



# U.S. Department of Energy Categorical Exclusion Determination Form

Submit by E-mail

Proposed Action Title: Quarry 187 LLC Access Road Improvements

Program or Field Office: Western Area Power Administration, Desert Southwest Regional Office

Location(s) (City/County/State): Clark County, Nevada

Proposed Action Description:

Quarry 187 LLC (applicant) is applying for a 120-foot-wide right-of-way (ROW) to use and improve an existing 80-foot-wide road and install adjacent buried utilities and waterline. The project is on withdrawn federal lands administered by Western Area Power Administration (Western) in Clark County, Nevada. Western's Proposed Action is to a License Outgrant to Quarry 187 LLC for the requested ROW. In total, the applicant is requesting 10.2 acres for a term of 50 years.

Under the Proposed Action, the applicant will construct improvements to an existing 80-foot-wide road and 3,592 square feet requested for a turnout, landscaping, and utilities. The expansion of the existing road will include road improvements and landscaping (Figure 2-1). The Proposed Action would provide for an additional access and utilities (including water line) to a residential neighborhood (Spring Canyon Road also provides access to these private parcels). The existing access road has been used for over 30 years: the Bureau of Land Management (BLM) initially granted a ROW in 1978 to Gornovich Sand and Gravel for a 10-foot-wide access road with a 4-inch waterline. The ROW was renewed and reassigned to the applicant in 2010. In 2013, the applicant submitted an application to the BLM for the ROW but was later instructed to resubmit to Western due to the location of the ROW within land withdrawn to Western. Prior to 2013, the Nevada Department of Transportation constructed a high-traffic intersection at U.S. 95 to accommodate the large volume of traffic on this roadway. Improvement of the road and turnout would require approximately 3.46 acres of new disturbance.

SEE CONTINUATION SHEET

Categorical Exclusion(s) Applied:

B1.13 - Pathways, short access roads, and rail lines

For the complete DOE National Environmental Policy Act regulations regarding categorical exclusions, including the full text of each categorical exclusion, see Subpart D of [10 CFR Part 1021](#).

Regulatory Requirements in 10 CFR 1021.410(b): (See full text in regulation)

The proposal fits within a class of actions that is listed in Appendix A or B to 10 CFR Part 1021, Subpart D.

To fit within the classes of actions listed in 10 CFR Part 1021, Subpart D, Appendix B, a proposal must be one that would not: (1) threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders; (2) require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities; (3) disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; (4) have the potential to cause significant impacts on environmentally sensitive resources, including, but not limited to, those listed in paragraph B(4) of 10 CFR Part 1021, Subpart D, Appendix B; (5) involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those listed in paragraph B(5) of 10 CFR Part 1021, Subpart D, Appendix B.

There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal.

The proposal has not been segmented to meet the definition of a categorical exclusion. This proposal is not connected to other actions with potentially significant impacts (40 CFR 1508.25(a)(1)), is not related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27(b)(7)), and is not precluded by 40 CFR 1506.1 or 10 CFR 1021.211 concerning limitations on actions during preparation of an environmental impact statement.

Based on my review of the proposed action, as NEPA Compliance Officer (as authorized under DOE Order 451.1B), I have determined that the proposed action fits within the specified class(es) of action, the other regulatory requirements set forth above are met, and the proposed action is hereby categorically excluded from further NEPA review.

NEPA Compliance Officer: *Loise Marcant*

Date Determined: 3-16-16

## **Quarry 187 Access Road Improvements Continuation Sheet**

### **Proposed Action Description (continued):**

The access road will include new overland construction, new buried utilities and use of existing temporary road across public land. The existing road will be expanded, and construction activities will include clearing vegetation, grading, and paving and/or installing drainage structures. Directly adjacent to the expanded roadway, up to five utility conduits and a water line will be buried. The trench in which the utilities will be buried will be approximately two feet wide and five feet deep. After installation of the conduits, the trench will be backfilled, and the area will be landscaped. During construction, gates may be installed to restrict ROW access to authorized parties and to limit access across public lands. Installation of gates and construction of access roads will be undertaken as agreed upon with Western. Temporary staging areas will be on vacant/undeveloped areas of the planned community within the eastern half of section 22. Quarry 187 currently operates sand and gravel operation at the site and has a Bureau of Land Management (BLM) Mining Contract for both the eastern half of section 22 and the eastern half of section 15.

Quarry 187 shall maintain the approved access roads in a safe, useable condition, as directed by an authorized officer from Western. A regular maintenance program may include, but is not limited to blading, ditching, culvert installation, and surfacing. Maintenance will be performed as needed, and limiting noise, dust, and the danger caused by maintenance vehicle traffic will provide for the comfort and safety of land users and local residents.

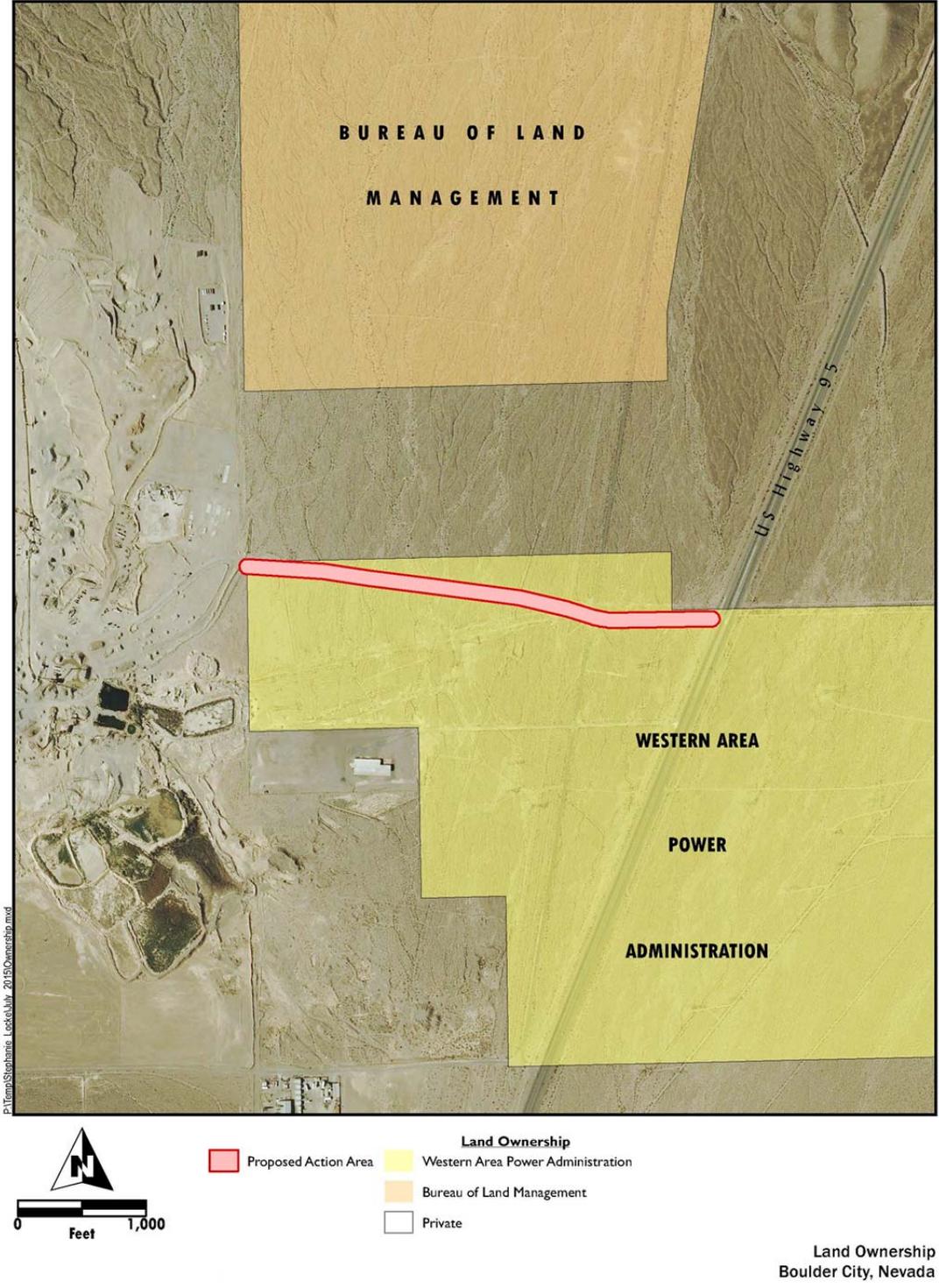
No hazardous materials are associated with the construction and operation of the road; however, the potential for petroleum spills still exists during construction and maintenance of the road. Spill cleanup kits will be available on equipment so that spills or leaks of vehicle fluids can be quickly cleaned up for proper disposal. Construction sites, material storage yards, and access roads will be kept in an orderly condition throughout the construction period. Refuse and trash, including stakes and flags, will be removed from the sites and disposed of in an approved manner. No construction equipment oil or fuel will be drained on the ground. Oils or chemicals will be hauled to an approved site for disposal. No open burning of construction trash will occur on Western-administered lands. An operational Environmental Health and Safety Plan will be prepared for the Proposed Action. The Safety Plan will outline all project activities, identify all hazardous substances and chemicals used at the site, and ensure compliance with Occupational Safety and Health Administration (OSHA) standards, the Nevada Division of Industrial Relations requirements, and all other local, state, and federal regulatory requirements. The Safety Plan will identify site-specific safety control measures, site health and safety roles and responsibilities, speed limits, and site safety hazards and controls. Following construction and cleanup, disturbed areas adjacent to the road will be landscaped. No reclamation will be required.

