

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

DOI-BLM-MT-C020-2016-0081-EA

July 5, 2016

DECISION RECORD

**CENEX ROW MTM-108614 AND TUP MTM 108614-01
AMENDMENT TO CENEX ROW MTM-107820 AND TUP MTM-107820-01**

Location: **T. 7 N., R. 46 E., Custer County, Montana, PMM**

Section 13: S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Section 23: S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Section 24: NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Section 26: E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;
 Section 27: E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Section 32: Lot 7;
 Section 33: S $\frac{1}{2}$; and
 Section 34: N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 7 N., R. 47 E., Custer County, Montana, PMM

Section 4: Lot 25, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Section 8: SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Section 9: Lot 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Section 17: NW $\frac{1}{4}$ NW $\frac{1}{4}$; and
 Section 18: E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

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**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MILES CITY FIELD OFFICE
RECORD OF DECISION
CENEX ROW MTM-108614 AND TUP MTM-108614-01
AMENDMENT TO CENEX ROW MTM-107820 AND TUP MTM-107820-01
DOI-BLM-MT-C020-2016-0081-EA**

DECISION

It is my decision to select the Proposed Action Alternative as described in the Cenex Pipeline, LLC's EA for a 10-inch steel pipeline. The EA and the FONSI analyzed the selected alternative and found no significant impacts. Implementation of this decision will result in the issuance of a Mineral Leasing Act (MLA) ROW MTM-108614 and TUP MTM-108614-01 to Cenex Pipeline, LLC and the issuance of an amendment to ROW MTM-107820 and TUP MTM-107820-01 for a gas and diesel pipeline. The selected alternative is in conformance with the Miles City Field Office Resource Management Plan.

ALTERNATIVES

In addition to the selected alternative, the EA considered the "No Action" alternative, which would carry out no management activities at this time.

RATIONALE FOR SELECTION

The purpose of the action is to allow Cenex Pipeline, LLC to install a steel gasoline and diesel pipeline across the following Federal land (Public Domain):

T. 7 N., R. 46 E., Custer County, Montana, PMM

Section 13: S $\frac{1}{2}$ SE $\frac{1}{4}$;
Section 23: S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Section 24: NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Section 26: E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;
Section 27: E $\frac{1}{2}$ SE $\frac{1}{4}$;
Section 32: Lot 7;
Section 33: S $\frac{1}{2}$; and
Section 34: N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 7 N., R. 47 E., Custer County, Montana, PMM

Section 4: Lot 25, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Section 8: SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Section 9: Lot 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;
Section 17: NW $\frac{1}{4}$ NW $\frac{1}{4}$; and
Section 18: E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

This action would be authorized by the issuance of an MLA ROW grant and TUP and the issuance of a MLA ROW amendment and a TUP amendment to Cenex Pipeline, LLC. The proposed action is in conformance with the Miles City Field Office RMP/EIS. This proposed action will provide Cenex's distributors and their customers with gas and diesel.

Also under the proposed action is an amendment to Right-of-way MTM-107820 and Temporary Use Permit MTM-107820-01. There will not be any construction on the east side of the river. However, Cenex will need to string and weld pipe on the Federal land located in Lot 2 of Section 4, T. 7 N., R. 47 E. in Custer County, Montana. This would be an amendment to the temporary use permit MTM-107820-01. This amendment would be 75 feet wide, 500 feet long, and consist of 0.86 acres, more or less. Cenex also needs access to this area by an existing two-track trail located in Tract U of Section 3, T. 7 N., R. 47 E. in Custer County, Montana. This would be an amendment to the right-of-way MTM-107820. This amendment would be 20 feet wide, 820 feet long, and consist of 0.38 acres, more or less.

CONSULTATION AND COORDINATION

The following BLM specialists were consulted: Doug Melton, Archaeologist; Kent Undlin, Wildlife Biologist; Drea Traeumer, Hydrologist; Dena Lang, Outdoor Recreation Planner; and Dalice Landers, Realty Specialist. The following Cenex specialist was consulted: Mike Stahly, Manager of Environmental, Health, and Safety. The Cenex Pipeline, LLC ROW EA (DOI-BLM-MT-C020-2016-0051-EA) was made available online via the BLM ePlanning website.

IMPLEMENTATION

Once the Cenex Pipeline, LLC EA FONSI and Decision Record are approved, a MLA ROW grant and TUP will be issued to Cenex Pipeline, LLC as described in the subject EA with the identified stipulations included as part of the grant. This decision will be effective immediately. Actions may begin immediately in accordance with any restrictions or constraints imposed by the grant and stipulations. The grant will be monitored for construction, use and termination.

ADMINISTRATIVE REVIEW OPPORTUNITIES

This 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 the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. If the appellant wishes to file a petition (request) pursuant to regulations 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time 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 this 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 this office. If the appellant requests a stay, they have 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.

/s/ Todd D. Yeager
Todd D. Yeager
Field Manager
Miles City Field Office

7/6/2016
Date

MITIGATION:

The right-of-way grant would be issued under the authority of Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) and subject to the terms and conditions in 43 CFR 2800/2880, 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.

(Cenex will retain a BLM permitted archaeologist to monitor construction activities in the vicinity of 24CR0001. Prior to fieldwork, the archaeologist will contact BLM for details on the monitoring.)

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. 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.

4. 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.

5. 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.

6. 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.

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

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

9. 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.

10. The holder shall design and construct adequate water-control structures in each drainage crossing to prevent excessive erosion along the pipeline and protect the pipeline from the natural erosion process within the drainage.

11. Hydrostatic testing water will be tested and processed, if necessary, before use to ensure that Montana surface and groundwater quality standards are met.

12. 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.

13. No surface disturbance or construction activity will be allowed within 50 feet of streams if flowing or anticipated to flow at the time of construction which shall be clearly marked as specified by the authorized officer. Any deviation from this requirement shall have

the prior written approval of the authorized officer. Spoils will not be placed within the streambed or streambanks.

14. Construction activity and surface disturbance will be prohibited during the period from April 15 to July 15 for the protection of migratory bird nesting activities. *(The Operator is responsible for compliance with provisions of the Act by implementing one of the following measures; a) **avoidance by timing**; ground disturbing activities will not occur from April 15 to July 15, b) **habitat manipulation**; render proposed project footprints unsuitable for nesting prior to the arrival of migratory birds (blading or pre-clearing of vegetation must occur prior to April 15 within the area scheduled for activities between April 15 and July 15 of that year to deter nesting, or c) **survey-buffer-monitor**; surveys will be conducted by an operator funded, BLM approved biologist within the area of the proposed action and a 300 foot buffer from the proposed project footprint between April 15 to July 15 if activities are proposed within this timeframe. If nesting birds are found, activities would not be allowed within 0.1 miles of nests until after the birds have fledged. If active nests are not found, construction activities must occur within 7 days of the survey. If this does not occur, new surveys must be conducted. Survey reports will be submitted to the BLM-Miles City Field Office.)*

15. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.

16. 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
<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.*

17. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within 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.

18. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

19. All above-ground structures not subject to safety requirements shall be painted by the holder to blend with the natural color of the landscape. The paint used shall be a color which simulates "Standard Environmental Colors" designated by the Rocky Mountain Five-State Interagency Committee. The color selected for this pipeline is Covert Green.

20. Within 60 days after placing the pipeline in service, the holder will submit to the Authorized Officer (AO), as-built drawings and a certification of construction verifying that the facility has been constructed (and tested) in accordance with design, plans, specifications, and applicable laws and regulations.