

DECISION RECORD
for
Cable Trust Right-of-Way (OR 063104 FD)
EA# DOI-BLM-OR-M050-2009-0025-EA

THE DECISION

This Decision Record documents my decision and rationale for the selection of Alternative 2 of the *Cable Trust Right-of-Way (OR 063104 FD) Environmental Assessment (EA)*. The EA documents the environmental analysis the BLM conducted to evaluate the site-specific effects on the human environment that may result from the implementation of this project. The EA was issued on December 1, 2009 for a 15-day public review period that ended December 16, 2009. One comment letter was received.

It is my decision to authorize the proposed action, as described in Section 2.3, Alternative 2 (Proposed Action) (EA, p. 5-6), including the project design features listed in Section 2.4, Project Design Features (EA, p. 7). The BLM will issue a perpetual right-of-way grant to provide Cable Trust with legal and continuous access across BLM land to their property. Pursuant to 43 CFR Part 2800, the BLM will authorize Cable Trust to construct, use, and maintain 1,700 feet (0.3 mile) of road in Township 34 South, Range 2 West, Section 5.

Project Design Features

These project design features are a compilation of Best Management Practices identified in the Medford District ROD/RMP and resource protection measures identified by the project's Interdisciplinary Team (ID Team) of resource specialists. The project design features serve as a basis for resource protection in the implementation of the project.

The BLM will require the following project design features as a condition of constructing and using the new road on BLM-administered land (EA, p. 7):

- PDF 1. Limit all ground-disturbing construction activities to the dry season (generally May 15 to October 15) or when soil moisture content is below 25 percent.
- PDF 2. Protect and stabilize bare soil exposed during construction activities with native plant seed and weed-free straw mulch prior to fall rains.
- PDF 3. Increase road surfacing depth to no less than 10 inches of durable rock if road will be used for winter log hauling.
- PDF 4. Place end-hauled waste material resulting from road construction in a designated location where sediment-laden runoff can be confined.
- PDF 5. Wash logging and construction equipment, including undercarriages, before initial move-in and prior to all subsequent move-ins into the Project Area. Cleaning prior to entry onto BLM lands may be accomplished by use of a pressure hose. Cleaning is defined as removal of dirt, grease, plant parts, and material that may carry noxious weed seeds and parts onto BLM lands.

- PDF 6. Stop work and notify the BLM within 12 hours if an archaeological site is discovered during the project.
- PDF 7. Seasonally restrict disturbance activities, such as tree felling and yarding, road construction, and log hauling on roads not normally used by the public, from March 1 to June 30 within 200 feet of known northern spotted owl sites.
- PDF 8. Seasonally restrict habitat removal activities from March 1 to September 30 within 0.25 miles of known northern spotted owl sites. The seasonal restriction will be waived if the BLM determines the site is not occupied or owls are not nesting.

RATIONALE FOR THE DECISION

My decision to authorize the proposed action is in conformance with the objectives, land use allocations, and management direction of the 1995 *Medford District Record of Decision and Resource Management Plan (ROD/RMP)* and any plan amendments in effect at the time this document is published. The project also conforms with the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (Northwest Forest Plan)*. The proposed action complies with all applicable standards and guidelines. This action takes into consideration cumulative impacts on nearby private and Federal lands. All required Threatened and Endangered, Special Status Species, and cultural surveys were completed and mitigation was applied, where appropriate.

The selected alternative, Alternative 2, best meets the project's purpose of making BLM lands available for needed rights-of-way, acquiring access to public lands, and developing and maintaining a transportation system that serves the needs of users in an environmentally sound manner. The selected alternative best meets the need to provide Cable Trust with legal and continuous access across public land to their property. I did not select Alternate 1, No Action, because it does not meet the purpose and need as described in the EA (p. 3).

In preparing the EA, the BLM analyzed the impacts of the proposed action for the following issues: invasive plants, water quality, and soil (EA, p. 3-4). The BLM determined the impacts will be within those analyzed in the environmental impact statement for the Proposed Medford District Resource Management Plan (PRMP/EIS) or were otherwise insignificant. Discussion of those impacts can be found in the EA available at the Medford District Office, 3040 Biddle Road, Medford, Oregon, or online at <http://www.blm.gov/or/districts/medford>.

