



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
Denver Federal Center, Building 67, Room 118  
Post Office Box 25007 (D-108)  
Denver, Colorado 80225-0007

November 19, 2018

ER 17/0566

Ms. Kimberly Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E., Room 1A  
Washington D.C. 20426

Subject: Application Ready for Environmental Analysis comments for the proposed Lake Powell Pipeline (FERC Project No. 12966)

Dear Ms. Bose:

This letter responds to the Federal Energy Regulatory Commission's (FERC) September 20, 2018, Order Denying Petition for Declaratory Order on Jurisdiction that restarted the December 11, 2017, Notice of Application Ready for Environmental Analysis for the proposed Lake Powell Pipeline (Project), located in Coconino and Mohave Counties, Arizona, and Kane and Washington Counties, Utah.

It is the Department's understanding that: (1) FERC intends to complete an environmental evaluation of alternative pipeline rights-of-way (ROW) for the Project,; and (2) although FERC only asserts licensing jurisdiction of the Applicant's in-line hydropower units, FERC is coordinating a master environmental impact statement (EIS) that can be used for any ROW actions needed by the Bureaus in the Department for the Applicant's pipeline facilities. FERC requests that comments from the Department of the Interior identify all information needed to complete an environmental impact statement for all Federal actions required to consider the Applicant's project.

The Department of the Interior (Department) appreciates FERC's coordination efforts with the Department and bureaus. In addition to the comments provided below, the Department and bureaus will work closely with FERC regarding any mitigation measures proposed by the State.

## **Bureau of Indian Affairs (BIA)**

It is BIA's understanding that the environmental evaluation of alternative pipeline rights-of-way (ROW) for the Project, will include an alternative that crosses the Kaibab Paiute Reservation

(Reservation) along Arizona State Route 389. BIA's comments relate to ROW application procedures, conditions, and compensation for requesting a right-of-way across Tribal lands. See [25 CFR Part 169, and 25 U.S.C. 323](#) which governs this subject.

In the event the Reservation route is selected for the final project, the State of Utah would need to submit a completed ROW application in accordance with BIA regulations 25 CFR Part 169. See *Attachment A: BIA's Right-of-Way Application, Checklist, and Regulations*.

Therefore, the need for the BIA action is established by the BIA's responsibility to respond to a request for a ROW over or across lands held in trust for Indian tribes. BIA's purpose for the Proposed Action is to respond to a ROW application. Including the information required for the ROW application on Attachment A in the environmental evaluation would enable FERC and BIA to complete the environmental evaluation of the pipeline alternative across the Reservation, including impacts to the locations of (including length and width) the proposed permanent and temporary construction easements along with the intended purposes.

To assist with the coordination on the project, BIA requests to be a cooperating agency for the FERC master environmental impact statement for the following reasons: (1) BIA has jurisdiction by law to grant the right-of-way across the Reservation if that route is selected; and (2) BIA has special expertise that qualifies our participation as a cooperating agency (42 U.S.C. 4332 and 40 CFR Part 1501.6). Therefore, BIA is not proposing 4(e) conditions under the Federal Power Act (FPA), as other agencies may do who are not Cooperating Agencies for this project.

If you have any questions, please contact Ms. Catherine Wilson, Supervisory Water Rights Specialist, (602) 379-6789, or by electronic mail at [catherine.wilson@bia.gov](mailto:catherine.wilson@bia.gov).

### **Bureau of Land Management (BLM)**

The BLM is a Cooperating Agency by Memorandum of Understanding (MOU) for the development of an EIS with FERC, who is the lead agency. The BLM will use the EIS to issue a record of decision (ROD) concerning whether to issue a ROW to the State of Utah on public lands it manages.

The need for the BLM action is established by the BLM's responsibility under Federal Land Policy and Management Act (FLPMA) to respond to a request for a ROW grant while avoiding or minimizing adverse impacts to other resource values and to locate the uses in conformance with land use plans. The BLM's purpose for the Proposed Action is to respond to a ROW application.

To that end, the BLM will be very engaged in the analysis of the appropriate portions of the EIS to ensure that it meets BLM's multiple-use mandate that a permitted use avoids or mitigates adverse impacts to other resource values and to locate the uses in conformance with land use

plans. Please see *Attachment B. for BLM References for Lake Powell Pipeline: Primary Laws, Regulations and Policy* setting out those issues for inclusion in the EIS to meet this need. Therefore, BLM is not proposing 4(e) conditions under the Federal Power Act (FPA), as other agencies may do who are not Cooperating Agencies for this project.

Please contact Joe Incardine, National Project Manager, at (801) 560-7135 or [jincardi@blm.gov](mailto:jincardi@blm.gov), if you have any questions about BLM comments.

### **Bureau of Reclamation (USBR)**

The USBR is a Cooperating Agency by Memorandum of Understanding (MOU) for the development of an EIS with FERC, who is the lead agency. The USBR's purpose for the Proposed Action concerns whether to enter into a water exchange contract with the State of Utah and a license agreement for the use of USBR lands for the intake and pumping plant at Lake Powell. The USBR will work with FERC on the analysis of the appropriate portions of the EIS.

