

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

**Lawrence & Maureen Serrano Right-Of-Way (ROW)
NEPA Document Number: DOI-BLM-AZ-P010-2013-0041- CX**

A. Background

BLM Office: Hassayampa Field Office (HFO)

Lease/Serial/Case File No.: AZA-16575

Proposed Action Title/Type: Water Facility (Rip Rap Structure) ROW Renewal

Project Code: LLAZP010000 1430 ER

Location of Proposed Action:

T. 6 N., R. 4 W., Gila & Salt River Meridian, Maricopa County, Arizona
Section 11: SW $\frac{1}{4}$ SW $\frac{1}{4}$,
containing .010 acres, more or less.

Description of Proposed Action: The proposed action is to renew an existing water facility ROW (AZA-16575). The rip-rap structure is used as a wash diversion which is located on public land adjacent to the applicant's private residential parcel. The function of the rip rap structure is to prevent flooding of the applicant's property. The total area involved is approximately .010 acres.

The ROW was first issued, on May 14, 1981, and allows the applicants the right to operate, maintain, and terminate a rip rap structure that is 100 feet long by 6 feet wide and 4 feet high.

This ROW was granted according to the provisions of the Federal Land Policy Management Act dated October 21, 1976, 90 Stat. 2776 (PL 94-579), and the regulations contained in 43 CFR 2800. The area was originally analyzed in Environmental Assessment (EA) number AZ-020-1-89, dated April 29, 1981.

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 first action was originally reviewed under environmental analysis (EA) number AZ-020-1-89, approved April 29, 1981. 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>TB, MS, HC, 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>TB, HC, CC, BL,</u> <u>MS, 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>TB, CC, JH, HC</u> <u>MS, IDT</u>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?	<u>NO</u>	<u>TB, CC, BL, 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>TB, CC, BL, IDT</u>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant, environmental effects?	<u>NO</u>	<u>CC, BL, HC, 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>BL, IDT</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>CC, IDT</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>BL, 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>BL, CC, 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>JH, TB, CC, MS</u>
<u>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 Codey Carter (CC), Archeologist Bryan Lausten (BL), Recreation Specialist Mary Skordinsky (MS), Travel Management Coordinator Tom Bickauskas (TB), Range Specialist James Holden (JH), Realty Specialist Hillary Conner (HC)
- ❖ Other IDT Members who also attended the NEPA meeting, dated July 16, 2013, in addition to those previously mentioned above - Planning and Environmental Coordinator Leah Baker, Geologist David Eddy, Lead Realty Specialist Jim Andersen, Realty Specialist JoAnn Goodlow, Lead Outdoor Recreation Planner Mary Skordinsky, GIS Specialist Sharisse Fisher.

Specialist Comments for AZA-16575 Rip Rap Structure
Attachment 2

Bryan Lausten, Archeologist
Cultural Resources, Native American Religious Concerns, and Paleontology Determinations:
NP (Not Present)
“Renewal of existing structure will not affect any cultural resources, paleo resources.”
7/10/2013

Hillary Conner, Realty Specialist:
Lands/Access Determination: NI (No Impact)
“No impact to prior existing uses.” 7/11/2013

Codey Carter, Wildlife Biologist
Fish/Wildlife/Migratory Birds and T&E/Sensitive/Special Status Species Determinations: NI
(No Impact)
“Existing structure. Structure is located in Category II desert tortoise habitat. This renewal does not impact desert tortoises or their habitat because it is an existing structure.” 7/11/2013

James Holden, Rangeland Specialist:
Livestock grazing and Rangeland Health Determinations: NI (No Impact)
“Existing diversion.” 7/11/2013

Mary Skordinsky, Recreation Specialist
Recreation Determination: NI (No Impact)
“Existing structure reauthorization will not affect recreation.” 7/11/2013

Tom Bikauskas, Recreation & Travel Management Specialist
Recreation and Transportation/Travel Determinations: NP (Not Present)
“No routes are being managed in the project area.” 7/15/2013

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. Upon demand of the BLM AO, the holder of the ROW shall pay to the United States such sums as the AO shall determine to be required to reimburse the United States for all Administrative and other costs incurred directly or indirectly by the United States in monitoring the construction, operation, maintenance, and termination of this grant;
15. This ROW is issued subject to an appraisal by a qualified appraiser of the BLM. The holder agrees to pay the BLM, upon demand, those fees determined in the appraisal to represent the fair market rental for the use of the public lands involved in this grant;
16. This grant is issued subject to the enclosed Civil Rights Stipulations, Forms 1814-2 and 1814-3;
17. 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;
18. 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;
19. 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;
20. 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.