U.S. DEPTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GLENDALE RESOURCE AREA

Categorical Exclusion Determination and Decision Record for the issuance of a Right-of-Way Grant under Title V of the Federal Land Policy and Management Act (as Amended), P.L. 94-579, and the regulations at 43 CFR 2800 Serial No. OR 65538 CE-OR-118-08-016

Location of Right-of-Way and Name of Applicant:

T. 33 S., R. 5 W., Section 32,
Medford District, Glendale Resource Area, Josephine County
HUC-6,Grave Creek/Placer and Wolf Creek (see Exhibit A Map attached).
Applicant: Jean Mountaingrove

Description of Proposed Action

The proposed action is the issuance of right-of-way grant to Jean Mountaingrove, under the provisions at 43 CFR Part 2800, and Title V of P.L. 94-579; 90 Stat 2743 for a term of 20 years. This has been serialized as case No. OR 65538.

The proposed use is an existing water facility consisting of a water pipeline with a right-of-way width of 5 feet and 100 feet in length from two existing spring boxes. The spring boxes are located on BLM land in T 33S., R 5W., Section 32. The first 100 ft of water pipeline crosses BLM land. Approximate acreage of the right-of-way is 0.01 acres. The system has been in place since 1982 and is used both as a domestic water source and irrigation by the Mountaingroves who reside on the private parcel in T 33S., R 5W., Section 32.

The proposed water line grant is shown on the attached map labeled as Exhibit A.

Project Design Features

This right-of-way would be subject to modification, adaptation, or discontinuation if it would be found by the Authorized Officer to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United State.

The United States would not be liable for any damage which may occur to the improvements authorized by this grant, as a result of its management of the Public Lands, including, but not limited to construction; reconstruction; and maintenance of the King Mountain Trail and roads; and harvest of timber.

The United States would not guarantee the quantity, quality, or purity of the water used by the Holder. The United States would not be held liable for damage or deterioration of the water supply which may result from natural causes or activities of the United States.

The water pipelines will be maintained in good condition through the life of this grant. The pipeline will be indicated by a stake in the ground every 25 feet and extending at least one foot above the ground.

All activities directly or indirectly associated with the maintenance of the spring boxes and water pipelines must be conducted within the limits of the right-of-way.

The holder, prior to initiation of construction, reconstruction, or major maintenance of facilities on the right-of-way which will involve disturbance of the land or use of heavy construction equipment will notify the Authorized Officer at the BLM Medford District Office of his or her intent to proceed with such work, the date it is to commence and the delegated representative of the holder to carry out the terms and conditions of the grants and act on behalf of the State Historic Preservation Office.

Cultural and Paleontological Resources. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on their behalf, on public or Federal land shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until a written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the Authorized Officer after consulting with the State Historic Preservation Office.

Plan Conformance Review

This proposed action is consistent with policy directed by the following:

- the *Final Supplemental Environmental Impact Statement and 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 FSEIS, 1994 and ROD, 1994);
- the *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement* and *Record of Decision* (EIS, 1994 and RMP/ROD, 1995);
- the *Final Supplemental Environmental Impact Statement: Management of Port-Orford-Cedar in Southwest Oregon* (FSEIS, 2004 and ROD, 2004);
- *Medford District Integrated Weed Management Plan Environmental Assessment (1998*) and tiered to the *Northwest Area Noxious Weed Control Program* (EIS, 1985)
- Final Supplement to the 2004 *Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and* Guidelines (FSEIS, 2007 and ROD, 2007.[1])

The proposed action is 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 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, and the Archaeological Resources Protection Act of 1979.

This proposed action is consistent with management direction in the Medford District Resource Management Plan that directs the BLM to continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon state-wide planning goals and rules, and the exclusion and avoidance areas identified in the Resource Management Plan (USDI 1995, p. 82).

[1]Complete title: *Record of Decision to Remove the Survey and Manage Mitigation measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl*.

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.16. This section allows for "Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes."

Before any action described in the list of categorical exclusions may be used, the "extraordinary circumstances," included in 516 DM 2, Appendix 2, must be reviewed for applicability (See attached review). 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 Michelle Calvert, Project Leader, at (541) 471-6505.

Prepared by:

Michelle Calvert 9/2/08

Michelle Calvert, Environmental Planner Date:

Glendale Resource Area

Decision

It is my decision to authorize right-of-way grant serial No. OR 65538 as described in the Proposed Action. The grant is planned for issuance summer 2008.

