United States Department of the Interior

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October 29, 2008
File Nos. 84320-2008-F-0007 and
84320-2008-I-0216

Memorandum

To: Field Manager, Ely Field Office, Bureau of Land Management, Ely, Nevada

From: Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada

Subject: Request for Formal and Informal Consultation on the Kane Springs Valley Groundwater Development Project in Lincoln County, Nevada

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed Kane Springs Valley Groundwater Development Project and its possible adverse effects on the desert tortoise (*Gopherus agassizii*) (Mojave population), listed as threatened under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), and its designated critical habitat, and the Moapa dace (*Moapa coriacea*), listed as endangered under the Act. No critical habitat has been designated for the Moapa dace. Further, the Bureau of Land Management (BLM) requests concurrence that the proposed project *may affect, but is not likely to adversely affect* the southwestern willow flycatcher (*Empidonax traillii extimus*), listed as endangered under the Act. No designated critical habitat for the southwestern willow flycatcher occurs in the project area. The Lincoln County Water District (LCWD) has applied for a BLM right-of-way to construct and operate a system of water facilities on BLM-managed land in southern Lincoln County.

This biological opinion is issued in accordance with section 7 of the Act and based on information provided in BLM's memorandum dated September 27, 2007, to the Service (received on September 28, 2007), and revised biological assessment (BA), dated December 2007 (ARCADIS 2007); Amended Stipulation for Withdrawal of Protests (Stipulated Agreement) dated August 8, 2006; discussions between the Service and BLM; and our files. A complete administrative record of this consultation is on file in the Service's Nevada Fish and Wildlife Office in Las Vegas.

TAKE PRIDE IN AMERICA

This biological opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statutory provisions of the Act to complete the following analysis with respect to critical habitat.

INFORMAL CONSULTATION

Southwestern willow flycatcher

No habitat is present for the southwestern willow flycatcher within the project area. The closest breeding populations occur at Pahranagat National Wildlife Refuge (NWR) approximately 23 miles northwest and in the Warm Springs Area, approximately 25 miles southeast. Since the springs in the Warms Springs Area are supplied by water from the deep carbonate aquifer, groundwater pumping in the Kane Springs Valley Hydrographic Basin could affect water levels in the Muddy River System. These effects to riparian vegetation will be minimized by actions contained in the Stipulated Agreement among the Service, LCWD and Vidler Water Company, Inc (VWC), which are designed to maintain minimum in-stream flows in the Warm Springs Area of the Muddy River system in order to protect and recover the Moapa dace. (See section below entitled "Proposed Minimization Measures for Moapa Dace"). The project is anticipated to have insignificant effects to the southwestern willow flycatcher since any decreases in groundwater flow to the Muddy River system will be minimized by the Stipulated Agreement.

In consideration of the proposed action, potential effects of the proposed action, and measures proposed by BLM, the Service concurs with BLM's determination that the proposed action *may affect, but is not likely to adversely affect* the southwestern willow flycatcher. This response constitutes informal consultation under regulations promulgated in 50 CFR§402.14, which establishes procedures governing interagency consultation under section 7 of the Act. This informal consultation does not authorize take of any listed species.

CONSULTATION HISTORY

The following chronology documents the consultation process that culminated in the following biological opinion for the desert tortoise and its designated critical habitat and for the Moapa dace:

On May 8, 2006, the Service sent BLM a memorandum containing a species list of endangered, threatened, and candidate species that may occur in or near the proposed Kane Springs Valley Groundwater Development Project (Service File No. 1-5-06-SP-499).

On July 12, 2007, BLM sent the Service a memorandum requesting formal consultation on the Kane Springs Valley Groundwater Development Project for potential adverse effects to the desert tortoise and its designated critical habitat. A BA accompanied the memorandum.

On September 4, 2007, the Service sent BLM a memorandum recommending formal consultation for the Moapa dace and requesting additional information necessary to initiate formal consultation for the desert tortoise (Service File No. 1-5-07-F-558).

On September 27, 2007, BLM sent the Service a memorandum requesting formal consultation on the project for potential adverse effects to the desert tortoise and its designated critical habitat and the Moapa dace. A revised BA accompanied the memorandum.

On October 19, 2007, the Service sent BLM a memorandum that initiated formal consultation on September 28, 2007, since the revised BA contained sufficient information (Service File No. 84320-2008-F-0007).

On December 4, 2007, BLM, the Service, and the project proponent participated in a conference call to discuss several topics including the monitoring wells that are required by the stipulated agreement among LCWD, VWC, and the Service for withdrawal of the Service's protests of water rights applications in Kane Springs Valley. It was decided that the BA would include acreages and potential effects associated with the two new monitoring wells.

On December 6, 2007, ARCADIS, the project consultant, sent the Service a revised BA on behalf of BLM, which included acreages associated with the two new monitoring wells.

On January 28, 2008, the Service sent BLM a memorandum extending the consultation period for this project by 60 days due to a substantial consultation workload.

On June 17, 2008, VWC sent the Service comments on the terms and conditions of the draft biological opinion.

On June 18, 2008, the Service provided BLM a copy of a draft biological opinion via email.

On June 30, 2008, a Memorandum of Understanding (MOU) among LCWD, VWC, and the Service was signed. Pursuant to the MOU, the Service will issue a biological opinion for the project which will include an incidental take statement authorizing such take of Moapa dace as may occur in connection with the pumping and transfer of 1,000 acre-feet of groundwater under Phase I of the Project and implementation of the Monitoring, Management and Mitigation Plan. Upon receiving authorization from the Nevada State Engineer to appropriate more than 1,000 and up to 5,000 acre-feet per year of groundwater from the Kane Springs Valley for use in the Coyote Springs Valley, the Service will reinitiate consultation for the project pursuant to section 7 of the Act.

On July 15, 2008, the Service received a copy of BLM's comments on the draft biological opinion via email.

On July 28, 2008, the Service and BLM met to discuss the draft biological opinion.

On August 18, 2008, BLM sent the Service proposed language for term and condition 4.d. and 5. of the biological opinion via email.

On October 1, 2008, BLM sent the Service updated proposed language for term and condition 4.d. of the biological opinion via email.

On October 1, 2008, the Service and BLM met to discuss deposition of remuneration fees for offsetting desert tortoise habitat loss.

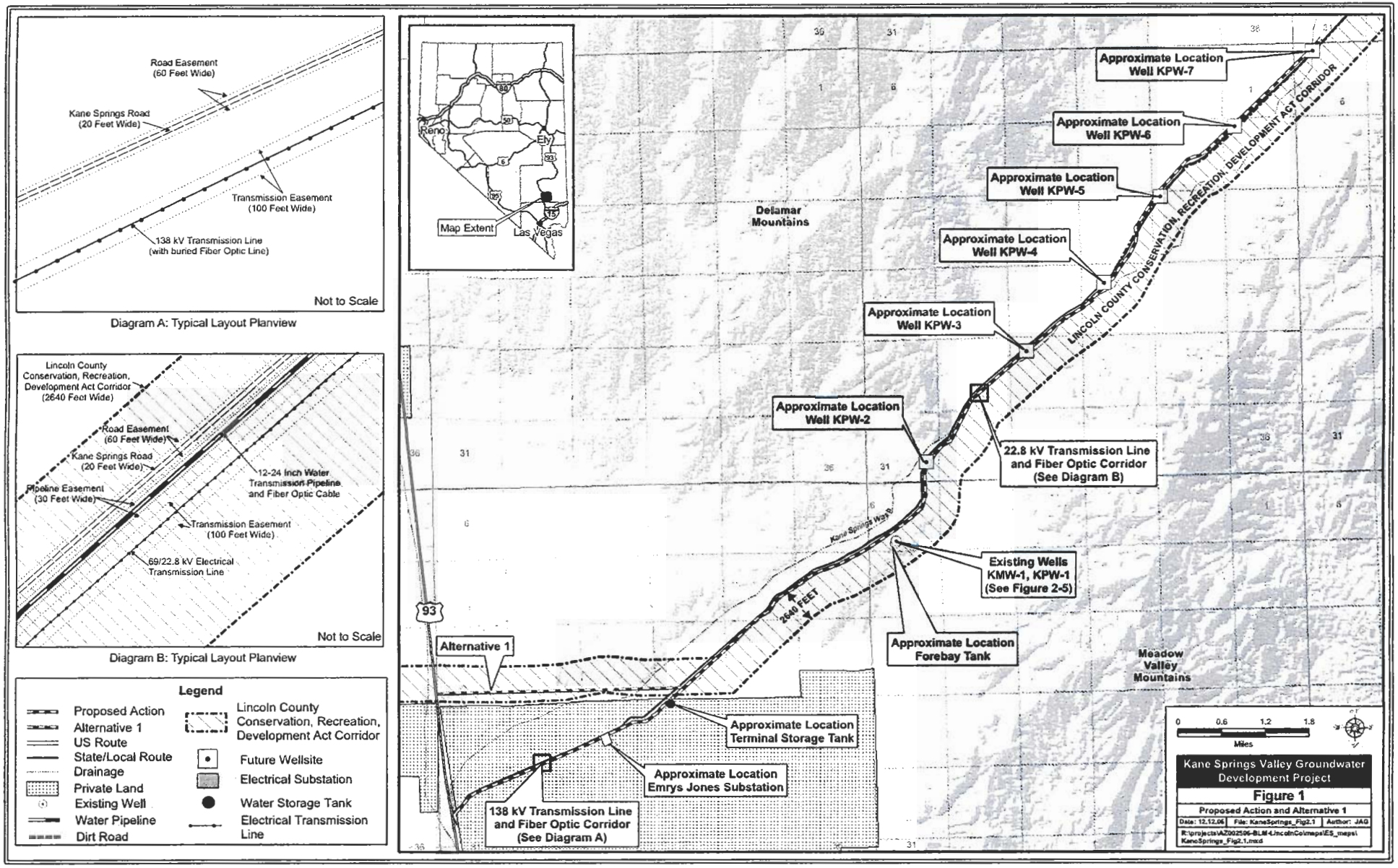
BIOLOGICAL OPINION

A. Description of the Proposed Action

The purpose of the proposed action is to develop a system for tapping groundwater resources in the Kane Springs Valley Hydrographic Basin for municipal water purposes within the Coyote Spring Valley Hydrographic Basin. The project proponents applied to the Nevada State Engineer's Office for 17,375 acre-feet per year (afy), but to date have been granted 1,000 afy under Ruling # 5712. The proposed pipeline would have capacity to transport up to 5,000 afy. Construction and operation of the proposed action would supply a small, but initially substantial portion of the total water requirements for the Coyote Springs Investment (CSI) development projects in southern Lincoln County. The majority of the proposed facilities would be located along or near the Kane Springs Road, within the 2,640-foot wide Lincoln County Conservation, Recreation, and Development Act (LCCRDA) utility corridor on public land, or on private land owned by CSI. The project area extends approximately 16.6 miles along Kane Springs Road from the intersection with US 93 (US 93).

The proposed action consists of several components including, groundwater production wells, monitoring wells, water pipelines, storage tanks, power transmission lines and substations, access roads and a fiber optic line. Figure 1 shows the approximate location of the project components in the lower Kane Springs Valley. LCWD is developing this project in cooperation with Lincoln County Power District (LCPD) Number 1 and Lincoln County Telephone Company. Each utility agency is responsible for the construction, operation, and rehabilitation of disturbed land associated with their utility. Each utility agency may be required to apply for a separate right-of-way with BLM.

Although the BA included the construction of the Emrys Jones Substation and power line west of the Substation, LCPD is constructing these facilities under another project, the Coyote Springs Transmission Line Project. Therefore, these facilities are not considered to be part of the proposed action for this consultation.


Road Easement
(60 Feet Wide)
Kane Springs Road
(20 Feet Wide)
Transmission Easement
(100 Feet Wide)
138 kV Transmission Line
(with buried Fiber Optic Line)
Not to Scale
Diagram A: Typical Layout Planview
Lincoln County
Conservation, Recreation,
Development Act Corridor
(2640 Feet Wide)
Road Easement
(60 Feet Wide)
Kane Springs Road
(20 Feet Wide)
Pipeline Easement
(30 Feet Wide)
12-24 Inch Water
Transmission Pipeline
and Fiber Optic Cable
Transmission Easement
(100 Feet Wide)
69/22.8 kV Electrical
Transmission Line
Not to Scale
Diagram B: Typical Layout Planview
Legend
Proposed Action
Alternative 1
US Route
State/Local Route
Drainage
Private Land
Existing Well
Water Pipeline
Dirt Road
Lincoln County
Conservation, Recreation,
Development Act Corridor
Future Wellsite
Electrical Substation
Water Storage Tank
Electrical Transmission
Line
Reno
Ely
Las Vegas
Map Extent
Delamar
Mountains
Approximate Location
Well KPW-7
Approximate Location
Well KPW-6
Approximate Location
Well KPW-5
Approximate Location
Well KPW-4
Approximate Location
Well KPW-3
Approximate Location
Well KPW-2
LINCOLN COUNTY CONSERVATION, RECREATION, DEVELOPMENT ACT CORRIDOR
22.8 kV Transmission Line
and Fiber Optic Corridor
(See Diagram B)
Kane Springs Wash
2640 FEET
Existing Wells
KMW-1, KPW-1
(See Figure 2-5)
Approximate Location
Forebay Tank
Meadow
Valley
Mountains
93
Alternative 1
Approximate Location
Terminal Storage Tank
Approximate Location
Emrys Jones Substation
138 kV Transmission Line
and Fiber Optic Corridor
(See Diagram A)
0 0.6 1.2 1.8
Miles
Kane Springs Valley Groundwater
Development Project
Figure 1
Proposed Action and Alternative 1
Date: 12.12.06 File: KaneSprings_Fig2.1 Author: JAG
R:\projects\AZ002506-BLM-LincolnCo\maps\ES_maps\
KaneSprings_Fig2.1.mxd

1. Project Features

a. Wells

Groundwater from the Kane Springs Valley Hydrographic Basin would be supplied to the Coyote Spring Valley area from up to seven groundwater production wells. All production wells would be located within the LCCRDA corridor on public land, spaced approximately 1.3 to 1.8 miles apart. The first well (KPW-1), approved under BLM Serial Number NVN-079630, was drilled in 2005. Each wellhead would be enclosed in a masonry block structure, which would also contain all aboveground piping, shutoff valve, check valve, flow meter, air release valve, and electrical equipment. The size of each fenced well yard would be approximately 150 feet by 150 feet. Production wells would be equipped with an electric pump.

An existing monitoring well, KMW-1, is located adjacent to KPW-1 (Figure 1). The monitoring well was installed in 2005 to assist in assessing the hydrogeology of the Kane Springs Valley Hydrographic Basin. Two new monitoring wells may also be installed per the stipulated agreement for withdrawal of the Service's protests of LCWD and VWC's water rights applications in Kane Springs Valley. The wells would be placed on CSI land and would each have a footprint of less than 1 acre in size. The final location would be coordinated through the Technical Review Team (TRT) established under the stipulated agreement. Should the TRT decide that these monitoring wells are not necessary, funds for the material and construction of the monitoring would be used instead for Moapa dace conservation.

b. Pipelines

There are two types of pipelines associated with the proposed action: the well field pipeline collection system and the main transmission pipeline. Ancillary pipeline components include isolation valves, cathodic protection, control valves, air release/vacuum valves, blow-off valves, access manways, fiber optic splice vaults, and pipe alignment markers.

The well field pipeline collection system would consist of individual branch pipelines from each well to a single main collection pipeline terminating at the forebay storage tank. The total pipeline collection system would extend approximately 9.4 miles. The pipeline, to be constructed of ductile iron, would vary in size (telescope) from 12 inches to 24 inches in diameter, with the largest diameters located closest to the forebay storage tank. The pipeline would be buried to a minimum depth of three feet below grade, or three times scour depth in washes in accordance with engineering requirements. In general, the pipeline would parallel the Kane Springs Road to the south, with a 60-foot wide construction easement and a 30-foot wide permanent easement. If cross-country construction is required, the temporary construction easement would be 75 feet wide, with a permanent easement of 60 feet.

Approximately 3.8 miles of buried 24-inch diameter transmission pipeline would be constructed adjacent to the Kane Springs Road between the forebay storage tank and the terminal storage tank. Appurtenant groundwater facilities (e.g., isolation valves, control valves) would occur, on

average, every mile along the alignment. These facilities would be located predominantly below existing grades in traffic-rated, lockable, concrete vaults that would vary in dimension. Typically, these vaults would be located outside of traffic areas and may require small location markers extending several feet above the surface of the ground.

c. Storage Tanks

A 50,000-gallon forebay storage tank would be installed adjacent to the existing production well (KPW-1) and would initially serve as the termination point for the groundwater collection system. This tank would be used to normalize flow pressures in the system and provide storage for secondary lifting to the terminal storage tank, if required. The water level in the forebay storage tank would control the operation of the well field via telemetry. Either wireless telemetry or direct-burial fiber optic telemetry cable located in pipeline trenches would enable communication between the collection system, forebay storage tank, and the terminal storage tank.

