

RECORD OF DECISION

Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project

**Cooperating Agencies:
U.S. Fish and Wildlife Service
Nevada Department of Wildlife**

U.S. DEPARTMENT OF INTERIOR (USDI)

**BUREAU OF LAND MANAGEMENT
ELY DISTRICT OFFICE
NVN79734**

January 8, 2010

I. LINCOLN COUNTY LAND ACT GROUNDWATER DEVELOPMENT and UTILITY RIGHT-OF-WAY PROJECT DECISION

DECISION: This document constitutes the Record of Decision (ROD) of the Department of the Interior (DOI), Bureau of Land Management (BLM) for the Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project (LCLA ROW Project). This ROD is prepared in accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and other applicable Federal laws and regulations. The LCLA ROW Project EIS evaluated the BLM action to grant a single right-of-way (ROW) to the Lincoln County Water District (LCWD) for all facilities necessary to complete the project and/or grant individual ROWs to the LCWD, the Lincoln County Power District (LCPD), to Lincoln County Telephone (LCT), and a natural gas purveyor. The EIS also evaluated an alternative ROW alignment for project linear facilities and the no action alternative.

After extensive environmental analysis, consideration of public comments, and application of pertinent Federal laws and policies, it is the decision of the BLM to grant a single ROW to the LCWD for construction, operation, maintenance and termination of the pipeline, fiber optic line and power line facilities. The ROW is on the alignment identified in the May 1, 2009 Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project Final Environmental Impact Statement (FEIS) as the Proposed Action and is consistent with the applications for ROW submitted by LCWD. All mitigating measures identified in the EIS will be applied. Under this ROD, a separate ROW for the natural gas pipeline could be granted to a natural gas purveyor.

ROW GRANTS: LCWD, in cooperation with LCPD and LCT, intends to construct groundwater facilities and ancillary utility infrastructure designed to pump and convey up to 23,820 AFY of groundwater for delivery to Lincoln County Water District customers. The project facilities would be located in eastern Lincoln County, Nevada, both within and outside the 2,640-foot wide utility corridor established by the Lincoln County Conservation, Recreation, and Development Act (LCCRDA) of 2004 (Public Law 108-424). The ROW to LCWD for the Proposed Action would be granted in perpetuity under Title III of LCCRDA. Attachment 3 shows the general location of the project within Lincoln County, Nevada.

The LCLA ROW Project would provide for groundwater development and conveyance infrastructure from 2 hydrographic basins in southeast Nevada. Groundwater would be developed in the Tule Desert and Clover Valley hydrographic basins. To date, LCWD has been granted by the Nevada State Engineer (NSE) approximately 2,496 acre-feet per year (afy) of groundwater appropriations in Tule Desert. LCWD has applications for 14,480 afy in Clover Valley pending before the NSE, which has yet to be scheduled for hearing. The LCLA ROW Project is a multi-phase project. Currently proposed facilities are as follows:

Parallel linear facilities would be sited within a 300-foot disturbance width:

- 73 miles buried water pipeline, 24-54 inch diameter
- 73 miles of 138 and 22.8 kV overhead powerline
- 73 miles of temporary construction width along ROW
- 73 miles of fiber optic line (placed in same trench with water pipeline)

Sites for ancillary facilities (permanent ROW)

- Up to 4 water pipeline booster stations with forebay storage tanks (9 acres total)
- Up to 5 water storage tanks (total capacity up to 4.9 million gallons)(4 acres total)
- Flow control facilities (7 acres total)
- Monitoring wells

Sites for temporary construction

- Construction staging sites (100 acres total = 20 5-acre sites)
- Extra construction workspace for ancillary facilities (6 acres total)
- Extra workspace (50 acres total)

Currently, LCWD has ROW for several wells as defined in the following table. These wells were authorized for purposes of exploring the water resource and complying with Nevada State Engineer requirements.

<i>ROW #</i>	<i>Facilities Authorized</i>	<i>Basin</i>
N82376	9 Exploration well sites	Clover
N66087	5 Monitoring well + 1 Production well site	Tule
N80825	3 Monitoring well + 5 Test well sites	Tule
N82770	1 Monitoring well + 2 Test well sites	Tule
N78413	2 Monitoring well sites	Tule

Additional (future) well field elements were identified and analyzed in the EIS and would occur in the identified well field areas. These elements would be specifically identified by LCWD in future ROW applications¹ which would then be reviewed and considered in subsequent NEPA analyses (either EISs or environmental assessments). These elements could include well sites (including those listed above, if they are identified by LCWD as valuable for production wells), collector/feeder pipelines and small power distribution lines to support the individual wells which would be located within the areas identified and studied in the EIS.

