

Issuance of Right-of-Way N-94179 Nye County Public Works Department: 2016-0026-CX

Categorical Exclusion Documentation Format When Using Categorical Exclusions Not Established by Statute

A. Background

BLM Office: Tonopah Field Office LLNVB0200 Lease/Serial/Case File No: N-94179

CX Number: DOI-BLM-NV-B020-2016-0026-CX Name of Preparer: Wendy Seley

Proposed Action Title/Type: Issue Title V FLPMA Right-of-Way to Nye County for the Manhattan Road.

Location of Proposed Action: T. 8 N., R. 44 E., sec. 20, Lots 6-7,12; Mt. Diablo Meridian, Nye County, Nevada. Location map is attached as Exhibit A.

Description of Proposed Action: Nye County Public Works Department has applied for a Title V Federal Land Policy and Management Act (FLPMA) Right-of-Way (ROW) on the existing Nye County Road, 742 or commonly known as Nevada State Route 377. The existing road is within the limits of the Town of Manhattan and maintained by Nye County. The proposed ROW is located in Nye County, Nevada approximately 6.6 miles east of the intersection of State Route 376 and State Route 377.

The current paved Manhattan roadway is between 18 to 24-foot wide and contains borrow ditches (two 5-foot (10) drainage features) and shoulders (two 2-foot (4) on each side of the road). The overall proposed ROW would be 80-foot wide; with a travelway of 1,456-foot long (0.27 miles), consisting of approximately 1.27 acres, ending at the intersection with National Forest Road, 460. A Sierra Pacific Power Company (SPPCo) overhead 24.9 kV distribution line right-of-way, N-42995 is contiguous to the proposed Nye County ROW. SPPCo's ROW is 25-foot wide. Some portions of the existing SPPCo may overlap the proposed ROW.

There will be no new disturbance. The total overall area of existing disturbance would be approximately 38-foot in width or 1.27 acres.

The road would require occasional maintenance to maintain drainage and clearance of shoulders for public safety. Current maintenance activities by the Nye County Public Works Department include grading as needed, subject to erosion from storm events. Use includes seasonal recreation, hunting, and wood gathering among other users. This segment is expected to remain an important access link between the Town of Manhattan and Smoky Valley for the foreseeable future.

The road ROW would be issued in perpetuity to Nye County.

Attached are stipulations that would be used with the ROW grant.

Applicant (if any): David Fanning, Director, Nye County Public Works Department

B. Land Use Plan Conformance

Land Use Plan Name: Tonopah Resource Management Plan

Date Approved/Amended: October 2, 1997

___ The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s):

 X 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):

Lands and Rights-of-Way Objective, page 18.

“To make lands available for community expansion and private economic development and to increase the potential for economic diversity.”

Page 33. “Unless the land has been dedicated to a specific use or uses, public land within the Tonopah Planning Area is available for consideration for linear rights-of-way for access, and for utility transportation and distribution purposes. Such land is also available for areal rights-of-way purposes.”

National Policy - 43 CFR 2801.2 - Rights-of-Way - Objectives (Selected Provisions), Subpart 2801 – General Information

“It is BLM’s objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or governmental entity and to direct and control the use of rights-of-way on public lands in a manner that:

(a). Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a government entity.”

(d). Coordinates to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.”

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 11.9, (E).

E. Realty. (16) “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.”

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 43 CFR 46.215 applies. However, standard stipulations included in Exhibit B do apply.

I considered all pertinent ecological, social and environmental factors which may be impacted by the project. In addition, I have reviewed the plan conformance statement and have determined that the proposed action is in conformance with the approved land use plan. The roadway already exists and is designed for the intended purpose. This ROW is being granted for administrative purposes and does not authorize additional surface disturbance or change in management and no further environmental analysis is required.

D. Signature

Environmental Coordinator:  Date: 2016-05-31
(Signature)

Authorizing Official:  Date: 6/1/16
(Signature)

Name: Timothy J. Coward
Title: Field Manager, Tonopah

Contact Person: For additional information concerning this CX review, contact Wendy Seley, Realty Specialist, Tonopah Field Office, P.O. Box 911, Tonopah, NV 89049, (775) 482-7805.

Note: A separate decision document must be prepared for the action covered by the CX.