A terminal water storage tank would ultimately be located at the southern end of the water transmission pipeline to receive the imported water and to serve as a water distribution source for the northern Coyote Spring Valley area. The storage tank would be constructed with a maximum capacity of 700,000 gallons, subject to final design requirements.

d. Power Distribution

In order to provide reliable electric service to the well fields, LCPD would construct and operate transmission lines and substations. Power facilities built for this project would connect to the Emrys Jones Substation, part of the Coyote Springs Transmission Line Project.

Under the proposed project, LCPD would construct an overhead transmission line with a 69 kV/22.8 kV distribution circuit from the Emrys Jones Substation to the proposed well fields along the Kane Springs Road, parallel to the pipeline. A total of 14 miles of transmission line would be installed. The 69 kV/22.8 kV transmission line would be a single-circuit line supported by wood pole structures. The 69 kV/22.8 kV transmission line would primarily be located on public lands managed by BLM, with a short section near the Emrys Jones Substation located on private property. Each wood pole structure would require a temporary construction easement of 0.07 acre and after construction, each structure would occupy 0.02 acre. The transmission line would have a 100-foot permanent easement.

At each well location, a fenced power substation (approximately 155 feet by 95 feet) would be constructed to serve the well pump motor and ancillary equipment. The substation yards would consist of a 69 kV/22.8 kV to 4.16 kV pad-mounted step-down transformer, primary metering, switch cabinet, capacitor bank, and a station service transformer.

e. Fiber Optic

The Lincoln County Telephone Company is proposing to install fiber optic cables within the proposed project right-of-way. The fiber optic line would be buried in the same trench as the pipeline and adjacent to the 138 kV transmission line on private lands proposed under the Coyote Springs Transmission Line Project. The fiber optic cables would be used for communication to manage the pipeline operation. The fiber optic cables would tie into an existing fiber optic line located on the east side of US 93.

f. Additional Project Components

Approximately 50 acres may be used for temporary extra work spaces. These areas would be spaced approximately 0.5 mile apart and would cover approximately 2 acres. Some larger staging areas may be sited in suitable areas near steeply incised drainages, above and below slopes where construction is expected to be difficult, and at pipe laydown areas. All extra work spaces on Federal lands would be located within the project right-of-way. Staging areas on private lands would be used during construction for storage of materials and equipment, construction office trailers, fuel storage, equipment maintenance, stockpiling and handling of excavated material, and other construction-related activities. Following construction, the staging areas would be restored as described in the Kane Springs Valley Groundwater Development Project Environmental Impact Statement (EIS).

g. Road Access and Transportation

US 93 and the Kane Springs Road would provide primary access into the project area. Spur roads would be constructed from the Kane Springs Road to temporary and permanent facilities sites, such as contractors' yards, well fields, and power pole locations, within the project right-of-way corridor. The number of new spur roads would be held to a minimum, consistent with their intended use (e.g., facility construction, conductor stringing and tensioning). It is estimated that seven new minor access roads would be required to access the proposed well houses. Each of these roads would be approximately 100 feet long and 12 feet wide. Access roads not required after construction would be removed and restored to their approximate original contour and dimensions and made to discourage vehicular traffic. All temporary road surfaces would be ripped or harrowed to establish conditions appropriate for reseeding, drainage, and erosion prevention.

Table 1 lists the estimated temporary and permanent disturbance acreage required for construction and operation of the proposed project. The estimated disturbance acreage is based on preliminary engineering plans and therefore may change slightly.

Table 1 Estimated Surface Disturbance by Land Ownership (at full buildout of the proposed project)		
	Temporary (acres)*	**Permanent (acres)***
Federal (BLM)		
Well House and Well Substation	3.2	3.0
KPW-1 Well, Forebay Tank, KMW-1 Well	0.3	1.0
Pipeline Construction right-of-way	148.7	0.0
Terminal Storage Tank	0.0	0.0
Electrical Substation	0.0	0.0
Electrical Transmission Line	14.8	5.0
Electrical Transmission Line Access Roads	0.0	8.0
Fiber Optics Line	0.0	0.0
Subtotal	**167.0**	**17.0**
Private		
Well House and Well Substation	0.0	0.0
KPW-1 Well, Forebay Tank, KMW-1 Well	0.0	0.0
Pipeline Construction right-of-way	0.0	0.0
Terminal Storage Tank	0.7	0.3
Electrical Substation	0.0	0.0
Electrical Transmission Line	2.4	1.1
Electrical Transmission Line Access Roads	0.0	0.7
Fiber Optics Line	14.2	0.0
Two Groundwater Monitoring Wells	4.0	2.0
Subtotal	**21.3**	**4.1**
Total	**188.3**	**21.1**

h. Construction Procedures

Each utility agency would conduct all activities associated with the construction, operation, and rehabilitation of temporarily disturbed areas within the authorized limits of their BLM right-of-way. To supply electrical power to the well fields, it is anticipated that LCPD would be the first utility agency to begin construction after all approvals have been acquired. During construction activities, water would be used to suppress dust in the construction area.

Construction of the electric transmission lines and substation would involve the following general sequence: engineering surveys and staking, clearing and grading, material storage and handling, creation of structure holes or foundations, structure assembly and erection, installation of security fencing around substation, post construction cleanup and reclamation, and construction monitoring. Construction of the overhead lines would be completed in two phases: setting the pole structures and installing the cable. The setting of the pole structures is accomplished with a single multi-purpose truck. The truck has a small crane suitable for lifting and placing poles. A pole trailer is towed behind the crane truck to transport the poles to the

installation site. Affixed to the crane is an auger for boring the holes for the pole structures. Soil excavated during construction would be used for backfill and for restoration of disturbed areas. The cable would be installed using two vehicles: a cable truck and a truck with a power lift. The cable would be strung out along the installation route and the man lift would be used to place the cable on the pole structure.

Construction of the groundwater facilities and fiber optic line would involve the following sequence: engineering surveys and staking, topsoil salvage and storage, clearing and grading (including access road construction), trenching and blasting, pipeline stringing/installation, installation of fiber optic line in common pipeline trench, backfilling, hydrostatic testing, re-grading, post-construction cleanup, and reclamation, and construction monitoring. Trenching would consist of excavating the trench using either a trenching machine or track-mounted excavator. In general the bottom of the trench would be five feet wide and up to six feet deep to provide the required cover over the top of the installed pipe. In areas of weathered rock, track-mounted excavators may be preceded by a bulldozer equipped with a single-shank ripper. Limited blasting may be required in areas where shallow or exposed bedrock is present. This project would be constructed utilizing a "Dig and Lay" procedure. In other words, a portion of trench would be dug, the pipe would be laid, welded, and back filled and another segment would begin. There would be minimal (less than 500 feet) open trench at any one time and the backfill would occur almost immediately following pipe installation.

i. Operation and Maintenance

The electrical facilities would be in continuous operation and water facilities would be operated and maintained to ensure safe operation and integrity of the pipeline. Periodic inspection and maintenance of power and water facilities would be required. If a pipeline break were to occur, immediate steps would be taken to isolate the break, the break would be repaired, and the trench backfilled. Areas would be contoured and revegetated after these types of repairs. Emergency maintenance of power lines, such are repairing downed wires and correcting unexpected outages would be performed by LCPD.

j. Project Phases

Construction of the project would occur in three phases, with one to three years between phases. Phases would correspond to demand for water and issuance of permits for additional water rights. Eventually LCWD would like to harvest 5,000 afy from the carbonate aquifer within the Kane Springs Valley Hydrographic Basin but so far has been granted an appropriation of 1,000 afy by the Nevada State Engineer. This appropriation granted four points of diversion, which constitutes the initial production under Phase 1 of the project. If additional appropriations are granted, production from Phase 1 wells could be increased, and Phase 2 and Phase 3 wells could be developed.

- Construction of Phase 1 would occur over a 90- to 180-day period and would begin upon completion of environmental reviews and the acquisition of necessary permits

and approvals. Phase 1 water facilities would include the transmission pipeline (main water line) and approximately 9.4 miles of well field collection pipelines for up to four wells (main collection plus laterals to wells), up to four production wells, the storage tanks, and up to two monitoring wells. Power facilities would include 14 miles of 69 kV/22.8 kV overhead power lines and up to four smaller substations to serve each well.

- Construction of Phase 2 would occur over a 30- to 60-day period. Phase 2 water facilities would include one to two production wells and lateral pipelines from these wells to the main collection pipeline (combined length of the two lateral pipelines is expected to be less than 1 mile). Power facilities would include 22.8 kV underground power lines from the main transmission line to the substation(s) and one to two smaller substations to serve the new well(s).
- Phase 3 construction would only occur if production from Phase 1 and Phase 2 were insufficient to meet anticipated demand or if production from previous wells were lower than estimated or designed. Phase 3 facilities and construction times are similar to Phase 2.

2. State Engineer Ruling

On February 2, 2007, the Nevada State Engineer issued Ruling 5712, which granted 1,000 afy of groundwater from the Kane Springs Valley Hydrographic Basin to LCWD and VWC for municipal purposes within the Coyote Spring Valley Hydrographic Basin. Specifically 500 afy was granted under Application 72220 and applications 72218, 72219, and 72221, were granted for a total combined duty of 500 afy.

The State Engineer concluded that to permit the appropriation of water in an amount greater than permitted under this ruling would conflict with existing rights and threaten to prove detrimental to the public interest. After reviewing the existing information, the State Engineer concluded that a small amount of water can be developed in the Kane Springs Valley and not unreasonably impact existing rights in the discharge areas of the White River carbonate-rock aquifer system, which are already fully appropriated. The State Engineer found that no water has been previously appropriated in the Kane Springs Valley Hydrographic Basin and by limiting the quantity of water authorized for appropriation the potential impacts to existing waster rights in down-gradient hydrographic basins would be minimized.

3. Proposed Minimization Measures for Desert Tortoise (Mojave population)

a. The applicant will implement an Environmental Training Program. Prior to beginning work, all contractor personnel assigned to the field for construction-related activity will attend a mandatory one-time Worker Environmental Training Program presented by the project developer's Environmental Compliance Team. The presentation will review topsoil salvage, access restrictions, general site restrictions, and other environmental

requirements regarding the project. Participants will sign a statement declaring that they understand and will abide by any guidelines set forth in the material presented.

b. All areas around structures will be backfilled, compacted, and returned as close as possible to the original condition and grade.

c. Signs will be placed along the access roads to discourage off-highway vehicle use of adjacent areas.

d. Clearance surveys will be performed prior to any construction activities within the right-of-ways. Any tortoises located will be handled and relocated by a qualified tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999). Burrows containing tortoises or nests will be excavated by hand, with hand tools, to allow removal of the tortoise or eggs. Desert tortoises moved during the tortoise inactive season or those in hibernation, regardless of date, must be placed into an adequate burrow; if one is not available, one will be constructed in accordance with Desert Tortoise Council (1994, revised 1999) criteria. During mild temperature periods in the spring and early fall, tortoises removed from the site will not necessarily be placed in a burrow. Tortoises and burrows will only be relocated to federally managed lands. If the responsible Federal agency is not BLM, verbal permission, followed by written concurrence, will be obtained from BLM and the Service before relocating the tortoise or eggs to lands not managed by BLM.

e. Construction monitoring will employ a field contact representative, authorized biologist(s), and qualified biologist(s) during construction activities except in those areas with high disturbance. The Service employs a specific set of guidelines for such monitoring.

f. Tortoises requiring moving will only be handled by the authorized and qualified tortoise biologist or other trained personnel approved by the Service and the Nevada Department of Wildlife (NDOW).

g. A 25 mile per hour (mph) project access road speed limit will be enforced for all project vehicles and personnel.

h. The area limits of project construction and survey activities would be predetermined based on the temporary and permanent disturbance areas noted on the final design engineering drawings to minimize environmental effects arising from the project, with construction activities and traffic restricted to and confined within those limits.

i. Littering is not allowed. Project personnel would not deposit or leave any food or waste in the project area, and no biodegradable or non-biodegradable debris would remain in the right-of-way following completion of construction.

j. No wildlife, including rattlesnakes, may be harmed except to protect life and limb.

k. Project personnel are not allowed to bring pets to any project area in order to minimize harassment or killing of wildlife and to prevent the introduction of destructive animal diseases to native wildlife populations.

l. Wildlife species may not be collected for pets or any other reason.

m. Project supplies or equipment where wildlife could hide will be inspected prior to moving or working on them, to reduce the potential for injury to wildlife. Supplies or equipment that cannot be inspected or from which wildlife cannot escape or be removed, will be covered or otherwise made secure from wildlife intrusion or entrapment at the end of each work day.

n. All steep-walled trenches or excavations used during construction will be inspected twice daily (early morning and evening) to protect against wildlife entrapment.

o. All new access roads constructed as part of the project that are not required as permanent access for future project maintenance and operation would be permanently closed to minimize impacts from increased public access.

p. To minimize perching opportunities for raptors near habitats supporting sensitive prey species, structures incorporating a design to discourage raptor perching will be selected.

q. Only the minimum amount of vegetation necessary for the construction of structures and facilities will be removed. Topsoil will be conserved during excavation and reused as cover on disturbed areas to facilitate re-growth of vegetation.

r. Construction holes left open overnight will be covered. Covers will be secured in place nightly, prior to workers leaving the site, and will be strong enough to prevent livestock or wildlife from falling through and into a hole.

s. Holes and/or trenches will be inspected prior to filling to ensure absence of mammals and reptiles.

t. Where necessary, a biological resource monitor shall be present during the construction to ensure resources are protected in the construction area.

u. Excavations will be sloped on one end to provide an escape route for small mammals and reptiles.

v. A revegetation plan will be developed and implemented for the project which describes procedures the LCWD and its contractors would use to conduct revegetation of the disturbed areas. The Plan describes seedbed preparation; seed mixtures; seeding,

salvaging, and transplanting methods; revegetation schedule; post-construction monitoring; evaluation of revegetation success; remediation; and reporting.

w. A noxious weed management plan will be developed and implemented for the project which includes site-specific measures that LCWD and its contractors would implement to control noxious weeds including, but not limited to, the use of cleaned, weed-free equipment, pressure washing of all vehicles and equipment prior to arrival at the work site, and the use of certified weed-free straw/hay bales to control erosion. A key element of the noxious weed management plan is to identify and treat existing weed infestations prior to construction.

x. A fire mitigation plan will be developed and implemented for the project which identifies measures to be taken during construction, operation, and maintenance of the project facilities to prevent and suppress fires. The purpose is to establish standards and practices to minimize the risk of fire or, in the event of fire, to implement immediate suppression procedures.

4. Proposed Minimization Measures for Moapa Dace

On August 8, 2006, the Service entered into a stipulated agreement with LCWD and VWC for water rights applications in the Kane Springs Valley Hydrographic Basin, then under review by the Nevada State Engineer's Office. The Service agreed to withdraw its protests for the granting of these water rights in exchange for the parties agreeing to implement the Monitoring, Management, and Mitigation Plan which would help protect senior Federal water rights in the Muddy River Springs/Warm Springs Area from unreasonable adverse impacts from groundwater pumping. The common goal of the parties is to manage the development of the LCWD and VWC water rights in their entirety from the Kane Springs Valley Hydrographic Basin, without resulting in any losses to senior water rights or unreasonable adverse impacts to Federal water resources.

The Monitoring, Management, and Mitigation Plan lists monitoring requirements in relation to the production wells, two new monitoring wells, elevation control and springflow, water quality, data quality, and reporting. The management requirements include action criteria to help to maintain minimum in-stream flows in the Warm Springs Area in order to protect and recover the Moapa dace. The parties agreed to the following, summarized from the Plan:

a. The Average Flow Level shall be determined by flow measurements at Warm Springs West flume. See the Plan for the definition of Average Flow Level.

b. If the Average Flow Level decreases to an amount within the Trigger Range of 3.2 cubic feet per second (cfs) or less, the parties agree to meet as soon as practically possible to discuss and interpret all available data and plan for mitigation measures in the event that flows continue to decline.

c. If the Average Flow Level is within the Trigger Range of 3.15 cfs or less but greater than 3.0 cfs, LWCD and VWC agree to reduce pumping from all wells in Kane Springs Valley by 50 percent or to a pumping level not greater than 2,500 afy, whichever results in the lesser amount of pumping, until the Average Flow Level exceeds 3.15 cfs. The subsequent State Engineer ruling limited pumping to 1,000 afy. Accordingly, under this scenario, LCWD and VWC would be required to reduce pumping by 50 percent.

d. If the Average Flow Level is within the Trigger Range of 3.0 cfs or less, LWCD and VWC agree to cease pumping from all wells in Kane Springs Valley until the Average Flow Level exceeds 3.0 cfs. However, if LWCD and VWC, together with CSI, effectuate a reduction in the quantity of water, CSI would have otherwise been entitled to pump in a given year from wells within the Coyote Spring Valley, then LWCD and VWC shall have the right to pump a like quantity of water from wells within Kane Springs Valley in that year.

