

# Categorical Exclusion: Fiber Optic Line Renewal

## A. Background

NEPA NUMBER: DOI-BLM-NV-S020-2014-0001-CX

NV Energy is a private corporation with a Certificate of Public Convenience and Necessity issued by the Public Utilities Commission of Nevada to provide electric service in the certificated area of Clark County and a portion of Nye County. The company currently occupies and manages 1,100+ BLM rights-of-way in the States of Nevada, Utah, and Arizona.

### **BLM Office:**

Bureau of Land Management  
Las Vegas Field Office  
4701 N. Torrey Pines Drive  
Las Vegas, Nevada 89130

LLNVS02000

### **Lease/Serial/Case File No.:**

N- 76931

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

Nevada Power Company d/b/a NV Energy has requested a renewal of right-of-way (ROW) N-76931, issued October 31, 2003, for two 48 strand fiber optic lines (OPGW-optical grounding wire) on an existing transmission line (permitted by N-59499). The existing right-of-way is 10–feet in width and 23,207–feet long (5.34 acres) The line is used year-round and all fibers are owned by, and utilized solely for NV Energy. This is a renewal and an administrative action only, no construction will take place.**Location of Proposed Action:**

Located east of Henderson, with portions going through Sloan Canyon NCA.

### **LEGAL DESCRIPTION:**

Mount Diablo Meridian, Nevada T. 23 S. R. 62 E. sec. 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 5, lots 3,5,6, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,SW $\frac{1}{4}$ NE $\frac{1}{4}$ ,NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ,NE $\frac{1}{4}$ SE $\frac{1}{4}$ ,NE $\frac{1}{4}$ NE $\frac{1}{4}$ ,SE $\frac{1}{4}$ SE $\frac{1}{4}$  sec. 8, E $\frac{1}{2}$ E $\frac{1}{2}$ sec. 9, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ ,SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ,NW $\frac{1}{4}$ NW $\frac{1}{4}$ ,SW $\frac{1}{4}$ sec. 17, NE $\frac{1}{4}$ NE $\frac{1}{4}$ ,NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ,E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ,W $\frac{1}{2}$ SE $\frac{1}{4}$  sec. 20, lots 7,3,4,1, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$

Mount Diablo Meridian, Nevada T.23 S., R. 61 E., sec. 25, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ .

**Description of Proposed Action:**

Description: October 31, 2003, a right-of-way was granted for two 48- strand fiber optic lines (OPGW-optical grounding wire) on an existing transmission line (permitted by N-59499).

The width of the existing right-of-way is 10 feet, length is approximately 23,207 feet (approx. 5.34 acres). There will be no new construction as this a renewal.

**B. Land Use Plan Conformance**

**Land Use Plan Name:**

NV - Sloan Canyon NCA GMP

**Date Approved/Amended:**

RMP dated May 2006

**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) :**

ROW 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, communization's, flood control, major utility transmission lines, and related facilities.

Management Direction. Objective: RW-1-h. "All public land within the planning area, except as stated in RW-1-c through RW-1-g, are available at the discretion of the agency for rights-of-way under the authority of the Federal Land Policy and Management Act."

**C. Compliance with NEPA:**

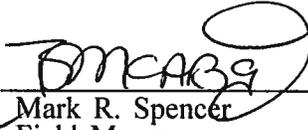
The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 2, Appendix 1, or 516 DM 11.9, E (12) "Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way."

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 A 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 no further environmental analysis is required.

**D. Approval and Contact Information**

  
Mark R. Spencer  
Field Manager  
Red Rock /Sloan Field Office

9/14/14  
Date

**Contact Person**

Vivian Browning, Realty Specialist  
Las Vegas Field Office  
4701 N. Torrey Pines Drive  
Las Vegas, Nevada 89130  
(702) 515-5013

Exhibit A  
Legal Descriptions for N-76931

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Mount Diablo Meridian, Nevada

T. 23 S., R. 62 E.,

sec. 4, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>;

sec. 5, Lots 3,5,6, N<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>,NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>,NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>;

sec. 8, E<sup>1</sup>/<sub>2</sub>E<sup>1</sup>/<sub>2</sub>;

sec. 9, NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>,SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>,NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>;

sec. 17, NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>,NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>,W<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>;

sec. 20, Lots 1,3,4,7, NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>.

T. 23 S., R. 61 E.,

sec. 25, NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>.

Exhibit B  
Stipulations N-76931

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**1.0 Special Stipulations**

- 1.1 The Holder will submit a ROW application to amend N-76931 for the authorization of maintenance routes within Sloan Canyon National Conservation Area (NCA) that provide access to N-76931 which is on an existing transmission line, permitted under N-59499. The application will be submitted within 30 days from the date of this renewal.

**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 conduct all activities associated with construction, operation, maintenance and termination of this ROW within its authorized limits.
- 2.5. 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.
- 2.6. 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.

- 2.7. 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. All mineral materials need to be used on site within the ROW or stockpiled on site for disposal by the BLM. If mineral materials are stockpiled on site for future disposal by the BLM, a mineral material contract, free use permit or material site ROW must be issued by the BLM.

If federally owned mineral materials need to be imported for the development of the proposed action, a specific BLM use authorization in accordance with the regulations at 43 CFR 3600, must be obtained from the BLM prior to the importing and use of those mineral materials.

## 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. Cactus and yucca are considered government property and regulated under the BLM Nevada forestry program. Because the proposed action is an administrative action for renewal of an existing ROW, no new impacts to cactus and yucca and other forestry products are expected.
- 7.2. The Holder shall be responsible for weed control on disturbed areas within the limits of the ROW. There is no new disturbance associated with this project. However, increased activity and vehicular traffic can introduce and/or spread noxious and/or invasive weeds. This risk can be mitigated by ensuring all crew associated with the project follow standard weed BMP's.
- 7.3. Compliance with fire restrictions is mandatory for all project activities.
- 7.4. 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.
- 7.5. 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.

- 7.6. 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. Although there is no new surface disturbance of wildlife habitat associated with this project, these species may be found on the adjacent undisturbed lands and could wander into the proposed project area. The primary direct impact of the proposed action on wildlife would be mortality resulting from operation and 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. Impacts to BLM Sensitive Species are not anticipated to lead to further decline of the species range wide as there is no new surface disturbance.

## 9.0 Livestock Grazing

- 9.1. A portion of the proposed project area is within the Hidden Valley Allotment which encompasses approximately 63,000 acres of BLM public land in Clark County. If livestock are encountered during operation and maintenance activities they may temporarily disturbed. Personnel will not harass (feed, pet, chase, etc.) any livestock encountered.

