

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GRANTS PASS 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 066310
DOI-BLM-OR-M070-2010-0021-CX**

A. Description of Proposed Action

The proposed action is for a right-of-way grant OR 066310 to George and Teresa Jones (applicant) for the use and maintenance of an existing underground water tank and associated water lines within a 44 ft. by 48 ft. area for domestic water to their property at 635 Sky Crest Drive, under the provisions at 43 CFR Part 2800, and Title V of P.L. 94-579; 90 Stat 2743. The authorization would allow the use of an existing system on BLM land with no new ground disturbance for 30 years.

B. Location of Right-of-Way and Land Use Allocation

The affected roads and/or lands are located in Josephine County on BLM lands administered by the Grants Pass Resource area. The existing water tank and associated water lines are located on BLM administered land in T. 36 S., R. 5W., Section 29 SW1/4 Willamette Meridian. The proposed right-of-way (ROW) location is shown on the attached map (Exhibit A).

C. Need / Rationale for the Proposed Action

The BLM needs to respond to the Jones's application for water facility right-of-way in a manner consistent with the resource management plan objectives and direction in accordance with the BLM's obligations under the Federal Land Policy and Management Act of 1976 (FLPMA). The current land use plan directs BLM to "Continue to make BLM-administered lands available for needed rights-of-ways where consistent with local comprehensive plans." (Record of Decision for the Medford District Resource Management Plan (1995 ROD/RMP), p. 82).

D. Project Design Features

See Exhibit B attached hereto.

E. Plan Conformance Review

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

- 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 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);
- *Final SEIS for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (2000), and the *ROD and Standards and Guidelines for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (2001)
- 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)

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.

F. 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."

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 43 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 (**X**)No
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 (**X**)No
3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*
()Yes (**X**)No

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*
Yes No
5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*
Yes No
6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*
Yes No
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
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
9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*
Yes No
10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*
Yes No
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
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

Reviewers:

Laura Davison 5/24/10
Silviculture, Vegetation
Dynamics, & Port-Orford Cedar
Date

Paul Ray 5/25/10
Wildlife
Date

William Dwyer 5/25/2010
Botany
Date

Michael DeBlasi 5/24/10
Soils/Hydrology
Date

Stephen 5/24/2010
Cultural Resources
Date

Tom Kenney 5/24/10
Visual Resources / Recreation
Date

Tom Parson 5/25/2010
Fisheries
Date

Cody Walker 5/26/10
Engineering
Date

Jim Gonzales 5/25/10
Fire and Fuels
Date

Carl Symons 4/22/2010
Prepared by
Date

Dulcey Schuster 5/26/10
NEPA Reviewed by
Date

Decision

The proposed action has been reviewed by the Grants Pass Resource Area staff and appropriate Project Design Features, as specified in Exhibit B, 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.

It is my decision to authorize right-of-way grant serial No. OR 066310 as described in the Proposed Action for a period of 30 years.



Abbie Jossie, Field Manager
Grants Pass Resource Area

5-28-2010

Date

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. Faxed or e-mailed appeals will not be considered. 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(s) George and Teresa Jones, 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) 471-6652
Or Dulcey Schuster (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
- George and Teresa Jones
635 Sky Crest Drive
Grants Pass, OR 97526

Attachments:

Form 1842-1
Exhibit A Map
Exhibit B Terms and Conditions

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.

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.

OTHER TERMS AND CONDITIONS

The Holder(s) shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/ operations under this grant. The Holder shall obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan must 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 other information that the Authorized Officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year (i.e., December 1, 2008, deadline for a fiscal year 2010 action). Emergency use of pesticides may occur. The use of substances on or near the right-of-way shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

The Holder shall promptly remove and dispose of all waste caused by their activities as directed by the 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, and equipment.

The United States will not be held liable for any damage to the holders personal property or the facility caused by the general public or as a result of fire, wind, or other natural disasters or as a result of silvicultural practices, timber harvesting operations, or other actions stemming from the land management activities of the Bureau of Land Management.

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 holder.

The Holder shall not place signs, gates, or barricades on public land, its resources, or improvements without prior written approval from the Authorized Officer.

Natural vegetation shall be cleared or trimmed only when necessary to provide suitable access for operations, maintenance, safety, and termination of the system.

The Holder shall not make any modifications to the existing system without BLM review and a written approval from the Authorized Officer.

If at any time it becomes necessary to move the water line because of land management activities, the Holder shall bear the cost of the relocation, replacement or repair of the line.

Holder shall take such measures for prevention and suppression of fire on the right-of-way area and other adjacent public lands or other public lands used or traversed by the holder in connection with operations as are required by applicable laws and regulations.

The Holder shall contact the Authorized Officer or his representative at least 15 days prior to the anticipated start of maintenance activities. The Authorized Officer is the BLM Grants Pass Field Manager, and his designated representative is:

Title: Grants Pass Lead Area Engineer
Address: 2164 NE. Spalding Avenue, Grants Pass, OR 97526
Telephone No: 541-471-6631

Existing Conditions

For Tom Nusbaum & Sally Jennings
Located in
NE/4 of SW/4 Section 29, T36S, R5W, W.M.
Josephine County, Oregon
by William Colisch PLS, PC
291 Pyle Dr., Grants Pass, OR
April 2, 2010

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
July 19, 1894
WILLIAM COLISCH
2659



SCALE
1" = 20'



▲ CP2
17.45'

Fd R&C MASON
per PP 1994-143

Fd 1.5" Pipe
per CS 8-72





