

2803 – QUALIFICATIONS FOR HOLDING FLPMA GRANTS

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.10 Holder Qualifications.

A. General. Qualifications depend on the authorizing law and whether the applicant/holder is an individual, group, association, corporation, partnership, or similar entity, or is a federal agency, or state or local government.

1. Responsibility. A ROW may be applied for and held by more than a single entity. Regardless of how the applicant/holder may indicate ownership among the members making up the applicant/holder, the BLM views them all as equally responsible and, if necessary, each totally responsible for the operation, maintenance and termination of the ROW.

2. Public Interest. It is not in the public interest to process a ROW application when the applicant is an existing holder and is not in compliance with the existing grant terms and conditions, including nonpayment of rent and cost recovery. The existence of willful trespasses on public lands should also be considered.

B. Real Property. An applicant must be legally capable of holding an interest in real property.

1. Individuals. The individual must be of legal age and competent. The BLM will assume competency unless it has good reason to do otherwise.

2. Business Entities. Unless the law under which the business entity is formed specifically states that the type of entity may hold interests in real property, the business's enabling papers - partnership agreement, association agreement, incorporation papers, etc.- must state that the entity may engage in, or is engaged in, the buying, holding, and selling of real property. In cases where the applicant corporation is owned by another corporation, the incorporation papers of the parent corporation may also have to be examined to determine the ability of the applicant to hold an interest in real estate.

C. Capability. Applicants must show that they are financially and technically capable of constructing, operating, maintaining, and terminating the proposed facilities. This may simply be a signed statement or may be in great detail – see F. below. Levels of financial or technical capabilities compared to the facilities proposed also provide a yardstick for possible bonding requirements.

D. Citizenship. While FLPMA does not require United States citizenship, some of the pre-FLPMA laws require citizenship status.

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E. “Limited” Business Status. The enabling papers submitted by ‘limited’ or ‘limited liability’ (LLC) associations, partnerships, companies, etc., must be closely reviewed for potential conditions that are unacceptable to the BLM. For example, LLCs may dissolve upon a fixed date or upon the death of one of the officers, leaving the BLM with a substantial liability. The BLM will consider the ‘limited’ liability of these organizations in any bonding requirement.

F. Papers. Unless it has good reason to believe otherwise, the BLM will accept papers filed by the applicant/holder as true and valid. The BLM may, at any time before or after issuing a grant, request additional information.

G. Business Qualifications. A corporation, partnership, association, limited or limited liability organization or other legal entity must submit the following additional information:

1. Copies of the papers of incorporation or other documents that show the creation of the legal entity.

a. In some cases - minor associations or minor partnerships - filing enabling papers with a government agency may not be required. In these cases, however, the association or partnership is not viewed by the BLM as a separate entity and the organization’s activity is the responsibility of all members, jointly and individually. For these situations, decisions, grants, and other documents will use the names of all individuals involved; the BLM will not use the association or partnership name on official documents.

b. When the BLM is dealing with a business entity, it is important to understand any limitations placed on the entity by its enabling papers. In some cases, the enabling papers may limit the BLM’s ability to hold officers or individuals involved in the business entity responsible for actions performed under a ROW grant or to recover damages in the event of non-performance. Therefore, it is important that the enabling papers be kept in the case file.

2. Evidence that the party signing the application and grant has the authority to bind the applicant to the terms and conditions of a ROW grant (e.g. corporate resolution).

3. If incorporated in another State, a certification that the company is entitled to operate in the State for which the ROW grant is sought.

H. Government. A governmental applicant must be a Federal Agency, State or local government.

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I. Indian Tribes. While Indian or Native groups, i.e., Navajo, are recognized as a distinct group or “Nation,” they are not considered a government or government agency for these ROW procedures. The Bureau of Indian Affairs is the government agency which may represent Indian Tribes.

.11 Agent of ROW Applicant. The BLM shall not recognize an agent unless the applicant has submitted documentation providing the extent to which the agent is allowed to represent the applicant. It is important to note that the agent is not the applicant, and that the applicant, not the agent, is responsible for activities conducted under a ROW grant.

.12 Disposition of Grant and Improvements Upon Death of Holder.

A. Provisions Within Grant. If the grant provides for a certain set of actions to take place in the event of the death of the holder, those provisions will apply.

B. No Provisions Within Grant.

1. Qualified Successor. The BLM will accept a qualified successor to a deceased applicant/holder. An assignment shall be processed (see BLM Manual 2807.21).

2. Unqualified Successor. The BLM will recognize an unqualified successor for a period of two years to allow the party to become qualified or assign the ROW to a qualified party.

3. No Successor. The BLM must make a full attempt to locate a qualified successor. The following procedures will be initiated:

a. Document in the casefile the evidence of death of the holder and efforts taken by the BLM to locate successors to the holder. This may include telephone calls, undelivered mail, etc.

b. In a newspaper(s) of 1) general circulation in the vicinity of the grant and 2) general circulation in the vicinity of the holder’s last known address, publish a Notice containing at a minimum the following information (see Illustration 1):

- (1) Name of deceased.
- (2) Brief description of authorization and any improvements.
- (3) Location of authorization.