<i>Screening for Extraordinary Circumstances: Will this project...</i>		Yes	No
1	Have significant adverse effects on public health or safety?		J
	Rationale: This right-of-way request is for issuance of a Title V FLPMA issued grant of an existing access road to Nye County in perpetuity. It is not anticipated that the Proposed Action will have any effects to public health and safety.		
2	Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness 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; and other ecologically significant or critical areas?		J
	Rationale: Issuing the ROW will not have significant impacts on such resources.		
3	Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources?		J
	Rationale: There is no controversy concerning the proposed action.		
4	Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?		J
	Rationale: The activity proposed in this CX is a long-standing practice on BLM administered lands. The BLM ID Team of resource specialists reviewed this project and determined there are no highly uncertain, potentially significant, unique, or unknown risks.		
5	Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?		J
	Rationale: The activities proposed in this CX are addressed and authorized under the 1997 Tonopah ROD/RMP. The proposed activities occur widely on Federal lands throughout NV and there is no evidence this type of activity would establish a precedent or decision for future actions that would have significant environmental effects.		
6	Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects?		J
	Rationale: The BLM interdisciplinary team reviewed the project and incorporated Project Design Features (PDFs) or stipulations into the project design to minimize any potential impacts to resources and prevent off-site effects that would contribute to the cumulative effects of other projects in the area. The ID Team determined that the project would not result in a cumulative significant effect when added to relevant past, present, and reasonably foreseeable actions in the area.		
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?		CW
	Rationale: Issuing the ROW would not have significant impacts to any properties either listed or eligible for listing on the National Register of Historic Places (NRHP).		
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?		AB
	Rationale: Where appropriate, PDFs/stipulations have been incorporated into the ROW to protect listed, or proposed to be listed species and their habitats. Appropriate buffers and seasonal restrictions will be implemented to avoid any adverse effects to threatened or endangered species or designated critical habitat.		
9	Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment?		J
	Rationale: The proposed activities conform to the TFO RMP's direction for management of public lands in areas of jurisdiction and comply with applicable laws, rules, and regulations.		
10	Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		J
	Rationale: Similar actions have occurred throughout the BMDO and there is no evidence that this type of ROW would have a disproportionately high and adverse effect on said populations.		

11	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? Rationale: The BLM field office area archaeologist reviewed the project. No Native American sacred sites were identified. The ROW does not significantly or adversely affect the physical integrity of any such sacred sites		JM
12	Contribute to the introduction, continued existence, or spread of noxious weeds or non-native species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species? Rationale: The proposed action does not result in measurable changes to the current baseline of the risk, or actual introduction, continued existence, or spread of noxious weeds or nonnative invasive species in or from the project area.		DSB

All of the above questions must be answered negatively before the Categorical Exclusion may be approved. This checklist is taken from 516 DM 2, Appendix 2.

Reviewed by:

Austin Brewer, (Biologist)

Initials

AB

Date:

5/24/16

Christine McCollum, (Archeologist)

CM

5/24/16

Juan Martinez, (Native American Coordinator)

JM

5-31-16

Dultry Balmer, (Rangeland Management Specialist)

DSB

5/24/16

Jorge Fatorde (Planning & Environmental Coordinator)

