

Appendix D: Right-of-Way General Terms and Conditions

EXHIBIT A

RIGHT-OF-WAY N-82701

December __, 2007

GENERAL TERMS AND CONDITIONS

(Continued from Form 2800-14)

1. In case of change of address, the Holder shall immediately notify the Bureau of Land Management (BLM) Authorized Officer (Authorized Officer).
2. This grant is subject to all valid rights existing on the effective date of this right-of-way (R/W) grant.
3. The Holder shall comply with applicable federal, state, county, and municipal laws, regulations, and standards, including but not limited to, those for public health and safety, environmental protection, locating, construction, operation, and maintenance, existing or hereafter promulgated, in exercising the rights granted by this R/W.
4. The federal regulations incorporated in 43 CFR 2800 are inclusive within these stipulations.
5. The R/W is not for the exclusive use of the Holder. All existing and future Holders shall be responsible for maintenance, and determining the maintenance and respective responsibilities. Upon request, the Authorized Officer shall be provided with copies of any maintenance agreement entered into.
6. The Holder shall permit free and unrestricted public access to and upon the R/W for all lawful purposes, except for any specific areas designated as restricted by the Authorized Officer to protect the public, wildlife, livestock, or facilities constructed within the R/W.
7. The Holder shall inform the Authorized Officer within 48 hours of any accidents on federal lands that require reporting to the Department of Transportation as required by 49 CFR Part 195.
8. Fences, signs, or other structures, which could be interpreted to represent a third-party, private use, shall not be installed or remain on or within the R/W.
9. The Holder is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites or for collecting artifacts.
10. Pursuant to 43 CFR 10.4(g), the Holder of this authorization must notify the Authorized Officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), the Holder must stop activities in the immediate vicinity of the discovery and protect it from all activities until notified to proceed by the Authorized Officer.

11. Any cultural and/or paleontological resource (historic or prehistoric site or object) or Native American human remains, funerary item, sacred object, or objects of cultural patrimony, discovered by the Holder, or any person working on their behalf, during the course of activities on public land, shall be immediately reported to the Authorized Officer by telephone, with written confirmation. The Holder shall suspend all operations in the immediate area of such discovery and protect it until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant values. The Holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the Authorized Officer after consulting with the Holder.
12. It is the Holder's responsibility to determine and to acquire all federal, state, county, and municipal permits and authorizations as required.
13. The Holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the R/W within the authorized limits of the R/W.
14. All improvements, operation, maintenance, design, material, and termination practices shall be in accordance with safe and proven engineering practices and subject to the approval of the Authorized Officer.
15. Construction related traffic shall be restricted to routes approved by the Authorized Officer. New access roads or cross-country vehicle travel will not be permitted unless prior written approval is given by the Authorized Officer.
16. The Holder shall prevent any activities which may cause erosion. Where erosion has resulted, the Holder shall re-vegetate and re-habilitate the location. The Holder is responsible for consultation with the Authorized Officer regarding acceptable methods and procedures. Any transmission line access, construction, and/or maintenance road(s) shall be winterized by providing a well drained roadway using waterbarring, maintaining drainage, and additional measures to minimize erosion.
17. No activities shall be performed during periods when the soil is too wet to adequately support equipment. If such equipment creates ruts in excess of six inches deep, the soil shall be deemed too wet to adequately support construction or maintenance activities.
18. No borrow areas shall be permitted on Federal land without a written application for the proposal and NEPA review.
19. Unless otherwise agreed to by the Authorized Officer, power lines, poles and crossbars, and transmission line framing, and/or structures shall be constructed in accordance to standards outlined in "Suggested Practices for Raptor Protection on Power Lines, The State of the Art in 1996," (Avian Power Line Interaction Committee (APLIC), 1996, Edison Electric Institute and the Raptor Research Foundation, Inc., Washington, D.C.). The Holder shall assume the burden and expense of proving that pole, framing, and

structure designs not shown in the above publication are "eagle safe." Such proof shall be provided by a raptor expert approved by the Authorized Officer.

20. The BLM reserves the right to require modifications or additions to all power line structures placed on this R/W, should they be necessary to ensure the safety of large perching birds and to minimize or prevent nesting and perching. Such modifications and/or additions shall be made by the Holder without liability or expense to the United States.
21. The Holder shall remove only the minimum amount of vegetation necessary for all activities.
22. The Holder shall seed disturbed areas within the authorized R/W resulting from grading and other activities. The Holder shall coordinate with the Authorized Officer for seeding method, seed mix, and planting season.
23. The Holder shall be responsible for weed control on disturbed areas within the limits of the R/W. The Holder is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods. Chemical weed control products shall not be used within 400 feet of any standing or flowing water body or drainage, or slope on which the water can flow.
24. All excess material, which includes vegetation resulting from maintenance, shall be removed from federal land.
25. Construction and maintenance equipment shall have a fire extinguisher, shovel, and axe or Pulaski at all times when on federal land.
26. The Holder shall protect all survey monuments found within the R/W. Survey monuments include, but are not limited to: General Land Office (GLO) and BLM Cadastral Survey Corners, reference corners, witness points, U. S. Coastal and Geodetic bench marks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the Holder shall immediately report the incident, in writing, to the Authorized Officer and the respective installing authority if known. Where GLO or BLM R/W monuments or references are obliterated during operations, the Holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The Holder shall record such survey in the appropriate county and send a copy to the Authorized Officer. If the Bureau cadastral surveyors or other federal surveyors are used to restore the disturbed survey monument(s), the Holder shall be responsible for the survey cost.
27. No future modifications, construction of improvements, or major maintenance operations involving disturbance of the land shall occur until plans for such actions have been

