

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CATEGORICAL EXCLUSION REVIEW AND DECISION RECORD

DOI-BLM-ORWA-M060-2016-0010-CX

Project Name: Right-of-Way OR 52269 – Qwest/CenturyLink

BLM Office: Ashland R.A., Medford District.

Prepared By: Kathy Minor **Title:** Assistant Field Manager/Planning and Env. Coordinator

Contact Person: Leslie Voelkel **Phone #** 541.618.2217

DESCRIPTION & LOCATION OF THE PROPOSED ACTION:

The proposed project is to re-authorize FLPMA Right-of-Way (ROW) Grant OR 52269 to Qwest/CenturyLink for underground fiber optic cable. This fiber optic line was installed within the same right-of-way as that of a natural gas pipeline owned by *ANR Land Management*. OR 52269 was originally issued to Qwest in 1995 and will expire in June 2015. The subject grant will authorize the operation, use and maintenance/repair of the fiber optic line for a period of fifty (50) years. The subject fiber optic right-of-way is 15 feet wide, 35,460 feet long and totals 12.2 acres on agency managed lands. No new ground disturbance or an increase in affected area is proposed.

LOCATION:

The proposed right-of-way is located on BLM-managed lands noted below:

S¹/₂NE¹/₄, N¹/₂SW¹/₄, SW¹/₄SW¹/₄, N¹/₂SE¹/₄ Section 11

NW¹/₄, SW¹/₄, Section 12

N¹/₂NE¹/₄, SE¹/₄NE¹/₄ Section 13

N¹/₂NE¹/₄, S¹/₂NW¹/₄ Section 15

S¹/₂SW¹/₄, NW¹/₄SW¹/₄, S¹/₂SE¹/₄ Section 17

NW¹/₄NE¹/₄, N¹/₂NW¹/₄, SW¹/₄NE¹/₄ Section 19

Township 38 S., Range 3 E.,

and

SE¹/₄NE¹/₄ Section 19

N¹/₂NE¹/₄, SE¹/₄NE¹/₄ Section 29

NE¹/₄NE¹/₄ Section 33

SE¹/₄NW¹/₄, NE¹/₄SW¹/₄, SW¹/₄SE¹/₄ Section 34

Township 38 S., Range 4 E.,

and

NE¹/₄NE¹/₄ Section 3

Township 39 S., Range 4 E.,

all in W.M., Jackson Co., Oregon

and

N¹/₂N¹/₂NW¹/₄ Section 1

Township 40 S., Range 6 E.,

all in W.M., Klamath Co., Oregon

PROJECT DESIGN FEATURES

Project Design Features (PDFs) are an integral part of the Proposed Action and have been developed to avoid or reduce the potential for adverse impacts to resources. The following PDFs are included in this project.

For the protection of water quality and fish/aquatic habitat

The ROW is located within the Jenny Creek Watershed, which is a Tier 1 Key Watershed and merits a higher level of protection. Jenny Creek is listed as water quality limited by the State of Oregon for summer temperature. These designations require considerations that ensure water quality is not adversely affected. Some portion of the ROW (best estimate ~ 10,000', over BLM ownership) is in the Little Butte Creek Watershed, near the top of the Dead Indian Creek catchment. The ROW is within the same ROW as a buried underground gas pipeline. The primary water quality concerns associated with this proposal are delivery of sediment to watercourses during and shortly after maintenance, repair, and removal. A disturbed surface where water is concentrated has the potential to mobilize and transport sediment. A secondary concern is use of the ROW by OHV's and the resultant disturbance.

Although this is an existing ROW, it is difficult to predict what magnitude of ground disturbance will occur as a result of maintenance and/or removal activities. To ensure protection of water resources, the following PDFs are required. Correct implementation of these recommendations would, under most circumstances, minimize adverse effects and ensure compliance with all applicable statutes and management direction, including cumulative impacts and impacts to wetlands, floodplains, and drinking water aquifers.

