

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GRANTS PASS RESOURCE AREA
2164 NE Spalding Ave
Grants Pass OR 97526

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

Wildlife Images Right of Way Amendment

DOI-BLM-OR-M070-2013-005-CX

Project: Wildlife Images Rehabilitation and Education Center (Wildlife Images) Right-of-Way Amendment to OR 39984 to provide short term resolution of non-compliance issues in regards to structures or facilities that were created or built on BLM land that were not authorized under the 1986 ROW.

Location: Medford District, Grants Pass Resource Area, Merlin, Oregon within the Hellgate Recreational Area of the Rogue National Wild and Scenic River Corridor. Legal location is T35S-R7W-Section 36 NW ¼ NE ¼.

Applicant: Wildlife Images Rehabilitation and Education Center

Description of Proposed Action:

The proposed federal action is to issue an Amendment to Right-of-Way Grant (OR 39984) pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761). The original ROW, OR 39984, approved in 1986 authorized a wildlife pond and bird holding and release facility. The Proposed Action would extend the Wildlife Images ROW which includes existing facilities as described in Exhibit A as part of the ROW grant. The ROW amendment would not include any new construction, modifications or renovations of facilities.

As this is a temporary amendment, Wildlife Images has previously agreed to the stipulations for potential for a long-term lease as described in Exhibit B: Settlement Agreement for Noncompliance Issues. There is no guarantee that a long-term lease would be approved. This extension expires in one year on May 29, 2014; however, one-year extensions may be granted at the discretion of the Authorized Officer. Any such extensions must be requested in writing prior to the expiration date.

Project Design Features

- Fire suppression: Wildlife Images will provide access for BLM and other agencies for fire suppression purposes.
- Fence maintenance: Maintenance of bear enclosures will be authorized. The modification to all bear enclosures include; wood posts and frames would be replaced with 8 feet high, 2 inch steel pipe with 45-degree cantilever top turned inward, and galvanized chain link, with an electrified interior fence.
- Weed mitigation: Wildlife Images will notify the BLM Authorized Officer upon discovery of any noxious weed species found in the right-of-way area and is responsible for immediate control and eradication. Wildlife Images is also responsible for control and eradication of weeds BLM is aware of within the right-of-way. Approval from the BLM Authorized Officer for acceptable weed control methods, such as mechanical or chemical must be obtained. Wildlife Images will clean motorized vehicles which will be driven off system roads, including tires and undercarriages to remove noxious weed plant parts and seeds to reduce the spread of noxious weeds. Blackberry treatment will occur annually to control the spread of populations.
- Vegetation: All planted vegetation will be native. Any straw will be certified as weed free. BLM will approve any vegetation efforts on the site.
- Access for BLM and the public: The BLM and authorized members of the public are granted administrative access from the highway to the river.
- Cultural: The BLM will be notified at least two weeks in advance of any ground disturbing activities. A BLM archaeologist, and possibly tribal representatives, will monitor ground disturbing activities. If cultural resources are discovered on the ground surface or exposed in the soil, work will be suspended in the area until the BLM is notified and appropriate procedures can be implemented. The BLM will be notified within 3 days if cultural material is discovered; if the cultural material appears to be human remains, then the BLM will be notified within 24 hours. Wildlife Images will allow the BLM to conduct any necessary archaeological work or tribal consultation work on the property as needed.
- Signage: BLM should be acknowledged on any signage on public lands as well as signs that identify wherever the public comes onto BLM land. The BLM is willing to review any interpretive materials to ensure messages are consistent.
- Other Agency permits: Wildlife Images will be responsible for obtaining and providing proof of any required permits from federal, state or local agencies.
- Public safety: Wildlife Images proposes to address public safety concern with items such as electrified fencing by maintaining the exterior fencing and posting that the interior fencing is electrified.

