

Categorical Exclusion Determination and Decision Record for Ketsdever Right-of-Way Grant OR 67728

DOI-BLM-OR-M050-2015-0003-CX

Description of Proposed Action

The BLM received a request for a right-of-way authorization from Brian and Laura Ketsdever for domestic use of an existing spring box, spring collection area, and water line located on BLM land. The system was originally developed in 1979 and a right-of-way grant (OR 23031) was issued to the previous owner for domestic use. The new owners (Ketsdever) would stay within the previously disturbed area within the right-of-way to make necessary repairs to the spring box. They do not intend to replace the water line across BLM. The right-of-way authorization would be for 30 years. The right-of-way is as follows:

- Water line: 10 feet wide x 765 feet long (7,650 square feet)
- Spring box: 10 feet wide x 10 feet long (100 square feet)
- Total right-of way: 8,650 square feet (0.2 acre)



Old spring box (to be repaired).

The Project is located southwest of the city of Butte Falls off Obenchain Road in the NW¹/₄, section 18, Township 35 South, Range 2 East in Jackson County, Oregon. The project is within the Big Butte Creek fifth field watershed.

Plan Conformance Review

This proposal is in conformance with 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.

This project is consistent with the 1994 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).

This project is also consistent with the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Stands and Guidelines (Survey and Manage), as incorporated into the ROD/RMP. This project uses the December 2003 species list. This list incorporates species changes and removals made as a result of the 2001, 2002, and 2003 Annual Species Reviews, with the exception of the red tree vole. For the red tree vole, the Ninth Circuit Court of Appeals in *KSWC et al. v. Boody et al.*, 468 F3d 549 (9th Circuit 2006) vacated the category change and removal of the red tree vole in the mesic zone and returned the red tree vole to its status as existed in the 2001 Survey and Manage ROD, which makes this species Category C throughout its range.

The BLM designed this project to be consistent with laws, regulations, and policies that include the following: 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 the Medford District 1995 ROD/RMP (p. 82) objective 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.

Project Design Features

- Use existing trails on the right-of-way to access the spring box for repairs and maintenance.
- Limit motorized vehicles used to access the spring box to vehicles that are 50-inches wide or less (i.e., Quad). Use of larger vehicles will require approval from BLM.
- Limit the number of motorized vehicle trips (passes) to the spring box in order to prevent off-highway vehicle trails from developing.
- Do not cut trees without prior approval.
- If soil disturbance occurs during spring box maintenance, apply government provided native grass seed and weed-free mulch to disturbed areas.