Based on the analysis documented in the EA, the anticipated effects of the construction of 1,700 feet of road to access private property will be contained to the immediate vicinity of the project site through the implementation of required project design features. My decision to authorize Right-of-Way OR 063104 FD provides for reasonable access to private land with an acceptable level of environmental effects.

CONSULTATION AND COORDINATION

Section 7(a)(2) of the Endangered Species Act (ESA) states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not

likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

The BLM wildlife biologist determined the project “May Affect, Not Likely to Adversely Affect” the northern spotted owl or designated critical habitat. The BLM consulted with US Fish and Wildlife Service on this project and received a letter of concurrence dated October 15, 2009 (EA p. 27). The project is outside the home range of all other threatened and endangered species or no species habitat is known or suspected to be present in the Project Area (EA, p. 23).

The BLM fisheries biologist determined the project will have “No Effect” to Southern Oregon/Northern California coho salmon, coho critical habitat, or essential fish habitat (EA, p. 20). Therefore, no consultation was required.

The BLM botanist determined the project will have “No Effect” on threatened and endangered plants because surveys were completed and no threatened and endangered plants occur within the project area (EA, p. 22). No consultation was required.

The BLM notified the Confederated Tribes of Siletz and the Cow Creek Band of Umpqua Tribe of Indians during the public comment period for this project.

PUBLIC INVOLVEMENT

A public comment period for the EA was held from December 1 to December 16, 2009. The public was notified through a newspaper notice in the *Medford Mail Tribune* and the EA was posted on the Medford BLM Web site. The EA was mailed to 5 individuals and 25 tribes, organizations, and government agencies (EA, p. 29). The BLM received one letter containing comments on the EA.

RESPONSES TO PUBLIC COMMENTS

The following are the BLM responses to the comments received from Klamath Siskiyou Wildland Center (KS Wild) on the *Cable Trust Right-of-Way (OR 048747 FD) EA*:

NEPA

Comment 1: Failure to Ensure Public Involvement and NEPA Compliance (KS Wild comment letter, p. 1)

The Scoping Process is Not Discretionary (KS Wild comment letter, p. 2)

Why was this project not publically scoped for issue identification and alternative development? The notice providing the brief 15-day commenting period on the completed EA was the first that we had heard of the Cable Trust road construction project. It appears that the decision to authorize a permanent 50-foot wide clearcut through BLM lands is pre-ordained, inevitable and inalterable.

The scoping process is not only critical for the general public, but also for cooperating state and federal agencies. The scoping process is required for both Environmental Impact Statements and Environmental Assessments.

Response: While scoping for an EIS is required, external scoping for an EA is optional (BLM's NEPA Handbook [H-1790-1], Section 6.3.2, External Scoping). The decision maker has the discretion to determine the need for and level of scoping to be conducted. In deciding whether or not to conduct external scoping, the BLM considered the history of this project, the size and scale of the project, and whether the BLM had conducted external scoping for a similar project.

History: The Cable ROW was initially analyzed in the *D.K. Cable Access Road Right-of-Way EA and East Evans Watershed Project Addendum* (EA No. OR110-98-06) in 1998. For that EA, the BLM considered alternate forms of access and alternate routes (EA, p. 8-9). The BLM received one comment letter on the proposal at that time; one comment related to the road construction identified concerns with water quality.

Size and Scale of Project: The road construction will remove vegetation on about 2 linear acres (50 feet wide and 1,700 feet long) of BLM-administered lands. This equals about .06 percent of the 3,600-acre Morrison Creek seventh field watershed, .006 percent of the 31,054-acre Upper Evans Creek sixth field watershed, and .0014 percent of the 143,350-acre Evans Creek fifth field watershed.

Similar Projects: Recently, the BLM completed EAs for two right-of-way and road construction projects: Meriwether Southern Oregon Land and Timber Right-of-Way (DOI-BLM-OR-M050-2009-0034-EA) and Brass Joe and Waterbrook Road Construction and Right-of-Way (OR117-08-05). The BLM mailed 31 Meriwether EAs to interested public and received 1 comment letter. The commenter identified concerns with survey and manage, noxious weeds, steep sideslopes, and road density.

For the Brass Joe and Waterbrook Road Construction and Right-of-Way EA, the BLM mailed scoping letters to 48 interested publics and received 1 comment letter. Based on input from that comment letter and the project ID Team, the BLM identified the following issues: stream sediment, loss of habitat, noxious weeds, and off-highway vehicle use.