Plan Conformance Review

The proposal is consistent with policy directed by the following

- *Final EIS and Record of Decision for the Medford District Resource Management Plan (RMP) (June 1995).*
- *Final Supplemental EIS on Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl (February 1994).*
- *Medford District Noxious Weed Environmental Assessment (April 1998).*
- *Final Supplemental Environmental Impact Statement, Management of Port-Orford Cedar in Southwest Oregon (December 2003)*

- *Rogue River Comprehensive River Management Plan* (Fed. Reg. Vol. 37, No. 131, 1972)
- *Proposed Recreation Area Management Plan and Final Environmental Impact Statement* (2003)
- *Hellgate Recreation Area Management Plan* (2004)
- *Rogue National Wild and Scenic River Area Prohibited Acts* (Fed. Reg. Vol. 46, No. 107, 1981; Fed. Reg. Vol. 57, No. 110, 1992)
- *Wild and Scenic River Act* (1968)

Categorical Exclusion Determination

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with BLM categorical exclusion 516 DM 11.9, E(9). Realty: “Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.”

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.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances having effects that may significantly affect the environment as documented in the following review. The proposed action has been reviewed, and none of the extraordinary circumstances described in 43 CFR § 46.215 rise to the level of significance. A summary of the extraordinary circumstances is listed below. The action must have a significant or a disproportional effect on the listed categories to warrant further analysis and environmental review.

NEPA Categorical Exclusion Review

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

Yes No

() Remarks: This ROW amendment will improve safety by allowing Wildlife Images to maintain existing facilities on BLM land. Maintenance of bear enclosures and proper posting of interior electrified fencing will improve the safety of the public.

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 land was purchased with Land and Water Conservation Funds under the authority of the Wild and Scenic Rivers Act and is within the designated river corridor. However, it is out of view of the river and no impacts to Wild and Scenic River values are expected.

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

Yes No

() Remarks: Environmental effects are known and are not expected to be highly controversial. There are no unresolved conflicts concerning alternative uses of available resources.

There will be no change to water quality or erosion by granting an extension to Wildlife Images Right-of-Way-grant.

However, Wildlife Images will need to provide the BLM with water use permit documentation from the State of Oregon, Department of Water Resources for the point of diversion located on the stream which is diverting surface flow to the wildlife pond located partially on BLM ownership. See attached map.

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

Yes No

() Remarks: There is some uncertainty about animal wastes entering the creek, but this action is currently occurring. If a long term authorization under a FLPMA lease is authorized it would resolve these uncertainties.

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

Yes No

() Remarks: This is a temporary amendment pending a potential resolution either under a long term lease or through removal of facilities on BLM land, and does not set a precedent for future actions.

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 properties listed, or eligible for listing, on the National Register of Historic Places.

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.*

() Remarks: None are expected.

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 proposed action does not violate any Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*
 Yes No
 () Remarks: The Proposed Action is not expected to have a disproportionately high and 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: Authorization of a short term amendment will not limit access or use to Indian sacred sites. To date no sacred sites have been identified. The BLM consults with individual, federally-recognized tribes on a regular basis. The BLM will continue to consult with Tribes in conjunction with the anticipated long-term lease application and associated NEPA analysis.
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: There are currently noxious weeds in the project areas. Noxious weeds will be controlled in cooperation with BLM botanists and the action will not contribute to introduction, continued existence or spread of noxious weeds or non-native invasive species.

Reviewers:

<u>Jon R. [Signature]</u> Fisheries	<u>6/5/13</u> Date	<u>Marvin Posa</u> Wildlife	<u>6/5/13</u> Date
<u>[Signature]</u> Botany	<u>6/5/13</u> Date	<u>[Signature]</u> Soils/Hydrology	<u>6/5/13</u> Date
<u>Mary Hayden</u> Cultural Resources	<u>6/5/13</u> Date	<u>[Signature]</u> Visual Resources / Recreation	<u>6/6/13</u> Date
<u>Michelle Cabret</u> Planning/NEPA	<u>6/5/13</u> Date	<u>[Signature]</u> Fuel	<u>6/6/13</u> Date

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

**Categorical Exclusion Decision Record for the
Wildlife Images Right of Way Amendment
DOI-BLM-OR-M070-2013-005-CX**

Proposed Action

The proposed federal action is to issue an Amendment to Right-of-Way Grant (OR 39984) pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761). The Amendment to Right-of-Way Grant OR 39984 is to provide short term resolution of non-compliance issues in regards to structures or facilities that were created or built on BLM land that were not authorized under the 1986 ROW. The proposed action would amend the Wildlife Images ROW to include existing facilities as described in Exhibit A as part of the ROW grant. The ROW amendment would not include any new construction, modifications or renovations of facilities.

