

**U.S. Department of the Interior  
Bureau of Land Management  
Uncompahgre Field Office  
Montrose, CO, COS050**

## **CATEGORICAL EXCLUSION**

NUMBER: DOI-BLM-CO-S050-2009-0052 CX

CASEFILE: COC- 73827

PROJECT NAME: Right-of-Way Grant for an Existing Powerline

PLANNING UNIT: Uncompahgre Basin Resource Management Unit

LEGAL DESCRIPTION: New Mexico Principal Meridian,  
T. 48 N., R. 7 W.,  
Sec. 1: Lots 2 and 3.

APPLICANT: Delta Montrose Electric Association

DESCRIPTION OF PROPOSED ACTION: The proposed action is to issue a right-of-way grant to Delta Montrose Electric Association (DMEA) for continued use of an existing powerline serving three communication sites on Sheep Knob. The right-of-way is located approximately 16 miles east of Montrose and approximately one mile north of Highway 50.

The powerline, which has been in service for over 40 years, was constructed as an ancillary facility for a communication tower authorized to Tri-State Generation and Transmission in 1965. The line is a single phase, 7.2 kV overhead powerline. The right-of-way is approximately 3400' long, 30' wide and encumbers approximately 2.342 acres of public land. Access to the right-of-way off Highway 50 uses existing roads crossing private lands, except for the last ½ mile to the right-of-way, which uses an existing road on Public Lands. No surface disturbance is anticipated to occur on the right-of-way, other than routine or necessary maintenance over time.

A compliance inspection of Sheep Knob was conducted in August 2008. The right-of-way was found to be in use and is still needed by the holder. No issues or concerns were noted and no weed problems were observed during the inspection

The right-of-way will be issued under FLPMA for 30 years with the right of renewal. DMEA's facilities are recognized under the Rural Electrification Act and are rental exempt. The grant will be subject to the attached stipulations, see Exhibit A.

PLAN CONFORMANCE REVIEW: The Proposed Action is subject to and has been reviewed for conformance with (43 CFR 1610.5, BLM 1617.3) the following plan:

Name of Plan: Uncompahgre Basin Resource Management Unit

Date Approved: July 1989

Decision Number/Page: Management Unit 16, page 143

Decision Language: MU-16 is managed for general land uses but does not specifically mention Lands Program rights-of-way. However the following assumption for the overall plan is: Lands cases generated by other agencies, individuals, and entities would be analyzed and processed on a case-by-case basis in accordance with guidance provided by this plan.

CATEGORICAL EXCLUSION REVIEW: The proposed action qualifies as a categorical exclusion under 516 DM 11.9, Number E16, which allows for acquisition of easements...or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements or sites for the same or similar purposes. None of the following exceptions in 516 DM 2, Appendix 2, apply.

Exclusion	YES	NO
1. Have significant adverse effects on public health and safety.	_____	_____ <u>X</u>
2. Have adverse effects 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, floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.	_____	_____ <u>X</u>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.	_____	_____ <u>X</u>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.	_____	_____ <u>X</u>
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.	_____	_____ <u>X</u>
6. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.	_____	_____ <u>X</u>
7. Have adverse effects on properties listed, or eligible for listing, in the National Register of Historic Places.	_____	_____ <u>X</u>
8. Have adverse effects on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.	_____	_____ <u>X</u>
9. Have the potential to violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.	_____	_____ <u>X</u>
10. Have the potential for a disproportionately high and adverse effect on low income or minority populations.	_____	_____ <u>X</u>

11. Restrict access to and ceremonial use of Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites. \_\_\_\_\_ X
12. Significantly, 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. \_\_\_\_\_ X

INTERDISCIPLINARY REVIEW:

<u>Name</u>	<u>Title</u>	<u>Area of Responsibility</u>
Linda Reed	Realty Specialist	Lands and Realty
Glade Hadden	Archaeologist	Cultural Resources
Thane Stranathan	Natural Resource Specialist	Wildlife, Threatened and Endangered Species
Melissa Siders	Biological Staff Supervisor	Wildlife, Threatened, Endangered and Sensitive Species, Migratory Birds

REMARKS:

Cultural Resources: Waiver of inventory under provisions of 8110.23B2 due to existing disturbance.