Please contact Peter Crookston, Supervisory Environmental Protection Specialist, at (801) 379-1152, or [pcrookston@usbr.gov](mailto:pcrookston@usbr.gov), if you have any questions about USBR's comments.

### **U.S. Fish and Wildlife Service (USFWS)**

The USFWS comments are submitted in accordance with provisions of the Endangered Species Act of 1973 (ESA), as amended; Fish and Wildlife Coordination Act (FWCA), as amended; the National Environmental Policy Act (NEPA), as amended; and the FPA, as amended.

In 2017, the Utah Board of Water Resources (UBWR) submitted an application to FERC for licensing of the entire Project. Subsequently, USFWS was meaningfully involved in the license application process for the Project, and provided input regarding study requests, interpretation of study results, and recommendations to reduce impacts to trust resources from Project facilities construction and operation.

USFWS previously filed the following comment letters to FERC:

- February 29, 2016 - Preliminary licensing plan and draft study reports;
- May 9, 2011 - Initial study reports;
- March 10, 2009 - ESA section 7 consultation process;
- January 8, 2009 - Revised study plans;
- November 19, 2008 - Proposed study plan and scoping document 2, and additional study requests; and
- July 17, 2008 - Study requests and the pre-application document and on scoping document 1.

These plans and reports provide the technical basis for additional environmental evaluations, such as Project alternatives, proposed mitigation, and consultations under NEPA, ESA, and the FWCA. In addition, FERC and other Federal permitting agencies rely on study results to help formulate agency permitting decisions, recommendations, and license terms and conditions stipulated by a FERC-issued license. The information in these plans and reports may also assist with the FERC's determination as to whether the license is consistent with the comprehensive plans for waterway management under FPA Section 10(a)(2).

*Request for a single lead federal agency for the purposes of conducting interagency consultation under section 7 of the ESA*

As discussed in our comments dated March 10, 2009, the Utah Ecological Services Field Office is designated as the lead USFWS office for interagency consultation under section 7 of the ESA. Due to the September 20, 2018, Order Denying Petition for Declaratory Order on Jurisdiction and its effect on FERC's jurisdiction limits for the project, we are unclear whether FERC or another agency with permitting authority for the Project will be the lead federal agency for the purposes of conducting ESA section 7 consultation with our office. Therefore, we request that all permitting agencies make a determination to designate one lead federal agency for the Project to conduct ESA section 7 consultation with our office.

*Request for Cooperating Agency Status*

As the Project moves into NEPA compliance and ESA consultation phases, we recommend that FERC consider effects to USFWS trust resources (i.e., threatened and endangered species, wetlands, migratory birds) associated with the construction, operation, and maintenance of the pipeline and all ancillary facilities. We request cooperating agency status so that we can work closely with the Project proponent and FERC to assist with Project compliance efforts.

As a cooperating agency, we would make available information and expertise for the NEPA analysis to help permitting agencies assess the affected environment, analyze environmental effects and cumulative impacts of our trust resources, and complete ESA section 7 consultation. We would also be able to assist with the development of conservation measures to offset impacts and comply with provisions of our shared regulatory authorities.

License Recommendations Per FERC's request, we are highlighting the following recommendations intended to reduce the potential for take of ESA-listed species or migratory birds and to reduce the effects of stressors to ESA-listed species as identified in each species recovery plan.

1. As described in previous USFWS comments submitted on the PLP and DSRs, Mojave desert tortoise surveys for the Project were last completed in 2010. According to USFWS protocols (USFWS 2017), desert tortoise surveys are valid for one year. Thus, under FPA Sections 10 (a)(1), the Project proponent shall conduct new active season

surveys using our revised pre-project survey protocols within a year before construction begins.

For example, the afterbay of the proposed hydroelectric pumped storage project at the base of the Hurricane Cliffs may constitute the permanent loss of occupied desert tortoise habitat on land managed by the BLM. Human development in occupied desert tortoise habitat is identified as one of the major stressors affecting Mojave desert tortoise recovery (USFWS 2011a). Additional active season surveys are needed to determine Project impacts to the desert tortoise population in that area. Under FPA Sections 10 (a)(1) and 10 (j)(2), we request FERC add a condition to the hydropower license to avoid, minimize, and offset impacts to Mojave desert tortoises and their occupied habitats in proposed hydropower station and associated power line locations.

2. For the listed plant species (Siler pincushion cactus, Holmgren milkvetch, Shivwits milkvetch), we recommend determining if suitable soils are present within the Project area and, if so, incorporating a 300 foot buffer in Project plans to evaluate indirect effects to listed plants. Under FPA Sections 10 (a)(1), if suitable soils are present, Project proponents shall conduct surveys for the listed plant species within suitable habitat by a qualified botanist as per our plant survey guidance (USFWS 2011b). Human development in occupied plant habitat is identified as one of the major stressors affecting recovery of the three plant species potentially in the Project area (USFWS 1986, USFWS 2006). If listed plant species are present in proposed hydropower station and associated power line locations, we request FERC add a condition to the hydropower license to avoid, minimize, and offset impacts to those species or their suitable habitats under FPA Sections 10 (a)(1) and 10 (j)(2).
3. In previous USFWS comments, we recommended that Project proponents conduct migratory bird surveys for the Project. Under FPA Sections 10 (a)(1), Project proponents shall conduct surveys for migratory birds prior to ground-disturbing activities. Under FPA Sections 10 (a)(1) and 10 (j)(2), Project proponents shall implement seasonal buffers and avoid construction in suitable areas during the breeding and nesting season (USFWS 2014) (Romin and Muck 2002) to reduce the Project's impacts to migratory birds.

