

1.0 INTRODUCTION

1.1 GENERAL OVERVIEW

The Ely District Office of the Bureau of Land Management (BLM) has prepared this Draft Environmental Impact Statement (EIS) in response to a right-of-way (ROW) application submitted by the Lincoln County Water District (LCWD or Applicant) to construct and operate the Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project (Proposed Action). The LCWD, in cooperation with the Lincoln County Power District No. 1 (LCPD), and the Lincoln County Telephone Company (LCT), intends to construct groundwater facilities and ancillary utility infrastructure designed to pump and convey groundwater that has been permitted or may be permitted by the Nevada State Engineer (NSE) in the Clover Valley and Tule Desert Hydrographic Areas for use by LCWD customers; specifically the Lincoln County Land Act (LCLA) development area north of Mesquite, Nevada. In addition, Southwest Gas Corporation (Southwest Gas) is proposing to construct and operate a natural gas line and metering facility within the southernmost portion of the water project corridor to serve planned development in the LCLA area. **Table 1-1** identifies the entities responsible for constructing and operating the various features of the Proposed Action.

Table 1-1 Features of the Proposed Action	
Facility	Entity Responsible for Constructing and Operating Facility
<i>Water Facilities</i>	
Groundwater production/monitoring wells (well fields in the Clover Valley and Tule Desert Hydrographic Areas)	Lincoln County Water District
Water collection/transmission pipelines	
Water pipeline booster stations	
Water storage tanks	
<i>Electric Utility Facilities</i>	
Electrical transmission lines	Lincoln County Water District or Lincoln County Power District No. 1
Electrical distribution lines	
Electrical substations	
<i>Natural Gas Facilities</i>	
A natural gas pipeline and metering station	Southwest Gas
<i>Communication Facilities</i>	
Buried telemetry system/fiber optic lines	Lincoln County Water District or Lincoln County Telephone Company
<i>Ancillary Facilities</i>	
Temporary and permanent access roads to wells and other facilities	To be coordinated among the various utilities sharing the permitted ROW
Staging/storage areas during construction	

The project facilities would be located in southeastern Lincoln County, Nevada, within or immediately adjacent to the 2,640-foot wide utility corridor established by the Lincoln County Conservation, Recreation, and Development Act (LCCRDA) under Public Law 108-424.

Enacted on November 30, 2004, the LCCRDA designated utility corridors to be used for ROWs for roads, wells, pipelines, and other infrastructure needed for construction and operation of a water conveyance system in Lincoln County.

The project alignment would be oriented north to south; between the Clover Mountains in the northern reach and the Mormon Mountains to the west, and terminating in the LCLA development area at the southern terminus (**Map 1-1**). Project construction is estimated to take between 18 and 24 months to complete, and would begin upon completion of the NEPA process and acquisition of necessary permits and approvals. The Applicant proposes to pump groundwater from up to 30 deep-carbonate groundwater wells; 14,480 acre-feet/year (AFY) from 15 wells in the Clover Valley Hydrographic Area and 9,340 AFY from 15 wells in the Tule Desert Hydrographic Area. As of January 2008, the Nevada State Engineer (NSE) has granted an appropriation of 2,100 AFY to the LCWD for groundwater withdrawal within the Tule Desert Hydrographic Area. Water rights applications for additional groundwater withdrawal by LCWD in the Clover Valley and Tule Desert Hydrographic Areas are still pending before the NSE.

ROW grants may be issued based on future agreements between the LCWD and LCPD/LCT and the analysis in this EIS. If a single ROW is issued, the LCWD would be responsible for construction and operation of all the proposed facilities needed to develop and transport groundwater subject to the terms and conditions of the grant. In the single ROW grant option, the LCWD would purchase electric and communication services from LCPD and LCT at a location(s) as designated in the agreements, but all physical facilities within the ROW would be owned and operated by the LCWD. If multiple ROWs are issued, the LCWD, the LCPD and LCT facilities would be authorized under separate ROW grants. The ROW for Southwest Gas would be a separate grant issued pursuant to Section 28 of the Mineral Leasing Act under either option. A single ROW issued to the LCWD for the water production/delivery system, electrical distribution system, and fiber optic lines, would be issued in perpetuity. This ROW would be granted pursuant to Title III of the LCCRDA and in the case of facilities outside the boundaries of the ROW corridor, the Federal Land Policy and Management Act (FLPMA). Individual ROWs issued to the LCPD and LCT would be subject to the terms and conditions of the FLPMA and 43 CFR 2800.

The BLM, as the federal agency responsible for issuing the ROW(s), lead the preparation of this Draft EIS. The Council on Environmental Quality (CEQ) guidelines direct federal agencies to actively engage state, local, and other federal agencies in preparation of analyses and documentation associated with the National Environmental Policy Act (NEPA) (42 United States Code [U.S.C.] §§ 4331[a], 4332[2]). The Moapa Valley Water District, National Park Service (NPS) – Lake Mead National Recreational Area, Nevada Department of Wildlife (NDOW), Nevada Department of Conservation and Natural Resources, U.S. Army Corps of Engineers (Corps), U.S. Fish and Wildlife Service (USFWS), and the U.S. Geological Survey (USGS) were invited to participate as cooperating agencies in preparation of the Draft EIS for the Proposed Action. The NDOW and USFWS accepted the BLM's invitation and have signed Memoranda of Understanding outlining their responsibilities as cooperating agencies. By accepting cooperating agency status, the agencies accept obligations to contribute staff to the EIS team and develop analyses for which they have particular expertise. Although the Draft EIS is ultimately a BLM document, the BLM has agreed to use the analyses, proposals, and comments of the cooperating agencies to the maximum extent possible.

