

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GRANTS PASS RESOURCE AREA

**Categorical Exclusion Determination and Decision Record
Grants Pass Resource Area**

**Turley Right-of-Way Grant
Serial No. OR 67327**

DOI-BLM-OR-M070-2013-010-CX

Project: Right-of-Way Grant under Title V of the Federal Land Policy and Management Act (as Amended), P.L. 94-579.

Location: Medford District, Grants Pass Resource Area, Josephine County, HUC-5 –Grave Creek fifth-field watershed. The legal location is T33S-R5W- Section 35.

Applicant: Lynda Turley

Description of Proposed Action

The Proposed Action is to issue a Right-of-Way Grant (OR 67327) pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761). The purpose of the right-of-way is to allow legal use and maintenance of a ¾ inch PVC water line for domestic and irrigation use for a residence located at 7144 Placer Road Sunny Valley, OR. The right-of-way grant is 5 feet wide by 238 feet long (approximately 0.03 acres). All activities associated with maintaining the right-of-way would be in compliance with the terms and conditions of Right-of-Way Grant OR 67327 and any additional Project Design Features listed below. The right-of-way grant is proposed for 30 years with the option for renewal.

The water right-of-way grant would be authorized, but would be subject to termination if the applicant fails to secure a water right certificate issued by the State of Oregon Water Resources Department for the above stated location within one year of the date of authorization.

Project Design Features

All activities associated with the operation, use, and maintenance of the right-of-way would be in compliance with the terms and conditions of Right-of-Way Grant OR 67327. The grant holder shall comply with applicable federal and Oregon State laws and regulations concerning the use of pesticides, insecticides, herbicides, fungicides, rodenticides, etc. The grant 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.

Maintenance of the access route would be limited to mowing and cutting of brush encroaching on the right-of-way access route to be completed by the grant holder. There will be no motorized vehicle use on the right-of-way.

Plan Conformance Review

- *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) as amended
- *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement and Record of Decision* (EIS, 1994 and RMP/ROD, 1995)
- *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)

Categorical Exclusion Determination

The proposal action qualifies as a categorical exclusion under Department of Interior Manual 516 DM 11.9, E(16) which 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 Code of Federal Regulations at 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.

NEPA Categorical Exclusion Review

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: The BLM has conducted this type of activity in the past with no significant impacts.

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

Yes No

() Remarks: There are no unresolved resource conflicts or controversial environmental effects.

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 on the Medford District and there is no evidence that this type of action 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: There are no listed or eligible historic places within the proposed right-of-way.

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: There would be no impact on *Fritillaria genterii* (FRGE), the only T/E plant (on Medford District) with a range that extends into the T35S-R7W area. The northern project area – in T33S-R6W and T33S-R7W – is not within the range of FRGE or any of our other T/E plants. Surveys of the southern project area were conducted in 2010, and no FRGE sites were located.

Animals Yes No

Remarks: Non-habitat

Fish Yes No

() Remarks: Non-habitat

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 BLM has conducted this type of activity in the past. The proposed activities are not anticipated to violated any federal, state, local, or tribal laws or requirements for protecting the environment.

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 on the Medford District and there is no evidence that this type of action would have a disproportionately high or adverse effect on low income or minority 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 sacred sites have been identified by federal recognized Native American tribes.

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 activities involved within this project areas would not affect current populations of noxious weeds or increase the risk of introducing new sites.

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Proposed Action

The Proposed Action is to issue a right-of-way grant pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761). The Proposed Action would provide legal use and maintenance of a ¾ inch PVC water line under Right-of-Way grant OR 67327. All activities associated with the use and maintenance of the right-of-way would be in compliance with the terms and conditions of the attached Right-of-Way Grant OR 67327.

Decision and Rationale

Based upon the attached Categorical Exclusion, it is my decision to provide right-of-way use by Lynda Turley as described in the Proposed Action.

The Proposed Action has been reviewed by the Grants Pass Resource Area staff and the Project Design Features will be applied to the Proposed Action. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined that the Proposed Action involves no significant impact to the environment and no further environmental analysis is required.

Administrative Review

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 (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)).

For additional information concerning this decision contact Ferris Fisher, Planning and Environmental Coordinator, telephone (541) 471-6639, 2164 NE Spalding Avenue, Grants Pass, Oregon 97526.

Implementation Date

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 “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 Authorized Officer in the Grants Pass Resource Area office by close of business (4:30 p.m.) not more than 30 days after the effective date. Only signed hard copies of a notice of appeal that are delivered to 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 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:

- The relative harm to the parties if the stay is granted or denied,
- The likelihood of the appellant’s success on the merits,
- The likelihood of immediate and irreparable harm if the stay is not granted, and
- Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board and the Regional Solicitor at the same time such documents are served on the Authorized Officer 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.

Appeal Format Requirements: The following are some of the formatting requirements for an appeal. A document filed in a case before IBLA must, in general, be double spaced (43 CFR § 4.401(d)(2)(v)) and a Statement of Reasons may not be longer than 30 pages (43 CFR §§ 4.412(a) 4.414(b)(1)). Unless the Board orders otherwise, the text of a statement of reasons may not exceed 30 pages, excluding exhibits, declarations, or other attachments (43 CFR § 4.412(a)). See 43 CFR §§ 4.401, 4.412, and 4.414 for more detail and other formatting requirements.



Allen Bollschweiler,
Field Manager
Grants Pass Resource Area

10/29/13

Date