The management requirements also include the establishment of a TRT with two representatives each from LCWD/VWC and the Service. The objectives of the TRT include reviewing existing data, making recommendations concerning the monitoring efforts required by this Plan, and determining whether other criteria, such as water levels in the monitoring wells, are a better indicator of potential effects of the pumping wells on the springs in the Muddy River Springs/ Warm Springs Area. As part of their commitment to the recovery of the Moapa Dace, LCWD and VWC will commit annual funds for a period of five years following the granting of the water rights applications, for the restoration of Moapa dace habitat outside the boundaries of the Moapa Valley National Wildlife Refuge (NWR).

B. Definition of the Action Area

The action area is defined as all areas to be affected directly or indirectly by the Federal action, including interrelated and interdependent actions, and not merely the immediate area involved in the action (50 CFR § 402.02). Subsequent analyses of the environmental baseline, effects of the action, cumulative effects, and levels of incidental take are based upon the action area as determined by the Service.

For the desert tortoise and its designated critical habitat, impacts will be tied to the project area and a zone-of-influence extending 0.5 miles (2,400 feet) beyond the project area to cover potential effects to desert tortoises that could move into construction areas or onto access roads.

For the Moapa dace, which depends on thermal springs in the Warm Springs Area for survival, the action area includes the Kane Springs Valley Hydrographic Basin and the hydrographic basins down gradient of this basin in the White River Groundwater Flow System that are hydrologically connected to the Muddy River ecosystem. These hydrographic basins are the Coyote Spring Valley (Basin 210) and Muddy River Springs Area (Basin 219). The Service acquired the Moapa Valley NWR to secure habitat and assist the recovery efforts for the endangered Moapa dace, a species restricted to the Warm Springs Area and the mainstem of the

upper Muddy River. Springs in this area are considered regional discharge points for the carbonate aquifer of the White River Flow System.

C. Status of the Species- Rangewide

1. Desert Tortoise (Mojave population) and Designated Critical Habitat

The current rangewide status of the desert tortoise and its critical habitat consists of information on its listing history, species account, recovery plan, recovery units, distribution, reproduction, and numbers, and critical habitat units and their constituent elements. This information is provided on the Service's website at: http://www.fws.gov/nevada. If unavailable, contact the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230 and provide File No. 84320-2008-F-0007.

2. Moapa Dace

See the description in the Intra-Service Programmatic Biological Opinion for the Proposed Muddy River Memorandum of Agreement Regarding the Groundwater Withdrawal of 16,100 afy From the Regional Carbonate Aquifer in the Coyote Spring Valley and California Wash Basins and Establishment of Conservation Measures for the Moapa Dace, Clark County, Nevada (Service 2006c) (File No. 1-5-05-FW-536). Updated information on the Moapa dace is provided below.

Warm Springs Natural Area

In September 2007, Southern Nevada Water Authority (SNWA) purchased 1,179 acres of private property that encompasses several springs in the Muddy River headwaters area, including the former Warm Springs Ranch. The property includes 3.8 miles of the mainstream Muddy River. The Warms Springs Natural Area is to be managed as a nature preserve for protection of Moapa dace; and restoration and management of the areas as an ecological reserve.

Current Distribution and Abundance

Moapa dace surveys have been conducted annually throughout the upper Muddy River system. Dace surveys conducted semi regularly between 1994 and 2006 indicate Moapa dace numbers range between 1,296 and 3,825 individuals. The 2007 survey data indicate that there were approximately 1,172 fish in the population that occurred throughout 5.6 miles of habitat in the upper Muddy River system. Approximately 97 percent of the total population occurred within one major tributary that included 1.78 miles of spring complexes that emanate from the Pedersen, Plummer, and Apcar spring complexes on the Moapa Valley NWR and their tributaries (upstream of the gabion barrier). Approximately 48 percent of the population was located on the Moapa Valley NWR and 48 percent occupied the Refuge Stream supplied by the Pederson-Plummer springs. The highest densities of Moapa dace occurred on the Moapa Valley NWR's Plummer and Pedersen units.

In 2008, there was an approximately 60 percent decrease in the number of Moapa dace, from 1,172 fish in 2007 to 460 in 2008. Most of this decline is due to large changes in the numbers of dace in the Pederson, Plummer, and Refuge Stream areas which supported more than 92 percent of the population in 2007. The cause of the population decline is currently unknown, although beavers have recently changed stream characteristics in the Refuge Stream and vegetation management occurred along the Pederson Unit. In addition, habitat restoration projects have been implemented over the past few years in the Pederson and Plummer units of the Moapa Valley NWR, restoring the streams to a more natural state to augment Moapa dace habitat and populations.

D. Environmental Baseline

1. Status of the Listed Species/Critical Habitat in the Action Area

a. *Desert Tortoise (Mojave Population) - Status within the Action Area*

The action area occurs in the Mojave Desert Scrub Biome (Turner 1982), along the Kane Springs Road located in the valley between the Meadow Valley Mountains to the south and the Delamar Mountains to the north. The project area crosses Kane Springs Wash, which flows southwest to its confluence with the Pahranagat Wash in the northern part of the Coyote Spring Valley, in several locations. The vegetation in the action area consists of creosote bush scrub and desert wash scrub along Kane Springs and Pahranagat washes. Elevations in the action area range from approximately 2,600 to 3,300 feet.

Between October 16 and 18, 2006, Greystone-ARCADIS biologists conducted desert tortoise presence-absence surveys in the project area for BLM (ARCADIS 2007). Evenly spaced along the project area were 18, 1.5 mile long by 10 yard wide triangular strip transects. Transects were surveyed for live or dead desert tortoise, and any tortoise sign including burrows, scat, tracks, and water scrapes. The total corrected sign method was used to estimate tortoise densities. Estimated tortoise densities ranged from 10 to 0 tortoises per square mile. No live tortoises were found and most of the tortoise sign was comprised of burrows and water scrapes. The highest tortoise densities were 10 per square mile at 3 transects, and 7 per square mile at 3 transects. The remainder of the transects had densities of 5 per square mile or less. No desert tortoise sign were found in the two transects that overlapped with a wildfire perimeter from 2005 at the northeast end of the project area. Over the project area, tortoise densities average 4 desert tortoises per square mile. Densities in the project area are therefore estimated to be very low.

Recent surveys have been conducted in the Coyote Spring Valley as part of the rangewide population monitoring program. Survey data from 2005 line-distance sampling in the Coyote Spring Valley, which includes transects in the CSI private and lease lands located in the Mormon Mesa Critical Habitat Unit (CHU), estimate the tortoise densities in the valley to be 8.3 tortoises per square mile (Service unpublished data). Over the first five years of line-distance sampling monitoring, tortoises were least abundant in the Northwest Mojave Recovery Unit (2 to 8 tortoises per square mile) as compared to other recovery units (Service 2006b). Tortoise

densities in the Coyote Spring Valley are therefore among the highest in the recovery unit. These results are preliminary and additional analysis is needed, incorporating 2006 and 2007 survey results. Desert tortoise clearance surveys were conducted in 2006-2007 in the southern part of the Coyote Spring Valley. One hundred percent clearance surveys were conducted on 5,302 acres of CSI private lands in Clark County as of January 2008. Based on the total number of tortoises cleared during surveys (108 adults and juveniles), we estimate a density of around 13 tortoises per square mile on the CSI private lands in Clark County.

Older desert tortoise survey data exists for the action area including BLM strip triangle surveys and the Coyote Springs Permanent Study Plot (PSP). Prior to 1991, BLM surveyed for tortoises using the strip triangle method, recording all tortoise sign within approximately 5 meters (15 feet) of the transect and estimating species density based on methods described by Karl (1981) for southern Nevada. Densities within one half mile of Kane Springs Road ranged from high to very low. Densities averaged medium (45 - 90 tortoises per square mile) and low (10 - 45 tortoises per square mile) over the project area. Densities on the northeast part of the project area were very low (0 - 10 tortoises per square mile). It appears that densities have declined somewhat since 1991.

The closest 1-square-mile PSP to the project area is the Coyote Spring plot, which is located 1.9 miles east of US 93 and 1.9 miles north of Kane Springs Road. This plot was established in 1986 and resurveyed in 1992 and 1995. EnviroPlus Consulting (1995) characterized this site as having moderately high tortoise numbers, with a size distribution typical of that observed on other PSPs and a significantly skewed sex ratio with female tortoises comprising two-thirds of the observed sub-adult and adult population (however, this effect was not significant for tortoises >208 mm mid-carapace length). Over the three survey periods, total estimated population size on the plot ranged from 96 ± 31 to 116 ± 29 (Esque1986, Converse Environmental Consultants Southwest, Inc. 1992, EnviroPlus Consulting 1995). This is considerably higher than densities in the action area. The annual adult mortality rate for the Coyote Spring plot in 1995 was estimated at 4 percent, which is higher than the 2-3 percent rate that the Service believes necessary to sustain desert tortoise populations (Service 1994). However, the tortoise population at the Coyote Spring PSP was apparently stable over the 10 years that the surveys spanned (EnviroPlus Consulting 1995).

Tortoises with symptoms of cutaneous dyskeratosis and URTD were observed during plot surveys; however, comparisons across survey periods are unreliable due to differences in diagnosis/evaluation criteria used to evaluate health status. In 1995, approximately one-third of tortoises had trauma-related injuries, likely caused by a predator. Overall, mortality by predation was characterized as present, but not at a high rate. Human impacts on tortoise populations in this area were considered low and inconsequential (EnviroPlus Consulting 1995). The PSP is located in the northern part of the Coyote Spring Valley and BLM strip triangle survey data corroborates that this area north of the Kane Springs Road and east of US 93 has higher tortoise densities than the surrounding areas with several very high density (greater than 140 tortoises per square mile) and high density (90 -140 tortoises per square mile) survey triangles.

b. ***Desert Tortoise Critical Habitat - Status within the Action Area and the Mormon Mesa CHU***

The project area is located mostly within the 427,900 acre Mormon Mesa CHU of the Northeastern Mojave Recovery Unit for the desert tortoise. The primary vegetation community within the Mormon Mesa CHU is creosotebush-white bursage desert scrub, which in Nevada is found in broad valleys, lower bajadas, plains and low hills of the Mojave Desert. Shrub cover is sparse to moderately dense, consisting primarily of creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) with a variety of different shrubs and cacti as co-dominants or understory species. Where poorly-drained soils with high salt and clay content are found on valley bottom floors, pockets of salt desert scrub community may be present, typified by one or more *Atriplex* species.

The CHU boundaries were based on proposed desert wildlife management areas (DWMAs) in the Draft Desert Tortoise Recovery Plan. The land management agencies have subsequently designated areas of critical environmental concern (ACECs) in each DWMA, where they are managing the land as reserves. In general, land management activities that may negatively affect the desert tortoise and its habitat such as domestic livestock grazing, grazing by wild burros and horses, commercial harvest of desert flora, and off-road vehicle use are mostly restricted or not allowed in these areas, as per Recovery Plan recommendations. The Mormon Mesa CHU contains the following ACECs: Kane Springs, Coyote Springs, and Mormon Mesa. The project area is in the Kane Springs ACEC.

CSI owns 29,055 acres of lands in Coyote Spring Valley, in Clark and Lincoln counties, Nevada, all of which is designated critical habitat for the desert tortoise. In addition CSI has a lease for approximately 13,767 acres of BLM-administered land in Coyote Spring Valley for 99 years. In Clark County, CSI is currently constructing a residential and golf community with associated commercial development on 6,881 acres of private land. Construction will occur over 25 years, with an eventual build out of 29,000 residential units, approximately 72,500 residents, and a visitor capacity equal to 14,500 residents (based on full-time equivalency). In Lincoln County, CSI proposes to develop 21,454 acres of private land over a 40 year period. It is estimated that there would be up to 111,000 residential units, resulting in an increase of population of 275,300 residents in Lincoln County. CSI plans to create a natural reserve on 13,767 acres of BLM leased land (approximately 7,548 acres in Lincoln County and 6,219 acres in Clark County).

EnviroPlus Consulting (1995) characterized the Coyote Spring PSP as having low historical and present-day human impact: Old Highway 93 was rarely used and had large shrubs growing through cracks in the pavement; little trash was observed on the plot; no power lines were present; no cattle or burros were observed; and while a few old two-track roads were discernible for short distances, none appeared to be recently made. Furthermore, this area was characterized as having somewhat variable but adequate tortoise habitat, with abundant forage and good soil for burrowing (EnviroPlus Consulting 1995).

The Mormon Mesa CHU is highly fragmented with an extensive network of primarily unimproved and two-track roads. The Desert Tortoise Recovery Plan (companion document for proposed DWMAs, Service 1994), describes this area as having the highest density of roads and trails (1.3 linear miles per square mile) of any desert tortoise *crucial* habitat in southern Nevada based on a 1984 status report [crucial habitat was defined by BLM in the California Desert Plan (1980) as "...Portions of the habitats of sensitive species that if destroyed or adversely modified could result in their being listed as threatened or endangered pursuant to section 4 of the Act or in some category implying endangerment by a State agency or legislature."]. US 93 runs along the western edge and bisects the southwestern tip of the unit, providing a substantial barrier between the unit and protected tortoise habitat in the Desert NWR to the west. State Route (SR) 168 also runs through the western part of the CHU, and I-15 traverses the southeastern edge of the unit. Other well-established roads include the Kane Springs Road and the Carp-Elgin Road which bisects the unit. Powerlines, pipelines, and access roads dissect much of the area.

The 2005 wildfire season in southern Nevada was severe due in large part to the high bio-mass of flammable non-native annual grasses after above-average moisture conditions the previous winter. Approximately eight acres in the northeast part of the project area burned in 2005 in the Meadow Valley Fire, which burned approximately 148,000 acres overall, including a small amount of the Mormon Mesa CHU. In total, over 56 fires of various sizes in southern Nevada, southwestern Utah, and northern Arizona burned roughly 964,806 acres in the Northeastern Mojave Recovery Unit in 2005 including 15,559 acres (4 percent) within the Mormon Mesa CHU. The wildfire hazard in the Mormon Mesa CHU remains significant although fire activity in 2006 and 2007 was lower due to dryer conditions over the winter and spring. Monitoring of the 2005 fires in critical habitat being conducted by the U.S. Geological Survey (USGS) shows that proportionally less tortoise activity occurred in burned areas (treatment plots and control plots) compared to unburned reference plots.

The Mormon Mesa CHU is primarily in Federal ownership, administered by BLM. In addition to CSI's private lands, there are several small privately-held parcels along the Meadow Valley Wash that are within or adjacent to the CHU. Other privately-held lands or Federal land slated for disposal adjacent or near the Mormon Mesa CHU have the potential for future development. Land near the extreme southwestern tip of the Mormon Mesa CHU and northeast of Las Vegas is also in private ownership. Future development of these private lands, as well as possible future disposals of Federal land to allow for expansion of existing cities will create additional challenges for the Service and Federal lands managers in terms of management of the Mormon Mesa DWMA/ACEC, and conservation and recovery of desert tortoises in the Mormon Mesa CHU.

c. *Moapa Dace - Status within the Action Area*

The action area encompasses the entire range of the Moapa dace. Population numbers were discussed in detail in the section entitled "Status of the Species Rangewide, C. Moapa Dace;" thus, no further details are provided here. The relationship of the dace's habitat to groundwater is discussed in more detail below.

2. *Factors Affecting the Listed Species/Critical Habitat in the Action Area*

The action area is located primarily within the Kane Springs Valley, Coyote Spring Valley and Muddy River Springs Area hydrographic basins. These basins are part of the White River Groundwater Flow System, a regional groundwater flow system located in southern Nevada (Eakin 1966, Harrill *et al.* 1988, Prudic *et al.* 1993). The flow system consists of numerous local basin fill aquifers underlain by a large regional carbonate aquifer that transmits groundwater from basin to basin, beneath topographic divides. Groundwater inflow or recharge to the regional carbonate aquifer is primarily through precipitation. The terminal discharge of the White River Groundwater Flow System is most likely the Warm Springs in the Upper Moapa Valley, an area consisting of about twenty regional springs, with numerous seeps and wetlands. Since the Moapa dace is dependent upon these springs for survival it is important to discuss the hydrology of this area in more detail.