While the draft license application notes that Project proponents will follow the Avian Protection Plan jointly produced by the Edison Electrical Institute and USFWS, we recommend the Project proponents identify the specific measures they would incorporate into transmission line design to prevent electrocutions and collisions. Specifically, under FPA Sections 10 (a)(1) and 10 (j)(2), Project proponents shall not place travelers (equipment used to hold electric transmission lines to poles) until necessary to reduce the potential for migratory birds to nest in the equipment. In addition, Project proponents shall minimize the use of flat pads and vegetation clearing to reduce ground disturbance that could impact migratory birds.

See *Attachment C. for Fish and Wildlife References.*

The USFWS looks forward to working with FERC staff, all NEPA cooperating agencies, and the Project proponents throughout the environmental planning process. If we can be of further assistance, please contact George Weekley at (385) 285-7929.

### **National Park Service**

The Proposed Action would require the National Park Service (NPS) to permit a ROW across the Glen Canyon National Recreation Area. The establishment of the ROW has the potential to impact resources at Glen Canyon National Recreation Area and Pipe Springs National Monument. It is therefore necessary for the project proponent to submit a ROW application that conforms to the fundamental purpose of the System units. The NPS has the following comments associated with their resources at Glen Canyon National Recreation Area and Pipe Springs National Monument.

#### *Goals and Objectives Associated with NPS Resources at Glen Canyon National Recreation Area and Pipe Springs National Monument*

The Goals and Objectives of the NPS for the Lake Powell Pipeline project which falls within the boundaries of Glen Canyon National Recreation Area and portions of the project which are outside the boundaries of NPS units but may have direct or indirect impacts on park system unit resources (such as soundscapes, viewscapes, night skies) are to:

- 1) Ensure applicable laws, regulations, and NPS Management Policies are adhered to and requirements are met in regards to the NEPA and environmental review process, ROW permitting processes, and all aspects of project implementation and long-term operation as it relates to the protection of natural and cultural resources and visitor experience, and
- 2) Minimize, to the extent possible, any short and long-term adverse impacts to natural and cultural resources, park and concessioner operations, and visitor experience through the implementation of best management practices and mitigation measures provided by the National Park Service.

See *Attachment D. for Statutory Authorities, Laws, Regulations, and Policies Applicable on NPS Land.* See *Attachment E. for NPS Right-of-Way Process.*

#### *Mitigations, Best Management Practices, Terms and Conditions*

##### *Glen Canyon National Recreation Area*

1. The NPS requests that impact analyses in the EIS specifically identify and include any and all areas of disturbance, including not only the pipeline and intake/pump stations, but also staging areas, temporary construction access routes, long-term operation and maintenance routes, transmission line routes, and transmission line access routes.

2. The NPS requests that the impact analyses in the EIS specifically address recreational, operational, and economic impacts to the park as a result of potential reservoir drawdown, especially under the climate change scenario, to include any potential changes to or relocations of water-based infrastructure, extension of ramps, access roads, parking areas, utilities, etc. associated with the potential for lowering lake elevations.
3. The NPS requests that comments previously provided on the FERC licensing application be incorporated in the EIS.

### *Pipe Springs National Monument*

Selection of the "Highway Route" will have the largest effect on the historic viewshed from the national monument, essentially increasing the visible width of the existing modern highway (AZ 389) that is within a 1/2 mile view of the primary interpreted features in the monument. Fugitive dust during construction is a temporary effect. Selection of the highway route would presumably allow pipeline service and inspection vehicles to use the existing paved highway as an access road which could minimize dust plumes during pipeline operation and inspections. However, if pipeline inspections drive the scar directly over the pipeline, the resulting dust plumes would have a periodic, adverse effect on visibility from the national monument.

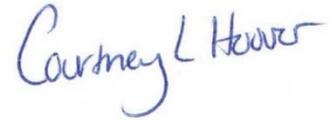
Selection of the southern route around the Kaibab Paiute Reservation would still produce an adverse effect on the viewshed and visibility. The viewshed impacts would be reduced due to the pipeline and service road scars being 2 miles south of the national monument and less perceptible. However, vehicle use on unimproved access roads for pipeline inspections and operation would create a greater adverse visibility issue due to the quantity of suspended dust generated.

In either selection, periodic wetting of the pipeline access road would be an acceptable mitigation to keep the fine clay consolidated and reduce the generation of suspended particles from vehicle traffic. The NPS requests that the impact analyses in the EIS specifically address these issues.