Decision and Rationale

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

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 Proposed Action. 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.

Administrative Review

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)).

CFR § 4.410(d)). For additional information concerning this decision contact Leah Schofield, Planning and Environmental Coordinator, telephone (541) 471-6504, 2164 NE Spalding Avenue, Grants Pass, Oregon 97526.

Implementation Date

This is a land decision on an existing right-of-way grant. 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.



Allen Boltschweiler, Field Manager
Grants Pass Resource Area

C/4/13

Date

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 address below will be accepted. Faxed or e-mailed appeals will not be considered.

BUREAU OF LAND MANAGEMENT
GRANTS PASS INTERAGENCY OFFICE
Grants Pass Resource Area
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:

- 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 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

For additional information contact:

Allen Bollschweiler, 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

Leah Schofield, Grants Pass Resource Area Environmental Planner, at (541) 471-6504

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 S.W. Broadway, Suite 600
Portland, Oregon 97205

Exhibit A
Wildlife Images Settlement Agreement
Table of Existing Facilities and Structures on Public Land
February 2009

Item No.	Description	Currently exists on BLM land?	Authorized under OR 39984?	Planned for Removal
1	Wildlife Pond	Partially	Yes	No
2	Exterior perimeter fence --8' foot metal fence with 45 degree inward cantilever with non-climb wire, electrified, which serves as a safety enclosure if any animals escape from their interior pens. Existing fences to remain as is (except authorization for annual maintenance would be requested to replace rotted or failing fence posts with steel fence posts). Also, replacement of wire with 9-gauge chain link to a taller height (10') . No additional ground disturbing activities are anticipated, only post replacement case by case.	Yes	No	No
3	Well No. 3 and well house (approx size 4' x 4') (near Wildlife pond)--unknown gpm.	Yes	No	No
4	Cougar and Lynx Complex (approx. size = 35' x 175', w/10' metal fencing, non-climb wire, electrified with electrified trees in pen).	Yes	No	No
5	Bear enclosure No. 1 (Brown Bear) (approx. size =194' x 198', with 8' metal frame and fencing, non-climb wire, electrified).	Yes	No	No
6	Bear enclosure No. 2 (approx size. 194' x 98', with 8' metal frame and fencing, non-climb wire, electrified with electrified trees in pen).	Yes	No	No
7	Bear enclosure No. 3 (Black Bear) (approx size. 118' x 140', with 5' wood-framed, metal non-climb wire, electrified fencing). Pen includes electrified trees and four interior pens.	Yes	No	No
8	Bear enclosure 4 (Black Bear) (approx size. 110' x 140', with 5' wood-framed, and metal non-climb wire, electrified fencing). Pen includes electrified trees and one interior pen.	Yes	No	No
9	Fawn Pen No. 1 (approx. size - 100' x 118' with 5', wood fence, plywood corrugated roof, non-climb wire, non-electrified.)	Yes	No	No
10	Wolf enclosure 1 (approx. size = 38' x 78' with 10' galvanized chain link fencing, electrified). Includes one interior pen.	Yes	No	No
11	Wolf enclosure 2 (approx. size = 38' x 78' with 10' galvanized chain link fencing, electrified.).	Partially	No	No

Exhibit A
Wildlife Images Settlement Agreement
Table of Existing Facilities and Structures on Public Land
February 2009