## 10.0 Migratory Birds

- 10.1. Migratory birds, Migratory birds, including BLM sensitive species, western burrowing owl (*Athene cunicularia*), may be present on the project site. Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703) protects migratory birds and their nests (nests with eggs or young). The proponent must comply with the MBTA and avoid potential impacts to protected birds within the project area. A list of MBTA protected birds are found in 50 C.F.R. 10.13 (<http://www.gpo.gov/fdsys/pkg/CFR-2012-title50-vol1/xml/CFR-2012-title50-vol1-sec10-13.xml>). The proposed will not result in any new surface or vegetative disturbances; therefore, the proposed action will have no impact on migratory birds.

## 11.0 Visual Resources

- 11.1. The only visual component being analyzed are the strung fiber optic lines, not the maintenance routes. The renewal ROW is within VRM II which must retain the existing character of the landscape. The level of change to the landscape should be low and may not attract the attention of casual viewers. This ROW does not conform to VRM Class II, and never will, and can not be mitigated. Currently, there is no authorized access to segments of N-76931 within the NCA.

The Holder will submit a ROW application to amend N-76931 for the authorization of maintenance routes within Sloan Canyon National Conservation Area (NCA) that provide access to N-76931 which is on an existing transmission line, permitted under N-59499. The application will be submitted within 30 days from the date of this renewal.

## 12.0 Threatened and Endangered Wildlife and Plant Species Stipulations

- 12.1. This project will be in compliance with section 7 of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.;;) for consultation with the USFWS on effects to federally listed and candidate species. The above action has a may affect, likely to adversely affect determination for the threatened desert tortoise (*Gopherus agassizii*) and a no effect determination for its designated critical habitat, as the project is outside of this range. This project will have no effect on any other federally listed species or designated critical habitat due to absence of the species and/or habitat. Go to [http://www.fws.gov/nevada/protected\\_species/nevada\\_species\\_list.html](http://www.fws.gov/nevada/protected_species/nevada_species_list.html) for a complete list of FWS species. The proposed action is a renewal of an existing ROW that was previously analyzed. The original action was consulted on (1-5-96-F-23R.2 and 1-5-97-F-251) before Sloan NCA was designated and thus the original BOs no longer apply. Section 7 Consultation for this project is now covered under an action specific append to the Sloan Programmatic Biological Opinion (1-5-06-F-416, append 84320-2014-F-0242) contingent on compliance with the terms and conditions. As this project is an administrative action for the renewal of an existing ROW, no new disturbance will occur. Therefore, no impacts to desert tortoise habitat is expected and no remuneration fees are required.

Survey data indicates that the area surrounding the project site is low to moderate density tortoise habitat, with a known live tortoise occurrence within a mile. Since tortoises have been found in the vicinity and undisturbed habitat exists in and adjacent to the project site, there is potential for tortoises to wander into the project area. If not noticed and avoided during maintenance activities, desert tortoises could be either injured or killed (by crushing) or harassed (by being moved out of harm's way). In addition to renewing the existing line, the existing overhead line may include maintenance.

Any maintenance activity will require a biologist or other approve by the BLM to present an education program (see Term and Condition 1.e.) and an authorized biologist to be on call during the desert tortoise active season (March 1 to October 31) to relocate any desert tortoises that enter the work during maintenance activities that are in harm's way area per Terms and Conditions provided. Terms and conditions and minimization measures in the above Biological Opinion contain measures to reduce potential impacts, including take, to desert tortoise.

- 12.2. The Holder will comply with the terms and conditions of the **Biological Opinion File No. 84320-2014-F-0242 and 1-5-06-F-416 for this project** on file at the Bureau of Land Management, Las Vegas Field Office and attached.

# **BIOLOGICAL OPINION**

**File No. 84320-2014-F-0242 & 1-5-06-F-416**



# United States Department of the Interior



**FISH AND WILDLIFE SERVICE**  
Nevada Fish and Wildlife Office  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130  
Ph: (702) 515-5230 ~ Fax: (702) 515-5231

July 21, 2014  
File Nos. 84320-2014-F-0242 and  
1-5-06-F-416

## Memorandum

**To:** Assistant Field Manager, Division of Resources, Las Vegas Field Office, Bureau of Land Management, Las Vegas, Nevada

**From:** Assistant Field Supervisor, Nevada Fish and Wildlife Office, Las Vegas, Nevada

**Subject:** Request to Append a Right-of-way Renewal for NV Energy Fiber-optic Line to the Programmatic Biological Opinion for the Sloan Canyon National Conservation Area, Clark County, Nevada

This responds to your memorandum received June 9, 2014, requesting the subject action be appended to the programmatic biological opinion (PBO) issued to the Bureau of Land Management for actions in the Sloan Canyon National Conservation Area (Fish and Wildlife Service File No. 1-5-06-F-416). The PBO addressed potential effects from construction, operation, and maintenance of facilities to the threatened Mojave desert tortoise (*Gopherus agassizii*), in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.) and 50 CFR § 402 of our interagency regulations governing section 7 of the Act.

Our response to your request is attached. If we can be of further assistance, please contact Michael Burroughs in the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230. Please reference File No. 84320-2014-F-0242 in future correspondence concerning this consultation.

Acting  
for  
  
Michael J. Senn

## Attachment

cc:  
Supervisory Biologist – Habitat, Nevada Department of Wildlife, Las Vegas, Nevada

**Attachment**

**APPENDED ACTION UNDER THE  
SLOAN CANYON NATIONAL CONSERVATION AREA (NCA)  
PROGRAMMATIC BIOLOGICAL OPINION (PBO)  
Proposed Action File No: 84320-2014-F-0242**

**Date of Request:** June 5, 2014 **PBO File No.:** 1-5-06-F-416  
**Date Received:** June 9, 2014 **Program:** Lands, Realty, and Mineral Development  
**Date of Response:** July 21, 2014 **Service Contact:** Michael Burroughs

**Species Affected:** Mojave desert tortoise (*Gopherus agassizii*); no critical habitat will be affected

**PROPOSED ACTION**

The Bureau of Land Management (BLM) proposes to renew an existing NV Energy right-of-way (ROW) for two fiber-optic lines on existing power transmission lines between the Anthem and Bicentennial substations. The ROW was issued under programmatic biological opinions 1-5-960F-023R.2 and 1-5-97-F-251 in 2003 before the Sloan Canyon NCA was established. BLM requests that the proposed ROW renewal be appended to the PBO for the Sloan Canyon NCA.

The proposed action involves 4 miles (6,500 meters) of BLM ROW of which 3 miles (4,900 meters) occur within the Sloan Canyon NCA. The remainder of the line occurs on non-Federal lands. Details of the project are described in the June 5, 2014, request.