Please contact Erin Janicki, Chief, Planning and Compliance Glen Canyon National Recreation Area, Rainbow Bridge National Monument, at (928) 608-6212 or [erin\\_janicki@nps.gov](mailto:erin_janicki@nps.gov), if you have any questions about NPS comments.

The Department appreciates the opportunity to provide these comments. If you have specific questions for an individual bureau, please reach out to the contact identified in the bureau comments section. If you have questions for the Department, please contact me at 303-445-2503, or [courtney\\_hoover@ios.doi.gov](mailto:courtney_hoover@ios.doi.gov).

Sincerely,

A handwritten signature in blue ink that reads "Courtney Hoover". The signature is written in a cursive style with a large initial 'C' and a long horizontal stroke at the end.

Courtney Hoover  
Regional Environmental Officer  
Office of Environmental Policy and Compliance

*Attachment A: BIA's Right-Of-Way Application and Checklist*

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
(Insert Name of BIA) Agency**

RIGHT-OF-WAY APPLICATION MUST IDENTIFY [§169.102(a)]:

1. Applicant Name and Address: \_\_\_\_\_  
\_\_\_\_\_
2. Tract(s) or parcel(s) affected by the right-of-way: \_\_\_\_\_
3. General location (easement description): \_\_\_\_\_
4. Purpose: \_\_\_\_\_
5. Term (Renewal, if applicable): \_\_\_\_\_
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under §169.105:

REQUIRED SUPPORTING DOCUMENTS [§169.102(b)]:

1. Accurate legal description of the right-of-way, its boundaries, and parcels associated with the right-of way;
2. A map of definite location of the right-of-way; (25 CFR 169.102((b)(2); survey plat signed by professional surveyor or engineer showing the location, size, and extent of the ROW and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C. § 176, 43 U.S.C. § 2 AND § 1764, and showing existing facilities adjacent to the proposed project.)
3. Bond(s), insurance, and/or other security meeting the requirements of §169.103;
4. Record of notice that the right-of-way was provided to all Indian landowners;
5. Record of consent that the right-of-way meets the requirements of §169.107, or a statement documenting a request for a right-of-way without consent under §169.107(b);
6. If applicable, a valuation meeting the requirements of §§ 169.110, 112, 114;
7. With each application, if the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:
  - a. The representative has authority to execute the application;
  - b. The right-of-way will be enforceable against the applicant; and
  - c. The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

- 8. Current environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;
- 9. If required, a statement from the appropriate tribal authority that the proposed right-of-way is in conformance with applicable tribal law.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

Applicant Point of Contact Information:

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

DATE: \_\_\_\_\_ APPLICANT: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**BIA RIGHT-OF-WAY CHECKLIST**

Applicant: \_\_\_\_\_ Purpose: \_\_\_\_\_  
 Land Status: Tribal \_\_\_\_\_ Allotment \_\_\_\_\_ Location: \_\_\_\_\_  
 New  Renewal  Amendment  Assignment  Mortgage

<b><u>DATE:</u></b>	<b><u>DOCUMENTATION:</u></b>	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>N/A</u></b>
<b>Preliminary Documents</b>				
_____	Applicant's Letter of Intent to Obtain ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Title Status Report, Landowner Name and Address	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Permission to Survey from Landowners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Field Inspection (Photos, Maps, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Right-of-Way Application Package</b>				
_____	Consent(s):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Tribal Resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Landowner(s) Consent to Grant ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Spreadsheet - consent percentage calculation, if applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Superintendent/Regional Director per 25 CFR 169.108, if applicable.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maps:</b>				
_____	Survey Plat/Legal description	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Location Map showing adjacent existing facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Environmental Compliance:</b>				
_____	Categorical Exclusion (CatEX)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Environmental Assessment (EA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Finding of No Significant of Impact (FONSI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Environmental Impact Statement (EIS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Record of Decision (ROD)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	NHPA Section 106	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	ESA Section 7 review	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Valuation:</b>				
_____	Valuation Report received	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Valuation Review requested (OASIS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Certification of Valuation Review by OST Appraisal Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Fair Market Value	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Corporate Documents:</b>				
_____	Authority of Officers to Execute Documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Articles of Partnership or Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	State-certified corporate charter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	License to do business (Tribe and/or State)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Waivers:</b>				
_____	Valuation (Appraisal, market analysis, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Bond(s), insurance, and/or alternative form of security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Compensation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Permission to cross existing rights-of-way, if applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Payment - Lockbox or Proof of Payment for Direct Payment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Grant of Easement for ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Attachment B: BLM References for Lake Powell Pipeline: Primary Laws, Regulations and Policy*

**Primary Laws, Regulations and Policy**

- CEQ implementing regulations for NEPA (40 CFR 1500–1508);
- DOI NEPA regulations (43 CFR 46); BLM NEPA handbook (H-1790-1)
- Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1761–1771)
  - 43 CFR Part 2800 outlines BLM policies for managing ROWs under FLMPA. As stated under 43 CFR 2801.2, it is BLM's objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or government entity and to direct and control the use of rights-of-way on public lands in a manner that:
    - (a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a government entity;
    - (b) Prevents unnecessary or undue degradation to public lands;
    - (c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and
    - (d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.
- BLM Planning Regulations (43 CFR 1601 and 1610)
- Paleontological Resources Preservation Act 2009
- National Historic Preservation Act (16U.S.C. 470); 26 CFR 800
- Endangered Species Act

**Important aspects to be included in the EIS**

*Chapter 1:*

BLM's Purpose and Need:

In accordance with the FLPMA and the BLM's ROW regulations (43 CFR 2800), the EIS states (takes into account) the BLM's multiple-use mandate. The need for the BLM action is established by the BLM's responsibility under FLPMA to respond to a request for a ROW grant while avoiding or minimizing adverse impacts to other resource values and to locate the uses in conformance with land use plans. The BLM's purpose for the Proposed Action is to respond to a ROW application.