1.2 PURPOSE AND NEED

The purpose of the action is to provide public land for the transport of groundwater resources by allowing for the construction of a groundwater development and conveyance system on public lands managed by the BLM. The multiple-use mission of the BLM includes managing activities such as mineral development, utility system development, energy production, recreation, and grazing, while conserving natural, historical, cultural, and other resources on the public lands. The BLM's objective is to meet public needs for use authorizations such as ROWs, permits, leases, and easements while avoiding or minimizing adverse impacts to other resource values. The proposal to construct, operate and maintain a groundwater conveyance pipeline on public lands would be in accordance with this objective.

In order to convey the groundwater from the Tule Desert and Clover Valley Hydrographic Areas to the LCLA development area, the LCWD has submitted a ROW application to the BLM for the Proposed Action. The Proposed Action includes construction and operation of groundwater production wells, pipelines, pumping stations, storage facilities, telemetry facilities, fiber optic communication service, power facilities, and natural gas pipelines (as outlined above) that cross or occupy BLM-administered public lands.

Pursuant to Title III of the LCCRDA, Congress directed the BLM to conduct a NEPA analysis of any ROW application submitted for the construction and operation of utility infrastructure within the designated 2,640-foot wide LCCRDA utility corridor. This Draft EIS is intended to fulfill the requirements of the NEPA by disclosing the potential environmental impacts of granting the requested ROWs for the Proposed Action and those of a reasonable range of alternatives to the Proposed Action.

The BLM must decide whether, and if so, under what conditions it will grant ROW(s) to enable construction and operation of the proposed facilities on public land.

1.3 RATIONALE FOR RIGHT-OF-WAY APPLICATION

The Applicant is seeking ROW from the BLM for the purpose of developing and conveying groundwater that has been permitted or may be permitted to the LCWD in the Tule Desert and Clover Valley Hydrographic Areas for use by LCWD customers. The purpose of the Proposed Action is to provide facilities for the production and transportation of water resources on and across areas of federal land. Included in the Proposed Action is construction and operation of a natural gas pipeline and metering facility for Southwest Gas within the southernmost portion of the water project corridor to serve planned development in the LCLA development area. The Proposed Action would assist in meeting a portion of the water demands within Lincoln County and is a component of the 2001 Lincoln County's Water Plan which includes:

- Assist and support the needs of local communities in Lincoln County including the LCLA development area.
- Meet the needs of future economic development within Lincoln County.
- Produce, purchase, wholesale, and transport water from sources inside and outside of Lincoln County to meet customer water needs across the region.

The BLM’s approval of the ROWs would assist the LCWD in meeting the goals of the county’s Water Plan.

1.4 PROJECT BACKGROUND

On June 11, 2003, Nevada’s Governor signed the Lincoln County Water District Act, which established the LCWD as a political subdivision of the state (Chapter 474, Statutes of Nevada 2003). The special legislative act created a single governmental entity with the authority to serve water to all real property located within the boundaries of Lincoln County. Further, the act authorized LCWD to sell water and water rights and to enter into agreements with private entities or corporations for the transfer or delivery of any water right or water appropriated (*id* at Sections 11[7], 11[11], and 11[12]).

The LCCRDA directed the United States Secretary of the Interior to complete the sale of lands identified in the Lincoln County Land Act (LCLA) Public Law 108-424. The LCLA directed the United States Secretary of the Interior to sell certain public lands in Lincoln County through a competitive sale process, including the eight parcels (13,300 acres) that make up the LCLA development area. The parcels vary in size from 666 to 4,257 acres. These lands were identified for disposal in the approved Caliente Management Framework Plan (MFP) Amendment and Record of Decision for the Management of Desert Tortoise Habitat (BLM 2000) and its associated Biological Opinion (file number 1-5-99-F-450, USFWS 2003). The LCLA lands are currently undeveloped but are being planned by Lincoln County as a Planned Unit Development, referred to as the LCLA Development Area (Lincoln County Planning Commission 2006). On February 5, 2005, the BLM auctioned the LCLA lands in several parcels which were sold to private developers for a combined total of \$47.5 million.

As the public agency responsible for coordinating and developing regional water supplies within Lincoln County, the LCWD intends to develop infrastructure to convey groundwater to the LCLA development area, an area within their service territory.

1.5 POLICIES, PLANS, AND PROGRAMS

The following subsections provide an overview of agency authorities and responsibilities that apply to the Proposed Action. The overview is not intended to be exhaustive or all-inclusive. The approval or denial of ROW authorizations by the BLM is not contingent upon any of the agency actions described below. However, construction and operation of the proposed ROW(s), if the ROW application(s) are approved, may not proceed until all applicable reviews, consultations, and authorizations are completed.

1.5.1 Relationship to BLM Policies, Plans and Programs

The BLM Ely District office and the Caliente Field Station are responsible for managing the BLM lands where the Proposed Action would be developed. In late 2005, the BLM Nevada State Director established the Nevada Groundwater Projects Office to facilitate the preparation of the EIS for this Proposed Action and two similar ROW applications for groundwater development in eastern Nevada. Although the Nevada State Office is responsible for preparing the EIS, the Nevada Groundwater Projects Office staff coordinates all efforts with the Ely

District office and Caliente Field Station staff. The BLM Ely District Manager is the authorized officer for this EIS.