Decision Rationale

The proposed action has been reviewed by the Glendale 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 environment and no further environmental analysis is required.

9/2/08

Katrina Symons, Field Manager Date

Glendale Resource Area

ADMINISTRATIVE REMEDIES:

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." (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 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:

BUREAU OF LAND MANAGEMENT
GRANTS PASS INTERAGENCY OFFICE
2164 NE Spalding
Grants Pass, OR 97526

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, 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 Joe Hoppe 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

See the attached Form 1842-1 for complete instructions on Filing an Appeal

CONTACT INFORMATION
For additional information contact:

Katrina Symons, Field Manager, Glendale Resource Area
Grants Pass Interagency Office
Bureau of Land Management
2164 NE Spalding
Grants Pass, OR 97526
(541)471-6653
Or Michelle Calvert (Glendale Resource Area Environmental Planner) at (541)471-6505

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
  805 S.W. Broadway, Suite 600
  Portland, Oregon 97205

- Jean Mountaingrove
  2000 King Mountain Trail
  Sunny Valley, OR 97497

Attachments:
Exhibit A Map
Form 1842-1

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 *Notice of Appeal* 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 *Notice of Appeal* 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
Grants Pass Interagency Office
2164 NE Spalding
Grants Pass, OR 97526

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 Within 30 days after filing the *Notice of Appeal*, 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 *Notice of Appeal*, 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 9720

4. ADVERSE PARTIES..... 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 *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE..... 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..... 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 *Notice of Appeal* (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 *Notice of Appeal* (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 *Notice of Appeal* 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)

NEPA Categorical Exclusion Review

Proposed Action: The proposed use is an existing water facility consisting of a water pipeline with a right-of-way width of 5 feet and 100 feet in length from an existing spring box. The spring box is located on BLM land in T 33S., R 5W., Section 32. The first 140 ft of water pipeline crosses BLM land. Approximate acreage of the right-of-way is 0.01 acres. The system has been in place since 1982 and is used both as a domestic water source and irrigation by the Mountaingroves who reside on the private parcel in T 33S., R 5W., Section 32.

Department of the Interior Manual 516 DM 2, Appendix 2 provides for a review of the following criteria for categorical exclusion to determine if exceptions apply to the proposed action based on actions which may:

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

   Yes No

   ( ) Remarks: All proposed activities follow established rules concerning health and safety.

2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resource;, 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

   ( ) Remarks: No unique geographical characteristics are within the project area or affected by this project.

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

   Yes No

   ( ) Remarks: Based on past experience from this type of activity, there are no predicted environmental effects from the proposed action which are considered to be highly controversial nor are there unresolved conflicts concerning alternative uses. Similar work has been completed on the Medford BLM District.

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

   Yes No

   ( ) Remarks: Past experience from this type of activity has shown no highly uncertain, potentially significant, unique or unknown risks.

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

   Yes No

   ( ) Remarks: Similar actions have taken place throughout the district and there is no evidence that this type of project would establish a precedent or decision for future action.

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

   Yes No

   ( ) Remarks: The BLM has conducted this type of activity in the past with no significant direct, indirect, or cumulative effects.

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

   Yes No

   ( ) Remarks: No eligible or listed properties are affected.

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

   Remarks: Threatened or Endangered plant sites have not been in this vicinity, and would not be affected.

   Animals Yes No
   Remarks: No effect to spotted owls, suitable habitat, or critical habitat. Not in the range of Marbled murrelet. No effect to fisher (Candidate species).

   Fish Yes No

   Remarks: Southern Oregon Northern California coho salmon (Federally listed as threatened) is present downstream of the proposed action. No effects to coho or coho critical habitat are expected as a result of the proposed action.

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

   Yes No

   ( ) Remarks: The proposed project would not violate federal law such as the Clean Water Act, Endangered Species Act.

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

    Yes No

    ( ) Remarks: Similar actions have taken place throughout the District and there is no evidence that this type of project would have a disproportionately high and adverse effect on said populations.

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

    ( ) Remarks: No such sites have been identified within the location of the proposed water line grant site.

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

    ( ) Remarks: The proposed activities outlined in this CE would not be responsible for spreading noxious weeds because the water line is an existing structure with no additional actions.