- Restrict non-emergency ground disturbing activities to dry periods (generally May 15 to October 15).
- Suspend activities during precipitation events or when precipitation is imminent.
- All disturbed surfaces and other areas of loose fill shall be seeded with an approved seed mix and mulched with weed free materials as work occurs. Consider using native mulch such as pine needles.
- Any stockpile areas of loose soil or other materials shall have perimeter control such as straw wattles or silt fence around the down slope perimeter when precipitation is occurring or is imminent.
- As determined by the authorized officer, right-of-way holder shall be required to install effective closure measures necessary to preclude OHV or other uses along the ROW and install and maintain signing to discourage such uses.
- Where access roads exist within the right-of-way, regular maintenance including the installation and maintenance of drainage dips is required as determined by the authorized officer.
- Retain vegetation wherever possible adjacent to all stream channels, but in particular to the above mentioned fish bearing channels to maintain and promote shade and to reduce the potential for increasing water temperatures.

For the protection of botanical resources

- Clean all equipment prior to entry onto BLM-administered lands to prevent the introduction and spread of noxious weeds. Cleaning is defined as removal of dirt, grease, plant parts, and material that may carry noxious weed seeds. Cleaning prior to entry may be accomplished by using a pressure hose.

- Following timely notification of routine maintenance (by February of planned activity year) actions, BLM shall flag and map any areas requiring avoidance or other specific Project Design Features and provide this information to Qwest/Century Link in a timely manner, provided such direction does not impede required maintenance.
- Following maintenance activities, the permittee shall apply BLM Botanist-approved seed and mulch to disturbed areas exposing bare soil.
- The Holder will comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this grant. The Holder will obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan will provide the type and quantity of material to be used; the pest, insect, fungus, etc. to be controlled; the method of application; the location for storage and disposal of containers; and other information that the Authorized Officer may require. The plan will be submitted no later than December 1st of any calendar year that covers the proposed activities for the next calendar year (i.e., December 1, 2016, deadline for any 2017 action). Emergency use of pesticides may occur. The use of substances on or near the right-of-way will be in accordance with the approved plan. A pesticide will not be used if the Secretary of the Interior has prohibited its use. A pesticide will be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides will not be permanently stored on public lands authorized for use under this grant.

For the protection of cultural resources

- If, during project implementation, the contractor/workers encounters or becomes aware of any objects or sites of cultural value on federal lands, such as historical or prehistorical ruins, graves, grave markers, or artifacts, the contractor shall immediately suspend all operations in the vicinity of the cultural value and notify the Contracting Officer's Representative (COR). The project may be redesigned to protect the cultural resource values present, or evaluation and mitigation procedures would be implemented based on recommendations from the resource area archaeologist and concurrence by the Ashland Field Manager and State Historic Preservation Office.

For the protection of wildlife Special Status Species

- If gray wolves or Pacific fisher den or rendezvous sites are discovered in the vicinity of the right-of-way, restrictions may be placed on activities to avoid disturbance to these species.
- If new northern spotted owl or great gray owl nest is discovered adjacent to the ROW area, restrictions may be placed on activities to avoid disturbance to these species.

PLAN CONFORMANCE

The proposed action is in compliance with the *1995 Medford District Record of Decision and Resource Management Plan (RMP)*. The 1995 Medford District Resource Management Plan incorporated the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the*

Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan) (USDA and USDI 1994). The 1995 Medford District Resource Management Plan was later amended by the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines*.

This project is not a habitat disturbing activity, as defined in page 22 of the Standards and Guidelines of the 2001 *Record of Decision and Standards and Guidelines*, for any Survey and Manage species. Because the project is not habitat disturbing, the Survey and Manage provisions, including pre-disturbance surveys, are not required under the 2001 *Record of Decision and Standards and Guidelines*, (Standards and Guidelines, p. 7, 21-22).

The proposed action is also in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act, and the Archaeological Resources Protection Act of 1979.

COMPLIANCE WITH NEPA

The proposed action is categorically excluded from further documentation under NEPA in accordance with 516 DM 11.9 E (9): 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 having effects that may significantly affect the environment as documented in the following review. The proposed action has been reviewed, and none of the extraordinary circumstances described in 43 CFR §46.215 rise to the level of significance. A summary of the extraordinary circumstances is listed below. The action must have a significant or a disproportional effect on the listed categories to warrant further analysis and environmental review.

CATEGORICAL EXCLUSION REVIEW

Department of the Interior Regulations (43 CFR § 46.205(c)) require that any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances listed in 43 CFR § 46.215. An action would meet one of the extraordinary circumstances if the action may:

CX Extraordinary Circumstances Documentation	Yes	No
1. Have significant impacts on public health or safety.		X
Rationale: This right-of-way request is for continued use of existing facilities. It is not anticipated that the Proposed Action will have any effects to public health and safety.		