BLM's Decision to be made: The BLM will decide whether to grant, grant with modifications, or deny the application. Modifications could include granting only a portion of the Project, modifying the proposed use, or changing the route or location of the proposed facilities if the BLM determines such terms, conditions, and stipulations are in the public interest (43 CFR 2805.10(a)(1)).

The table is a list of key laws, regulations and policies:

<b>MAJOR FEDERAL AUTHORIZING LAWS, REGULATIONS, AND POLICIES</b>	
<b>Law and Regulation</b>	<b>Reference</b>
American Indian Religious Freedom Act of 1978	42 United States Code (U.S.C.) 1996
Antiquities Act of 1906	16 U.S.C. 431 et seq.
Archaeological Resources Protection Act of 1979, as amended	16 U.S.C. 470aa et seq.
Bald and Golden Eagle Protection Act of 1972	16 U.S.C. 668
Bureau of Land Management (BLM) Land Use Planning Handbook H-1610-1 (2008)	BLM Manual Release 1-1693
BLM right-of-way regulations	43 Code of Federal Regulations (CFR) 2800
BLM National Environmental Policy Act (NEPA) Handbook H-1790-1 (2008)	BLM Manual Release 1-1710
Clean Air Act of 1963	42 U.S.C. 7401 et seq.
Clean Water Act of 1972	33 U.S.C. 1251 et seq.
Comprehensive Environmental Response, Compensation, and Liability Act of 1980	42 U.S.C. 9601-9675
Consultation and Coordination with Indian Tribal Governments	Executive Order 13084
Consultation and Coordination with Indian Tribal Governments	Executive Order 13175
Council on Environmental Quality's Regulations for Implementing the National Historic Preservation Act (NEPA)	40 CFR 1500 et seq.
Departmental Responsibilities for Indian Trust Resources	512 Department Manual 2.1
Endangered Species Act of 1973	16 U.S.C. 1531 et seq.
Environmental Justice in Minority Populations and Low-income Populations	Executive Order 12898
Federal Compliance with Pollution Control Standards	Executive Order 12088
Federal Land Policy and Management Act of 1976 (FLPMA)	U.S.C. 1701 et seq.; 43 CFR 2800 (BLM FLPMA regulations covering special uses)
Floodplain management	42 U.S.C. 4321; Executive Order 11988
Indian sacred sites	Executive Order 13007
Migratory Bird Treaty Act of 1918	16 U.S.C. 703 et seq.; Executive Order 13186
National Environmental Policy Act	42 U.S.C. 4371 et seq.; 36 CFR 800

National Historic Preservation Act of 1966 and regulations implementing	16 U.S.C. 470 et seq.; 36 CFR 800
National Trails System Act of 1968	16 U.S.C. Sections 1241 et seq.
Native American Graves Protection and Repatriation Act of 1990	25 U.S.C. 3001 et seq.
Noise Control Act of 1972, as amended	42 U.S.C. 4901 et seq.
Noxious weeds and invasive species	Executive Order 13112
Paleontological Resources Preservation Act of 2009	16 U.S.C. 470aaa et seq
Pollution Prevention Act of 1990	42 U.S.C. 13101 et seq.
Protection and Enhancement of the Cultural Environment	Executive Order 11593
Protection of wetlands	42 U.S.C. 4321; Executive Order 11990
Resource Conservation and Recovery Act of 1976	42 U.S.C. 6901 et seq.; 42 U.S.C. 6992k
Responsibilities and the Endangered Species Act	Secretarial Order 3206, June 5, 1997
Safe Drinking Water Act of 1974	42 U.S.C. 300f et seq.
Wild and Scenic Rivers Act of 1968	P.L. 90-542; 16 U.S.C. 1271 et seq

*Chapter 1 Continued – Land use Planning process:*

- Describes the need for a plan amendment
- Describes scoping for planning
- Describes plan amendment alternatives

*Chapter 2:*

- Does the EIS clearly describe the proposed action and alternatives [40CFR1502.14]
- Does the EIS clearly describe the proposed action and alternatives [40CFR1502.14]
- Is the No Action Alternative adequately described [40CFR1502.14(d)]
- Are the Alternatives eliminated from detailed analysis adequately described with a strong (defensible) rationale for elimination [40CFR1502.14(a)]
- Are design features that would reduce impacts described for each alternative [40CFR1502.14(f)]
- Is the Agency preferred (preliminarily preferred) alternative identified with an adequate rationale for its selection [40CFR1502.14(e)] Is it different than the Environmentally Preferable Alternative?
- Have reasonable alternatives not within the jurisdiction of the lead agency been included [40CFR1502.14(c)]
- For each alternative analyzed (including No Action) in detail? Is the depth of analysis similar allowing for comparison [40CFR1502.14(b)]

