

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

Categorical Exclusion

CX#: DOI-BLM-NV-W010-2013-0016-CX

Date 12/6/2012

Lease / Case File / Serial #: N-91232

Regulatory Authority (CFR or Law): 3604

BLM Manual:

Subject Function Code: 3600

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: Daniel Atkinson

3. Project Title: Four Corners Free Use Permit Application

4. Applicant: Pershing County Road Department

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

The Pershing County Road Department (PCRD) has requested a Free Use Permit (FUP) for the removal of mineral materials from the Four Corners pit located in T33N, R32E, section 22, Pershing County, Nevada. This FUP would be in a location that has not been previously authorized by the BLM, however, there is an existing gravel pit that has been initiated in trespass. The pit access would be through the National Conservation Area (NCA) boundary, but the removal of mineral materials would be conducted outside of the NCA boundary. The material removed from this pit would be used for the maintenance of local county roads. Material would be mined using a front-end loader or backhoe and hauled using semi trucks with belly-dump trailers. PCRD would likely process material using a screening plant to better sort the gravel prior to placement on the roads. The permit term would be for up to 10 years from the date of issuance, or the removal of 50,000 cubic yards, whichever comes first.

Project dimensions (length, width, height, depth): Approximately 530 ft. long by 430 ft. wide.

Total Acres: Approximately 5 acres.

BLM Acres: Approximately 5 acres.

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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? Approximately 12%. 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 a small amount of existing disturbance consistent with the development of a gravel pit. See attached aerial photograph.

6. Legal Description: T33N, R32E, section 22, SWSE

USGS 24k Quad name: Rye Patch Reservoir North

100k map name: Eugene Mountains

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 applicable Land Use Plan (LUP) because it is specifically provided for in the following LUP decision(s):

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:

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) 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.

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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 cunicularia hypugaea</i>)	<input type="checkbox"/> Yes <input type="checkbox"/> No	Permittees must strive to conduct their mining activities outside of the burrowing owl nesting season which runs from March 1 st through August 31 st . Should a need for mineral materials arise during the nesting season, any authorized permit / contract holder may request approval from the BLM to initiate a pre-disturbance burrowing owl nesting survey. A pre-disturbance burrowing owl nesting survey shall be conducted by a qualified biologist within potential breeding habitat prior to any surface disturbance proposed during the avian breeding season (March 1st through August 31st). 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 burrows are located, the BLM biologist must be notified immediately and appropriate protection measures which may include avoidance or restriction of activities will be established.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Loggerhead shrike (<i>Lanius ludovicianus</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Permittees must strive to conduct their mining activities outside of the migratory bird nesting season which runs from March 1 st through August 31 st . In the event the permittee finds it can't avoid activity during this time, the permittee must at least plan ahead and clear the native vegetation in those areas outside of the nesting season to deter birds from nesting there. Vegetation must be cleared only in the footprint

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ESA	BLM	Common (<i>Scientific</i>) Name	May Be Affected?	Mitigation for BLM Sensitive Species (<i>Attach ESA Section 7 Compliance to Form</i>)
				<p>of the projected disturbance for that year. For example, a pit would be cleared of only several acres of previously disturbed habitat at any one time (the projected years need) instead of clearing the entire permitted area at once. Once cleared of vegetation, any material taken from the area must be within the area devoid of vegetation. The Permittee must take measures to deter weeds and native vegetation from returning to the disturbed area such as applying a BLM approved herbicide or blading the area again as needed.</p> <p>Should a need for mineral materials arise during the nesting season in an area that has not been cleared of vegetation, any authorized permit / contract holder may request approval from the BLM to initiate a pre-disturbance migratory bird nesting survey. A pre-disturbance migratory bird nesting survey shall be conducted by a qualified biologist within potential breeding habitat prior to any surface disturbance proposed during the avian breeding season (March 1st through August 31st). 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, vegetation should be cleared within 10 days of survey completion.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brewer's sparrow (<i>Spizella breweri</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See loggerhead shrike stipulation.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sage thrasher (<i>Oreoscoptes montanus</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See loggerhead shrike stipulation.

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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"/>	Oryctes (<i>Oryctes nevadensis</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Prior to any surface disturbing activities, a special status plant survey is required for the entire disturbance area. Timing of the survey will be dependent on the habitat type and the detectability of the target species. If a special status plant is located, a protective buffer will be delineated in consultation with the authorized officer. Typical survey months for oryctes are May-June.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sand Cholla (<i>Grusonia pulchella</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Prior to any surface disturbing activities, a special status plant survey is required for the entire disturbance area. Timing of the survey will be dependent on the habitat type and the detectability of the target species. If a special status plant is located, a protective buffer will be delineated in consultation with the authorized officer. Typical survey months for sand cholla are May-June.

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
Mourning dove (<i>Zenaida macroura</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See loggerhead shrike stipulation.
Horned lark (<i>Eremophila alpestris</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See loggerhead shrike stipulation.
Lark sparrow (<i>Chondestes grammacus</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See loggerhead shrike stipulation.
Black-throated sparrow (<i>Amphispiza bilineata</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See loggerhead shrike stipulation.

Mitigation Measures/Remarks:

- Permittees must strive to conduct their mining activities outside of the burrowing owl nesting season which runs from March 1st through August 31st. Should a need for

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mineral materials arise during the nesting season, any authorized permit / contract holder may request approval from the BLM to initiate a pre-disturbance burrowing owl nesting survey. A pre-disturbance burrowing owl nesting survey shall be conducted by a qualified biologist within potential breeding habitat prior to any surface disturbance proposed during the avian breeding season (March 1st through August 31st). 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 burrows are located, the BLM biologist must be notified immediately and appropriate protection measures which may include avoidance or restriction of activities will be established.

- Permittees must strive to conduct their mining activities outside of the migratory bird nesting season which runs from March 1st through August 31st. In the event the permittee finds it can't avoid activity during this time, the permittee must at least plan ahead and clear the native vegetation in those areas outside of the nesting season to deter birds from nesting there. Vegetation must be cleared only in the footprint of the projected disturbance for that year. For example, a pit would be cleared of only several acres of previously disturbed habitat at any one time (the projected years need) instead of clearing the entire permitted area at once. Once cleared of vegetation, any material taken from the area must be within the area devoid of vegetation. The Permittee must take measures to deter weeds and native vegetation from returning to the disturbed area such as applying a BLM approved herbicide or blading the area again as needed.

Should a need for mineral materials arise during the nesting season in an area that has not been cleared of vegetation, any authorized permit / contract holder may request approval from the BLM to initiate a pre-disturbance migratory bird nesting survey. A pre-disturbance migratory bird nesting survey shall be conducted by a qualified biologist within potential breeding habitat prior to any surface disturbance proposed during the avian breeding season (March 1st through August 31st). 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, vegetation should be cleared within 10 days of survey completion.

- Prior to any surface disturbing activities, a special status plant survey is required for the entire disturbance area. Timing of the survey will be dependent on the habitat type and the detectability of the target species. If a special status plant is located, a protective buffer will be delineated in consultation with the authorized officer. Typical survey months for oryctes and sand cholla are May-June.

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\ Ken Loda acting FM – HRFO Date: 12 June '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 Edward Seum, 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.

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Pursuant to 43 CFR 4.47I(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)).