Road construction would begin in the second or third quarter of 2016 and last approximately 90 to 120 days.

The access road is designed to function for a minimum of 50 years. It is anticipated that this road will be turned over to Clark County at some point in time. If the facility is decommissioned, the roadway will be removed and disturbed area associated will be reclaimed. A reclamation plan will be developed 6 months prior to decommissioning of the Proposed Action. At a minimum, the land would be re-contoured to match the surrounding environment.

**Special Conditions:**

1. The applicant shall abide by all terms and conditions of Western’s license outgrant.
2. The applicant shall be responsible for compliance with all federal, state, county, and local permits and regulations associated with the improvement, operation, and maintenance of the access road. Required permits include, but are not limited to, to Clark County Dust Control permitting.
3. Federal law prohibits the “take” of endangered, threatened, proposed or candidate wildlife and plants, and destruction or adverse modification of designated Critical Habitat. Federal law also prohibits the “take” of birds protected by the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act. “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in any such conduct with a protected animal or plant or any part thereof, or attempt to do any of those things without a permit from U.S. Fish and Wildlife Service.
  - a. Western and the applicant shall abide by all terms and conditions of the Biological Opinion for the project (attached).
  - b. The applicant shall schedule blading, clearing, grubbing, or other ground-disturbing outside the breeding bird season (generally February 15 to August 31 for southern Nevada), as feasible. Alternatively, if these activities will occur during the breeding bird season, a qualified biologist shall conduct pre-construction surveys for nesting birds. The biologist shall flag active nests for avoidance, using a buffer appropriate to the bird species and type of activity; or the applicant shall contact the U.S. Fish and Wildlife Service for further direction to prevent take of protected bird species.



**Figure 1. Proposed Action Area**



# United States Department of the Interior



**FISH AND WILDLIFE SERVICE**  
Southern Nevada Fish and Wildlife Office  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130  
Ph: (702) 515-5230 ~ Fax: (702) 515-5231

February 24, 2016  
File No. 84320-2016-F-0109

Linda Marianito, Environmental Manager  
Western Area Power Administration  
U.S. Department of Energy  
Post Office Box 6457  
Phoenix, Arizona 85005-6457

Subject: Biological Opinion for the Quarry 187 LLC License Outgrant and Plan of Development for an Access Road and Utilities, Sloan, Clark County, Nevada

Dear Ms. Marianito:

This letter transmits the Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed project and possible adverse effects on the Mojave desert tortoise (*Gopherus agassizii*), a species listed as threatened under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). No critical habitat will be affected by the proposed action.

The attached biological opinion was prepared in response to your request for formal consultation dated November 13, 2015, and in accordance with the Act and 50 CFR § 402 of our interagency regulations governing section 7 of the Act. This biological opinion is based on information provided in your letter, attachments, and biological assessment received on either November 17, 2015, or December 31, 2015; discussions between the Service and Western Area Power Administration (Western); and our files. A complete project file is available in the Service's Southern Nevada Fish and Wildlife Office in Las Vegas.

If we can be of further assistance regarding this consultation, please contact Carla Wise in the Southern Nevada Fish and Wildlife Office at (702) 515-5230. Please reference File No. 84320-2016-F-0109 in future correspondence concerning this consultation.

Sincerely,

Michael J. Senn  
Field Supervisor

Enclosure

cc: Supervisory Biologist - Habitat, Nevada Department of Wildlife, Las Vegas, Nevada

## **ENCLOSURE**

# **BIOLOGICAL OPINION**

### **A. CONSULTATION HISTORY**

On November 17, 2015, the Fish and Wildlife Service (Service) received a request from the Western Area Power Administration (Western) for formal consultation on potential adverse effects to the Mojave desert tortoise (*Gopherus agassizii*) that may result from the Quarry 187 LLC proposed access road and utilities.

On December 1, 2015, the Service requested additional information from Western in order to initiate formal consultation.

On December 31, 2015, the Service received the requested information and updated biological assessment. The Service determined that the information provided by Western was sufficient for the consultation and initiated formal consultation on December 31, 2015.

### **B. DESCRIPTION OF THE PROPOSED ACTION**

The Proposed Action refers to the 120-foot right-of-way (ROW) requested for installation of buried utilities and water line, improvement of an existing 80-foot road, creation of a 3,592 square foot turnout, landscaping at the junction of the road and U.S. 95, and utilities (Figure B-1). In total, the applicant is requesting 10.2 acres for a term of 50 years. The expansion of the existing road would include road improvements and landscaping (Figure B-2). The Proposed Action would provide for an additional access and utilities (including water line) to a residential neighborhood (Spring Canyon Road also provides access to these private parcels). The existing road has been used for over 30 years; previously, Nevada Department of Transportation constructed a high traffic intersection at U.S. 95 to accommodate the large volume of traffic on this roadway. Improvement of the road and turnout would require approximately 3.46 acres of new disturbance (Table B-1).

