

**United States Department of the Interior
Bureau of Land Management**

**Categorical Exclusion DOI-BLM-MT-C020-2016-0036-CX
November 4, 2016**

**Gunsight ROW
MTM-48793**

***Location:* McCone County**
T. 26 N., R. 43 E., Section 13: Lot 7 (canal/pipeline)
T. 26 N., R. 44 E., Section 19: SW $\frac{1}{4}$ NE $\frac{1}{4}$ (road)

U.S. Department of the Interior
Bureau of Land Management
Miles City Field Office
111 Garryowen Road
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UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

CATEGORICAL EXCLUSION REVIEW AND APPROVAL

A. Background

BLM Office: Miles City Field Office

Serial/Case File No.: MTM-48793

NEPA Number (if applicable): DOI-BLM-MT-C020-2016-0036-CX

Proposed Action Title/Type:

Assignment of ROW from Idland to Gunsight MTM-48793

Location of Proposed Action (w/county):

T. 26 N., R. 43 E., Section 13: Lot 7 (canal/pipeline) and
T. 26 N., R. 44 E., Section 19: SW $\frac{1}{4}$ NE $\frac{1}{4}$ (road), McCone County, Montana, PMM

Background:

On April 16, 1981, Edmund and Loretta Walton were authorized for Right-of-way MTM-48793 for an irrigation canal, water pipeline, and an access road. On September 14, 2004, it was assigned to Farm Service Agency. On April 27, 2007, it was assigned to Glen Idland. It will terminate on December 31, 2036. The rental is paid through December 31, 2016. Gunsight Land Partnership, LLP has requested that the right-of-way be assigned to them from Glen Idland. Gunsight has submitted a SF-299, an Assignee Agreement, and paid the \$424 processing fee. Gunsight agrees to comply with and be bound by all the terms and conditions of the right-of-way grant. Mr. Idland has signed the Assignor Consent form agreeing to assign the right-of-way to Gunsight.

Description of Proposed Action:

Gunsight Land Partnership, LLP agrees to comply with and be bound by all the terms and conditions of the right-of-way grant for a canal, water pipeline, and access road located on Federal land. The canal and water pipeline are located on Lot 7 of Section 13, T. 26 N., R. 43 E. in McCone County, Montana. The portion of the right-of-way for the canal and water pipeline is 200 feet wide, 569.50 feet long, and consists of 2.61 acres, more or less. The portion of the right-of-way for the road is located on Federal land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T. 26 N., R. 44 E. in McCone County, Montana. The road is 40 feet wide, 311.90 feet long, and consists of 0.29 acres, more or less. There is an existing county road that provides access to the road right-of-way that leads to a residence. There is a county road and a BLM easement MTM-96626 that leads to the canal and water pipeline.

The right-of-way rental has been paid through December 31, 2016. A Category 2 processing fee of \$424 has been received. No known hazardous materials would be used during the term of the right-of-way.

The right-of-way would be used on a year-around basis. Right-of-way use will be monitored by the BLM and Gunsight Land Partnership, LLP.

Termination activities for the Federal surface area would be conducted in much the same manner as construction activities. Access will be available along the same route. All above-ground materials would be removed and disposed of in a licensed landfill. Reclamation would be done according to BLM requirements. The area will be scarified and reseeded with an appropriate seedmix. Reclamation is not needed on the relinquishment area because it was never disturbed.

The right-of-way would be renewed pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and would be subject to the terms and conditions in 43 CFR 2800, the terms and conditions and stipulations specified below, and mitigations set forth in the application. The standard stipulations for cultural and/or paleontological resource protection, hazardous materials, and toxic substances will be made a part of the right-of-way grant, as will the standard stipulations that all activities associated with the right-of-way will be conducted within the authorized limits of the grants. The applicant shall be responsible for weed control on disturbed areas within the limits of the right-of-way. There will be no construction or routine maintenance when the soils are too wet. The holder will reclaim the area with the appropriate seedmix. The right-of-way would be subject to mitigations set forth in the application and plan of development. The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands.

