

Attachment 3b
Right-of-Way Stipulations
Lincoln County Water District
NV-79734

1. Hereinafter, holder means any party granted this right-of-way and/or temporary use permit, its agents, contractors, representatives, or other persons directed by holder to construct, maintain, repair, restore, relinquish, abandon, modify, rehabilitate, or terminate this right-of-way, and holder's successors, or assigns.
2. This grant is subject to all valid rights existing on the effective date of this grant.
3. There is reserved to the authorized officer, the right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant.
4. The holder shall maintain the right-of-way in a sanitary condition at all times during construction, maintenance or other operations during the term of this right-of-way. Any waste material, to include all discarded matter, will be disposed of promptly at a State of Nevada approved sanitary landfill site by the holder. "Waste" means all discarded matter including human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
5. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder shall comply with the Toxic Substances Control Act of 1976 as amended, 15 U.S.C. 2601 et. seq. (1982) with regards to any toxic substances that are used, generated by, or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation, and Liability Act, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
6. Any relocation, additional construction, or use that is not in accord with the right-of-way grant or approved Plan of Development, shall not be initiated without prior written approval of the authorized officer.
7. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 4 inches deep, the soil shall be deemed too wet to adequately support construction equipment.
8. Holder may not construct or make new access roads or travel cross-country by vehicle to

reach the grant area unless prior written approval is given by the Authorized Officer.

9. The holder shall conduct all activities directly or indirectly associated with the construction, maintenance, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
10. If previously unidentified cultural resources (including human remains) are discovered, the procedures outlined in State Protocol Agreement, Section VIII (Discovery Situations) would be adhered to. Under the agreement, all related construction activities would cease within 100 meters of the find, and the LCWD representative would notify the BLM Authorized Officer. The BLM, in coordination with the SHPO, interested persons and Tribal representatives, would determine if construction activities can proceed or if mitigation is required. If mitigation is required, the BLM (in consultation with the SHPO), interested persons and Tribal representatives) would notify LCWD of the need for mitigation, and additional mitigation measures would be implemented. The BLM would ensure that reports of mitigation efforts for discovery situations are completed in a timely manner and conform to the Department of the Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Activities may resume after the BLM notifies the LCWD that the mitigation process is complete.
11. The holder shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way area by the holder. The holder shall fully indemnify the United States for liability, damage, or claims arising in connection with the holder's use and occupancy of the right-of-way area.
12. The holder of right-of-way N-79734 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Recourse Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
13. Actions which may impact migratory birds are not allowed during the critical nesting period. The critical nesting period is established as May 1 through July 15. Activities may not occur during this period without special authorization, and only after breeding bird surveys have been conducted by the District Office wildlife team. If you wish to conduct activities during this period, you must notify the Ely District Office wildlife team a minimum of 30 days prior to the day you wish to begin in order for the required survey to be conducted. Authorization for construction during this breeding period would be contingent on the findings of the survey.
14. Removal and disturbance of vegetation would be kept to a minimum through construction site management (e.g. using previously disturbed areas and existing easements, limiting equipment/materials storage and staging area sites, etc.)
15. A speed limit of 25 miles per hour shall be required for all vehicles on unposted access

roads and roads in desert tortoise habitat.

16. To restrict OHV use in unauthorized areas, restrictive barriers will be constructed to limit public access of new maintenance roads adjacent to designated Wilderness Areas. Barrier control methods would be coordinated with the authorized officer and may include locked gates and fencing.
17. In the event that the public land underlying the easement encompassed in this grant is conveyed out of Federal ownership, Grantor waives any right it has to administer the easement within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2880, including any rights to have the Grantee apply to Grantor for amendments, modifications, or assignments and for Grantor to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, Grantor's successors and assigns shall succeed to the interests of the Grantor in all matters relating to the easement within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the easement shall be considered a civil matter between the Grantee and the Grantor's successors and assigns.
18. Desert tortoise remuneration fees will be managed consistent with a Memorandum of Agreement to be developed between BLM and the U.S. Fish and Wildlife Service. Fees collected 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.
19. All structures or facilities requiring permanent lighting will utilize anti-glare light fixtures.
20. Within 90 days of construction completion, the Holder shall provide the Authorized Officer with data in a format compatible with the Bureau's Arc-Info Geographic Information System to accurately locate and identify the right-of-way.

Acceptable data formats are:

- (1) Corrected Global Positioning System files with sub-meter accuracy or better, in NAD 27 or NAD 83;
- (2) An AUTOCAD dxf file;
- (3) Or ARCInfo export files on a CD ROM, 100 mb ZIP disk or 1gb Jazz disk.

Data may be submitted in any of the following formats:

- (1) ARCInfo export file;
- (2) On a 3.5 inch floppy disk in compressed or uncompressed format. Compressed or ZIPed data must include a copy of the UNZIP.EXE file on the disk.

All data shall include metadata for each coverage, and conform to the Content Standards for Digital Geospatial Metadata Federal Geographic Data Committee standards.

21. Additional construction, or use that is not in accord with the approved plan(s) of

development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan(s) of development, shall be made available on the right-of-way area during construction, operation, and termination to the authorized officer. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.

22. The holder will notify the Authorized Officer of any change in the future ownership status of any facilities constructed on the right-of-way grant.
23. The holder must amend the right-of-way grant at any time additional land, equipment and/or new uses are proposed which are beyond the scope of this existing right-of-way grant, as authorized.
24. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way without the prior approval of a Plan of Development and written authorization of the Authorized Officer. Such written authorization shall be a Notice to Proceed (NTP) issued by the Authorized Officer. Any NTP shall authorize construction or use only as therein expressly stated and only for the particular location(s) or use(s) therein described.
25. The holder will provide the authorized officer all copies of legal agreements between Lincoln County Water District and Lincoln County Power District No. 1 as pertains to the construction, operation, maintenance and point of purchase of the electrical distribution system of the project prior to the Notice to Proceed.
26. The holder will provide the authorized officer all copies of legal agreements between Lincoln County Water District and Lincoln County Telephone as pertains to the construction, operation, maintenance and point of purchase of the telecommunication system for the project prior to the Notice to Proceed.
27. The holder shall provide a performance and reclamation bond in the amount of \$100,000, to be maintained until restoration of disturbed areas and other requirements relative to the construction phase of the project have been accepted by the Authorized Officer. Upon completion, or partial completion of construction activities, the authorized officer may reduce the amount of the bond.
28. Should the bond(s) delivered under this grant become unsatisfactory to the Authorized Officer, the holder, shall, within 30 days of demand, furnish a new bond.