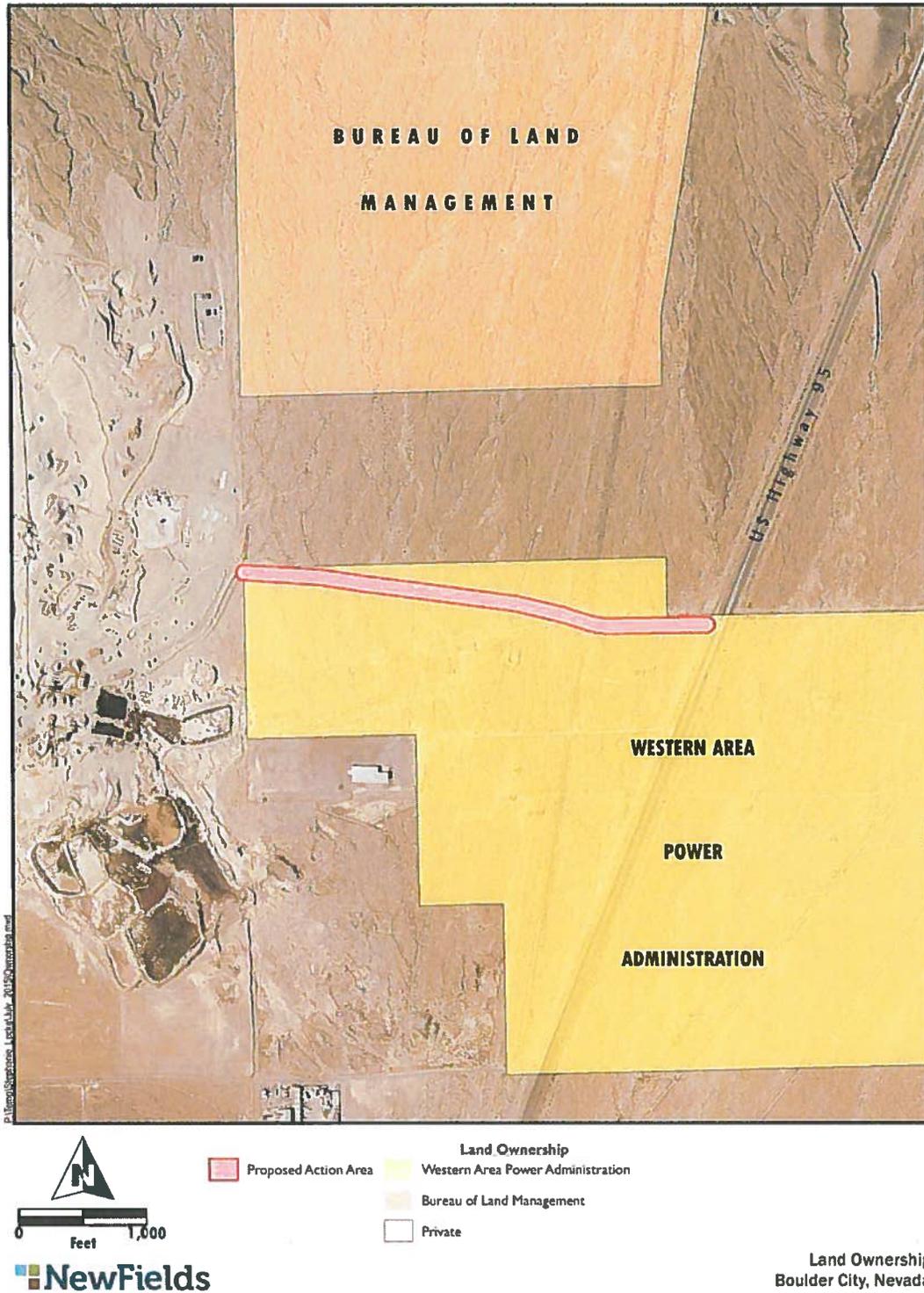


Figure B-1. Proposed Action Area

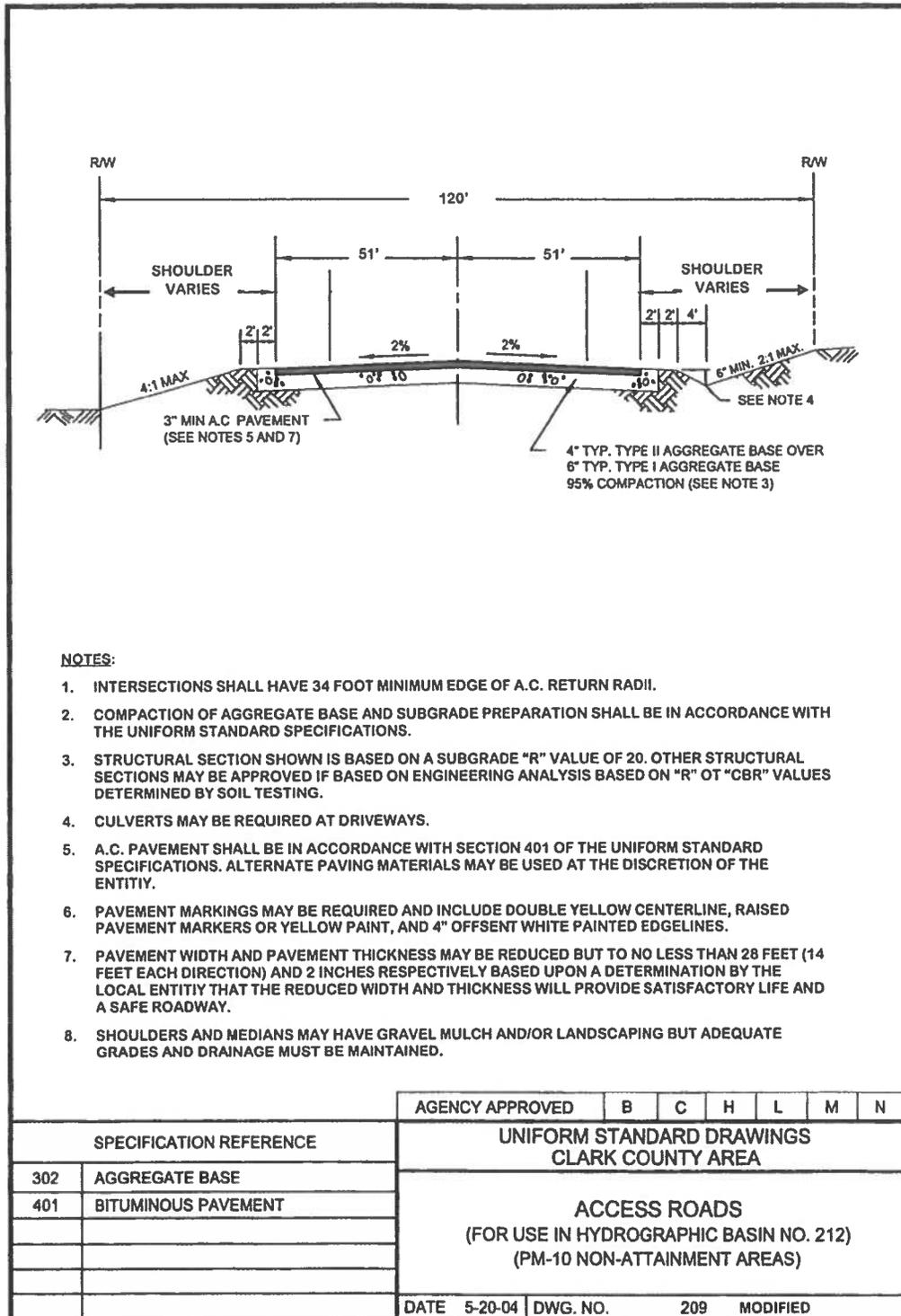


Figure B-2. Access Road Specifications

Table B-1. ROW Requested and Associated Disturbance

<b>Feature</b>	<b>Connecting to Eldorado Substation</b>
Total length of the road ROW	3,671.00 feet (0.70 mile)
Road ROW width	120.00 feet
<b>Total ROW requested for the road</b>	<b>440,520.00 square feet (10.11 acres)</b>
Total base of the turnout	60.00 feet
Turnout height	119.74 feet
<b>Total ROW requested for the turnout</b>	<b>3,592.14 square feet (0.09 acre)</b>
Previously disturbed area	293,680.00 square feet (6.74 acres)
New disturbance	150,432.14 square feet (3.46 acres)
<b>Total</b>	<b>444,112.14 square feet (10.2 acres)</b>

**Construction Activities**

The access road would include new overland construction, new buried utilities and use of existing temporary road across public land. The existing road would be expanded, and construction activities would include clearing vegetation, grading, and paving and installing drainage structures. Directly adjacent to the expanded roadway, up to 5 utility conduits and a water line would be buried. The trench in which the utilities would be buried would be approximately 2 feet wide and 5 feet deep. After installation of the conduits, the trench would be backfilled, and the area would be landscaped as depicted in Figure 2-1. During construction, gates may be installed to restrict ROW access to authorized parties and to limit access across public lands. Installation of gates and construction of access roads would be undertaken as agreed upon with Western. Temporary staging areas would be on vacant or undeveloped areas of the planned community within the eastern half of section 22. Quarry 187 currently operates a sand and gravel operation at the site and has a Bureau of Land Management (BLM) Mining Contract for both the eastern half of section 22 and the eastern half of section 15.

**Maintenance Activities**

Quarry 187 shall maintain the approved access roads in a safe, useable condition, as directed by an authorized officer from Western. A regular maintenance program may include, but is not limited to blading, ditching, culvert installation, and surfacing. Maintenance would be performed as needed, and limiting noise, dust, and the danger caused by maintenance vehicle traffic would provide for the comfort and safety of land users and local residents.

**Waste and Hazardous Materials**

No hazardous materials are associated with the construction and operation of the road; however, the potential for petroleum spills still exists during construction and maintenance of the road. Spill cleanup kits would be available on equipment so that spills or leaks of vehicle fluids can be quickly cleaned up for proper disposal.

Construction sites, material storage yards, and access roads would be kept in an orderly condition throughout the construction period. Refuse and trash, including stakes and flags, would be removed from the sites and disposed of in an approved manner. No construction equipment oil or

fuel would be drained on the ground. Oils or chemicals would be hauled to an approved site for disposal. No open burning of construction trash would occur on Western-administered lands.

An operational Environmental Health and Safety Plan would be prepared for the Proposed Action. The Safety Plan would outline all project activities, identify all hazardous substances and chemicals used at the site, and ensure compliance with Occupational Safety and Health Administration (OSHA) standards, the Nevada Division of Industrial Relations requirements, and all other local, state, and federal regulatory requirements.