B. Land Use Plan Conformance

Land Use Plan Name: BLM 2015 Miles City Resource Management Plan

Date Approved/Amended: Approved September 21, 2015

The proposed action is in conformance with the applicable LUPs because it is specifically provided for in the following LUPs decision(s):

This proposed action is in conformance with the BLM 2015 Miles City Resource Management Plan (ARMP) which was approved in September, 2015. On page 3-8 of the ARMP, it states; "On the remaining surface acres in the planning area, Major ROWs are allowed on 445,170 surface acres (16%) and Minor ROWs are allowed on 1,809,798 surface acres (66%)." The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5.

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 11.9E (9) for 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 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, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances

The project would:

1. Have significant impacts on public health or safety.

Yes	No	Rationale: <i>The project would not have significant impacts on public health and safety as this is an assignment of an existing right-of-way authorized under MTM-48793. DDL 12/2/2015</i>
	X	

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.

Yes	No	Rationale: <i>Impacts would not be significant as the proposed action is for the assignment of an existing right-of-way authorized under MTM-48793. There are no Areas of Critical Environmental Concern, Wilderness Study Areas, Monuments, or other areas with special designation involved with this proposal. The proposed action would not occur in a floodplain or wetland area. DDL 12/2/2015</i>
	X	

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].

Yes	No	Rationale: <i>No controversial environmental effects or unresolved conflicts. DDL 12/2/2015</i>
	X	

4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

Yes	No	Rationale: <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. DDL 12/2/2015</i>
	X	

5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.

Yes	No	Rationale: <i>This action is not connected to another action that would require further environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis. DDL 12/2/2015</i>
	X	

6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

Yes	No	Rationale: <i>This action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. DDL 12/2/2015</i>
	X	

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.

Yes	No X	<p>Rationale: <i>Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.</i></p> <p>The assignment of the ROW from Idland to Gunsight will not involve new ground disturbance or have the potential to affect historic resources, therefore this action does not require a field inventory (<i>Handbook H-8110-1, Appendix 1, Realty No. 8</i>)</p> <p>See Report <i>MT-020-16-34</i></p> <p>JGH 12/7/2015</p>
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.		
Yes	No X	<p>Rationale: <i>This area does not provide habitat for threatened, endangered or candidate species. KU 12/3/15</i></p>
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	No X	<p>Rationale: <i>No laws are being violated by this action. DDL 12/2/2015</i></p>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	No X	<p>Rationale: <i>Does not have a disproportionately high and adverse effect on low income or minority populations. DDL 12/2/2015</i></p>
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).		
Yes	No X	<p>Rationale: <i>Consultation with tribes regarding Indian sacred sites must take place</i></p> <p>The proposed action will have no effect on access to the area and no sacred sites are known from the area.</p> <p>JGH 12/2/2015</p>
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).		
Yes	No X	<p>Rationale: <i>The proposed action will not contribute to the introduction or spread of noxious weeds. Under the authorization the applicant is responsible for weed control within the authorized area for the term of the right-of-way. DDL 12/2/2015</i></p>

/s/ Christopher Morris
Supervisory Land Use Specialist
Division of Non-Renewable Resources

12/10/2015
Date

/s/ Kathy Bockness
Environmental Coordinator

12/7/2015
Date

Decision Record for Categorical Exclusion
Gunsight Right-of-Way Assignment MTM-48793
DOI-BLM-MT-C020-2016-0036-CX

Decision: I have made the decision to the assignment of a Federal Land Policy and Management Act (FLPMA) road right-of-way (ROW) for MTM-48793 from Glen Idland to Gunsight Land Partnership, LLP. All repairs, restoration, maintenance and operations will occur within the previously-disturbed area which was previously authorized under MTM-48793. Therefore, no new land would be disturbed. The right-of-way is located on Federal lands (PD land) in the following locations:

T. 26 N., R. 43 E., Section 13: Lot 7 (canal/pipeline) and
T. 26 N., R. 44 E., Section 19: SW $\frac{1}{4}$ NE $\frac{1}{4}$ (road), McCone County, Montana, PMM

Gunsight Land Partnership, LLP agrees to comply with and be bound by all the terms and conditions of the right-of-way grant for a canal, water pipeline, and access road located on Federal land. The canal and water pipeline are located on Lot 7 of Section 13, T. 26 N., R. 43 E. in McCone County, Montana. The portion of the right-of-way for the canal and water pipeline is 200 feet wide, 569.50 feet long, and consists of 2.61 acres, more or less. The portion of the right-of-way for the road is located on Federal land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T. 26 N., R. 44 E. in McCone County, Montana. The road is 40 feet wide, 311.90 feet long, and consists of 0.29 acres, more or less. There is an existing county road that provides access to the road right-of-way that leads to a residence. There is a county road and a BLM easement MTM-96626 that leads to the canal and water pipeline.