*Chapter 3: Affected Environment*

- Does the EIS describe the environment of the area(s) to potentially be affected by the proposed action and alternatives [40CFR1502.15]
- Does the EIS identify the following (as applicable)
  - Floodplains [EO11988; 10 CFR 1022]
  - Wetlands [EO 11990; 10 CFR 1022; 40CFR1508.27(b)(3)]
  - Threaten & Endangered or Special status species [16USC1531;40CFR1508.27(b)(9)]
  - Prime or unique farmland [USC 4201; 7CFR658;40CFR1508.27(b)(3)]
  - State, National Parks, ecological, scenic or aesthetic importance [40CFR1508.27(b)(3)]
  - Wild and Scenic Rivers [16 USC1271; 40 CFR1508.27(b)(3)]
  - Natural Resources (timber, minerals, fish, migratory birds, wildlife, water bodies, aquifers) [40CFR1508.8]
  - Property of historic, archaeological or architectural significance [EO 11593; 16USC470; 36CFR 800; 40 CFR 1508.27(b)(3)(8)]
  - Native American Concerns [EO 13007; 25USC 3001; 16USC 470; 42USC 1996]
  - Minority and low-income populations [40CFR 1502.16(c)]
  - Does the affected environment description provide the necessary information to support the impact analysis including cumulative [40 CFR 1502.15]

#### *Chapter 4: Environmental Effects*

- Are the direct and indirect impacts of the proposed action and alternatives adequately identified and significance discussed [40CFR1502.16(a)(b)]
- Does the EIS analyze both beneficial and adverse impacts [40CFR 1508.27(b)(1)]
- Does the EIS discuss reasonably foreseeable future actions (impacts) of cumulative actions with regard to both the proposed and alternatives [40CFR1508.25(a)(2)]
- Does the EIS discuss the potential direct, indirect, and cumulative effects to the following (as applicable)
  - Floodplains [EO11988; 10 CFR 1022]
  - Wetlands [EO 11990; 10 CFR 1022; 40CFR1508.27(b)(3)]
  - Threaten & Endangered or Special status species [16USC1531;40CFR1508.27(b)(9)]
  - Prime or unique farmland [USC 4201; 7CFR658;40CFR1508.27(b)(3)]
  - State, National Parks, ecological, scenic or aesthetic importance [40CFR1508.27(b)(3)]
  - Wild and Scenic Rivers [16 USC1271; 40 CFR1508.27(b)(3)]
  - Natural Resources (timber, minerals, fish, migratory birds, wildlife, water bodies, aquifers) [40CFR1508.8]

- Property of historic, archaeological or architectural significance [EO 11593; 16USC470; 36CFR 800; 40 CFR 1508.27(b)(3)(8)]
- Native American Concerns [EO 13007; 25USC 3001; 16USC 470; 42USC 1996]
- Minority and low-income populations [40CFR 1502.16(c)]
- Does Cumulative section describe the incremental differences in cumulative effects as a result of the proposed action? Of the alternatives? (40CFR1508.7)
- To the extent possible does the EIS assess reasonable alternatives and identify measures to restore and enhance the environment, avoid or minimize potential adverse effects [40CFR1500.2(f)]

Does the EIS avoid the appearance of justifying a decision that has already been made [40CFR1502.22 and 1502.24]

***Attachment C. Fish and Wildlife References***

Romin, L. A., and J. A. Muck. 2002. Utah Field Office Guidelines for Raptor Protection From Human and Land Use Disturbances. U.S. Fish and Wildlife Service, Utah Field Office, Salt Lake City, Utah. Available at: [https://www.fws.gov/utahfieldoffice/Documents/MigBirds/Raptor%20Guidelines%20\(v%20March%2020,%202002\).pdf](https://www.fws.gov/utahfieldoffice/Documents/MigBirds/Raptor%20Guidelines%20(v%20March%2020,%202002).pdf)

U.S. Fish and Wildlife Service (USFWS). 2017. Preparing for any action that may occur within the range of the Mojave Desert Tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Desert Tortoise Recovery Office, Reno, Nevada. 25 pp. Available at: [https://www.fws.gov/nevada/desert\\_tortoise/documents/manuals/Mojave%20Desert%20Tortoise\\_Pre-project%20Survey%20Protocol\\_2017.pdf](https://www.fws.gov/nevada/desert_tortoise/documents/manuals/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2017.pdf)

USFWS. 2014. Migratory Bird Conservation Actions for Projects to Reduce the Risk of Take during the Nesting Season. U.S. Fish and Wildlife Service, Region 6, Denver Colorado. 3 pp. Available at: [https://www.fws.gov/utahfieldoffice/Documents/MigBirds/Mig%20Bird%20Cons%20Actions%20for%20projects\\_%20June%202014.pdf](https://www.fws.gov/utahfieldoffice/Documents/MigBirds/Mig%20Bird%20Cons%20Actions%20for%20projects_%20June%202014.pdf)