**Project Construction Schedule**

Road construction would begin in the second or third quarter of 2016 and last approximately 90 to 120 days.

**Construction Equipment and Personnel**

Table B-2 illustrates the estimated number of construction workers and equipment anticipated to be used onsite during construction activities.

Table B-2. Numbers of Workers and Types of Equipment

Activity	Maximum Number of Workers	Type of Equipment
Survey	6	2 pickup trucks
Access Road and Utility Installation	15	2 pickup trucks 1 road graders 1 paving machine 10 end dumps 1 water truck 1 backhoe
Clean-up	4	2 pickup trucks 1 water truck
Rehabilitation/Landscaping	10	1 pickup truck
<b>Total</b>	35*	

\* More personnel may be used to meet schedule

**Decommissioning**

The access road is designed to function for a minimum of 50 years. It is anticipated that this road would be turned over to Clark County at some point in time. If the facility is decommissioned, the roadway would be removed and disturbed area associated would be reclaimed. A reclamation plan would be developed 6 months prior to decommissioning of the proposed action. At a minimum, the land would be re-contoured to match the surrounding environment.

## **Proposed Measures to Minimize the Potential Effects of the Action**

### Construction

1. Quarry 187 (or its contractors) shall notify Western at least 30 days in advance of onsite construction activities.
2. The boundaries of disturbance shall be flagged before beginning any activities, and all disturbances shall be confined to the flagged areas. Project personnel will be instructed that their activities must be confined within the flagged areas. To the greatest extent possible, all disturbances shall be located on previously disturbed areas. If previously disturbed areas are not available, these activities will be restricted to the ROW and will be cleared of tortoises by the onsite biologist prior to use.
3. Quarry 187 or its contractors shall provide an authorized desert tortoise biologist or qualified biological monitor to be onsite during land-clearing activities. The authorized biologist shall be present during all earth-moving activities and during the tortoise more active season (March 1- October 31). At other times, a qualified biological monitor may be present in place of an authorized biologist.
4. Prior to surface-disturbing activities, an authorized desert tortoise biologist will clear the area. A biological monitor may assist in clearance surveys if under the direct supervision of an authorized desert tortoise biologist.
5. All project personnel working in tortoise habitat shall complete the Desert Tortoise Worker Environmental Awareness Program (WEAP). The program provides information relative to the occurrence of the desert tortoise, the threatened status of the species, the definition of "take," the potential for impacts to the tortoise, the potential penalties for taking a threatened species, and the procedures for protecting tortoises.
6. Project personnel shall halt activities and notify the on-site biologist when the continuation of such activities may endanger a desert tortoise or if a tortoise is found on a project site. An authorized biologist shall be available on-call, if one is not on-site, and will respond to the sighting within 1 hour of notification during normal operating hours. Project activities will resume after the project biologist assesses the situation and takes appropriate action to avoid or minimize the direct impact to the animal.
7. All vehicles shall be driven at speeds within posted speed limits on existing roads and will not exceed 15 miles per hour within project boundaries. Any tortoise observed in harm's way will be moved off the road in the direction it was moving in accordance with Service-approved tortoise handling procedures by a qualified and permitted biologist. All tortoise observations on roads shall be reported to the Service and Western biologists to be included in the annual report.
8. Prior to starting operations each day, the applicant or its contractor shall be responsible for conducting a desert tortoise inspection in coordination with the authorized desert tortoise biologist or monitor. Areas to be inspected include around and under all equipment; in and around all disturbed areas to include stockpiles and reject materials areas; in and around all routes of ingress and egress; and in and around all other areas where the operation might expand to during that day. If a tortoise is discovered during this inspection, the contractor will cease all operations in

the immediate vicinity of the tortoise and will immediately notify the authorized tortoise biologist or monitor.

9. All trenches and holes will be covered, fenced, or backfilled to ensure desert tortoises do not become trapped unless alternate measures are in place as agreed by Western and the Service. If trenches or holes are to remain open during construction, they will be checked for tortoises at least four times a day, at the start of day, at mid-morning, early afternoon, and at the end of the work day. The trenches or holes will also be checked immediately before backfilling regardless of the season. Tortoises found in the trench will be reported and moved out of harm's way in accordance with handling protocols (USFWS 2009).
10. Project personnel shall check underneath any vehicle or equipment within desert tortoise habitat before moving. This includes the morning before any construction activity begins. If a desert tortoise is observed, an authorized desert tortoise biologist will be contacted.
11. All burrows found within areas proposed for disturbance that cannot be avoided, whether occupied or vacant, shall be excavated by an authorized desert tortoise biologist and collapsed or blocked to prevent occupation by desert tortoises. All burrows will be excavated with hand tools to allow removal of desert tortoises and/or desert tortoise eggs. All desert tortoise handling and burrow excavations, including nests, will be conducted in accordance with the Service-approved protocol (USFWS 2009).
12. All desert tortoises shall be relocated 300 to 1,500 feet into adjacent undisturbed habitat following Service most current handling protocols. Tortoises will be moved by an authorized tortoise biologist or by a biological monitor under the direct supervision of an authorized biologist.
13. Quarry 187 or its contactors will implement a litter control program. Trash and food items will be disposed properly in predator proof containers with resealing lids. Trash will be emptied and removed from the Project site on a periodic basis as they become full. Trash removal reduces the attractiveness of the area to opportunistic predators such as ravens, coyotes, and foxes.
14. Prior to surface-disturbing activities associated with the proposed project, the Quarry 187 shall pay remuneration fees at the rate of \$849 per acre of new disturbance (3.46 acres) for a total of \$2,937.54. These fees will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U). Information on the CPI-U can be found on the Internet at: <http://stats.bls.gov/news.release/cpi.nr0.htm>. The next adjustment will occur on March 1, 2017.

### Reporting

1. All authorized desert tortoise biologists (and biological monitors) are agents of Western and shall report directly to Western regarding all compliance issues or take of desert tortoises. Incidental take shall be reported by phone or email to Western and the Service within 24 hours for incidents involving take or noncompliance.
2. Annual comprehensive draft construction reports will be submitted to Western for

initial review. Final annual construction reports will be submitted to Western and the Service's Southern Nevada Fish and Wildlife Office in Las Vegas. Annual construction reports will cover the calendar year and are due April 1st of the following year (e.g., the annual report for calendar year 2013 is due April 1, 2014). Final construction reports are due within 60 days following completion of the project. If available, GIS shape files will be included.

3. The Applicant shall submit an annual written assessment report to Western and the Service outlining ongoing operation and maintenance activities that occurred over the past year. This report shall include frequency of implementation of minimization measures, biological observations, and general success of each of the minimization measures. All deaths, injuries, and illnesses of endangered or threatened species within the project area, whether associated with project activities or not, will be summarized in the annual report. As stated above, any incidental take (e.g. injuries, deaths etc.) will be reported to the Service by phone and e-mail within 24 hours by an authorized biologist. The annual report is due April 1 of each year.

### **C. ANALYTICAL FRAMEWORK FOR THE SERVICE'S DETERMINATIONS**

Section 7(a)(2) of the Act requires that Federal agencies ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species.

"Jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR § 402.02).

The jeopardy analysis in this biological opinion considers the effects of the proposed Federal action, and any cumulative effects, on the range-wide survival and recovery of the desert tortoise. It relies on four components: (1) the Status of the Species, which describes the range-wide condition of the desert tortoise, the factors responsible for that condition, and its survival and recovery needs; (2) the Environmental Baseline, which analyzes the condition of the desert tortoise in the action area, the factors responsible for that condition, and the relationship of the action area to the survival and recovery of the desert tortoise; (3) the Effects of the Action, which determines the direct and indirect impacts of the proposed Federal action and the effects of any interrelated or interdependent activities on the desert tortoise; and (4) the Cumulative Effects, which evaluates the effects of future, non-Federal activities in the action area on the desert tortoise.

### **D. STATUS OF THE SPECIES RANGEWIDE**

The range-wide status of the desert tortoise consists of information on its listing history, species account, recovery plan, recovery units, distribution, reproduction, and numbers. Because of the length of the document, the current rangewide status of the species and its critical habitat is provided on the Service's website at:

[http://www.fws.gov/nevada/desert\\_tortoise/documents/misc/status-desert-tortoise.pdf](http://www.fws.gov/nevada/desert_tortoise/documents/misc/status-desert-tortoise.pdf).

