

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

**CATEGORICAL EXCLUSION DETERMINATION &
DECISION RECORD**

**Categorical Exclusion Determination and Decision Record
for a Right-of-Way Grant to be Issued
Under Title V of the Federal Land Policy and Management Act
(Case Serial No. OR 66346)**

DOI-BLM-OR-M070-2010-0034-CX

Project: Rosenthal Water Right-of-Way Grant

Date: October 4, 2011

Location: Recreation Section of the Rogue National Wild and Scenic River. Grants Pass Resource Area, legal description is T. 36 S., R. 7W. , Section 2 NW1/4 SE1/4 Willamette Meridian. The proposed R/W location is shown on the attached map (Exhibit A).

Land Use Allocations: The project is within the designated Wild and Scenic Rogue River. The Outstandingly Remarkable Values for this river segment are fish, recreation, and scenery. The river segment's classification is recreational under the Wild and Scenic River system.

Description of Proposed Action:

The proposed federal action is to issue a right-of-way grant (OR66346) to Thomas A. Rosenthal (applicant), under the provisions at 43 CFR Part 2800, and Title V of P.L. 94-579; 90 Stat 2743, over BLM managed land to use, operate, and maintain a water facility consisting of an existing underground water pipeline and electric cable for domestic water use. The applicant has a buried 1-1/4 inch PVC pipe and electrical cable from a pump buried in the flood plain of the Rogue River to a holding tank on the applicant's property. The water right-of-way is 10 ft by approximately 975 ft (0.22 acres) across BLM land as it enters the applicant's private land. The pipe and cable are buried approximately 3-4 ft deep and are identified with metal markers installed along the buried line. The system has been in place for many years and is used for domestic use by Mr. Rosenthal who resides on the private parcel in T 36S., R 7W., Section 2. The requested period of use is for a term of 30 years with option for renewal.

The Rosenthal's R/W Grant OR 43960 issued on April 11, 1989 for operation and maintenance of the buried water pipeline and electric cable expired on April 10, 2009.

The facility remains in place and the Rosenthal's wish to continue operating and maintaining the water line.

Upon grant termination by the Authorized Officer, all improvements would be removed from public land within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the Authorized Officer.

The holder would 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.

The water pipelines are to be maintained in good condition through the life of this grant by the requester. The pipeline would be marked by staking the ground every 25 ft and each stake would extend at least one foot above ground.

The proposed water line grant is shown on the attached map labeled as Exhibit A.

Project Design Features

- All activities associated with the operation, use, maintenance and termination/removal of the water line would be in compliance with the terms and conditions of Right-of-Way Grant OR 66346 including Exhibit A (see attached). As noted in Exhibit A (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.
- Vehicle use would be restricted to the existing unnumbered BLM road across BLM managed land in taxlot 600 (Lots 3 and 4) and would not occur under wet conditions to protect water quality and prevent surface displacement such as rutting or ribbons.
- Alteration of the water facility or use outside the boundaries of the right-of-way is not authorized.
- This right-of-way would be subject to modification, adaptation, or discontinuation if it would be found by the Authorized Officer to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.
- The United States would not be liable for any damage which may occur to the improvements authorized by this grant, as a result of its management of the Public Lands, including, but not limited to construction, reconstruction, and maintenance of the roads and harvest of timber.
- The United States would not guarantee the quantity, quality, or purity of the water used by the Holder. The United States would not be held liable for damage or

deterioration of the water supply which may result from natural causes or activities of the United States.

- Should the design of the water system change from an infiltration gallery system to an exposed intake system, continuation of the grant would be contingent on the compliance of the installation with current Oregon Department of Fish and Wildlife standards for fish passage and screening.

Plan Conformance Review

The Proposed Action is consistent with the Medford District's 1995 Record of Decision (ROD) and Resource Management Plan (RMP) and 2008 ROD/RMP. Following the March 31, 2011 decision by the United States District Court for the District of Columbia in Douglas Timber Operators et al. v. Salazar, which vacated and remanded the administrative withdrawal of the Medford District's 2008 ROD and RMP, we evaluated this project for consistency with both the 1995 RMP and the 2008 ROD and RMP. Based upon this review, the Proposed Action contains some design features not mentioned specifically in the 2008 ROD and RMP. The 2008 ROD and RMP did not preclude use of these design features, and the use of these design features is clearly consistent with the goals and objectives in the 2008 ROD and RMP. Accordingly, this project is consistent with the Medford District's 1995 RMP and the 2008 ROD/RMP.