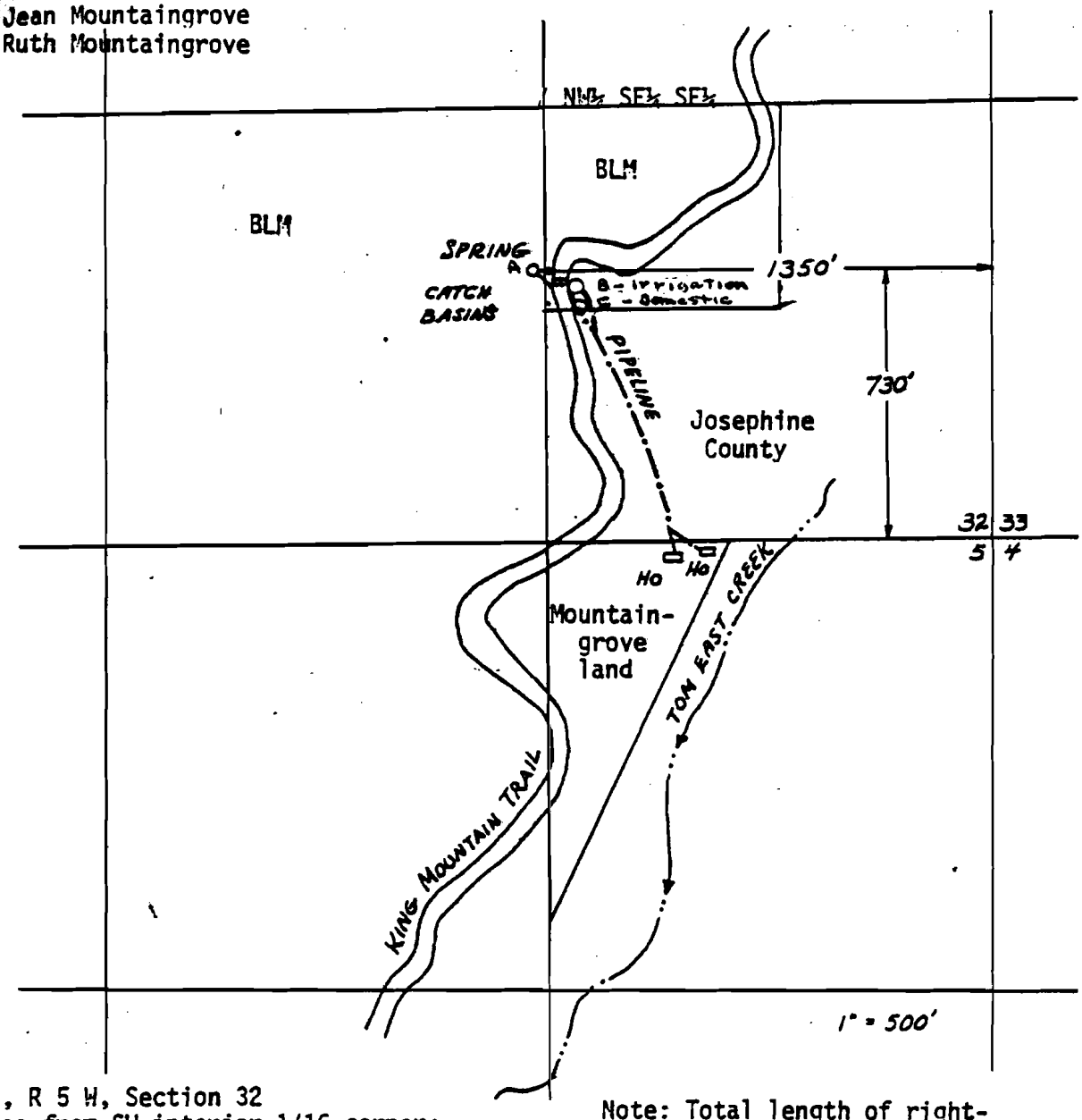
OR 26639

RIGHT-OF-WAY MAP
[illegible]ing right-of-way pipeline
through
[illegible] Bureau of Land Management property
[illegible] and 34 SOUTH
[illegible]., W. M.
[illegible]ine County Oregon
[illegible]le: 1" = 500'

May 1, 1981

Exhibit "A", Revised

Jean Mountaingrove
Ruth Mountaingrove



T 33 S, R 5 W, Section 32
Distance from SW interior 1/16 corner:
to spring A = 128' North 41° West
to pipeline = 50' East
to culvert outflow, indeterminate at this date
to spring C: 100' North 39° East
Distance from point pipeline crosses BLM boundary
to spring C: 100' North 59° West.

Note: Total length of right-of-way on BLM land is 100'

Right-of-way width will be 5 feet; diameter of 2 pipelines will be 1½ inches or less. RIGHT OF WAY WILL CONTAIN TWO PIPES.