



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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DECISION RECORD

FOR THE

NEW CINGULAR WIRELESS PCS, LLC (AT&T)

RIGHT-OF-WAY GRANT RENEWAL (OR 48563)

(DOI-BLM-OR-M040-2013-0002-EA)

INTRODUCTION

This document describes my decision, and reasons for my decision, regarding the selection of a course of action to be implemented for the New Cingular Wireless PCS, LLC (AT&T) right-of-way grant renewal request. The Medford District Bureau of Land Management (BLM), Ashland Resource Area, has completed the environmental analysis of the right-of-way grant renewal proposal, which is documented in the *New Cingular Wireless PCS, LLC (AT&T) Right-Of-Way Grant Renewal (OR 48563) Environmental Assessment* (DOI-BLM-OR-M040-2013-0002-EA) (EA). The New Cingular Wireless PCS, LLC (AT&T) Right-of-Way Grant Renewal EA was issued for a 15-day public review on August 26, 2015.

BACKGROUND

The Soda Mountain Communications Site is a long-standing, established site that serves a large and varied population over a broad geographic region encompassing southwest Oregon and northern California. Soda Mountain functions as a vital link in the communications industry. The various authorized holders who currently operate at the site provide an array of services, including emergency 911 service; fire detection/reporting; commercial and public radio and television broadcasting; microwave and internet data links; telephone transmissions; and other uses.

The site overlooks Ashland, Oregon and several other communities in the region. Interstate 5 runs in a generally north/south direction approximately six miles west of the communications site. State Highway 66 runs in an east/west direction approximately four miles north of Soda Mountain. Other secondary county and BLM roads also run through the surrounding area. This transportation network, and the many residents who live in and around the area (including those

within the boundaries of the CSNM), are served by the authorized users who operate at and provide 24/7 communication services from the top of Soda Mountain.

There are currently eight communications facilities at Soda Mountain. The first authorized use on the mountain was for the fire lookout/repeater site, allowed through a letter of permission dated May 11, 1962. Medford Cellular Telephone Company, Inc. (now New Cingular Wireless PCS, LLC) was authorized on September 30, 1992. The last communications facility to be authorized on Soda Mountain occurred on September 6, 1993.

In 2000, the Cascade-Siskiyou National Monument was reserved in recognition of its remarkable ecology and to protect a diverse range of biological, geological, aquatic, archeological and historic objects (Presidential Proclamation 7318). The Soda Mountain Wilderness (SMW) was added to the National Wilderness Preservation System on March 30, 2009. The Soda Mountain Communications Site is within the CSNM and is surrounded on all sides by the SMW.

The existing New Cingular Wireless PCS, LLC (AT&T) communication site authorization at Soda Mountain was recognized as a valid existing right in the *Cascade-Siskiyou National Monument Record of Decision and Resource Management Plan* (USDI 2008, VER-5, p. 117 and Appendix O, Table O-2, p. O-3). The CSNM ROD/RMP also identified that a comprehensive communications site management plan addressing site efficiency, visual resources, and the impacts of technology would be developed (VER-6, p. 117). The *Soda Mountain Communications Site Management Plan* was approved on August 27, 2012.

The New Cingular Wireless PCS, LLC (AT&T) Right-of-Way Grant Renewal EA documented the analysis of BLM's proposal to renew New Cingular Wireless PCS, LLC (AT&T)'s right-of-way grant for a period of 10 years, and to include modifications to the original grant to address special resource considerations associated with the CSNM and adjacent resource values associated with the SMW. The Public Land Survey System (PLSS) description of the Soda Mountain Communication Site is the NW¼ of Section 28, T. 40 S., R. 3 E., Willamette Meridian, Jackson County, Oregon.

THE DECISION

It is my decision to authorize the implementation of Alternative 2 as described in the New Cingular Wireless PCS, LLC (AT&T) Right-of-Way Grant Renewal EA (pp. 15-16). This Decision authorizes the renewal the New Cingular Wireless (AT&T) Right-of-Way Grant (OR 48563), as amended by the *Soda Mountain Communications Site Management Plan* (USDI 2012), for a period of 10 years. The right-of-way grant would authorize New Cingular Wireless PCS, LLC (AT&T) to operate and maintain their existing communication facility, a 100 foot x 100 foot compound containing an operational 80-foot cell tower, equipment shelter, a propane tank and to use and maintain BLM roads 39-3E-32.3 (Soda Mountain Road), 40-3E-21.1 and 40-3E-21.2 (Soda Mountain Lookout Road). This Decision also allows the right-of-way grant to be re-assignable under specific instances due to mergers, buy-outs, or name changes.