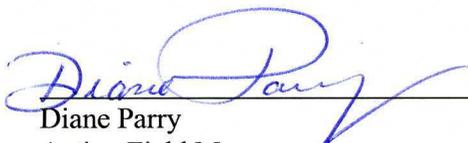
CX Extraordinary Circumstances Documentation	Yes	No
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		X
Rationale: The Proposed Action is not anticipated to affect the aforementioned resources.		
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].		X
Rationale: Based on past experience from these types of activities, there are no predicted environmental effects from the Proposed Action that are considered to be highly controversial nor are there unresolved conflicts concerning alternative uses. This project's Categorical Exclusion Authority allows for activities which utilize existing facilities.		
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
Rationale: The activities proposed in this CX are not highly uncertain, potentially significant, unique, or unknown risks.		
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
Rationale: The activities proposed in this CX are addressed and authorized under the Medford ROD/RMP. The proposed activities occur widely on Federal lands throughout Oregon and there is no evidence this type of activity would establish a precedent or decision for future actions that would have significant environmental effects.		
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
Rationale: The Proposed Action would not result in a cumulative significant effect when added to relevant past, present, and reasonably foreseeable actions in the area.		
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.		X
Rationale: The Proposed Action will not have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places.		
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.		X
Rationale: The location of the Proposed Action has been reviewed by the BLM botanist, wildlife biologist, and fisheries biologist. The Proposed Action would have no 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.		

9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.		X
Rationale: The proposed activities conform to the Medford RMP's direction for management of public lands on the Medford District and comply with applicable laws, rules, and regulations.		
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		X
Rationale: Similar actions have occurred throughout the District and there is no evidence that this type of activity would have a disproportionately high and adverse effect on said populations.		
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 130007).		X
Rationale: The Proposed Action does not significantly or adversely affect the physical integrity of any such sacred sites.		
12. Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative 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).		X
Rationale: The Proposed Action does not result in measurable changes to the current baseline of the risk, or actual introduction, continued existence, or spread of noxious weeds or nonnative invasive species above what would be present from other activities that occur on federal lands.		

DECISION AND RATIONALE

Based on the Categorical Exclusion Review above, I have determined that the Proposed Action qualifies as a categorical exclusion under 516 DM 11.9 E (9). It is my decision to implement the Proposed Action and re-authorize the FLPMA Right-of-Way Grant (OR 36317) to Qwest/CenturyLink. In making my decision, I considered the Project Design Features that will be incorporated into the project.

In addition, I have reviewed the plan conformance statement and have determined the Proposed Action is in accordance with the approved land use plans and that no further environmental analysis is required. Therefore, an environmental assessment or an environmental impact statement is not needed. It is my decision to implement the Proposed Action as described.


 Diane Parry
 Acting Field Manager
 Ashland Resource Area

1-19-16
 Date

ADMINISTRATIVE REMEDIES

Administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized would cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410 (a) – (c)). Other than the applicant/proponent for the right-of-way action, in order to be considered a “party to the case” the person claiming to be adversely affected by the decision must show that they have notified the BLM that they have a “legally cognizable interest” and the decision on appeal has caused or is substantially likely to cause injury to that interest (See 43 CFR § 4.410(d)).

EFFECTIVE DATE OF DECISION

This is a land decision on a right-of-way application. All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal (See 43 CFR § 2801.10) unless the Secretary rules otherwise. Rights-of-way decisions that remain in effect pending an appeal are considered as “in full force and effective immediately” upon issuance of a decision. Thus, this decision is now in effect.

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after the date of service. Only signed hard copies of a notice of appeal that are delivered to the following address will be accepted.

BUREAU OF LAND MANAGEMENT
MEDFORD INTERAGENCY OFFICE
Ashland Resource Area
3040 Biddle Road
Medford, OR 97504

Faxed or e-mailed appeals will not be considered.

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for 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.

A notice of appeal with petition for stay must be served upon the Board and the Regional Solicitor at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations (43 CFR § 4.413(a)). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, Virginia 22203

Regional Solicitor
Pacific Northwest Region
U.S. Department of the Interior
1220 S.W. 3rd Avenue
Portland, OR 97204

For additional information concerning this project, contact Kathy Minor, Planning and Environmental Coordinator, at (541) 618-2245.