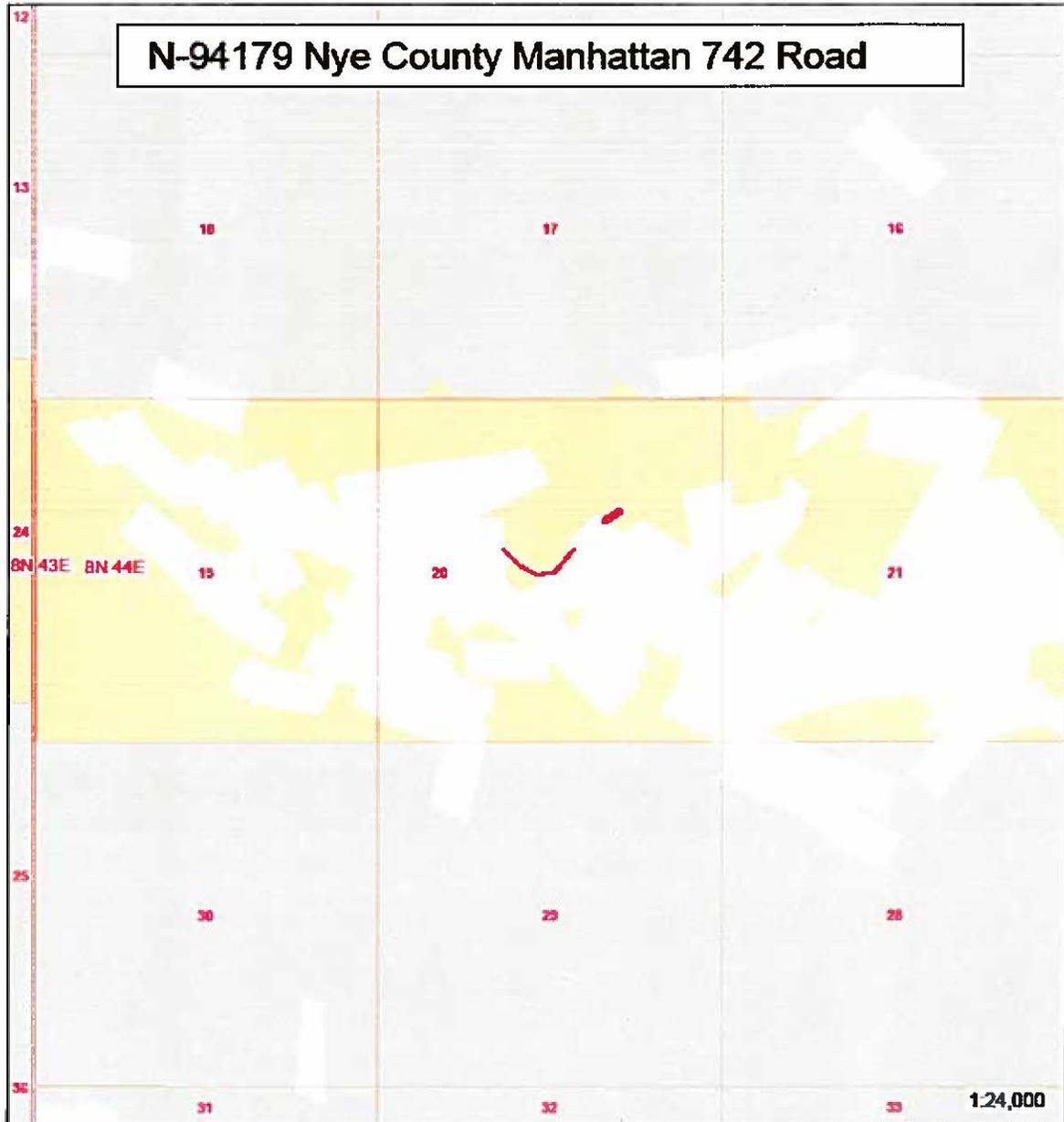
J

2016-05-31

11	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?		
Rationale: The BLM field office area archaeologist reviewed the project. No Native American sacred sites were identified. The ROW does not significantly or adversely affect the physical integrity of any such sacred sites			
12	Contribute to the introduction, continued existence, or spread of noxious weeds or non-native species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species?		DDB
Rationale: The proposed action does not result in measurable changes to the current baseline of the risk, or actual introduction, continued existence, or spread of noxious weeds or nonnative invasive species in or from the project area.			

All of the above questions must be answered negatively before the Categorical Exclusion may be approved. This checklist is taken from 516 DM 2, Appendix 2.

<u>Reviewed by</u>	<u>Initials</u>	<u>Date</u>
Austin Brewer, (Biologist)	<u>AB</u>	<u>5/24/16</u>
Christine McCollum, (Archeologist)	<u>CCM</u>	<u>5/24/16</u>
Juan Martinez, (Native American Coordinator)	<u> </u>	<u> </u>
Daltry Balmer, (Rangeland Management Specialist)	<u>DBB</u>	<u>5/24/16</u>
<i>Joy Jatoch (Planning & Environmental Coordinator)</i>	<u>J</u>	<u>2016-05-31</u>



**N-94179 Nye Cnty Manhattan ROW
1:24,000 Map**

Legend

- N-94179 Nye Cnty ROW
- N-94179 Nye Cnty 742 Rd
- Bureau of Land Management
- Forest Service
- Private