Modifications to the existing lease approved with this Decision include: replacing an existing 4-foot diameter microwave dish located 50 feet high on the tower with a 2.5-foot diameter

microwave dish at 80 feet on the tower; installing a new 6-foot diameter microwave dish with an ice shield to be placed at 70 feet on the existing tower; painting the equipment shelter, coax cable bridge, propane tank, and all microwave dishes and ice shields with shadow gray paint (from the BLM Standard Environmental Color Chart (2008)); and allowing the two existing subleases (AT&T and the State of Oregon) to continue per their existing agreement with the right-of-way holder (New Cingular Wireless PCS, LLC (AT&T)), however, if either sublease agreement is terminated, no new subleases would be allowed.

All Project Design Features (PDFs) as described in the EA (pp. 17-18) are incorporated into this decision.

DECISION RATIONALE

My decision to authorize the implementation of Alternative 2 as described in the New Cingular Wireless PCS, LLC (AT&T) Right-of-Way Grant Renewal EA, and above, is based on consideration and evaluation of how well the purpose and need (EA, p. 3) are met, evaluation of decision factors (EA, pp. 4-8), consideration of the environmental consequences of implementing or not implementing the right-of-way grant renewal (as analyzed in the EA and documented in the FONSI), and review and consideration of public comments received in response to the Environmental Assessment.

Response to Purpose and Need and Decision Factors

New Cingular Wireless PCS, LLC (AT&T) applied to renew their right-of-way grant for their communication facility at Soda Mountain. The BLM considered the application and evaluated in the EA options for granting the renewal as-is, granting with conditions, or denying the application. My decision to authorize Alternative 2 meets the need to evaluate the application from New Cingular Wireless PCS, LLC (AT&T) to renew their existing right-of-way grant and best responds to the five decision factors identified in the EA (pp. 4-8).

1. Is consistent with the management direction in the Cascade-Siskiyou National Monument Record of Decision and Resource Management Plan (USDI 2008) for communication sites.

The New Cingular Wireless PCS, LLC (AT&T) Right-of-Way Grant was expressly recognized as a valid existing right in the *Cascade-Siskiyou National Monument Record of Decision (ROD) and Resource Management Plan (RMP)* (USDI 2008, VER-5, p. 117 and Appendix O, Table O-2, p. O-3). Presidential Proclamation 7318 established the CSNM “subject to valid existing rights.” The CSNM ROD/RMP doesn’t allow new facilities to be built at the communications site, but it does allow for modifications to existing facilities as long as the modifications don’t increase the size (footprint) of the current authorization.

Both Alternatives 2 and 3 meet the 2008 RMP direction for the Soda Mountain Communications Site and continue to authorize the New Cingular Wireless PCS, LLC (AT&T) lease that was identified as a valid existing right (USDI 2008, VER-5, p. 117); however, Alternative 3 would not provide improvements to communication services. Alternative 1 would not meet RMP direction to continue existing communication authorizations on Soda Mountain.

2. Follows the guidance in the *Soda Mountain Communications Site Management Plan* (USDI 2012).

This Communications Site Management Plan was developed to document and evaluate the existing communications site and facilities located on Soda Mountain. The plan also provides guidance for future modification of individual facilities at the site in conformance with the *Cascade-Siskiyou National Monument Record of Decision and Resource Management Plan* (ROD/RMP) (USDI 2008).

The communications site plan sets out criteria that the applicant must follow when making requests for renewals and or requests for modification or reconstruction. Applicants are required to:

1. Analyze whether there are any reasonable off-monument alternatives for placement of facilities prior to analyzing continued use within the monument;
2. Analyze any technological advancements that could obviate the need for this facility altogether; and
3. Analyze any technological advances that could reduce the footprint and the visual and other impacts of the facility.