The ID Team for the Cable Trust Right-of-Way project considered the comments received on the 3 right-of-way EAs and conditions specific to this project to develop the issues identified in the Cable Trust ROW EA: invasive plants, water quality (stream sedimentation), and soil (erosion and slope stability) (EA, p. 3-4).

The Cable Trust Right-of-Way project was included in the Spring 2009 and Fall 2009 Medford Messenger, a publication the Medford District sends out to notify the public about upcoming projects. Klamath Siskiyou Wildlands Center is on the mailing list for that publication. Additionally, the Medford Messenger is published on the Medford District Web site.

Environmental information was made available to the public when the EA for the project was mailed and posted on the Internet. The BLM published a notice in the *Medford Mail Tribune* on December 1, 2009 that the environmental analysis document was available for review. The decision maker considered KS Wilds concerns and suggestions before making this decision.

Comment 2: Inadequate Range of Alternatives (KS Wild comment letter, p. 4)

The single action alternative considered is unreasonably narrow and not meaningful in regards to the purposes of NEPA. The highly restricted range of alternatives evaluated and considered violates the very purpose of NEPA's alternative analysis requirement, to foster informed decision making and full public involvement.

Reasonable alternatives to that should have been considered (that could have been identified in the scoping process had the BLM had one) include:

1. Reducing road mileage by decommissioning roads elsewhere in the watershed as recommended by the Watershed Analysis.
2. A narrower road could accomplish the purpose and need for the project. The road is not required for private timber haul but rather for personal access. Many Forest Service (as opposed to BLM) roads are as narrow as 15 feet. No reasonable alternatives to the proposed 50-foot wide clearcut were developed or considered.
3. A “closed” gated road would accomplish the purpose and need for the project.
4. A land exchange is a reasonable alternative to the proposed action.

Response: The Cable Right-of-Way was initially analyzed in the *D.K. Cable Access Road Right-of-Way EA and East Evans Watershed Project Addendum* (EA No. OR 110-98-06) in 1998. In that EA, the BLM considered alternate forms of access and alternate routes (EA, p. 8-9).

The following are BLM’s responses to KS Wild’s proposed alternatives:

1. The BLM will assess road decommissioning in future analyses for vegetation treatments that may occur in the Evans Creek watershed. At that time, the BLM will identify roads no longer needed or those needing improvement. These roads will be assessed and analyzed in an associated EA. It is the BLM’s objective to analyze roads for upgrades and improvements as well as decommissioning. The BLM is willing to consider KS Wild’s recommendations for specific road projects in the Evans Creek watershed during the analysis process.
2. BLM engineers design roads to the standards found in BLM Manual 9113-Roads. BLM policy is that Bureau roads must be designed to an appropriate standard no higher than necessary to accommodate their intended functions adequately (timber hauling, administrative access, public travel). Design, construction, and maintenance activities must be consistent with national policies for safety; esthetics; protection and preservation of cultural, historic, and scenic values; and accessibility for the physically handicapped.

The 50-foot clearing width analyzed in the EA is a typical width and is not necessarily the final clearing width. The final clearing width depends on the specific on-the-ground conditions, such as slope, that exist for a specific project. Based on input from the resource specialists, analysis in the EA, and public input, project engineers were able to more accurately layout the road location and determine needed clearing widths. Engineers found a clearing width that varies from 20 to 40 feet will be adequate for the design of this specific road.

3. The project’s ID Team did not identify an issue or concern that a gate on this road would address. BLM typically gates a road if it is a natural surface road that should not be used during wet weather or if there is a wildlife concern. This road will be rocked with 6 inches of rock to allow for all-weather access. The project wildlife biologist did not identify any wildlife concerns (i.e., the project is not within deer and elk winter range) from leaving the road open (EA, p. 27-28). The BLM could install a gate at any time if resource conditions indicate one is needed. Additionally, if Cable Trust requests a gate, the BLM would authorize installation on BLM land.

4. The BLM and Mr. Cable discussed a land exchange when negotiations for the easement first began. Mr. Cable chose to pursue an easement because of the high costs and lengthy timeline associated with a land exchange.

