

DECISION RECORD & CATEGORICAL EXCLUSION REVIEW

(DOI-BLM-OR-M060-2010-0023-CX)

Project Name: Right-of-Way Renewal for OR 65962 (Qwest)

BLM Office: Ashland R.A., Medford District. **Contact:** Leslie Voelkel (541) 618-2217

DESCRIPTION & LOCATION OF THE PROPOSED ACTION:

The Ashland Resource Area of the Medford District Bureau of Land Management (BLM) proposes to reauthorize an existing right-of-way grant, OR 65962 to Qwest for use, maintenance, repair and termination/removal of an existing telephone line. This line was originally authorized as ORE 5615 in 1958 and provides service to the local area along Middle Fork Foothills Creek Road. The right-of-way is 20 feet wide, 850 feet long and contains approximately 0.39 acres. The project is located as follows: W½ NW¼ NE¼ of Section 13, Township 37 South, Range 4 West, Willamette Meridian, Jackson County, Oregon. Please refer to the attached map and photographs.

If approved, this authorization will be issued pursuant to Title V of the Federal Land Management Policy Act (FLPMA) of October 21, 1976 (90 Stat. 2776; 43 USC 1761) for a term of thirty (30) years. In addition to the standard terms and conditions (Appendix 1) listed in the right-of-way grant, the following project design features (PDFs) are required conditions of this project;

- The Holder will notify the Ashland Resource Area Engineer at 541-618-2370 when they are going to be in the Ashland Resource Area performing routine facility inspection and maintenance.
- The Holder shall not use dirt roads as access routes for non-emergency work from November 1 to April 30; the Holder may contact BLM during this time period to request a waiver based on site-specific resource and weather conditions.
- The Holder shall perform adequate maintenance necessary to provide effective drainage on roads and trails, used exclusively by the Holder for the purpose of maintaining and/or accessing the ROW, to minimize road erosion and sedimentation to surface water.
- As necessary, the Holder shall install and maintain effective signing to discourage Off-Highway Vehicle (OHV) use within the ROW. In addition, blocking access with gates, fences, boulders, or other measures to prevent OHV use within the ROW may be required as determined by the BLM Authorized Officer.

PLAN CONFORMANCE

The proposed action is in compliance with the *1995 Medford District Record of Decision and Resource Management Plan (RMP)* which states to “*continue to make BLM-administered lands available for needed rights-of-way.*” The 1995 Medford District Resource Management Plan incorporated the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan)* (USDA and USDI 1994).

The 1995 Medford District Resource Management Plan was later amended by the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines*. On July 25, 2007, the *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 amended the 1995 Medford District Resource Management Plan by removing the Survey and Manage Mitigation Measure Standards and Guidelines.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects (including timber sales).

This project may proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision. This is because this meets the provisions of the last valid Record of Decision, specifically the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (not including subsequent Annual Species Reviews). This project is not a habitat disturbing activity, as defined in page 22 of the Standards and Guidelines of the *2001 Record of Decision and Standards and Guidelines*, for any Survey and Manage species. Because the project is not habitat disturbing, the Survey and Manage provisions, including pre-disturbance surveys, are not required under the *2001 Record of Decision and Standards and Guidelines*, (Standards and Guidelines, p. 7, 21-22).

The proposed action is also 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.

CATEGORICAL EXCLUSION REVIEW

Department of the Interior Regulations (43 CFR § 46.205(c)) require that any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances listed in 43 CFR § 46.215. An action would meet one of the extraordinary circumstances if the action may:

<u>Yes</u>	<u>No</u>	<u>Categorical Exclusion Exception</u>
()	(X)	1. Have significant adverse effects on public health or safety.
()	(X)	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.
()	(X)	3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)] not already decided in an approved land use plan.
()	(X)	4. Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.
()	(X)	5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
()	(X)	6. Have a direct relationship to other actions with individually insignificant, but significant cumulative environmental effects. (<i>40 CFR 1508.7 and 1508.25(a)</i>).

- () (X) 7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
- () (X) 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.
- () (X) 9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
- () (X) 10. Have disproportionate significant adverse impacts on low income or minority populations (Executive Order 12898).
- () (X) 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).
- () (X) 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).