The Proposed Action is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the Medford District Resource Management Plan.

Compliance with the National Environmental Policy Act

Environmental Policy Act (NEPA) in accordance with 516 DM 11.9 H (1) "Issuance of Special Recreation permits for day use or overnight use . . . and/or for recreational travel along roads, trails, or in areas authorized in a land use plan."

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2, Appendix 2, apply (See attached checklist).

NEPA Categorical Exclusion Review

Extraordinary circumstances (CFR § 46.215) provides for a review of the following criteria for categorical exclusion to determine if exceptions apply to the Proposed Action based on actions which may:

1. *Have significant impacts on public health or safety.*
 Yes No
Remarks: None

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 buried pump located in the flood plain of the Recreation Section of the Rogue National Wild and Scenic Rogue River corridor is not having an impact because it is compatible with maintaining the Outstandingly Remarkable Values, particularly the scenic values of the river corridor.

There would be no significant impact on the fisheries resource because none of the channel dynamics associated with habitat would be affected by operation of the pump and fish production and survival would be maintained.

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

Yes No

Remarks: None

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

Yes No

Remarks: None

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

Yes No

Remarks: None

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

Yes No

Remarks: None

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: None

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: There would be no significant impact on the fisheries resource because none of the channel dynamics associated with habitat would be affected by operation of the pump and fish production and survival would be maintained.

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

Yes No

Remarks: None

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

Yes No

Remarks: None

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: None

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: None

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MEDFORD DISTRICT OFFICE

CATEGORICAL EXCLUSION DECISION

DOI-BLM-OR-M070-2010-0034-CX

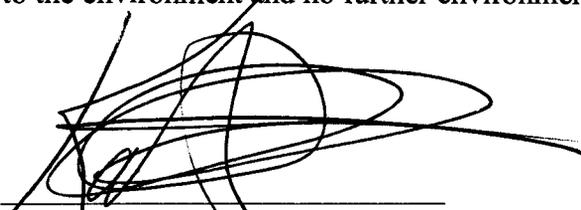
NEPA CATEGORICAL EXCLUSION DECISION DOCUMENTATION

Proposed Action

The proposed action is the issuance of right-of-way grant to Thomas A. Rosenthal (applicant), under the provisions at 43 CFR Part 2800, and Title V of P.L. 94-579; 90 Stat 2743. This has been serialized as case No. OR66346.

Decision and Rationale

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



Katrina Symons, Field Manager
Grants Pass Resource Area



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 Thomas A. Rosenthal, 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:

Katrina Symons, Field Manager, Grants Pass Resource Area
Grants Pass Interagency Office
Bureau of Land Management
2164 NE Spalding
Grants Pass, OR 97526
(541) 471-6653

Or Michelle Calvert (Planning and Environmental Coordinator) at (541)471-6505

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
- Thomas and Wilma Rosenthal
1080 Ferry Road
Grants Pass, OR 97526

Attachments:

Exhibit A Map

Draft Right-of-Way Grant

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 <i>Notice of Appeal</i> 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 <i>Notice of Appeal</i> 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 <i>Notice of Appeal</i> , 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 <i>Notice of Appeal</i> , 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 97205
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 <i>Notice of Appeal</i> , (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 <i>Notice of Appeal</i> (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 <i>Notice of Appeal</i> (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 <i>Notice of Appeal</i> 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.