**Proposed Minimization Measures**

The BLM proposes the measures below to minimize the potential effects of the proposed action:

1. **Speed limit:** Within Clark County, the speed limit is 25 miles-per-hour on unposted county roads; this speed shall be established for all activities at all times unless otherwise designated.
2. **Vehicles:** All project/event-related individuals shall check underneath stationary vehicles before moving them.
3. **Vehicle Traffic:** Shall be restricted to designated roads, except for emergency and administrative-related traffic.
4. **Timing of maintenance:** The BLM shall ensure that when possible, the project proponent schedules and conducts maintenance activities within desert tortoise habitat during the less-active season (generally November 1 to March 1) and during periods of reduced desert tortoise activity (typically when ambient temperatures are less than 60°F or greater than 95°F).

All vehicles and equipment that are not in areas enclosed by desert tortoise exclusion fencing will stop activities in desert tortoise habitat during rainfall events in the more-active season (generally March 1 to October 31), and if temperatures are above 60°F but below 95°F for more than 7 consecutive days. The Field Contact Representative (FCR) or designee will determine, in coordination with the BLM and Service, when it is appropriate for project activities to continue.

5. **Litter-control:** Shall be implemented and enforced by the project proponent or BLM. Trash containers shall remain covered, must be raven-proof, and emptied frequently enough to prevent overflow of materials. Trash, litter, project debris, etc. shall be transferred to a designated solid waste disposal facility. Vehicles hauling trash must be secured to prevent litter from blowing out along the road.
6. **Tortoise mortality/injury:** BLM wildlife staff (702/515-5000) and the Service (702/515-5230) must be notified of any desert tortoise death or injury in the NCA by close of business on the following work day. In addition, the Service's Division of Law Enforcement shall be notified in accordance with the reporting requirements of this biological opinion.
7. **Education Program:** A BLM or Service-approved biologist (as defined below) shall facilitate a tortoise education program to all supervisors, workers, permittees and other employees or participants involved in this project. The program will consist of either a presentation or fact sheet as determined by project-level consultation between BLM and the Service, and 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. "Take," which is defined to include any harm or harassment to desert tortoise, including significant habitat modification, will also be explained. Workers and project associates will be encouraged to carpool to and from the project sites. Specific and detailed instructions will be provided on the proper techniques for capturing and moving tortoises which appear onsite if appropriate. These instructions will be in accordance with Service-approved protocol. Currently, the Service-approved protocol is the Desert Tortoise Field Manual (Service 2009).
8. **Authorized desert tortoise biologist:** An authorized desert tortoise biologist is required to be on call during the desert tortoise active season (March 1 to October 31) to relocate any desert tortoises that enter the work area during maintenance activities that are in harm's way per Terms and Conditions provided below.

All authorized desert tortoise biologists are agents of BLM and the Service and shall report directed to BLM and the proponent concurrently regarding all compliance issues and take of desert tortoises; this includes all draft and final reports of non-compliance or take. The initial draft report shall be provided to BLM and Service within 24 hours of the

observation of take or non-compliance.

9. **Biologist approval:** BLM and Service wildlife staff shall approve the authorized biologists who will be assigned to implement the terms and conditions of the biological opinion, or permit issued by BLM. Any biologist not previously approved must submit a statement of qualifications in the Service-developed format and be approved by the wildlife staff, before authorized to represent BLM in meeting compliance with the terms and conditions of the biological opinion. Other personnel may assist with implementing conservation measures, but must be under direct field supervision by the authorized biologist.
10. **Biologist qualifications:** In accordance with Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise (Service 1992), an authorized desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by BLM and the Service. 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 (Service 2009). In addition, the biologist shall have the ability to recognize and accurately record survey results and must be familiar with the terms and conditions of the biological opinion that resulted from project-level consultation between BLM and the Service.
11. **Tortoises in harm's way:** If a tortoise is found within the project/activity site in harm's way, all potentially harmful activity shall cease until the tortoise moves or is moved out of harm's way by an authorized biologist.  
  
If a desert tortoise is in imminent danger, the tortoise shall be moved out of harm's way and on to adjacent BLM land, using techniques described in the tortoise education program.
12. **Moving tortoises:** Tortoises that are moved offsite and released into undisturbed habitat on public land, shall 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 the tortoise handling protocol. Tortoises encountered shall be treated in a manner consistent with the appropriate measures in this biological opinion.
13. **Permits:** All appropriate State and Federal permits, including Nevada Department of Wildlife permits for handling desert tortoises or their parts, shall be acquired by the tortoise biologists or other personnel before project initiation and prior to handling any desert tortoise or their parts, or conducting any activity requiring a permit.
14. **Project oversight:** One or more BLM representatives shall be designated who will be responsible for overseeing compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements identified in this

biological opinion. The designated representatives shall provide coordination among the permittee, project proponent, BLM, and the Service.

15. **Desert tortoise burrows:** Shall be avoided whenever possible; if not, the burrow will be cleared in accordance with the measures set forth in this biological opinion.
16. **Heat stress:** Desert tortoises encountered experiencing heat stress shall be placed in a tub, by an authorized tortoise biologist, with one inch of 76- 90°F (24-32°C) water for at least 20 minutes or until heat stress symptoms are no longer evident.
17. **Temperature restrictions:** Desert tortoises shall be treated in a manner to ensure that they do not overheat, exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Desert tortoises shall be kept shaded at all times until it is safe to release them. No desert tortoise shall be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95°F (35°C). Ambient air temperature shall be measured in the shade, protected from wind, at a height of 2 inches (5 centimeters) above the ground surface. No desert tortoise shall be captured if the ambient air temperature is anticipated to exceed 95°F before handling and relocation can be completed. If the ambient air temperature exceeds 95°F during handling or processing, desert tortoises shall be kept shaded in an environment that does not exceed 95°F, and the animals shall not be released until ambient air temperature declines to below 95°F.
18. **Previous disturbance:** Overnight parking and storage of equipment and materials, including stockpiling, shall be within previously-disturbed areas or within areas cleared by a tortoise biologist to minimize habitat destruction.
19. **Leaks/spills:** All vehicles shall be inspected prior to moving into the project area to ensure proper fluid containment. Any vehicles leaking fluid (oil, transmission fluid, etc.) will not be allowed in the project area. Any fuel or hazardous waste leaks/spills shall be contained immediately and cleaned up at the time of occurrence. Contaminated soil will be removed and disposed of at an appropriate facility.
20. **Notification:** The project applicant/BLM lead shall notify BLM wildlife staff representative responsible for NEPA review of the project, at least 10 days before initiation of the project (702/515-5000).
21. **Weed prevention:** Vehicles and equipment shall be cleaned with a high pressure washer prior to arrival in desert tortoise habitat and prior to departure from areas of known invasive weed and nonnative grass infestations to prevent or at least minimize the introduction or spread of these species.

22. **Operation and maintenance:** A written assessment report shall be submitted annually to the Service outlining the operation and maintenance activities that occurred over the past year. Report to include: It will include frequency of implementation of minimization measures, biological observations, and general success of each of the minimization measures. All deaths, injuries, and illnesses of endangered or threatened species within the project area, whether associated with project activities or not, will be summarized in the annual report. The report is due April 1 of each year.