Native American Religious Concerns: None known.

Threatened and Endangered (T&E) Species: The proposed action would have no effect on any federally listed species or its habitat (see 6840 file for Clearance details).

Sensitive Species: The proposed action may affect individuals of some sensitive species, but is not likely to result in a trend toward federal listing (see 6840 file for Clearance details).

Required stipulation: Bald Eagle winter foraging area: no construction or disturbance activities between December 1<sup>st</sup> and April 15th.

Migratory Birds: The proposed action may affect individuals, but would not significantly or adversely impact the continued existence of a migratory bird species or its habitat, and would not likely result in a trend toward federal listing (see 6840 file for Clearance details).

Required stipulation: To protect migratory birds, especially raptors, follow "Suggested Practices for Avian Protection on Powerlines: The State of the Art in 2006."

Big Game: The proposed action would not significantly or adversely impact the continued existence of a big game species or its habitat.

Required stipulation: To protect wintering deer and elk, no surface disturbing activities shall occur from December 1<sup>st</sup> through April 30<sup>th</sup>.

NAME OF PREPARER: Linda Reed

October 2, 2009

NAME OF ENVIRONMENTAL COORDINATOR: Bruce Krickbaum

DATE: 10/05/2009

DECISION AND RATIONALE: I have reviewed this CER and have decided to implement the proposed action.

This action is listed in the Department Manual as an action that may be categorically excluded. I have evaluated the action relative to the 10 criteria listed above and have determined that it does not represent an exception and is, therefore, categorically excluded from further environmental analysis.

SIGNATURE OF AUTHORIZED OFFICIAL:

/s/ Barbara Sharrow  
Barbara Sharrow,  
Uncompahgre Field Office, Field Manager

DATE SIGNED: 10/05/2009

COC-73827  
Exhibit A

## STIPULATIONS

1. The holder shall contact the Authorized Officer (AO) at least two weeks prior to the anticipated start of any surface disturbing activities. It is the holder's responsibility to comply with all applicable Federal, State, and local laws and regulations existing or hereafter enacted or promulgated. In any event, prior to any surface disturbing activities, the holder shall comply and demonstrate compliance in writing, i.e., with surveys and inventories completed by qualified individuals, with the following laws including, but not limited to, the Endangered Species Act (if potential habitat is determined to be present), the National Historic Preservation Act, and the Native American Graves Protection and Repatriation Act. Evaluations and inventories can be completed by BLM, or by the holder in order to meet the holder's schedule and subject to approval by the AO. The holder shall not initiate any surface disturbing activities on the right-of-way without prior written approval as determined necessary by the AO. Contact Linda Reed, BLM Realty Specialist, at (970) 240-5322, or alternate Barney Buria, BLM Environmental Protection Specialist, at (970) 240-5333.
2. Any relocation, additional construction, or use that is not in accord with the approved conditions shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all plans and stipulations shall be made available at the right-of-way site during construction. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health or the environment.
3. 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.
4. Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.
5. 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 the applicant's 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. The plan should be submitted no later than March 1 of any calendar year to cover the proposed activities for the next growing season. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.

6. The holder shall be responsible for weed control 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), including pesticides approved for use on BLM land.
7. The holder shall comply with applicable State standards for public health and safety, environmental protection and siting, construction, operation and maintenance, if these State standards are more stringent than Federal standards for similar projects.
8. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated regarding toxic substances or hazardous materials. In any event, the holder 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 of 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 of State government.
9. The authorized officer may suspend or terminate in whole, or in part, any construction or maintenance activities, when in his judgment, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.
10. All construction, operation and maintenance shall be within the authorized limits of the right-of-way granted herein.
11. All brush, grasses, and other woody material cleared from the right-of-way shall be removed from the public land and not scattered on site; unless the debris is mulched and used for reclamation as natural materials to enhance surface stability and re-vegetation efforts.
12. No burning of trash, litter, trees, brush or other vegetative material shall be allowed under this grant.
13. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support such equipment. If the equipment creates ruts in

excess of four (4) inches deep, the soil shall be deemed too wet to adequately support the construction equipment.

