

**U.S. Department of the Interior  
Bureau of Land Management**

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**Categorical Exclusion**

**Wyoming State Forestry Division  
WYW-168584**

**State Forestry Right-of-Way  
DOI-BLM-WY-R050-2016-0016-CX**

**PREPARING OFFICE**

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**BLM**





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**Prepared by**

**U.S. Department of the Interior**

**Bureau of Land Management**

**BLM Lander Field Office**

**Lander, Wyoming**

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# Table of Contents

<b>1. State Forestry Right-of-Way .....</b>	<b>1</b>
<b>Appendix A. Right-of-Way Stipulations .....</b>	<b>5</b>

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# **Chapter 1. State Forestry Right-of-Way**

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## A. Background

**BLM Office:** Lander Field Office

LL00WYR05000

**Lease/Serial/Case File No.:** WYW-168584

**Proposed Action Title/Type:** State Forestry Right-of-Way

**Location of Proposed Action:**

T. 29N, R. 100W, Section 3

**Description of Proposed Action:** The applicant proposed to use an existing road for the transportation of forest product from two state timber sale units for a term of five years. Approximately 100 million board feet of sawlogs and roundwood will be transported. The request is for 650 feet by 12 feet with a total of approximately .18 acres. No new surface disturbance will occur. Periodic maintenance of the existing road may occur, with prior approval from the authorized officer.

**Authority for Authorization:** Title V of the Federal Land Management and Policy Act of October 31, 1976 (90 Stat. 2776; 43 U.S.C. 1761)(granted in 1978). This grant may be issues for a term of 30 years.

## B. Land Use Plan Conformance

**Land Use Plan Name:** Lander Record of Decision and Approved Resource Management Plan and Record

**Date Approved/Amended:** June 26, 2014

**The proposed action is in conformance with the applicable LUP because:** the proposed project area is located within the South Pass Historical Landscape ACEC. Decision 7121 states “ROW management in the ACEC is excluded to major ROWs and avoided for minor ROWS”. The proposed project is considered a minor ROW. Avoidance Areas are defined as “Areas where negative routing factors exist. Rights-of-way (ROWs) either will not be granted in these areas, or if granted, will be subject to stringent terms and conditions. In other words, ROWs would be restricted, but not necessarily prohibited, in avoidance areas. Special stipulations will likely apply.”

The “relevant and important” values of the South Pass Historical Landscape ACEC are the historic mining resources in the area and their setting. The right-of-way grant will allow the timber trucks and equipment to drive on a road which is located on a section of a historic railroad bed. The BLM determined that this use will not adversely impact the historic resource with the application of stipulations precluding any modification of the road or the trees along the road that can be seen from the railroad bed. This mitigation will avoid potential adverse impacts to the historic resource making the grant of the right-of-way in conformance with the LUP.

## C. Compliance with NEPA:

The proposed action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 43 CFR 46.215, 516 DM 11.9 Appendix 4 E. Reality 16.

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 none of the extraordinary circumstances described in 43 CFR 46.210 apply.

The BLM considered alternative routes for the access road but it was determined that new disturbance would have to occur to construct a new access road. To avoid new surface disturbance, the authorization is for the proposed action on the existing road.

### **Departmental Exceptions and Critical Resource Values Checklist:**

1. Have significant impacts on public health or safety.

Authorizing this right-of-way on an existing road does not have significant impacts on 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 (NNLs); sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 119900); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

The nearest wilderness area is more than ten miles away and terrain does not allow the road to be viewed from the wilderness area. The nearest NNL is approximately eight miles away; the road is out of the viewshed of the NNL. The nearest proposed WSR is more than twenty miles away. The proposed project is not within a WSA. The BLM archaeologist evaluated the project and did a survey. The prohibition of surface disturbance as provided in the stipulations which will prevent adverse impacts to cultural resources. There are no parks, recreation, refuge lands, prime farmlands, wetlands, or other ecologically significant areas near the proposed project area. No floodplains, sole, or principal drinking water aquifers have been identified in the area.

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

The BLM has no reason to expect that the proposed action is controversial.

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

The environmental impacts are well understood and are not significant.

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

The authorization does not establish a precedent for future actions that will result in adverse impacts.

