

10/11/2017

FORM 2800-14  
(August 1985)

RIDGECREST FIELD OFFICE

Issuing Office

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

SERIAL NUMBER CACA-049393

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1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

2. Nature of Interest:

a. By this instrument, the holder:

Project Darwin LLC.  
P.O. Box 3969  
Tonopah, NV. 89049-3969

receives a right to operate, maintain, terminate and reclaim a monitoring well on public lands within the following legal description:

**MOUNT DIABLO MERIDIAN,**

**Inyo County, California**

Township 19 South, Range 41 East, Sec. 10. NE $\frac{1}{4}$ .

b. This right-of-way granted herein is 50 feet wide by 50 –feet long, containing approximately .06 acres, more or less.

c. This right-of-way instrument shall terminate on December 31, 2046. This instrument may be renewed prior to expiration; however, it is the responsibility of the Holder to request a renewal of this Grant in the time frames cited within Title 43 Code of Federal Regulation (CFR) 2800

d. This Grant is issued subject to the Holder's compliance with all applicable federal, state, county, and city regulations contained in Title 43 CFR 2800.

e. Noncompliance with the terms and conditions will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.

f. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable by its terms and conditions shall be binding on the Holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accrued herein before or on account of the expiration or prior termination of the Grant. During such periods of review the Authorized Officer may amend, modify, add or remove stipulations to this Grant.

g. Each grant issued for a term of 30 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way granted herein may be reviewed at any time deemed necessary by the authorized officer.

h. Maintenance: Will be conducted by Project Darwin, LLC. If maintenance requires an area outside of the authorization, Project Darwin will apply for a Notice to Proceed from the Ridgecrest Field Office. All equipment and vehicular access to the well area will be confined to the existing roads and established ROW. Existing BLM roads will not be utilized as turn-around locations for vehicles and equipment.

j. This instrument may be renewed. If renewed, 120 days prior to expiration, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms conditions and stipulations that the authorized officer deems necessary to protect the public interest.

k. Holder shall provide a copy of the ROW grant and stipulations to all subcontracts. The ROW grant along with stipulations will be maintained on the construction site at all times during construction.

3. Rental:

a. For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer whenever necessary to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

b. The rental fee for the site specific project area grant will be based on the total public land acreage of the project area included in the right-of-way grant.

c. BLM requires, the applicant to obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan

to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant; a bond will be required for monitoring authorizations to ensure compliance with the terms and conditions of the authorization. The bond will be based on the reclamation Cost Estimate and shall be provided to the Ridgecrest Field office within ninety three days from authorization. The amount of the reclamation bond may include potential reclamation and administrative costs to the BLM.

4. Terms and Conditions:

- a. Access to the well site will only be on well-established roads and trails, no new roads or trails are authorized. No cross-country travel is permitted.
- b.. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the right-of-way/lease), the United States against any liability arising from the Holder's use or occupancy of the right-of way/lease area, from the time of the issuance of this right-of-way/lease to the Holder, and during the term of this right-of-way/lease. This agreement to indemnify and hold harmless the United States against liability arising from the Holder's use or occupancy of the right-of way/lease area shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or related third parties.
- c. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery 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 cultural or scientific 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.
- d. The holder shall be responsible for noxious weed control on disturbed areas within the limits of the right-of-way. The holder is responsible to pressure wash all vehicles and equipment entering the project area.
- e. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners,

witness points, U.S. Coastal and Geodetic benchmarks 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. Where General Land Office or Bureau of Land Management right-of-way 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, the holder shall be responsible for the survey cost.

- f. Every reasonable effort will be made to prevent, control, or suppress any fire in the operation area. Uncontrolled fires must be immediately reported to the BLM Ridgecrest Field Office (760) 385-5400 or call 911.
  
- g. No hazardous material, 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 Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.) shall be used, produced, transported, released, disposed of, or stored within the right-of-way/lease area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.), caused by the Holder, in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.