Land management on the BLM lands is guided by land use plans specific to each BLM planning area. Before 1985, the BLM’s land use plans were called Management Framework Plans (MFPs). Since 1985, the BLM’s land use plans are called Resource Management Plans (RMPs). **Table 1-2** below lists MFPs and RMPs that guide land use within the project area.

Table 1-2 BLM Land Use Plans Applicable to the Project Area	
Date of BLM Approval	Plan
1981	Caliente Management Framework Plan
1999	Amendment to Caliente Management Framework Plan ¹
2007	Proposed Resource Management Plan/Final EIS for the Ely Field Office ²

¹ Caliente MFP amended to address the management of threatened desert tortoise habitat in southern Lincoln County (Federal Register June 16, 1999, Vol. 64, No. 115).

² The BLM Notice of Availability of the Proposed RMP/EIS for the Ely District which was distributed for public review on November 30, 2007 (Federal Register November 30, 2007, Vol. 72, No. 230, 67748-67750).

Until the currently proposed RMP for the Ely District is finalized and in effect, the management of the Caliente Resource Area and federal actions pertaining to the Proposed Action follow the directives in the 1999 Amended Caliente MFP.

The issuance of ROWs across BLM-managed public lands is outlined under Title V of the FLPMA. Title V states that in “designating rights-of-way corridors and in determining whether to require that ROW be confined to them, [BLM] shall take into consideration national and state land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices” (43 U.S.C. § 1763). The FLPMA further directs that “each rights-of-way permit contain terms and conditions to protect federal property and economic interests, protect lives and property, and otherwise protect the public interest in the lands traversed by the ROW or adjacent to them” (43 U.S.C. § 1765).

1.5.2 Relationship to Non-BLM Policies, Plans, and Programs

1.5.2.1 Water Rights

As noted in the LCCRDA, the establishment of utility corridors and ROWs, in and of themselves, has no bearing on water rights adjudications in Nevada, which are solely under the jurisdiction of the NSE. Water rights, pumping rates, volumes of water proposed for transfer annually to the LCLA development area, and place of use proposed for transfer across public lands and monitoring requirements are outside the jurisdiction of the BLM.

Table 1-3 presents the individual water right applications submitted by LCWD and pertaining to the Proposed Action.

Date of Application	Application Number(s)	Discussion
12/11/98	64692 64693	<ul style="list-style-type: none"> Submitted for appropriation of groundwater up to 14,500 AFY in the Tule Desert Hydrographic Area. These applications were protested by the NPS and Virgin Valley Water District. The NPS withdrew its protests based on a stipulation (Ruling 5181; November 26, 2002) entered into with the LCWD. The remaining protest was overruled in part and upheld in part by the reduction of groundwater permitted under the applications. Application 64693 was granted in the amount of 2,100 AFY. Application 64692 was granted; however, it is being held in abeyance by the NSE while the LCWD conducts additional groundwater investigations.^{1,2}
11/8/00	66932	Submitted to change the point of diversion and place of use of water requested for appropriation under Application 64693. This change application was granted in the same quantity as Application 64693, thereby abrogating it.
8/31/01	67964 67965 67966 67967	Submitted for appropriation of groundwater up to 14,480 AFY in the Clover Valley Hydrographic Area. All four of these applications are classified as Ready for Action (Protested) by the NSE ³ .

Notes:

¹ These investigations include the amount of underground water available from the Tule Desert Hydrographic Area, amount of recharge to the area, and the direction of groundwater flow.

² A copy of Ruling No. 5181 which outlines agreed upon monitoring, management, and mitigation measures subject to this decision, is provided in **Appendix A1**.

³ Ready for Action (Protested) is an official term from the State Engineer's database. All necessary documentation has been submitted to the NSE by the Applicant, but the water rights have been protested by another party, meaning there is a dispute and the decision is still pending.

1.5.2.2 Regional Planning

While the Caliente MFP guides land use decisions and management actions on BLM-administered lands within the Caliente Management Area (see Section 1.5.1), other established policies or programs of other federal, state, and local regulations or guidelines apply to the Proposed Action.

Other federal plans applicable to land use in the region include:

- The USFWS Desert Tortoise (Mojave Population) Recovery Plan (USFWS 1994b) and the Recovery Plan for the Southwestern Willow Flycatcher (USFWS 2002). Desert tortoise habitat is present in the southern portion of the project area. There is no habitat for the southwestern willow flycatcher within the project area. The nearest habitat for this species is located in the Meadow Valley Wash, which is in a separate watershed approximately 20 miles west of the project area.
- The BLM, in cooperation with the U.S. Department of Agriculture Forest Service and the U.S. Department of Defense (DOD), has issued a draft Programmatic EIS to evaluate issues associated with the designation of energy corridors on federal lands in 11 western states including Nevada. Based on the information and analyses developed in the

Programmatic EIS, each agency would amend its respective land use plans by designating a series of energy corridors. Designated utility corridors within the project area include the 2,640-foot wide LCCRDA corridor.

Local regulations and guidelines that now or in the near future will guide development activities on private lands within the project area include:

- *Lincoln County Water Plan* (Resource Concepts, Inc. 2001),
- *2006 Annual Report Lincoln County Comprehensive Economic Development Strategy* (Board of Lincoln County Commissioners 2007), and
- *Lincoln County Master Plan*, adopted December 2006 (Lincoln County Planning Commission 2006).