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(4) Request for identity of successors.

(5) Notice that, barring a claim by a successor to the deceased, the grant will revert to the United States 60 days after publication of the Notice.

(6) Name, address, and phone number of the BLM official that can provide further information.

c. Take action appropriate with responses or lack of responses to the Notice(s).

C. Real Property. Upon reversion, the improvements must be listed on the BLM's real property inventory. Subsequent use and disposition is governed by the real property procedures (see Manual 1530).

Illustration 1
.12B3

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Sample Newspaper Notice

[Name of Lessee]

On July 21, 1996, a right-of-way (AA 06999) was issued to *[Lessee]* (deceased) to provide for a water line from a spring in section 4, across public land in the S1/2 of section 5, to a livestock watering facility in section 6, all in T22S, R14E, SBM, San Diego County, California.

Located about 34 miles northwest of El Centro, CA, the right-of-way portion of the water line consists of about 4600 feet of 2 inch iron pipe and 600 feet of 1 inch iron pipe buried about 8 inches deep

[Lessee]'s last known address was:
9911 S. Alameda Way
San Diego, CA 81023

Any heir or relative of *[Lessee]* who wishes to obtain *[Lessee]*'s rights to the right-of-way must contact this office within 60 days of the publication of this notice. After 60 days, if no one contacts this office, the pipeline on the public land shall become the property of the United States.

Please contact *[BLM Realty Specialist]* at 760-337-4400 or write or visit the
Bureau of Land Management
El Centro Field Office
1661 S. 4th Street
El Centro CA 92243
Phone: (760) 337-4400
Fax: (760) 337-4490

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Discussion Paper on Holder Qualifications WHO MAY HOLD A RIGHT-OF-WAY?

With this era of changing companies, corporate restructuring, and multiple uses/users of rights-of-way (ROW) it may be appropriate to review WHO may hold a ROW or an interest in a ROW. This is not a definitive paper but an attempt to raise the level of thinking and, if possible, provoke further discussion of this particular issue.

INDIVIDUALS

Legal Age & Competency:

In all cases the individual must be of legal age to hold an interest in real property such as a ROW. The individual must also be competent but BLM would only look at whether the individual had been declared incompetent and then only if BLM had good reason to look for such.

Technically and Financially Able:

The Federal Land Policy and Management Act (FLPMA) requires that the applicant be technically and financially able to construct, operate, maintain and terminate the project/facilities for which the proposed ROW is sought. None of the other major ROW statutes have this requirement, although it is good business practice.

Citizen of the United States:

The following major ROW statutes require the applicant/holder to be a citizen of the United States:

- Act 2/25/1920, as amended (30 USC 185) - Oil & Gas.
- Act 1/21/1895, as amended (43 USC 956-957) [Repealed by FLPMA] - Tramroads, Canals, Electric.
- Act 2/15/1901, as amended (43 USC 959) [Repealed by FLPMA] - Permit of ROW electric plants, etc.
- Act 3/4/1911, as amended (43 USC 961) [Repealed by FLPMA] - Power & Communications.

As the following statutes are silent as to citizenship it follows that a non-citizen could apply for/hold a ROW. For assurances that a non-citizen performed properly as a ROW holder, BLM could consider bonding and other similar requirements.

- Act 10/21/1976, as amended (43 USC 1761 et. seq.) FLPMA - ROWs other than non-Federal O&G & Fed Aid Hwys.
- Act 3/3/1891, as amended (43 USC 946-951) [Repealed by FLPMA] - Irrigation & Drainage.
- Act 1/10/1897, as amended (43 USC 952-955) [Repealed by FLPMA] - Livestock Reservoir.

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ASSOCIATIONS - PARTNERSHIPS- CORPORATIONS

Enabling Laws:

Whenever two or more individuals come together and form a separate identifiable entity, it must be done in conformance with the laws of the United States, a Territory, or a State. Usually there is a requirement that this new entity file “corporate” papers with an agency of the US, Territory, or State; for States it is usually the Secretary of State’s Office.

In some cases - minor associations or minor partnerships - filing with the Government Agency may not be required. In these cases, however, the association or partnership is not normally looked at as a separate entity and most activity is the responsibility of all members, jointly and individually.

Authority to Hold Real Estate:

Unless the law under which the entity is formed specifically states that the type of entity may hold interests in real property, the enabling papers - partnership agreement, association agreement, incorporation papers, etc. - must state that one activity the entity may engage in, or is engaged in, is the buying, holding, selling of real property. Even then the enabling papers may limit the activity of the entity in its activities with real property.

When BLM is dealing with an Association, Partnership, Corporation, or similar entity it is important that BLM understands any boundaries placed on the entity by its enabling papers. In some cases, BLM may find that the enabling papers limit BLM’s ability to get to the officers or individuals involved in the entity to obtain ROW performance or recovery of damage repair costs. Thus, it is important that BLM have these “corporate” papers in the ROW file or relative easy access to a copy.