The source water supporting spring discharge in the Warm Springs Area is from the regional carbonate groundwater (62 percent) and from local recharge based on precipitation in the surrounding mountain ranges (BLM 2008). The production wells in the Kane Springs Valley that would be pumped under the proposed action are located about 20 miles northwest of the Warm Springs Area. The high permeability and transmissivity of the carbonate aquifer underlying the Kane Springs Valley and down-gradient Coyote Spring Valley could connect the proposed action to springs in the Warm Springs Area. Long-term effects from groundwater extraction could be propagated over great distances. Barriers to flow, such as faults or rock units with low permeability, also affect the extent of drawdown. There may be a break in the regional hydraulic gradient at the location of the Kane Springs Wash fault zone; however until additional long-term pumping data are obtained, the true relationship cannot be fully evaluated (BLM 2008).

a. *Existing Groundwater Rights and State Engineer Rulings in the Action Area:*

Groundwater wells within the Kane Springs Valley and Coyote Spring Valley Hydrographic Basins are associated with municipal, mining, industrial, commercial and irrigation use. Permitted diversion rates for existing wells vary from 145 to 7,242 afy. Within the Kane Springs Valley Hydrographic Basin, permitted water rights are limited to the LCWD/VWC applications recently approved by the State Engineer under Ruling 5712. The LCWD has an additional four groundwater applications pending before the Nevada State Engineer. Currently, in the Kane Springs Valley Hydrographic Basin permitted groundwater rights are 1,000 afy (BLM 2008).

In the Coyote Spring Valley Hydrographic Basin, groundwater rights filed with the Nevada State Engineer include 15 industrial use permits owned by SNWA, 4 municipal use permits owned by CSI, 1 industrial use permit owned by Nevada Power Company, and 4 permits owned by Bedrock Limited, LLC associated with sand and gravel mining operations. Bedrock Limited, LLC also has one vested application for irrigation use. Currently, in the Coyote Spring Valley Hydrographic Basin permitted groundwater rights are 16,304 afy (BLM 2008). There are 34 pending applications by Las Vegas Valley Water District (LVWD); CSI; Dry Lake Water, LLC;

and Bedrock Limited, LLC in the Coyote Spring Valley Hydrographic Basin. A list of surface water and groundwater rights in the Kane Springs Valley and Coyote Spring Valley hydrographic basins is provided in Appendix D of the Kane Springs Valley Groundwater Development EIS (BLM 2008).

There are three Nevada State Engineer rulings that affect the withdrawal of groundwater in the action area. In these rulings the Nevada State Engineer has required "staged development," an incremental approach for phasing in development of the carbonate aquifer with adequate monitoring in cooperation with other parties in order to assist in assessing effects. This approach was adopted by the Nevada State Engineer "...in order to predict, through the use of a calibrated model, the effects of continued or increased development with a higher degree of confidence." Ruling 5712, granting 1,000 afy of groundwater from the Kane Springs Valley to LCWD and VWC was summarized in the section entitled "Description of the Proposed Action." The other two rulings are summarized below.

In Order 1169 issued in 2002, the Nevada State Engineer held in abeyance applications for new groundwater rights in the Coyote Spring Valley, Black Mountains Area, Garnet Valley, Hidden Valley, Upper Moapa Valley, and Lower Moapa Valley groundwater basins until a pump test is completed. All major water right holders in these basins (SNWA, LVVWD, Moapa Valley Water District [MVWD], CSI, and Nevada Power Company) were required to conduct a regional groundwater study, including the pumping of at least 50 percent of the permitted water rights within the Coyote Spring Valley hydrographic basin for a period of at least two consecutive years. Order 1169 is designed to evaluate how groundwater pumping activities in Coyote Spring Valley will impact water rights and the environment within the Warm Springs Area, including the Muddy River ecosystem. Data obtained from the study will be used to evaluate groundwater development activities within the regional carbonate groundwater system.

To date, there has been limited pumping of the permitted groundwater rights in Coyote Spring Valley. In 2005, CSI drilled and pump tested two wells in Coyote Spring Valley under Nevada Division of Water Resources permit numbers 70429 and 70430. Currently, CSI is monitoring and pumping water as needed for their development activities in Clark County.

In Ruling 4243 in the Muddy River Springs Area Hydrographic Basin, the Nevada State Engineer granted permits to MVWD for 5,800 afy from Arrow Canyon Well, but with pumping phased in over a 10-year period while monitoring surface water flows and groundwater levels in order to assess potential effects to wells and springs. Annual volume pumped is limited to annual demand, up to the maximum permitted. Annual pumping has consistently been less than the amount allowed in the ruling.

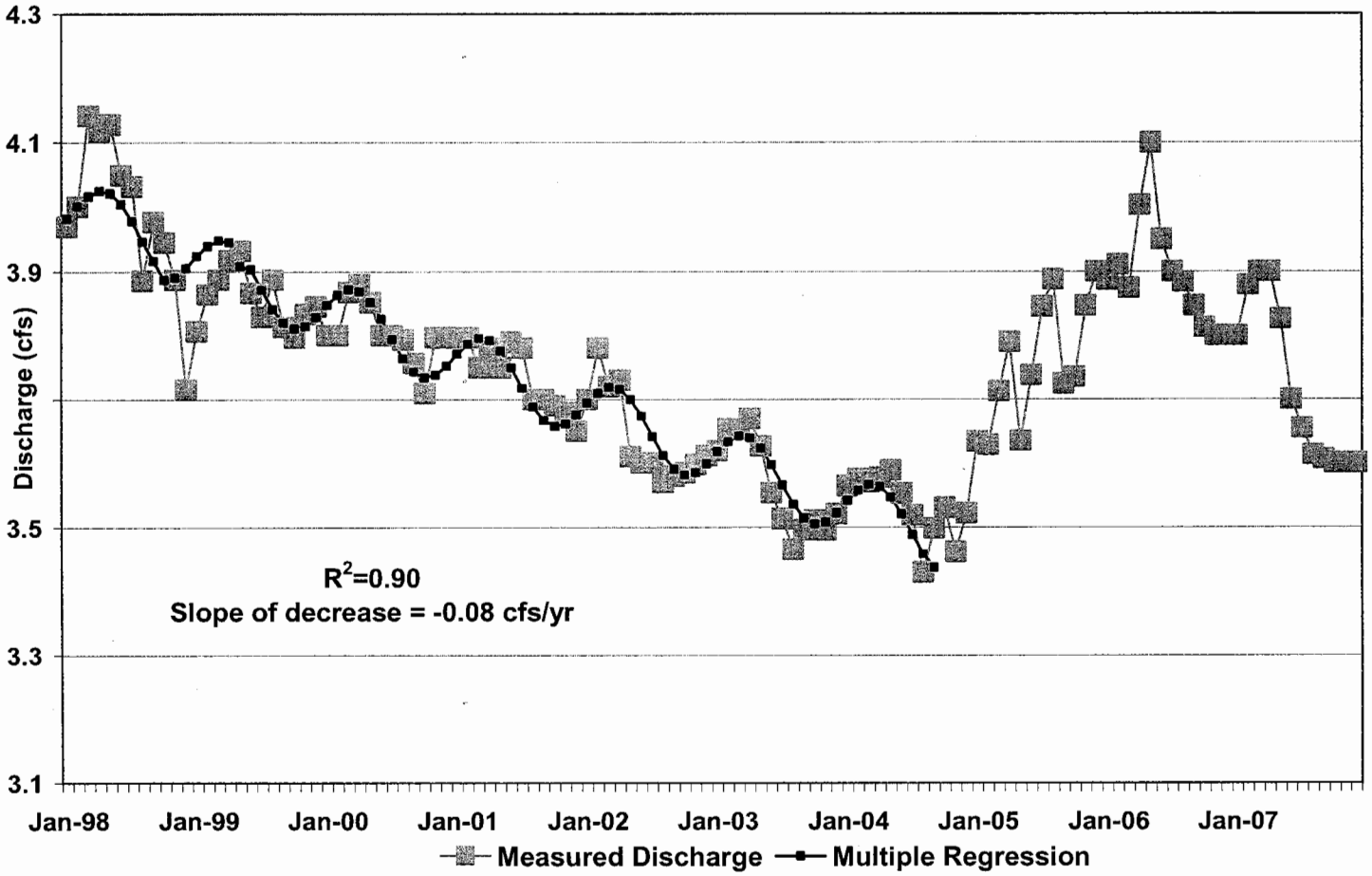
As of 2002, the Nevada State Engineer had granted a total of approximately 14,800 afy of groundwater permits for the alluvial and carbonate aquifer in the Muddy River Springs Area Hydrographic Basin (Service 2006c). Included in these are MVWD permits for the Arrow Canyon Well totaling 7,240 afy (1,440 afy prior to Ruling 4243 plus 5,800 afy from Ruling 4243) from the carbonate aquifer. To date, the actual pumping from the Arrow Canyon Well has

been far less than the permitted volume. Approximately 2,400 afy has been pumped on average since 1998.

Concurrent with groundwater pumping between 1998 and 2004, groundwater levels and spring discharge in the Warm Springs Area consistently declined (Service 2006c). Over the same period, the total spring discharge from the Pedersen Unit, as measured at Warm Springs West, decreased from 4.00 cfs to 3.55 cfs (Service 2006c) (Figure 2). The discussion in Mayer (2004) shows that the observed decreases in spring discharge are consistent with expected decreases based on the two-foot decline in groundwater levels observed in the carbonate monitoring wells in the Warm Springs Area. The extremely wet winter of 2005 appears to have recharged the springs with monthly discharge peaking at 4.1 cfs in May of 2006, and decreasing since that time (Mayer 2008). This is expected to be a transient response but the timing and level of a return to equilibrium conditions is not known for certain. Discharge has currently declined to 3.6 cfs (USGS 2008).

The exact timing of the groundwater level decline is important because if the actual decline precedes in time any action or event suspected of causing the decline (such as increased pumping or drought), then this is strong evidence that there are other factors causing the decline. The Service (2006c) analyzed the timing of the decline as it was concerned about the rate and magnitude of the 1998 to 2004 decrease. The start of the decline coincides with MVWD's increased pumping from the carbonate aquifer. In order to address the possibility that drought caused the groundwater level declines, the Service (2006c) compiled precipitation records from a number of stations in the southeastern Nevada area. Their analysis showed that the decline from 1998 to 2004 was not likely to be drought-related. These declines observed between 1998 and 2004 have occurred not only locally in the Warm Springs Area, but have also occurred in monitoring wells 12 miles upgradient in Coyote Spring Valley and 15 miles south in monitoring

Figure 3: Warm Springs West, Moapa Valley NWR - USGS Average Monthly Discharge, Apr 1998 to Dec 2007



wells in the California Wash Basin, based on USGS monitoring well data and monitoring well data shared with the Service in July 2004 (Service 2006c).

On July 14, 2005, a Memorandum of Agreement (MOA) was signed by the SNWA, MVWD, CSI, Moapa Band of Paiutes (Tribe), and the Service, regarding groundwater withdrawal of 16,100 afy from the regional carbonate aquifer in Coyote Spring Valley and California Wash Basins, and establishment of conservation measures for the Moapa dace. The MOA outlined specific conservation actions that each party would complete in order to minimize potential impacts to the Moapa dace should water levels decline in the Muddy River system as a result of the cumulative withdrawal of 16,100 afy of groundwater from two basins within the regional carbonate aquifer system.

To minimize effects to the Moapa dace, conservation actions were identified in the MOA. In order to be considered a benefit to the species, the proposed conservation measures will be initiated or fully implemented prior to the proposed groundwater withdrawal of 16,100 afy. Since development of these water rights requires the construction of facilities, as identified above, there would be a two to five year timeframe in which to implement many of these actions prior to the pumping of the full amount of water. CSI would utilize a small portion of their water right in Coyote Spring Valley prior to full implementation of all of the conservation measures. The action items identified in the MOA include development of a Recovery Implementation Program, restoration, ecological studies, construction of fish barriers, eradication of non-native fish, and dedication of water rights. Minimum in-stream flow levels were established in the MOA that trigger various conservation actions should those predetermined levels be reached. The flow levels will be measured at the Warm Springs West Flume located on the Moapa Valley NWR.

b. Section 7 Consultations Completed for Activities and Projects in the Action Area

1. **File Nos. 1-5-99-F-450 and 84320-2008-F-0078:** On March 3, 2000, the Service issued a programmatic biological opinion (File No. 1-5-99-F-450) to BLM's Ely District Office for implementation of actions in the Caliente Management Framework Plan Amendment (CMFPA). The planning area consisted of public lands in White Pine, Lincoln, and a portion of Nye counties in east-central Nevada. Cumulatively, 25,521 acres of desert tortoise habitat were projected to be affected by the proposed activities within the planning area over a 10-year period.

   On September 9, 2008, the Service issued a programmatic biological opinion (File No. 84320-2008-F-0078) to BLM for the Ely District Resource Management Plan (Ely RMP). This programmatic biological opinion superseded the March 3, 2000, programmatic biological opinion for the CMFPA. Programs in the 2008 programmatic biological opinion included: vegetation management; weed management; wild horse management; lands, realty, and renewable energy projects; travel and off-highway vehicle management;

recreation; livestock grazing management; geological and mineral extraction; and fire management.

Implementation of multiple-use activities (excluding vegetation and weed management) were projected to result in the disturbance of 22,624 acres of desert tortoise critical habitat and 37,311 acres of desert tortoise habitat. During the 10-year term of the programmatic biological opinion, the Service authorized the take of no more than 47 desert tortoises and estimated that 972 tortoises would be taken by non-lethal means (i.e. harassment).

2. **File Nos. 1-5-94-F-334, 335, 336, and 035:** On May 15, 1995, the Service issued a non-jeopardy biological opinion to BLM for the issuance of a right-of-way to install four proposed fiber-optic lines in Clark and Lincoln counties, Nevada. Four applicants comprising the Fiber Toll Joint Venture Project requested a 7.6-m-wide (25-foot-wide) right-of-way for construction of four buried fiber-optic lines. Segments of these lines would parallel SR 168 for approximately 23 miles, and for 43 miles along US 93 (File Nos. 1-5-94-F-334 and 336). Approximately 98 and 65 acres of long- and short-term habitat disturbance, respectively, was attributed to the two segments adjacent to US 93 and SR 168 described above, a majority of which runs through the action area for the CSI project. This included approximately 53 acres of long-term disturbance and 35 acres of short-term disturbance to designated critical habitat (Mormon Mesa CHU) for the desert tortoise. The Service anticipated that up to 34 tortoises would be incidentally taken, 8 through mortality and 26 through injury or harassment.

3. **File No. 1-5-98-F-053, as amended:** On June 18, 1998, the Service issued a programmatic biological opinion to BLM for implementation of the Las Vegas Resource Management Plan (RMP). The project area for this consultation covers all lands managed by BLM's Las Vegas Field Office, including desert tortoise critical habitat, desert tortoise ACECs, and BLM-withdrawn land. The Las Vegas Field Office designated approximately 648 square miles of tortoise habitat as desert tortoise ACEC in the Northeastern Mojave Recovery Unit, and approximately 514 square miles of tortoise habitat as desert tortoise ACEC in the East Mojave Recovery Unit, through the final RMP. As identified in the RMP, BLM manages 743,209 acres of desert tortoise habitat within four tortoise ACECs for desert tortoise recovery. To accomplish desert tortoise recovery in the Northeastern and Eastern Mojave Recovery Units, the Las Vegas Field Office implements appropriate management actions in desert tortoise ACECs.

4. **File No. 1-5-98-FW-177:** On November 2, 1998, the Service issued a non-jeopardy biological opinion to the Nevada Fish and Wildlife Office for the implementation of eradication of non-native fish activities and installation of fish barriers in the Apcar Stream in the Warm Springs Area of the Muddy River. The Service concluded that the project was not likely to jeopardize the continued existence of the Moapa dace.

Incidental take was authorized and Reasonable and Prudent Measures were identified to minimize take to the species.

5. **File No. 1-5-99-F-411:** On December 8, 1999, the Service issued a non-jeopardy biological opinion to BLM for issuance of a right-of-way permit for the Nevada segment of the Las Vegas to Salt Lake City Long-haul Fiber-Optic Project. This consultation evaluated impacts to the desert tortoise and designated critical habitat from the construction, operation, and maintenance of a buried fiber-optic cable and related structures over an 180-mile linear stretch from the Utah-Nevada border to its terminus north of Nellis Air Force Base in Las Vegas. The section of the fiber-optic cable that runs through the Mormon Mesa CHU and CSI lands was located in NDOT's right-of-way east of US 93. The final area of disturbance was calculated at approximately 270 acres, including 158 acres of permanent impacts. The Service estimated that 4 desert tortoises may be incidentally injured or killed and 200 tortoises could potentially be affected by project activities.

6. **File No. 1-5-01-F-463:** On December 26, 2001, the Service issued a non-jeopardy biological opinion to the Bureau of Indian Affairs for approval of a lease for lands on the Reservation for construction and operation of the Moapa Paiute Energy Center. The proposed project would disturb up to 7 percent of the total available spawning habitat for the Moapa dace. As of the date of this biological opinion, the proposed project has not moved forward and the Service is not aware of any plans in the near future to construct the project.