The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the right-of-way/lease area, potentially affecting the right-of-way/lease area. As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the right-of way/lease area.

WHEREOF, the undersigned agrees to the terms and conditions of this right-of-way grant or permit.

Linda Stone

(Signature of Holder)

Carl B. Symons

Carl B. Symons

Manager

(Title)

Field Manager

(Title)

10-11-17

(Date)

10/11/2017

(Date)

## **EXHIBIT "A"** **BLM STIPULATIONS**

The following stipulations have been installed for the purpose of managing post-construction right-of-way (ROW) for the protection of human health and the environment. Project Darwin shall comply with the following stipulations:

### **General Stipulations:**

1. BLM is requesting a Biological site monitor familiar with the area be onsite during any ground disturbing activities to ensure sensitive resources are marked and avoided.
2. The monitor will flag squirrel burrow complex for avoidance and remove flags upon completion.
3. If ground disturbance occurs during nesting season for birds ((Feb-Aug) a nest survey must be conducted.
4. If an active nest is found, construction should occur after the young have fledged.
5. *All animal burrows should be avoided to the greatest extent possible.*
6. When possible, shrubs should be crushed rather than bladed.
7. Construction equipment and vehicles should be washed off prior to ingress onto BLM lands to minimize spread of invasive seeds

### **Tortoise Stipulations:**

1. Prior to beginning work at the project site, all workers engaged in activities for this project will be educated by the BLM Biologist about the desert tortoise, including awareness on its legal status, habitat requirements, activity patterns, and avoidance measures. Tortoise awareness stickers will be handed out for placement on vehicles and equipment.
2. No desert tortoises can be handled at any time. If a desert tortoise is found on-site, all activity that may harm or kill the desert tortoise must cease until the desert tortoise leaves on its own accord. Avoidance measures include only using established roads, walking on trails when possible, and avoiding walking on burrows.
3. A biological monitor must be onsite and actively monitoring for desert tortoise ahead of any vehicles or other equipment that may cause surface disturbance.

4. When traveling on designated routes, a 20 mph speed limit will be enforced and drivers will exercise care to observe and avoid desert tortoise.
5. Workers must check under their vehicles and equipment prior to moving/using them. If there is a desert tortoise under a vehicle or under/in equipment, the vehicle/equipment must not be moved/used until the desert tortoise leaves on its own accord.
6. All trash and food items shall be promptly contained within closed, raven-proof containers or placed out of sight in vehicles with closed windows.
7. Soil disturbance will be minimized when possible.
8. Construction on the pipeline will occur during the general inactive season for tortoises (generally November-February). If the project will take longer than expected, the BLM will be notified.
9. Previously disturbed areas within the project site shall be utilized when possible for stockpiling of dirt, parking vehicles, and storing equipment.
10. No holes/trenches should be left open overnight.
11. All trenches and holes will be inspected daily for the presence of desert tortoise and before being filled. If a desert tortoise is present, contact the BLM biologist immediately.
12. All ends of the replacement pipe and old pipe that are exposed in the ground or lying on/near the ground will be capped to prevent wild life from entering them.

Please call the BLM Biologist at 760-384-5400 or 5425 with any questions.

#### **GENERAL ADMINISTRATIVE**

1. This authorization is issued subject to all valid existing rights as of the effective date
2. In case of change of the address, the Holder shall immediately notify the authorized officer.
3. The Holder shall inform and provide a copy of terms and conditions of this ROW Grant (CACA-049393), to all employees, contractors, and subcontractors during construction.