## **STATUS OF THE SPECIES RANGE-WIDE**

The range-wide status of the desert tortoise consists of information on its listing history, species account, recovery plan, recovery units, distribution, reproduction, and numbers. Because of the length of the document, the current range-wide status of the species and its critical habitat is provided on the Service's website at:

[http://www.fws.gov/nevada/desert\\_tortoise/documents/misc/status-desert-tortoise.pdf](http://www.fws.gov/nevada/desert_tortoise/documents/misc/status-desert-tortoise.pdf).

If unavailable on this web site, contact the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230, and provide File No. 84320-2014-F-0242 and the date February 10, 2014. Additional information is provided in our 5-year review (Service 2010) and revised recovery plan for the Mojave desert tortoise (Service 2011).

## **ENVIRONMENTAL BASELINE**

In general, the action area borders residential development. Existing unpaved roads, some of which provide access to NV Energy's power transmission lines, exist throughout the area. The roads and recreation trails provide public access. Overall, the action area consists of areas that range from unsuitable for tortoises to low quality tortoise habitat.

On April 25, 2014, desert tortoise surveys of the action area were performed to determine presence or absence of desert tortoises. No desert tortoises were found, but tortoise scat and two tortoise burrows were found.

## **EFFECTS OF THE ACTION**

The effects of the proposed action are described in the *Effects of the Proposed Action on the Listed Species* section of the PBO, and are hereby incorporated by reference.

No direct effects to tortoise habitat are anticipated. Because tortoise sign was found in the action area, individuals could wander into the project area and if not observed, may be directly harmed (i.e., injured or killed) by project vehicles. Desert tortoises captured and moved from harm's way may wander into new areas and be subject to increased incidences of predation and other threats. Desert tortoises occupying the habitat surrounding the project may be indirectly disturbed by project construction noise and activity. Because of the low impact of project

activities, proposed minimization measures, and low number of tortoises in the action area, these effects would have minimal impact on desert tortoises and their habitat.

Cumulative effects to desert tortoise may occur since a portion of the action area involves non-Federal lands. These effects should be minimal since most non-Federal land has been developed. Potential effects to the desert tortoise on non-Federal land would be similar to those described for the BLM ROW portion of the project.

## **CONCLUSION**

After reviewing the current status of the desert tortoise, the environmental baseline for the action area, and the effects of the proposed action, it is the Service's biological opinion that the proposed action is within the scope of the PBO and is therefore, not likely to jeopardize the continued existence of the threatened Mojave desert tortoise.

## **INCIDENTAL TAKE STATEMENT**

### **AMOUNT OR EXTENT OF TAKE**

In the PBO, the Service determined that an unknown number of desert tortoises may be incidentally taken as a result of land use and resource management activities during the 10-year period of the biological opinion. In the PBO, the Service estimated that two desert tortoises could be killed or injured during the 10-year term of the consultation and up to three desert tortoises per year could be taken by non-lethal means (capture and relocation).

Based on the analysis of effects provided above, minimization measures, and anticipated project duration, the Service anticipates that no desert tortoise may be incidentally killed or injured as a result of the action and one desert tortoise may be captured and displaced from the project site.

### **EFFECT OF THE TAKE**

In the PBO and this appended action, the Service determined that the anticipated take is not likely to result in jeopardy to the threatened Mojave population of the desert tortoise. Incidental take anticipated for the proposed project in combination with previous appended actions are within the level of take exempted in the PBO.

### **REASONABLE AND PRUDENT MEASURES (RPM) WITH TERMS AND CONDITIONS**

The Service does not include any additional measures beyond those proposed by the BLM.

This concludes formal consultation on the action outlined in your June 5, 2014, request. Information in the request and this consultation document are hereby appended to the PBO issued to fulfill their consultation requirements pursuant to section 7(a)(2) of the Act.

## LITERATURE CITED

- Service (Fish and Wildlife Service). 2009. Desert Tortoise Field Manual. Desert Tortoise Recovery Office, Reno, Nevada. Available at:  
[http://www.fws.gov/ventura/species\\_information/protocols\\_guidelines/](http://www.fws.gov/ventura/species_information/protocols_guidelines/)
- Service (Fish and Wildlife Service). 2010. Mojave population of the desert tortoise (*Gopherus agassizii*), five-year review: summary and evaluation. Desert Tortoise Recovery Office, Reno, Nevada. September 30, 2010. Available on the internet at:  
[http://www.fws.gov/ecos/ajax/docs/five\\_year\\_review/doc3572.DT%205Year%20Review\\_FINAL.pdf](http://www.fws.gov/ecos/ajax/docs/five_year_review/doc3572.DT%205Year%20Review_FINAL.pdf)
- Service (Fish and Wildlife Service). 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. 222 pp. Available on the internet at:  
[http://www.fws.gov/nevada/desert\\_tortoise/det\\_recovery\\_plan.html](http://www.fws.gov/nevada/desert_tortoise/det_recovery_plan.html)

# Tortoise Education Program

# The Threatened Desert Tortoise

## Life History

The desert tortoise is the largest reptile and the only wild land tortoise found in the southwestern United States. The tortoise occurs in southern Nevada, western Arizona, southeastern California, and northwestern Mexico. Desert tortoises are typically found in creosote bush, cactus and shad scale scrub, and Joshua tree woodland habitats below 5000' elevation.

Tortoise populations are patchily distributed and densities range from a few per square mile to 200 per square mile. A tortoise will live in the same general area of less than one square mile during its lifespan of 50 to 100 years. This slow-moving desert reptile ranges in size from 2 to 15 inches long and is soil colored. Because of their color and shape, tortoises can be very difficult to see.

There are several clues that can be used to tell male and female tortoises apart. However, only tortoises greater than seven inches long can be sexed reliably. Males tend to be larger than females, have a longer tail, have longer upward curving gular horns, have larger chin glands, and have a concave plastron (bottom portion of shell).



Tortoises are well adapted to their desert environment and spend up to 98% of their time in burrows they dig. Burrows are crescent shaped and are most often found at the base of desert shrubs or in wash banks. A

tortoise may excavate and use many burrows during the year. Some burrows are used for only a short period of time and others may be used for several years. Some researchers believe that some winter dens on the Beaver Dam Slope in Utah may be 5000 years old. Many mammals, birds, reptiles, and invertebrates utilize tortoise burrows. Burrows and tortoises are most often found on valley floors and slopes, but they may also be found on the less precipitous slopes and ridges of desert mountain ranges.

Besides burrows, and remains; another method that biologists use to determine if tortoises exist in an area is the presence of scat (feces). Fresh scat is dark brown or black, but turns gray as it weathers. Scat length varies, from one half to four inches, depending on the size of the tortoise. Scats usually contain coarse plant fibers.