¹ The reason LCWD does not now know the exact location of these facilities is that siting them is dependent on further water studies, the results of groundwater modeling and future NSE rulings and/or negotiations; however, the general locations of these well field elements would be confined to the designated well field areas identified and analyzed in the EIS.

The LCWD ROW will consist of:

1. Approximately 73 miles of water main transmission pipeline and the Clover Valley laterals which will be located within a 100-foot construction width (60-foot wide permanent ROW). The pipelines will contain all appurtenant valves, thrust restraint, and cathodic protection.
2. Up to 73 miles of electrical transmission and distribution lines within a 100-foot permanent right-of-way width.
3. The fiber optic line will be within the same trench as the LCWD pipeline ROW and will have a 10-foot wide permanent ROW.

LCWD will be responsible for constructing and operating the groundwater production/delivery system, electrical and fiber optic facilities under BLM ROW serial number N79734. Construction activities would occur in phases depending on the demand for water and issuance of permits for additional water rights. Construction activities will be defined in the final Plan of Development to be submitted and approved prior to any Notices to Proceed.

A separate ROW would be issued to a natural gas purveyor for approximately 15 miles from the Kern River Natural Gas Pipeline adjacent to the Toquop Power Station site along the LCWD alignment, to the terminus at the LCLA development lands within a 140-foot construction width (60-foot permanent ROW).

PROTECTION MEASURES: The ROW, Plan of Development (POD), and any other required approvals will be subject to agency (BLM, USFWS, NDOW) stipulations and performance standards described and referenced in the mitigation measures section (Attachment 2) of this document and the July 8, 2009 Biological Opinion issued by the U.S. Fish and Wildlife Service.

Prior to any construction or other surface disturbance associated with the ROW grant, the Authorized Officer or delegated agency representative will issue a written Notice to Proceed (NTP). Any NTP shall authorize construction or use only as expressly stated therein and only for the particular location, segment, area, or use described. The LCWD and natural gas purveyor are required to provide the BLM a final POD that details how the project facilities will be constructed. The final POD will become part of the ROW grant(s). The final POD will be completed and approved by the BLM prior to the issuance of any NTP for construction on Federal lands. In addition, the disturbance acreages reflected in the final POD will be used to calculate the desert tortoise remuneration fee, which will be provided prior to the issuance of any NTP and managed in accordance with

Hastey et.al. (1991). This will implement Reasonable and Prudent Measure 3(w) of the July 8, 2009, Biological Opinion.

II. MANAGEMENT CONSIDERATIONS AND DECISION RATIONALE

PURPOSE AND NEED: The purpose of the Proposed Action is to provide ROW access for transporting water resources across areas of federal land. The Proposed Action would assist in meeting a portion of the water demands of Lincoln County and is a component of Lincoln County's Water Plan. Development is underway in southeastern Lincoln County. Groundwater from this project will be used to supplement these uses which include municipal and industrial applications.

A. BIOLOGICAL OPINION (BO): Attached to this decision (Attachment 1) is documentation of the U.S. Fish and Wildlife Service (USFWS) review of the Biological Assessment (BA), (final revision November 18, 2008), expressed in the final Biological Opinion of July 8, 2009, which is an addendum to the Programmatic BO (July 10, 2008) for the Ely Resource Management Plan. The BO found that potential effects to listed species from the project facilities were adequately addressed with applicant committed measures in the BA and the DEIS. Based on these commitments, the USFWS has determined that the project, as proposed and analyzed, is not likely to jeopardize the continued existence of the threatened desert tortoise (Mojave population) nor is it likely to adversely modify designated critical desert tortoise habitat. The BO determined that the level of anticipated take is not likely to result in jeopardy to the desert tortoise. These determinations are based in part on the implementation of conservation measures detailed in the BA for this project.

The BLM conditions this decision to retain jurisdiction should Section 7 consultation need to be re-initiated.

Further information about specific species impacts can be found in Chapter 3.5 of the Final EIS.

B. HISTORIC PRESERVATION: An intensive pedestrian archeological inventory (Class III survey) was conducted for the Proposed Action in November of 2006 and March 2007 (Harper et. al. 2007). The survey corridor encompassed a 300-foot wide area (2,685 acres) area of potential effect (APE). An addendum to this report (Hutchins 2008) was conducted in August 2008, which dealt with the inventoried Toquop Gap area. An additional pedestrian survey (Class III) was conducted in May and June 2008 (Spath 2008). This additional survey covered 11.5 miles of a 300-foot wide (341.6 acres) APE and related specifically to the north side of the Clover Mountain and the East Pass area. As a result of the cultural work completed, 25 historic properties were identified within the APE. A historic property is a property that has been listed or is eligible for listing in the National Register of Historic Places (NRHP). Treatment plans are being prepared for all NHPA eligible historic properties.