Lincoln County is preparing a Habitat Conservation Plan (HCP) specifically addressing development of private lands within the LCLA Development Area. The *Southeastern Lincoln County HCP* is currently under development.

Prior to construction, the Applicant would need to obtain other permits and approvals from federal, state, and local agencies with respect to their jurisdictions. Other potential permits and approvals are discussed in Section 1.8.

1.6 SCOPING

The NEPA is procedural and designed to ensure that the environmental consequences of major federal decisions are known and available to public officials and the public before decisions are made and actions are undertaken. Public scoping assists in the environmental review process by providing a means to inform the public about activities that involve a federal action and solicit their comments regarding the proposed action. The BLM considered comments received through public scoping when developing the scope, content, and alternatives to be analyzed in this Draft EIS.

A Notice of Intent to prepare this Draft EIS was published in the Federal Register (Volume 71, No. 62) on March 31, 2006. The notice encouraged the public and other federal, state, local, and Tribal governments to assist the BLM in identifying issues to be considered for evaluation in this Draft EIS. A 30-day public scoping period (March 31, 2006 through May 1, 2006) was provided for submission of comments.

The BLM distributed press releases announcing the dates, locations, and times of scoping meetings to local and regional print and broadcast media. The press release was sent to newspapers for publication and to radio and television stations for airing of public service announcements. Paid legal notices indicating the dates, locations, and times of scoping meetings were published in the local newspapers circulated in Reno, Las Vegas, Baker, Caliente, Alamo, and Mesquite, Nevada. The BLM held six open house meetings between April 11, 2006 and April 18, 2006. A summary report of scoping comments received during the scoping period is provided in the Lincoln County Land Act Groundwater Development and Utility Right-of-Way EIS Scoping Report (BLM 2006a). A copy of this report is available for download at the BLM Nevada State Office website located at www.nv.blm.gov. Written requests can be submitted to

the BLM – Nevada State Office, Attention - Penny Woods, Nevada Groundwater Project Manager, P.O. Box 12000, Reno Nevada, 89520-0006.

Based on comments received during the scoping process, the following general categories of issues were identified as summarized below. More detailed discussion is presented in the scoping report referenced above.

- **NEPA Process** – Eighty-nine comments were received specific to the NEPA process; particularly, how closely the Draft EIS would follow the NEPA process.
- **Social Resources** – Forty-eight comments were received specific to concerns about impacts on the human or built environment. Scoping comments were provided on the following resources: 1) Visual Resources; 2) Noise; 3) Land Use (including Transportation, Mineral Resources, and Range Resources); 4) Areas of Critical Environmental Concern, Wilderness, and Other Special Use Areas; 5) Recreation; 6) Socioeconomic Resources; 7) Solid Waste and Hazardous Materials; 8) Environmental Justice; 9) Paleontology; and 10) Cultural and Historic Resources.
- **Physical and Biological Resources** – One hundred and sixteen comments were received specific to concerns about impacts on components of the physical environment. Scoping comments were provided on the following resources: 1) Air Quality; 2) Biological Resources (including Endangered, Threatened, Proposed and Candidate Species, Fisheries, Migratory Birds, Vegetation, Noxious Weeds, and Wetlands/Riparian Habitat); 3) Geologic Resources; 4) Soil Resources; and 5) Water Resources.

1.7 ORGANIZATION OF THE DRAFT EIS

Table 1-4 describes the organization of the remaining components of the Draft EIS.

Chapter Title	Description
Chapter 2.0 – Proposed Action and Alternatives	Chapter 2.0 describes the Proposed Action and alternatives including the No Action alternative. Alternatives that were considered but eliminated from further analysis are described in Chapter 2.0, Section 2.4, Alternatives Considered During Scoping but Eliminated from Further Consideration, with a discussion of why they were not considered further.
Chapter 3.0 – Affected Environment	The existing environment that could be affected by granting the ROWs requested by the LCWD is described in Chapter 3.0 of the Draft EIS. The existing environment includes the social and natural environment.
Chapter 4.0 – Environmental Consequences	Chapter 4.0 describes possible environmental consequences of the Proposed Action and alternatives. Direct, indirect, and cumulative effects of the Proposed Action and alternatives are assessed and described in order to allow for comparative impact evaluation. Impacts are compared to the social and natural environment that would be expected to exist if no action were taken (the No Action Alternative).
Chapter 5.0 – Consultation and Coordination	Chapter 5.0 describes public participation undertaken to date and additional opportunities that would occur throughout the EIS process. It also lists agencies and organizations that will receive copies of the EIS for review and lists the preparers of the document.
Chapter 6.0 – References, Glossary, and Index	Chapter 6.0 includes a list of references used in the preparation of the Draft EIS. Other sections that follow include a glossary of technical terms used, and an index listing of keywords used in the Draft EIS.

1.8 APPLICABLE LAWS, AUTHORIZING ACTIONS AND PERMITS

The Draft EIS was prepared in compliance with CEQ regulations for implementing the NEPA (40 CFR § 1500-1508); the BLM NEPA Handbook, H-1790-1; the Ely Field Office Environmental Analysis Guidebook; FLPMA Sections 201, 202, and 206 (43 CFR § 1600); and the BLM Land Use Planning Handbook (BLM Handbook H-1601-1). The BLM also has Instruction Memoranda (IM 2004-105, 149, 231, and 2005-105) which guide and set NEPA compliance policy for the BLM. **Table 1-5** is a representative list of other laws and Executive Orders that may apply to the Proposed Action. The Applicant and its contractors would comply with requirements set forth in these directives as applicable.