Tortoises are inactive from mid November until February. The activity period for desert tortoises is from March until late October when they usually spend part of each day above ground. Tortoises are especially active during warm days when it is overcast or raining, when they seek water that collects in natural depressions or in depressions the tortoises dig themselves. Available drinking water is essential to tortoise survival. The diet of tortoises, which are vegetarians, includes a wide variety of herbs, grasses, cacti, and flowers. Since droughts are common in the desert that tortoises inhabit, they rely on the erratic years of good rainfall and the ensuing growth of palatable plants.



Sexual maturity for tortoises occurs at 15-20 years of age. Breeding occurs in March and April and egg laying is from May to July. Nests are almost always located at the entrance of burrows. Clutches 1 to 14 eggs and a mature female may lay 0 to 3 clutches annually. The eggs are covered with soil and hatch after 80 to 130 days in August or September.

Predators are usually only a problem for young tortoises. Predation is the greatest cause of mortality for hatchlings. Eggs are eaten by Gila monsters, foxes, coyotes, snakes, and badgers. The shell of juvenile tortoises does not harden for five or more years and young tortoises may fall prey to ravens, hawks, eagles, coyotes, foxes, bobcats, badgers, skunks, and feral dogs and cats. Up to 200 young tortoise carcasses have been found under raven perches and nests. While successful predation on adults is rare; coyotes, foxes, bobcats, eagles, and feral dogs have been known to prey on adult tortoises. Habitat quality can affect predation in certain habitats.

## Research

The Bureau of Land Management will be actively involved ongoing research projects that are addressing various aspects of tortoise management and physiology. Research is being conducted on disease, livestock grazing, predator-prey relationships, genetics, tortoise translocation/relocation, and habitat restoration.

## Legal Status

The desert tortoise (*Gopherus agassizii*) in the Mojave Desert was federally listed under the Endangered Species Act of 1973 as a threatened species on April 2, 1990. The tortoise was listed because of direct losses and threats to tortoise populations and habitat. Desert tortoises are directly impacted by increased raven predation on juveniles, collection by humans, vandalism, losses on roads and to off-highway vehicle (OHV) activities, and Upper Respiratory Tract Disease (URTD). Tortoise habitat is lost directly to urbanization, agriculture, road construction, military activities, and other uses. OHV use, rights-of-way, and grazing degrade habitat. All of these activities fragment tortoise habitat, which may reduce a tortoise population below the level necessary to maintain a minimum viable population.

The U.S. Endangered Species Act makes it illegal to harass, collect, or harm tortoises and provides for penalties of up to **\$50,000 in fines and one year in prison for each count**. State laws and Fish and Game Codes also afford protection to the desert tortoise.



**Legal Status continued..**

The Endangered Species Act allows for individuals of and endangered or threatened species to be taken incidentally to an otherwise lawful activity: as long as the conditions of the Fish and Wildlife Service's (Service) Biological Opinion are followed. "Take" includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing or collecting, or attempting to engage in any such conduct. Harm includes significant habitat modification or degradation that impacts a listed species by interfering with breeding, feeding, or sheltering behavior. The threatened listing of the desert tortoise occurred because of widespread habitat destruction and degradation, illegal collection, disease, raven predation, and other factors.

Tortoises in captivity prior to the initial listing of August 4, 1989 are not protected by the Act. If you are interested in having a pet tortoise, you may obtain one from an adoption group or from someone that has acquired their pet legally and gifted them to you. Tortoises can offer a unique alternative to more traditional family pets but please do not turn them loose or allow your tortoises to breed.