USFWS. 2011a. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*). Region 8, Pacific Southwest Region. U.S. Fish and Wildlife Service, Sacramento, California. 246 pp. Available at: [https://www.fws.gov/nevada/desert\\_tortoise/documents/recovery\\_plan/RRP%20for%20the%20Mojave%20Desert%20Tortoise%20-%20May%202011.pdf](https://www.fws.gov/nevada/desert_tortoise/documents/recovery_plan/RRP%20for%20the%20Mojave%20Desert%20Tortoise%20-%20May%202011.pdf)

USFWS. 2011b. Utah Field Office Guidelines for Conducting and Reporting Botanical Inventories and Monitoring of Federally Listed, Proposed, and Candidate Plants. U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, West Valley City, Utah. Available at: <http://www.fws.gov/utahfieldoffice/SurveyorInfo.html>

USFWS. 2006. *Astragalus holmgreniorum* (Holmgren milk-vetch) and *Astragalus ampullarioides* (Shivwits milk-vetch) recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 106 pp. Available at: [https://ecos.fws.gov/docs/recovery\\_plan/060929.pdf](https://ecos.fws.gov/docs/recovery_plan/060929.pdf)

USFWS. 1986. Recovery Plan for the Siler Pincushion Cactus (*Pediocactus sileri*). Region 2, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 64 pp. Available at: [https://ecos.fws.gov/docs/recovery\\_plan/860414b.pdf](https://ecos.fws.gov/docs/recovery_plan/860414b.pdf)

*Attachment D. Statutory Authorities, Laws, Regulations, and Policies Applicable on NPS Land*

- 54 USC §100101(a) (formerly 16 USC §1, the National Park Service Organic Act of 1916) the Secretary, acting through the Director of the National Park Service shall: “...promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations”.
- 54 USC § 10101(b)(2) provides that the authorization of activities in the National Park System “shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress”;
- 36 CFR Chapter 1 – National Park Service, Department of the Interior
- Rights-of-way, 54 U.S.C. §§ 100902(a) and 100902(b), 36 CFR Chapter 1, Part 14
- Glen Canyon National Recreation Area Enabling Legislation, PL 92-593
- National Environmental Policy Act, Council on Environmental Quality Regulations, 40 CFR Parts 1500-1508
- National Park Service Director’s Order 12 and NEPA Handbook
- National Historic Preservation Act, 16 U.S.C. 470
- Archaeological Resources Protection Act, 16 U.S.C. 470aa-470mm
- Secretary of the Interior’s Standards for the Treatment of Historic Properties, 36 CFR Part 68
- Director’s Order 28 and Handbook, Cultural Resource Management (see also: Handbooks 28A, 28B, and 28C)
- Glen Canyon National Recreation Area Superintendent’s Compendium, 16 U.S.C. § 3, 36 CFR Chapter 1, Parts 1-7
- 2006 National Park Service Management Policies
- Other laws including, but not limited to: Endangered Species Act, Migratory Bird Treaty Act, Wilderness Act, Clear Water Act, Clean Air Act, Paleontological Resources Preservation Act

***Attachment E. NPS Right-of-Way Process***ROW/Process

1. As part of the NPS ROW permitting process, supplemental documents, including but not limited to a metes and bounds legal description and engineer-stamped site construction plans, shall be provided for the routes of the pipeline, transmission lines, access routes, and other infrastructure as part of the ROW application.
2. Aspects of the project requiring a ROW permit shall be co-located, to the extent possible, within other existing ROW and previously disturbed areas. This includes, but is not limited to: the ADOT and UDOT highway ROW corridor, existing transmission line routes, existing park General Management Plan roads, off-road vehicles routes (per the Glen Canyon Off-road Vehicle Management Plan EIS), and existing utility administrative access routes.
3. All ROW permit conditions as well as mitigations and best management practices identified in the Plan of Development/ROW application shall be adhered to during construction, operation and maintenance activities.

Construction General

1. Active construction area limits, staging areas, and construction access routes shall be identified in coordination with NPS staff and marked to minimize the amount of disturbance within the project area.
2. Pre-construction meetings shall be held with the project proponent, contractors, sub-contractors, NPS/Glen Canyon staff, and other entities, as appropriate, prior to the start of work. Subsequent and routine construction update meetings shall occur between the NPS and the project proponent and project managers throughout the construction and restoration phases of the project at intervals as requested by the NPS.
3. Contractors shall be given an orientation prior to the start of construction to include, but not limited to, the following topics: proper conduct within an NPS unit with respect to wildlife, natural and cultural resources, proper conduct of operations, prohibited activities on NPS land, review of mitigation measures, and proper notification procedures when on NPS land.
4. All equipment and machinery shall be inspected for leaks of oils or fluids prior to entering the park and at the beginning and end of each work day. Any identified leaks shall be immediately stopped and machinery shall be removed from the park until repaired. Leaks or spills shall be reported to NPS personnel immediately upon discovery.
5. Contractors shall have a spill response plan which would be immediately implemented upon discovery of a spill or leak. The spill response plan shall include requirements for containment kits, reporting procedures, and clean-up measures and will be reviewed and approved by NPS personal for portions of the project which occur on NPS land.
6. Equipment and machinery shall not be refueled on-site unless refueling procedures and plans are approved by the Park Superintendent.
7. All utilities shall be located and marked prior to the start of construction. Should any disruption of services occur as a result of construction related activities, the project proponent must repair the damage within four (4) hours from the time the damage occurred.