Table 1-5 Other Laws and Executive Orders that May Apply to the Proposed Action
FEDERAL
Administrative Procedures Act, Title 5 U.S.C. Chapter 5, Sections 511-599
Federal Land Policy and Management Act of 1976 43 U.S.C.1701 et seq.
National Historic Preservation Act and regulations implementing the National Historic Preservation Act 16 U.S.C.470 et seq.
Archeological Resources Protection Act of 1978, as amended, 42 U.S.C.1996 and 1996a
Clean Water Act of 1987, as amended, 33 U.S.C.1251 et seq.
Clean Air Act of 1990, as amended, 42 U.S.C.7401 et seq.
Protection and Enhancement of the Cultural Environment Executive Order 11593
Endangered Species Act of 1973, as amended, 16 U.S.C.1531 et seq.
Native American Graves Protection and Repatriation Act of 1990, as amended, 25 U.S.C.3001 et seq.
Noise Control Act of 1972, as amended 42 U.S.C.4901 et seq.
Occupational Safety and Health Act 29 U.S.C.651 et seq. (1970)
Farmland Protection Act of 1981 (Prime and Unique Farmlands)
Pollution Prevention Act of 1990 42 U.S.C.13101 et seq.
Safe Drinking Water Act, as amended, 42 U.S.C. § 300f et seq. (1974)
Safe Drinking Water Act, as amended, 42 U.S.C.201 et seq.
Migratory Bird Treaty Act (Migratory Bird Guidance) 16 U.S.C.703–711 Executive Order January 1, 2001
National Environmental Policy Act, Protection and Enhancement of Environmental Quality - Executive Order 11512
Floodplain Management Executive Order 11988
Protection of Wetlands Executive Order 11990
Federal Compliance with Pollution Control Standards Executive Order 12088
Environmental Justice Executive Order 12898
Indian Sacred Sites Executive Order 13007
American Indian Religious Freedom Act of 1978 (42 U.S.C.1996)
Consultation and Coordination with Indian Tribal Governments Executive Order 13084
Invasive Species Executive Order 13112
Responsibilities and the ESA, Secretarial Order 3206 (June 5, 1997)
Federal Water Pollution Control Act, as amended, 33 U.S.C.1323 et seq.
Wild and Scenic Rivers Act, as amended, 16 U.S.C.1271 et seq.
Wilderness Act, as amended, 16 U.S.C.1131 et seq.
Mineral Leasing Act of 1920, as amended, 30 U.S.C.181 et seq.
Mining and Mineral Policy Act of 1970, as amended, 30 U.S.C.21 (a)
Taylor Grazing Act of 1934, as amended, 43 U.S.C 315 et seq.
Public Rangelands Improvements Act of 1978, 43 U.S.C.1901
Wild and Free-Roaming Horse and Burro Act, as amended, 16 U.S.C.1331-1340
Migratory Bird Conservation Act of 1979, as amended, 16 U.S.C.715 et seq.
Energy Policy and Conservation Act Reauthorization of 2000, as amended, Public Law 106-469.

Table 1-5 Other Laws and Executive Orders that May Apply to the Proposed Action

Energy Policy and Conservation Act Report.
Executive Order 13443 (Facilitation of Hunting Heritage and Wildlife Conservation)
Executive Orders 11644 and 11989 (Off-Road Vehicles)
Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks)
Executive Order 12144 (Environmental Effects Abroad of Major Federal Actions)
Executive Order 13212 (Actions to Expedite Energy Related Projects)
Secretarial Order 3175 (incorporated into the Departmental Manual at 512 DM 2)
STATE
State Protocol Agreement between the BLM, Nevada, and the Nevada SHPO, (January 2005)
Chapter 474, State of Nevada 2003 (County Fire Protection Districts)
NSE Ruling 5181
NRS Chapters 501 through 506 (Wildlife – Administration and Enforcement; Licenses, Tags, and Permits; Hunting, Fishing, and Trapping; Management and Propagation; Fur Dealers; and Wildlife Violator Compact)
NRS Chapters 527 and 528 (Forestry; Forest Products and Flora – Protection and Preservation of Timbered Lands, Trees, and Flora; Forest Practice and Reforestation)
NRS 527.060-120 (Protection and Preservation of Timbered Lands, Trees, & Flora – Definitions Cactus & Yucca)
NRS 527.270 (List of species declared to be threatened with extinction; special permit required for removal or destruction)
NRS 533.030 (Adjudication of Vested Water Rights; Appropriation of Public Waters - Appropriation for beneficial use; use for recreational purpose declared beneficial; limitations and exceptions)
NRS 533.035 (Adjudication of Vested Water Rights; Appropriation of Public Waters - Beneficial use: Basis, measure and limit of right to use)
NRS 534.020 (Underground waters belong to public and are subject to appropriation for beneficial use; declaration of legislative intent).
NRS 555.005 (Agriculture – Control of Insects, Pests, and Noxious Weeds, Definitions)
NAC Chapters 527 and 528 (Administrative Code for NRS 527 through 528)
NAC Chapters 501 through 505 (Administrative Code for NRS 501 through 505)
NAC 445A – 445A.225 (Water control definitions and standards)
NAC 444.571 (Class II disposal site definition)
NAC 445A.226 (Actions for contaminated sites)
U.S.C – United States Code NRS – Nevada Revised Statutes NAC – Nevada Administrative Code et seq. – “and the following”

1.8.1 Air and Water Resources

The Nevada Division of Environmental Protection (NDEP) regulates air and water quality in the State of Nevada in cooperation with the U.S. Environmental Protection Agency (EPA). Prior to project construction activities, each utility (e.g., LCWD, LCPD, LCT, and Southwest Gas), or its contractor, would be responsible for obtaining a Surface Area Disturbance – Air Quality Permit from the NDEP – Bureau of Air Pollution Control. The contractor would be required to implement a Dust Control Plan during project construction. The LCWD has prepared a Dust Control Plan that describes measures the LCWD and its construction and reclamation contractors would implement during project construction in accordance with local regulations (LCWD 2007).