Consultation for these will be conducted in accordance with Section 106 of the National Historic Preservation Act (NHPA), as amended, and the Nevada State Historic Preservation Office and Nevada Bureau of Land Management Protocol Agreement. Any historic artifacts or properties identified during the construction of the project would be dealt with in accordance with CR-1 through CR-10 of Attachment 2c. The State Historic Preservation Office has concurred with all BLM findings.

C. NATIVE AMERICAN CONCERNS: The BLM consulted with nine (9) Native American tribes to determine whether they might have traditional cultural interests within the project area. Three tribes responded to the request for consultation. The Las Vegas Paiute did not provide input regarding any concerns about the Proposed Action, but wished to be kept informed of the project; the Paiute Indian Tribe of Utah had no interest in the project during the scoping process (however the Kaibab Band of this tribe did offer written comments on the draft EIS, which were responded to in the final EIS); and the Ely Shoshone Tribe wished to continue consultation for the Proposed Action directly with the BLM. The Ely Shoshone Tribe and the Duckwater Shoshone Tribe participated in a meeting where the project was discussed and expressed their concerns and interest in continued consultation. The Moapa Band of Paiutes chairman met with BLM to discuss the project and tribal members participated in a tribal public meeting for the DEIS.

D. OTHER ENVIRONMENTAL IMPACTS: Impacts studied in the Final EIS include the following: air quality, noise, topography, mineral resources, surface water quality, water resources, wetlands, soils, prime and unique farmland, forestry, livestock grazing, wildlife, fisheries, threatened and endangered species, cultural resources, Native American religious values, paleontological resources, visual resources, solid waste facilities, and socioeconomic conditions. Any adverse environmental impacts resulting from the project would be short-term.

The discussion of these resources and impacts is located in Chapters 3 and 4 of the Final EIS. Environmental protection measures found in Appendix C of the Final EIS (Attachment 2) will be incorporated into the final POD. A Notice to Proceed will be issued for construction once the POD is approved by the BLM.

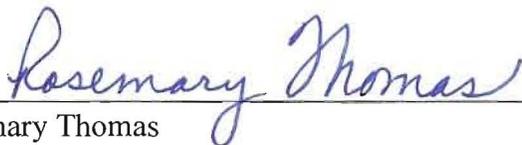
E. COMMENTS OFFERED ON THE FINAL EIS: Eight comment letters were received within the 30-day availability period for the final EIS. None of these letters or comments was found to contain information which would require reanalysis or reevaluation of the data and interpretations within the Final EIS. The content of all letters/comments submitted during the 30-day availability period were considered in the preparation of this ROD.

BLM PLAN CONFORMANCE: This project was found, through a consistency review at the time of the ROW application, to be in conformance with the Caliente Management Framework Plan (MFP). The project is also in conformance with the Ely District Resource

Management Plan (RMP) which was approved on August 20, 2008. Best Management Practices (BMPs) which were identified within the RMP have been incorporated into this ROD as attachment 2a.

III. LINCOLN COUNTY LAND ACT GROUNDWATER DEVELOPMENT AND UTILITY RIGHT-OF-WAY PROJECT AUTHORIZING SIGNATURE

As the Authorized Officer, in accordance with Title III of the Lincoln County Conservation, Recreation, and Development Act of 2004, Title V of the Federal Land Policy and Management Act and the regulations under Title 43, Code of Federal Regulations, Part 2800, this document constitutes my Record of Decision for the Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project. Specifically, this ROD applies to the Lincoln County Water District, BLM ROW application N-79734 and a 15-mile ROW for a natural gas pipeline. This ROD and the ROW grant(s) constitute a Final Decision of the BLM for the proposed project.



Rosemary Thomas
Ely District Manager

JAN 08 2010

Date

IV. BACKGROUND: The Bureau of Land Management (BLM) was the lead agency for preparation of the Environmental Impact Statement (EIS). The U.S. Fish and Wildlife Service (FWS), the Nevada Department of Wildlife (NDOW) were cooperating agencies. Under the direction of these agencies, an EIS was prepared to evaluate the direct, indirect, and cumulative environmental consequences of approving or issuing rights-of-way (ROW) grants across Federal lands.