Citizenship:

Associations that are not formally organized and ‘filed’ under US, Territory, or State law must be made up entirely of citizens under the following ROW acts. The same would likely hold true for informal partnerships.

Act 2/25/1920, as amended (30 USC 185) - Oil & Gas.

Act 1/21/1895, as amended (43 USC 956-957) [Repealed by FLPMA] - Tramroads,
Canals, Electric.

With one exception - Act 2/20/1920, as amended (30 USC 185) - Oil & Gas - formally established Associations, Partnerships, Corporations, etc., may be made up of non-citizens, in whole or in part.

Section 1 of the 1920 Act (30 USC 181) provides that “Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease . . .”

At this time no country is identified as denying such privileges.

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Technically and Financially Able:

As with individuals, the Federal Land Policy and Management Act (FLPMA) requires that the applicant be technically and financially able to construct, operate, maintain and terminate the project/facilities for which the proposed ROW is sought. None of the other major ROW statutes have this requirement, although it is good business practice.

Corporate Structures:

Often you will find that the applicant corporation is at the lower end of the corporate food chain - it is owned by a corporation that in turn is owned by another corporation, etc., etc. On occasion one may have to look at the incorporation papers of the parent corporations as well as the applicant corporation.

Eligible Signer:

With any artificial entity BLM must be assured that the individual(s) signing for the entity has the authority to bind the entity to the ROW conditions. This authority may be part of the enabling papers if the person is specifically designated by name, not title. If it is not, then the person(s) signing for the entity must provide BLM with a copy of the resolution or other document providing the signing authority and issued by the entity's ruling body (Board of Directors, or similar) and properly authenticated.

MULTIPLE APPLICANTS OR HOLDERS

A ROW may be applied for and held by more than a single entity.

Regardless of how the applicant/holder may have indicated ownership among the members making up the applicant holder, e.g., A is 10%, B is 40% and C is 50%, the BLM views them all as equally responsible and, if necessary, each totally responsible, for the operation, maintenance and termination of the ROW.

In issuing a ROW grant, all holders should be listed in the "grant to" portion. If the list is lengthy, it can be placed in an addendum or attachment. Where one or more of the parties is an informal Association or Partnership the name of the Association or Partnership can be placed in the "grant to" portion but should be footnoted with a list of the entire membership of the Association or Partnership.

Multiple Ownership Through Assignment:

With corporate mergers, take-overs, buy-outs, etc., one can end up with a new or multiple owners of an existing ROW. A multiple ownership can also occur when the existing holder sells part of their interest in the ROW to another party, e.g., the power company sells an interest in the transmission line ROW to the communication company in order that the communication company can use the existing poles to hang its wires.

Note: In these cases, especially with a partial interest sale, BLM should look closely to determine whether a change in use occurs in addition to the ownership question.. It may be that an amendment of the ROW is necessary in addition to an assignment.

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Where a new multiple ownership occurs, the proper method for assignment is for the new companies to file for an assignment to them and for the old company to file a statement to the effect that they agree with the assignment to the new owners. Where the old company retains an interest in the ROW, both the old and new companies must file for an assignment.

For example:

1. Company A is holder of a ROW. It sells to Company B. Company B files the assignment request and Company A files agreement to the assignment.

1. Company A is holder of a ROW. Due to a merger, Companies A and B are to be equal holders of all real property. Companies A & B should file the assignment and Company A should file an agreement to the assignment.

Prepared by: Ted Bingham; AZ 910; 12/10/99

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RIGHTS-OF-WAY

Qualifications of Holder

1. FLPMA 504(j) - ROWs other than non-Federal O&G & Fed Aid Hwys
“ . . . when satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title.”
2. Act 2/25/1920, as amended (30 USC 185) - Oil & Gas
“ . . . to any applicant possessing the qualifications provided in” 30 USC 181.
30 USC 181 : “ . . . citizens, or to associations of such citizens, or to any corporation organized under the laws [US/state/territory] . . . Citizens of another country [which deny such privileges] shall not by stock ownership . . . own any interest in any . . . “
3. Act 3/3/1891, as amended (43 USC 946-951) [Repealed by FLPMA] - Irrigation & Drainage
“The provisions . . . shall apply . . . whether constructed by corporations, individuals, or associations of individuals. . . “
4. Act 1/10/1897, as amended (43 USC 952-955) [Repealed by FLPMA] - Livestock Reservoir
“Any person, livestock company, or transportation corporation engaged in . . . livestock may construct reservoirs . . .”
5. Act 1/21/1895, as amended (43 USC 956-957) [Repealed by FLPMA] - Tramroads, Canals, Electric
“ . . . by any citizen or association of citizens . . . “
6. Act 2/15/1901, as amended (43 USC 959) [Repealed by FLPMA] - “Permit of ROW electric plants, etc.”
“ . . . by any citizen, association, or corporation of the United States . . .”
7. Act 3/4/1911, as amended (43 USC 961) [Repealed by FLPMA] - Power & Communications
“ . . .to any citizen, association, or corporation of the United States . . .”