The NDEP also controls the discharge of storm waters associated with temporary construction activities through a National Pollutant Discharge Elimination System (NPDES) Notice of Intent

Permit and the requirement that all activities be conducted in accordance with a Storm Water Pollution Prevention Plan (SWPPP). The NDEP also issues NPDES permits for pipeline construction activities that involve certain discharges of water during hydrostatic testing. The LCWD has prepared a SWPPP that addresses activities related to construction and reclamation of the Proposed Action (LCWD 2007).

The Nevada Division of Water Resources is responsible for administering and enforcing Nevada water law, which includes the permitting, adjudication and appropriation of groundwater and surface water in the state. All water within the boundaries of the state, whether above or beneath the surface of the ground, is subject to appropriation for beneficial use under the laws of the state (Nevada Revised Statutes [NRS] 533.030 and NRS 534.020).

Individual General Improvement Districts (GIDs) have not yet been formed within the LCLA Development Area. The construction and operation of future utility infrastructure (e.g., sewer, water, wastewater solid waste facilities) within the jurisdictional boundaries of the planning area would be the responsibility of the developers or GID. At a minimum, the developer or GID would be mandated by law to provide water treatment (NRS 318.144) and sanitary sewer facilities (NRS 318.140) to those portions of their jurisdictional area within their respective territories. If the developer or GID determines that water provided from the Proposed Action requires treatment, a water treatment facility may be constructed on private lands near the terminal storage tank. The developer or GID would be responsible for wastewater treatment, storage, and disposal facilities within their jurisdictional area. The developer or GID would also be responsible for the treated effluent reuse system. The NDEP and the Nevada State Health Department would regulate these facilities subject to Nevada Administrative Code (NAC) Chapter 445A. Also, the NDEP would regulate the use of treated effluent. Other actions associated with the LCLA development area are discussed in Section 4.20 – Cumulative Impacts.

1.8.2 Fish and Wildlife Resources, Including Threatened, Endangered, Candidate, and Special Status Species

Special status species include those declared as threatened or endangered under the federal Endangered Species Act (ESA) of 1973, as amended; candidate species proposed for listing under the ESA; or species of concern or otherwise identified by the USFWS, the BLM, or State of Nevada as unique or rare. Threatened and endangered animal/plant species are protected by the ESA. Candidate species are not provided the same level of protection under the ESA. However, the BLM policy requires that actions authorized, funded, or carried out by the agency would not jeopardize the continued existence of any threatened or endangered species, contribute to the listing of any candidate species as threatened or endangered, or result in the destruction or adverse modification of habitat which is determined by the United States Secretary of the Interior as critical to such species.

Under Section 7 of the ESA, the BLM is required to consult with the USFWS on actions that it permits, licenses, funds, or otherwise authorizes, in whole or in part, to ensure that these actions would not jeopardize the continued existence of any listed species or result in adverse modification of critical habitat as designated by the USFWS. As part of the Section 7 process, the BLM is preparing a Biological Assessment for the Proposed Action. Upon receipt, the USFWS will review the Biological Assessment for completeness, and would then issue a Biological Opinion indicating whether the Proposed Action would jeopardize the continued

existence of any species listed or proposed for listing as threatened or endangered under the ESA and whether the proposed action would result in adverse modification of designated or proposed critical habitat.

The NDOW defines “Sensitive” species as those plants and animals identified by the BLM as species for which population viability is a concern, as evidenced by (1) a significant current or predicted downward trend in population numbers or density or (2) a significant current or predicted downward trend in habitat capability that would reduce the species’ existing distribution.

Conservation management and special protections for flora and fauna are provided mainly by state and federal laws, regulations, and policies, with management carried out by authorized agencies. The State of Nevada provides for and authorizes conservation management and protection for a great number of species under NRS chapters 501 through 506, NAC chapters 501 through 505, NRS chapters 525 and 528, and NAC chapters 527 and 528.

The state’s wildlife and wild land plants are administered by the NDOW and the Nevada Division of Forestry, respectively. The NDOW establishes population objectives for various species within Nevada. The BLM manages the habitat and confers with the NDOW on proposed projects that would have an effect on wildlife or fisheries. Mule deer, bighorn sheep, mountain lion, cottontail rabbit, chukar, Gambel’s quail, and mourning dove are among wildlife in the project area classified as game species; whereas bobcat, kit fox, and gray fox are among those classified as fur-bearing species. In general, management methods and intensities are based on a sustainable population principal with protection enforced against illegal harvest. Wild land plants, notably coniferous species, are similarly managed by the Nevada Department of Forestry. However, because of the vulnerability of certain wildlife and flora to decline, special management status and protections may be asserted. Under NRS chapter 501, wildlife may be classified as protected with further classifications of sensitive, threatened, or endangered as warranted.