Pursuant to this ROD, the BLM will issue ROW grants across Federal lands in accordance with 43 Code of Federal Regulations (CFR) Subpart 2800. This subpart describes the application filing content, processing, and decision steps in granting a ROW under these regulations. For the LCWD ROW, an additional authority was Title III of the Lincoln County Conservation Recreation, and Development Act (LCCRDA) of 2004 (Public Law 108-424) which established a 2,640 foot wide utility corridor for the project on BLM lands and mandated that the LCWD ROW within the corridor would be perpetual and rent free. For the natural gas ROW, the grant would be issued pursuant to 43 CFR 2800 and be for a period of 30 years and rental fees would be applied.

LCWD Background

LCWD filed a right-of-way (ROW) application with the Bureau of Land Management in February 2005 to construct and operate a water development and transportation system on Federal lands. LCWD, the Lincoln County Power District (LCPD) and Lincoln County Telephone (LCT), intends to construct groundwater development facilities and ancillary utility infrastructure designed to pump and convey up to 23,820 AFY of groundwater for delivery to the LCWD customers in the southeastern portion of the county. The project facilities would be located in eastern Lincoln County, Nevada, within and outside of the 2,640-foot wide utility corridor established by the LCCRDA. LCWD also identified a needed natural gas line to support development of the LCLA lands north of Mesquite, Nevada, which would be constructed and operated by a local natural gas purveyor.

V. PURPOSE AND NEED: The purpose of the Project is to grant ROWs to enable construction and operation of groundwater production and delivery, telephone service and natural gas to residents in the southeastern portion of Lincoln County.

The LCWD is a public agency responsible for coordinating regional water supply issues, acquiring resources, and developing water delivery facilities in Lincoln County. LCWD holds groundwater rights and applications in Lincoln County and will develop these resources to meet increasing water demands and improve the reliability of water supply systems in the region.

VI. ALTERNATIVES CONSIDERED (INCLUDING BLM-PREFERRED ALTERNATIVE)

PROPOSED ACTION

The LCWD (Applicant), in cooperation with the LCPD and LCT, is proposing to construct groundwater facilities and ancillary utility infrastructure required to pump and convey groundwater from the Clover Valley and Tule Desert Hydrographic Basins to the LCWD Service Territory in southeastern Lincoln County, Nevada, for use by Lincoln County customers; specifically, the LCLA development area north of Mesquite, Nevada. A majority of the proposed facilities would be located within the 2,640-foot wide LCCRDA utility corridor. For engineering feasibility reasons and/or to minimize environmental impacts, the ROW requested by the LCWD deviates from the LCCRDA corridor in a few locations.

A natural gas pipeline is proposed along the LCWD alignment from the Kern River Natural Gas Pipeline near the Toquop Power Plant site to the LCLA development lands north of Mesquite, Nevada, for purposes of supporting residential development of the area.

ALTERNATIVES ANALYZED

ALTERNATIVE 1 – LCCRDA CORRIDOR ALIGNMENT: Under Alternative 1, the ROW would remain within the LCCRDA corridor from the north end of Tule Desert to the LCLA development area. The location of the Tule Desert and Clover Valley groundwater well fields would be the same under the Proposed Action and Alternative 1. This alternative would require additional construction in currently undisturbed areas as well as construction in steeper terrain that would result in more extensive environmental impacts. It also does not use the existing utility corridor between the Toquop Energy Plant site and the LCLA development area. Increased project costs because of additional technical and engineering issues were also documented in the record. For these reasons it was not chosen.

NO ACTION ALTERNATIVE: The No Action Alternative represents the status quo — not approving or implementing the Proposed Action or Alternative 1. Analysis of the No Action Alternative is required by NEPA guidelines. Under the No Action Alternative, BLM would not approve LCWD's ROW application as submitted, and the Proposed Action would not be constructed on federally managed lands. To date, the Nevada State Engineer has granted LCWD/Vidler Water Company water rights of 2,496 AFY of groundwater from the Tule Desert Hydrographic Basins. Selection of the No Action Alternative would not negate the LCWD permitted water rights in accordance with the Nevada State Engineer's Rulings, nor would it preclude another entity from constructing other projects within the same corridor, subject to approval by the BLM.

ALTERNATIVES CONSIDERED BUT ELIMINATED FROM DETAILED ANALYSIS:

Underground Electrical Transmission and Distribution Lines

Selection of this alternative would require the transmission line and distribution lines to be buried parallel to the water transmission and collection pipelines and fiber optic line. This alternative was eliminated from further analysis in the EIS because, while it is technically feasible to bury the 138 kV and 22.8 kV/4.16 kV transmission lines, it is not cost-effective for construction and maintenance. The cost of burying transmission lines is estimated to be 7.5 to 12 times higher than traditional overhead construction for a given project. Also, it is common for transmission lines within road ROWs to be constructed aboveground to minimize infrastructure constraints within public easements (e.g., installation of public works such as water pipelines and sewer lines).