submitted and approved in writing by the Authorized Officer. Any proposals involving new surface disturbance outside of the authorized R/W area shall require a cultural inventory and may require completion of an environmental assessment. Failure of the Holder to comply with this requirement may result in a suspension of operations authorized by this R/W grant.

28. The Holder shall notify the Authorized Officer if there is a significant variance from the approved action with respect to the use, storage, or disposal of hazardous materials on this R/W.
29. The Holder 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 (CERCLA) of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C. 6901 et seq.)) on the R/W (unless the release or threatened release is wholly unrelated to the R/W Holder's activity on the R/W). This agreement applies without regard to whether a release is caused by the Holder, its agent, or unrelated third parties.
30. The Holder shall comply with all applicable federal, state, county, and municipal laws and regulations, existing or hereafter enacted or promulgated, with regard to any hazardous material, as defined in this paragraph, that will be used, produced, transported, or stored on or within the R/W or any of the R/W facilities, or used in the construction, operation, maintenance, or termination of the R/W or any of its facilities. "Hazardous material" means any substance, pollutant, or contaminant that is listed as hazardous under the CERCLA of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. 6901 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas. The Holder is prohibited from discharging oil or other pollutants on federal land or into or upon waters on federal land. The Holder shall give immediate notice of any such discharge to the Authorized Officer and such other federal and state officials as are required by law to be given such notice.
31. The Holder shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by, or stored on the R/W or on facilities authorized under this R/W 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 CERCLA of 1980, Section 102b. A copy of any report required or requested by any federal agency or state government as a result of a reportable release or spill of any toxic

substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal agency or state government.

32. The Holder is prohibited from discharging oil or other pollutants on federal land or into or upon waters on federal land. The Holder shall give immediate notice of any such discharge to the Authorized Officer and such other federal and state officials as are required by law to be given such notice.
33. In the event of the release of any hazardous substance, the Holder shall immediately notify the Winnemucca Field Office hazardous materials specialist. The Holder shall be responsible for all work and costs associated with removing the substance from federal lands to the approval of the Authorized Officer. An approved hazardous materials spill kit shall be available in all vehicles and equipment.
34. Use of pesticides shall comply with the applicable federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the Authorized Officer. Emergency use of pesticides shall be approved in writing by the Authorized Officer prior to such use.
35. The R/W shall be maintained in a sanitary condition at all times. Waste materials at the site shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to: human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
36. Subleasing authority is not granted.
37. Selling the R/W is not authorized.
38. In accordance with federal regulations in 43 CFR 2807.21, any proposed transfer of any right or interest in the R/W grant and future amendment(s) shall be filed with the Authorized Officer. An application for assignment shall be accompanied by a showing of qualifications of the Assignee. The assignment shall be supported by a stipulation that the Assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned. No assignment shall be recognized unless and until it is approved in writing by the Authorized Officer. Fees for assignments shall be in accordance with 43 CFR 2807.21.
39. The R/W shall be relinquished to the United States within 180 days if it is no longer needed for the use it was authorized to serve.
40. Prior to relinquishment or abandonment of any portion of the R/W authorized by this grant and future amendment(s), the Holder shall contact the Authorized Officer to

arrange a joint inspection of the R/W. This inspection will be held to agree to an acceptable rehabilitation plan. This plan shall include, but is not limited to, removal of facilities, surface material, recontouring, topsoiling, or seeding. The Authorized Officer must approve the plan in writing prior to the Holder's commencement of any termination activities. The Holder shall be responsible for the cost and implementation of the approved rehabilitation plan.

41. The Holder agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the United States, or its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the Holder's use, occupancy, or operations on the R/W. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the United States and its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and R/W which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws, and regulations that are now, or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous wastes) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into, or under land, property, and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used, or otherwise disposed on the R/W, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; (6) or natural resource damages as defined by federal and state law. This covenant shall be construed as running with the R/W and may be enforced by the United States in a court of competent jurisdiction.
42. The Holder shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
43. If the Holder violates any of the terms and conditions of this grant, the Authorized Officer, after giving written notice, may declare the grant terminated. The Authorized Officer may consult with the Holder and, at the Authorized Officer's discretion, grant a period of time to cure the violation prior to declaring the grant terminated.
44. The effective date of this R/W grant is the date of execution by the Authorized Officer.