

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OF IDAHO
TWIN FALLS DISTRICT
Burley Field Office
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CATEGORICAL EXCLUSION REVIEW AND APPROVAL

Project Name: White Cloud Communications, Inc.
Communication Site Lease Issuance
NEPA Number: DOI-BLM-ID-T020-2013-0002-CX
Lead Preparer: Debbie Kovar, Communication Site Specialist
Project or Serial Number: IDI-37438
Date of Preparation: January 23, 2013

A. Background

Additional Information: The initial authorization (IDI-012066) was granted in 1961 under the Act of March 4, 1911, as amended, to Fisher Broadcasting-Idaho TV, LLC. The Act of 1911 has been repealed and does not allow for any changes (amendments, assignments, renewals etc.) to the grant. Therefore, this action will require the closure of this case file and a new case will be initiated under Federal Land Policy & Management Act of 1976 (FLPMA) for the reissuance of the communication site lease.

Purpose and Need of the Action: The purpose for this action is to consider whether or not to grant a communication site use lease with legal access on public land managed by BLM, and if so, under what terms and conditions. The need for this action is established by the BLM's responsibility under the Federal Land Policy and Management Act of 1976 to respond to applications for use of public land.

Project Location: The site is located about 4-miles south of Albion, Idaho and east of U.S. Highway 77. The legal description of the communication site location and access road is as follows: Facility Location - T. 12 S., R. 26 E., Boise Meridian; Section 19: SESE; Access Road (3.3 miles X 30') - T. 12 S., R. 25 E., Boise Meridian; Section 25: SENE, N2SE, SESW, SWSE; Section 35: SENE, E2SE; T. 12 S., R. 26 E., Boise Meridian; Section 30: Lots 1 & 2, NENE, W2NE, SENW.

Description of Proposed Action: This action is for the reissuance of the lease area for White Cloud Communications, Inc. on Cotterel Communication Site. It has been requested to continue the communication site use which includes a 20' X 20' shelter and an open pole

structure, 1000 gallon propane tank and 30 ft. X 3.3 miles access road. The authorization would include standard Terms, Conditions and Stipulations for communication site leases and the Cotterel Communication Site Plan. They will also be required to operate and be held to current regulations and policies including Motorola R56 Standards and bonding of communication sites. A bond will be established and requested in the amount of \$12,000.

B. Plan Conformance

This site is within the Cassia Resource Management Plan (RMP) approved on January 24, 1985, and is subject to the following recommendation: Limit rights-of-way to existing facilities/localities. The plan also requires that any valid use, occupancy or development of the public lands, including but not limited to those requiring rights-of-way, leases, and licenses, will be considered subject to applicable environmental review procedures, unless specifically excluded in the plan. The Cotterel Communication Site Plan (September 2002, Updated February 2003) identifies this and the immediate area for communication site uses. The communication site lease is in conformance with other governmental entity's requirements and plans.

C. Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 5.4 E. (9). This reference states, *“Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.”* This categorical exclusion is suitable in this situation because this communication site facility is currently in existence and within an authorized communication site facility's area.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 43 CFR 46.215 apply. The extraordinary circumstances checklist is located in the project file.

Consultation and Preparation: The affected environment of the project area was reviewed by an interdisciplinary team. It was determined that there would be no additional impacts as the area was already developed for communication site use.

Authorized Official:

/S/

January 23, 2013

Name: Michael C. Courtney
Title: Burley Field Office Manager

Date

Contact Person: For more information concerning the CX review, contact Debbie Kovar, Realty Specialist, at (208) 732-7401 or via email at dkovar@blm.gov.

