

Consumers Power, Inc. - 2nd Amendment to Right-of-Way Grant OR060205

Decision Record

Environmental Assessment Number DOI-BLM-OR-SO40-2010-0002-EA

November 2010

T. 9 S., R. 3 E. section 7, SE¼; W.M.
United States Department of the Interior
Bureau of Land Management, Salem District
Marion County, Oregon

Responsible Agency: USDI - Bureau of Land Management

Responsible Official: Cindy Enstrom, Field Manager
 Cascades Resource Area
 1717 Fabry Road SE
 Salem, OR 97306
 (503) 375-5969

For further information, contact: Jodi Murphy, Project Leader
 Cascades Resource Area
 1717 Fabry Road SE
 Salem, OR 97306
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As the Nation's principal conservation agency, the Department of Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering economic use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interest of all people. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Territories under U.S. administration.

BLM/OR/WA/AE10/058+1792

1.0 Introduction

The Bureau of Land Management (BLM) has conducted an environmental analysis for authorizing a right-of-way to Consumer Power, Inc (CPI), which is documented in the *Consumers Power, Inc. - 2nd Amendment to Right-of-Way Grant OR060205 Environmental Assessment and Finding of No Significant Impact* (# DOI-BLM-OR-SO40-2010-0002-EA) (EA) and the associated project file. This Decision Record (DR) documents my decision, based on site-specific analyses in the EA. The EA is incorporated here by reference.

2.0 Decision

I have decided to implement the proposed action as described in the EA (EA pp. 5-6). This Decision is summarized in this section of the DR and is hereafter referred to as the “selected action”.

The project is located on BLM lands in T. 9 S., R. 3 E., sec. 7, SE¼, W.M., near BLM’s Canyon Creek Recreation Site, in Marion County, Oregon. The selected action will authorize CPI to replace an aerial power line with a buried cable for the reasons described in EA section 1.0. The selected action will authorize excavating a 1 foot wide trench, 3 feet deep and 100 feet long (see Map, DR p. 7). The cable will be buried at a depth of 36 inches with 6 feet on each side of center line. It is estimated that construction will occur in one day. The selected action will also authorize existing unauthorized CPI facilities on public lands in the area (aerial lines, buried cable, concrete building). These facilities will be added to Right-of-Way Grant 060205.

Project design features include placing the equipment that will remove the aerial line on the established road and driveway; using a backhoe with tires (not tracks) to limit effects to the vegetation; operating outside the open season for Canyon Creek day use recreation site; and placing the cable route to avoid removing trees.

3.0 Alternatives Considered

The EA analyzed the effects of the proposed action and no action alternatives. The proposed action is described in the EA and in this DR, p. 3. Under the No Action Alternative, the removal of the aerial power line and the burial of the cable outside of the existing right-of-way will not take place. Additionally, the existing unauthorized facilities will not be added to the authorization.

4.0 Decision Rationale

Considering the analysis documented in the EA, the supporting project record, and the management direction contained in the RMP, I have decided to implement the selected action as described in DR section 2.0. The following is my rationale for this decision.

- No Action alternative: I did not select this alternative because it will not meet the purpose and need of the project (EA p. 3). The No Action alternative will adversely affect public health and safety by not addressing current hazards associated with the aerial line. Existing aerial power line will continue to detract from a natural recreation setting.
- Proposed Action/Selected Action: The selected action 1/ meets the purpose of and need for action (EA p. 3); 2/ removes the current above-ground hazards associated with the aerial line; and 3/ will have a beneficial effect to visual resources by providing a more natural setting for visitors.

5.0 Compliance with Direction

The analysis documented in the EA is site-specific and supplements analyses found in the Salem District Proposed Resource Management Plan/Final Environmental Impact Statement, September 1994 (RMP/FEIS). This project was designed under the Salem District Record of Decision and Resource Management Plan, May 1995 (RMP) and related documents which direct and provide the legal framework for management of BLM lands within the Salem District (EA pp. 3-5). All of these documents may be reviewed at the Cascades Resource Area office.