7. **File No. 1-5-02-FW-463:** On March 13, 2002, the Service issued a non-jeopardy biological opinion to the Desert NWR Complex, Las Vegas, Nevada for the implementation of riparian and aquatic habitat restoration activities in the Pedersen Unit of the Moapa Valley NWR. The Service concluded that the incidental take of less than 10 percent of the 180-200 individuals (18-20 individuals) that may be present in the project area, would not likely jeopardize the continued existence of the Moapa dace. Reasonable and Prudent Measures were identified and implemented to minimize take of the species.

8. **File No. 84320-2008-F-0066 and 1-5-94-F-28R:** On December 20, 2007, the Service issued a biological opinion to BLM-Las Vegas for their proposal to amend an existing right-of-way for construction, operation, and maintenance of a single-circuit, overhead 500 kV transmission line (Southwest Intertie Project). The southern portion of the project begins at the Harry Allen Substation in Clark County, Nevada, crossing through the planning area, and ending approximately 34 miles north of Ely in White Pine County, Nevada. The project would disturb 231 acres of non-critical and 365 acres of critical desert tortoise habitat.

9. **File No. 1-5-05-FW-536:** On January 30, 2006, the Service issued a non-jeopardy intra-Service programmatic biological opinion for the Proposed Muddy River MOA, regarding the groundwater withdrawal by multiple parties of 16,100 afy from the regional carbonate aquifer in the Coyote Spring Valley and California Wash Basins. Given that there will be groundwater withdrawn from the same regional carbonate aquifer concurrently by different users and at different locations, it was difficult to assign loss to a specific action. The most accurate way to establish incidental take is at the landscape-level, which was analyzed in the Programmatic Biological Opinion. In that parent document, the cumulative withdrawal of 16,100 afy from all parties associated with the MOA predicted a loss of approximately 22 percent riffle and 16 percent pool habitat (as measured at the Warm Springs West gage downstream from the Pedersen Unit) when the flows reach 2.78 cfs. This amount included habitat losses potentially occurring under both the CSI development and SNWA pipeline. Three tiered biological opinions have been issued under this programmatic opinion:

a. **File No. 1-5-05-FW-536 Tier 1:** On March 2, 2006, the Service issued a non-jeopardy tiered biological opinion to the Corps for the issuance of a Section 404 permit under the Clean Water Act of 1972, as amended, for the CSI residential development project. The Service concluded the proposed residential development is an interdependent activity with the Corps' action and will result in the permanent loss of 6,881 acres of desert tortoise habitat and take of no more than 645 desert tortoises. The proposed action falls within the scope and coverage of the 10(a)(1)(B) permit issued to Clark County for its multiple species habitat conservation plan (MSHCP), and exemption for the anticipated take of the desert tortoise is provided via the incidental take statement for the MSHCP. The Service estimated that the proposed action will result in the incidental take of Moapa dace associated with the loss of 6 percent of riffle habitat and 5 percent of pool habitat, in the Pedersen Unit. Incidental take was authorized, and reasonable and prudent measures were identified to minimize take of the species.

b. **File No. 1-5-05-FW-536 Tier 2:** On May 9, 2007, the Service issued a non-jeopardy tiered biological opinion to BLM for a right-of-way to the SNWA to construct a water conveyance pipeline. SNWA's appropriated water right of 9,000 afy from Coyote Spring Valley would be pumped in order to participate in the Nevada State Engineer Study (Order 1169), and to provide water to the Moapa Valley area for residential and commercial purposes. The right-of-way would allow construction of approximately 16 miles of 24-inch diameter pipeline to transport water from three existing groundwater pumping wells in the southern end of the Coyote Spring Valley to an existing storage tank and pipeline. The Service estimated that 12 percent of riffle habitat and 9 percent of pool habitat will be lost due to the withdrawal of 9,000 afy associated with the SNWA action; however there were other factors which complicated the establishment of incidental take at this level for the proposed action.

c. **File No. 1-5-05-FW-536 Tier 3:** On August 6, 2007, the Service issued a non-jeopardy tiered biological opinion to the U.S. Department of Housing and Urban Development for construction of a water pipeline from an existing well on the Moapa River Indian Reservation to the Moapa Valley of Fire Travel Plaza. The use of 7 of the 16,100 afy for the proposed Travel Plaza will independently have no significant impact on the Muddy River Springs area discharge and subsequently the Moapa dace, but was authorized under the Programmatic Biological Opinion.

On October 22, 2008, the Service issued a non-jeopardy intra-service biological opinion for the Coyote Springs Investment Planned Development Project Multiple-Species Habitat Conservation Plan (MSHCP) (File No. 84320-2008-F-0113). The Service subsequently issued a 40-year incidental take permit to CSI under the authority of section 10(a)(1)(B) of the Act. The Permit covers take of desert tortoise on up to 21,454 acres of private lands in Lincoln County, and management of 13,767 acres of lease lands in Clark and Lincoln counties as the Coyote Springs Investment Conservation Lands. Groundwater withdrawal is not a Covered Activity in the CSI MSHCP. Groundwater withdrawals and their effects to the Moapa dace are subject to evaluation under separate biological opinions for several groundwater development projects, and any appropriate incidental take would be authorized through those biological opinions when issued, or under section 10 (a)(1)(B) if these actions did not involve a Federal agency.

E. Effects of the Proposed Action on the Listed Species/Critical Habitat

Effects of the action refer to the direct and indirect effects of the proposed action on the listed species, together with the effects of other activities that are interrelated and interdependent with that action. Direct effects encompass the immediate, often obvious effect of the proposed action on the listed species or its habitat. Indirect effects are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur. In contrast to direct effects, indirect effects can often be more subtle, and may affect listed species populations and habitat quality over an extended period of time, long after project activities have been completed. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

1. Effects to the Desert Tortoise (Mojave Population)

Linear construction projects can negatively affect desert tortoise populations. Studies suggest that differences in the extent of the threat are related to the scale of the project, the ability of crews to avoid disturbing burrows, and timing of construction to avoid peak activity periods of tortoises (Boarman 2002). In addition to the discrete disturbance points formed by towers and lines, maintenance roads and repeated operations can (1) introduce continuous sources of disturbance and (2) provide potential sites for invasion of exotic species. Rights-of-way can

cause habitat destruction and alteration where vegetation is minimal, possibly increasing mortality, directly or indirectly (Boarman 2002).

Direct impacts to the desert tortoise would be the permanent and temporary loss of habitat utilized by tortoises for foraging, breeding, and cover. Approximately 21 acres will be permanently lost by the construction of well houses and well power substations, water storage tanks, access roads, ancillary pipeline facilities, and power poles. Approximately 188 acres will be temporarily lost by the construction of the pipelines, power lines, fiber optic line, temporary access roads, and temporary workspaces such as pipe and power line laydown areas, power line pulling sites, staging areas, and construction easements. Many of these activities will involve blading and excavation of the area. These areas will be rehabilitated as described in the Revegetation Plan in the Plan of Development; however, it will likely take a long time (potentially more than 10 years) before these areas can provide foraging and cover sites for the desert tortoise.

Other areas that have heavy machinery moving over them will have crushed vegetation and compacted soil. LCWD and BLM propose to salvage topsoil during excavation and to reuse the topsoil later as cover on disturbed areas to facilitate re-growth of vegetation. LCWD and BLM will also flag the work areas so that unauthorized habitat removal does not occur.

Any tortoise within the construction area during work activities would be highly vulnerable. Desert tortoises may be killed or injured by project vehicles and equipment in the project area. Construction equipment and vehicles could crush tortoises or collapse burrows both occupied and unoccupied if not located during clearance surveys. Project vehicles and equipment that stray away from designated access roads and areas may crush desert tortoises aboveground or in their burrows. Tortoises may take refuge underneath project vehicles and equipment and be killed or injured when the equipment or vehicle is moved. Blasting during construction could collapse burrows and injure tortoises. Tortoises that wander into the project area could also fall into holes or trenches from which they are unable to escape. The following measures proposed by LCWD and BLM should reduce these potential effects to desert tortoises: 1) conduct tortoise clearance surveys within the project area; 2) enforce a 25 mph speed limit on project access roads; 3) cease project activities that may endanger a tortoise until it is moved out of harm's way by an authorized desert tortoise biologist; 4) present a worker education program; 5) cover construction holes left open overnight and check trenches twice daily to check for entrapment of wildlife; and 6) restrict vehicles and equipment to the work area boundaries and designated access roads.

Tortoises moved during clearance surveys and tortoises that are physically moved out of harm's way to prevent mortality or injury could be inadvertently harmed if not handled properly. Urine and large amounts of urates are frequently voided during handling and may represent a severe water loss, particularly to juveniles (Luckenbach 1982). Overheating can occur if tortoises are not placed in the shade when ambient temperatures equal or exceed temperature maximums for the species (Desert Tortoise Council 1994, revised 1999). Tortoise eggs moved during clearance

surveys could also be harmed if not handled properly. The following measures proposed by LCWD and BLM should reduce these potential effects to desert tortoises: 1) implementing a worker education program; 2) utilizing Service-approved protocols for handling desert tortoises and tortoise eggs; and 3) ensuring that only authorized individuals handle tortoises.

The resulting indirect impacts to the desert tortoise may include the risk of death, injury, or lower reproductive potential through increased predation and degradation and fragmentation of the habitat surrounding the project area. There is a potential for an increase in the number of predatory and scavenger species due to the presence of humans and improper disposal of trash. Workers associated with the proposed project may provide food in the form of trash and litter; or water, which attracts important tortoise predators such as the common raven, kit fox, and coyote (BLM 1990, Boarman and Berry 1995). Natural predation in undisturbed, healthy ecosystems is generally not an issue of concern. However, predation rates may be altered when natural habitats are disturbed or modified (BLM 1990). Ravens likely would be attracted to human activities and buildings for perch sites and food sources, increasing the potential for predation on juvenile desert tortoise in adjacent habitats. LCWD and BLM will implement a litter-control program and a worker education program to avoid or minimize these potential effects.

The project may degrade habitat in the surrounding landscape by introducing non-native weeds or plants into the project area, which later spread in to the surrounding desert, increasing fuel loads for wildfires and competing with native forbs and shrubs. Land clearing activities in the project area may lead to increased soil erosion especially on steeper slopes. The following measures proposed by LCWD and BLM should help reduce these potential effects to desert tortoise habitat: 1) implementation of a Stormwater and Pollution Prevention Plan; 2) implementation of a Revegetation Plan; and 3) implementation of a Noxious Weed Management Plan.

Following construction, the public may use project access roads which may result in adverse effects to tortoise populations. Humans use the desert for off-road exploration, casual shooting and target practice, personal or commercial collection of animals and plants, searches and digging for minerals and gems, geocaching (GPS guided stash hunts), and even the production of illegal drugs. Desert tortoise shells found in the Mojave Desert with bullet holes were examined forensically with the finding that the tortoises were alive when they were shot (Berry 1986), suggesting that illegal shooting of tortoises could occur. Project personnel could illegally collect tortoises for pets or bring dogs to the project area. Measures proposed by LCWD and BLM to 1) clear project areas of tortoises, 2) prohibit pets from the project area, 3) impose a speed limit, and (4) close unnecessary roads following construction and control public access, should minimize the potential effects to the tortoise described above.

2. Effects to Critical Habitat for the Desert Tortoise (Mojave Population)

Direct impacts to desert tortoise critical habitat would be the permanent and temporary loss of areas that contain the PCEs of desert tortoise critical habitat. Approximately 18 acres will be

permanently lost by the construction of well houses and well power substations, water storage tanks, access roads, ancillary pipeline facilities, and power poles. Approximately 155 acres will be temporarily lost by the construction of the pipelines, power lines, fiber optic line, temporary access roads, and temporary workspaces such as pipe and power line laydown areas, power line pulling sites, staging areas, and construction easements. Many of these activities that temporarily impact areas will involve blading and excavation of the area which would remove all of the PCEs of critical habitat. These areas will be recontoured and rehabilitated as described in the Revegetation Plan; however, it will likely take a long time before these areas can provide a sufficient quantity and quality of forage species (PCE 2) and sufficient vegetation to provide shelter from temperature extremes and predators (PCE 5). Other areas that have heavy machinery moving over them, will impact PCE 3 (suitable substrates for burrowing, nesting, and overwintering), PCE 4 (burrow, caliche caves, and other shelter sites), and PCE 5. These areas will also likely take a long time to recover and may also need some revegetation or soil de-compaction treatments. LCWD proposes to salvage topsoil during excavation and to reuse the topsoil later as cover on disturbed areas to facilitate re-growth of vegetation. As per the Revegetation Plan only native species will be used and cacti and yucca will be salvaged when possible.

Indirect impacts to the desert tortoise critical habitat may include fragmentation of the habitat surrounding the project area which will degrade PCE 1 (space to support viable populations and to provide for movement, dispersal, and gene flow). Since the project is linear, it has a greater potential to fragment habitat, although it does follow the existing Kane Springs Road. The project is in the LCCRDA corridor which is 0.5 miles wide. This project is the first to use this designated utility corridor so it may have greater impacts than future projects, although the proposed development on CSI lands in Lincoln County will be a greater barrier to tortoise movement.

Indirect impacts also include the introduction or spread of non-native plants in the project area and into the surrounding landscape which may impact PCE 2 and PCE 5. If red brome increases in the project area or surrounding landscape, this could increase the fuel load which increases the chance of large scale fires. Red brome can often out-compete native species because red brome extracts soil water and nutrients more rapidly than similar native annuals (DeFalco *et al.* 2003) and also reduces the growth of mature native perennials (DeFalco *et al.* 2007b). The project could also introduce new non-native plants into the area which could impact PCE 2 and PCE 5 in the future. LCWD and BLM should help reduce these potential effects to critical habitat by the implementation of a Noxious Weed Management Plan and the implementation of a Fire Management Plan. The Noxious Weed Management Plan includes the following measures: survey of area prior to land clearing, cleaning of vehicles and equipments, treating weed infestations, post-construction monitoring and employee education.

Project activities could also increase soil erosion. Increased soil erosion could negatively impact PCE 2, PCE 4, and PCE 5. LCWD and BLM should help reduce these potential effects to critical habitat by the implementation of a Stormwater and Pollution Prevention Plan.

3. Effects to the Moapa Dace

The Moapa dace will not be directly affected by the physical construction of the proposed groundwater wells, pipelines, and power facilities; however, groundwater pumping will likely indirectly affect the headwater spring discharges of the Muddy River, and therefore, the Moapa dace. The magnitude and timing of impacts from pumping in Kane Springs Valley are uncertain. Differences in boundary conditions relating to the areal extent of the aquifer, location of the pumping, transmissivity, and permeability, all influence the magnitude and timing of pumping impacts. Also, if the proposed pumping lowers carbonate water levels in the Warm Springs Area further, not all springs will be affected equally. The decrease in spring discharge will be proportional to the decrease in head elevation at each spring. Higher elevation springs have a lower head difference initially and are therefore more susceptible to decreases in groundwater levels. Therefore, the higher elevation springs will be affected proportionately more for a given decline in groundwater levels. The highest elevation springs occur on the Pedersen Unit of the Moapa Valley NWR, an area which also comprises some of the most important spawning habitat for Moapa dace in the system.

As discussed in the programmatic biological opinion for the Muddy River MOA (Service 2006c), existing data suggests that current groundwater pumping of the Arrow Canyon Well is causing a decline in the regional carbonate aquifer levels locally and in the Coyote Spring Valley, and a decrease in spring discharge in the Warm Springs Area (Mayer 2004). The average pumping rate at the Arrow Canyon Well since 1998 has been 3.3 cfs or 2,400 afy. Pumping rates will increase with commencement of the pump test, and may further increase pending the outcome of the pump test and associated monitoring. The proposed action includes pumping of an additional 1,000 afy from the same regional carbonate aquifer. The pumping will be located along the same flow path that supplies the Warm Springs Area and is within the low-gradient, high-transmissivity zone that connects Kane Springs Valley, Coyote Spring Valley and the Warm Springs Area.

Under the terms of the stipulated agreement, if the Average Flow Level reaches 3.15 cfs or less but greater than 3.0 cfs at the Warm Springs West gage, LWCD and VWC agree to reduce pumping from all wells in Kane Springs Valley by 50 percent. This would mean pumping at these flow levels would be reduced to 500 afy. If the Average Flow Level reaches 3.0 cfs or less, LWCD and VWC agree to cease pumping from all wells in Kane Springs Valley until the Average Flow Level exceeds 3.0 cfs. The exact magnitude and timing of the impacts from pumping groundwater from the carbonate aquifer in Kane Springs Valley are unknown at this time, as are the effects of reduced or cessation of groundwater pumping or whether there will be some equilibration of the aquifer to the proposed pumping.

