

DECISION RECORD
for
Windstreams Fork Rock Fiber Optic Right-of-Way

I have reviewed Environmental Assessment (EA) DOI-BLM-NM-A010-2009-38-EA and the associated Finding of No Significant Impacts. Based on the information provided, it is my decision to approve the Right-of Way Grant requested by Windstream Communications as proposed for the construction of a 48 fiber-optic interoffice cable connecting their Cuba Office with the PNM's WW Transmission Line fiber between Cuba and San Ysidro. In addition, this project will give Windstream a connect into Albuquerque and an alternate route in case of a major fiber cut.

The proposed action is in conformance with the provisions of the Rio Puerco Resource Management Plan (November 1986, maintained and reprinted October 1992). While the Plan does not specifically identify the proposed action it says, "All future resource management authorizations and actions in the Rio Puerco Resource Area including budget proposals, will conform or, at a minimum, not conflict with the Rio Puerco Resource Management Plan." In the Draft Resource Management Plan it identifies objectives and says that Rio Puerco Resource Area grants Rights-of-Way for the use of public lands. All Rights-of-Way Applications are analyzed on a case by case basis.

Windstream will acquire and keep current permits required by Federal, State, and Local governments for construction of projects as that being proposed.

In filing an appeal the following procedures would apply:

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 an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of the decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay 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.

The approval is also based on compliance with the following stipulations.

Holder agrees to comply with the following stipulations to the satisfaction of the Authorized Officer:

1. The holder is allowed subleasing of space/equipment to additional telecommunication providers without further approval from the BLM. Subleasing includes any change in ownership of any portion of the project, or the subleasing of space to additional telecommunication service providers. These additional telecommunication providers will not be required to obtain a separate grant for their use. No additional rent will be assessed to the ROW holder for the additional sublease owner(s) or telecommunication provider(s) within the project or facility. The holder is liable and responsible for compliance with all terms/conditions of the grant, including compliance with the terms/conditions by any additional user.
2. The holder will notify BLM of any change in the future ownership status of the fiber optic project, or the subleasing to separate telecommunication service providers.
3. The holder must amend the right-of-way at any time additional land, equipment and/or new uses are proposed which are beyond the scope of the existing authorization.
4. The holder is required to provide an updated fiber content map which includes the number of active and installed but inactive fibers on an annual basis.
5. The holder shall provide a bond in the amount of \$550,000 to be maintained until restoration of disturbed areas and other requirements relative to the construction phase of the project have been accepted by the authorized officer. Upon completion, or partial completion of these construction related requirements, the authorized officer may terminate or reduce the amount of the bond.
6. All above-ground facilities shall be painted to blend in with background. Use Carlsbad Canyon Brown.
7. The permittee shall immediately notify the BLM Authorized Officer of any paleontological resources discovered as a result of operations under this authorization. The permittee shall suspend all activities in the vicinity of such discovery until notified to proceed by the Authorized Officer and shall protect the discovery from damage or looting. The permittee may not be required to suspend all operations if activities can be adjusted to avoid further impacts to a discovered locality or be continued elsewhere. The Authorized Officer will evaluate, or will have evaluated, such discoveries as soon as possible, but not later than 10 working days after being notified. Appropriate measures to mitigate adverse effects to significant paleontological resources will be determined by the Authorized Officer after consulting with the operator. Within 10 days, the operator will be allowed to continue construction through the site, or will be given the choice of either (1) following the Authorized Officer's instructions for stabilizing the fossil resource in place and avoiding further disturbance to the fossil resource, or (2) following the Authorized Officer's instructions for mitigating impacts to the fossil resource prior to continuing construction through the project area.
8. Cultural:

Table 1. Design Features Developed to Avoid Resources

(Shaded cells denote resources located on BLM land)