Nevada
Map Extent

United States Department Of The Interior

Bureau of Land Management
Bureau Field Office
1033 S. Main Street • Box 911
Toiyah, NV 89040

Date: 02/2/2011
UTM Zone 11N NAD83 49080 8800E 4285383.720m
494384.134mE 4285387.800mN

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

0 0.25 0.5 1 Miles

**EXHIBIT B
STIPULATIONS**

1. In accordance with Federal regulations in 43 CFR 2807.21, any proposed transfer of any right or interest in the right-of-way grant shall be filed with the BLM Authorized Officer. An application for assignment shall be accompanied by a showing of qualifications of the Assignee. The assignment shall be supported by a stipulation that the Assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned. No assignment shall be recognized unless and until it is approved in writing by the Authorized Officer.
2. This grant is subject to all valid rights existing on the effective date of this grant.
3. The Holder shall comply with all applicable Federal, State, and local laws and regulations, existing or thereafter enacted or promulgated.
4. In case of change of address, the Holder shall immediately notify the BLM Authorized Officer.
5. In the event that the public land underlying the right-of-way (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 right-of-way, 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 right-of-way, 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.
6. Future modifications, construction of improvements, or major maintenance operations involving disturbance of the land, shall not occur until plans for such actions have been submitted and approved in writing by the Authorized Officer. Any proposals involving new surface disturbance shall require a cultural inventory and may require completion of an environmental assessment.
7. The Holder shall permit free and unrestricted public access to and upon the right-of-way for all lawful purposes, except for those specific areas designated as restricted by the Authorized Officer to protect the public, wildlife, livestock, or facilities constructed within the right-of-way.

8. The Holder shall construct, operate, and maintain the facilities, improvements, and structures within this grant in strict conformity with the plan of development that accompanied the Application and was approved and made part of the grant. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the Authorized Officer. A copy of the complete grant, including all stipulations and approved plans of development, shall be made available on the grant area during construction, operation, and termination to the Authorized Officer. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
9. Upon the discovery of any cultural resource(s) (historic or prehistoric site or object) by the permit Holder (or any person working on their behalf) during the course of activities on federal land, all operations shall be immediately suspended within 50 feet of the discovery. The permit Holder shall protect the discovery from any disturbance and immediately report the discovery to the Authorized Officer by telephone, followed by written confirmation of the discovery to the Authorized Officer. Following the discovery, the Authorized Officer shall conduct an evaluation to determine the significance of the discovery and consult with the permit Holder regarding any mitigation and/or treatment measure(s) necessary before operations may resume. The Holder shall be responsible for all costs of evaluation and any mitigation and/or treatment measures(s). Operations may resume with the written consent of the Authorized Officer.
10. Upon the discovery of any Native American human remains, funerary item(s), sacred objects(s), or object(s) of cultural patrimony by the permit Holder (or any person working on their behalf) during the course of activities on federal land, all operations shall be immediately suspended within 50 feet of the discovery. The permit Holder shall protect the discovery from any disturbance and immediately report the discovery to the Authorized Officer by telephone, followed by written confirmation of the discovery to the Authorized Officer. Operations may resume with the written consent of the Authorized Officer.
11. Upon the discovery of any faunal (animal) bones or remains that are indeterminate (not clearly human or non-human) by the permit Holder (or any person working on their behalf) during the course of activities on federal land, all operations shall be immediately suspended within 50 feet of the discovery. The permit Holder shall protect the discovery from any disturbance and immediately report the discovery to the Authorized Officer by telephone, followed by written confirmation of the discovery to the Authorized Officer. Following the discovery the Authorized Officer shall conduct an evaluation to determine the significance of the discovery and consult with the permit Holder regarding any mitigation and/or treatment measure(s) necessary before operations may resume. The Holder shall be responsible for all costs of evaluation and any mitigation and/or treatment measures(s). Operations may resume with the written consent of the Authorized Officer.
12. Upon the discovery of any paleontological (fossil) resource(s) by the permit Holder (or any person working on their behalf) during the course of activities on federal land, all operations shall be immediately suspended within 50 feet of the discovery. The permit Holder shall

protect the discovery from any disturbance and immediately report the discovery to the Authorized Officer by telephone, followed by written confirmation of the discovery to the Authorized Officer. Following the discovery the Authorized Officer shall conduct an evaluation to determine the significance of the discovery and consult with the permit Holder regarding any mitigation and/or treatment measure(s) necessary before operations may resume. The Holder shall be responsible for all costs of evaluation and any mitigation and/or treatment measures(s). Operations may resume with the written consent of the Authorized Officer.