New Cingular Wireless PCS, LLC (AT&T) explored the option of relocating their facility and/or reducing the footprint, as described on pp. 18-19 of the EA, and the Soda Mountain location is crucial in meeting communications coverage objectives.

My decision to authorize Alternative 2 is consistent with the communications site management plan. The proposed renewal of the right-of-way authorization was evaluated in accordance with the communications site plan and Alternative 2 provides modifications to the existing lease that improve the visual quality and have the potential to reduce the footprint of the facility over time.

Alternative 3 would not improve the visual quality to the same degree and would allow New Cingular Wireless PCS, LLC (AT&T) to authorize additional subleases and a longer term for the authorization which has the potential to prolong the reduction of infrastructure at the facility (EA, p. 29). Alternative 1 would not meet RMP direction to continue existing communication authorizations on Soda Mountain.

3. Considers the resource values associated with the *Cascade-Siskiyou National Monument* and the adjacent *Soda Mountain Wilderness*.

Alternative 2 was selected because it provides the best options for mitigating the impacts of the communications facility on monument and adjacent wilderness resources. Alternative 2 reduces the visual impact of facility through the application of shadow gray paint to equipment, helping to blend the structures into the background as seen from the Pacific Crest National Scenic Trail (EA, p. 28). The lease period under Alternative 2 is 10 years which encourages a more frequent review of the facilities and potentially capturing advancements in technology more quickly that could reduce the footprint or obviate the need for the facility altogether. Prohibiting new subleases has the potential to reduce the infrastructure at the facility over time.

Alternative 3 considers the values of the CSNM and adjacent SMW to a lesser degree than Alternative 2 as it continues to allow new subleases and authorizes the right-of-way for twice as long. Alternative 1, not renewing New Cingular PCS, LLC (AT&T)'s lease would provide minimal improvements to monument and wilderness resources as the other authorized users at the Soda Mountain Communications Site would remain.

4. Is consistent with the management direction in BLM Manual 6100 – *National Landscape Conservation System Management Manual* (USDI 2012), BLM Manual 6220 – *National Monuments, National Conservation Areas, and Similar Designations* (USDI 2012) and BLM Manual 6340 – *Management of BLM Wilderness* (USDI 2012).

The existing New Cingular Wireless PCS, LLC (AT&T) communication site authorization at Soda Mountain was recognized as a valid existing right in the *Cascade-Siskiyou National Monument Record of Decision and Resource Management Plan* (USDI 2008, VER-5, p. 117 and Appendix O, Table O-2, p. O-3).

As directed in BLM Manual 6100, 6220 and 6340, BLM considered an alternative to remove New Cingular Wireless PCS, LLC (AT&T)'s facilities (Alternative 1). New Cingular Wireless PCS, LLC (AT&T) also evaluated the possibility of locating the facility elsewhere and reducing the footprint of the facility through advances in technology (EA, pp. 18-19).

Alternative 2 best responds to BLM Manual direction by continuing to authorize a recognized valid existing right and mitigating the impacts to objects and values associated with the CSNM and adjacent SMW. The features of Alternative 2 allow for potential reduction in infrastructure over time and reduced visual impacts from within the SMW.

Alternative 3 does not include any features that would mitigate the impacts of the communication facility on monument and wilderness values. Alternative 1 would follow guidance in BLM Manuals “to consider removal of facilities” and “mitigate impacts to objects and values;” however, it does not allow for the continuation of a recognized valid existing right for a communication facility that provides for public safety.

5. Maintains vital communication coverage (including emergency 911 services) to the surrounding area.

Alternatives 2 and 3 both address the need to maintain 911 services and wireless coverage on Interstate 5 provided by New Cingular Wireless PCS, LLC (AT&T). Alternative 2 better responds to this decision factor than Alternative 3 as the proposed modifications will improve services provided. Alternative 1 does not meet this need to maintain vital communication services.

Response to Other Information

This section addresses my rationale for selecting Alternative 2 in regard to other key issues addressed throughout project development and analysis that are not otherwise addressed above under Response to Purpose and Need and Decision Factors. This is not intended to address all

concerns identified throughout project development and public involvement, but those issues that strongly influenced project design and this decision.