6.0 Public Involvement/ Consultation/Coordination

6.1 Scoping, EA Comment Period and EA Comments

The BLM prepared a scoping letter, which was posted on the Salem District BLM website and sent to 11 interested individuals, groups and agencies on September 20, 2010. There were no public comments received in response to this scoping. I signed a Finding of No Significant Impact on October 19, 2010 and made the EA available for public review from October 20 to October 27, 2010 (*DR section 6.0*). I received no comment letters during the public review period.

6.2 Consultation

1. US Fish and Wildlife Service (USFWS) (EA p. 11): The only terrestrial species which could be affected is the northern spotted owl. The project would have no effects to the northern spotted owl because no spotted owl habitat would be modified or lost, and there are no sites within disturbance range of the project.
2. National Marine Fisheries Service (NMFS) (EA p. 11): Upper Willamette River (UWR) winter steelhead trout and UWR Chinook Salmon are federally listed as threatened and inhabit the Little North Fork Santiam River adjacent to the project area. The project would have no effect on these species or on listed fish habitat. No soil will move from the project site to the river channel because of the small area of disturbance, flat topography (<10% slope), and distance to the river (>250 feet to the channel). Consultation with NMFS is not required because the project would have no effect on listed fish and their habitat.
3. Cultural Resources: Section 106 Consultation with State Historical Preservation Office (EA p. 11): Cultural surveys were conducted in compliance with section 106 of the National Historic Preservation Act for the areas affected by the buried cable on October 4, 2010. No cultural resources have been found (EA Table 2); therefore consultation with SHPO is not required.

7.0 Conclusion

I have reviewed the information in the EA and this DR. I have determined that change to the Findings of No Significant Impact (EA pp. 11-13) is not necessary because no new information was provided during the public comment period for the EA that led me to believe the analysis, data or conclusions related to environmental effects of the proposed action are in error or that the selected action needs to be altered. The selected action will not have effects beyond those already anticipated and addressed in the RMP EIS.

Supplemental or additional information to the analysis in the RMP/FEIS in the form of a new Environmental Impact Statement is not needed for the reasons described in the Findings of No Significant Impact (EA pp. 11-13).

8.0 Administrative Review Opportunities and Implementation

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If you appeal: A *Notice of Appeal* must be filed in writing to the office which issued this decision – Cindy Enstrom, Cascades Field Manager, Bureau of Land Management, 1717 Fabry Road SE, Salem, OR, 97306. A copy of the *Notice of Appeal* must also be sent to the BLM Regional Solicitor. The appellant has the burden of showing that the decision is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. 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 (see 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.

