

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

CATEGORICAL EXCLUSION REVIEW AND DECISION RECORD

DOI-BLM-ORWA-M060-2016-0014-CX

Project Name: Right-of-Way Grant OR 068591 – Lyons

BLM Office: Ashland Resource Area, Medford District

Prepared By: Michelle Calvert **Title:** Planning and Environmental Coordinator

Contact Person: Juanita Wright **Phone #** (541) 618-2345

DESCRIPTION OF THE PROPOSED ACTION

The proposed federal action is to issue a Federal Land Policy and Management Act (FLPMA) Right-of-Way (ROW) Grant OR 68591 across BLM-administered land for legal ingress and egress to the William Hinkle Irrigation Ditch (a.k.a. Hoogendyk Ditch) as well as maintenance of the existing irrigation pipe line (70 feet of pipeline) and irrigation ditch (including grass mowing). The ROW grant area is a 1.25-acre parcel of BLM-administered land which lies north of Hinkle Irrigation Ditch.

The ROW grant is proposed for 25 years with option for renewal. If renewed, the ROW grant would be subject to regulations existing at the time of renewal, and such other terms and conditions deemed necessary to protect the public interest. The ROW does not propose additional ground disturbance at this time, but would re-authorize future maintenance, repair, and removal within the existing footprint.

LOCATION

The proposed ROW is located on BLM-administered lands of the Applegate Adaptive Management Area land use allocation in Jackson County, Oregon:

- T. 38 S., R. 4 W., Sec 28, NWNWSWSE

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.

Maintenance of the access route would be limited to mowing and cutting of brush encroaching on the unnumbered BLM road (the ROW access route) to be completed by the grant Holder.

The Holder shall comply with applicable federal and state laws and regulations concerning the use of pesticides, insecticides, herbicides, fungicides, rodenticides, etc. The Holder shall submit a written plan of operation and receive written approval of said plan from the BLM Authorized Officer prior to use of said substances.

To prevent the spread of noxious weeds

- All equipment shall be washed prior to entering, and immediately after leaving the project area at a site where any mud or debris from the equipment will not contribute to the spread of noxious weeds.

For the protection of cultural resources

- If any ground disturbing work is purposed on the portion of the historic Hinkle Irrigation Ditch that crosses BLM-administered land, the BLM will be notified one week prior to the work and afforded an opportunity to review the proposed disturbance.
- If any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, or artifacts are inadvertently found during any permitted actions under this ROW, the owner/workers shall immediately suspend all operations in the vicinity of the cultural value and notify the appropriate BLM representative. 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 with concurrence from the Field Manager and State historic Preservation Office.

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 (16): 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 purposes.

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:

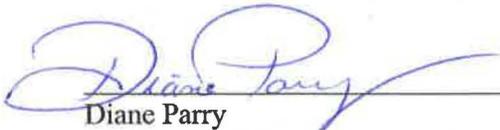
CX Extraordinary Circumstances Documentation	Yes	No
1. Have significant impacts on public health or safety.		X
Rationale: This ROW request is for ingress and egress to use of existing facilities and maintenance of an existing water pipeline. It is not anticipated that the Proposed Action will have any effects to public health and safety.		
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.		

CX Extraordinary Circumstances Documentation	Yes	No
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 (16). It is my decision to implement the Proposed Action and authorize the FLPMA ROW Grant (OR 68591) to Craig and Kim Lyons. 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 plan 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

March 15, 2016
Date

ADMINISTRATIVE REMEDIES

Administrative review of ROW 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 ROW 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 ROW 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

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For additional information concerning this project, contact Michelle Calvert, Planning and Environmental Coordinator, at (541) 618-2252.

Map of Lyons Right-of-Way Grant OR 68591