If unavailable on this web site, contact the Southern Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230, and provide File No. 84320-2016-F-0109.

Additional information is provided in our 5-year review (USFWS 2010) and revised recovery plan for the Mojave desert tortoise (USFWS 2011).

## **E. ENVIRONMENTAL BASELINE**

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

The action area for this project is defined as the 10.2-acre area requested in the right-of-way application, including the new access road expansion, the proposed turnout area, and up to 1,500 feet surrounding the project limits to the north and south of the proposed project where displaced tortoises may be released or where tortoises may travel from and occur in work areas. In addition, the action area includes a 0.5-mile wide buffer along each side of the linear project area. We include a 0.5-mile buffer to address adverse effects to desert tortoises whose home ranges overlap the linear project area.

The proposed project site is in the Eldorado Valley in Clark County, Nevada, approximately 3 miles southwest of the City of Boulder City. The Eldorado Valley is within the southern portion of the Basin and Range Province characterized by north-south trending valleys bordered by the McCullough Range to the west, the River Mountains to the north, and the Eldorado Mountains and Opal Mountains to the east. The Valley is located in an alluvial fan in an area dominated by creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) vegetation. Land near the project area is characterized primarily by mining operations, power generation facilities, energy transmission infrastructure, transportation infrastructure, and open space.

Vegetation adjacent to the existing access road is somewhat disturbed. These disturbed areas possess urban and construction related trash and display high rates of erosion.

The action area is not located within any desert tortoise designated critical habitat. The nearest designated critical habitat (i.e., Piute-Eldorado Desert Wildlife Management Area) is less than 3 miles southeast of the proposed action.

Undeveloped parts of the Action Area may support wildlife characteristic of the north-eastern Mojave Desert. Common wildlife in this region includes Mojave desert tortoise (*Gopherus agassizii*), Great Basin whiptail (*Cnemidophorus tigris*), desert horned lizard (*Phrynosoma platyrhinos*), common nighthawk (*Chordeiles minor*), common raven (*Corvus corax*), black-tailed jack rabbit (*Lepus californicus*), kit fox (*Vulpes macrotis*), coyote (*Canis latrans*), cactus mice (*Peromyscus spp.*), and kangaroo rats (*Dipodomys spp.*).

On August 6, 2015, a team of biologists experienced with biota of the Mojave Desert conducted tortoise surveys using a variation of Service protocols (USFWS 2010) with approval from the

Southern Nevada Fish and Wildlife Office. The team of biologists surveyed using 10-meter (33-foot) wide parallel pedestrian transects. The Service refers to this methodology as “100 percent coverage.” Team members included more than one biologist previously approved by the Service as an Authorized Biologist for multiple prior projects. As most of the Action Area is an existing road (80 feet is developed on the 120-foot requested ROW), biologists surveyed a 100-foot buffer area on each side of the existing road. As this survey was conducted outside of the Service protocol survey dates and is for a linear project, density was not estimated using the Service’s 2010 Protocol equation.

No tortoises or tortoise sign was observed during the field surveys.

## **F. EFFECTS OF THE PROPOSED ACTION ON THE LISTED SPECIES**

### **Direct Effects**

Death and injury of desert tortoises could result from excavation activities such as clearing and grubbing of vegetation; trenching activities and entrapment in open trenches and pipes; and collisions with or crushing by vehicles or heavy equipment, including individuals that take shelter under parked vehicles and are killed or injured when vehicles are moved. Desert tortoises that enter or attempt to cross project access roads may be struck resulting in death or injury. Mortality mechanisms also include individual desert tortoises or their eggs being crushed or buried in burrows during construction and O&M (operation and maintenance)-related activities. Because of increased human presence in the area, desert tortoises may be killed or injured due to collection or vandalism associated with increased encounters with workers, visitors, and unauthorized pets. Desert tortoises may be attracted to the construction area by application of water to control dust, placing them at higher risk of death or injury. Desert tortoises may also be directly (or indirectly) affected by construction noise, ground vibrations, and artificial lighting. Overall, we expect death and injury of subadult and adult tortoises to be avoided during construction and O&M activities through implementation and compliance of proposed minimization measures. Such measures include having an authorized desert tortoise biologist and biological monitors present during grading activities to clear the area and relocate any tortoises outside of the ROW; covering, fencing, or inspecting trenches; having project personnel complete a WEAP program; and implementing speed limits.

The proposed project will result in the disturbance of approximately 3.46 acres of low quality habitat. No tortoises, tortoise sign, or tortoise burrows were encountered during pre-project surveys. If a tortoise in a burrow were encountered, a biologist would relocate the tortoise out of harm’s way. Capturing, handling, and relocating desert tortoises from road and turnout areas may result in harassment and possibly injury or death (Blythe et al. 2003). Additionally, if capture and relocation methods are performed improperly, the tortoise could void its bladder, which would lower its chances of survival. Another risk is that if multiple tortoises are improperly handled by the same biologist, pathogens for upper respiratory tract disease could be spread amongst the tortoises. We do not anticipate that moving desert tortoises out of harm’s way would result in death or injury because these individuals would remain near or within their existing home range, which is not likely to result in significant social or competitive impacts to resident desert tortoises in the area.

## **Indirect Effects**

Indirect effects are those that are caused by or result from the Proposed Action and may occur later in time but are reasonably certain to occur. Indirect effects that could be caused by access roads include increased predation. Predators such as ravens, coyotes, or other raptors may be attracted to the construction site due to an increase in food opportunities including construction site litter; an increased number of perching opportunities due to new transmission lines, fences, or other opportunities; or increased water sources due to dust control protocols. An increased presence of predators could lead to a predation increase on smaller, more vulnerable tortoises. Minimization measures such as a litter control program will reduce these effects.

Ground-disturbing activities during construction may result in an increase of noxious and invasive plant species in the area. Construction machinery may facilitate the spread of existing noxious or invasive species throughout the site or may facilitate the introduction of new noxious weeds or invasive species. Noxious and invasive plants may displace native species that provide forage for tortoises. While we cannot reasonably predict the increase in nonnative species abundance that this project may cause within the action area, the degradation of habitat due to spread of nonnative plants would be minimized through the measures outlined above and in the Weed Management Plan.

## **G. CUMULATIVE EFFECTS**

Cumulative effects consist of past, current, and future state or private actions, excluding federal activities. Current land use activities in the project vicinity include mining, renewable energy production, energy transmission, and dispersed recreation. One mining claim is currently active near the project directly east of the proposed project. Reasonably foreseeable private or state future actions include the conversion of the quarry west of the Proposed Action into a residential development. Past, present, and future activities and development in the valley contribute incrementally to desert tortoise habitat disturbance and removal.

In total, future residential development would remove an unknown amount of desert tortoise habitat. These potential effects are addressed in the Clark County Multiple Species Habitat Conservation Plan (2002) and under Section 10 of the Endangered Species Act (ESA).

## **H. CONCLUSION**

After reviewing the current status of the desert tortoise and its critical habitat, the environmental baseline for the action area, the effects of the proposed project, and the cumulative effects, it is the Service's biological opinion that the project, as proposed and analyzed, is not likely to jeopardize the continued existence of the threatened Mojave desert tortoise.

The Service's conclusion of no jeopardy is based on the following:

1. The habitat in the project area has been previously disturbed or is of low quality, and no desert tortoises or tortoise sign were observed in the project area.

2. A relatively small amount (3.46 acres) of desert tortoise habitat would be disturbed as a result of the proposed project.
3. Measures have been proposed by Western to further minimize any effects of the proposed action to the desert tortoise.
4. The proposed project would not result in tortoise mortality, or other take of desert tortoise that would significantly affect the range-wide number, distribution, or reproduction of the species; desert tortoises that are taken by non-lethal means as a result of the project are anticipated to remain in the wild with no long-term effects.

## **INCIDENTAL TAKE STATEMENT**

Section 9 of the Act, as amended, prohibits take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering (50 CFR § 17.3). "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR § 17.3). Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant. Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the Terms and Conditions of this Incidental Take Statement.