Item No.	Description	Currently exists on BLM land?	Authorized under OR 39984?	Planned for Removal
	Includes one interior pen.			
13	Badger enclosure (approx. size 16' x 32' with attached 6' x 6' pen, with 8' metal pipe, galvanized chain link fencing."	Yes	No	No
14	Ibis and Crane enclosure (approx. size = 23' x 59'. Fencing is 12' metal posts with 4' non-climb wire and fully enclosed with nylon netting.	Partially	No	No
15	Above-ground power distribution power line w/poles running across front of property (next to road). Approx. 432' in length. (Note: PacifiCorp owns and maintains this line. They will need to apply for separate right-of-way).	Partially	PacifiCorp will need to apply for ROW.	No
16	Underground power line running from WI Maintenance Bldg complex to the Black Bear 3 and 4 enclosures—item Nos. 7 & 8 above). Note: This power line is owned and maintained by WI. (Approx. length/width on BLM property is 232'/12":)	Partially	No	No
17	Underground power line running from WI clinic complex to the location of the removed Bear Enclosure #5. This power line is owned and maintained by WI. (Approx. length/width on BLM property is:223 ft.. x 12")	Partially	No	No
18	Buried PVC water lines running from WI maintenance area to all animal enclosures. Total length is approx. 2029 feet.	Partially	No	No
19	Buried phone line running from WI clinic complex on WI images property through BLM land to WI maintenance area on WI property. Approx length on BLM is 534 feet. (WI owns and maintains this phone line).	Partially	No	No
20	Foot Bridge No. 1 – Wooden bridge w/concrete abutments at property line	Partially	No	No
21	Foot Bridge No. 2 – Wooden (located on walking trail south of property). Includes a corrugated metal pipe culvert..	Yes	No	No
22	Foot Bridge No. 3 – located west of pond. Wooden. Includes a corrugated metal pipe culvert.	Yes	No	No
23	Developed walking trails various locations identified on map. Total length on BLM approx. 2469 feet. .	Yes	No	No
24	Night pathway lighting – 1298' of low voltage	Partially	No	No

Exhibit A
Wildlife Images Settlement Agreement
Table of Existing Facilities and Structures on Public Land
February 2009

Item No.	Description	Currently exists on BLM land?	Authorized under OR 39984?	Planned for Removal
	night lights.			
25	Pond No. 2 (seasonal)--This pond is outside exterior fencing enclosing the WI facilities and structures and is only a natural pond needing no authorization.	Yes	No authorization needed	No
26	Temporary recovery area where portable, temporary pens are placed (currently approx. 27 exist)	Partially	No	No
27	Temporary release holding area (at location of old Fawn #2 area). Temporary pens used prior to release of wildlife.	Partially	No	No
28	Bird Holding and Release Facility	Yes	Yes	No

**SETTLEMENT AGREEMENT
FOR NON-COMPLIANCE ISSUES ASSOCIATED WITH
RIGHT-OF-WAY GRANT NO. OR 39984**

PARTIES

This agreement is entered into by Wildlife Images Rehabilitation and Education Center (hereafter called WI), and the United States, Dept. of Interior, Bureau of Land Management, Grants Pass Resource Area (hereafter called BLM).

BACKGROUND AND PURPOSE

The BLM issued to WI a right-of-way grant (No. OR 39984, approved on May 30, 1986) authorizing a wildlife pond and bird holding and release facility (identified as item Nos. 1 and 27 in the Exhibit A Table) to be maintained on public land in T. 35 S., R. 7 W., Sec. 36 (over a portion of Donation Land Claim 37). The right-of-way grant expires on May 29, 2011. This right-of-way was issued under the authority of Title V of the Federal Land Policy and Management Act (FLPMA), as amended (43 U.S.C. 1761).

WI serves as a significant wildlife rehabilitation and interpretive center with a high level of public use. Only a portion of the WI facilities is located on public land; the remaining facilities are on land owned by WI.

Over time, since the right-of-way grant was approved, WI has expanded the facilities and made a number of changes not reflected in the right-of-way. However, WI and BLM have had on-going communication since November, 2000, about proposed changes to the site and the possibility of entering into a lease for the portion of the WI facilities located on BLM land.

In August, 2006, BLM gave official notice to WI of non-compliance under the current right of way but at the same time confirmed BLM's interest in working cooperatively with WI to ensure short-term compliance with the right of way and to identify a process for considering a long-term solution.

