

**Categorical Exclusion Documentation Format for Actions Other Than
Hazardous Fuels and Fire Rehabilitation Actions**

**City of Mesa Right-Of-Way (ROW)
NEPA Document Number: DOI-BLM-AZ-P020-2013-0018- CX**

A. Background

BLM Office: Hassayampa Field Office (HFO)
Lease/Serial/Case File No.: AZA-16884
Proposed Action Title/Type: Water Facility Right-of-Way Renewal
Project Code: LLAZP010000 1430 ER

Location of Proposed Action:

T. 1 N., R. 4 E., Gila & Salt River Meridian, Maricopa County, Arizona
Section 14: N½NE¼NE¼,
containing .183 acres, more or less.

Description of Proposed Action: The proposed action is to renew the City of Mesa's existing water facility ROW (AZA-16884). Located within 140 acres of withdrawn land for the Salt River Project, managed by the Bureau of Reclamation, this isolated parcel of BLM land is in the middle of private and State owned land. The ROW was first issued, on April 28, 1982, and allows the City of Mesa the right to operate, maintain, renew and terminate an underground sewer pipe that is 20' wide by 398' long.

This ROW was granted according to the provisions of the Federal Land Policy Management Act (PL 94-579) and the regulations contained in 43 CFR 2800.

Access to the site exists via McClintock Road to where it becomes Hayden Road and adjacent to the Salt River. The applicant continues to be in compliance with this ROW. If authorized, the ROW would be issued for an additional 30 years with the right to renew.

B. Land Use Plan Conformance

Land Use Plan (LUP) Name: Bradshaw Harquahala Resource Management Plan
Date Approved/Amended: 4/22/2010

The proposed action is in conformance with the applicable 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):

This action has been reviewed for conformance, with the Bradshaw-Harquahala Resource Management Plan (RMP) with respect to the Code of Federal Regulations (CFR) (43 CFR 1610.5) and BLM Manual 1601.04 C.2. It has been determined that the proposed action does comply with the objectives, terms, and conditions of the RMP. Specifically, this type of action is provided for in Lands and Realty Management, Land Use Authorizations LR-24 which states,

“Continue to issue land use authorizations (right-of-way, leases, permits, easements) on a case-by-case basis and in accordance with resource management prescriptions in this land use plan.”

C: Compliance with NEPA

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA), in accordance with the list of DOI-wide categorical exclusions located in 516 DM 11.5 or 516 DM Chapter 2, Appendix 1.

The Departmental Manual [516 DM 2.3 (A)(3) and 516 DM, Appendix 2] requires that before any action described in the list of categorical exclusions is used, the exceptions (located in Attachment 1) must be reviewed for applicability and, in each case, must result in no extraordinary circumstances.

In this case, the use of a categorical exclusion is appropriate because there are no extraordinary circumstances which may have significant effects on the environment. Considerations of all aspects of this document were taken and no potential for significant impacts were found. In other words, the proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM Chapter 2 or 516 DM 11.5 apply.

The area was originally analyzed in Environmental Assessment (EA) number AZ-025-82-021, dated August 6, 1982. Consideration of all aspects of this document was taken and no potential for significant impacts were found.

Justification for the use of a CX, for the renewal portion of this action, resides in 516 DM Chapter 6 Appendix 5 Section 5.4 (E)(9) as well as BLM NEPA Handbook (H-1790-1) Appendix 4, (E)(9) which states,

“Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.”

In addition, the basis for a CX is also located in BLM NEPA Handbook H-1790-1; Appendix 4 BLM Categorical Exclusions (E)(16) which states,

“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.”

BLM Categorical Exclusions: Extraordinary Circumstances¹
Attachment 1

CRITERIA	<u>Comment (Y/N)</u>	<u>Staff Initial</u>
1. Have significant impacts on public health and safety?	<u>NO</u>	<u> IDT</u>
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness or wilderness study areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas?	<u>NO</u>	<u> RT, CB, IDT</u>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]?	<u>NO</u>	<u> IDT</u>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?	<u>NO</u>	<u> RT, AF, IDT</u>
5. Establish a precedent for future action, or represent a decision in principle about future actions, with potentially significant environmental effects?	<u>NO</u>	<u> CB, RT, AF, IDT</u>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant, environmental effects?	<u>NO</u>	<u> IDT</u>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the Bureau or office?	<u>NO</u>	<u> CB</u>
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species?	<u>NO</u>	<u> RT</u>
9. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007)?	<u>NO</u>	<u> CB, IDT</u>
10. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment?	<u>NO</u>	<u> CB, IDT</u>

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| 11. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)? | <u>NO</u> | <u>IDT</u> |
| 12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)? | <u>NO</u> | <u>AF, JH, IDT,</u> |

¹ If an action has any of these impacts, you must conduct NEPA analysis.

