

## DECISION RECORD

### FINDING OF NO SIGNIFICANT IMPACT

#### CHRISTOPHER JAMES WATER PIPELINE RIGHT-OF-WAY

#### ENVIRONMENTAL ASSESSMENT ID-330-2008-EA-147

**Proposed Action:** 30-Year (renewable) Water Pipeline Right-of-Way (ROW)

**Applicant:** Christopher James

**EA No.:** ID-330-2008-EA-147

**Serial No.:** IDI-33653

**Contact Person:** Tim Vanek

**Location of Action:** The subject parcel is located within Daugherty Gulch approximately 4 mi west of the City of Challis located along Garden Creek Rd. The legal land description for the action is:

B.M., T. 13 N., R. 18 E., sec. 3, NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>

#### **Finding of No Significant Impact (FONSI)**

I have reviewed this Environmental Assessment ID-330-2008-EA-147 including the explanation and resolution of any potentially significant impacts. I have determined this ROW involving approximately 0.63 acres of public land, will not have any significant impacts on the human environment and that an Environmental Impact statement is not required.

Implementing regulations for National Environmental Policy Act (NEPA) (40CFR 1508.27) provide criteria for determining the significance of effects. “Significant”, as used in NEPA requires consideration of both context and intensity. The bold and italicized text is repeated from 40CFR 1508.27. There is an explanation following each cited passage, how the proposed action conforms to this regulation.

**(a) Context This requirement means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the local rather than in the world as a whole. Both short-and-long-term effects are relevant (40 CFR 1508.27):**

The disclosure of effects in the EA found the action limited in context. The ROW will involve a small amount of public land along Daugherty Spring Creek, which feeds Challis Creek. Challis BLM wildlife and fisheries biologists as well as plant specialists concluded that the proposed action would not impact any endangered, threatened or critical species. Table 1, section 3.4.4 of EA number ID-330-2008-EA-147 lists sensitive wildlife species which are expected to be affected by the proposed action. These are primarily riparian-dependent migratory/songbirds, several birds of prey and amphibians. Challis Field Office Lands & Realty staff consulted with local municipalities (county and city) and a right-of-way holder in the project vicinity during the scoping and analysis processes; none presented objections or concerns. Several residents of Garden Creek submitted comments to the above EA during the scoping process. Their comments

were reviewed by the BLM Challis Field Office staff serving as the Interdisciplinary Team (ID team) responsible for analyzing impacts of the proposed project. The ID team included those comments in the above EA, but determined that most raised issues beyond the scope of the EA. Because of the nature of the proposed use authorization, its location, and the circumstances precipitating it, analysis determined significance to be local in context. Significance of the proposed action will be limited to downstream residents of Daugherty Gulch with subordinate water rights.

**(b) Intensity. This requirement refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following are considered in evaluating intensity (40 CFR 1508.27).**

*(1) Impacts that may be both beneficial and adverse.*

- The Environmental Analysis identified minimum adverse impact to small rodents, the western toad, migratory birds, birds of prey, rodents, and big game species. The beneficial impacts are: improved drinking water quality for the occupants of the Living Waters Guest Ranch & Retreat Center. Additionally, the proposed action is a more economical means for Christopher James to acquire the surface water allowed in water right 72-04174C than hauling water.

*(2) The degree to which the proposed action affects public health or safety.*

- The Environmental Assessment does not address threats to public safety. The Challis Resource Area staff determined during the initial analysis of the proposed action those subjects did not warrant further consideration. As a result, the proposed pipeline right-of-way represents a “no adverse effect” action for public health or safety.

*(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.*

- Historical records search and Class III archaeological field survey of the entire subject parcel failed to locate any cultural resources eligible for listing on the National Register of Historic Places. The proposed right-of-way ROW route is not in park lands, prime farmlands, nor does it contain wetlands, or ecologically critical areas. Work in Daugherty Spring Creek, will not adversely affect the river as work will be far enough removed from a high flow stream that silt is not expected to reach Challis Creek. As a result, the proposed ROW represents a “no effect” action for cultural resources; nor was there any significant effects revealed in the EA to the remaining topics listed above.

*(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.*

- The project was posted on the Idaho BLM – NEPA Database (<http://www.id.blm.gov/planning/nepa/databases/index.php>) on August 29, 2008. The BLM Challis Field Office (CFO) received three public comments on November 3, 2008 from two separate households near the proponent along Challis Creek as well as the Idaho Conservation League. CFO project staff reviewed the public comments on December 1, 2008 and concluded that most of the comments did not fall within the scope of the project analysis. One comment pertaining to the lack of information concerning the

economic cost of hauling water granted in water right 72-04174C was further addressed in an update to the draft of the environmental analysis. Another comment suggested that if the BLM were to implement the proposed action we should only grant the ROW for 10-years rather than the full, 30-years allowed by regulation. CFO project staff concluded that the author of the comment did not include sound reasoning with the comment therefore, it was not in the best interest of the public to alter the proposed action in that manner. Furthermore, all new/renewed land use authorizations issued by the CFO have compliance checks due every five years. CFO project staff concluded that the timing of the compliance checks adequately mitigated the concerns the individual commenting had raised in the comment concerning ROW term length. The analysis did not identify any controversy or disagreement concerning effects on the quality of the human environment.

