CATEGORICAL EXCLUSION

Project Name/ Applicant: J & S Cattle LLC/ John Hagenbarth
Project/Case File Number: IDI-37119
Project Lead: Heather Schlenker
CE Number: DOI-BLM- ID-I010-2012-0007-CX
Date of Preparation: October 26, 2012

PROPOSED ACTION:

On August 18, 2011, J & S Cattle LLC, submitted an application (SF-299) requesting a right-of-way (ROW) authorization for legal access only on an existing two-track dirt road across public land to their private land.

The proposed road ROW is located approximately 5 miles Northwest of Dubois, Idaho, in the NE ¼ and the SE ¼ of section 35., T. 11 N., R. 35 E., Clark County, Idaho (Exhibit A). The ROW would be approximately 1.06 mile (5,596) feet in length, 12 feet in width, encumbering 1.6 acres of public land.

CONSULTATION AND COORDINATION:

This project was brought before an Interdisciplinary Team of Bureau of Land Management (BLM) specialists on October 26, 2012. A description of the proposed action was posted to the online NEPA register. This is available to members of the public through the USFO webpage. No comments were received and no issues/conflicts were identified for this project.

FINDING AND RECOMMENDATION:

The proposed action is categorically excluded as outlined in 516 DM 11.9, Appendix 5.4 E (16) and none of the extraordinary circumstances described in 516 DM 2, Appendix 2 apply. This exclusion states that acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purpose may be excluded from further environmental review.

I recommend that the road right-of-way authorization, ID-37119 be granted for approximately 30 years, expiring on December 31, 2042. The grant would allow for legal access only, no construction or maintenance would be authorized. The grant would be issued with the right to renew, subject to current terms and conditions and the attached stipulations (Exhibit B). The right-of-way would be granted under the authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and current Bureau regulations found at 43 CFR 2800. Rent would be collected as required in 43 CFR 2806.10.

DECISION AND RATIONALE FOR THE DECISION:

It is my decision to issue a right-of-way grant for IDI-37119, allowing the use of an existing road on public land to access private land. The grant would allow egress and ingress only, no construction or maintenance would be authorized. The right-of-way encumbers approximately 1.6 acres. The grant would be issued for approximately 30 years, expiring on December 31, 2042, with the right to renew, subject to the current terms and conditions found at 43 CFR 2800 and the attached stipulations. Rent would be collected as required in 43 CFR 2806.10.

Issuance of the right-of-way would cause no significant environmental disturbance. The subject action qualifies as a Categorical Exclusion and meets the criteria contained in 516 DM 11.9, Appendix 5.4 E (16). None of the exceptions found in 516 DM 2, Appendix 2 apply.

LAND USE PLAN CONFORMANCE:

The proposed action is in conformance with the Medicine Lodge Resource Management Plan (1985).

APPEALS INFORMATION:

43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2801.10

/s/Heather Schlenker 11/6/2012
Realty Specialist Date
Heather Schlenker

/s/Josh Gibbs 11/6/2012
NEPA Reviewer Date
Joshua Gibbs

/s/Jeremy Casterson 11/13/2012
Upper Snake Field Manager Date
Jeremy Casterson

Extraordinary Circumstances Requiring Preparation of an EA or EIS

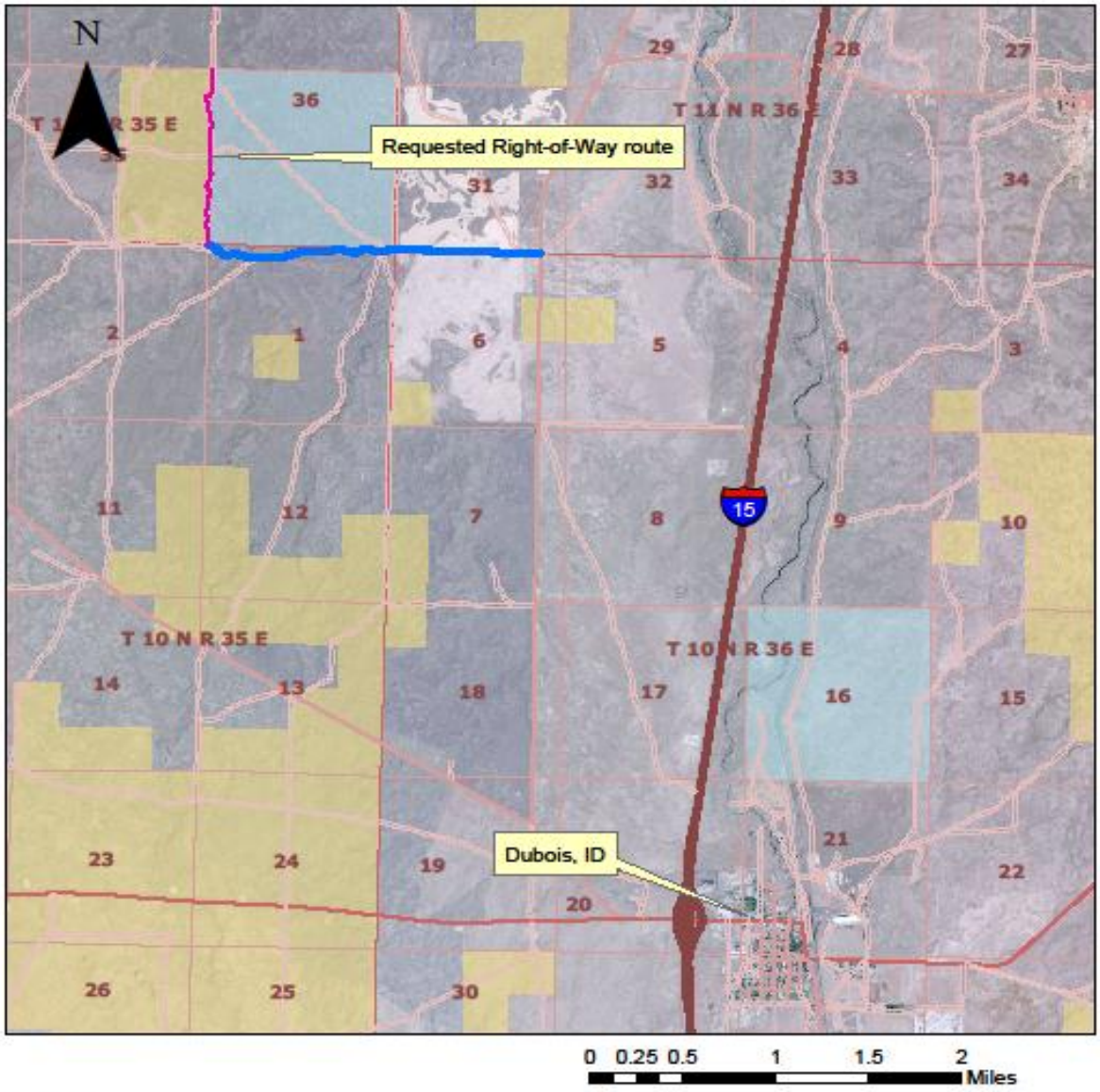
(516 DM 2, Appendix 2)

The action described in categorical exclusion # ID- I010-2012-0007-CX (IDI-37119) has been reviewed to determine that none of the extraordinary circumstances listed below pertain to the proposed action.

DM#	Extraordinary Circumstance
2.1	Have significant impacts on public health or safety
2.2	Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.
2.3	Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].
2.4	Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
2.5	Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
2.6	Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.
2.7	Have significant impacts on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau or office.
2.8	Have significant impacts on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have significant impacts on designated critical habitat for these species.
2.9	Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
2.10	Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).
2.11	Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).
2.12	Contribute to the introduction, continued existence, or spread of noxious weeds or non native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

IDI-37119 HAGENBARTH
T. 11 N., R. 35 E., Sec 35 & 36

EXHIBIT A
CLARK COUNTY
10/23/2012 HS



Legend

Surface Management Agency (Idahon Falls District)

Surface Management Agency

- Bureau of Land Management
- Private
- State
- Requested ROW (approx. 1.06 miles)
- ExistingPrivate Easements

Stipulations- Exhibit B

IDI-37119

Access Agreement

1. This Right-of-Way includes an agreement between the BLM and the Holder which allows the BLM to use a portion of the Holder's private property to access BLM property for a timber project in sections 2 & 11, T. 12 N., R. 38 E., B.M., Idaho. Access would be limited to the BLM and its contractors. The BLM will meet with the land owner prior to use in a pre-work meeting to mark designated access areas. The BLM shall stay on designated access areas unless otherwise approved by the Holder. The BLM shall retain access for a period of up to 5 years from the beginning date of this agreement or the end of the timber project, whichever comes first.

   Prior to termination of BLM's use of the private land, the BLM shall contact the Holder to arrange a joint inspection of the approved designated areas. This 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, or seeding.

Operation and Maintenance

2. The holder shall conduct all activities associated with the operation of the right-of-way within the authorized limits of the right-of-way.

3. Right-of-way shall be maintained in a sanitary condition at all times; waste materials at those sites 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.

4. There is reserved to the Authorized Officer, the right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant.

5. Ninety (90) days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This 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, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

6. The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgment, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.

7. The holder shall permit free and unrestricted public access to and upon the right-of-way for all lawful purposes except for those specific areas designated as restricted by the authorized officer to protect the public, wildlife, livestock, or facilities constructed within the right-of-way.

Weed Control

8. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).

9. Use of all pesticides (including fungicides, herbicides, insecticides, etc.) shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used , pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.

Cadastral

10. 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 and the respective installing authority if known. 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.

Environmental Protection

11. The holder of right-of-way No. IDI-37439 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way.) This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

Cultural

12. 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.

13. Pursuant to 43 CFR 10.4(g), the holder of this authorization must immediately notify the authorized officer by telephone, with written confirmation, upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), the holder must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer. The BLM Authorized Officer will determine avoidance, protection or mitigation measures in consultation with the Holder, Idaho SHPO, and affected Tribes. Costs associated with the discovery, evaluation, protection or mitigation of the discovery shall be the responsibility of the holder.