13. The permit Holder (or any person working on their behalf) is prohibited from moving, disturbing, and sharing the location of any cultural resource(s); Native American human remains, funerary item(s), sacred objects(s), or object(s) of cultural patrimony; faunal (animal) bones or remains that are indeterminate (not clearly human or non-human); or paleontological resource(s), discovered during the course of activities on federal land, unless authorized to do so by the Authorized Officer.
14. The Holder shall protect all survey monuments found within the grant. 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. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the Holder shall immediately report the incident, in writing, to the Authorized Officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management grant monuments or references are obliterated during operations, the Holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. 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 monument, the Holder shall be responsible for the survey cost.
15. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Where possible and if needed, topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.
16. The Holder shall conduct all activities associated with the construction, operation, and termination of the grant within the authorized limits of the grant.
17. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.
18. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.

19. Prior to any planned disturbance in potential migratory bird nesting habitat from March 1 to July 31st (the approximate nesting season), a field survey for migratory birds, their nests, eggs or young should be performed, in order to prevent violation of the Migratory Bird Treaty Act (MBTA). If any nests, eggs or young are found either (1) the project should be delayed until the birds have completed their nesting and brood rearing activities; (2) a protective buffer zone around and nests, eggs or young migratory birds should be established on a site and species specific basis by a qualified biologist (to the approval of the BLM) allowing work to proceed outside of the buffer zone, or (3) the project should be resigned as to not harm the migratory birds, their nests, eggs or young. A migratory bird is any species of bird except upland game species, feral pigeons, European starlings and English house sparrows. Potential migratory bird nesting habitat is any habitat that may provide nesting opportunities of any species or migratory bird. Any violation of the MBTA can incur penalties up to \$15,000 or 6 months imprisonment, or both per individual offense. Any questions about the Migratory Bird Treaty Act should be referred to the Reno Office of the U.S. Fish and Wildlife Service at (775) 861-6300, or e-mail at asknevada@fws.gov.
20. Holder shall be responsible for weed control on disturbed areas within the limits of the grant. The Holder is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
21. The Holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the Holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the lease or on facilities authorized under this communications site lease. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (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 of 1980, 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 toxic substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved Federal agency or State government.
22. The Holder of right-of-Way **N-94179** agrees to indemnify the United States against any liability arising from the release of any hazardous 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 (RCRA) of 1976, as amended, 42 U.S.C. 6901 et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way Holder's activity on the right-of-way). This agreement applies without regard to whether a release is caused by the Holder, its agent, or unrelated third parties.

23. During the period of May 1 through October 1 of each year, Holder should consider using spark arresters on vehicles and equipment in the project area, due to the potential for fire ignition from project related activities. This includes emission of hot carbon particles from diesel powered equipment, improperly equipped or poorly operating exhaust systems on gas powered vehicles and direct contact of wildland fuels with catalytic converters. Individuals, groups, businesses or corporations found responsible for the ignition of a wild fire may be held liable for the costs associated with the suppression of that fire.
24. The Holder shall prevent any activities which may cause erosion. Where erosion has resulted, the Holder shall re-vegetate and re-habilitate the location. The Holder is responsible for consultation with the Authorized Officer for an acceptable proposal.
25. The Holder shall be responsible for making any necessary arrangements or agreements with private land owners for access or for those portions of this project which are located on private lands and for which the Bureau of Land Management has no jurisdiction.
26. Widening, realignment, or altering the character of the road is not authorized other than grading, waterbarring, rocking, and replacing and/or installing culverts.
27. The Holder shall seed disturbed areas outside of the authorized ROW resulting from grading, staging areas, stockpiles, and other activities. The Holder shall coordinate with the BLM for seeding method, seed mix, and planting season.
28. 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. Emergency use of pesticides shall be approved in writing by the Authorized Officer prior to such use.
29. Ninety days prior to termination of the right-of-way, the Holder shall contact the Authorized Officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The Authorized Officer must approve the plan in writing prior to the Holder's commencement of any termination activities.



Nye County Pictures – Set 1