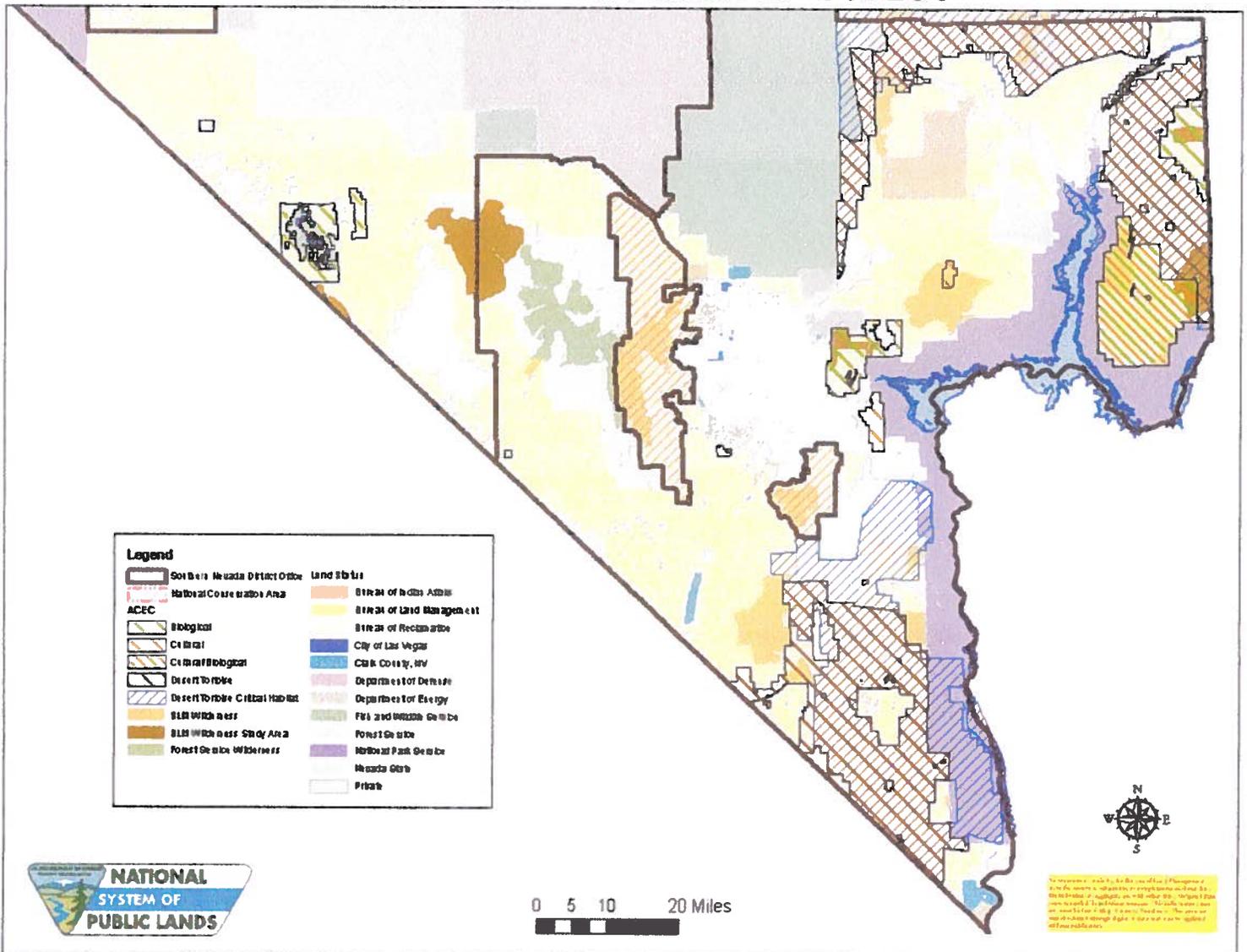


**Tortoise Handling**

Handle all tortoise carefully and only if authorized to do so! Tortoises can be injured and can die from improper handling. Do not approach tortoises unless absolutely necessary, as your presence can induce stress in the animal. When you must approach a tortoise, move slowly and approach from the rear of the animal. Pick up the tortoise gently and keep it level at all times. When handling large tortoises, grasp the animal with both hands, one at each side of the animal. When moving tortoises longer distances, a plastic tote or cardboard box should be used. Containers should be thoroughly cleaned between tortoises or only used for one tortoise. All personnel handling tortoises will wear surgical type gloves to inhibit the transmission of diseases among tortoises. Not more than one tortoise can be handled

*Remember to always check under your vehicles!!*

# Southern Nevada District

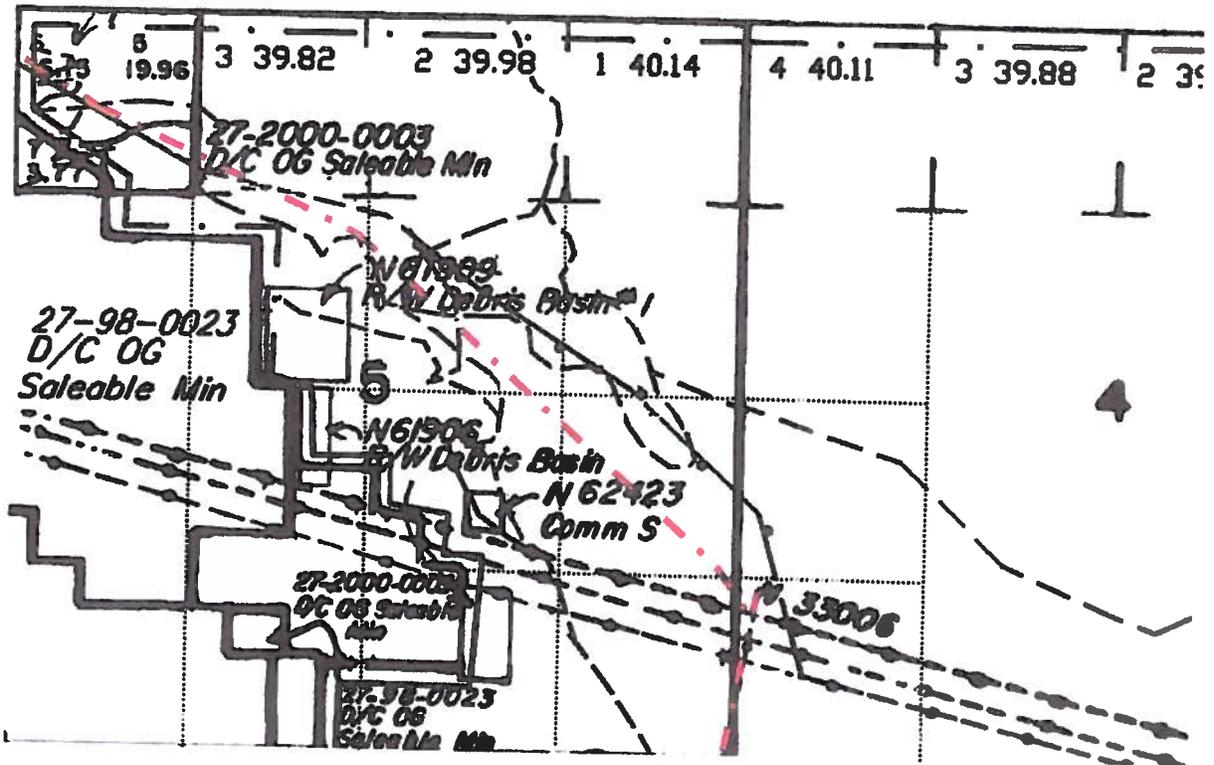


**BLM Right-of-Way Grant to renew N-76931**

**DESCRIPTION OF RIGHT OF WAY**

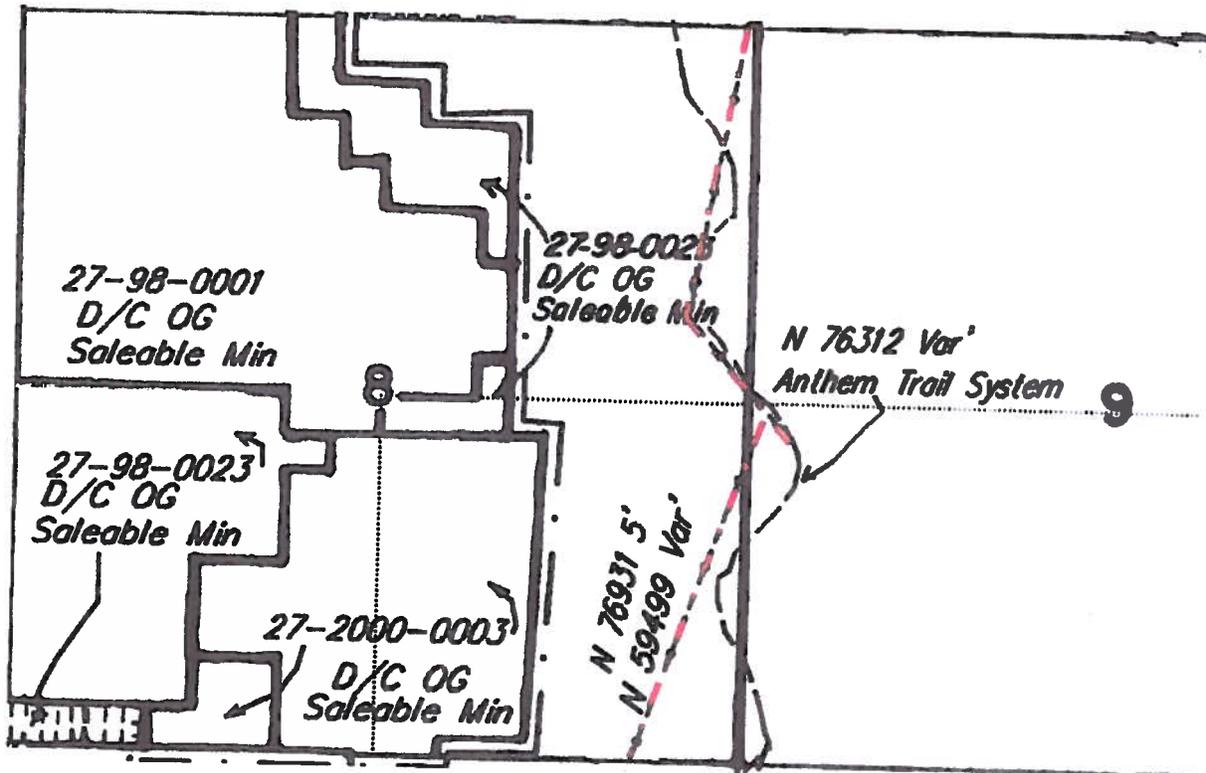
A 10-foot wide by approximately 23,207-foot long right-of-way for an existing fiber optic line within the following:

Government Lots 3, 5, and 6, The North Half of the Southeast Quarter of the Northwest Quarter ( $N \frac{1}{2} SE \frac{1}{4} NW \frac{1}{4}$ ), the Southwest Quarter of the Northeast Quarter ( $SW \frac{1}{4} NE \frac{1}{4}$ ), the Northeast Quarter of the Northwest Quarter of the Southeast Quarter ( $NE \frac{1}{4} NW \frac{1}{4} SE \frac{1}{4}$ ), the Northeast Quarter of the Southeast Quarter ( $NE \frac{1}{4} SE \frac{1}{4}$ ), and the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter ( $NE \frac{1}{4} NE \frac{1}{4} SE \frac{1}{4} SE \frac{1}{4}$ ) of Section 5, and the Southwest Quarter of the Southwest Quarter ( $SW \frac{1}{4} SW \frac{1}{4}$ ) of Section 4, Township 23 South, Range 62 East, M.D.M., Clark County, NV.



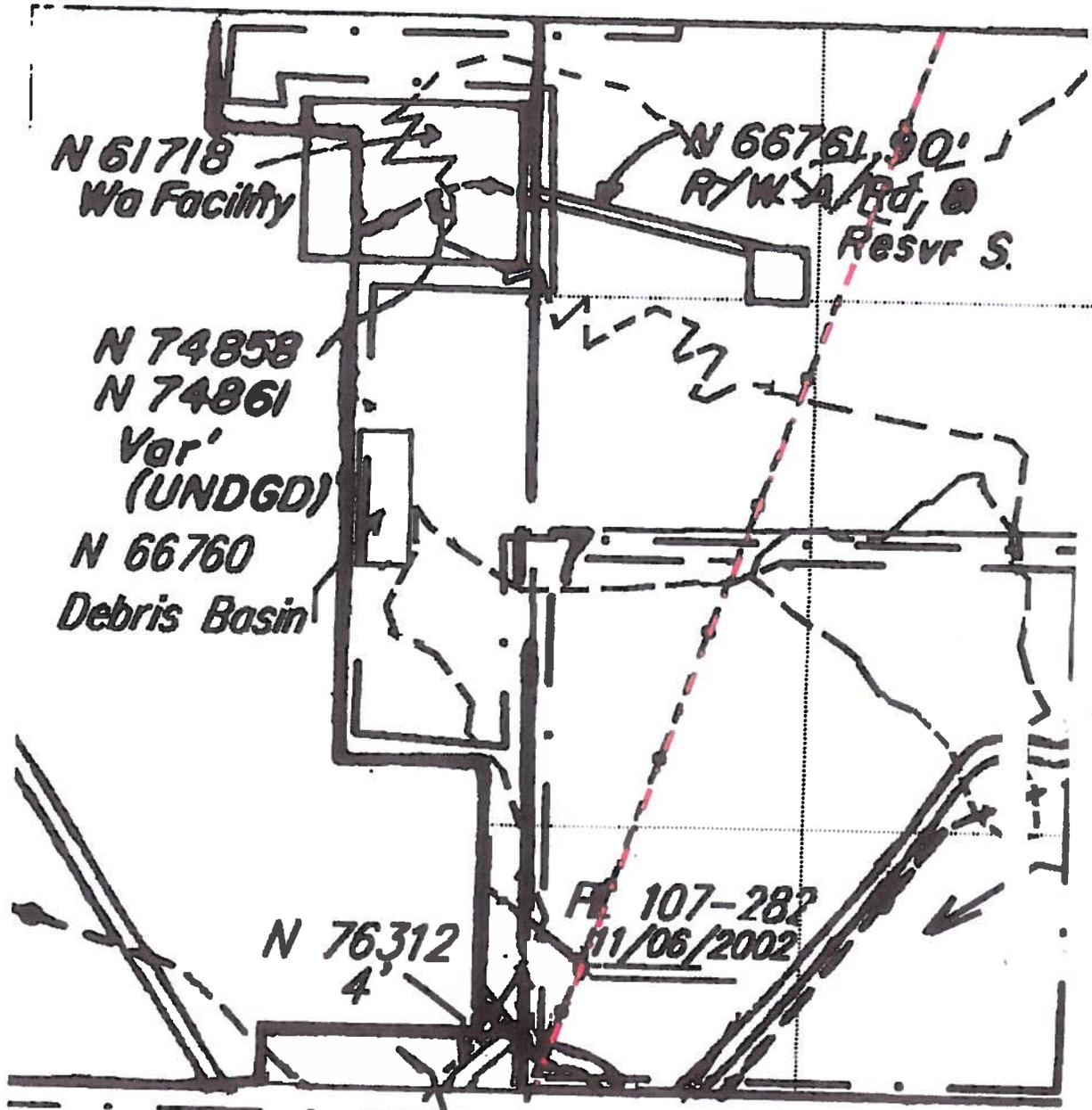
**BLM Right-of-Way Grant to renew N-76931**  
**DESCRIPTION OF RIGHT OF WAY**

The East Half of the East Half (E ½ E ½) of Sections 8, and the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW ¼ NW ¼ NW ¼), the Southwest Quarter of the Southwest Quarter of the Northwest Quarter (SW ¼ SW ¼ NW ¼), and the Northwest Quarter of the Northwest Quarter of the Southwest Quarter (NW ¼ NW ¼ SW ¼) of Section 9, Township 23 South, Range 62 East, M.D.M., Clark County, NV.