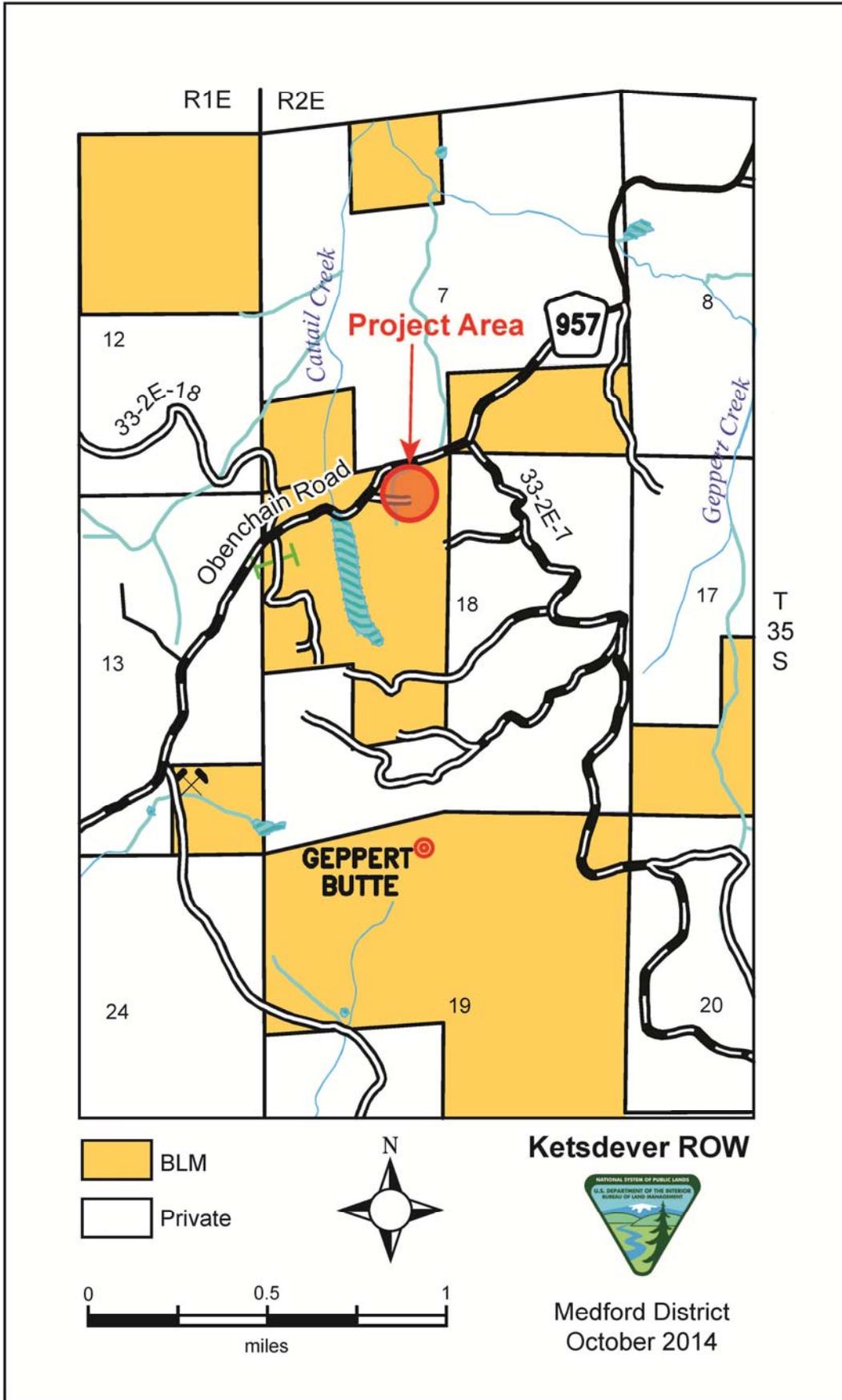
Categorical Exclusion Determination

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). This section 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, Project Leader, at (541) 618-2217.



NEPA Categorical Exclusion Review

Proposed Action: Authorize the issuance of a right-of-way grant for a period of 30 years to Brian and Laura Ketsdever for the domestic use of an existing spring box system on BLM land (as specified in Description of the Proposed Action).

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 RW

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 SL

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 RW

Remarks:

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

Yes No Initial RW

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 RW

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 SW

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:

Wildlife Yes No Initial LR Remarks:

Fish Yes No Initial TR 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 MF

Remarks:

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

Yes No Initial RW

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 MF

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
Robyn Wicks	NEPA Coordinator	12/1/14	RW
Marcia Wineteer	Botanist	10/27/14	mw
Dave Roelofs	Wildlife Biologist	10/24/14	D.R.
Jon Raybourn	Fisheries Biologist	10/30/14	JR
Shawn Simpson	Hydrologist	11/12/14	SLS
Amy Meredith	Soil Scientist	10/29/14	AM
Al Mason	Fire/Fuels Specialist	10/27/14	AM
Stephen Summers	Archaeologist	12/1/14	SS
Jeff Brown	Engineer	10/29/14	JB
Trish Lindaman	Outdoor Recreation Planner	10/24/14	TL

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 decision making 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 Bureau of Land Management, Butte Falls Field Manager, 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 the right-of-way applicant 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.