The measures proposed by Western as part of this incidental take statement are nondiscretionary and must be implemented by Western, or other jurisdictional Federal agencies as appropriate, so that they become binding conditions of any project, contract, grant, or permit issued by Western, or other jurisdictional Federal agencies as appropriate, in order for the exemption in section 7(o)(2) to apply. The Service's evaluation of the effects of the proposed actions includes consideration of the measures developed by Western, to minimize the adverse effects of the proposed action on the desert tortoise. Any subsequent changes in the minimization measures proposed by Western, or other jurisdictional Federal agencies as appropriate, may constitute a modification of the proposed action and may warrant reinitiation of formal consultation, as specified at 50 CFR § 402.16.

Western, or other jurisdictional Federal agencies as appropriate, has a continuing duty to regulate the activity that is covered by this Incidental Take Statement. If Western, or other jurisdictional Federal agencies as appropriate, fails to adhere to the Terms and Conditions of the incidental take statement through enforceable terms that are added to permits or grant documents, or fails to retain oversight to ensure compliance with these measures, the protective coverage of section 7(o)(2) may lapse. The Reasonable and Prudent Measures (RPMs) in section C below are intended to clarify or supplement the proposed minimization measures as part of the proposed action.

## **A. AMOUNT OR EXTENT OF TAKE ANTICIPATED**

Based on the scope of the proposed action, the desert tortoise survey data, analysis of impacts provided above, measures proposed by Western, and the anticipated project duration, the Service anticipates that the following take could occur as a result of the proposed action:

1. All desert tortoises in harm's way during project activities may be taken by capture. We estimate up to 2 desert tortoises will be captured and relocated. If the number of tortoises encountered and moved exceeds our estimate, Western shall notify the Service to evaluate the risk of injury and mortality to tortoises and determine if any additional measures are appropriate. We anticipate a desert tortoise moved from harm's way will remain in their home range with no long-term effects.
2. No desert tortoises are anticipated to be killed or injured as a direct or indirect result of project activities.
3. No desert tortoises will be taken in the form of indirect mortality through predation by ravens or other subsidized predators drawn to the project area. This determination is based on no net increase in potential resources for ravens above baseline levels.
4. No desert tortoise nests are anticipated to be disturbed as a result of project activities.

## **B. EFFECT OF TAKE**

In the accompanying biological opinion, the Service has determined that this level of anticipated take is not likely to jeopardize the continued existence or adversely affect the recovery of the desert tortoise.

## **C. REASONABLE AND PRUDENT MEASURES WITH TERMS AND CONDITIONS**

The Service believes that the following Reasonable and Prudent Measures (RMPs) and Terms and Conditions are necessary and appropriate to minimize take of desert tortoise during construction, operation, and maintenance of the project. If differences exist between the applicant-proposed measures and the terms and conditions of this biological opinion, the terms and conditions of the biological opinion will be followed.

**RPM 1.** Minimize injury and mortality of tortoises during all construction activities and during operation and maintenance activities.

- 1.a. *Authorized desert tortoise biologist*—All authorized desert tortoise biologists (and monitors) are agents of Western and shall report directly to Western regarding all compliance issues and take of desert tortoises; this includes all draft and final reports of non-compliance or take. The initial draft report shall be provided to Western and the Service within 24 hours of the observation of take or non-compliance.

Authorized desert tortoise biologists and monitors shall be responsible for ensuring compliance with all conservation measures for the project. This responsibility includes: (1) enforcing the litter-control program; (2) ensuring that desert tortoise habitat disturbance is restricted to authorized areas; (3) ensuring that all equipment and materials are stored within the boundaries of the construction zone or within the boundaries of previously-disturbed areas or designated areas; (4) ensuring that all vehicles associated with construction activities remain within the proposed construction zones; (5) ensuring that no tortoises are underneath project vehicles and equipment prior to use or movement; (6) ensuring that all monitors (including the authorized desert tortoise biologist) have a copy of the required measures in their possession, have read them, and they are readily available to the monitor when on the project site.

An authorized desert tortoise biologist will serve as a mentor to train desert tortoise monitors and will approve monitors if required. An authorized desert tortoise biologist is responsible for errors committed by desert tortoise monitors.

An authorized desert tortoise biologist is responsible for recording and reporting each desert tortoise handled. Information will include the following: location (GPS), date and time of observation, whether the desert tortoise was handled, general health and whether it voided its bladder, location desert tortoise was moved from and location moved to, unique physical characteristics of each tortoise, and effectiveness and compliance with the desert tortoise protection measures. This information will be provided **directly** to Western and the Service.

Potential authorized desert tortoise biologists must submit their statement of qualifications to the Service's Southern Nevada Fish and Wildlife Office in Las Vegas for approval, allowing a minimum of 30 days for Service response. The statement form is available on the internet at:

[http://www.fws.gov/nevada/desert\\_tortoise/auth\\_dt\\_form.htm](http://www.fws.gov/nevada/desert_tortoise/auth_dt_form.htm).

Prior to final approval to begin work on the project, the authorized desert tortoise biologists will have read the required measures (terms and conditions and other stipulations) and have a copy of the measures available at all times while on the project site. Western shall provide the appropriate agency contact for the project to the Service and the Service will include the forms with approval letters. Biologists and monitors should be visibly identifiable on the project site, which may include use of a uniquely designated hardhat or safety vest color.

- 1.b. *Desert tortoise monitor*—Desert tortoise monitors assist an authorized desert tortoise biologist during surveys and serve as apprentices to acquire experience. Desert tortoise monitors ensure proper implementation of protective measures, and record and report desert tortoises and sign observations in accordance with Term and Condition 1.a. They will report incidents of noncompliance to the authorized desert tortoise biologist. No monitors shall be on the project site unless supervised by an authorized desert tortoise biologist.

If a desert tortoise is immediately in harm's way (e.g., certain to immediately be

crushed by equipment), desert tortoise monitors may move the desert tortoise then place it in a designated safe area until an authorized desert tortoise biologist assumes care of the animal.

Desert tortoise monitors may not conduct field or clearance surveys or other specialized duties of an authorized desert tortoise biologist unless directly supervised by an authorized desert tortoise biologist or approved to do so by the Service; “directly supervised” means an authorized desert tortoise biologist has direct sight and voice contact with the desert tortoise monitor (i.e., within approximately 200 feet of each other).

- 1.c. *Desert tortoise education program*—A desert tortoise education program shall be presented to all personnel on site during construction activities by an agency or authorized desert tortoise biologist. At a minimum, the program shall cover desert-specific Leave-No-Trace guidelines, the distribution of desert tortoises, general behavior and ecology of this species, sensitivity to human activities, threats including introduction of exotic plants and animals, legal protection, penalties for violation of State and Federal laws, reporting requirements, and project measures in this biological opinion). All field workers shall be instructed that activities must be confined to locations within the approved areas and their obligation to walk around and check underneath and vehicles and equipment before moving them (or be cleared by an authorized desert tortoise biologist). In addition, the program shall include fire prevention measures to be implemented by employees during project activities. The program shall instruct participants to report all observations of desert tortoise and their sign during construction activities to the FCR and authorized desert tortoise biologist.
- 1.d. *Vehicle travel*— Project personnel shall exercise vigilance when commuting to the project area to minimize risk for inadvertent injury or mortality of all wildlife species encountered on paved and unpaved roads leading to and from the project site. Speed limits will be clearly marked, and all workers will be made aware of these limits. Onsite, personnel shall carpool to the greatest extent possible.

During the more active season (generally March through October), and if temperatures are above 60 but below 95°F for more than 7 consecutive days, vehicle speed on project-related access roads and in the work area will not exceed 15 mph. All vehicles and construction equipment will operate in groups of no more than three vehicles.

- 1.e. *Unauthorized access*—Western shall ensure that unauthorized personnel, including the public and off-duty project personnel, do not travel on project-related temporary access roads, to the greatest extent practicable.

During the more-active season (generally March through October), and if temperatures are above 60 but below 95°F for more than 7 consecutive days, project- and non-project-related activities on all access roads that intersect the ROW will be monitored and logged. During construction, the ROW will be fenced at public roads that intersect the ROW. Signs will say that access on the

ROW is strictly prohibited except by authorized personnel and that violators will be prosecuted.

- 1.f. *Desert tortoise clearance*—Prior to surface-disturbing activities, authorized desert tortoise biologists potentially assisted by desert tortoise monitors, shall conduct a clearance survey to locate and remove all desert tortoises from harm's way including areas to be disturbed using techniques that provide full coverage of all areas (Service 2009). During the more-active season, clearance surveys will be conducted either the day prior to, or the day of, any surface-disturbing activity. During the less-active season, clearance surveys will be conducted within 7 days prior to any surface-disturbing activity. No surface-disturbing activities shall begin until two consecutive surveys yield no individuals.