4. The Holder shall construct, operate, and maintain the facilities, improvements, and structures within this ROW in strict conformance with the conditions within the Plan of Development.
5. Any relocation, additional construction, or use that is not in accordance with the approved project description, shall not be initiated without the prior written approval of the Authorized Officer.
6. The Holder will make available a copy of the complete ROW Grant, including all mitigations, stipulations and approved project descriptions. This will be maintained on the ROW area during construction, operation, and termination of the activities. Noncompliance with this requirement will result in an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment. Such suspension will only be lifted when the matter of noncompliance is resolved.
7. The Holder shall designate formally in writing a representative(s) who shall have the authority to act upon and to implement instructions from the Authorized Officer or his/her Representative. The Holder's representative shall be available for communication with the Authorized Officer or his representative within four hours when construction or other surface disturbing activities are underway.
8. The Holder shall indemnify the United States against any and all liability, direct or indirect, arising from the occupancy and use of the land associated with the activities herein authorized.
9. The Holder shall perform all operations in a workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
10. The Holder shall protect all survey monuments found within the ROW. Survey monuments include, but are not limited to, General Land Office and BLM Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks 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 General Land Office or BLM ROW monuments or references are obliterated during operations, the Holder shall secure the services of a registered land surveyor or a BLM 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 each such survey in the appropriate county and send a copy to the Authorized Officer. If the BLM cadastral surveyors or

other Federal surveyors are used to restore a disturbed survey monument, the Holder shall be responsible for the survey cost.

11. The Holder of this authorization or the Holder's successor in interest, and all agents, assigns, employees, contractors or subcontractors engaged in activities authorized under this authorization shall comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.), and the regulations of the Secretary of the Interior issued pursuant thereto.
12. The Holder shall comply with the construction practices and mitigating measures established by 33 CFR 323.4, which sets forth the parameters of the "nationwide permit" required by Section 404 of the Clean Water Act. If the proposed action exceeds the parameters of the nationwide permit, the Holder shall obtain an individual permit from the appropriate office of the Army Corps of Engineers and provide the Authorized Officer with a copy of the same. Failure to comply with this requirement shall be cause for suspension or termination of this ROW Grant.
13. No signs or advertising devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the Authorized Officer or representative.
14. Six months prior to the termination date of the Grant, the Holder shall contact the Authorized Officer to arrange a pre-termination conference and joint inspection of the ROW. The conference and inspection will be held to agree to an acceptable termination and rehabilitation plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, re-contouring, top soiling, and seeding. The Reclamation Plan will include specific procedures for erosion control, topsoil salvage, re-vegetation, and maintenance and monitoring requirements. The Authorized Officer must approve the plan in writing prior to the Holder's commencement of any termination activities.

#### **SURFACE MANAGEMENT/HAZARDOUS/TOXIC MATERIALS:**

1. The Holder shall comply with the Toxic Substances Control Act of 1976, as amended 15 USC 2601, et seq., with regard to any toxic substances that are used, generated by or stored on the public land under this authorization or on facilities herein authorized, in accordance with the provisions of Title 40 CFR 702 through 799, including the provisions addressing polychlorinated biphenyls (PCBs). Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR 117 shall be reported as required by Section 102(b) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 USC. 2011 et seq. A copy of any report required or requested by any State or Federal Agency as a result of a reportable release or spill of any toxic or

hazardous substances shall be furnished to the BLM's Authorized Officer, concurrent with the filing of the reports to the other Federal or State agencies. The Holder shall further indemnify the United States against any and all costs and liabilities that may arise from the release of any such toxic or hazardous substances or wastes as a result of the use of public land under this authorization.

2. The Holder shall comply with all applicable Federal, State and local 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 ROW or any of the ROW facilities, or used in the construction, operation, maintenance or termination of the ROW or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under CERCLA. 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), USC 9601 (14), nor does the term include natural gas.
3. Construction sites shall be maintained in a sanitary condition at all times. Waste materials 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. Hazardous Waste includes all waste oil contaminated soils and materials, unless testing has shown Resource Conservation and Recovery Act (RCRA) wastes are not present above minimum levels. See the RCRA and the CERCLA and State Regulations for details.
4. The Holder agrees to indemnify the United States against any liability arising from the release of any hazardous or toxic substances or hazardous or toxic waste (as defined under RCRA and CERCLA) on the ROW, unless the release or threatened release is wholly unrelated to the ROW Holder's activity on the ROW. This agreement applies without regard to whether a release is caused by the Holder, its agent, or unrelated third parties.
5. Use of pesticides will only be approved with a Pesticide Use Permit issued by the BLM. The Holder 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 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.