Objects of Biological Interest

Comments were received that the communication facility has the potential to impact wildlife, such as various bird species including bluebird, meadowlark, and other species mentioned in the proclamation, as well as archaeological and historic objects. The proposal was evaluated by the interdisciplinary team and the implementation of Alternative 2 with the identified Project Design Features (PDFs) (EA, pp. 17-18) is not expected to affect objects of biological interest identified in the proclamation and the CSNM ROD/RMP. Under Alternative 2, there are no direct, indirect, or cumulative effects to Bureau Special Status, Survey and Manage, or federally-listed vascular plant species (EA, p. 33) or wildlife species (EA, p. 37) because no disturbance or habitat modification would occur outside the existing footprint. The Soda Mountain Communications Site was surveyed for cultural resources and no direct, indirect, or cumulative impacts are expected for cultural resources as a result of implementing Alternative 2. The EA includes a PDF which requires evaluation and appropriate mitigation if archaeological or historic objects are discovered at the site (EA, pp. 17-18).

Wilderness Character

Concerns were raised that renewing the right-of-way authorization would impact the wilderness character of the adjacent Soda Mountain Wilderness. Under all alternatives, since the Soda Mountain Communications Site remains, the impact of the site itself on wilderness character remains unchanged. The communications site is visible from within the wilderness and affects opportunities for solitude and unconfined recreation within the SMW on the edges adjacent to the communications site. The site does not, however, impact the untrammelled, undeveloped, natural, or unique/supplemental qualities of wilderness character because it is located outside of the wilderness (EA, pp. 27-30). Uses outside a wilderness on public lands are not generally prohibited solely to protect wilderness character inside the designed lands (BLM Manual 6340, USDI 2012). My decision to select Alternative 2 may provide slight improvements to the feeling of naturalness from within the SMW near the communications site through the application of shadow gray paint to help camouflage New Cingular Wireless PCS, LLC (AT&T)'s facility (EA, p. 28).

Sublease Provision

Concerns were expressed that the inclusion of a provision in the right-of-way grant that permits additional subleasing could potentially increase the infrastructure at the facility over time and affect CSNM and adjacent SMW resources and values. Alternative 2 was selected because it allows the existing two subleases to continue per their current agreement with New Cingular Wireless PCS, LLC (AT&T), but does not allow for any additional subleases or replacement subleases if either of the two existing subleases is terminated (EA, p. 16). This alternative allows for the continuation of services provided by New Cingular Wireless PCS, LLC (AT&T), including public safety, and has the potential to reduce the infrastructure at the facility over time as recommended in BLM Manual 6220 for management of communications sites within monuments.

Law and Policy

This decision is also in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act of 1990, the National Historic Preservation Act of 1966 as amended, the Archaeological Resources Protection Act of 1979, and the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (EA, p. 10) (FONSI pp. 1-8).

Based on the environmental analysis documented in the New Cingular Wireless PCS, LLC (AT&T) Right-of-Way Grant Renewal Environmental Assessment, a Finding of No Significant Impact (FONSI) was completed for this project. There will be no significant impacts resulting from the implementation of this decision (FONSI pp. 1-8).

PUBLIC INVOLVEMENT

Scoping began for this project when the New Cingular Wireless (AT&T) Right-of-Way Grant Project appeared in the Ashland Resource Area's Schedule of Proposed Actions published in Medford's Messenger (BLM's quarterly newsletter) in the winter 2012-2013 edition. A scoping letter briefly describing the Proposed Action and inviting comments was mailed to adjacent landowners, interested individuals, organizations, and other agencies and posted on the Medford BLM planning website on January 22, 2013. The BLM received two comment letters. The BLM interdisciplinary team of resource specialists reviewed public input received, and identified relevant issues to be addressed during the environmental analysis.

The New Cingular Wireless (AT&T) Right-of-Way Grant Renewal EA was issued for a 15-day comment period on August 26, 2015 and made available for public review on the BLM's Medford District website. Notification of the availability of the EA for public comment was made through publication of a legal notice in the Mail Tribune newspaper. The EA, or notice of availability, was also sent to those who responded to the scoping letter or requested to be kept informed about the project. The EA public review period ended on September 10, 2015.