In the programmatic biological opinion for the MOA, the Service (2006c) used the potential effects on spring discharge at the Warm Springs West gage to predict potential effects to Moapa dace habitat. The results indicated that both spring discharge and dace habitat are reduced with declines in groundwater levels. Flows and habitat loss were projected as a function of

incremental declines in groundwater levels (Service 2006c). If flows were reduced to 3.02 cfs at the Warm Springs West gage this would be a 25 percent reduction of flows from the 1998 conditions which would reduce riffle habitat by 17 percent and pool habitat by 13 percent in the Petersen Unit. Because pumping for the Kane Springs project will occur concurrently with the potential pumping of 16,100 afy in the carbonate aquifer of White River Flow System, only a very small amount of this possible reduction would be attributable to pumping in Kane Springs Valley. Given the amount of 1,000 afy authorized by the State Engineer, effects from this project will be difficult to tease apart from effects of pumping 16,100 afy as described in the programmatic biological opinion for the MOA. However, monitoring of the Kane Springs wells concurrent with other monitoring under the MOA will lend greater understanding to the overall effects.

The primary effect to the Moapa dace of diminished flows within the spring channels will be a decrease in the hydraulic conditions that create the diversity of habitat. A decrease in velocity and depth within riffles would result in a decrease of invertebrate and phytoplankton (food) production. Drift stations in pools are maintained by the scouring effect of turbulent flow. Scour will decrease in pools as water velocity and depth at the upstream end of the pool decreases. Perhaps the most prominent impact that would occur, as a result of decreased discharge and subsequent depth, is the reduction of overall volume of water that will be available to the species within the channel. Scoppettone *et al.* (1992) demonstrated that Moapa dace size is scaled to water volume. Thus, larger water volumes provide the habitat necessary for increased food production and subsequently larger fish, therefore greater fecundity. Hence, more numerous, larger eggs provide a better opportunity for the long-term survival of the species.

Additional factors that would influence channel and hydraulic characteristics within the stream channels following a decline in spring discharge include, but are not limited to, changes in sediment transportation rates, and the alteration of riffle and pool maintenance that is accomplished at the present rate of discharge in each spring channel. Additionally, vegetative encroachment and subsequent channel obstruction may also occur as the wetted cross sectional area of the channel decreases, and new surfaces become exposed for vegetation growth. Decreases in these parameters will likely have an adverse impact on the overall diversity and quantity of hydraulic habitat.

The Pedersen Unit of the Moapa Valley NWR is one of the six spring complexes that the Moapa dace depends on for successful reproduction. It includes the highest elevation spring, presumed most susceptible to groundwater level declines. The analysis presented in the programmatic biological opinion for the MOA (Service 2006c) estimated that at 3.02 cfs, there is a 25 percent loss in flow on the Pedersen Unit from 1998 conditions. This loss is estimated to reduce available riffle habitat by 17 percent and pool habitat by 13 percent within the Pedersen Unit. In addition to the loss of habitat, decreased flows would also result in a loss of temperature that would extend downstream, thereby reducing the thermal load in the system and thus the amount of available habitat at the appropriate spawning temperature. The additional 1,000 afy of groundwater pumping under the Kane Springs Groundwater Development Project would

potentially increase overall habitat loss and temperature declines, however, trigger levels identified in the Monitoring, Management and Mitigation Plan (starting at 3.2 cfs or less) are a higher threshold than those established under the MOA. Accordingly, adverse effects on Moapa dace habitat should be prevented.

Conservation Measures Identified to Minimize Effects of the Proposed Action

Guaranteed Groundwater Pumping Reductions (Trigger ranges): LCWD and VWC have agreed to reduce groundwater pumping by half in the Kane Springs Valley should stream flows reach 3.15 cfs or less but greater than 3.0 cfs at the Warm Springs West gage. The groundwater pumping will be stopped in the Kane Springs Valley should stream flows reach 3.0 cfs or less at the Warm Springs West gage. This conservation measure will result in a reduction in the rate of decline of water levels and spring discharge. Further reduction in the rate of decline will depend on the effect of remaining groundwater pumping by other parties in the Coyote Spring Valley, California Wash, and the Warm Springs Area.

Restore Moapa Dace Habitat Outside of the Moapa Valley NWR Boundary: LCWD and VWC agreed to provide funds annually for five years to be used for habitat restoration outside of the Moapa Valley NWR boundary to promote recovery of the Moapa dace. This funding will be applied towards various on-going or proposed activities that would improve and secure habitat that is currently not being utilized due to degraded conditions (i.e. illegal diversions or non-native species presence). The funding will provide a mechanism to restore habitat to a level that would provide a higher quality of habitat for the species. These habitat improvements would contribute to the long-term survival of the species by increasing the food production potential, providing additional habitat types that would be available for the various life stages and providing an environment that is devoid of predatory non-native fishes.

F. Cumulative Effects

Cumulative effects are those effects of future non-Federal (State, local government, or private) activities that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

1. Desert Tortoise (Mojave Population)

The action area is on both Federal and private lands. The Service determined that future actions in the action area would likely require section 7 consultation or fall under purview of an HCP (section 10 of the Act). Thus, no future non-Federal activities are reasonably certain to occur in the action area; thus, there are no cumulative effects to the desert tortoise as a result of the proposed action. Private lands in the action area include CSI property. These activities are proposed to be covered under the Coyote Springs Investment MSHCP and associated incidental take permit, which are currently under development.

2. Critical Habitat for the Desert Tortoise (Mojave Population)

The Mormon Mesa Critical Habitat unit occurs mostly on Federal lands with CSI private land along US 93 and private property along Meadow Valley Wash. The Service determined that future actions in the action area would likely require section 7 consultation or fall under purview of an HCP (section 10 of the Act). No future non-Federal activities are reasonably certain to occur in the action area; thus, there are no cumulative effects to designated critical habitat as a result of the proposed action. Activities on CSI lands in Clark County are covered under the approved Clark County MSHCP and associated incidental take permit, and the activities in Lincoln County are proposed to be covered under the CSI MSHCP and associated incidental take permit, which are currently under development. The Southeastern Lincoln County Habitat Conservation Plan and associated incidental take permit, which are currently under development, will cover activities on private land along Meadow Valley Wash.

3. Moapa Dace

Future demand for groundwater will continue to threaten spring flows and surface water important for aquatic species such as the Moapa dace. In the Warm Springs Area, MVWD's existing permit would allow more groundwater to be pumped from the Arrow Canyon Well in the future. The maximum permitted pumping rate at the Arrow Canyon Well is 7,200 afy, as compared with the annual average of 2,400 afy pumped currently. Depending on the outcome of the pump study mandated in the State Engineer Order 1169 and subsequent ruling by the State Engineer, additional groundwater could potentially be pumped in Coyote Spring Valley. The maximum volume that could be removed from the Coyote Spring Valley and Muddy River Springs Area basins under existing permits is 31,100 afy. This represents more than a tenfold increase from current withdrawals in the system. In addition to the existing permitted water rights, there are pending applications for a far greater volume of groundwater above and beyond the permitted amount in the Coyote Spring Valley, Muddy River Springs Area, and Kane Springs Valley hydrographic basins.

G. Conclusion

1. Desert Tortoise (Mojave Population)

After reviewing the current status of the desert tortoise, the environmental baseline for the action area, the effects of the proposed project, and the cumulative effects, it is the Service's biological opinion that the project, as proposed and analyzed, is not likely to jeopardize the continued existence of the threatened desert tortoise (Mojave population). This conclusion for the desert tortoise is based on the following:

a. The proposed project will not result in a level of take of desert tortoise that would significantly affect the rangewide number, distribution, or reproduction of the species; tortoises that are taken as a result of the project are anticipated to remain in the wild with

no long-term effects except for two desert tortoise estimated to be killed or injured by project activities.

b. The desert tortoise densities in the project area are considered low and measures have been proposed by LCWD and BLM to minimize the effects of the proposed action on the desert tortoise.

2. Critical Habitat for Desert Tortoise (Mojave Population)

The Service has reviewed the current rangewide status of designated critical habitat for the desert tortoise (Mojave population), the environmental baseline, the effects of the project, and the cumulative effects. Based on this review, it is the Service's biological opinion that these actions are not likely to destroy or adversely modify designated critical habitat for the desert tortoise (Mojave population). The project actions will not diminish the capability of the area to serve its role for recovery by continuing to provide the PCEs of critical habitat. The basis for this conclusion is summarized as follows:

a. The amount of critical habitat permanently and temporarily disturbed by the project is 173 acres, approximately 0.05 percent of the Mormon Mesa CHU.

b. Measures have been proposed by LCWD and BLM to minimize the effects of the proposed action on critical habitat for the desert tortoise.

3. Moapa Dace

After reviewing the current status of and environmental baseline for the Moapa dace, the effects of the project, and the cumulative effects, it is the Service's biological opinion that the action, as proposed and analyzed, is not likely to jeopardize the continued existence of the endangered Moapa dace. The project could contribute to groundwater level declines and spring flow reductions; however, implementation of the project's conservation actions will minimize these impacts.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act, as amended, prohibits take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering (50 CFR § 17.3). "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR § 17.3). Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the

Federal agency or applicant. Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The terms and conditions may include: (1) restating measures proposed by BLM; (2) modifying the measures proposed by BLM; or (3) specifying additional measures considered necessary by the Service. Where these terms and conditions vary from or contradict the minimization measures proposed under the Description of the Proposed Action, specifications in these terms and conditions shall apply. The measures described below are nondiscretionary and must be implemented by BLM so that they become binding conditions of any project, contract, grant, or permit issued by BLM or other jurisdictional Federal agencies as appropriate, in order for the exemption in section 7(o)(2) to apply. The Service's evaluation of the effects of the proposed actions includes consideration of the measures developed by BLM, and repeated in the section entitled "Description of the Proposed Action" of this biological opinion, to minimize the adverse effects of the proposed action on the desert tortoise. Any subsequent changes in the minimization measures proposed by BLM may constitute a modification of the proposed action and may warrant reinitiation of formal consultation, as specified at 50 CFR § 402.16. These reasonable and prudent measures are intended to clarify or supplement the protective measures that were proposed by BLM as part of the proposed action.

BLM, or other jurisdictional Federal agencies as appropriate, have a continuing duty to regulate the activity that is covered by this incidental take statement. If BLM, or other jurisdictional Federal agencies as appropriate, fail to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to permits or grant documents, and/or fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

A. Amount of Take

Desert Tortoise (Mojave Population)

Based on the analysis of effects provided above, measures proposed by BLM, and anticipated project duration the Service anticipates that the following take could occur as a result of the proposed action:

1. No more than two adults and an unknown number of hatchling and juvenile desert tortoises would be incidentally killed or injured as a result of the proposed project. Should any desert tortoise be killed or injured in association with the proposed action, all activity in the vicinity of the incident shall cease and the project proponent shall contact the Service within 24 hours to assess the circumstances and discuss if additional protective measures are necessary.

2. All desert tortoises located during clearance surveys or located in harm's way in work areas may be harassed by capture and removal from the project area. Based on survey data, timing of the proposed project, and description of the project area, the Service estimates that no more than 33 desert tortoises may be taken (other than killed or injured) by non-lethal means as a result of project activities.

3. An unknown number of desert tortoise nests with eggs may be excavated and relocated. The Service determined that no desert tortoise nests with eggs are anticipated to be destroyed as a result of project activities.

4. An unknown number of desert tortoises may be preyed upon by ravens or other subsidized desert tortoise predators drawn to trash in the project area; however, the Service estimates that the potential increase in ravens will be minimized by litter-control measures proposed by BLM.

Moapa Dace

The Service anticipates that incidental take of Moapa dace through harm (i.e., habitat modification or degradation that results in death or injury) will occur, but the actual death or injury of fish will be difficult to detect for the following reasons: the species has a small body size and finding a dead or impaired specimen is unlikely in a flowing stream environment. On the other hand, significant habitat modification or degradation that could result in take of Moapa dace will be detectable and measurable. Therefore, we are expressing take of Moapa dace in terms of habitat loss resulting from changes in habitat characteristics, such as water temperature or chemistry and water flows. Although the extent of effects to the species as a result of the proposed action is not yet known, future and on-going biological and hydrological studies will assist us in determining how flow reductions and thermal load losses will affect Moapa dace habitat, food availability, reproduction, and fecundity.

Perhaps the most significant impact to Moapa dace habitat that could result from implementation of the proposed action, as a result of decreased discharge and subsequent wetted area, is the reduction of overall volume of water that would be available to the species within the channel. The amount of groundwater pumping permitted under the Kane Springs Groundwater Development Project (1,000 afy) is substantially smaller than the amount of pumping that could potentially co-occur under Order 1169 (16,100 afy). A small but unquantifiable amount of take in the form of habitat loss would occur in the Pedersen Unit if flows reached 3.0 cfs at the Warm Spring West gage. Should flows at the Warm Springs West gage decline below 3.0 cfs, the amount of incidental take for this project would be exceeded for the Moapa dace.

B. Effect of Take

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the desert tortoise or Moapa dace. These determinations are based in part on the implementation of conservation measures detailed in the BA for this project.

C. Reasonable and Prudent Measures with Terms and Conditions

The Service believes that the following reasonable and prudent measures (RMPs) are necessary and appropriate to minimize take of desert tortoise or Moapa dace.

RPM 1: *BLM, LCWD, VWC, and other jurisdictional Federal agencies as appropriate, shall ensure implementation of measures to minimize injury or mortality of desert tortoises due to surface-disturbing activities and operation of project vehicles or equipment:*

Terms and Conditions:

1.a. An authorized desert tortoise biologist shall be onsite at all locations where ground-disturbing activities are occurring within desert tortoise habitat. The authorized biologist will be responsible for approving, evaluating, and supervising monitors to assist in implementing the desert tortoise measures of this biological opinion. Potential biologists shall complete the Qualifications Form (Attachment A) and submit it to the Service for review and approval as appropriate. Allow 30 days for Service review and response.

1.b. Prior to initiation of construction, an authorized biologist or approved monitor shall present a desert tortoise awareness program to all personnel who will be onsite, including but not limited to contractors, contractors' employees, supervisors, inspectors, and subcontractors. This program will contain information concerning the biology and distribution of the desert tortoise and other sensitive species, their legal status and occurrence in the project area; the definition of "take" and associated penalties; the terms and conditions of this biological opinion; the means by which employees can help facilitate this process; responsibilities of workers, approved monitors, and biologists; and reporting procedures to be implemented in case of desert tortoise encounters or non-compliance with this biological opinion. The name of every individual trained will be recorded on a sign-in sheet. Each trained individual will be given evidence indicating they have received this training and will keep that evidence with them at all times when they are in the project area.

1.c. Immediately prior to surface-disturbing activities or traveling off of main access roads on the right-of-way, the authorized biologist shall survey for desert tortoises

and their burrows using techniques providing 100-percent coverage of the right-of-way and an additional area approximately 90 feet from both sides of the right-of-way. Transects will be no greater than 30 feet apart. All potential desert tortoise burrows will be examined to determine occupancy of each burrow by desert tortoises and handled in accordance with Term and Condition 1.d. – 1.f and 2.a – 2.c. below.

1.d. All potential desert tortoise burrows located within the project area that are at risk for damage shall be excavated by hand by an authorized biologist, tortoises removed, and burrows collapsed or blocked to prevent occupation by desert tortoises.

1.e. Desert tortoises located in the project area, but outside of an area to be disturbed by ground disturbing activities, sheltering in a burrow during a period of reduced activity (*e.g.,* winter), may be temporarily penned. Tortoises shall not be penned in areas of moderate or heavy public use. Penning shall be accomplished by installing a circular fence, approximately 20 feet in diameter to enclose the tortoise/burrow. The pen should be constructed with durable materials (*i.e.,* 16 gauge or heavier) suitable to resist desert environments. Fence material should consist of ½-inch hardware cloth or 1-inch horizontal by 2-inch vertical, galvanized welded wire. Pen material should be 24 inches in width. Steel T-posts or rebar (3 to 4 feet) should be placed every 5 to 6 feet to support the pen material. The pen material should extend 18 to 24 inches aboveground. The bottom of the enclosure will be buried several inches; soil mounded along the base; and other measures should be taken to ensure zero ground clearance. Care shall be taken to minimize visibility of the pen by the public. An authorized biologist, approved monitor, or designated worker shall check the pen daily.

1.f. Desert tortoises and eggs found within construction sites shall be removed by an authorized biologist in accordance with the most current protocols identified by BLM and the Service. Desert tortoises will be moved solely for the purpose of moving them out of harm's way. Desert tortoises shall be relocated up to 1,500 feet into adjacent undisturbed habitat on protected public land in accordance with Service-approved handling protocol (Desert Tortoise Council 1994, revised 1999). The disposition of all tortoises handled shall be documented in accordance with 6.b. below.