COMPLIANCE WITH NEPA

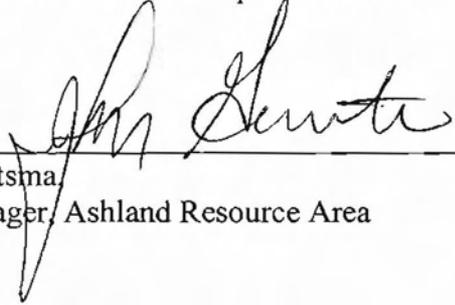
In accordance with 43 CFR §§ 46.205(c) and 46.215, the proposed action has been reviewed against the twelve criteria above and I have determined that none of the extraordinary circumstances described in 43 CFR § 46.205(c) apply to this project. The project qualifies as a categorical exclusion under 516 DM 11.9, E (11) which allows for the *“transfer or conversion of leases, permits, or rights-of-way grants to Title V grants.....where no new facilities or other changes are needed.”*

DOCUMENT PREPARATION AND REVIEW

<i>Leslie Voelkel</i>	Realty Specialist	03-04-2010
Prepared by	Title	Date
Stephanie Larson	Assistant Environmental Coordinator	04-01-2010
Reviewed & Edited by	Title	Date

DECISION

I have determined that the proposed action qualifies as a categorical exclusion under 516 DM 11.9, E (11) and involves no significant impact to the human environment and that no further environmental analysis is required. It is my decision to authorize the requested right-of-way grant, OR 65962, to Qwest as described above in the Proposed Action.



4-26-10

John Gerritsma
Field Manager, Ashland Resource Area

Date

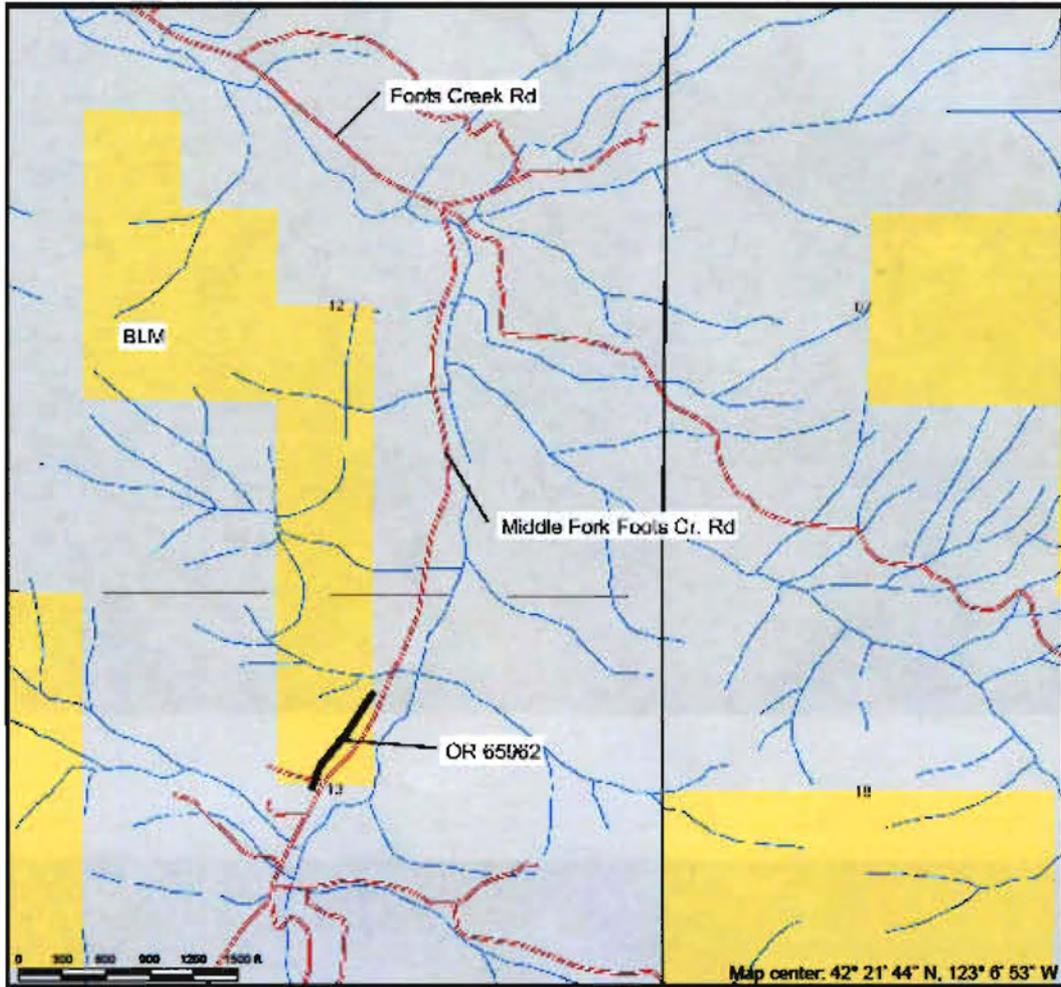
ADMINISTRATIVE REMEDIES

Notice of this decision will be posted on the District internet website. In accordance with 43 CFR 2801.10, this decision is in effect immediately and will remain in effect pending any appeal to the Interior Board of Land Appeals under 43 CFR Part 4, unless a stay is granted under 43 CFR § 4.21(b).



