

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

Categorical Exclusion

CX#: DOI-BLM-NV-W010-2014- 0025-CX

Date: 5/19/2014

Lease / Case File / Serial #: N-92867

Regulatory Authority (CFR or Law): 2800

BLM Manual: 2800

Subject Function Code: 2800

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: Debbie Dunham

3. Project Title: A & B Enterprises N-92867

4. Applicant: A & B Enterprises LLC

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

A & B Enterprises LLC has applied for an existing use for which no authorization has been received.

The works relevant to this application were previously completed under Nevada State Water Rights Permit 48622 (filed December 6, 1984) for irrigation and domestic purposes. It is unknown to the applicant who originally drilled the source well, but the prior owner of the ranch made application in 1984 to change his point of underground diversion to the subject source (Permit 486220) which was granted by the State of Nevada.

The existing well was reconditioned in April 1987, and a Proof of Completion of works for Permit 48622 was filed on July 30, 1987. Apparently, no Proof of Beneficial Use was timely filed by the required date (July 19, 1990) and Permit 48622 was cancelled on January 8, 1991 "because of failure of applicant to comply with the provisions of permit." It is unknown if or how the original works were modified after the POC was filed in 1987, but the works continue to exist at present.

The source is a flowing well, with a 6-inch diameter casing, fitted with a valve that permits shutting off the flow of water. The well is an estimated 30 feet from private land. The domestic works consist of a 2-inch pipeline that delivers water to a house, yard, garden, and shade trees. The pipeline exists on public land for an estimated distance of 30 feet before entering private land. The irrigation works consist of a previously-developed ditch of varying width and depth, but generally each less than 3 feet. The ditch exists on public land for an estimated distance of 107 feet before entering private land in sec. 36, where it proceeds to applicant's ranch irrigation ditches.

The permittee filed application #80545 with the State Engineers Office, State of Nevada, on February 9, 2011, using the completed works of Permit 48622 (with ditch maintenance or pipeline installation as necessary), but a lesser amount of diversion than requested by Permit 48622. Applicant requests three years to provide Proof of Beneficial Use following approval of this application. This is an application to change the Point of Diversion of a Portion (0.3927 second feet) of Permit 19581/Certificate 5899.

Debbie Dunham and Pat Haynal made a site visit to the project area on April 14, 2014.

This ROW is needed annually, January 1 – December 31, for a 30 year term.

Leach Hot Springs, T. 31 N., R. 38 E., sec. 1, Lot 3.

The project is needed for A&B Enterprises' domestic works and irrigation ditches and would save the applicant approximately ½ the costs to operate the irrigation pump, as the source well is a flowing well and would operate by pressure and gravity. The year round water on public land and private in ponds and irrigated fields may increase wildlife viewing by the public from public land. The project would authorize the public land portion of a project previously approved under State water law, and would aid the economic and rural lifestyle of applicants and improve the overall aesthetics of the ranching environment.

Works are already constructed, but will require one day to install an above ground pipeline (at the source of the well), 10-20 feet long and 6 inches wide, made of CPVC, on public land and occasional future maintenance. Temporary works areas are not needed and a two-track access road already exists.

Additional Information:

Project dimensions (length, width, height, depth):

Total Acres: 0.01

BLM Acres: 0.01

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? 100%. 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):

6. Legal Description: T. 31 N., R. 38 E., sec. 1, Lot 3.

USGS 24k Quad name: Leach Hot Springs, NV

100k map name: Winnemucca, NV

Land Status: BLM Private Other3T

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: L-4: To provide lands for rights-of-ways on or across public lands.

Part II: NEPA Review

Categorical Exclusion Review: This Proposed Action qualifies as a categorical exclusion under:

43 CFR 46.210 DOI Implementation of NEPA of 1969, Listing of Departmental Categorical Exclusions (*formerly 516 DM2 Appendix 1*)

516 DM 11.9, (BLM) E. 18 – Temporary placement of a pipeline above ground.

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 (Scientific) Name	May Be Affected?	Mitigation for BLM Sensitive Species (The following stipulation(s) is/are recommended to be applied to the authorization) (Attach ESA Section 7 Compliance to Form, if applicable)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ferruginous hawk (<i>Buteo regalis</i>), Swainson’s hawk (<i>Buteo swainsoni</i>), burrowing owl (<i>Athene cunicularia</i>), loggerhead shrike (<i>Lanius ludovicianus</i>), sage thrasher (<i>Oreoscoptes montanus</i>), vesper sparrow (<i>Pooecetes gramineus</i>), Brewer’s sparrow (<i>Spizella breweri</i>)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	In order to avoid potential impacts to breeding migratory birds, a careful visual inspection of habitat in the project area should be made prior to any surface disturbance (including cross-country routes) during the avian breeding season (March 1 st through August 31 st). Nesting activities may include eggs or young present in nest, adult behavioral displays (e.g. dive-bombing, faking injury, won’t leave the area, agitated calling, etc.). 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.
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	

Table 2. Migratory Bird Treaty Act Consideration

Potential MBTA Species w/in the Project Area Common (<i>Scientific</i>) Name	May Be Affected?	Recommended Mitigation (The following stipulation(s) is/are recommended to be applied to the authorization)
<p>This list may not include all species present at this site:</p> <p>northern harrier (<i>Circus cyaneus</i>), prairie falcon (<i>Falco mexicanus</i>), common nighthawk (<i>Chordeiles minor</i>), gray flycatcher (<i>Empidonax wrightii</i>), black-billed magpie (<i>Pica hudsonia</i>), horned lark (<i>Eremophila alpestris</i>), rock wren (<i>Salpinctes obsoletus</i>), green-tailed towhee (<i>Pipilo chlorurus</i>), lark sparrow (<i>Chondestes grammacus</i>), black-throated sparrow (<i>Amphispiza bilineata</i>), sage sparrow (<i>Amphispiza belli</i>), western meadowlark (<i>Sturnella neglecta</i>), Brewer’s blackbird (<i>Euphagus cyanocephalus</i>), house finch (<i>Carpodacus mexicanus</i>)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Same mitigation as for Special Status Species, in Table 1, above.</p>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Mitigation Measures/Remarks (The following stipulation(s) is/are recommended to be applied to the authorization): “See Attached”

The Proposed Action has been reviewed to determine if any exceptions described in 43 CFR 46.215 Categorical Exclusions: Extraordinary Circumstances apply. (See attached page)

Part III: DECISION:

I have reviewed this plan conformance and NEPA compliance record and have determined that the proposed project is in conformance with the approved land use plan and that no other environmental analysis is required.

Project authorization is subject to mitigation measures identified above. (This is a NEPA Decision. A separate program implementation decision is necessary.)

Based on regulatory authority or law that allows BLM to take action, it is my decision to allow for implementation of the project, as described, with the mitigation measures identified above and attached as stipulations, conditions of approval, terms of conditions, etc. This is a combined NEPA and program implementation decision.

Authorized Official: s\ James W. Schroeder
(Signature)

Date: 8-5-2014

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 James W. Schroeder, 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.

CX#: DOI-BLM-NV-W01-2014-0025 -CX

Applicant: A & B Enterprises LLC

Project Title: A & B Enterprises N-92867

Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).