1.g. All fuel, transmission or brake fluid leaks, or other hazardous materials shall not be drained onto the ground or into streams or drainage areas. All petroleum products and other potentially hazardous materials shall be removed to a disposal facility authorized to accept such materials. Waste leaks, spills or releases shall be reported immediately to BLM. BLM or the project proponent shall be responsible for spill material removal and disposal to an approved off-site landfill.

Servicing of construction equipment will take place only at a designated area. All fuel or hazardous waste leaks, spills, or releases will be stopped or repaired immediately and cleaned up at the time of occurrence. Service and maintenance vehicles will carry a bucket and pads to absorb leaks or spills.

1.h. Vehicles shall not exceed 25 mph on access roads. Authorized desert tortoise biologists and/or approved monitors will ensure compliance with speed limits during construction.

1.i. Project personnel shall exercise caution when commuting to the project area and obey speed limits to minimize any chance for the inadvertent injury or mortality of species encountered on roads leading to and from the project site. All desert tortoise observations, including mortalities, shall be reported directly to an authorized biologist and the Service.

1.j. Any vehicle or equipment on the right-of-way within desert tortoise habitat shall be checked underneath for tortoises before moving. This includes all construction equipment and the area under vehicles should be checked any time a vehicle is left unattended, as well as in the morning before any construction activity begins. If a desert tortoise is observed, an authorized biologist will be contacted.

1.k. Project activity areas shall be clearly marked or flagged at the outer boundaries before the onset of construction. All activities shall be confined to designated areas. The authorized biologist and approved monitors shall ensure that no habitat is disturbed outside designated areas as a result of the project, including ensuring that all vehicles and equipment remain on the right-of-way or areas devoid of native vegetation.

1.l. To prevent mortality, injury, and harassment of desert tortoises and damage to their burrows and coversites, no pets shall be permitted in any project construction area.

1.m. All desert tortoises observed within the project area or access road shall be reported immediately to the authorized biologist. The authorized biologist shall halt activities as necessary to avoid harm to a desert tortoise. Project activities that may endanger a desert tortoise shall cease until the desert tortoise moves out of harm's way or is moved out of harm's way by an authorized biologist.

1.n. Only water or an alternative substance approved by BLM shall be used as a dust suppressant. Water application shall avoid pooling of water on roadways. Pools of water may act as an attractant to desert tortoises.

1.o. In the event that blasting is required, a 200-foot-radius area around the blasting site shall be surveyed by an authorized biologist for desert tortoises prior to blasting, using 100-percent-coverage survey techniques. All tortoises located above ground or in pallets within this 200-foot radius of the blasting site shall be moved 500 feet from the blasting site. Additionally, tortoises in burrows within 75 feet of the blasting will be placed into an artificial or unoccupied burrow 500 feet from the blasting site. This will prevent tortoises that leave their burrow upon translocation from returning to the blasting site. Tortoises in burrows at a distance of 75 to 200 feet from the blasting site will be left in their burrows. Burrow locations will be flagged and recorded using a GPS unit and burrows would be stuffed with newspapers. Immediately after blasting, newspaper and flagging will be removed. Blasting would only occur in the brief time period after an area has been cleared by an authorized biologist, but before any relocated tortoises could return to the site.

1.p. If possible, overnight parking and storage of equipment and materials shall be located in previously-disturbed areas or areas to be disturbed that have been cleared by an authorized tortoise biologist. If not possible, areas for overnight parking and storage of equipment shall be designated by the authorized biologist.

1.q. Within desert tortoise habitat, any construction pipe, culvert, or similar structure with a diameter greater than 3 inches stored less than 8 inches above ground on the construction site for one or more nights shall be inspected for tortoises before the material is moved, buried, or capped. As an alternative, all such structures may be capped before being stored on the construction site.

1.r. Flagging and wire shall be removed from the project area at the end of project to ensure debris is not consumed by desert tortoises.

1.s. All project activities in desert tortoise habitat shall be conducted from dawn until dusk.

1.t. Any excavated holes left open overnight shall be covered, and/or tortoise-proof fencing (Attachment B) shall be installed to prevent the possibility of tortoises falling into the open holes.

1.u. Open pipeline trenches shall be fenced with temporary tortoise-proof fencing or inspected by an authorized biologist or approved monitor periodically throughout and at the end of the day, and immediately prior to backfilling, and tortoise escape ramps (of at least 3:1 slope) shall be installed at least every quarter mile. Any tortoise that is found in a trench or excavation shall be promptly removed by an authorized biologist in accordance with Service-approved protocol or alternative

method approved by the Service if the biologist is not allowed to enter the trench for safety reasons.

1.v. In areas to be encircled by a security fence, such as well yards and well substations, the fence shall be installed at least one foot below the surface of the ground or install permanent desert tortoise fencing around the area, to ensure that tortoises do not get trapped inside. See Attachment B for the Service's recommendations on tortoise exclusion fencing, dated September 2005. Fences should be checked during regular maintenance of the facilities to ensure zero ground clearance.

1.w. Any tortoise injured as a result of the proposed project shall immediately be transported to a qualified veterinarian and reported to the Service's Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230.

RPM 2: *BLM, LCWD, and other jurisdictional Federal agencies as appropriate, shall ensure implementation of the following measures to ensure that tortoises are not injured as a result of capture and handling:*

Terms and Conditions:

2.a. All appropriate NDOW permits or letters of authorization shall be acquired prior to handling desert tortoises and their parts, and prior to initiation of any activity that may require handling tortoises.

2.b. Tortoises and nests shall be handled and relocated by an authorized tortoise biologist in accordance with the Service-approved protocol (Desert Tortoise Council 1994, revised 1999). If the Service or Desert Tortoise Council releases a revised protocol for handling of desert tortoises before initiation of project activities, the revised protocol shall be implemented for the project area. A pair of new, disposable latex gloves shall be used for each tortoise that must be handled. After use, the gloves will be properly disposed. Burrows containing tortoises or nests shall be excavated by hand, with hand tools, to allow removal of the tortoise or eggs. Desert tortoises moved during the tortoises less active season or those in hibernation, regardless of date, must be placed into an adequate burrow; if one is not available, one shall be constructed in accordance with Desert Tortoise Council (1994, revised 1999) criteria. Desert tortoises that are located aboveground and need to be moved from the project area shall be placed in the shade of a shrub. All desert tortoises removed from burrows shall be placed in an unoccupied burrow of approximately the same size and orientation as the one from which it was removed.

2.c. Special precautions shall be taken to ensure that desert tortoises are not harmed as a result of their capture and movement during extreme temperatures (i.e., air temperatures below 55° F or above 95° F). Under such adverse conditions, tortoises captured will be monitored continually by an authorized biologist or approved monitor until the tortoise exhibits normal behavior. If a desert tortoise shows signs of heat stress, procedures will be implemented as identified in the Service-approved protocol (Desert Tortoise Council 1994, revised 1999). The disposition of all tortoises handled shall be documented in accordance with 6.b. below.

RPM 3: *BLM, LCWD, and other jurisdictional Federal agencies as appropriate, shall ensure implementation of the following measures to minimize predation on desert tortoises by predators drawn to the project area:*

Terms and Conditions:

Trash and food items shall be disposed properly in predator-proof containers with resealing lids. During construction activities, trash containers will be emptied and waste will be removed from the project area daily. Trash removal reduces the attractiveness of the area to opportunistic predators such as desert kit fox, coyotes, and common ravens.

RPM 4: *BLM, LCWD, and other jurisdictional Federal agencies as appropriate, shall ensure implementation of the following measures to minimize loss and long-term degradation and fragmentation of desert tortoise habitat, such as soil compaction, erosion, crushed vegetation, and introduction of weeds or contaminants as a result of construction activities:*

Terms and Conditions:

4.a Off-road travel outside construction zones shall be prohibited.

4.b. The designated utilities shall follow the Noxious Weed Management Plan which includes the following: washing vehicles and equipment prior to mobilizing to the project area, providing onsite personnel with BLM weed identification information, reseeding the project area with a BLM-approved certified weed-free seed mix, and controlling noxious weeds should they be introduced as a result of the proposed action.

4.c. After completion of the project, the designated utilities shall follow the Revegetation Plan to restore all temporarily-disturbed areas to functioning desert tortoise habitat, using native seeds or plants.

4.d. BLM shall ensure payment of remuneration fees by the project proponents, the designated utilities, for compensation of the loss of desert tortoise habitat as a result of the proposed project. BLM shall require a receipt of payment from each designated utility prior to issuing the Notice to Proceed.

The right-of-way applicant is required to submit a Final Plan of Development to the BLM, which must be approved by BLM prior to issuance of the Notice to Proceed. It is likely that the amount of disturbance will change with the final engineering design; therefore, BLM will reevaluate the project disturbance and adjust the total compensation fee accordingly. A copy of the Final Plan of Development and a breakdown of the final compensation fee will be provided to the Service. The applicant will be made aware that, depending on final engineering designs, the final compensation fee may be lower than the estimated value provided in this document.

Currently, the basic compensation rate for disturbance to desert tortoise habitat is $753 per acre. For disturbance to desert tortoise critical habitat a multiplier is used to increase the cost per acre as described in Hastey *et al.* (1991). For each project, this multiplier for critical habitat is based on assignment of ratings to the following five factors:

- Category of Habitat (value of the land to tortoise populations)
- Term of Effect (short term vs. long term)
- Existing Disturbance on Site
- Growth Inducement (growth inducing effects of the proposed action)
- Effect of Adjacent Lands (whether adjacent lands will be affected)

The proposed project will disturb 209 acres of desert tortoise habitat on lands in Lincoln County. The total compensation fee for this project is $808,722. Attachment C shows a breakdown of these calculations. Fees for disturbances on Federal land will be deposited into the Lincoln County Section 7 Account, while fees for disturbance on private land will be deposited into the CSI MSHCP Section 10 Trust Fund. The payee will fill out the attached fee payment forms (Attachment D) and include these with the payments.

Each year these fees will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U). Information on the CPI-U can be found on the internet at:
http://stats.bls.gov/news.release/cpi.nr0.htm. The next rate adjustment will occur on March 1, 2009.

Fees deposited in the Lincoln County Section 7 account will be managed consist with an MOA to be developed between BLM and the Service. The development of a MOA will be initiated within 30 days of the ROD.

Section 7 fees collected under this biological opinion may be used in coordination with the mitigation program of the CSI MSHCP, to implement conservation and recovery measures within the Mormon Mesa critical habitat unit.

RPM 5: *BLM, LCWD, VWC, and other jurisdictional Federal agencies as appropriate, shall ensure implementation of the following measures to minimize impacts to Moapa dace that may result from groundwater pumping associated with the project in the Kane Springs Valley:*

Terms and Conditions:

BLM shall assure that all provisions of the proposed actions including the Monitoring, Management and Mitigation Plan of the Stipulated Agreement are fully implemented.

RPM 6: *BLM, LCWD, and other jurisdictional Federal agencies as appropriate, shall ensure implementation of the following measures to comply with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements contained in this biological opinion:*

Terms and Conditions:

6.a. LCWD shall designate a field contact representative. The field representative will be responsible for overseeing compliance with protective stipulations for the desert tortoise and coordinating directly with BLM and the Service. The field contact representative shall have the authority to halt activities or construction equipment that may be in violation of the stipulations. A copy of the terms and conditions of this biological opinion shall be provided to the field contact representative, biologists, and monitors for the project.

6.b. The authorized biologist shall record each observation of desert tortoise handled. Information will include the following: location, date and time of observation; whether tortoise was handled, general health and whether it voided its bladder; location tortoise was moved from and location moved to; and unique physical characteristics of each tortoise. A final report will be submitted to the Service's Nevada Fish and Wildlife Office in Las Vegas within 90 days of completion of the project.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, the level of incidental take or loss of habitat identified is exceeded, such incidental take and habitat loss represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures provided. The designated utilities must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

D. Reporting Requirements

Upon locating a dead or injured endangered or threatened species within the action area, notification must be made to the Service's Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230. Care should be taken in handling sick or injured endangered or threatened species to ensure effective treatment and be taken for handling of dead specimens to preserve biological material in the best possible state for later analysis of cause of death. In conjunction with the care of injured endangered or threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to carry out instructions provided by the Service to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed. All deaths, injuries, and illnesses of endangered or threatened species, whether associated with project activities or not, will be summarized in an annual report.

Desert Tortoise (Mojave Population)

The following actions should be taken for injured or dead tortoises if directed by the Service:

1. Injured desert tortoises shall be delivered to any qualified veterinarian for appropriate treatment or disposal.

2. Dead desert tortoises suitable for preparation as museum specimens shall be frozen immediately and provided to an institution holding appropriate Federal and State permits per their instructions.

3. Should no institutions want the desert tortoise specimens, or if it is determined that they are too damaged (crushed, spoiled, etc.) for preparation as a museum specimen, then they may be buried away from the project area or cremated, upon authorization by the Service.

4. The designated utilities shall bear the cost of any required treatment of injured desert tortoises, euthanasia of sick desert tortoises, or cremation of dead desert tortoises.

5. Should sick or injured desert tortoises be treated by a veterinarian and survive, they may be transferred as directed by the Service.

Moapa Dace

The following action should be taken for injured or dead Moapa dace if directed by the Service: Dead Moapa dace suitable for preparation as museum specimens shall be frozen immediately and provided to the Service's Nevada Fish and Wildlife Office in Las Vegas.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The Service provides no conservation recommendations at this time.

REINITIATION

This concludes formal consultation on the actions outlined in your requested dated September 27, 2007. As required by 50 CFR § 402.16, reinitiation of formal consultation is required where the discretionary Federal agency involvement or control over an action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. In particular, if the State Engineer grants additional water rights beyond the currently permitted 1,000 afy for the Kane Springs Groundwater Development Project, then formal consultation should be reinitiated.

The incidental take statement provided with this Biological Opinion authorizes take of the Moapa dace as may occur in connection with the pumping and transfer of 1,000 afy of groundwater under Phase I of the Project, and implementation of the Monitoring, Management, and Mitigation Plan established under the amended stipulated agreement for the Kane Springs Valley Hydrographic Basin. In June 2008, the LCWD, VWC, and the Service executed a Memorandum of Understanding to ensure additional consultation on this project should additional water rights be appropriated to LCWD and VWC in the Kane Springs Valley Hydrographic Basin (Attachment E). Specifically, the Memorandum requires that the Service reinitiate Section 7 consultation, and, if required, LCWD and VWC will apply for an incidental take permit under Section 10(a)(1)(B) of the Act to cover any take that may occur due to the pumping and transfer of such additional groundwater.

If we can be of further assistance regarding this consultation, please contact me at (775) 861-6300, or Janet Bair in the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230.

Sincerely,

Robert D. Williams
Field Supervisor

Attachments

cc:
Lincoln County Treasurer, Pioche, Nevada
Supervisory Biologist - Habitat, Nevada Department of Wildlife, Las Vegas, Nevada
Field Manager, Caliente Field Office, Bureau of Land Management, Caliente, Nevada
Nevada Groundwater Projects Office, Nevada State Office, Bureau of Land Management, Reno, Nevada
T&E Species Coordinator, Nevada State Office, Bureau of Land Management, Reno, Nevada

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ATTACHMENT A

GENERAL DESERT TORTOISE QUALIFICATIONS STATEMENT

This form should be used to provide your qualifications to agency officials if you wish to undertake the duties of an authorized biologist with regard to desert tortoises during construction or other projects authorized under Sections 7 (Biological Opinions) or 10(a)(1)(B) (i.e. Habitat Conservation Plans) of the Endangered Species Act.

(If you seek approval to attach/remove/insert any devices or equipment to/into desert tortoises, withdraw blood, or conduct other procedures on desert tortoises, a recovery permit or similar authorization may be required. Application for a recovery permit requires completion of Form 3-200-55, which can be downloaded at http://www.fws.gov/forms/3-200-55.pdf.)

1. Contact Information:

Name	
Address	
City, State, Zip Code	
Phone Number(s)	
Email Address	

2. Date:

3. Areas in which authorization is requested (check all that apply):

□ San Bernardino, Kern, and Los Angeles Counties, California (Ventura office)
□ Riverside and Imperial Counties, California (Carlsbad office)
□ Nevada □ Utah □ Arizona

4. Please provide information on the project:

USFWS Biological Opinion or HCP Permit No.		**Date:**
Project Name		
Federal Agency		
Proponent or Contractor		

5. If you hold, or have held, any relevant state or federal wildlife permits provide the following:

Species	Dates	State (specify) or Federal Permit Number	Authorized Activities

6. Education: Provide up to three schools, listing most recent first:

Institution	Dates attended	Major/Minor	Degree received

7. Desert Tortoise Training.

Name/Type of Training	Dates (From/To)	Location	Instructor/Sponsor
1. Classes			
2. Field Training			
3. Translocation			
4.			