This Settlement Agreement serves two purposes: 1) To agree on a strategy for resolving the issues related to non-compliance associated with right-of-way grant No. OR 39984, 2) to develop proposals which will ultimately determine if and how any of the non-compliance items can or should be authorized.

Exhibit A attached hereto provides a written description of all facilities and structures which are located on United States lands which are either currently or proposed to be maintained by WI as part of their complex and whether or not they are currently authorized under their existing right-of-way grant No. OR 39984. It also identifies those facilities or structures which they are proposing to remove. The map attached here as Exhibit B (and labeled as "Current Situation - Wildlife Images" identifies all facilities or structures (including culverts, walking trails, pens, fences, etc.) that currently exist on United States land managed by the BLM.

PROPOSED SETTLEMENT

A. Items to Be Removed

WI has already removed the former Bear enclosure No. 5 (black bear). Targeted for removal in 2009 are: 1) old bird holding facility, 2) temporary badger facility, 3) empty building by pond. There are no additional items currently targeted for removal at this time.

B. Short-Term Resolution of Non-Compliance Issues

While BLM and WI are working toward long-term solutions, the parties agree that:

1. No later than 30 days following execution of this agreement, WI will submit an application for right-of-way (SF-299), requesting an amendment to right-of-way grant No. OR 39984 to the existing facilities and structures identified as Item Nos. 1-28 in Exhibit A and as shown on the Exhibit B map attached hereto.

2. The BLM and WI agree that the above application for amendment to right-of-way grant No. OR 39984 will only include existing facilities as described in Exhibits A and B, and will not include any requests for new construction, modifications to or renovation of facilities,, except for modification to the bear pens per USDA standards which would include no new ground-disturbing activity. The proposal to be submitted would include only replacement of poles and fence using existing holes (the area already being previously disturbed). Adding of the no-dig barrier as required by USDA and ODFW would be deferred to the long-term lease proposal. The modification to all bear enclosures would include:

- o Wood posts and frames would be replaced with 8' high, 2" steel pipe with 45-degree cantilever top turned inward, and
- o Galvanized chain link, electrified fence.

 ~~3. The WI application for amendment will include a request to remove and delete from the right-of-way the Bird Holding and Release Facility from right-of-way OR 39984.~~

4. Regarding any facility or structure which is regulated or permitted by the Oregon Dept. of Fish and Wildlife or other regulatory agencies (such as bear pens and fencing), WI agrees to provide documentation that the regulatory agency consents to allow any existing facility or structure regulated by them to remain in place "as is," or improved as describe in item No. 2 above, on a temporary basis until May 29, 2011, or until the structures are subsequently amended into the right-of-way grant OR 39984.

5. The BLM agrees to process the application for amendment to OR 39984 in accordance with the regulations at 43 CFR 2800 and to conduct any appropriate environmental reviews in a timely manner in order to reach a decision whether to authorize the above uses through the life of the existing right-of-way grant No. OR 39984 (May 29, 2011). The parties understand that no decision can be made until the application has been reviewed and is in compliance with the National Environmental Policy Act (NEPA) review requirements and other federal laws, regulations, policy or land use plans.

6. BLM agrees to commence the NEPA analysis within 120 days of submittal of the SF-299 application and will perform initial scoping of the proposal and notify WI of the necessary surveys and anticipated time frames for their completion.

C. Long-Term Resolution

The BLM has determined that the appropriate authority for a potential long-term authorization is a lease under Sec. 302 of FLPMA and the regulations at 43 CFR 2920. While no decision can be made regarding whether or not a lease can be issued until all required reviews and analyses are completed, the BLM is willing to commence processing an application for a Sec. 302 lease. **There is no guarantee that the lease will be approved or granted, as any final decision will be reserved until after the appropriate analyses are completed. Given the need for full public participation in these decisions and due process to all parties, delays may occur as a result of these proposals and potential conflicts.**

1. WI desires to apply for and receive a long-term lease (under Sec. 302 of FLPMA) which would authorize the item Nos. 1-28 shown on Exhibit A. In addition to authorizing Item Nos. 1-28, WI desires to make modifications to all bear enclosures (Item Nos. 7 & 8 on Exhibit A) by installing the required no-dig barriers in each enclosure to prevent animals from digging out from under the fence.