Aboveground Water Transmission Pipeline

This alternative would involve constructing the water transmission pipeline aboveground. This alternative was eliminated from further analysis in the EIS because it provides no environmental advantage over the Proposed Action or other action alternative analyzed. Constructing the water transmission pipeline aboveground would result in greater visual impacts and may act as a barrier to wildlife migration and livestock management. The potential for vandalism and road safety issues would also be greater. Also, it is standard operating procedure for municipal water transmission pipelines to be buried to minimize infrastructure constraints within a public easement.

BLM-PREFERRED ALTERNATIVE: The BLM Preferred Alternative is the Proposed Action.

VII. CONSULTATION

U.S. FISH AND WILDLIFE SERVICE (USFWS) CONSULTATION

The USFWS issued an *Appended Action under the Ely District Programmatic Final Biological Opinion* (PBO) for the Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project on July 8, 2009. Both the (LCLA-specific) *Appended PBO* and the *Ely District PBO* are attached (Attachment 1) to this document. In the *Appended PBO*, the USFWS concluded that the proposed water development project will not jeopardize the continued existence of any Federally-listed species or their critical habitat.

NEVADA STATE HISTORIC PRESERVATION OFFICER (SHPO) CONSULTATION

Cultural resources have been addressed in accordance with Section 106 of the National Historic Preservation Act (NHPA) and implementing regulation under 36 CFR 800. The State Historic Preservation Office concurred with BLM findings in January 2009. A Programmatic Agreement was not prepared for this project.

OTHER CONSULTATION

Federal and state agencies as well as Native American Tribes were contacted individually to gather input for the EIS. Other resource management agencies were consulted at the federal and state levels to identify common concerns related to the Proposed Action or Alternatives. In addition, the USGS has provided technical guidance related to water resource issues.

PUBLIC INVOLVEMENT

The BLM and its cooperating agencies, the USFWS and NDOW, have involved the public throughout the NEPA process for the LCLA water development project. Public involvement began with a round of scoping meetings in April 2006. The public was provided a 30-day scoping period to disclose potential issues and concerns associated with the Proposed Action. The BLM collected stakeholder comments at public meetings as well as comments sent via fax or mail. Six public meetings were held during the public scoping period. These meetings were held in Caliente, Alamo, Mesquite, Las Vegas, Reno and Baker with a total attendance among all meetings of 70 people. The scoping period ended on May 1, 2006. Information obtained by the agencies during public scoping was combined with issues identified by the BLM and subsequently utilized in defining the scope of this EIS.

The 60-day comment period for public review of the Draft EIS began with the publication of the Notice of Availability in the Federal Register on May 23, 2008. The BLM distributed press releases announcing the dates, locations, and times of the public meetings to local and regional print and broadcast media. The Draft EIS was distributed to individuals and agencies that requested copies and posted on the BLM's website. Four public meetings were held during the public comment period (May 23 to July 22, 2008) to receive comments on the Draft EIS. These meetings were held in Carson City, Caliente, Mesquite, and Las Vegas with a total attendance of 36 persons. During the Draft EIS 60-day public comment period, the BLM received 19 comment documents (i.e. letters, emails, faxes) from individuals, private companies, and federal and state agencies commenting on the Draft EIS. Each comment letter was assigned a reference number, and each comment was identified with a number. As a response to comments, changes or additions were made to the Final EIS, where appropriate.

A 30-day availability period for the Final EIS ended on June 1, 2009. Eight comments were received during the 30-day availability period. All comments received during the Final EIS availability period were reviewed and used, if applicable, in the preparation of this Record of Decision.

ATTACHMENTS

1. U.S. FISH AND WILDLIFE SERVICE BIOLOGICAL OPINION

- Addendum to Ely District Programmatic Biological Opinion July 8, 2009
- Ely District Programmatic Biological Opinion July 10, 2008 (pgs 1-3, 132-135). Complete text of the programmatic Biological Opinion is available at http://www.blm.gov/nv/st/en/prog/planning/groundwater_projects/lcla_groundwater_project/documents_and_maps.html

2. MITIGATION MEASURES

- Best Management Practices (Ely District RMP, 2008)
- Stipulations (Ely District)
- Applicant Proposed Environmental Protection Measures (LCLA Groundwater Development and Utility Right-of-Way Project EIS, Appendix C)

3. LOCATION MAP