

Categorical Exclusion Determination and Decision Record for EMBARQ Telephone Line Reauthorization, OR 34803 and PacifiCorp Electrical Line Reauthorization, OR 65610

DOI-BLM-OR-M050-2009-0031-CX

Description of Proposed Action

The proposed project is to reauthorize two existing utility lines: an EMBARQ telephone line (OR 34803) and a PacifiCorp electrical line (OR 65610). Generally, both lines follow the same route on BLM-administered lands along Indian Creek Road near Shady Cove, Oregon. The existing telephone line right-of-way was authorized as OR 34803 under the Federal Land Policy and Management Act (FLPMA) in 1984. The right-of-way is 20.0 feet wide, 2.2 miles long, and contains approximately 5.33 acres. The existing electrical line right-of-way was originally authorized in 1958 (pre-FLPMA) as ORE 6065; consequently, it will be reauthorized under FLPMA as OR 65610 with a right-of-way 20.0 feet wide, 1.66 miles long, and containing 4.02 acres. This project is located in SW¹/₄SE¹/₄ Section 14 and W¹/₂NE¹/₄, SE¹/₄NE¹/₄, N¹/₂SE, SW¹/₄SE¹/₄, N¹/₂SW¹/₄, and SW¹/₄NW ¹/₄ Section 23, in Township 34 South, Range 1 West, W.M., Jackson County, Oregon.

Plan Conformance Review

The Bureau of Land Management did not scope this proposal and the public was not involved in its development. This proposal is consistent with policy directed by the following:

- *Final Environmental Impact Statement for the Revision of the Resource Management Plans of the western Oregon Bureau of Land Management and Record of Decision and Resource Management Plan for the Medford District* (EIS, 2008 and ROD/RMP, 2008)
- *Medford District Integrated Weed Management Plan Environmental Assessment* (1998) and tiered to the *Final-Northwest Area Noxious Weed Control Program Environmental Impact Statement* (EIS, 1985)

This proposal conforms to the Medford District's 2008 Record of Decision and Resource Management Plan (ROD/RMP) (USDI 2008). This project complies with the Management Objectives and Direction of the 2008 RROD/RMP. In addition, this project fully complies with the management objectives, actions, and direction of the resource management plan in place prior to December 30, 2008, which was the 1995 ROD/RMP, as amended (USDI 1995). The design of this project would not have differed under either the 2008 or the 1995 ROD/RMPs. This proposal also complies with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937, Federal Land Policy and Management Act of 1976, Endangered Species Act of 1973, Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act of 1990 (as amended), and Archaeological Resources Protection Act of 1979.

This proposal is consistent with management direction in the Medford District 1995 and 2008 ROD/RMPs that directs the BLM to

“Continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance areas identified in this RMP” (1995 ROD/RMP, p. 82).

“Provide needed rights-of-way, permits, leases, and easements over BLM-administered lands in a manner that is consistent with federal and state laws” (2008 ROD/RMP, p. 49).

Project Design Features

See attached EMBARQ (OR 34803) and PacifiCorp (OR 65610) Right-of-Way Grants (Form 2800-14) for Terms and Conditions that apply to this authorization.

Categorical Exclusion Determination

This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11.9, E (9) which allows for:

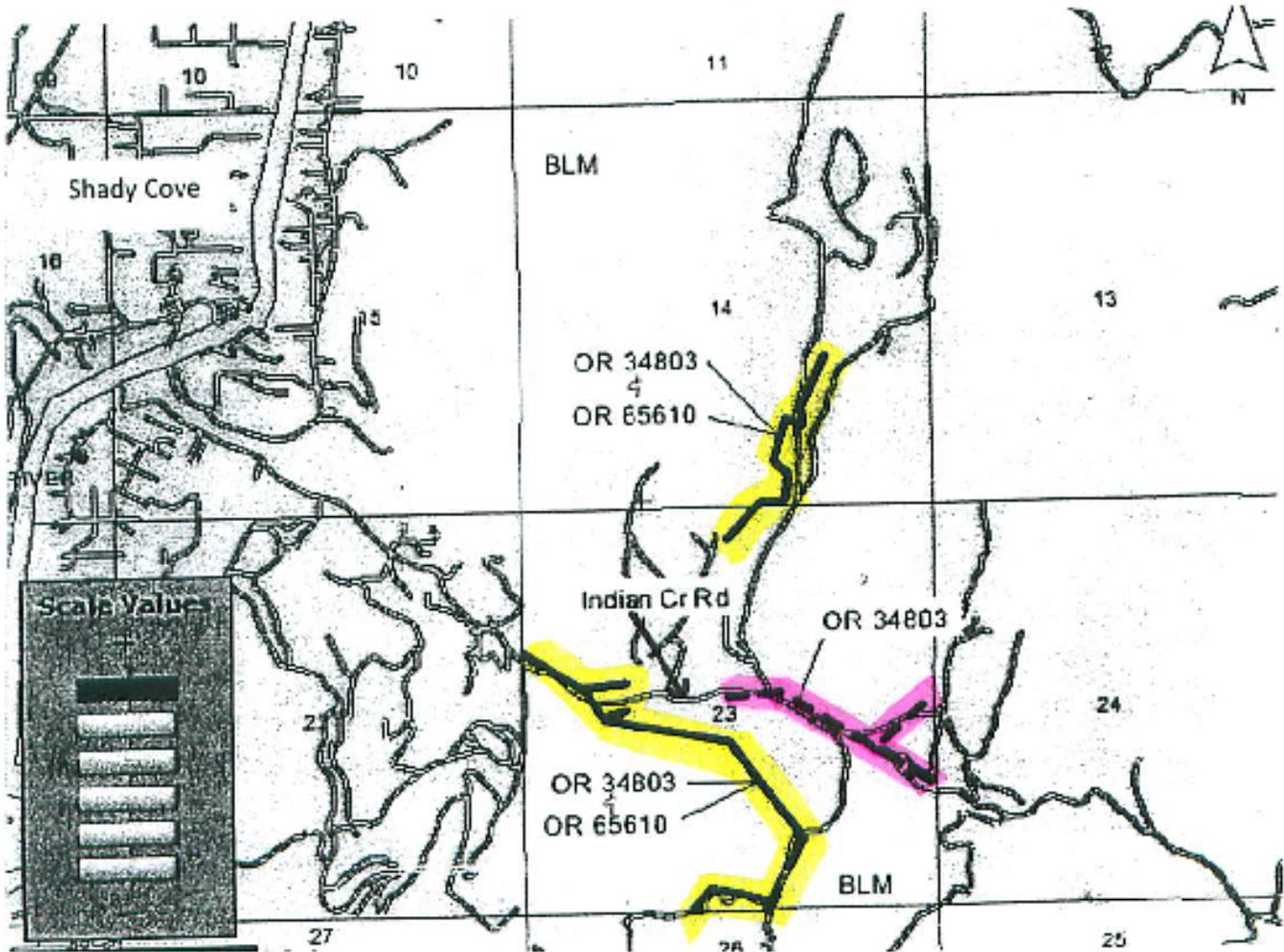
- “Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.”

Before any action described in the list of categorical exclusions may be used, the “extraordinary circumstances,” included in the Code of Federal Regulations (CFR) at 43 CFR 46.205(c) must be reviewed for applicability. After review, the BLM determined no extraordinary circumstances exist that would cause the proposed action to have a significant environmental effect. The action will not require additional analysis.

Contact Person

For additional information concerning this project, contact Leslie Voelkel, Realty Specialist, at (541) 618-2217.

OR 34803 & OR 65610
R/W Map



NEPA Categorical Exclusion Review

Proposed Action: Reauthorize an existing telephone line located on BLM-administered lands along Indian Creek Road, near Shady Cove, OR under FLPMA authority as OR 34803. The right-of-way area is 20.0 feet wide, 2.2 miles long and contains approximately 5.33 acres.