*(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.*

- The action of issuing public land use authorization is a well-defined and regulated process. Subsequently, it does not pose “highly uncertain”, or “unique or unknown risks”.

*(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.*

- The BLM Challis Field Office issue numerous linear rights-of-way annually. This proposed ROW will not be a precedent in either type or in principle.

*(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.*

- The analysis of the proposed action did not reveal any relationship to other actions with individually insignificant but cumulatively significant impacts.

*(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.*

- The analysis shows that the proposed action or alternatives would result in “No effect” to highways, cultural or historical resources.

*(9) The degree to which the action may adversely affect an endangered or threatened species or its critical habitat that has been determined under the Endangered Species Act of 1973, as amended.*

- As was discussed in the EA, the proposed action is determined to have “No effect” for federally listed plant, or terrestrial species occurring in the nearby area. The proposed action is determined to “Not likely to effect” Salmonoid species.

*(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.*

- The analysis in the EA shows Challis Field Office staff consulted with Federal and State agencies responsible for environmental protection in the affected environment. Furthermore, said consultation revealed the proposed actions or alternatives are consistent with Federal, State, and local laws or requirements imposed for protection of the environment.

I have reviewed the Council on Environmental Quality Regulations (CEQ) for significance (40 CFR 1508.27) and have determined the actions analyzed in the EA would not constitute a major Federal action that would significantly affect the quality of the human environment; therefore an Environmental Impact Statement is not required.

### **Decision**

It is my decision to approve the Proposed Action as submitted by Christopher James in application number: IDI-33653 dated December 20, 2002 and as described in Environmental Assessment (EA) #ID-330-2008-EA-466. This action is to authorize a 30-year renewable Right of Way for a potable water well, surface water diversion structure, and buried, potable and irrigation water pipelines (approx. 500 and 200 feet in length, respectively). The fenced potable water well and 30-foot wide pipeline would involve approximately 0.49 acres of public land. The 30-foot wide irrigation pipeline and diversion structure would involve approximately 0.14 acres of public land for a total of 0.63 acres of involved public land. All development will be constructed to the specifications included in the above EA. The project area is contained within the following legal land description:

Boise Meridian, T. 13 N., R. 18 E., sec. 3, NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

This ROW is authorized under Title V: Rights-Of-Way, section 501: Authorization to Grant Rights-Of-Way (43 Code of Federal Regulations (CFR) subpart 28) and is needed to support Christopher James in his effort to supply the Living Waters Ranch with potable and irrigation water.

This ROW will be subject to all rules and regulations found in the current edition of 43 CFR Part 2800 (Rights-of-Way). Additionally, all plans and drawings found in Appendix A of EA ID-330-2008-EA-147 and all stipulations in Appendix B, shall also be made part of the ROW grant.

### **Rationale for Decision**

This ROW is an example of the BLM complying with the mandate of the Federal Land Policy Act of 1976 requiring Federal land managing agencies to: "Manage public lands and their resource values so they are utilized in the combination that best meets the present and future needs of the American people. Furthermore, this ROW helps fulfill the BLM's mission of providing multiple use of America's public lands while sustaining the health, diversity and productivity of those lands.

The action is in conformance with the Challis Resource Area Record of Decision and Resource Management Plan, dated July; 1999. The proposed action meets the guidelines found in Section II, Land Tenure and Access, Goal 3, Rationale #1, page 35.

### **Authority**

The BLM has prepared this environmental assessment (EA) in compliance with the National Environmental Policy Act (NEPA) as well as other appropriate laws and regulations both federal and state. The EA discussed direct, indirect and cumulative impacts that may result from the Proposed Action or alternatives. The EA also provided supporting documentation for this decision document. I am implementing this action by the authority delegated to the Bureau of Land Management found in Section 302 (b) of the Federal Land Policy Management Act of 1976 (43 USC 1732).

### Appeal Procedures

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, your 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.

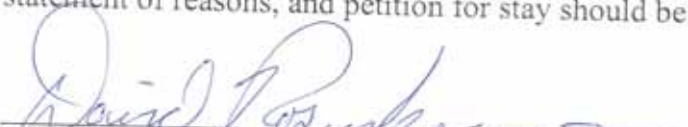
If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2801.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice 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 you request a stay, you 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.

If you decide to also submit a petition for stay of the decision, a copy of the notice of appeal, statement of reasons, and petition for stay should be simultaneously filed.

  
David P. Rosenkrance  
Field Manager

5 JUNE 2009  
Date