One comment letter was received in response to EA. The commenter believes there are more than two vantage points where the communications site can be seen from the Pacific Crest National Scenic Trail (PCNST) as identified in the EA (p. 24 and Map 2, p. 26). The commenter recognizes the importance of the communications facility in the region and commended the BLM for requiring additional mitigations to minimize the visual impact of the facility on the PCNST and the wilderness users and for limiting the lease renewal to a 10-year term should opportunities arise to reduce the footprint and associated visual impacts.

The BLM recognizes that there are more than two locations from which the communications site can be seen from the PCNST, "The Soda Mountain Communications Site is visible from multiple locations along the trail (EA, p. 13)." Two Key Observation Points (KOPs) were selected as representative locations from which the casual observer could prominently view the

communications site from the PCNST in order to assess the visual effects of implementing the alternatives on users of the PCNST and the adjacent SMW (EA, pp. 24-30).

CONSULTATION AND COORDINATION

Consultation under the Endangered Species Act with the USFWS is not necessary. The right-of-way grant renewal would have no effect on listed species or their habitat (EA, p. 37).

There would be no effect to listed aquatic species nor their habitat, and consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries is not needed.

Consultation for federally-listed botanical species was not needed as there would be no effect to any federally-listed botanical species (EA, p. 33).

Letters describing the preliminary Proposed Action initiating consultation with the local federally recognized Native American Tribes were sent in November 2014. Further consultation in the form of meetings, phone calls, and emails did not identify any concerns with the proposed activities. Certified letters announcing the availability of the EA for comment were sent to the Tribes on August 25, 2015; no comments on the EA from the Tribes have been received by the Medford District BLM.

Consultation with the State Historic Preservation Office (SHPO) was not needed as the BLM determined that the project will have no effect to cultural resources.

PLAN CONFORMANCE

The New Cingular Wireless (AT&T) Right-of-Way Grant Renewal EA (DOI-BLM-OR-M040-2013-0002-EA) is tiered to the *Cascade-Siskiyou National Monument Proposed Resource Management Plan/Final Environmental Impact Statement* (USDI 2005). The EA is in conformance with the *Cascade-Siskiyou National Monument Record of Decision and Resource Management Plan* (USDI 2008), as amended in October 2013.

The New Cingular Wireless (AT&T) Right-of-Way Grant Renewal Project is consistent with the the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (2001 ROD). This project utilizes the December 2003 Survey and Manage species list. This list incorporates species changes and removals made as a result of the 2001, 2002, and 2003 Annual Species Reviews (ASRs) with the exception of the red tree vole.

My decision is also consistent with the management direction in BLM Manual 6100 – *National Landscape Conservation System Management Manual*, BLM Manual 6220 – *National Monuments, National Conservation Areas, and Similar Designations* and BLM Manual 6340 – *Management of BLM Wilderness*.

ADMINISTRATIVE REMEDIES

Administrative review of rights-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 Authorized 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 following address will be accepted.

*BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
Ashland Resource Area
3040 Biddle Road
Medford, OR 97504*

Faxed or e-mailed appeals will not be considered.

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 and the Regional Solicitor 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

For additional information contact:

Jennifer Sanborn, Acting Field Manager, Ashland Resource Area
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3040 Biddle Road
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541.618.2438

Or:

Kathy Minor, Assistant Field Manager, at 541.618.2245

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

Regional Solicitor
Pacific Northwest Region
U.S. Department of the Interior
1220 S.W. 3rd Avenue
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New Cingular Wireless PCS, LLC
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Appeal Format Requirements: The following are some of the formatting requirements for an appeal. A document filed in a case before IBLA must, in general, be double spaced (43 CFR § 4.401(d)(2)(v)) and a Statement of Reasons may not be longer than 30 pages (43 CFR §§ 4.412(a) 4.414(b)(1)). Unless the IBLA orders otherwise, the text of a statement of reasons may not exceed 30 pages, excluding exhibits, declarations, or other attachments (43 CFR § 4.412(a)). See 43 CFR §§ 4.401, 4.412, and 4.414 for more detail and other formatting requirements.



Jennifer Sanborn
Acting Field Manager, Ashland Resource Area
Medford District, Bureau of Land Management

9/29/15

Date