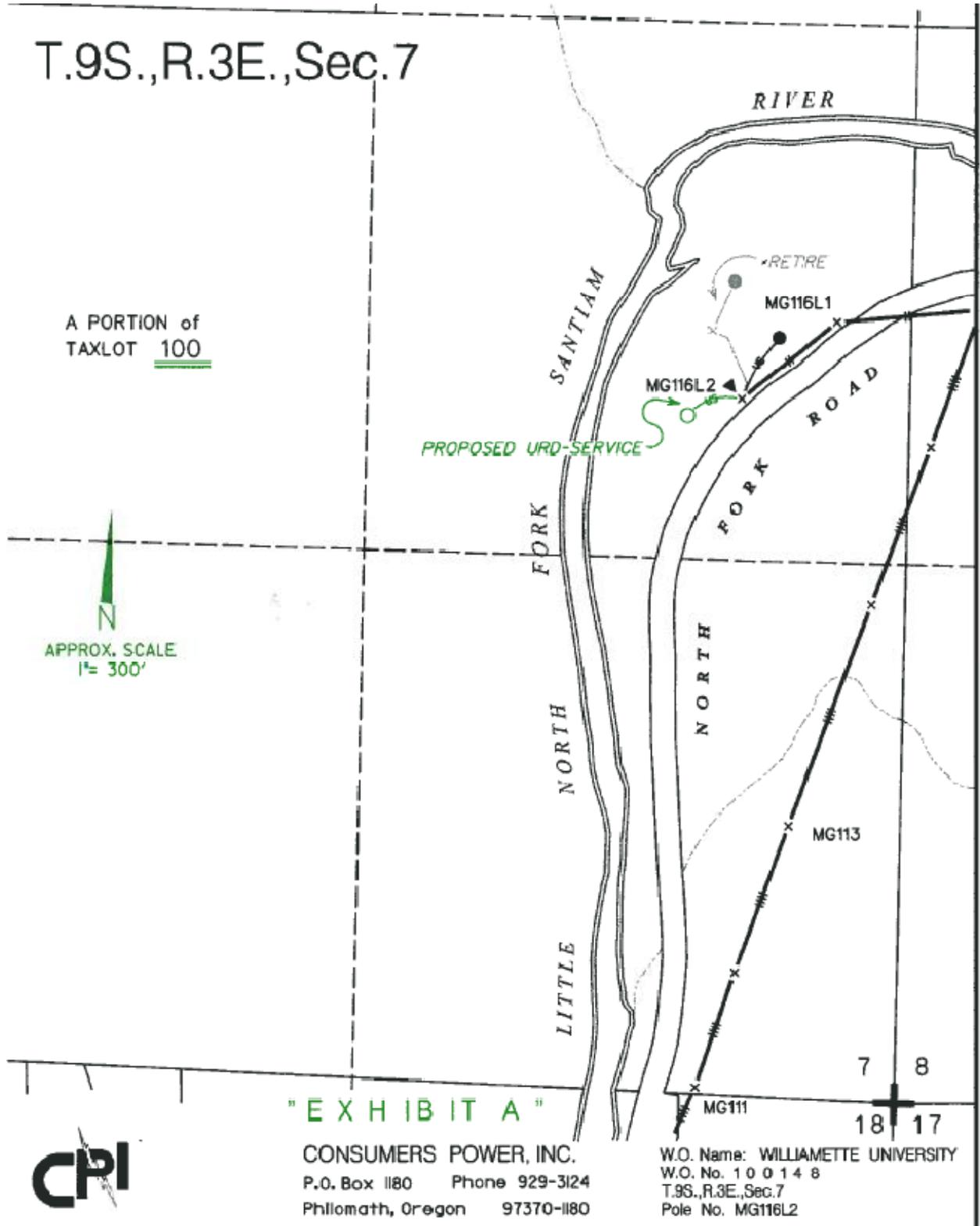
Standards for Obtaining a Stay: Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: 1/ The relative harm to the parties if the stay is granted or denied, 2/ The likelihood 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..

8.1 Implementation

All BLM decisions under CFR 43 2801.10 (b) remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in this part. If no stay is received, this project will be implemented in the Fall of 2010. Agency contact: Jodi Murphy, Cascades Resource Area, Salem District Office, 1717 Fabry Road SE Salem, OR 97306, phone: (503) 589-6854.

Approved by: Cindy Enstrom _____ 11/4/2010
Cindy Enstrom/Cascade Resource Area Field Manager Date

9.0 Map



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 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 WITH COPY TO SOLICITOR	A. Cindy Enstrom, Cascades Resource Area Field Manager, Bureau of Land Management, 1717 Fabry Road SE, Salem, OR 97306 B. U.S. Department of the Interior, Office of the Regional Solicitor, 805 SW Broadway, Suite 600 Portland, OR 97205
3. STATEMENT OF REASONS WITH COPY TO SOLICITOR	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). Same as 2 B.
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). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associated Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associated Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.
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 notice of appeal (43 CFR 4.21 or 43 CFR 2804.1). 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 <i>Petition for a Stay</i> 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 other 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 1847-1, September 2005)