8. Experience – Include only those positions relevant to the requested work with desert tortoises. Distinguish between Mojave desert tortoise and other experience. Include only your experience, not information for the project you worked on (e.g., if 100 tortoises were handled on a project and you handled 5 of those tortoises, include only those 5. List most recent experience first. Handling a Mojave desert tortoise must be authorized by a Biological Opinion or other permit and reported to the USFWS. Information provided in this section will be used by the USFWS to track the numbers of tortoises affected by previous projects (baseline). **Be sure to include a project supervisor or other contact that can verify your skills and experience in relation to your job performance.** Attach additional sheets as necessary.

ATTACHMENT A

Experience by project and activity:

Project Name, Job Title, Dates	Project Contact name, phone no., & Email address		Conduct Clearance Surveys (Hrs/Days)	Excavate DT burrows (No.)	Locate DT No. < 100mm ≥100mm	Relocate DTs (No.)	Excavate, and relocate DT nests (No.)
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

Experience by project and activity (continued): Each project number should correspond with the project listed on the previous page

Project Number (Corresponds to previous page)	Construct Artificial Burrows (No.)	Monitor project equipment and activities (Hrs/Days)	Oversee project compliance (Hrs/Days)	Supervise field staff (Hrs/Days)	DT fence Installation and inspection (Hrs/Days)	Present DT Awareness Training (No.)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

ATTACHMENT A

Summary of experience:

Total time spent for all desert tortoise-related field activities (referenced above):
Specify total number of hours
OR total number of 8-hour days: _____

Total number of miles/kilometers walked conducting survey transects:

Total number of wild, free-ranging desert tortoises you personally handled:

<100 mm: _____

≥100 mm: _____

I certify that the information submitted in this form is complete and accurate to the best of my knowledge and belief.
I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. Ch.47, Sec. 1001.

Signed: _____ **Date:** _____

ATTACHMENT B

RECOMMENDED SPECIFICATIONS FOR DESERT TORTOISE EXCLUSION FENCING
September 2005

These specifications were developed to standardize fence materials and construction procedures to confine tortoises or exclude them from harmful situations, primarily roads and highways. Prior to commencing any field work, all field workers should comply with all stipulations and measures developed by the jurisdictional land manager and the U.S. Fish and Wildlife Service for conducting such activities in desert tortoise habitat, which will include, at a minimum, completing a desert tortoise education program.

FENCE CONSTRUCTION

Materials

Fences should be constructed with durable materials (*i.e.,* 16 gauge or heavier) suitable to resist desert environments, alkaline and acidic soils, wind, and erosion. Fence material should consist of 1-inch horizontal by 2-inch vertical, galvanized welded wire, 36 inches in width. Other materials include: Hog rings, steel T-posts, and smooth or barbed livestock wire. Hog rings should be used to attach the fence material to existing strand fence. Steel T-posts (5 to 6-foot) are used for new fence construction. If fence is constructed within the range of bighorn sheep, 6-foot T-posts should be used (see New Fence Construction below). Standard smooth livestock wire fencing should be used for new fence construction, on which tortoise-proof fencing would be attached.

Retrofitting Existing Livestock Fence

Option 1 (see enclosed drawing). Fence material should be buried a minimum of 12 inches below the ground surface, leaving 22-24 inches above ground. A trench should be dug or a cut made with a blade on heavy equipment to allow 12 inches of fence to be buried below the natural level of the ground. The top end of the tortoise fence should be secured to the livestock wire with hog rings at 12 to 18-inch intervals. Distances between T-posts should not exceed 10 feet, unless the tortoise fence is being attached to an existing right-of-way fence that has larger interspaces between posts. The fence must be perpendicular to the ground surface, or slightly angled away from the road, towards the side encountered by tortoises. After the fence has been installed and secured to the top wire and T-posts, excavated soil will be replaced and compacted to minimize soil erosion.

Option 2 (see enclosed drawing). In situations where burying the fence is not practical because of rocky or undigable substrate, the fence material should be bent at a 90° angle to produce a lower section approximately 14 inches wide which will be placed parallel to, and in direct contact with, the ground surface; the remaining 22-inch wide upper section should be placed vertically against the existing fence, perpendicular to the ground and attached to the existing fence with hog rings at 12 to18-inch intervals. The lower section in contact with the ground should be placed within the enclosure in the direction of potential tortoise encounters and level

with the ground surface. Soil and cobble (approximately 2 to 4 inches in diameter; can use larger rocks where soil is shallow) should be placed on top of the lower section of fence material on the ground covering it with up to 4 inches of material, leaving a minimum of 18 inches of open space between the cobble surface and the top of the tortoise-proof fence. Care should be taken to ensure that the fence material parallel to the ground surface is adequately covered and is flush with the ground surface.

New Fence Construction

Options 1 or 2 should be followed except in areas that require special construction and engineering such as wash-out sections (see below). T-posts should be driven approximately 24 inches below the ground surface spaced approximately 10 feet apart. Livestock wire should be stretched between the T-posts, 18 to 24 inches above the ground to match the top edge of the fence material; desert tortoise-proof fencing should be attached to this wire with hog rings placed at 12 to 18-inch intervals. Smooth (barb-less) livestock wire should be used except where grazing occurs.

If fence is constructed within the range of bighorn sheep, two smooth-strand wires are required at the top of the T-post, approximately 4 inches apart, to make the wire(s) more visible to sheep. A 20 to 24-inch gap must exist between the top of the fence material and the lowest smooth-strand wire at the top of the T-post. The lower of the top two smooth-strand wires must be at least 43 inches above the ground surface.

(72-inch T-posts: 24 inches below ground + 18 inches of tortoise fence above ground + 20 to 24-inch gap to lower top wire + 4 inches to upper top wire = 66 to 70 inches).

INSPECTION OF DESERT TORTOISE BARRIERS

The risk level for a desert tortoise encountering a breach in the fence is greatest in the spring and fall, particularly around the time of precipitation including the period during which precipitation occurs and at least several days afterward. All desert tortoise fences and cattleguards should be inspected on a regular basis sufficient to maintain an effective barrier to tortoise movement. Inspections should be documented in writing and include any observations of entrapped animals; repairs needed including bent T-posts, leaning or non-perpendicular fencing, cuts, breaks, and gaps; cattleguards without escape paths for tortoises or needed maintenance; tortoises and tortoise burrows including carcasses; and recommendations for supplies and equipment needed to complete repairs and maintenance.

All fence and cattleguard inventories should be inspected at least twice per year. However, during the first 2 to 3 years all inspections will be conducted quarterly at a minimum, to identify and document breaches, and problem areas such as wash-outs, vandalism, and cattleguards that fill-in with soil or gravel. GPS coordinates and mileages from existing highway markers should be recorded in order to pinpoint problem locations and build a database of problem locations that may require more frequent checking. Following 2 to 3 years of initial inspection, subsequent inspections should focus on known problem areas which will be inspected more frequently than

twice per year. In addition to semi-annual inspections, problem areas prone to wash-outs should be inspected following precipitation that produces potentially fence-damaging water flow. A database of problem areas will be established whereby checking fences in such areas can be done efficiently.

REPAIR AND MAINTENANCE OF DESERT TORTOISE BARRIERS

Repairs of fence wash-outs: (1) realign the fence out of the wash if possible to avoid the problem area, or (2) re-construct tortoise-proof fencing using techniques that will ensure that an effective desert tortoise barrier is established that will not require frequent repairs and maintenance. Gaps and breaks will require either: (a) repairs to the existing fence in place, with similar diameter and composition of original material, (b) replacement of the damaged section to the nearest T-post, with new fence material that original fence standards, (c) burying fence, and/or (d) restoring zero ground clearance by filling in gaps or holes under the fence and replacing cobble over fence constructed under Option 2. Tortoise-proof fencing should be constructed and maintained at cattleguards to ensure that a desert tortoise barrier exists at all times.

All fence damage should be repaired in a timely manner to ensure that tortoises do not travel through damaged sections. Similarly, cattleguards will be cleaned out of deposited material underneath them in a timely manner. In addition to periodic inspections, debris should be removed that accumulates along the fence. All cattleguards that serve as tortoise barriers should be installed and maintained to ensure that any tortoise that falls underneath has a path of escape without crossing the intended barrier.

Attachment C

Calculation of Desert Tortoise Remuneration Fees

Table 1. Project specific multiplier for calculating remuneration fees for critical habitat.

COMPENSATION FACTOR*	DESCRIPTION	RATING
Category of Habitat	The habitat has been rated as Category I, which is the most valuable and protected (i.e. critical habitat).	3.0
Term of Effect	The term of effect has been rated as long term (> 10 years)	1.0
Existing Disturbance on Site	The existing disturbance has been rated as little or no existing habitat disturbance	1.0
Growth Inducement	The proposed action has been rated as having growth inducing effects	0.5
Effect of Adjacent Lands	The proposed action has been rated as having a direct or indirect deleterious impacts	0.5
TOTAL RATING FOR COMPENSATION FACTORS = MULTIPLIER		6.0
MULTIPLIER X CURRENT COST/ACRE (6 x $753)**		$4,518/acre

Table 2. Calculation of remuneration fees for the Kane Springs Valley Groundwater Development Project.

ACRES	COST PER ACRE**	COST
Compensation for disturbance not within designated critical habitat on Federal land:		
36 acres	$753/acre	$27,108
Compensation for disturbance within designated critical habitat:		
148 acres Federal land	$4,518/acre	$668,664
25 acres private land	$4,518/acre	$112,950
TOTAL COST		**$808,722**

*Compensation Factors are rated based on the *Compensation for the Desert Tortoise; A Report Prepared for the Desert Tortoise Management Oversight Group* (Hastey *et al.*, 1991).

** Each year these fees will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U). Information on the CPI-U can be found on the internet at: http://stats.bls.gov/news.release/cpi.nr0.htm. The next rate adjustment will occur on March 1, 2009.

Attachment D

LINCOLN COUNTY SECTION 7
LAND DISTURBANCE FEE
PAYMENT FORM
Entire form is to be completed by project proponent

Biological Opinion File Number: 84320-2008-F-0007

Biological Opinion issued by: Nevada Fish and Wildlife Office, Las Vegas, Nevada

Species: Desert tortoise (*Gopherus agassizii*) (Mojave population)

Project: Kane Springs Valley Groundwater Development Project

Number of acres anticipated to be disturbed: 184 acres on Federal land (148 acres critical habitat, 36 acres non-critical habitat)

Fee rate (per acre): $4,518 for critical habitat, $753 for non-critical habitat

Total payment required: $_____

Amount of payment received: _____

Date of receipt: _____

Check or money order number: _____

Project proponent: _____

Telephone number:

Authorizing agencies: Bureau of Land Management, Ely, Nevada

Make checks payable to: Lincoln County Treasurer

Deliver check to:
Lincoln County Habitat Conservation Section 7 Account
Lincoln County Treasurer
Attn: Ms. Cathy Hiatt
P.O. Box 416
Pioche, Nevada 89043
(775) 962-5805

If you have questions, you may call the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230.

Attachment D (continued)

CSI MSHCP SECTION 10 TRUST FUND
LAND DISTURBANCE FEE
PAYMENT FORM
Entire form is to be completed by project proponent

Biological Opinion File Number: 84320-2008-F-0007

Biological Opinion issued by: Nevada Fish and Wildlife Office, Las Vegas, Nevada

Species: Desert tortoise (*Gopherus agassizii*) (Mojave population)

Project: Kane Springs Valley Groundwater Development Project

Number of acres anticipated to be disturbed: 25 acres of critical habitat on private land

Fee rate (per acre): $4,518 for critical habitat

Total payment required: $_____

Amount of payment received: _____

Date of receipt: _____

Check or money order number: _____

Project proponent: _____

Telephone number:

Authorizing agencies: Bureau of Land Management, Ely, Nevada

Make checks payable to: Coyote Springs Investment, LLC/CSI MSHCP Section 10 Trust Fund

Deliver check to:
CSI MSHCP Section 10 Trust Fund
Coyote Springs Investment, LLC
Attn: Mr. James England
3100 State Route 168
Coyote Springs, Nevada 89037

If you have questions, you may call the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230.

ATTACHMENT E

Memorandum of Understanding Between
Lincoln County Water District, Vidler Water Company, Inc.
and Nevada Fish and Wildlife Office, US Fish and Wildlife Service

The Nevada Fish and Wildlife Office of the US Fish and Wildlife Service (SERVICE), Lincoln County Water District (LCWD) and Vidler Water Company, Inc. (VIDLER) have entered into this memorandum of understanding (MOU) with reference to the following facts and circumstances:

1) The SERVICE is responsible for administering and implementing the Endangered Species Act of 1973, as amended, (ESA) (16 U.S.C. §§ 1531 – 1544), including conducting consultation pursuant to Sections 7 and 10 of the ESA and as described in its implementing regulations (50 CFR Part 402).

2) LCWD and VIDLER propose to complete the Kane Springs Valley Groundwater Development Project (Project), which involves the pumping and transfer of up to 5,000 acre-feet of groundwater from the Kane Springs Valley Hydrographic Basin for use in the Coyote Spring Valley Hydrographic Basin in Lincoln County, Nevada. The Project will be completed in three phases. Phase I of the Project involves the pumping and transfer of 1,000 acre-feet per year of groundwater.

3) LCWD and VIDLER applied to the Nevada State Engineer for authorization to appropriate up to 5,000 acre-feet per year of groundwater from Kane Springs Valley for use in Coyote Spring Valley, and the SERVICE filed protests to the applications.

4) The SERVICE, LCWD and VIDLER entered into an Amended Stipulation for Withdrawal of Protests under which the SERVICE, LCWD and VIDLER agreed to implement a Monitoring, Management and Mitigation Plan and the SERVICE agreed to withdraw its protests to the applications.

5) The purpose of the Monitoring, Management and Mitigation Plan is to obtain accurate and reliable information regarding the aquifer's response to pumping and the impact of pumping on water-related resources within the regional carbonate-rock aquifer and overlying basin-fill aquifer systems so that the Project can be managed to avoid adverse impacts to the Moapa Dace or its habitat.

6) The Nevada State Engineer has authorized LCWD and VIDLER to appropriate 1,000 acre-feet of groundwater from Kane Springs Valley for use in Coyote Spring Valley and may in the future authorize LCWD and VIDLER to appropriate up to 5,000 acre-feet of groundwater from Kane Springs Valley for use in Coyote Spring Valley.

7) The Bureau of Land Management is expected to issue a Record of Decision granting a right-of-way for the Project.

8) The SERVICE is expected to issue a biological opinion concluding that the Project "may affect, is likely to adversely affect" the Moapa dace or its habitat.

9) The extent of any impact to the Moapa dace or its habitat is uncertain and cannot be known until pumping begins and reliable data is collected under the Monitoring, Management and Mitigation Plan.

10) The sole purpose of this MOU is to ensure ongoing cooperation and consultation between LCWD, VIDLER and the SERVICE, the timely, economical and successful completion of the Project and the protection of the Moapa Dace and its habitat.

11) By entering into this MOU, the SERVICE is taking "action" as defined in 50 CFR §402.02.

12) By entering into this MOU, the SERVICE, LCWD, and VIDLER seek to create a federal nexus to enable the SERVICE to reinitiate consultation under Section 7 of the ESA concerning impacts to the Moapa dace that may occur if the Nevada State Engineer authorizes LCWD and VIDLER to appropriate more than 1,000 acre-feet of groundwater from the Kane Springs Valley Hydrographic Basin.

Now, therefore, in consideration of the mutual promises contained in this MOU, LCWD, VIDLER and the SERVICE agree as follows:

A. The SERVICE will issue a biological opinion for the Project. The biological opinion will include an incidental take statement authorizing such take of the Moapa dace as may occur in connection with the pumping and transfer of 1,000 acre-feet of groundwater under Phase I of the Project and implementation of the Monitoring, Management and Mitigation Plan.

B. Upon receiving authorization from the Nevada State Engineer to appropriate more than 1,000 and up to 5,000 acre-feet per year of groundwater from the Kane Springs Valley for use in Coyote Springs Valley, the SERVICE will reinitiate consultation for the Project pursuant to Section 7 of the ESA; and if necessary, LCWD and VIDLER will apply for an incidental take permit under Section 10(a)(1)(B) of the ESA to cover any take of the Moapa dace that may occur due to the pumping and transfer of such additional groundwater.

US Fish and Wildlife Service
Nevada Fish and Wildlife Office

Robert Williams
Field Supervisor

6/30/08
Date

Lincoln County Water District

By George T. Rowe
Title: Chairman LCWD

6/16/08
Date

Vidler Water Company, Inc.

By [illegible]
Title: President

6/26/08
Date