

Categorical Exclusion Determination and Decision Record for PacifiCorp OR-67043 Right-of-Way Grant DOI-BLM-OR-M050-2012-0003-CX

Description of Proposed Action

PacifiCorp has applied for a right-of-way grant to construct, install, and operate an underground electrical distribution line in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20 of Township 34 South, Range 2 East, W.M., Jackson County, Oregon. This line will provide service to property at 3927 Cobleigh Road, Butte Falls, OR. The proposed right-of-way is 10 feet wide, 835 feet long and contains approximately 0.19 acre.

This right-of-way follows an old road that connects to an existing driveway on BLM which provides access to the above noted private property.

Plan Conformance Review

The BLM completed a revision of the Resource Management Plans for Western Oregon Districts in December 2008. The Secretary of the Interior administratively withdrew the 2008 Records of Decision/Resource Management Plans (ROD/RMP) in July 2009 and the districts reverted to implementing the 1995 ROD/RMPs. In March 2011, the United States District Court for the District of Columbia vacated and remanded the administrative withdrawal of the western Oregon BLM District's 2008 ROD/RMPs (*Douglas Timber Operators et al. v. Salazar*) and effectively reinstated the 2008 ROD/RMPs. Given the uncertainty surrounding planning in western Oregon, the Medford District will design projects to conform to the 2008 ROD/RMP and the 1995 ROD/RMP. Consequently, projects will be consistent with the goals and objectives in the 1995 and 2008 ROD/RMPs.

This proposal is consistent with management direction in the Medford District 1995 ROD/RMP (p. 82) 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."

This proposal is consistent with management direction in the Medford District 2008 ROD/RMP (p. 49) that directs the BLM to "Provide needed rights-of-way, permits, leases, and easements over BLM-administered lands in a manner that is consistent with federal and state laws."

The proposed action was designed to be consistent 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.

Project Design Features

See attached PacifiCorp document, *Overview of Operation and Maintenance Activities for Electric Transmission and Distribution Lines (Power Lines)*, March 2009.

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.17. This section allows for *Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.*

Before any action described in the list of categorical exclusions may be used, the “extraordinary circumstances,” included in the Code of Federal Regulations 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, Project Leader, at 541-618-2217.

NEPA Categorical Exclusion Review

Proposed Action:

Construct/install and operate an underground electrical distribution line in the SE¼NW¼ Section 20 of Township 34 South, Range 2 East, W.M., Jackson County, Oregon. The proposed right-of-way is 10 feet wide, 835 feet long, and contains approximately 0.19 acre.

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 CL 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 CL 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 CL Remarks:

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

Yes No

Initial CL 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 CL Remarks:

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

Yes No

Initial SL 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 AB 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: *need to avoid Lowermyella rhinana pungi site next to driveway - see map*

Animals Yes No

Initial EF

Remarks:

Fish Yes No

Initial DJ

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 SC Remarks:

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

Yes No

Initial SC 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 SC 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:

Categorical Exclusion Reviewers:

Name	Title	Date	Initials
Jean Williams	NEPA Coordinator	3/5/12	JLW
Marcia Wineteer	Botanist	3/1/12	mw
Dave Roelofs	Wildlife Biologist	2-28-12	DR
Dale Johnson	District Fisheries Biologist	3-5-12	DJ
Shawn Simpson	Hydrologist	2-28-12	SS
Amy Meredith	Soil Scientist	3-1-12	AM
Al Mason	Fire/Fuels Specialist	2-29-12	AM
Lisa Brennan	Archaeologist	3-2-12	LB
Leo Kalvels	Engineer	2-28-12	LK
Trish Lindaman	Outdoor Recreation Planner	2-28-12	PL

Decision

It is my decision to authorize PacifiCorp a right-of-way grant to construct/install and operate an underground electrical distribution line in the SE¼NW¼ Section 20 of Township 34 South, Range 2 East, W.M., Jackson County, Oregon, as described in the Proposed Action.

Decision Rationale

The proposed action has been reviewed by BLM staff; 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.



Jon K. Raby
Field Manager
Butte Falls Resource Area

3/6/12
Date

Administrative Review or Appeal Opportunities

In accordance with BLM's Rights-of-Way regulations (43 CFR § 2801.10), administrative review of right-of-way decisions requiring 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). 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 decisionmaking process (see 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; therefore, 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 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 e-mailed 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 document 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, 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: Jon Raby, Field Manager, Butte Falls Resource Area, 3040 Biddle Road, Medford, Oregon 97504 or telephone 541-618-2200.

Additional contact addresses are:

U.S. Department 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 600
Portland, OR 97205

PacifiCorp
825 NE Multnomah Street, Suite 1700
Portland, OR 97232

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
2. WHERE TO FILE	
NOTICE OF APPEAL.....	U.S. Department of the Interior, Bureau of Land Management Medford District Office 3040 Biddle Road Medford, OR 97504
WITH COPY TO SOLICITOR.....	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 97205
3. STATEMENT OF REASONS	
WITH COPY TO SOLICITOR.....	Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR.....	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 97205
4. ADVERSE PARTIES	
WITH COPY TO SOLICITOR.....	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
5. PROOF OF SERVICE	
WITH COPY TO SOLICITOR.....	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
6. REQUEST FOR STAY	
WITH COPY TO SOLICITOR.....	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)



Cobleigh Road looking north



Electrical Pole #A 4761 where distribution line begins



Northwest back toward electrical pole #A 4761



Southeast along proposed right-of-way on old road, south of Cobleigh Road



Proposed right-of-way along existing driveway on BLM (above & below)





Right-of-way near private property line.

