

**UNITED STATES OF AMERICA  
DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT  
MEDFORD DISTRICT OFFICE**

**CATEGORICAL EXCLUSION DOCUMENTATION &  
DECISION RECORD**

**Higby R/W Grant Application OR 20100  
NEPA #: DOI-BLM-OR-M070-2010-0006-CE**

**I. PROPOSED ACTION:**

The proposed project is to re-authorize/renew Right-of-Way Grant OR 20100 for an existing concrete diversion dam and buried PVC water/pipe line located near China Creek Gulch and West Pickett Creek Road. The applicant has a certificate of water right for domestic use for his residence located at 471 West Pickett Creek Road. Information in the file indicates that this system has been in continued use since 1947. This grant will be authorized under Title V of the Federal Land Management Policy Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761). The term of the grant will be for thirty (30) years. The existing right-of-way is 10 feet wide, 900 feet long and contains approximately 0.21 acres. These facilities are located as follows (Attachment 1):

W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 27,  
T. 35 S., R. 7 W., WM,  
Josephine Co., Oregon.

**II. PLAN CONFORMANCE**

The proposed action is in conformance with the following plans and decisions:

- 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)
- *Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from The Bureau of Land Management Plans Within the Range of the Northern Spotted Owl*, July, 2007

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 objective in the 1995 Medford District Resource Management Plan 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.” (1995 RMP, p. 82).

### **III. NEPA REVIEW**

The Proposed Action qualifies as a categorical exclusion under Department Manual 516 DM 11.9 as follows:

- “Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations. (E-9)
- “Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding or water well. (E-17)

### **IV. EXTRAORDINARY CIRCUMSTANCES REVIEW**

Title 43, Section 46.205(c) of the Code of Federal Regulations (CFR) requires the review of this action to determine if any of the following “extraordinary circumstances” (found at 46 CFR 46.215) would apply. If any of the extraordinary circumstances apply, then an otherwise categorically excluded action would require additional analysis and environmental documentation.

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

Yes No

*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 Remarks:

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

Yes No Remarks:

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

Yes No Remarks:

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

Yes No Remarks:

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

Yes No Remarks:

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:

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.*

Yes No Remarks:

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

Yes No Remarks:

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

Yes No 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 Remarks:

12) *Contribute to the introduction, continued existence, or spread of noxious weeds or non-native 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:

Reviewers:

Linda Dawson  
Silviculture, Vegetation  
Dynamics, & Port-Orford Cedar

11/18/09  
Date

Robin G. Swick 11/23/09  
Wildlife Date

William J. Dewey 11/18/09  
Botany Date

Michael D. Dyer 11/18/09  
Soils/Hydrology Date

Lisa B... 11/18/09  
Cultural Resources Date

Paul K. Gert... 11/18/09  
Visual Resources / Recreation Date

Jean R. Barron 12/14/09  
Fisheries Date

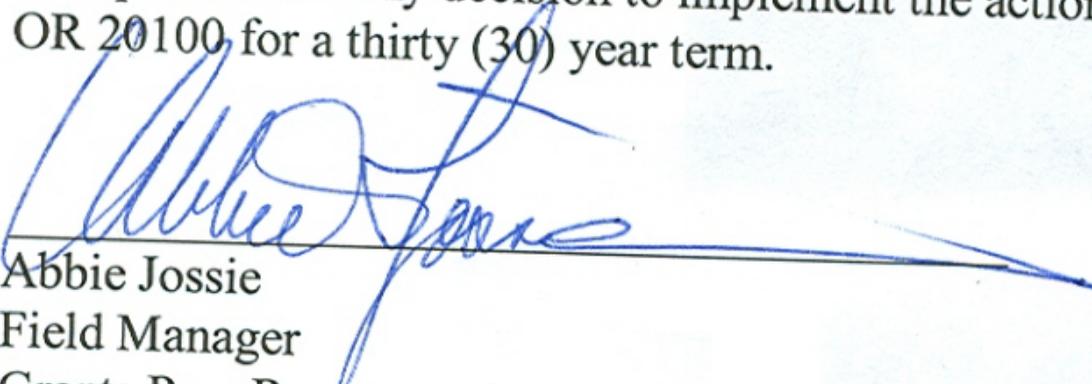
James R. Roper 11/23/09  
Engineering Date

M. Mathews 12/15/09  
Planning Coordinator/NEPA Date

Leslie Voelkel 10-21-2009  
Prepared by Date

**DECISION**

I have reviewed this Categorical Exclusion Documentation, including the plan conformance, NEPA compliance review, and extraordinary circumstances review, and have determined the proposed action is in conformance with the approved land use plan and that no further environmental analysis is required. It is my decision to implement the action as described and approve Right-of-Way Grant OR 20100 for a thirty (30) year term.

