

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

DOI-BLM-MT-C020-2016-0074-CX

March 17, 2016

Assignment of Two ROWs from Bitter Creek to WBI

Location:

MTM-94025:

T. 9 S., R. 40 E., Section 35: NE $\frac{1}{4}$ NE $\frac{1}{4}$, Big Horn County, Montana, PMM

MTM-94037:

T. 9 S., R. 41 E., Section 21: SW $\frac{1}{4}$ NW $\frac{1}{4}$ & SW $\frac{1}{4}$, Big Horn County, Montana

U.S. Department of the Interior
Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, MT 59301
Phone: 406-233-2800
FAX: 406-233-2921



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 Nos.: MTM-94025 and MTM-4037

NEPA Number (if applicable): DOI-BLM-MT-C020-2016-0074-CX

Proposed Action Title/Type: Assignment of Two ROWs from Bitter Creek to WBI

Location of Proposed Action (include county):

MTM-94025:

T. 9 S., R. 40 E., Section 35: NE¹/₄NE¹/₄, Big Horn County, Montana, PMM

MTM-94037:

T. 9 S., R. 41 E., Section 21: SW¹/₄NW¹/₄ & SW¹/₄, Big Horn County, Montana

Description of Proposed Action: These two natural gas pipelines were issued to Bitter Creek Pipelines, LLC. Bitter Creek has assigned these rights-of-way to WBI Energy Midstream, LLC.

B. Land Use Plan Conformance

Land Use Plan Name: Miles City Field Office Resource Management Plan (RMP)

Date Approved: September, 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>This project would not have significant impacts on public health and safety since it is just an assignment of two natural gas pipeline rights-of-way from Bitter Creek to WBI. DDL 3/15/2016</i>
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>The impacts would not be significant impacts since it is just an assignment of two natural gas pipeline rights-of-way from Bitter Creek to WBI. DDL 3/15/2016</i>
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 effects or unresolved conflicts exist. DDL 3/15/2016</i>
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 environment risks exist. DDL 3/15/2016</i>
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 3/15/2016</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No	Rationale: <i>There would be no cumulative impacts from this project. See CFR 1508.7. DDL 2/1/2016</i>
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	Rationale: <i>Confirm that cultural surveys have been completed; the</i>

	X	<p><i>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><i>Both ROWS are in CBNG PODs that have been inventoried for cultural resources. No cultural sites, isolated finds, or paleontological localities are located in the ROWS crossing BLM surface in Sections 35 and 21. BLM has determined assigning the ROWS to WBI would have no effect to historic properties (See BLM Cultural Resources Report MT-020-16-70) for details.</i></p> <p><i>DM 03/22/16</i></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: Transferring the two natural gas pipelines from Bitter Creek Pipelines, LLC to WBI Energy Midstream, LLC is administrative and will have no significant impact on listed species or designated Critical Habitat.</p> <p>The pipeline is in general greater sage-grouse habitat but there will be no effect on sage-grouse by transferring the two natural gas pipelines.</p> <p><i>3/17/16 FAP</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 3/15/2016</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>This project does not have a disproportionately high and adverse effect on low income or minority populations. DDL 3/15/2016</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 is to reassign an existing ROW to a new company. No surface disturbance is proposed. The reassignment would not affect access or use of public lands. Cultural inventories did not identify any sites, the Ethnographic Overview for Southeast Montana did not identify any sites of concern.</p> <p><i>DM 03/22/16</i></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	Rationale: <i>The proposed action will not contribute to the introduction or spread of noxious weeds as the three rights-of-way a just being assigned from Fidelity to WBI. DDL 3/15/2016</i>

/s/ Kathy Bockness
Signature of Environmental Coordinator

3/23/2016
Date

/s/ Christopher Morris
Signature of Supervisory Land Use Specialist

3/24/2016
Date

Decision Record for Categorical Exclusion
Assignment of Three Rights-of-way from Bitter Creek to WBI
DOI-BLM-MT-020-2016-0074-CX

Decision: I have made the decision to assign two existing natural gas pipeline rights-of-way from Bitter Creek Pipelines, LLC to WBI Energy Midstream, LLC. The two rights-of-way are located on the following Federal lands (Public Domain):

MTM-94025:

T. 9 S., R. 40 E., Section 35: NE $\frac{1}{4}$ NE $\frac{1}{4}$, Big Horn County, Montana, PMM

MTM-94037:

T. 9 S., R. 41 E., Section 21: SW $\frac{1}{4}$ NW $\frac{1}{4}$ & SW $\frac{1}{4}$, Big Horn County, Montana

The standard stipulations for cultural and/or paleontological resource protection, toxic substances stipulation, weed control stipulation, no construction or maintenance when too wet, coordinate with other parties, timing stipulation, appropriate seedmix for reclamation, as well as other stipulations will be made part of the rights-of-way assignment. The project area is designated as general greater sage-grouse habitat. Transferring the right-of-ways will not impact sage-grouse habitat as no additional action at the site will take place. These rights-of-way would be assigned pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) and be subject to all applicable provisions of the regulations at 43 CFR 2800/2880, and the attached stipulations for the construction, operation, maintenance, and termination of the proposed project. The applicant will be subject to cost recovery fees and rental fees. The rights-of-way will be monitored for use and before future renewal or termination.

Rationale 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 actions are in conformance with the Miles City Resource Management Plan which was approved in September of 2015.

I considered the proposed action and associated stipulations which will be included in the rights-of-way assignment and 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/ **Wendy Warren**
Signature of Authorizing Official

3/25/2016
Date

Name: Wendy Warren.

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 in 43 CFR 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 2881.10 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

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, 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

2800/2880, 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 pipeline installation. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth and vegetation.

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 (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

Schizachyrium scoparium

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. During conditions of extreme fire danger, operations shall be limited or suspended in specific areas, or additional measures may be required by the authorized officer.

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

11. The holder shall coordinate with the existing right-of-way holders, grazing lessees/permittees, and other parties who hold an authorized right on adjacent and affected lands.

12. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.

13. If during any phase of the construction, operation, or termination of the pipeline or related facilities any oil or other pollutant should be discharged from the pipeline system, or from containers or vehicles impacting Federal lands, the control and total removal, disposal, and cleanup of such oil or other pollutant, wherever found, shall be the responsibility of the holder, regardless of fault. Upon failure of holder to control, cleanup, or dispose of such discharge on or affecting Federal lands, or to repair all damages to Federal lands resulting therefrom, the authorized officer may take such measures as he deems necessary to control and cleanup the discharge and restore the area, including, where appropriate, the aquatic environment and fish and wildlife habitats, at the full expense of the holder. Such action by the authorized officer shall not relieve the holder of any liability or responsibility.

14. Construction activity and surface disturbance will be prohibited during the period from March 1 to June 15 for the protection of sage grouse habitat.