

UNITED STATES OF AMERICA  
DEPARTMENT OF INTERIEOR  
BUREAU OF LAND MANAGEMENT  
MEDFORD DISTRICT OFFICE

**CATEGORICAL EXCLUSION DOCUMENTATION &  
DECISION RECORD**

**Robert G. Hoellrich R\W Reauthorization Application, OR 65782**

NEPA #: DOI-BLM-OR-M070-2009-0015-CX

**A. Proposed Action:**

Robert R. Hoellrich has applied for a right-of-way (r\w) reauthorization of OR 17452 for continued use of the existing water facility for which the r\w was previously granted under OR 17452, which expired on July 4, 2008. The right of way area is 15 feet by 700 feet. The system consists of up to 700 feet of buried 8" water line, depending on the location of the stream channel during the irrigation season. The right of way, consistent with the original grant, would also include rights to install a buried electrical cable. The system has been in place for many years and is used for irrigation purposes by the applicant who resides at 100 Ferry Road, Grants Pass, OR. The facility was previously authorized by BLM to Robert G. Hoellrich. The proposed action is to reauthorize the r\w grant for the existing facility for a 30 year term.

**B. Location/Land Use Allocation:**

The diversion source and the underground line are located on public land near Merlin, Oregon in Josephine County, at **Lot 2; Section 36, T. 35 S., R. 7 W., Willamette Meridian**. See attached map. The r/w is located within the designated corridor of the Hellgate Recreation Area of the Rogue National Wild and Scenic River.

The map depicts approximately 700 feet between the private property boundary and the Rogue River. However, the river channel in this location has been very dynamic in the 30 years since the original grant, and has moved approximately 550 to 650 feet closer to the private property line. The channel course remains dynamic, and may continue to shift towards the private property line, or may eventually shift towards its previous location. Because of the dynamic nature of the river course, the proposed action of the r\w grant retains the original r\w area provided for in the original grant authorization.

**C. Need / Rationale for the Proposed Action:**

The BLM's need for proposing this action is to respond to Robert Hoellrich's application for reauthorization in a manner consistent with the management objectives and management direction of the land use plan for the BLM-administered lands at this location, in accordance with the BLM's obligations under the Federal Land Policy and Management Act of 1976 (FLPMA). The current land use plan establishes the management objective to "provide needed rights-of-way ... over BLM-administered lands in a manner that is consistent with federal and state law" (Record of Decision for the Medford District Resource Management Plan (2008 ROD/RMP), p. 49).

#### **D. Project Design Features**

The following project design features (PDF's) would be included as stipulations in the right-of-way grant:

##### *Agency Discretion and Authority*

Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the Authorized Officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or grant granted herein may be reviewed at any time deemed necessary by the Authorized Officer.

##### *Stop Activities in Case of Damage*

The Bureau of Land Management reserves the right to stop any or all activities authorized under this Grant when the Authorized Officer determines that damage to the environment may occur or is anticipated.

##### *Compliance with Environmental Laws*

The Grant holder agrees that during the life of this grant he shall comply with:

- a) All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the grant area, together with all applicable State and Federal laws and regulations. The Grant holder shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the grant area in connection with any operations under this grant.
- b) All applicable State and Federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides and other similar substances. **Prior to the use of such substances on or near the right-of-way, the Grant holder shall obtain from the Authorized Officer approval of a written plan for such use.** The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used.
- c) All other applicable State and Federal environmental laws, regulations and standards.

The Grant holder shall immediately discontinue all construction or other operations under this grant upon receipt of written notice from the Authorized Officer that such operations or any part thereof are in violation of this provision.

##### *Cultural*

If in connection with maintenance of the water system or other operations under this grant, the Grant holder encounters or becomes aware of any objects or sites of cultural value on federal lands, such as historical or pre-historical ruins, graves, grave markers, fossils or artifacts, the grant holder shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The grant holder's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.

A BLM cultural resources specialist shall be present during any ground disturbing activities, unless the BLM provides authorization to proceed without the presence of a cultural resources specialist.

#### *Hazmat*

The grant holder may not release any hazardous substances or hazardous wastes (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. (CERCLA) or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. (RCRA)) on the right-of-way area. The Right-of-way Holder agrees to indemnify the United States against any liability arising from the release of any hazardous substances or hazardous wastes.