OR 65962 R/W Map

T37S- R4W Sec13



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|-----------------------------|----------|----------|
| Forest Operations Inventory | Non BLM | Highways |
| TPCC | Lakes | Roads |
| Township and Range | Streams | Trails |
| Sections | Wetlands | |



Internal Use Only

 United States Department of the Interior
Bureau of Land Management
Medford District Office
3040 Eldridge Road
Medford, OR 97504

Printed: Jul 6, 2009 1:53:12 PM
http://web.maps.or.blm.gov/otl_section

Scale 1:12,000
Universal Transverse Mercator
Zone 10, North American Datum of 1983

Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the BLM Authorized Officer.
- c. The Holder shall be prepared to conduct all maintenance concerning the use of this authorization at the Holder's expense. The Holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- d. The Holder shall provide a written work schedule specifically detailing activities for all maintenance and repair of the right-of-way (vegetative, roads, structural equipment, etc.) authorized through this grant one (1) year prior to the proposed commencement of activities. Said written schedule shall describe in detail the type of site specific activity proposed, equipment and work methods to be used, debris disposal options proposed, beginning and ending dates of operation, etc. The Holder shall strictly adhere to any BLM requirements at the Holder's cost. The Holder shall also include the name, address and telephone number of the Holder's delegated representative. The delegated representative is the person who is authorized by the Holder to carry out the terms and conditions of the grant and act on behalf of the Holder.
- e. As necessary to respond to Emergency Conditions, the Holder may, at anytime and without prior authorization, enter onto and conduct repairs or adjustments within the right-of-way area governed by this authorization. As used in this stipulation, the term "Emergency Condition" shall mean a condition or situation that is imminently likely to endanger life or property or that is imminently likely to cause a material adverse effect on the security of, or damage to the Holder's electrical system. Concurrently, or as soon as reasonably possible, the Holder shall notify BLM via Medford Interagency Communication Center at 541-618-2510 of any emergency repairs or adjustments undertaken in conjunction with this stipulation. The BLM shall provide the Holder a list of agency contacts. The Holder acknowledges that depending upon the scope of the emergency action, BLM may be required to conduct post emergency analysis and review, including that required under NEPA, ESA, Clean Water Act or other laws, regulations and policy. The Holder shall be responsible for the cost and implementation of actions needed to stabilize and/or restore resources following emergency activities.
- f. No hazardous materials are to be produced, transported, or stored on this right-of-way. The Holder shall notify the authorized officer if there is a significant variance from this authorization with respect to hazardous materials and their use, storage, or disposal. The Environmental Protection Agency maintains and updates a list of all hazardous substances that may present substantial danger to the public health or the environment in Title 40 of the United States Code of Federal Regulations Part 302.
- g. The Holder shall notify the BLM Authorized Officer upon discovery of any noxious weed species found in the right-of-way area and is responsible for immediate control and eradication. The Holder shall consult with, and obtain approval from the BLM Authorized Officer for acceptable weed control methods, such as mechanical or chemical. The Holder shall clean motorized vehicles which will be driven off system roads, including tires and undercarriages to remove noxious weed plant parts and seeds to reduce the spread of noxious weeds.