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

The only action the BLM has identified related to the proposed action is the cutting of sawtimber that will be hauled on the right-of-way. One hundred million board feet is considered a small timber harvest. It is remote from view and would have only minor short term impacts on ecological health and would likely result in beneficial impacts over time from the removal of beetle-killed fuels. This related action would not result in cumulative significant environmental effects.

7. Have significant impacts on properties listed, or eligible for listings, on the National Register of Historic Places as determined by either the bureau or office.

The railroad bed over which a portion of the right-of-way passes is a contributing structure and National Register eligible. However, the BLM archaeologist determined that with the limitation on surface disturbance, the project does not pose a significant impact to 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.

The BLM wildlife biologist determined that the proposed project would not adversely impact threatened or endangered species and/or their critical habitat.

9. Violate a Federal law, or a State, Local or tribal law or requirement imposed for the protection of the environment.

The proposed action does not violate any laws.

10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

The proposed action occurs in a remote and lightly populated area and has no identified impacts on low income or minority 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 13007).

The BLM archaeologist did not identify any Indian sacred sites near the proposed project area in the cultural clearance report.

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).

A weed clearance was conducted and identified that there are no known noxious weeds within the project area. There are no meaningful impacts due to the required stipulations to mitigate for potential weeds.

## D. Approval and Contact Information

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Richard Vander Voet  
Field Manger

Date

### Contact Person

Leta Rinker, Realty Specialist

Lander Field Office  
1335 Main Street  
Lander, Wyoming, 82520

307-332-8405

See Attachments:

- Exhibit "A"- Map
- Exhibit "B"- Wildlife Clearance
- Exhibit "C"- Cultural Clearance
- Exhibit "D"- Weeds Clearance
- Exhibit "E"- VRM Clearance

# Appendix A. Right-of-Way Stipulations

## TIMING

1. The holder is prohibited or restricted, for the protection of big game crucial winter range, from surface disturbing and/or disruptive activities during the period of **November 15 to April 30**. This includes non-emergency activities, i.e. road maintenance, routine maintenance activities, replace or repair pipelines, replacement of any power or telephone facilities, etc. (reference Appendix F of the 2014 Lander Field Office (LFO) Resource Management Plan (RMP)). **The holder may request an exception to this requirement at least 2 weeks prior to the holder wanting to conduct such activity. The holder must have prior written approval from the authorized office.**

## CONSTRUCTION

1. The holder must contact the authorized officer at least seven (7) days prior to the anticipated start of construction and/or maintenance. The authorized officer may require and schedule a pre-construction conference with the holder prior to the holder's commencing activity on the right-of-way. The holder and/or his representative must attend this conference. **The holder's contractor, or agents involved with construction and/or maintenance associated with the right-of-way, must also attend this conference to review the stipulations of the grant including the application.**
2. The holder must not perform any activities during periods when the soil is too wet to support equipment. If such equipment creates ruts in excess of four (4) inches deep, the soil is too wet to support equipment.
3. All design material, construction, operation, maintenance, and termination practices must be in accordance with safe and proven engineering practices.
4. **CULTURAL AND PALEONTOLOGICAL RESOURCES STIPULATION.** No surface disturbance is allowed under this authorization. If maintenance is required for the right-of-way, prior approval must be granted from the authorized officer before maintenance is conducted. Violation of this stipulation may result in the holder being subject to the penalties and actions contained in the 43 CFR7 Regulations, which are on file at all BLM offices.
5. **CULTURAL AND PALEONTOLOGICAL RESOURCES STIPULATION.** Trees may be removed from the access right-of-way **ONLY** if they impede timber-related traffic to and from the block area. If removal of trees is required, prior approval must be granted from the authorized officer before tree removal is conducted. Violation of this stipulation may result in the holder being subject to the penalties and actions contained in the 43 CFR7 Regulations, which are on file at all BLM offices.
6. **CULTURAL AND PALEONTOLOGICAL RESOURCES STIPULATION.** Any cultural and/or paleontological resource (historic or prehistoric site or object or fossil) 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 shall be made by the authorized officer after consulting with the holder.