6. No fueling within the ROW without a spill kit and plan, a fueling plan must be developed and approved by the BLM prior to construction activities. If fueling is to take place on public lands.
7. If during any phase of the construction, operation, or termination of the project, any oil or other pollutant should be discharged impacting Federal lands, the control and total removal, disposal, and cleanup of such oil, HAZMAT, or other pollutant, wherever found, shall be the responsibility of the Holder, regardless of fault.
8. The Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted. All waste material resulting from construction shall be removed from the site. All waste disposal sites on public land must be approved in writing by the Authorized Officer in advance of use. All Hazardous and all Solid Waste shall be removed to licensed facilities. All HAZMAT wastes shall be removed under manifest, and copies furnished to the Authorized Officer.
9. Any cultural resources in association with human remains (native and non-native), funerary items, sacred objects, or objects of cultural patrimony, should be treated with care and respect at all times. The discovery of any human remains within the project's Area of Potential Effect is subject to criteria set forth by the Native American Graves Protection and Repatriation Act, Title 43 CFR Part 10, as amended, 1999. In the event human remains are discovered, the Holder will:
  - a. Immediately stop all excavation work. This work stop must be in safe manner which will minimize any further disturbance to the remains. All work within the immediate vicinity will remain halted until BLM, after consultation with all the appropriate agencies, professionals and representatives has issued Notice to Proceed to resume work near the discovery.
  - b. The Holder will contact the Inyo County Sheriff/Coroner's Office in accordance with State law, and will contact the BLM.
  - c. The Coroner's Office will determine 1) if the remains are human; 2) if the area is a crime scene; and 3) if determined to not be a crime scene, the Sheriff will contact the Native American Native American Heritage Commission in Sacramento, California to send the appropriate tribal representative to the site.
  - d. The Native American representative and a professional archeologist will examine the remains and determine if they are native or non-native remains. Based on the recommendations resulting from this examination, the remains may be re-buried near the area of disturbance, removed from

the area or handled according to the recommendations provided at that time.

e. All costs associated with an event of this nature will be borne by the Holder.

## CONSTRUCTION AND DEVELOPMENT

1. Suitable topsoil material removed in conjunction with clearing and stripping shall be windrowed on each side of the ROW. Top Soils one side and sub-soils on the other side of the ROW.
2. 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 three (3) inches deep, the soil shall be deemed too wet to adequately support construction equipment.
3. The Holder shall provide for the safety of the public entering the ROW. This includes, but is not limited to, barricades for open trenches, flagmen/women with communication systems.
4. The Holder shall construct properly designed and adequate water-control structures in each of the drainage crossings to prevent excessive erosion along the bike path and to protect the bike path from the natural erosion process within the drainage. Fences, gates, and brace panels shall be reconstructed to appropriate BLM standards and/or specifications as determined by the Authorized Officer.
5. Material encountered on the project and needed for borrow; surfacing, riprap, or other special needs shall be conserved.
6. The Holder shall survey and clearly mark the centerline of the ROW.
7. The Holder shall re-seed disturbed areas with local native seeds as designated by the Authorized Officer. All seed will be certified weed free seed and labels will be providing the authorized officer.
8. The holder shall reclaim the right-of-way route by re-contouring and re-seeding disturbed areas as prescribed by the authorized officer. The seed shall be applied by a drill equipped with a depth regulator. Planting depth shall not exceed one-half inch. Where drilling is not possible, the seed shall be broadcast at twice the recommended rate of application and the area shall be raked or chained to cover the seed.