2. Before BLM can accept an application for such a lease, it must publish a Notice of Realty Action (NORA) in the *Federal Register* once, and for three consecutive weeks thereafter in a local newspaper. This NORA would notify the public of the intent of the BLM to consider accepting applications for a lease for specific purposes. By May 15, 2009, BLM agrees to have the NORA document drafted and sent to the BLM Oregon State Office for subsequent transmittal to and publication in the *Federal Register*. BLM cannot guarantee a publication date in the *Federal Register*.

3. After the required publication periods for the NORA have been satisfied, BLM will notify WI that it can legally accept an application for the proposed uses under Sec. 302 of FLPMA including modification of the bear enclosure fencing. WI's application would need to include detailed drawings and specifications for the modifications to any animal enclosures for BLM to consider in their NEPA analysis.

4. The parties understand that approval of a FLPMA Sec. 302 lease will be a precedent-setting action (long-term lease) since the lands were acquired for a specific purpose (Wild and Scenic Rivers Act (W&SRA)) and that the BLM Field Manager will need to brief higher levels of management and gain their consensus for proceeding on this long-term proposal for resolution.

5. The parties understand that under the W&SRA any leases must first be offered to the parties from whom the BLM acquired ownership. WI agrees to perform any due diligence in finding the former owners of the property or to demonstrate why they can't be located (such as they are deceased, etc.). BLM will provide the name of the original Grantor at the time of BLM acquisition.

6. BLM agrees to commence the NEPA scoping and analysis within 60 days of submittal of the lease application and will perform initial scoping of the proposal and notify WI of the necessary surveys and anticipated time frames for their completion. The target goal is to have all required analysis completed before the right-of-way grant expires in May 2011. In the event no decision has been reached by that date if WI is in compliance with this agreement, the BLM shall grant an extension on the existing ROW for one year to allow for continued good faith efforts. If BLM denies the application, BLM may grant either an extension of the existing ROW, or order complete removal of all improvements from the affected lands within a reasonable specified time.

RESOURCE AND OTHER ISSUES TO BE CONSIDERED

The parties agree that the following issues are of particular concern and will need to be taken into consideration in any application analysis. WI will address these issues as part of its ROW and Lease Applications:

- Fire suppression: The application submitted by WI would need to address fire danger and access for fire equipment. BLM has been completing neighborhood plans in the river corridor. However, the specific neighborhood plan that includes the WI facilities addresses only fuels reduction and not fire protection. The application would need to include access for BLM and other agencies for fire suppression purposes. BLM is willing to perform risk assessment and recommend changes for fire suppression.
- Consultation with Cow Creek Tribe: BLM is responsible for consulting with tribal leaders of the Cow Creek Tribe regarding the tribe's interest in lands north of the Rogue River. The BLM will perform any needed consultation on the proposals.
- Water rights for well No. 3: It is assumed there are no rights conveyed to WI to transport the water from BLM to private lands. BLM will need to research the status of the well, and the acquisition records to determine if the well is reserved for BLM use. WI proposes to limit or terminate water use off of BLM lands. Continued use of the pond on BLM land is authorized under the existing ROW.
- Fence maintenance: Both the short-term and long-term applications will need to include a request for authorization to maintain fences. Specifics as to the type of fences and where, anticipated, the maintenance level will still need some clarity. WI intends to replace wood posts with steel, and replace fence wire with 9-gauge chain link. No digging is anticipated other than to replace posts.
- Rehabilitation of sites for facilities to be removed: BLM is willing to consult on rehabilitation of sites where facilities are being removed. WI will be responsible for the removal and any rehabilitation needed.
- Weed mitigation: Any authorization would contain language for weed mitigation.
- Vegetation: All planted vegetation would need to be native. Any straw would need to be certified as weed free. All trees and ground cover would need to be native. BLM will provide an approved species list as an attachment to a right-of-way amendment or lease.
- Access for BLM and the public: The proposal and authorization would need to include a provision which addresses BLM and public administrative access from the highway to the river.
- Hold U.S. harmless: A clause which holds the U.S. harmless would be required.
- Public use of facility: The lease proposal must clearly disclose any fees anticipated to be charged to the public.
- Cost recovery: Leases under Section 302 of FLPMA are process under the regulations at 43 CFR 2920. Provisions for cost recovery found in the regulations at 43 CFR 2800 apply to 43 CFR 2920 leases. The regulations at 43 CFR §2804.21 can be addressed in the lease application whereby the State Director may choose to waive or reduce cost recovery fees if requested by WI.
- Lease rental fees: Rental is based on a market value appraisal. The cost of appraisal would be included as part of cost recovery needs to be determined.
- Signage: While the improvements are authorized under a right-of-way grant, or a future potential lease, the property is still public land. BLM indicated that, while it doesn't need to be involved in development of "interpretive" signs, BLM should be acknowledged on any signage particularly on public lands. The BLM is willing to review any interpretive materials to ensure messages are consistent, etc.; however, acknowledgement of partnership only is also acceptable in most cases – as a cooperator. This situation is unique however, and

