius lapponicus
Agelaius phoeniceus
Sturnella neglecta
Euphagus cyanocephalus
Molothrus ater

Black Rosy Finch
 Gray-crowned Rosy Finch
 House Sparrow

Leucosticte atrata
Leucosticte tephrocotis
Passer domesticus

Mammals

Little Brown Bat
 Long-eared Myotis
 Long-legged Myotis
 Small-footed Myotis
 Silver-haired Bat
 Western Pipistrelle
 Big Brown Bat
 Townsend's Big-eared Bat
 Brazilian Free-tailed Bat
 Black-tailed Jackrabbit
 Mountain Cottontail
 Pygmy Rabbit
 Townsend's Ground Squirrel
 Belding Ground Squirrel
 Least Chipmunk
 Botta's Pocket Gopher
 Northern Pocket Gopher
 Little Pocket Mouse
 Great Basin Pocket Mouse
 Dark Kangaroo Mouse
 Ord Kangaroo Rat
 Chisel-toothed Kangaroo Rat
 Deer Mouse
 Northern Grasshopper Mouse
 Desert Woodrat
 Sagebrush Vole
 House Mouse
 Kit Fox
 Coyote
 Long-tailed Weasel
 Badger
 Striped Skunk
 Mountain Lion
 Bobcat
 Mule Deer
 Pronghorn

Myotis lucifugus
Myotis evotis
Myotis volans
Myotis ciliolabrum
Lasionycteris noctivagan
Pipistrellus hesperus
Eptesicus fuscus
Plecotus townsendii
Tadarida brasiliensis
Lepus californicus
Sylvilagus nuttallii
Sylvilagus idahoensis
 Townsend's Ground Squirrel
Spermophilus beldingi
Tamias minimus
Thomomys bottae
Thomomys talpoides
Perognathus longimembris
Perognathus parvus
Microdipodops megacephalus
Dipodomys ordii
Dipodomys microps
Peromyscus maniculatus
Onychomys leucogaster
Neotoma lepida
Lemmiscus curtatus
Mus musculus
Vulpes macrotis
Canis latrans
Mustela frenata
Taxidea taxus
Mephitis mephitis
Felix concolor
Lynx rufus
Odocoileus hemionus
Antilocapra americana

Reptiles

Western Skink
 Western Whiptail
 Desert Collared Lizard
 Long-nosed Leopard Lizard
 Desert Spiny Lizard

Eumeces skiltonianus
Cnemidophorus tigris
Crotaphytus insularis
Gambelia wislizenii
Sceloporus magister

CX#: DOI-BLM-NV-W010-2012-0058 -CX

Applicant: Humboldt County Road Dept.

Project Title: Jakes Creek Well

Sagebrush Lizard	<i>Sceloporus graciosus</i>
Western Fence Lizard	<i>Sceloporus occidentalis</i>
Side-blotched Lizard	<i>Uta stansburiana</i>
Desert Horned Lizard	<i>Phrynosoma platyrhinos</i>
Short-horned Lizard	<i>Phrynosoma douglassii</i>
Long-nosed Snake	<i>Rhinocheilus lecontei</i>
Ground Snake	<i>Sonora semiannulata</i>
Night Snake	<i>Hypsiglena torquata</i>
Gopher Snake	<i>Pituophis melanoleucus</i>
Racer	<i>Coluber constrictor</i>
Striped Whipsnake	<i>Masticophis taeniatus</i>
Western Rattlesnake	<i>Crotalus virid</i>

Attachment 2 – Migratory Birds

On January 11, 2001, President Clinton signed the Migratory Bird Executive Order 13186. This Executive Order outlines the responsibilities of federal agencies to protect migratory birds. The United States has recognized their ecological and economic value to this country and other countries by ratifying international, bilateral conventions for the conservation of migratory birds. These migratory bird conventions impose substantive obligations on the United States for conservation of migratory birds and their habitats. The United States has implemented these migratory bird conventions through the Migratory Bird Treaty Act. President Clinton’s Migratory Bird Executive Order directs executive departments and agencies to take certain actions to further implement the Migratory Bird Treaty Act. As defined in the executive order, “action” means a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a federal agency. The executive order further states that each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service that shall promote conservation of migratory bird populations. The term “action” will be further defined in this MOU as it pertains to each federal agency’s own authorities and programs.

A list of the migratory birds affected by the President’s executive order is contained in 43 CFR 10.13. References to “species of concern” pertain to those species listed in the periodic report “Migratory Nongame Birds of Management Concern in the United States;” priority migratory bird species as documented by established plans, such as Bird Conservation Regions in the North American Bird Conservation Initiative or Partners in Flight physiographic areas; and those species listed in 50 CFR 17.11. The 1999 Nevada Partners in Flight Bird Conservation Plan identifies the following bird species for prioritization for management action associated the wild horse herd areas, as listed by habitat type in the following table.

Attachment 2 (Cont.)– Migratory Birds

Migratory Birds by Habitat Type

Sagebrush
<u>Obligates:</u> Sage Grouse
<u>Other:</u> Black Rosy Finch Ferruginous Hawk Gray Flycatcher Loggerhead Shrike Vesper Sparrow Prairie Falcon Sage Sparrow Sage Thrasher Swainson’s Hawk Burrowing Owl Calliope Hummingbird
<u>Other associated species:</u> Brewer’s Sparrow Western Meadowlark Black-throated Sparrow Lark Sparrow Green-tailed Towhee Brewer’s Blackbird Horned Lark Lark Sparrow

CX#: DOI-BLM-NV-W010-2012-0058 -CX

Applicant: Humboldt County Road Dept.

Project Title: Jakes Creek Well

* "Obligates" are species that are found only in the habitat type described in the section. [Habitat needed during life cycle even though a significant portion of their life cycle is supported by other habitat types]

** "Other" are species that can be found in the habitat type described in the 1999 Nevada Partners in Flight Bird Conservation Plan.

*** Other Associated Species: Vegetation provides cover and foraging areas on a seasonal basis or yearlong basis.

CX#: DOI-BLM-NV-W010-2012-0058 -CX

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Mitigation Measures/Remarks:

- Per Project Description Language, that, "...*holding pond to be lined with an HDPE liner...*" Wildlife would be attracted to the standing water source. Unless the pond is totally enclosed in mesh-like material, terrestrial species could go through, under or over fencing materials and drowned if accidentally submerged in ponded water and are unable to get out. Unless the pond is totally enclosed, recommend that, 1) coarse-textured liner is used; 2) escape ramp(s) (e.g. inverted V-shaped piece of expanded metal with one-foot wings at approx. 30 degree angle, in place from bottom to top of pond) is secured; and 3) pond slopes are constructed in a manner to allow for wildlife ingress and egress from "12-foot by 12-foot" holding pond.

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: 3/18/2013
(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)).