#### *Threatened or Endangered Species*

The grant holder shall immediately discontinue specified use upon receipt of written notice from the Authorized Officer that:

- a) Threatened or endangered plants or animals protected under the Endangered Species Act of 1973, as amended, may be affected by the operation and a determination is made that consultation or re-initiation of consultation is required concerning the species prior to continuing operations; or
- b) Federal proposed, federal candidate, Bureau sensitive or State listed species protected under BLM Manual 6840 – Special Status Species Management – have been discovered and a determination is made that continued operations would adversely affect the species or its habitat.

#### *Noxious Weeds*

The grant holder shall

- a) Wash all ground disturbing equipment used on BLM lands prior to entering BLM lands to remove any dirt or vegetation that may harbor noxious weed seeds.
- b) Notify the Authorized Officer upon discovery of any noxious weed species found on the right-of-way area. If the Authorized officer determines that noxious weeds on the right-of-way area are the result of the grant holder's activity, the grant holder is responsible for immediate control and eradication of the noxious weeds. The Holder shall consult with, and obtain written approval from, the Authorized Officer for acceptable weed control methods, such as mechanical or chemical, or provide funds to BLM for treatment.

#### *Maintenance and repair*

The grant holder or his contractor shall:

- a) Conduct all maintenance, repair, or other activities under this right of way grant in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- b) Notify the Authorized Officer of his intent to conduct any ground disturbing maintenance or operations authorized through this grant no later than fourteen (14) days prior to the maintenance or operations, and shall provide the authorized officer the date it is to commence and the delegated representative of the Holder (if any). Such delegated representative is the person who is authorized by the Holder to carry

out the maintenance or operations and other terms and conditions of the grant and act on behalf of the Holder. The notice of the delegated representative shall include a current mailing address and telephone number.

The Grant Holder shall clearly mark the surveyed exterior limits of the right-of-way area. All activities directly or indirectly associated with the maintenance or repair of this irrigation pipeline must be conducted within the limits of the right-of-way area. Machinery and/or ground disturbing activity shall be restricted to inside the designated right-of-way area only. Unless specifically authorized by the Authorized Officer, work involving ground disturbance shall be performed in the dry season only, which is generally between May 15th and October 15th of any year. Heavy equipment operation and ground disturbing activities are prohibited when soil moisture content exceeds 20% by weight. All equipment shall be washed and inspected for leaks before entering BLM administered lands. Within the right-of-way area, no trees of eight (8) inches or greater diameter at breast height shall be removed without written authorization from the BLM. Additionally, no trees less than eight (8) inches diameter at breast height or shrubs are to be cut on the right-of-way area except as required for necessary access and maintenance.

#### *Miscellaneous*

The grant holder shall hold a current surface water right permit during the life of the ROW grant, and shall comply with terms of that permit, including all fish screening requirements contained in the applicant's surface water right permit and all applicable fish screening requirements under state or federal law.

#### **E. Plan Conformance**

The proposed action is in conformance with the following plans and decisions:

- a) Record of Decision (ROD) for the Medford District Resource Management Plan (RMP) (2008)
- b) Final EIS for the Revision of the Resource Management Plans of the Western Oregon Bureau of Land Management (2008)
- c) Record of Decision (ROD) for the Rogue National wild and Scenic River: Hellgate Recreation Area Recreation Area Management Plan (RAMP) (July 2004)
- d) Decision Record and Environmental Assessment for the Medford District Integrated Weed Management Plan (April 1998)

#### **E. Compliance with the National Environmental Policy Act**

The Proposed Action qualifies as a categorical exclusion under Department Manual 516 DM 11, Appendix 11.9, Section 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.

## **F. Extraordinary Circumstances Review**

Title 43, Section 46.205(c) of the Code of Federal Regulations (CFR) requires the review of this action to determine if any of the following “extraordinary circumstances” (found at 43 CFR 46.215) would apply. If any of the extraordinary circumstances apply, then an otherwise categorically excluded action would require additional analysis and environmental documentation.

1) *Have significant impacts on public health or safety.*

Yes No Remarks:

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 Remarks: The right-of-way is within the 100 year floodplain of the Rogue National Wild and Scenic River, but a buried irrigation line is a suitable facility for the floodplain, and does not conflict with the Hellgate Recreation Area Recreation Area Management Plan (RAMP).