East Evens [sic] Creek Watershed Analysis (KS Wild Comment Letter, p. 5)

Comment 3: It does not appear that the information from the watershed [analysis] is contributing to decision making or alternative development in this project.

Response: The Cable Trust Right-of-Way project was in response to a request from a private landowner for legal ingress and egress to his property. The watershed analysis does not provide recommendations for granting rights-of-ways. It does, however, provide recommendations that were used in the design and location of the road.

- Prevent expansion of weeds from surrounding watersheds by use of native species of grasses, forbs, and shrubs whenever possible (WA, p.54).
- Stabilize unstable road prisms with rock buttressing and/or revegetating (WA, p. 58).
- Improve road drainage to meet 100 year flood standard through proper culvert sizing and spacing (WA, p. 59).
- Revegetate road cutbanks and other disturbed areas to reduce soil erosion, increase organic material, and increase shading (WA, p. 62).

In addition, the road will be located outside riparian reserves and will be surfaced with 6 inches of rock to address concerns in the watershed analysis related to road sediment produced by roads in riparian reserves.

Road Construction on Steep Slopes Necessitates Completion of an EIS (KS Wild Comment Letter, p. 6)

Comment 4: The significant and irreparable impacts to soils associated with the proposed road construction that would occur on slopes greater than 55% is not adequately analyzed and disclosed in the EA.

Response: When completing the on-the-ground work to decide road location, the BLM project engineer determined the sideslopes for 300 feet of the road construction would be at least 55 percent, the threshold that determines the need to end-haul road construction waste material. The project engineer also determined the maximum slope was below the 70 percent slope the ROD/RMP recommends avoiding for road construction. The EA on page 6 states that about 300 feet of road would be located on sideslopes greater than 55 percent. For clarity, the EA should have stated that about 300 feet of road would be located on sideslopes *between 55 percent and 60 percent*.

The Soil analysis in the EA (p. 12) states, “The most critical project design for soils with unstable parent materials is end-hauling the excavated waste material from slopes greater than 55 percent to suitable disposal areas. This greatly reduces the amount of soil and rock material otherwise available for fillslope failure and mass wasting.” “Other factors that would contribute to moderating the effects of the proposed action are . . . Maximum sideslopes are less than 60

percent.” Although the EA was not clear on the maximum sideslope for the road construction, the analysis was adequate for slopes up to 60 percent.

Best Management Practices in the ROD/RMP recommend avoiding slopes in excess of 70 percent for road locations (ROD/RMP, p. 157) and the maximum slopes for this project are less than 60 percent. The Cable Trust Right-of-Way EA tiers to the EIS for the Medford District ROD/RMP. In the Medford District PRMP/EIS (p. 4-13), the BLM concluded the Best Management Practices that address forest management activities such as road construction should prevent unacceptable degradation of the soil resource. Road construction for the Cable Trust Right-of-Way project will be within those impacts analyzed under the EIS for the ROD/RMP; therefore, an EIS for this project is not necessary.

Comment 5: The location to where “excess material would be end-hauled” is not disclosed or analyzed.

Response: Locations are generally flat areas, ridge tops and roadway embankments that are located away from areas prone to erosion. Disposal of end-hauled material will be controlled through project inspection and enforcement of contract specifications that reflect BLM design standards. The Cable Trust Right-of-Way specifications will require the excess excavated material from station 18+50 to 21+50 to be end-hauled and disposed of as roadway embankment material near a ridgetop location. The material will be placed, shaped, and compacted to form the finished road prism from station 27+00 to 29+50.

The EA Did Not Account For, Analyze, the Impacts of New Road Construction On Forest Values (KS Wild Comment Letter, p. 6)

Comment 6: The EA [did] not account for, or disclose, the impacts of road construction on habitat outside of the road prism.

Response: Road construction can cause changes in adjacent interior forest habitats through loss of canopy along the road corridor resulting in reduced canopy closure and increased solar and wind exposure (Trombulak and Frissell 2000). This could cause reduced reproduction and survival of species with low dispersal capabilities, such as amphibians (Marsh and Beckman 2004). The Butte Falls Resource Area does not contain any special status amphibian species (EA, p. 31). The proposed right-of-way partially follows an existing jeep road along the ridge and is not expected to cause a major change in adjacent habitat due to increased edge because of the small number of acres (2) of interior forest habitat removed.