ultimately may need to be clarified. BLM lands should be identified on some type of sign wherever the public comes into the BLM land.

- o Insurance: WI has blanket policy. The Policy will need to be modified to ensure it indemnifies BLM for the ROW or the potential lease on public lands.
- o Blackberry removal: Both the short-term and long-term applications will include a request to do blackberry removal.
- o Other Agency permits: WI would be responsible for obtaining and providing proof of any required permits from federal, state or local agencies.
- o Public safety: The application should address how WI proposes to address public safety concern with items such as electrified fencing, etc.

DISCLOSURES AND LIMITATIONS

The agreements herein are to reach a tentative settlement on the outstanding unauthorized uses, contingent upon completion of the required actions to be performed by Wildlife Images. This agreement is binding upon WI as a precursor to having consideration for a ROW amendment or lease application considered by the BLM.

If additional modifications to this agreement are needed, supplemental agreements may be developed to facilitate a mutually acceptable resolution. Any modification to this agreement shall be in writing, signed by the parties.

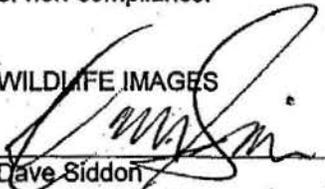
A final decision determining that all non-compliance issues are resolved will not be issued by the BLM until one of the following is accomplished: 1) the BLM approves an amendment to the existing right-of-way OR 39984 which authorizes any/all facilities or structures currently in noncompliance, or 2) there is a complete removal of all structures/improvements on the affected parcel of public land which the BLM determines it cannot authorize.

Further information will be provided by the BLM and WI to identify and communicate any other settlement options as well as the application processes. The BLM and WI are aware there will be public interest in this case, and that settlement and lease decisions are subject to potential protest and appeal by third parties, including being subject to Freedom of Information Act (FOIA) requests.

The BLM will work diligently (**subject to availability of funds**) to ensure issues are resolved internally and externally as appropriate, but cannot guarantee a specific outcome or resolution.

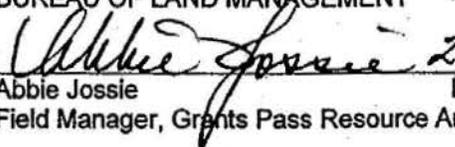
It is anticipated that completion of the items as discussed in this agreement will resolve the issues of non-compliance.

WILDLIFE IMAGES


Dave Siddon
Executive Director

2/12/09
Date

BUREAU OF LAND MANAGEMENT


Abbie Jossie
Field Manager, Grants Pass Resource Area

2-25-09
Date

Attachments:

- Exhibit A – Table of Existing Facilities and Structures on Public Land
- Exhibit B – Map – Current Situation