Persons/Agencies Consulted:

- ❖ BLM, Field Office resource specialists or Interdisciplinary Team (IDT) members assigned to project - Wildlife Biologist Ronald Tipton (RT), Archeologist Cheryl Blanchard (CB), Natural Resource Specialist Andrea Felton (AF), Rangeland Specialist James Holden (JH).
- ❖ Other IDT Members (perhaps working outside the proposed action area or just not assigned) also in attendance of the NEPA meeting dated July 16, 2013 - Planning and Environmental Coordinator Leah Baker, Archeologist Bryan Lausten, Geologist David Eddy, Lead Realty Specialist Jim Andersen, Realty Specialist Hillary Conner, Realty Specialist JoAnn Goodlow, Wildlife Biologist Paul Sitzmann, Lead Outdoor Recreation Planner Mary Skordinsky, Transportation Coordinator Tom Bickauskas, GIS Specialist Sharisse Fisher.

Specialist Comments for AZA-16884 Water Facility
Attachment 2

James Holden, Range Specialist:

- Not Present (NP) to livestock grazing.

(No comments provided) 5/10/2013

Andrea Felton, Natural Resource Specialist:

- Not Present (NP) for prime/unique farmlands, invasive species/noxious weeds, livestock grazing, wild horses and burros (see below).

- No Impact (NI) to rangeland health (no HAs or HMAs) and soils (see below).

“There are no grazing allotments in this area. Rangeland health & soils should not be impacted because this ROW has existed for 30 years. No new disturbance is expected.” 6/13/2013

Ron Tipton, Wildlife Biologist:

- Not Present (NP) to T&E/candidate species as well as fish/wildlife/migratory birds.
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 2. U:\NEPA-ESA\NEPA\FY 2013\Mesa Sewer Line AZA 16884\Mesa SL AZA 16884-TES WLife.mxd
 3. U:\NEPA-ESA\NEPA\FY 2013\Mesa Sewer Line AZA 16884\Screen Shot TES W-Life and AZA 16884.bmp

“ESA and BLM Sensitive Species/Habitat - Listed or sensitive species/habitat in Maricopa County (<http://www.fws.gov/southwest/es/arizona/Documents/CountyLists/Maricopa.pdf>) have not been identified in the near field of the existing ROW. The nearest identified habitats are Category 3 (least desirable) Sonoran desert tortoise habitat and pygmy owl critical habitat, which are both 14 miles northeast. Yuma clapper rail individuals and yellow-billed cuckoo habitat have also been identified approximately 14 miles northeast of the action area. The nearest lesser long nosed bat forage habitat is 21 miles south (Link 2 or 3 above).

Determination and Rationale - There is no new disturbance associated with renewal of this ROW and currently documented listed or sensitive wildlife species and habitat do not appear to be present. Therefore, renewal of the ROW is expected to have “No Effect” on ESA listed or BLM sensitive species/habitat nor is it expected to lead to a trend resulting in the future listing of species/habitat.” 6/4/2013

Cheryl Blanchard, Archeologist:

- Not Present (NP) to cultural resources. (Prior survey)

“A search of cultural resource records reveal that a pedestrian cultural survey was performed in 1981 by Donald E. Simonis, Archaeologist at BLM. Photographs of the project area taken in 1981 by BLM staff were carefully examined. These photographs reveal that the subject area had been disturbed by the construction of roads, power line access routes, river bed contouring, river bank contouring, and bridge abutment construction. In a search using Google Earth (June 28, 2013) satellite imagery, I verified the location of this project and note that additional ground-disturbing activities had occurred through the years. No original surface remains in this area. In light of this information, no additional field inventory is necessary.