- h. The Holder shall during the life of this grant, comply with all applicable State and Federal environmental laws, regulations, and standards. The Holder shall also immediately discontinue all construction or other operations under this grant upon receipt of written notice from the Authorized Officer that such operations are in violation of said provisions.
- i. The United States reserves the right to grant subsequent use pursuant to 43 CFR 801.1-1.
- j. The right-of-way Holder is aware that BLM administered lands in western Oregon are managed in part for timber resource activities which include timber harvesting, reforestation, and tree release programs. BLM forest management activities may also include application of herbicides, firewood cutting, and prescribed burning. Logging operations cause dust and noise. Many of these activities are considered objectionable by residents living on adjacent private lands. BLM roads will be used to haul timber. Other important resources of these lands include wildlife habitat, minerals, soil and water quality, recreation opportunities, and others. The Holder should also be aware that the BLM may grant other rights-of-way across BLM lands and may also enter into agreements for exchange or sale of BLM administered lands.
- k. The Holder or his contractor shall immediately stop all operations and notify the BLM upon becoming aware of, encountering, or discovery of any objects or sites of cultural, historical, or pre-historical value within the project area.
- l. No installation machinery or ground disturbing activity shall be allowed outside the designated right-of-way.
- m. The Holder or his contractor shall contact and receive either a permit or notification from the Oregon State Forestry prior to use of mechanized equipment by the Holder or their contractor in the installation and maintenance of this right-of-way grant.
- n. The Holder shall undertake every reasonable measure to minimize erosion to the roads and surrounding areas, soil disturbances and turbidity to waterways, ground disturbing activity or the introduction of invasive plants.
- o. The Holder shall promptly remove and dispose of all waste caused by its activities as directed by the BLM Authorized Officer. The term "waste" as used herein means all discarded matter including, but not limited to: human waste, trash, garbage, refuse, petroleum products, ashes, equipment and vegetative materials.
- p. The Holder shall not place signs (except Holder facility location and warning signs), gates, or barricades on public land, its resources or improvements without prior written approval from the BLM Authorized Officer.
- q. The Holder shall abide by soil and resource protection measures as may be necessary to protect and restore the land and vegetation to the satisfaction of the BLM Authorized Officer.
- r. Within sixty days of the issuance of the new grant, updated maps shall be submitted to the BLM Authorized Officer. Electronic copies of the maps shall accompany hard copies for the right-of-way files.
- s. The Holder shall not use dirt roads as access routes during non-emergency use when such use would cause severe rutting or erosion, as determined by the BLM Authorized Officer. Use, maintenance, and termination activities shall be suspended on public lands if soil condition warrants, as determined by the BLM Authorized Officer. The Holder shall repair any environmental damage resulting from activities associated with this authorization.
- t. The Holder shall notify the BLM Authorized Officer when it is necessary to cut/remove any tree eight inches (8") in diameter or over at breast height during the exercise of the rights granted through this authorization.
- u. Unless otherwise agreed to by the BLM Authorized Officer in writing, power lines shall be constructed in accordance to standards outlined in "*Suggested Practices for Avian Protection on*

Power Lines: The State of the Art in 2006 (APLIC 2006).” The Holder shall assume the burden and expense of proving that pole designs not shown in the above publication are “eagle safe.” Such proof shall be provided by a raptor expert approved by the BLM Authorized Officer. The BLM reserves the right to require modification or additions to all power line structures placed on this right-of-way, should they be necessary to ensure the safety of large perching birds. Such modification and/or additions shall be made by the Holder without liability or expense to the United States.

- v. The United States shall not be held liable for any damage to the right-of-way caused by the general public or as a result of fire, wind, or other natural disasters or as a result of silvi-culture practices, timber harvesting operations, or other actions stemming from the land management activities of the BLM. The Holder shall indemnify the United States against any liability for damages to life or property arising from the occupancy or use of public lands under this grant.
- w. The Holder shall protect all survey monuments, witness corners, reference monuments, and bearing trees within this right-of-way against disturbance during construction, operation, maintenance, and rehabilitation. If any monuments, corners, or accessories are destroyed, obliterated, or damaged during construction, the Holder or his contractor shall restore said items to the satisfaction of the BLM Authorized Officer at the Holder’s cost.
- x. The Holder shall be responsible for costs incurred for reconfiguration of Holder improvements within the right-of-way when road construction or other activities prescribed by the BLM are required.
- y. The Holder shall comply with applicable Federal and State laws and regulations concerning the use of pesticides, insecticides, herbicides, fungicides, rodenticides, etc. The Holder shall submit a written plan of operation and receive written approval of said plan from the BLM Authorized Officer prior to use of said substances. The plan shall provide the type and quantity of material to be used; the pest, insect, fungus, etc. to be controlled; the method of application; the location for storage and disposal of containers; and any other information the BLM Authorized Officer requires. Application of said substances by the Holder shall be under the supervision of an appropriately licensed applicator. The Holder’s plan shall be submitted no later than October 1 of any calendar year covering the proposed activities for the next calendar year (i.e., December 1, 2008, deadline for calendar year 2009 action). The use of substances on or near the right-of-way shall be in accordance with the BLM approved plan. Said substances shall not be used if the Secretary of the Interior has prohibited its use. Said substances shall be used only in accordance with its registered uses and within any other limitations imposed by the Secretary of Interior. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

ADDITIONAL TERMS AND CONDITIONS – ASHLAND RESOURCE AREA

1. The Holder will notify the Ashland Resource Area Engineer at 541-618-2370 when they are going to be in the Ashland Resource Area performing routine facility inspection and maintenance.
2. The Holder shall not use dirt roads as access routes for non-emergency work from November 1 to April 30; the Holder may contact BLM during this time period to request a waiver based on site-specific resource and weather conditions.
3. The Holder shall perform adequate maintenance necessary to provide effective drainage on roads and trails, used exclusively by the Holder for the purpose of maintaining and/or accessing the ROW, to minimize road erosion and sedimentation to surface water.
4. As necessary, the Holder shall install and maintain effective signing to discourage Off-Highway Vehicle (OHV) use within the ROW. In addition, blocking access with gates, fences, boulders, or other measures to prevent OHV use within the ROW may be required as determined by the BLM Authorized Officer.