14. The holder shall disturb the minimum amount of soils and vegetation necessary for the construction, operation, or maintenance of the powerline. The holder shall recontour disturbed areas as necessary by grading to restore the area to approximately the original contour of the ground as directed by the authorized officer.
15. The holder shall seed all disturbed areas with the following seed mix. There shall be no primary or secondary noxious weed seed in the seed mixture. In addition, there should be no more than 0.5% total weed seed, less than 2% other seed, and no trash larger than ¼ inch in length. Seed shall not be stored in burlap bags. Seed going on projects less than 20 acres or less than 200 lbs. shall be tested, and the viability testing of seed shall be done in accordance with State law(s). Seed tests shall be less than one year old and can be from the company's seed test. Seed test documents can be from: a) certified "blue" tag(s); b) an independent seed lab test; or c) a seed lab analysis either by seed lot or by seed mix. Copies of the seed test documents shall be forwarded to the BLM, Uncompahgre Field Office. Commercial seed shall be either certified or registered pure live seed (PLS). The seed container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer. Only State Certified weed free mulch shall be used.

The seed shall be evenly and uniformly planted over any disturbed areas. Seed shall be broadcast and the area shall be raked or chained to cover the seed. 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 two days prior to seeding of the project. Seeding shall be completed at a time of optimum soil moisture content, i.e., early spring or the fall.

<u>Seed Mix</u>	<u>Pounds/acre PLS</u>
Slender wheatgrass	4
Western wheatgrass	4
Total	8 lbs/acre PLS

16. For the purpose of determining joint maintenance responsibilities of the access road, the holder shall make road use plans known to all other authorized users of the road. Failure of the holder to share proportionate maintenance costs on the common use access road in dollars, equipment, materials, or manpower with other authorized users may be adequate grounds to terminate the right-of-way grant. The determination as to whether this has occurred and the decision to terminate shall rest with the authorized officer. Upon request, the authorized officer shall be provided with copies of any maintenance agreement entered into.
17. Unless otherwise agreed to by the authorized officer in writing, powerlines shall be constructed in accordance to standards outlined in "Suggested Practices for Avian Protection on Powerlines: The State of the Art in 2006" (Avian Power Line Interaction

Committee. 2006. Available at: [http://www.aplic.org/SuggestedPractices2006\(LR-2watermark\).pdf](http://www.aplic.org/SuggestedPractices2006(LR-2watermark).pdf)). The holder shall assume the burden and expense of proving that pole designs not shown in the above publication are “eagle and raptor safe.” Such proof shall be provided by a raptor expert approved by the authorized officer. The BLM reserves the right to require modifications or additions to all powerline structures placed on this right-of-way, should they be necessary to ensure the safety of large perching birds. Such modifications and/or additions shall be made by the holder without liability or expense to the United States. All pole replacements will be brought up to this standard. For all maintenance activities that involve, but are not limited to, nest relocation or destruction, temporary possession, depredation, salvage/disposal, harassment, and scientific collection of raptors, the right-of-way holder shall provide the BLM with a copy of their current Migratory Bird Permit for those activities.

18. Prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination and rehabilitation plan as necessary. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.
19. Construction activity and surface disturbance will be prohibited during the period from December 1<sup>st</sup> to April 30<sup>th</sup> for the protection of elk and mule deer winter and severe winter range. Any exceptions to this requirement must have prior written approval from the authorized officer.
20. Construction activity and surface disturbance will be prohibited during the period from December 1<sup>st</sup> to April 15<sup>th</sup> for the protection of bald eagle (winter range). Any exceptions to this requirement must have prior written approval from the authorized officer.