

UNITED STATES OF AMERICA
DEPARTMENT OF INTERIEOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE

**CATEGORICAL EXCLUSION DETERMINATION &
DECISION RECORD**

**McKeen R/W Application, OR 066326
DOI-BLM-OR-M070-2010-0038-CX**

I. PROPOSED ACTION

A. Description of Proposed Action

The proposed action is for a right-of-way grant OR 066326 to Lindsey McKeen (applicant) for the use and maintenance of an existing buried water line and catch basin for domestic water to private property at 14725 Galice Road, Merlin, OR, 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 within the Rogue National Wild and Scenic River Corridor 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 lines and catch basin are located on BLM administered land in T. 34 S., R. 8 W., Section 24 Lot 1, NW¹/₄NW¹/₄ 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 McKeen'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.

II. PLAN CONFORMANCE

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.

III. 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 **Remarks:** The McKeen R/W for use and maintenance of an existing buried water line and catch basin for domestic water within the Rogue National Wild and Scenic River Corridor is compatible with maintaining the Outstandingly Remarkable Values, of the river corridor.

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:

Sarah Pearson 8/25/10
Silviculture, Vegetation
Dynamics, & Port-Orford Cedar
Date

John G. Spiller 8/24/10
Wildlife
Date

A. S. 8/23/10
Botany
Date

Dave Mauer 8/23/10
Soils/Hydrology
Date

Joan Brennan 8/23/2010
Cultural Resources
Date

Det. Bull 8/26/10
Visual Resources / Recreation
Date

Jan RAVACON 8/26/2010
Fisheries
Date

James R. Proyer 8/23/10
Engineering
Date

Tim Gonzales 8-24-10
Fire and Fuels
Date

Tanya Dent 8/4/2010
Prepared by Date

Dulcey Schuster 8/26/10
NEPA Reviewed by Date

IV. 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 OR 066326 to Lindsey McKeen as described in the Proposed Action for a period of 30 years.

Abbie Jossie
Abbie Jossie, Field Manager
Grants Pass Resource Area

8-30-2010
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.

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

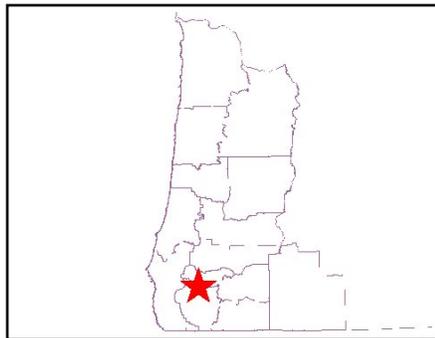
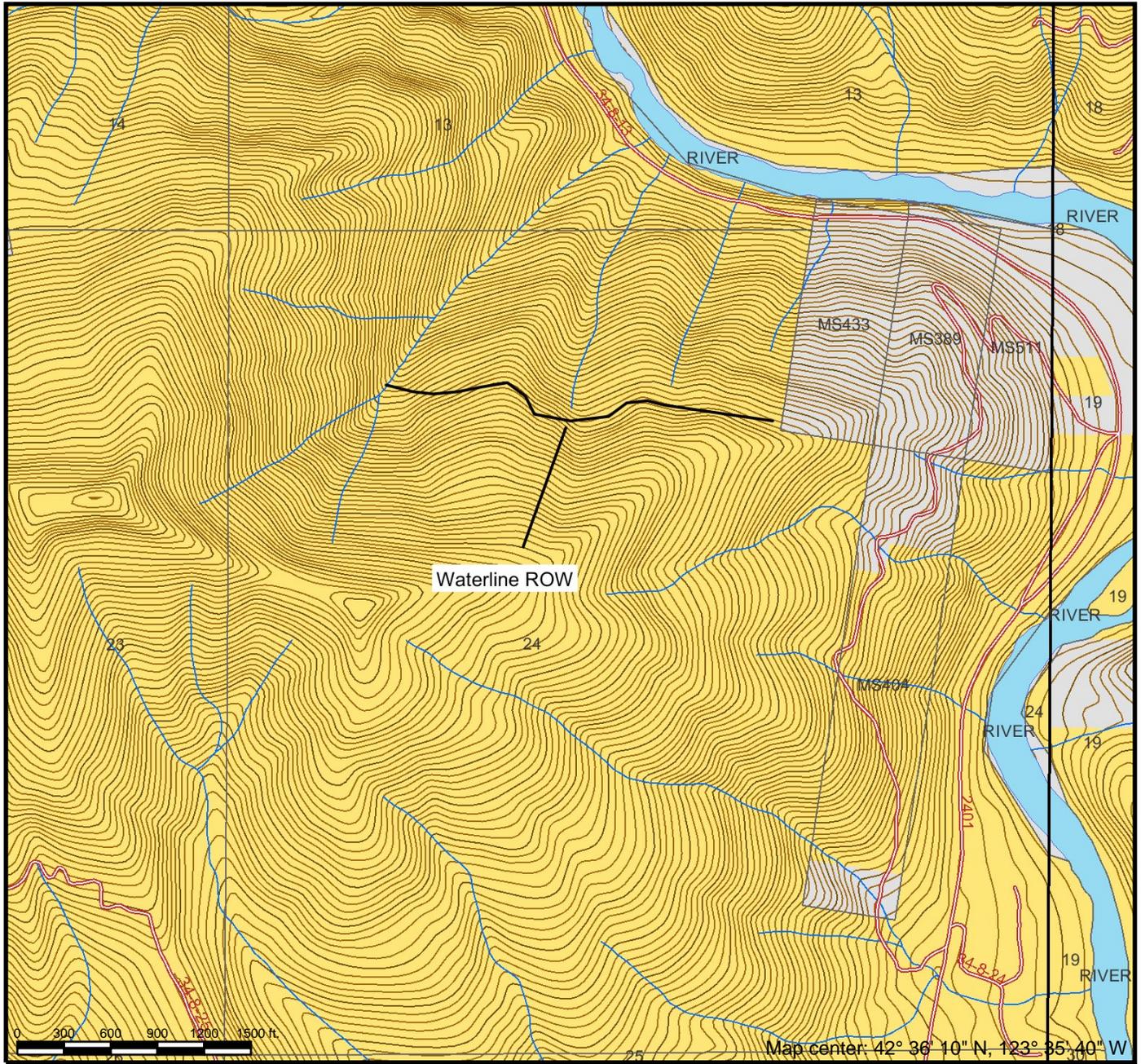
Additional contact addresses include:

- 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
805 SW Broadway, Suite 600
Portland, Oregon 97205
- Lindsey McKeen
733 25th Ave. NW
Seattle, WA 98117

Attachments:
Exhibit A Map
Exhibit B Terms and Conditions

Waterline ROW, OR 066326

T34S - R8W Sec24



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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 Biddle Road
 Medford, OR 97504

Printed: Jun 28, 2010 10:38:59 AM
http://web.maps.or.blm.gov/foi_section

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

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, 1979, deadline for a fiscal year 1981 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.

Cultural and Paleontological Resources. 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.

The Holder shall not make any in-stream modifications to the catch basin structure 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.

The Holder shall maintain a live water source in the immediate vicinity of the water line facility so that water is accessible to wildlife.

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

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.