8. The project proponent and/or contractors shall coordinate with NPS Facilities staff regarding the pipeline crossing of the NPS force sewer main line to ensure there are no conflicts between the infrastructure and to ensure access to the sewer force main is not impeded in any way at the point of intersection during construction or operation of the Lake Powell Pipeline.
9. All project work sites, staging, and access areas shall be kept clean and tidy. Generated litter and trash shall be collected daily and removed from the park to a proper disposal location. To the extent possible, waste materials shall be recycled to reduce the volume entering the waste stream.
10. Photographs shall be taken of pre-construction conditions and post-construction conditions.
11. A post-construction meeting and inspection shall occur within 30 days of the completion of work on NPS land. Additional annual meetings and inspections shall occur with the project proponent to assess the progress of revegetation and restoration work. Additional measures may be required of the project proponent to achieve the desired post-construction conditions.
12. Project proponent will have portable toilets in the work area; deposition of any human waste on NPS property is prohibited.

#### Recreation Resources/Visitor Experience

1. The project proponent shall work with NPS staff to produce informative materials for dissemination to park visitors as well as to produce press releases at critical points throughout the project implementation and construction phase.

#### Health/Safety

1. Contractors shall supply the NPS with a copy of the work-site and construction safety plan.
2. Active construction areas shall be marked to prevent park personnel, visitors, or any other non-project related individuals from entering the site.

#### Noise/Natural Sound

1. Machinery and equipment shall not be left running or idling any longer than necessary for active construction related activities or safety purposes to reduce the amount of constructed related noise impacts.
2. Machinery and equipment shall be properly muffled to achieve a maximum noise threshold of 60 decibels at 50 feet on the A-weighted scale. Any machinery or equipment used which will exceed this threshold must be disclosed to NPS personnel to include sound level in decibels and the average number of hours a day or length of time it will be used.
3. Noise related to the operations of the intake and booster pump station shall not exceed 45 decibels at the fence line or at a distance of 50 feet from the building, whichever is closer to the source of the noise.

#### Air Quality

1. Machinery and equipment shall not be left running or idling any longer than necessary for active construction related activities or safety purposes to reduce exhaust, impacts to air quality and noise impacts.

2. Watering shall be conducted regularly to prevent the presence of fugitive dust originating from the construction area.

#### Scenic Resources/Viewshed

1. All visible aspects of the pipeline project shall be painted, designed, or otherwise camouflaged to match the aesthetics of the surrounding natural environment.
2. In addition to the above, the NPS shall be involved in the design and review process to ensure buildings and structures on NPS land and/or visible from NPS land to ensure minimized impact to the viewshed and scenic resources.

#### Dark Sky

1. No night-time construction work will be conducted unless otherwise agreed upon and approved by the Superintendent.
2. Only the minimum amount of lighting required shall be installed on buildings and structures related to the Lake Powell Pipeline project. Any outdoor lighting installed shall be International Dark-Sky Association compliant and approved by NPS personnel.

#### Vegetation

1. Native plants shall be salvaged from the project area and replanted as part of post-construction restoration and revegetation activities.
2. Areas of disturbance shall be minimized to the extent possible to reduce the amount of damaged or destroyed vegetation.
3. Re-seeding and revegetation activities in the project area shall begin immediately after construction in the area has been completed. Re-seeding shall be done in compliance with the 2006 NPS Management Policies 4.4.1.2 and seeding shall be done using closely related ecological and genetic variants, sourced from as close to the project area as possible. The project proponent shall work with Glen Canyon staff a minimum of one year prior to the completion of construction on NPS lands to ensure propagation of appropriate seeds and quantities is achieved for re-seeding purposes.
4. The project area shall be monitored for 5 years post construction completion on NPS lands for the establishment or spread of any non-native plant species. If new populations are identified, they will be removed by the Project proponent using NPS approved methods.
5. A revegetation, monitoring and treatment plan written in accordance with NPS Management Policies shall be provided to the NPS for review and approval prior to the start of construction.

#### Soils/Geology

1. To the extent possible, construction and operation related activities will avoid any areas containing biological soil crusts.
2. As construction work is implemented and completed, the area shall be returned to pre-construction conditions to the extent possible. These actions include but are not limited to: raking out tracks, replacing soils in appropriate order and strata, re-compaction of soil to within 95% of initial condition, approximate rock arrangement, re-contouring the ground to

approximate pre-construction conditions and grade, and elimination of potential sources of erosion and gullyng. Project proponents shall work with NPS staff to determine the best methods for restoration.

During construction, minimize dust emissions by using water tankers or other means to spray water on disturbed surfaces.