An authorized biologist shall excavate all burrows that have characteristics of potentially containing desert tortoises in the area to be disturbed with the goal of locating and removing all desert tortoises and tortoise eggs. During clearance surveys, all handling of desert tortoises and their eggs and excavation of burrows shall be conducted solely by an authorized desert tortoise biologist in accordance with the most current Service-approved guidance (currently Service 2009). If any active tortoise nests are encountered, the Service must be contacted immediately, prior to removal of any tortoises or eggs from those burrows, to determine the most appropriate course of action. Unoccupied burrows shall be collapsed or blocked to prevent desert tortoise entry. Outside construction work areas, all potential tortoise burrows and pallets within 50 feet of the edge of the construction work area shall be flagged.

An authorized desert tortoise biologist will inspect areas to be backfilled immediately prior to backfilling.

- 1.g. *Desert tortoise in harm's way*—Any project-related activity that may endanger a desert tortoise shall cease if a desert tortoise is seen on the project site. Project activities may resume after an authorized desert tortoise biologist or desert tortoise monitor (see restrictions in Term and Condition 1.d.) removes the desert tortoise from danger or after the tortoise has moved to a safe area on its own.
- 1.h. *Handling of desert tortoises*—Desert tortoises shall only be moved by an authorized desert tortoise biologist or desert tortoise monitor (see restrictions in Term and Condition 1.b.) solely for the purpose of moving the tortoises out of harm's way. During construction, operation, and maintenance, an authorized desert tortoise biologist shall pen, capture, handle, and relocate desert tortoises from harm's way as appropriate and in accordance with the most current Service-approved guidance. No tortoise shall be handled by more than one person. Each tortoise handled will be given a unique number, photographed, and the biologist will record all relevant data on the Desert Tortoise Handling and Take Report (Appendix A) to be provided to Western and the Service in accordance with the project reporting requirements.

Desert tortoises that occur aboveground and need to be moved from harm's way

shall be placed in the shade of a shrub, 150 to 1,640 feet from the point of encounter.

If desert tortoises need to be moved at a time of day when ambient temperatures could harm them (less than 40°F or greater than 95°F), they shall be held overnight in a clean cardboard box. These desert tortoises shall be kept in the care of an authorized biologist under appropriate controlled temperatures and released the following day when temperatures are favorable. All cardboard boxes shall be discarded after one use and never hold more than one tortoise. If any tortoise active nests are encountered, the Service must be contacted immediately, prior to removal of any tortoises or eggs from those burrows, to determine the most appropriate course of action.

Desert tortoises shall be handled in accordance with the Desert Tortoise Field Manual (Service 2009). Equipment or materials that contact desert tortoises (including shirts and pants) shall be sterilized, disposed of, or changed before contacting another tortoise to prevent the spread of disease. All tortoises shall be handled using disposable surgical gloves and the gloves shall be disposed of after handling each tortoise. An authorized desert tortoise biologist shall document each tortoise handling by completing the Desert Tortoise Handling and Take Report (Appendix A of the PBO).

- 1.i. *Wildlife escape ramps*—Earthen plugs, with wildlife escape ramps on either side of the plug, will be provided in open trench segments at no greater than every 0.25 mile. These distances will be reduced if the FCR and authorized desert tortoise biologist determine that the plug and escape ramp spacing is insufficient to facilitate animal escape from the trench. Any tortoise that is found in a trench or excavation shall be promptly removed by an authorized desert tortoise biologist or monitor in accordance with the most current Service-approved guidance. If the authorized desert tortoise biologist is not allowed to enter the trench for safety reasons, the alternative method of removal must have prior approval by the Service.
- 1.j. *Dust control*—Water applied to for dust control shall not be allowed to pool outside desert-tortoise fenced areas, as this can attract desert tortoises. Similarly, leaks on water trucks and water tanks will be repaired to prevent pooling water. An authorized desert tortoise biologist will be assigned to patrol each area being watered immediately after the water is applied and at approximate 60-minute intervals until the ground is no longer wet enough to attract tortoises if conditions favor tortoise activity.
- 1.k. During operation and maintenance, Western and any designated agents shall implement all appropriate measures described previously in the *Proposed Minimization Measures* section, and any appropriate Terms and Conditions listed herein the Incidental Take Statement.

**RPM 2. Minimize predation.**

- 2.a. *Litter control*—A litter control program shall be implemented to reduce the attractiveness of the area to opportunistic predators such as desert kit foxes, coyotes, and common ravens. Trash and food items will be disposed of properly in predator-proof containers with predator-proof lids. Trash containers will be emptied and construction waste will be removed daily from the project area and disposed of in an approved landfill.
- 2.b. *Deterrence*—The project proponent will implement measures to discourage the presence of predators on site (coyotes, ravens, etc.), including elimination of available water sources, designing structures to discourage potential nest sites, and use of hazing to discourage raven presence.

**RPM 3. Minimize impacts to tortoise habitat.**

- 3.a. *Minimizing new disturbance*—Cross-country travel outside designated areas shall be prohibited. Native vegetation will be left in place wherever possible. All equipment, vehicles, and construction materials shall be restricted to the areas designated prior to project activities and new disturbance will be restricted to the minimum necessary to complete the task. All work area boundaries shall be conspicuously staked, flagged, or otherwise marked to minimize surface disturbance activities. To the maximum extent possible, access to splicing and tensioning site will occur by overland travel (no blading ).
- 3.b. *Weed prevention*—Vehicles and equipment shall be cleaned with a high pressure washer prior to arrival in desert tortoise habitat and prior to departure from areas of known invasive weed and nonnative grass infestations to prevent or at least minimize the introduction or spread these species.
- 3.c. *Chemical spills*—Hazardous and toxic materials such as fuels, solvents, lubricants, and acids used during construction will be controlled to prevent accidental spills. Any leak or accidental release of hazardous and toxic materials will be stopped immediately and cleaned up at the time of occurrence. Contaminated soils will be removed and disposed at an approved landfill site.
- 3.d. *Residual impacts from disturbance*—To compensate for desert tortoise impacts during construction, Western shall pay remuneration fees to offset these effects. Remuneration fees will be used for management actions expected to promote recovery of the desert tortoise over time, including management and recovery of desert tortoise in Nevada. Actions may involve habitat acquisition, habitat restoration and recovery; reducing loss of individual animals; monitoring habitat, populations, and effectiveness of conservation and recovery actions; promoting conservation and recovery through applied research; public outreach; and predator management. Fees will be used to fund the highest priority recovery actions for desert tortoises in Nevada.

Compensation will be provided for the actual number of acres disturbed. The acres identified below are estimates based on the proposed construction footprint. Although these numbers are expected to be fairly accurate, they are only an

approximation of actual acres requiring compensation in the various ratio categories. All fees must be paid prior to initiating surface-disturbing activities.

The current base rate for Federal land disturbance is \$849 per acre of disturbance, as indexed for inflation, effective March 1, 2016, until the next adjustment becomes effective March 1, 2017. The fee rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31st of each year, becoming effective March 1st. Fees assessed or collected for projects covered under this biological opinion will be adjusted based on the current CPI-U for the year they are collected. Information on the CPI-U can be found on the internet at <http://www.bls.gov/cpi/>.

The Applicant shall complete the attached form (Appendix B) and submit it to the Service's Southern Nevada Fish and Wildlife office, by one of the methods below.

Email: Michael\_senn@fws.gov

Postal Mail: Field Supervisor  
Southern Nevada Fish and Wildlife Office  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130

Fax: (702) 515-5231

Once received and approved by the Service, the Applicant will be notified. Following notification, the Applicant will coordinate actual payment with the National Fish and Wildlife Foundation (NFWF) through:

Shawn Marchand (Shawn.Marchand@NFWF.ORG) and/or  
Anne Butterfield (Anne.Butterfield@NFWF.ORG).

#### **RPM 4. Compliance and reporting.**

4.a. *Disposition of dead or injured desert tortoises*— In the event that a dead or injured desert tortoise is found within the action area, Western must include the following notification procedures in their respective incidental take permit and ROW grant.