The Code of Federal Regulations at 43 CFR 46.205(c) requires that "any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215" (listed below). Additional analysis and environmental documents must be completed for any normally categorically excluded action which may:

1. *Have significant impacts on public health or safety.*

Yes No

Initial JW Remarks:

2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.*

Yes No

Initial JW Remarks:

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

Yes No

Initial JW Remarks:

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*

Yes No

Initial JW Remarks:

5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

Yes No

Initial JW Remarks:

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

Yes No

Initial SLS Remarks:

7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.*

Yes No

Initial JB Remarks:

8. *Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.*

Plants Yes No

Initial mw Remarks:

Animals Yes No

Initial OR Remarks:

Fish Yes No

Initial LR Remarks:

9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*

Yes No

Initial SW Remarks:

10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

Yes No

Initial SW Remarks:

11. *Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).*

Yes No

Initial SW Remarks:

12. *Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).*

Yes No

Initial mw Remarks: *Following the terms and conditions of the grant will reduce the risk of introducing or spreading noxious weeds.*

Decision

It is my decision to authorize existing telephone and electrical line right-of-ways, as described in the Proposed Action. The serial numbers attached to this authorization are OR 34803 and OR 65610.

Decision Rationale

The proposed action has been reviewed by Butte Falls Resource Area staff and appropriate Project Design Features, as specified above, will be incorporated into the proposal. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the human environment and no further environmental analysis is required.



6/1/09

Jon K. Raby
Field Manager
Butte Falls Resource Area

Date

ADMINISTRATIVE REMEDIES

In accordance with BLM's Rights of Way regulations (See 43 CFR § 2801.10), administrative review of right-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" (43 CFR § 4.410). Other than the applicant for the right-of-way, 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 of their alleged injury through their participation in the decision making process (43 CFR § 4.410(b) and (c)). The latest date that any affected parties received the Notice of Decision will establish the date initiating a 30-day appeal period.

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** (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" (43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after this decision is approved (or the date the affected parties received notice of the decision). Only signed hard copies of a notice of appeal that are delivered to the BLM Medford District Office, 3040 Biddle Road, Medford, Oregon 97504 will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project will qualify as party to the case (43 CFR § 4.410(b)). However, in order to qualify as an appellant, a "party to the case," you also have the burden of showing possession of a "legally cognizable interest" that has a substantial likelihood of injury from the decision (43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed (43 CFR § 4.410(c)).

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, the Regional Solicitor, EMBARQ, and PacifiCorp 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 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.

CONTACT INFORMATION

For additional information, contact Donald K. Hoffheins, Field Manager, Butte Falls Resource Area, 3040 Biddle Road, Medford, Oregon 97504 or telephone (541-618-2217). Additional contact addresses include:

- U.S. Dept of the Interior, Office of Hearings and Appeals,
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC,
Arlington, VA 22203
- U.S. Department of the Interior
Office of the Regional Solicitor
805 SW Broadway, Suite 607
Portland, OR 97205
- EMBARQ
Mail Stop: KSNCAA-0133-1 WS-446
600 New Century Parkway
New Century, KS 66031-8000
- PacifiCorp
825 NE Multnomah, Suite 1700
Portland, OR 97232

Categorical Exclusion Reviewers:

Name	Title	Date	Initials
Jean Williams	NEPA Coordinator	5/13/09	JW
Marcia Wineteer	Botanist	4/23/09	mw
Dave Roelofs	Wildlife Biologist	4/24/09	D.R.
Steve Liebhardt	Fisheries Biologist	4/27/09	SL
Shawn Simpson	Hydrologist	5/6/09	SLS
Ken Van Etten	Soil Scientist	4/29/09	K.V.
Al Mason	Fire/Fuels Specialist	5/4/09	APM
Lisa Brannen Ann Ramage	Archaeologist	5/13/09	AB
Randy Bryan	Engineer	5/5/09	RRB
Trish Lindaman	Outdoor Recreation Planner	4/27/09	TL