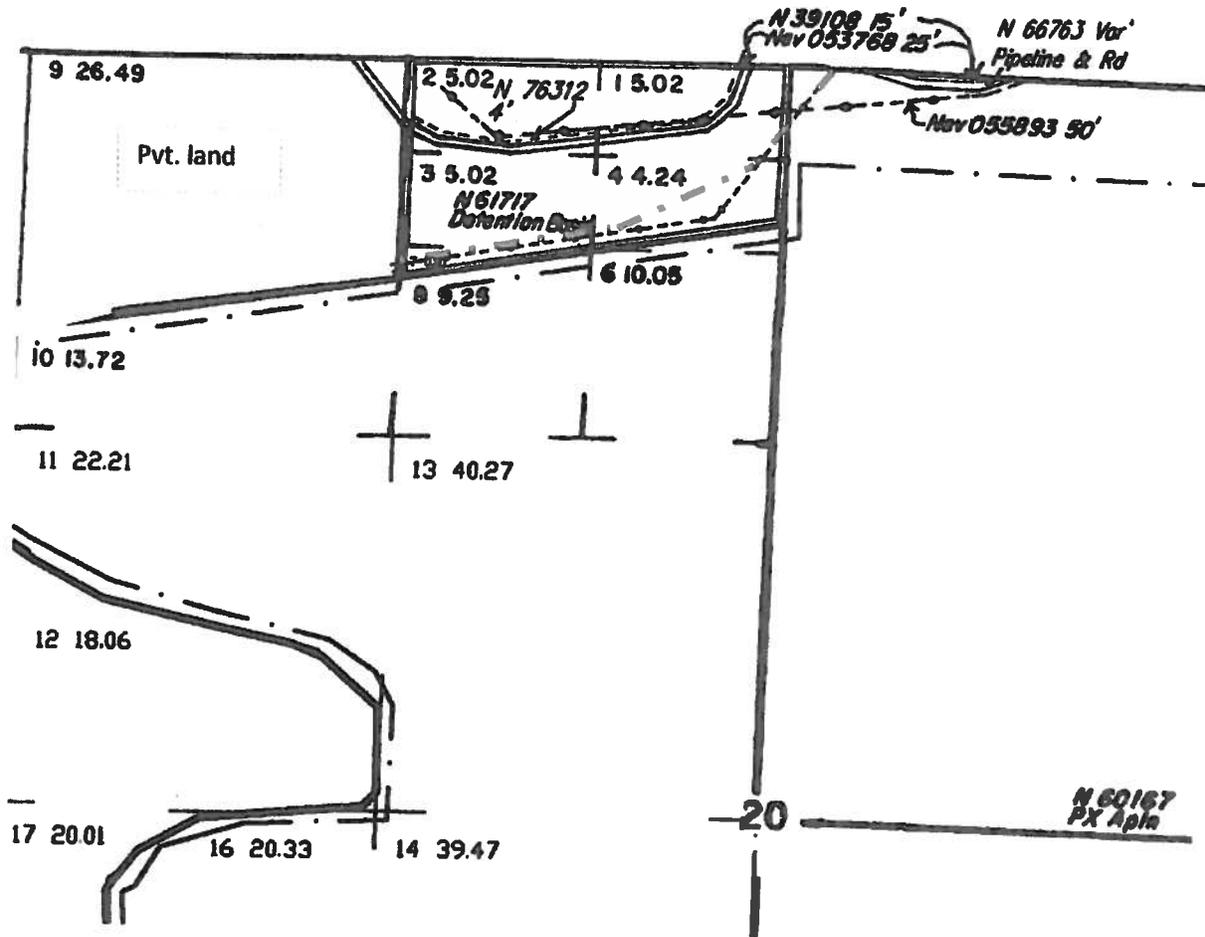
**BLM Right-of-Way Grant to renew N-76931**  
**DESCRIPTION OF RIGHT OF WAY**

The Northeast Quarter of the Northeast Quarter (NE ¼ NE ¼), the Northwest Quarter of the Southeast Quarter of the Northeast Quarter (NW ¼ SE ¼ NE ¼), the East Half of the Southwest Quarter of the Northeast Quarter (E ½ SW ¼ NE ¼), and the West Half of the Southeast Quarter (W ½ SE ¼) of Section 17, Township 23 South, Range 62 East, M.D.M., Clark County, NV.

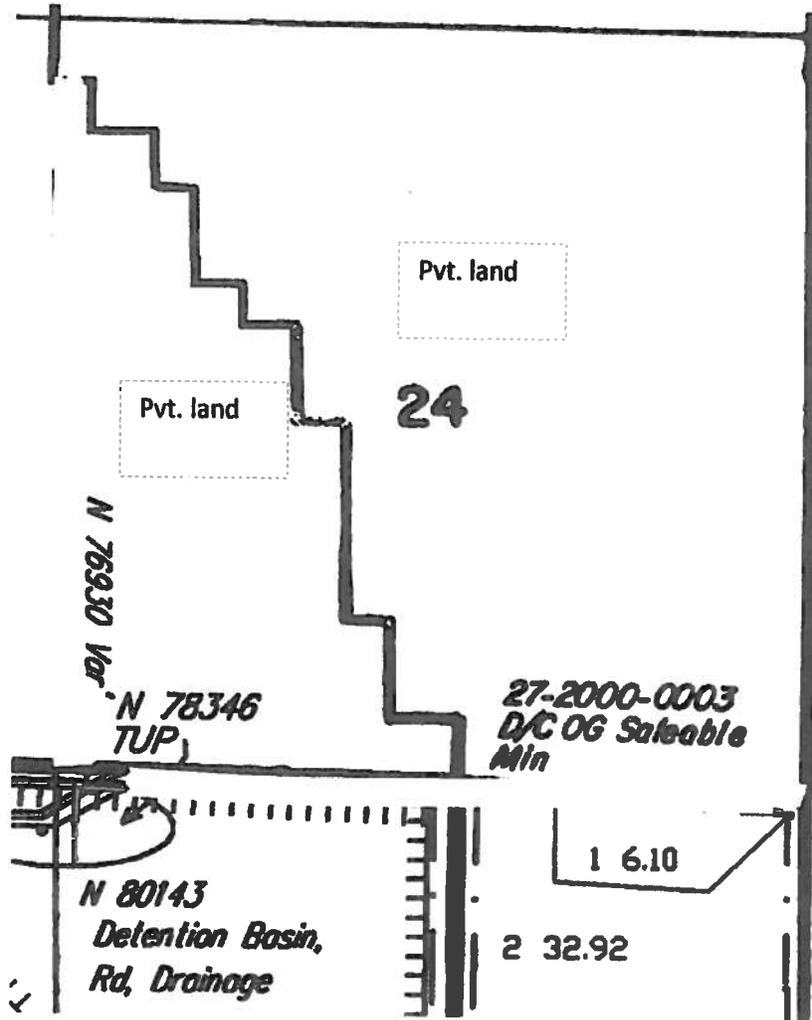


**BLM Right-of-Way Grant to renew N-76931**  
**DESCRIPTION OF RIGHT OF WAY**

Government Lots, 7, 3, 4, and 1, and the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW ¼ NW ¼ NE ¼) of Section 20, Township 23 South, Range 62 East, M.D.M., NV.



BLM Right-of-Way Grant to renew N-76931



Length: Approx.23,207-feet; Width-10-feet; 232,070-sq. feet; 5.34-acres