- The applicant must notify Western and the Southern Nevada Fish and Wildlife Office and by telephone (702 515-5230) or email within 24 hours of locating any dead or injured desert tortoises. The report must include the date, time, and location of the carcass, a photograph, cause of death, if known, and any other pertinent information.
- Transport injured desert tortoises to a qualified veterinarian for treatment. Contact the Service regarding their final disposition if any injured desert

tortoises survive.

- Handle dead specimens to preserve biological material in the best possible state for later analysis, if such analysis is needed. The Service will make this determination when Western or the applicant provides notice that a desert tortoise has been killed by project activities.
- 4.b. *Non-compliance*—Any incident occurring during project activities that was considered by the authorized desert tortoise biologist or biological monitor to be in non-compliance with this biological opinion shall be immediately documented by an authorized desert tortoise biologist. Documentation shall include photos, GPS coordinates, and details on the circumstances of the event. The incident will be included in the annual report and post-project report.
- 4.c. *Project reporting requirements*—Annual and comprehensive final project reports will be submitted to Western and the Service’s Nevada Fish and Wildlife Office in Las Vegas. Annual reports will cover the calendar year and are due April 1<sup>st</sup> of the following year (for example, the annual report for calendar year 2016 is due April 1, 2017). Final project reports are due within 60 days following completion of the project or each phase of the project.
- 4.d. *Operation and maintenance*—A written assessment report shall be submitted annually to the Service outlining the operation and maintenance activities that occurred over the past year.

Report to include: It will include frequency of implementation of minimization measures, biological observations, general success of each of the minimization measures. All deaths, injuries, and illnesses of endangered or threatened species within the project area, whether associated with project activities or not, will be summarized in the annual report. The report is due April 1 of each year.

## CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

We do not offer any conservation recommendations at this time.

## REINITIATION REQUIREMENT

This concludes formal consultation on the actions outlined in your request received November 17, 2015. As required by 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over an action has been

retained (or is authorized by law) and if: (1) The amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

## LITERATURE CITED

- Blythe A K, Swann D E., Steidl, R J., Stitt E W. 2003. Movement patterns of translocated desert tortoises. In: Proceedings of the Desert Tortoise Council Symposium; 2003 February 21-23. Las Vegas (NV): Desert Tortoise Council. p. 81.
- Clark County. 2002. Clark County multiple species habitat conservation plan and environmental impact statement for issuance of a permit to allow incidental take of 79 species in Clark County, Nevada. Las Vegas (NV): Department of Comprehensive Planning.
- USFWS. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California. Available on the internet at: [http://www.fws.gov/ventura/speciesinfo/protocols\\_guidelines/](http://www.fws.gov/ventura/speciesinfo/protocols_guidelines/)
- USFWS. 2010. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)
- USFWS. 2010. Mojave population of the desert tortoise (*Gopherus agassizii*), five-year review: summary and evaluation. Desert Tortoise Recovery Office, Reno, Nevada. September 30, 2010. Available on the internet at: [www.fws.gov/.../five\\_year\\_review/doc3572.DT%205Year%20Review\\_FINAL.pdf](http://www.fws.gov/.../five_year_review/doc3572.DT%205Year%20Review_FINAL.pdf)
- USFWS. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. 222 pp.

**APPENDIX A. DESERT TORTOISE HANDLING AND TAKE REPORT**

If a desert tortoise is killed or injured, immediately contact the U.S. Fish and Wildlife Service and Western by phone and complete Section 1 of the form.

Completed forms should be submitted to the Western and Fish and Wildlife Service.

Project Name: Quarry 187 LLC License Outgrant and Plan of Development for an Access Road and Utilities	Report Date:
Fish and Wildlife Service File No.- 84320-2016-F-0109	
Authorized Desert Tortoise Biologist: _____  Employed by:	
<b>Section 1: Complete all information below if a desert tortoise is injured or killed in addition to initial contact described above.</b>	
A tortoise was injured <input type="checkbox"/> or killed <input type="checkbox"/> (check appropriate box):	
Date and time found: _____ Found by: _____ GPS location (NAD 83): easting: _____ northing: _____ No. of photos taken: _____ Disposition: _____ _____ _____	
Attach report with photos that describe in detail, the circumstances and potential cause of injury or mortality. For injuries include name of veterinarian and detailed assessment of injuries.	

**Section 2: Complete all information below for each desert tortoise handled.**

All instances of desert tortoise handling must be reported in this section and be included in the quarterly, annual, and final project reports.

Desert tortoise number: \_\_\_\_\_

Date and time found: \_\_\_\_\_ Sex of tortoise: \_\_\_\_\_

Air temperature when found: \_\_\_\_\_ Air temperature when released: \_\_\_\_\_

Tortoise activity when found: \_\_\_\_\_

Handled by: \_\_\_\_\_ Approx. carapace length \_\_\_\_\_

GPS location (NAD 83) found: easting: \_\_\_\_\_ northing: \_\_\_\_\_

GPS location released: easting: \_\_\_\_\_ northing: \_\_\_\_\_

Approximate distance moved: \_\_\_\_\_

Did tortoise void bladder; if so state approximate volume and actions taken:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Post handling or movement monitoring and observations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 3: Complete for each tortoise burrow penned.**

All instances of desert tortoise penning must be reported in this section and be included in the quarterly, annual, and final project reports.

Date reported to Fish and Wildlife Service: \_\_\_\_\_

Date and time of pen construction:

Began: \_\_\_\_\_ Completed: \_\_\_\_\_

Date and time pen removed:

\_\_\_\_\_

Pen constructed by:

\_\_\_\_\_

Why was tortoise penned?

\_\_\_\_\_

How frequently was pen monitored?

\_\_\_\_\_

Observations of desert tortoise behavior including time and date of observation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Include photos of pen and burrow with report.

**APPENDIX B. NATIONAL FISH AND WILDLIFE FOUNDATION SECTION 7 FEE FORM**

**SOUTHERN NEVADA MITIGATION AND CONSERVATION ACCOUNT  
MOJAVE DESERT TORTOISE SUB-ACCOUNT DEPOSIT DOCUMENT**

*The applicable Action Agency is responsible for completing this form and submitting it to USFWS for review and approval. The USFWS Agency Representative for the Mojave Desert Tortoise Sub-Account is responsible for submitting the approved deposit document to NFWF when a project proponent is prepared to deposit funds with NFWF. The deposits identified in the deposit document will be made by the project proponent to NFWF directly.*

**Project Name:** Quarry 187 LLC License Outgrant and Plan of Development for an Access Road and Utilities

**Biological Opinion Number and Date:** 84320-2016-F-0109

**Project Phase:** (if applicable) n/a

**Project Location:** (i.e. County) Sloan, Clark County, NV

**Land Ownership of Project Site:** (if publicly owned, identify the applicable government entity)  
Western Area Power Administration

**Project Proponent:** Western Area Power Administration

**Action Agency (check if applicable) and Decision Documents:** (identify by name, date, and identification #)

**Federal Highway Administration**  
 Decision Document Attached  
Project Identification or Tracking #: \_\_\_\_\_

**National Park Service**  
 Decision Document Attached  
Project Identification or Tracking #: \_\_\_\_\_

**Western Area Power Administration**  
 Decision Document Attached  
Project Identification or Tracking #: \_\_\_\_\_

**U.S. Army Corps of Engineers**  
 Decision Document Attached  
Project Identification or Tracking #: \_\_\_\_\_

**U.S. Bureau of Reclamation**  
 Decision Document Attached  
Project Identification or Tracking #: \_\_\_\_\_

**Nellis Air Force Base**  
 Decision Document Attached  
Project Identification or Tracking #: \_\_\_\_\_

**U.S. Bureau of Indian Affairs**  
 Biological Opinion Attached  
Project Identification or Tracking #: \_\_\_\_\_

**Other (Specify)**  
 Biological Opinion Attached  
Project Identification or Tracking #: \_\_\_\_\_

**Monies Required for Deposit:      \$ 2937.54**  
(3.46 ac X \$849/ac)

**Deposit Document:**

Prepared and Submitted to USFWS by Action Agency

**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Signed:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

Approved and Submitted to NFWF by USFWS

**Name:** Michael J. Senn  
**Title:** Field Supervisor  
**Phone:** (702) 515-5230  
**Email:** Michael\_Senn@fws.gov  
**Signed:** \_\_\_\_\_  
**Date:** \_\_\_\_\_