Attachments

- 1- Terms, Conditions and Stipulations

TERMS, CONDITIONS, AND STIPULATIONS
White Cloud Communications, Inc. Lease IDI-37438

1. The Lessee shall install, maintain, and operate their equipment in accordance with the Motorola R56 Standards (Release 68P81089E50-B, 9/1/2005, or later applicable version) and/or applicable recognized industry standards, as determined by the BLM Authorized Officer.
2. To avoid causing harm to migratory birds project activities should not take place during the Migratory Bird nesting season from March 1 through July 31st, or until occupied nest are no longer active. If construction activities must take place during the migratory bird nesting season an exception request must be submitted to the BLM Authorized Officer in writing requesting a variance to the stipulation. Upon receiving this request an onsite evaluation would be completed by the BLM resource specialist to determine if implementation of the project activities will avoid causing harm to migratory birds. It is recommended that the project applicant contact the USFWS to discuss potential liability under the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.
3. Communication towers represent a potential collision hazard for avian species and bats. In an attempt to avoid/minimize this conflict communication site towers should avoid using guy wires. If the uses of guy wires are necessary then they should be adequately marked with bird deterrent devices. Deterrent devices should be constructed of quality material that will not fail under exposure to UV light and adverse weather conditions. Deterrent devices should also be of satisfactory size and color to increase detectability. Annual maintenance of deterrent devices may be necessary to ensure effectiveness.
4. Any new construction should take place adjacent to existing structures and utilize existing access roads. If new construction will occur an additional clearance and field evaluation will be required.
5. A performance bond, acceptable to the authorized officer, shall be furnished by the lessee in the amount of **\$12,000**. This bond may be periodically adjusted by the authorized officer when, in his/her sole determination, conditions warrant such a change. In addition, whenever requested by the authorized officer, the lessee shall furnish a report within 90 days estimating all costs to the BLM to fulfill the terms and conditions of the lease in the event that the lessee was not able to do so. This estimate report shall be prepared by an independent State certified engineer who is approved in advance by the BLM authorized officer, and shall include such information including but not limited to administrative costs and Davis Bacon wages potentially incurred by the BLM. The report shall detail the estimated costs and shall be accompanied by the engineer's seal. All costs of preparing and submitting this report shall be borne solely by the lessee. This report along with inflationary estimates shall be the basis of the bond, and shall remain in effect until such time that the authorized officer determines that conditions warrant a review of the bond. Surface disturbing activities shall not commence until the BLM authorized officer has accepted the bond and issued a notice to proceed.
6. All development, operation and maintenance of the authorized facility, improvements, and equipment located on the property must be in accordance with stipulations in the communications site plan approved by the Authorized Officer. If required by the Authorized Officer, all plans for development, layout, construction, or alteration of

improvements on the property as well as revisions of such plans must be prepared by a licensed engineer, architect, and or landscape architect. Such plans must be approved in writing by the Authorized Officer before commencement of any work. After completion, as-built plans, maps, surveys, or other similar information will be provided to the Authorized Officer and appended to the communications site plan.

7. The Lessee must comply with applicable Federal, State, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this lease. The obligations of the Lessee under this lease are not contingent upon any duty of the Authorized Officer, or other agent of the United States, to inspect the premises. A failure by the United States, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms or conditions of this lease. Lessee waives all defenses of laches or estoppel against the United States. The Lessee must at all times keep the title of the United States to the property free and clear of all liens and encumbrances.
8. Use of communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or Director of Telecommunications Management/Interdepartmental Radio Advisory Committee (DTM/IRAC) authorization (if required), and the operation of the equipment is in strict compliance with applicable requirements of FCC or IRAC. A copy of each applicable license or authorization must at all times be maintained by the Lessee for each transmitter being operated. The Lessee must provide the Authorized Officer, when requested, with current copies of all licenses for equipment in or on facilities covered by this lease.
9. The Lessee must ensure that equipment within his or her facility (including tenant and customer equipment) operates in a manner which will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site. If the Authorized Officer or authorized official of the Federal Communications Commission (FCC) determines that the Lessee's use interferes with existing equipment, the Lessee must promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the Authorized Officer or FCC official.
10. When requested by the Authorized Officer, the Lessee must furnish technical information concerning the equipment located on the property.
11. The Lessee assumes all risk of loss to the authorized improvements.
12. The Lessee must comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S. C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.
13. The Lessee must indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the Lessee's use or occupancy of the property. The Lessee's indemnification of the United States must include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this lease. Indemnification must include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire

suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph survives the termination or revocation of this lease, regardless of cause.