7. The holder must 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 must 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 must secure the services of a registered land surveyor or a BLM 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 must record such survey in the appropriate county and send a copy to the authorized officer. If the holder uses the BLM cadastral surveyors or the other federal surveyors to restore the disturbed survey monument, the holder is responsible for the survey cost.

### **WEED CONTROL**

1. The holder is responsible for weed control on disturbed areas within the limits of the right-of-way. Use of pesticides must comply with the applicable Federal and state laws. The holder must only use pesticides in accordance with their registered uses and within limitations imposed by the Secretary of Interior. Prior to the use of pesticides, the holder must 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.
2. The holder is responsible for managing all noxious desirable invading plant species in the reclaimed areas, including cheat grass, until the authorized officer deems revegetation activities successful, and the authorized office releases the bond. If the holder encounters noxious or invasive weeds, the holder must consult the BLM and/or the County Weed and Pest Department for suppression and control methods. The holder must obtain Pesticide Use Proposal (PUP) and written approval from the authorized officer for the use of herbicides prior to usage of herbicides.
3. The holder must clean all mobile equipment transported from an offsite location to the BLM project area prior to arrival using water, steam, or air pressurized cleaning methods to remove any invasive or noxious weed seed and plant parts or materials that could contain seeds or plant parts. When appropriate, identify sites to clean equipment generally off public lands. The holder must collect seeds and plant parts and dispose of them appropriately.
4. The holder is responsible for suppression and/or control of any invasive or noxious plant species within the authorized area. If chemical herbicide control methods are used on public lands, only BLM approved chemicals and application methods will be permitted. The holder must submit a Pesticide Use Proposal (PUP) and the BLM must approve it before initiating chemical control methods.
5. All mulch, seed and other vegetative reclamation materials must be certified weed free. If available all sand, gravel, and fill materials must be certified weed free.

6. The holder must control all weeds the Fremont County Weed and Pest deem as noxious or invasive should they begin to grow in disturbed areas.
7. If the local BLM weed coordinator determines weed species are encroaching outside of the right-of-way or project area as a result of the disturbance of the project the holder is responsible for the treatment and management of the weeds as long as the encroachment exists. In order for the BLM to release the holder of this responsibility, the BLM must not find plants in as many consecutive years as the seed viability for the particular plant species lasts.
8. The holder is responsible financially for the management of weeds, if the BLM weed specialist determines that the project is responsible for the introduction of new weed species. In order for the BLM to release the holder of this responsibility, the BLM must not find plants in as many consecutive years as the seed viability for the particular plant species lasts.

### **RECLAMATION**

1. Prior to reclamation and relinquishment of this right-of-way, the holder must obtain an approved seed mixture from the BLM, Lander Field Office.
2. One hundred eighty (180) days prior to termination of the right-of-way, the holder must contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection is for the holder and the authorized officer to determine an acceptable termination (and rehabilitation) plan. This plan must include, but is not limited to, removal of facilities, drainage structures, or surface material, re-contouring, top-soiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

### **GENERAL**

1. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with the plan of development which was approved and made part of the grant on \_\_\_\_\_. Any Relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan of development, shall be made available on the right-of-way area during construction, operation, and termination to the authorized officer. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
2. The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgment, unforeseen conditions arise which result in the approve terms and conditions being inadequate to protect the public health and safety or to protect the environment.
3. The holder must conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
4. The holder must maintain the right-of-way in a sanitary condition at all times. The holder must dispose of waste materials promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, petroleum products from equipment used (Bobcat), ashes, and equipment.

5. The holder(s) must comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) must 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 appropriation 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, the holder must report any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. The holder must provide a copy of any report required or requested by any Federal agency or State government because of a reportable release or spill of any toxic substances to the authorized officer concurrent with the filling of the reports to the involved Federal agency or State government.
6. The holder(s) agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.* or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, *et seq.*) on the right-of-way (unless the release or threatened release is wholly unrelated to the holder’s activity on the right-of-way). This agreement applies without regard to whether a release is caused by the holder, its agents, or unrelated third parties.
7. The holder must relinquish the right-of-way upon completion of authorized uses.
8. The holder shall inform the authorized officer within 48 hours of any accidents on federal lands that require reporting to the Department of Transportation as required by 49 CFR Part 195.