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

Yes No Remarks:

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

Yes No Remarks:

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

Yes No Remarks:

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

Yes No Remarks:

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 Remarks:

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 Remarks:

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

Yes No Remarks:

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

Yes No Remarks:

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 Remarks:

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 Remarks:

**G. Contact Person**

For additional information concerning this project, contact Floyd Peterson, Project Lead, at (541) 618-2329.

**Reviewers:**

<u>Concepcion Francis</u> 3/20/09 Silviculture, Vegetation Dynamics, & Port-Orford Cedar	<u>Jason Rees</u> 3/13/09 Wildlife
<u>Robyn Singh-Jaworski</u> 3/19/09 Botany	<u>Michael DeSlo</u> 3/19/09 Soils/Hydrology
<u>Krista Brennan</u> 3/24/09 Cultural Resources	<u>Barbara Zinkheller</u> 3/16/09 Visual Resources / Recreation
<u>Joe Rabin</u> 3/13/09 Fisheries	<u>Cindy Wulfsberg</u> 3/24/09 Engineering
<u>Jim W. L.</u> 3/9/09 Fire and Fuels	

<u>Floyd Peterson</u>	<u>01-22-2009</u>
Prepared by	Date
<u>Jared C. Nichol</u>	<u>3/24/2009</u>
NEPA Reviewed by	Date
Jared Nichol	
Planning and Environmental Coordinator	

## DECISION

I have reviewed this Categorical Exclusion Documentation, including the plan conformance, NEPA compliance review, and extraordinary circumstances review. I have determined that:

- (1) the applicant has established a reasonable need for the requested reauthorization,
- (2) the proposed action is in conformance with the approved land use plan
- (3) the categorical exclusion cited in Categorical Exclusion Documentation applies to this action, and therefore no further environmental analysis is required.

It is my decision to implement the action as described and approve Right-of-Way Grant OR 65782 to Robert R. Hoellrich for a thirty (30) year term.

  
\_\_\_\_\_  
Abbie Jossie  
Field Manager  
Grants Pass Resources Area

3-30-09  
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 address below will be accepted. Faxed or e-mailed appeals will not be considered.

*BUREAU OF LAND MANAGEMENT  
GRANTS PASS INTERAGENCY OFFICE*

2164 NE Spalding  
Grants Pass, OR 97526

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, the Regional Solicitor and the Right of Way applicant (Roland and Doris Bleitz) 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.

## **HOW TO FILE AN APPEAL**

See the attached Form 1842-1 for complete instructions on Filing an Appeal

## **CONTACT INFORMATION**

For additional information contact:

Abbie Jossie, Field Manager, Grants Pass Resource Area  
Grants Pass Interagency Office  
Bureau of Land Management  
2164 NE Spalding  
Grants Pass, OR 97526  
(541) 618-6500  
Or Jared Nichol (Grants Pass Environmental Planner, Detail) at (541) 471-6645

Additional contact addresses include:

- 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
- Office of the Regional Solicitor  
Pacific Northwest Region  
U.S. Department of the Interior  
805 SW Broadway, Suite 600  
Portland, OR 97205
- Robert R. Hoellrich  
100 Ferry Road,  
Grants Pass, OR 95726

Attachments:  
Form 1842-1  
Exhibit A Map

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS**

**DO NOT APPEAL UNLESS**

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

**IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED**

<b>1. NOTICE OF APPEAL</b> .....	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
<b>2. WHERE TO FILE</b>	
<b>NOTICE OF APPEAL</b> .....	U.S. Department of the Interior, Bureau of Land Management Grants Pass Interagency Office 2164 NE Spalding Grants Pass, OR 97526
<b>WITH COPY TO SOLICITOR</b> ...	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 97205
<b>3. STATEMENT OF REASONS</b>	Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).
<b>WITH COPY TO SOLICITOR</b> .....	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 9720
<b>4. ADVERSE PARTIES</b> .....	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
<b>5. PROOF OF SERVICE</b> .....	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
<b>6. REQUEST FOR STAY</b> .....	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay <b>must</b> 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 (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.  <b>Standards for Obtaining a Stay.</b> Except as otherwise provided by law or other pertinent regulations, 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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

### 43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

#### STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2006)

Robert Hoellrich  
RIGHT OF WAY LOCATION MAP  
SEC.36 T.35S.,R.7W., WILL.MER.

SERIAL NO. OR  
EXHIBIT A  
SHEET 1 OF 1

LEGEND

-  BLM LANDS
-  RIGHT OF WAY