Similarly, under NRS 527.270, native plants may be declared as threatened with extinction and protected. By nature, authorities to manage plant and animals overlap among the state and federal natural resource management agencies.

The NDOW establishes population objectives for various species. The BLM confers with the NDOW on proposed projects that would have an effect on wildlife or fisheries. The USFWS and the NDOW are cooperating agencies with the BLM in the preparation of this Draft EIS.

1.8.3 Waters of the U.S., Wetlands, and Floodplains

Construction activities would involve ephemeral wash crossings in the Clover Mountains and Tule Desert areas. Section 404 of the Federal Clean Water Act regulates discharges into streams or wetlands that are considered “Waters of the United States.” The St. George, Utah Regulatory Office of the Corps of Engineers (the Corps) is the delegated office responsible for implementing and enforcing Section 404 of the federal Clean Water Act (33 CFR parts 320 to 330). The Corps was invited but declined the BLM invitation to participate as a cooperating agency in preparation of this Draft EIS. Formal jurisdictional delineation has not been conducted for the Proposed

Action; however, the LCWD would consult with the Corps upon approval of the ROW. All construction activities would be conducted in accordance with Corps regulatory requirements using erosion and sediment control best management practices (BMPs) to avoid or minimize any impacts from construction activities.

1.8.4 Heritage Resources

The BLM consults with the Nevada State Historic Preservation Office (SHPO) and other interested parties, as necessary, regarding potential impacts of the proposed undertaking on cultural and historic resources.

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C 470f) requires the BLM to take into account the effects of “undertakings” on historic properties. The regulations require the BLM official to avoid effects where prudent and feasible. When the BLM determines that an undertaking would have an effect on a historic property, before the undertaking is allowed to proceed, the BLM must provide for the development and implementation of agreements, in consultation with SHPO, Indian tribes, and the interested public, as appropriate, the means by which adverse effects will be considered. A Protocol Agreement between the Nevada BLM and the Nevada SHPO defines how interaction and cooperation will occur between the two federal entities regarding the development and implementation of these agreements. These regulations, the NHPA and Protocol Agreement, require the BLM to avoid effects to cultural resources where prudent and feasible. A Class I literature review of the project area was prepared by ARCADIS (2006a) to identify archaeological resources and properties that would be affected by the Proposed Action. Subsequently, a Class III (intensive survey) was conducted. Upon final engineering design, and prior to construction, any areas outside of the previously surveyed areas would be surveyed according to BLM guidelines and protocols.

Section 110 of the NHPA (16 U.S.C 470 h-2) requires federal agencies to establish a program for the identification, evaluation, and nomination of significant sites, districts, buildings, structures, and objects under the jurisdiction and control of such agency to the National Register of Historic Places (NRHP). The NRHP properties must be managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values. This section of the NHPA incorporates the provisions of Executive Order 11593 into law.

The Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470aa et seq.) prohibits excavation, removal, damage, alteration, or defacement of archeological resources without a permit. The ARPA (16 U.S.C. 470ii) also requires agencies to inventory the nature and extent of archaeological resources on public and Indian lands. Further, the ARPA also requires federal agencies to establish a program to increase public awareness of the significance of archaeological resources located on public and Indian lands and the need to protect such resources.

1.8.5 Tribal Consultations

The BLM is conducting government-to-government consultation with interested Tribes to provide information on the Proposed Action and alternatives and to obtain information on cultural resources and Native American practices and beliefs which may be affected by the

Proposed Action and alternatives. The following laws, regulations, and Executive Orders are the basis of BLM policy on tribal consultation.

The BLM Manual Handbook, Guidelines for Conducting Tribal Consultation (H-8121-1), provides guidelines for BLM Managers and staff in carrying out assigned tribal consultation responsibilities and roles. This Handbook provides for federally recognized Tribal governments and Tribe individuals to have sufficient opportunity to contribute to decision-making, and that the BLM decision-maker will give Tribal concerns proper consideration.

Section 106 of the NHPA (16 U.S.C 470f) provides for a process for the identification and evaluation of archaeological and historic resources for listing in the NRHP, as well as for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

Executive Order 13084 requires federal officials to recognize the domestic dependent sovereign status of federally recognized Indian Tribes and coordinate with Tribes on any activities which may have an impact on Tribal interests.

The American Indian Religious Freedom Act (AIRFA; 42 U.S.C. 1996) reinforces the constitutional right of free practice of religion. The AIRFA reminds federal officials to consider impacts of federal actions on the free practice of Indian religions.

Executive Order 12898 reinforces the AIRFA by directing federal land managers to specifically take into account and document that federal actions do not damage sacred sites.

The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001[9]) requires federal officials to consult with American Indian individuals, Tribal organizations, and recognized Tribal governments with demonstrated affinity to human remains, funerary objects, sacred objects, and objects of cultural patrimony when federal actions may disturb these features.

1.8.6 Highways

The Proposed Action would be constructed along county or BLM-maintained dirt roads between the Clover Mountains east of Caliente and the Tule Desert, north of Mesquite. Temporary overland access routes and improvements of existing dirt roads may be required.

1.8.7 Authorizing Actions and Permits

Table 1-6 lists federal, state, county, and other permits and approvals that may be needed to implement the Proposed Action or other action alternatives.