14. The United States has no duty, either before or during the lease term, to inspect the property or to warn of hazards and, if the United States inspects the property, it will incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This paragraph survives the termination or revocation of this lease, regardless of cause.
15. The Lessee has an affirmative duty to protect from damage the land, property, and interests of the United States.
16. In the event of any breach of the lease by the Lessee, the Authorized Officer may, on reasonable notice, cure the breach at the expense of the Lessee. If the Bureau of Land Management at any time pays any sum of money or does any act which requires payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages will, at the election of the Bureau of Land Management, be deemed to be additional rental hereunder and will be due from the Lessee to the Bureau of Land Management on the first day of the month following such election.
17. Nondiscrimination. The Lessee must at all times operate the described property and its appurtenant areas and its buildings and facilities, whether or not on the property, in full compliance with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of the Interior and in effect on the date this lease is granted to the end that no person in the United States will, on the grounds of race, sex, color, religion, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any of the programs or activities provided thereon.
18. This lease may be suspended or terminated upon breach of any of the terms or conditions herein or upon nonuse, or when in the public interest. Nonuse refers to a failure to operate consistently the facilities on the property for any period during the term in excess of 180 days. When suspended or terminated in the public interest, the Lessee will be compensated subject to the availability of appropriated funds. Compensation will be based upon the initial cost of improvements located on the lease, less depreciation as allocated over the life of the improvements as evidenced by the Lessee's Federal tax amortization schedules.
19. Except in emergencies, or in case of nonuse, the Authorized Officer will give the Lessee written notice of the grounds for termination or suspension and a reasonable time, not to exceed 90 days, to complete the corrective action. After the prescribed period, the Bureau of Land Management is entitled to such remedies as are provided herein.
20. Any discretionary decisions or determinations by the Authorized Officer on termination or suspension are subject to appeal in accordance with the regulations in Title 43, Code of Federal Regulations.
21. In the event the Authorized Officer decides not to issue a new lease, or the Lessee does not desire a new lease, the Lessee must, prior to the termination of this lease, restore and stabilize the site to the satisfaction of the Authorized Officer.

22. In the event this lease is revoked for noncompliance, the Lessee must remove all structures and improvements within a reasonable period as determined by the Authorized Officer, except those owned by the United States, and must restore the site as nearly as reasonably possible to its original condition unless this requirement is otherwise waived in writing by the Authorized Officer.
23. If the Lessee fails to remove all structures or improvements within the prescribed period, they will become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States.
24. Members of Congress. No member of or Delegate to Congress or Resident Commissioner may benefit from this lease either directly or indirectly, except when the lease provides a general benefit to a corporation.
25. Reservations. This lease is granted subject to the following reservations by the United States:
 - a) The right to all natural resource products now or hereafter located on the property unless stated otherwise herein, and the right to obtain, utilize, or dispose of such resources insofar as the rights and possession of the Lessee are not unreasonably affected.
 - b) The right to modify the communications site plan as deemed necessary.
 - c) The right to enter upon the lease and inspect all facilities to assure compliance with the conditions of this lease.
 - d) The right of the United States to use or to authorize the use of the property for compatible uses, including the subsurface and air space.
26. The Holder shall comply with the applicable Federal and State Laws and regulations concerning the use of pesticides (i.e. insecticides, herbicides, fungicides, rodenticide, and other similar substances) in all activities/operations under this grant. Pesticides shall be used only in accordance with their registered uses and within the 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. Pesticides shall not be permanently stored on public lands authorized for use under this grant. Applicator(s) shall hold a current applicator's license.
27. The Lessee shall visibly post the Bureau serial number assigned to the lease within the lease area.
28. Upon reasonable notification, the BLM authorized officer shall have the right to jointly inspect with the Lessee, the Lessee's communication facility to insure compliance with the terms and conditions, and stipulations of the authorized lease.