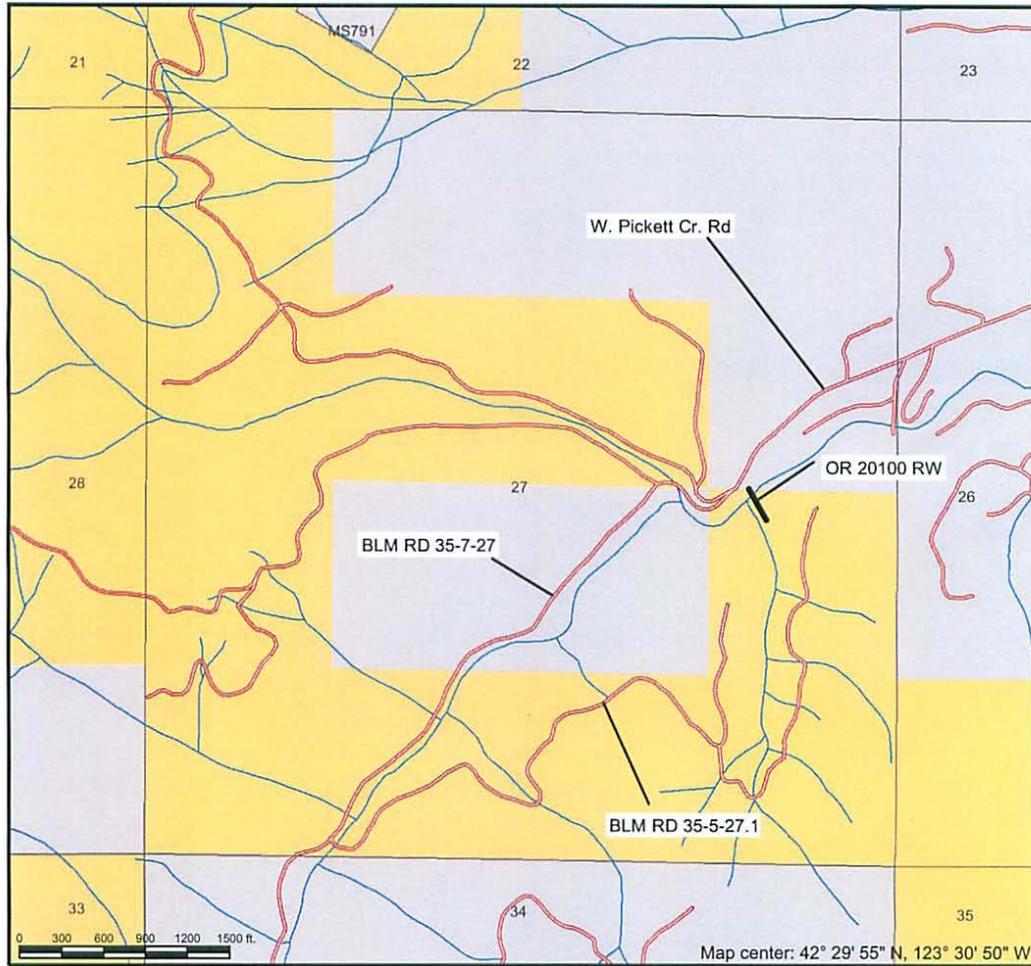


Abbie Jossie  
Field Manager  
Grants Pass Resources Area

12-15-09  
Date

# OR 20100 R/W Map

T35S - R7W Sec27



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

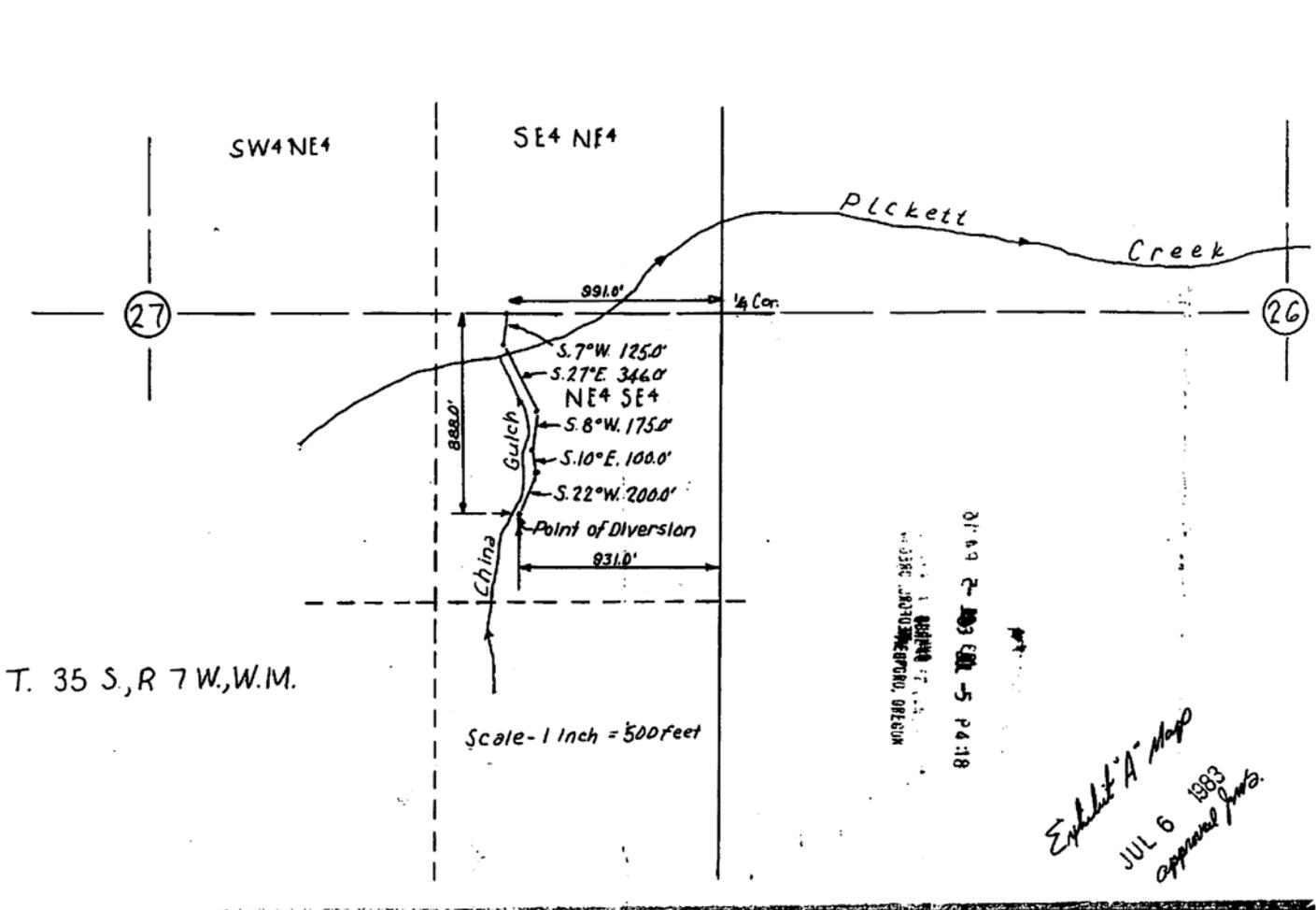


Internal Use Only

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

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[http://web.maps.or.blm.gov/foi\\_section](http://web.maps.or.blm.gov/foi_section)

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



## **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 the following address will be accepted. Faxed or e-mailed appeals will not be considered.

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

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 (Higby) 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:

Abbie Jossie, Field Manager, Grants Pass Resource Area  
Grants Pass Interagency Office  
Bureau of Land Management  
2164 NE Spalding  
Grants Pass, OR 97526  
(541) 618-6500 OR  
Mike Mathews (Grants Pass Environmental Planner) at (541) 471-6565

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  
500 N.E. Multnomah Street, Suite 607  
Portland, Oregon 97232
- Don Higby  
3388B Merlin Rd #112  
Grants Pass, OR 97526