Table 1-6 Authorizations, Permits, Reviews and Approvals		
Actions Requiring Permit, Approval, or Review	Permit/Approval	Accepting Authority/ Approving Agency
Federal		
ROW over BLM-administered Public Lands	FLPMA, Section 28 of the MLA, and Title III of the LCCRDA	BLM
NEPA Compliance to Grant ROW	EIS	BLM
Grant of ROW by the BLM	NHPA, Compliance with Section 106	BLM and SHPO
Grant of ROW by the BLM	Endangered Species Act Compliance (Section 7 Consultation on public lands and Section 10 Consultation on private land); the BLM and USFWS, Biological Assessment, Biological Opinion	USFWS
Jurisdictional Waters of the U.S. Crossings	Clean Water Act, Section 401/404	Army Corps of Engineers
State of Nevada		
Water Appropriation, Importation, Monitoring, and Mitigation	Water Appropriation Permits	Nevada State Engineer
Notice of Intent to Drill or Abandon a Well	Well Drilling Permits	Nevada Department of Water Resources
Critically Endangered Plant Species; Native Cacti and Yucca Commercial Salvaging and Transportation Permit	Collection Permit for State-Listed Plants	Nevada Division of Forestry
Wildlife and Habitat Consultation for Disturbance on the BLM Land	Authorization for take or removal of state-protected reptiles	NDOW
Desert Tortoise Handling Permit/Authorization	Handling Authorization	NDOW
Notification for Stormwater Management during Construction and Operation; Temporary Groundwater Discharge	SWPPP, Section 401 Water Quality Certification; Section 402 NPDES Notification; Temporary Discharge Permit	NDEP
Construction / Fugitive Dust – PM ₁₀	Surface Area Disturbance – Air Quality Permit	NDEP
Certificate for New Water Utility	Utilities Environmental Protection Act Construction Permit	Public Utilities Commission of Nevada
Encroachment of U.S. Highway 93	Encroachment Permit	Nevada Department of Transportation
Local		
Construction and Operation of the Proposed Action	Special Use and Construction Permits; Grading Permits for Project Components on the BLM lands	Lincoln County

BLM – Bureau of Land Management

NDEP – Nevada Department of Environmental Protection

NEPA – National Environmental Policy Act

NPDES – National Pollution Discharge Elimination System

PM₁₀ – particulate matter less than 10 microns

SHPO – State Historic Preservation Office

USFWS – U.S. Fish and Wildlife Service

LCCRDA – Lincoln County Conservation, Recreation, and Development Act

EIS – Environmental Impact Statement

NDOW – Nevada Department of Wildlife

NHPA – National Historic Preservation Act

NSE – Nevada State Engineer

ROW – right-of-way

SWPPP – Storm Water Pollution Prevention Plan

1.9 INTERRELATED PROJECTS

The CEQ guidelines for EIS preparation require that cumulative impacts be addressed in addition to direct and indirect impacts. Cumulative impacts are those incremental impacts that would result from the effects of the Proposed Action or action alternatives when added to the effects of other past, present, and reasonably foreseeable projects.

The BLM identified the following past, present, or reasonably foreseeable interrelated projects, BLM or other agency activities, or environmental condition whose cumulative impacts may extend across a broad range of the resource categories being assessed in this Draft EIS.

Utilities, Industry, and Public Service Projects

- Toquop Energy Project (Proposed Coal Fired Power Plant) – *Future*
- Holly Energy Partners (Proposed Petroleum Products Pipeline) – *Future*
- Kern River Gas Transmission Company Expansion Pipeline – *Past*
- Mesquite Replacement Airport – *Future*
- Interstate 15 - Exit 109 Interchange – *Future*
- Navajo Electric 500 kV Transmission Lines – *Past*
 - 500 kVAC transmission line (Navajo)
 - 500 kVDC transmission line (IPP)
- Nevada Power 345 kV Electric Transmission Line (Harry Allen/Red Butte) – *Past*
- FTV System Fiber Optic Communication Cable – *Past*

Water Projects

- Current and future groundwater pumping in the Clover Valley, Tule Desert, Virgin River, and Lower Meadow Valley Wash Hydrographic Areas – *Past, Present, Future*

Residential Development Projects

- Build-Out of the Lincoln County Land Act Area (Toquop Township) – *Future*
- Build-Out of the Mesquite Lands Act Property (Mesquite Continuity Parcel) – *Future*
- Build-Out of Coyote Springs Investment development – *Future*

BLM and Other Agency Activities

- Lincoln County Conservation, Recreation, and Development Act – *Past (P.L. 108-424, enacted November 30, 2004), Present (environmental analysis of proposed activities within the designated corridor and preparation of Wilderness Plans), Future (development activities within the designated corridor)*
- Grazing Activities – *Past, Present, Future*
- Solar and Wind Energy Development on BLM Lands - *Future*
- Mineral Development and Mining – *Past, Present, Future*

- Approval of the Ely Proposed RMP/Final EIS – *Future*
- Southeastern Lincoln County Habitat Conservation Plan – *Future*
- Off-highway Vehicle (OHV) Special Recreation Permits (SRPs) on BLM-administered lands – *Past, Present, Future*

Environmental Conditions

- Drought (Climate Change) – *Past, Present, Future*
- Wildland Fire – *Past, Present, Future*
- Localized Flooding – *Past, Future*

Each project, BLM activity, or environmental condition listed above was evaluated to determine if it is sufficiently defined (reasonably foreseeable) to be: 1) relevant to potential impacts, 2) within the project area of influence, and 3) of a magnitude that could potentially result in a cumulative impact. Cumulative effects and descriptions of each of these projects are presented in Section 4.20 - Cumulative Impacts.

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