In 1981, no artifacts or features were observed. The photographs, cultural forms, and recent Google Earth images indicate that the original ground surface was destroyed by the river and intense development of this area. It is my finding that no impacts to any significant cultural resources are anticipated as a result of this activity.

Clearance Recommended with the Following Stipulations. Standard Stipulation.

Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the Bureau of Land Management authorized officer. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values.” 7/1/2013

BLM Mitigation Measures/Other Remarks
Attachment 3

1. All valid rights existing on the date of the grant;
2. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800 and regulations to be promulgated by the Secretary of the Interior pursuant to the Federal Land Policy and Management Act of October 21, 1976 (P.L. 94-579);
3. The right-of-way (ROW) herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States;
4. The holder shall not initiate any additional construction, maintenance, or other surface disturbing activities on the ROW, other than what is authorized, without prior written authorization from the Authorized Officer (AO);
5. All activities directly or indirectly associated with maintenance must be conducted within the limits of the ROW; removal of vegetation shall be restricted to that absolutely essential to maintenance;
6. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the Bureau of Land Management (BLM) AO. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the AO to determine appropriate actions to prevent the loss of significant cultural or scientific values;
7. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the AO at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a ROW or permit granted herein may be reviewed at any time deemed necessary by the AO;
8. The stipulations, plans, maps, or designs set forth in Exhibits A and B, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety;
9. Failure of the holder to comply with applicable law or any provision of this ROW grant or permit shall constitute grounds for suspension or termination thereof;
10. If facilities authorized for construction under this ROW grant use Polychlorinated Biphenyls (PCBs) such use shall be in a totally enclosed manner in accordance with

provisions of the Toxic Substances Control Act of 1976 as amended (see 40 CFR Part 761). Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any hazardous material shall be furnished to the authorized officer within 5 working days of the occurrence of the spill or release;

11. The holder shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under the grant. The holder shall obtain from the BLM AO approval of written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc. to be controlled; the method of application; the location for storage and disposal of containers; and other information that the BLM AO may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year (i.e., December 1 deadline for the Federal fiscal year beginning the following October 1). Emergency use of pesticides may at times be necessary; in these instances, notification shall be furnished the BLM AO either by telephone or personal visit prior to application of the pesticide. The use of substances on or near the ROW shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under the grant. Existing utilities shall be protected and supported;
12. 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;
13. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public;
14. This grant is issued subject to the Civil Rights Stipulations, Forms 1814-2 and 1814-3;

15. The ROW reserves to the Secretary of the Interior, or lawful delegates, the right to grant additional ROW, leases, or easements for compatible uses over, under, within or adjacent to the lands involved in this grant;
16. This grant is issued subject to the enclosed Bureau of Reclamation Stipulation, Form 300-8(a);
17. Upon termination of the grant, the holder shall restore the lands in the disturbed area to as near their natural condition as possible, subject to approval by the District Manager;
18. Upon grant termination by the AO, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the AO;
19. This ROW may be renewed. If renewed, the ROW will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

STIPULATION

There is reserved to the United States, its successors and assigns, the prior right to use any of the land herein described to construct, reconstruct, operate, and maintain dams, dikes, levees, reservoirs, canals, wasteways, laterals, ditches, drainage works, flood channels, telephone and telegraph lines, electric transmission lines, roadways, and appurtenant irrigation structures, without any payment made by the United States, or its successors and assigns, for such right, with the agreement on the part of the applicant that if the construction or reconstruction of any or all of such dams, dikes, levees, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, or appurtenant irrigation structures across, over, or upon said lands should be made more expensive by reason of the existence of improvements or working of the applicant thereon, such additional expense is to be estimated by the Secretary of the Interior, whose estimate is to be final and binding upon the parties hereto, and that within thirty days after demand is made upon the applicant for payment of such sums, the applicant will make payment thereof to the United States, or its successors and assigns, constructing or reconstructing such dams, dikes, levees, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph structures across, over or upon said lands. There is also reserved to the United States the right of its officers, agents, employees, licensees, and permittees, at all proper times and places freely to have ingress to, passage over, and egress from all of said lands for the purpose of exercising, enforcing, and protecting the rights reserved herein.

Applicant further agrees that the United States, its officers, agents, employees, and assigns, shall not be liable for any damage to the improvements or works of the applicant resulting from the construction, reconstruction, operation, or maintenance of any of the works hereinabove enumerated.