The right-of-way rental has been paid through December 31, 2016. A Category 2 processing fee of \$424 has been received. No known hazardous materials would be used during the term of the right-of-way. The right-of-way would be used on a year-around basis. Right-of-way use will be monitored by the BLM and Gunsight Land Partnership, LLP.

Termination activities for the Federal surface area would be conducted in much the same manner as construction activities. Access will be available along the same route. All above-ground materials would be removed and disposed of in a licensed landfill. Reclamation would be done according to BLM requirements. The area will be scarified and reseeded with an appropriate seedmix. Reclamation is not needed on the relinquishment area because it was never disturbed.

The right-of-way would be assigned pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and would be subject to the terms and conditions in 43 CFR 2800, the terms and conditions and stipulations specified below, and mitigations set forth in the application. The standard stipulations for cultural and/or paleontological resource protection, hazardous materials, and toxic substances will be made a part of the right-of-way grant, as will the standard stipulations that all activities associated with the right-of-way will be conducted within the authorized limits of the grants. The applicant shall be responsible for weed control on disturbed areas within the limits of the right-of-way. There will be no construction or routine maintenance when the soils are too wet. The holder will reclaim the area with the appropriate seedmix. The right-of-way would be subject to mitigations set forth in the application and Assignee Agreement. The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands.

Gunsight Land Partnership will be subject to cost recovery and rental fees. The right-of-way will be monitored for use and before future renewal or closure.

Rational for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (9) for renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations and none of the exceptions in 516 DM 2 apply. Further the action is in conformance with the BLM 2015 Miles City Resource Management Plan which was approved on September 21, 2015.

I considered the proposed action and associated stipulations which will be included in the right-of-way assignment and which are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

D: Signature

/s/ Eric D. Lepisto
Signature of Authorizing Official

12/10/2015
Date

Name: Eric D. Lepisto

Title: Acting Field Manager

Contact Person

For additional information concerning this CX review and decision, contact:

Dalice Landers, Realty Specialist (406-233-2836)
BLM – Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

Administrative Review or Appeal Opportunities

A BLM decision to issue a ROW may be appealed under regulations 43CFR 2801.10 in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2801.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original

documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

STIPULATIONS

The right-of-way grant would be issued under the authority of Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and subject to the terms and conditions in 43 CFR 2800, the application, mitigations as mentioned in the plan of development, and subject to the following stipulations:

1. 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.
2. 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).
3. 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 four (4) inches deep, the soil shall be deemed too wet to adequately support construction equipment.
4. The holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the right-of-way within the authorized limits of the right-of-way.
5. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, *et. seq.*) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
6. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances.

After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

7. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities.

8. The holder shall seed all disturbed areas with the seed mixture listed below. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within six months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to insure this does not occur.) Where drilling is not possible, seed shall be broadcast and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the authorized officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The authorized officer is to be notified a minimum of seven (7) days prior to seeding of the project.

Seed Mixture (clayey) - Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted only when western wheatgrass is unavailable. The combination for the seed mixture must include at least four of the following species including Western wheatgrass:

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre</i> <i>*(PLS)</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

**Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS.*

9. The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands.

10. This grant is issued subject to the holder's compliance with the mitigations set forth in the application/plan of development.

11. All operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices as stated in BLM Manual 9113 Road Standards.

12. Prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a pre-termination conference. This conference will be held to review the termination provisions of the grant.

13. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.

14. Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted on the site. All off-site borrow areas must be approved in writing by the authorized officer in advance of excavation. All waste material resulting from construction or use of the site by holder 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.

15. 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.