(Continued on page 2)

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:

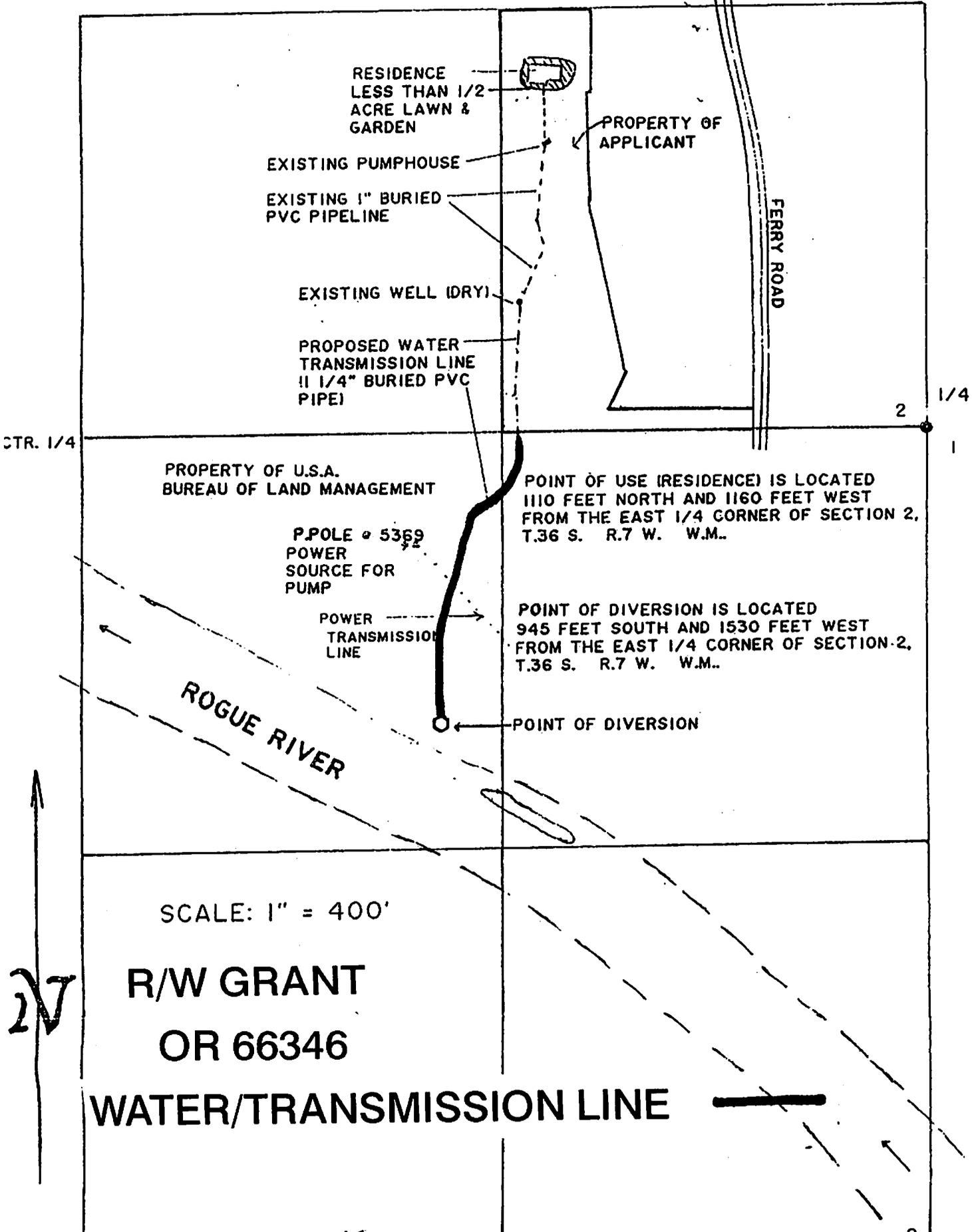
Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana 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.

(Form 1842-1, September 2006)

EXHIBIT A

T. 36 S. R. 7 W. SECTION 2 W.M.



CTR. 1/4

2 1/4

PROPERTY OF U.S.A. BUREAU OF LAND MANAGEMENT

POINT OF USE (RESIDENCE) IS LOCATED 1110 FEET NORTH AND 1160 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 2, T.36 S. R.7 W. W.M..

P. POLE # 5369 POWER SOURCE FOR PUMP

POINT OF DIVERSION IS LOCATED 945 FEET SOUTH AND 1530 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 2, T.36 S. R.7 W. W.M..

POWER TRANSMISSION LINE

POINT OF DIVERSION

ROGUE RIVER

SCALE: 1" = 400'

R/W GRANT OR 66346

WATER/TRANSMISSION LINE

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