A study of ovenbirds in eastern forests indicated forest-interior birds may have lower density of territories near edges (Ortega and Capen 1999). Although the report concluded that narrow forest roads should be viewed as sources of habitat fragmentation, the report found no differences in fledging success between edge and interior areas, although habitat quality may be lower near the edges. Ovenbirds do not occur in Oregon.

None of the BFRA special status species identified in the analysis as being impacted by the Proposed Action is an interior obligate species. In fact, some of the species use open forest and edge habitat for nesting, roosting, and foraging (e.g., olive-sided flycatcher, purple finch, fringed myotis, Townsend’s big eared bat, and pallid bat).

The EA (p. 27) states, “Although there could be some disturbance and loss of smaller trees in 2 acres along a linear path during construction, the composition of the adjoining forest would not change. Habitat would be retained in the adjacent forest within the section.”

Failure or loss of a nest during one nesting season would not reduce the persistence of any bird or mammal species in the watershed. Conifer forest landscape with a variety of forest stand age and structure will be available on BLM land adjacent to the right-of-way and within the sixth field watershed and would minimize short-term loss and temporary displacement during project activities. Only negligible or undetectable effects to BLM Bureau Sensitive species are expected (EA, p. 31-38).

Cumulative Impacts (KS Wild Comment Letter, p. 8)

Comment 7: The EA is simply silent as to the numerous findings contained in the WA indicating that roads and associated timber harvest have drastically impacted wildlife connectivity, hydrological function and health and soil health and productivity.

Response: The Water Resources section in the EA (p. 13) states, “This analysis employs the use of the following sources: . . . The *Watershed Analysis of East Evans Creek* to provide general water resource background information for the Project Area.”

The Fisheries section in the EA (p. 15) states, “*Watershed Analysis of East Fork Evan[s] Creek and Mid Evans Creek Landscape Analysis* were used for background information.”

Survey and Manage (KS Wild Comment Letter, p. 9)

Comment 8: Please be advised that the RODs eliminating the survey and manage program so as to expedite old-growth timber sales violate FLPMA. If you tier to these documents your project may be enjoined.

Response: On July 22, 2008, a coalition of environmental and conservation groups (Conservation Northwest et al.) filed suit against the 2007 Final Survey and Manage Supplemental EIS and Records of Decision, and the biological opinion of the U.S. Fish and Wildlife Service. On September 22, 2008, the Federal agencies filed their response to the plaintiffs’ complaint with the U.S. District Court Western District of Washington. No other legal timelines have been set by the court at this time. The 2007 Survey and Manage Record of Decision remains the current direction.

The analysis meets the current BLM management direction for former Survey and Manage species. The BLM’s Special Status Species Program continues to provide for the conservation of these species. The methods used to assess and review the potential effects to these species followed the techniques described in the OR/WA Special Status Species Policy (IM OR-2003-054).

Northern Spotted Owl (KS Wild comment letter, p. 9)

Comment 9: The permanent increase in habitat fragmentation associated with the project is contrary to the objectives identified in the watershed analysis and must be disclosed and analyzed in the EA. This is particularly important given that the proposed road construction is located “within the 1.3-mile northern spotted owl provincial radius” of an active NSO pair.

Response: The proposed ROW will not remove suitable spotted owl habitat. The portion of the project within the 1.3-mile provincial radius will occur only within **dispersal** habitat. Only 2 acres of northern spotted owl dispersal habitat is proposed for removal along a 1,700-foot right-of-way. The dispersal habitat will continue to provide flying space and prey species for dispersing northern spotted owls after the action. Because the road prism is a narrow, linear opening through dispersal habitat that partially follows an old existing jeep road, northern spotted owl will still be able to use the dispersal habitat as they did prior to the proposed action. The Proposed Action will not change the function of the spotted owl dispersal habitat.

Road Width (KS Wild Comment Letter, p. 9)

Comment 10: The BLM has failed to disclose why it insists on a clearing width of fifty feet in order to construct a 14-foot wide road that is not proposed for log haul or heavy equipment.

Response: See response to Comment 2.

Transient Snow Zone (KS Wild Comment Letter, p. 10)

Comment 11: The EA and RMP do not provide a site-specific analysis of how BLM and private action affect water quality, timing, availability and flow in *this* watershed from *this* project.

Response: The project will not occur within the transient snow zone. In the Butte Falls Resource Area, the transient snow zone is an elevation band between 3,500 and 5,000 feet. The elevations in the Project Area range from 2,480 to 2,600 feet (EA, p. 21). Transient snow zone discussion or analysis is therefore irrelevant to this environmental assessment.

Noxious Weeds (KS Wild Comment Letter, p.10)

Comment 12: Noxious weeds in the planning area are already having a detectable effect on the ecosystem and the contention that additional impacts from the proposed action will not result in a detectable effect to the environment is simply not credible.

Response: No noxious weed populations were discovered in the Project Area (EA, p. 21). Soil disturbance and movement of vehicles in and out of the area during road construction could potentially introduce noxious weeds where they have not previously existed. In order to minimize that risk, the BLM will implement the following PDFs (EA, p. 7):

PDF 2. Protect and stabilize bare soil exposed during construction activities with native plant seed and weed-free straw mulch prior to fall rains.

PDF 5. Wash logging and construction equipment, including undercarriages, before initial move-in and prior to all subsequent move-ins into the Project Area. Cleaning prior to entry onto BLM lands may be accomplished by use of a pressure hose. Cleaning is defined as removal of dirt, grease, plant parts, and material that may carry noxious weed seeds and parts onto BLM lands.

Applying native grass seed along road banks after road construction will allow native plant species to establish and occupy the open, disturbed space, thereby minimizing the area noxious weeds could occupy if seed was unknowingly transported into the Project Area during construction or incidentally introduced through ongoing activities in the area (EA, p. 22).

Washing equipment prior to moving into the Project Area will reduce the risk of inadvertently introducing noxious weed seed (EA p. 22).

In addition to implementing these two project design features during the road construction, the BLM also has an ongoing program of weed detection and treatment. This further reduces the risk that noxious weeds will become established in the future as a result of the proposed road construction. For these reasons, this project will not add cumulatively to noxious weeds in the Project Area (EA, p. 23).

Road Density (p. 10-11)

Comment 13: The EA completely failed to address the interception of surface water and change in flow pattern mentioned above, it also ignored the impacts of the proposed full bank construction with an excavator on mass wasting and subsurface flows.

Response: The EA addressed direct and indirect effects on water resources. The EA (p. 14) states, “Because the proposed road construction is more than 200 feet above any stream channels, there would not be an expected increase in mass wasting events above natural occurrences. Sediment transport would occur along the road ditch line, but would be dispersed on the hillslope by culverts and outslope drainage. Vegetation on the hillslopes would maintain a slow rate of transport by reducing overland flow, thereby minimizing the amount of sediment that can stay in solution.”

ADMINISTRATIVE REMEDIES

Administrative review of specific grant decisions 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” (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 (43 CFR § 4.410 [d]).

Parties interested in additional information on the appeal process should contact the Medford District Office.

EFFECTIVE DATE OF DECISION

This is a lands decision on a right-of-way application. All BLM decisions under 43 CFR 2800 remain in effect pending an appeal (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 the action authorized in this decision would cause injury, and who have established themselves as a “party to the case” (43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the Butte Falls Resource Area Field Manager 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 delivered to Bureau of Land Management, Butte Falls Resource Area, 3040 Biddle Road, Medford, OR 97504 will be accepted. 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.
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board, Regional Solicitor, David R. Cyphers, and The Daniel Kingston Cable and Barbara White Cable 1995 Revocable Intervivos Trust at the same time such documents are served on the deciding official at this office. Service must be accomplished within 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 Board will review any petition for a stay and may grant or deny the stay. If the Board 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 the Board makes a final ruling on the case.

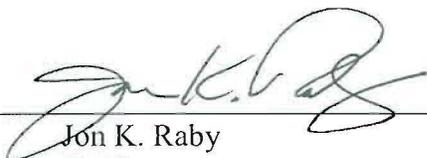
Notice of appeal addresses:

US Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, VA 22203

US Department of the Interior
Office of the Regional Solicitor
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Jon K. Raby
Field Manager
Butte Falls Resource Area

12/18/09

Date

CONTACT INFORMATION

For additional information, contact:

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Bureau of Land Management
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541-618-2260

Or

Robyn Wicks, Butte Falls Resource Area Environmental Planner at 541-618-2458.