Resource	Location	Fiber-Optic Placement
Archaeological Site LA 85119	Confidential	Plowed into the bar ditch outside the site boundary. Monitoring by qualified archaeologist during construction in area of site.
Archaeological Site LA 85120	Confidential	Already planned for the other side of NM 197
Archaeological Site LA 85121	Confidential	Already planned for the other side of NM 197
Archaeological Site LA 85122	Confidential	Aerial insert would span large arroyo adjacent to site and would be extended to avoid the site. Monitoring by qualified archaeologist during construction in area of site.
Archaeological Site LA 132198	Confidential	Already planned for other side of NM 197. Monitoring by qualified archaeologist during construction in area of site.
Wetland 1	South of Cubita and Miera Rds intersection	Aerial insert with poles placed 248 ft south and 489 ft south of the Cubita and Miera intersection
Wetland 2	MP 5.38 to MP 5.56	Line would be bored beneath existing culverts on the north side of NM197 between MP 5.38 and MP 5.39; Line would then be plowed in the bar ditch on the north side of NM197 to avoid the wetland.
Wetland 3	MP 7.28 to MP 7.38	Aerial insert with poles placed at MP 7.28 and MP 7.38
Rio Puerco	MP 0.41 to MP 0.73	Aerial insert with poles placed at MP 0.41 and MP 0.73
Arroyo 1	MP 3.22 to MP 3.28	Aerial insert with poles placed at MP 3.22 and MP 3.28
Arroyo Chijuilito/ NM 197 Crossing 1	MP 6.23	Line will be bored from the north side of NM 197 to the south side
Arroyo Lucero	MP 6.75 to MP 6.77	Aerial insert with poles placed at MP 6.75 and MP 6.77
Arroyo 2	MP 15.33 to MP 15.34	Aerial insert with poles placed at MP 15.33 and MP 15.34
Arroyo Jarido	MP 15.97 to MP 16.0	Aerial insert with poles placed at MP 15.97 and MP 16.0
Arroyo 3	MP 20.93 to MP 20.96	Aerial insert with poles placed at MP 20.93 and MP 20.96
NM 197 Crossing 2	MP 21.12	Line will be bored from the south side of NM 197 to the north side
Gas Lines	MP 21.12 to MP 21.07	Aerial insert to avoid gas lines

9. Unless otherwise agreed to by the authorized officer in writing, power lines shall be constructed in accordance to standards outlined in "Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006," established by Avian Power Line Interaction Committee (APLIC), 2006. The holder shall assume the burden and expense of proving that pole designs not shown in the above publication are "eagle safe." Such proof shall be provided by a raptor expert approved by the authorized officer. The BLM reserves the right to require modifications or additions to all power line structures placed on this right-of-way, should they be necessary to ensure the safety of large perching birds. Such modifications and/or additions shall be made by the holder without liability or expense to the United States.

10. The use of heavy machinery will not be used during the months of April - May and September - October for migration season and between the months of April – June for breeding season.

11. You will supply BLM with copies of SWPPP, acknowledgement of permit coverage from EPA, bi-weekly inspection reports, and notice of termination (NOT) from EPA.

12. Noxious Weeds:

a) Inventory the proposed route or site for the presence of Noxious Weeds. The following noxious weeds have been identified as occurring on lands within the boundaries of the Rio Puerco Field Office (RPFO).

- 1) Russian Knapweed (*Centaurea repens*)
- 2) Musk Thistle (*Carduus nutans*)
- 3) Bull Thistle (*Cirsium vulgare*)
- 4) Canada Thistle (*Cirsium arvense*)
- 5) Scotch Thistle (*Onopordum acanthium*)
- 6) Hoary Cress (*Cardaria draba*)
- 7) Perennial Pepperweed (*Lepidium latifolium*)
- 8) Halogeton (*Halogeton glomeratus*)
- 9) Spotted Knapweed (*Centaurea maculosa*)
- 10) Dalmation Toadflax (*Linaria genistifolia*)
- 11) Yellow Toadflax (*Linaria vulgaris*)
- 12) Camelthorn (*Alhagi pseudalhagi*)
- 13) Yellow Starthistle (*Centaurea solstitialis*)
- 14) Saltcedar (*Tamarix spp.*)

b) Construction equipment should be inspected and cleaned prior to coming onto the work site. This is especially important on vehicles from out of state or if coming from a weed infested area.

c) If fill dirt or gravel will be required, the source needs to be weed free.

d) The site should be monitored for the life of the project for the presence of Noxious weeds (includes maintenance & construction activities). If weeds are found the RPFO will be notified and the RPFO will determine the best method for the control of the particular weed species.

e) If the work site is abandoned, the area shall be reclaimed and revegetated with the species specified by the RPFO. All seed shall be certified weed free. Area will be monitored to determine the success of the revegetation, and will be reseeded if necessary.

13. All heavy equipment will be cleansed of mud and dirt prior to entering and exiting BLM land to avoid the transfer of noxious weed seeds.

14. The holder shall be responsible for noxious weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable noxious weed control methods.

15. Should noxious weed infestation be found at the proposed site, the holder will provide for treatment of noxious weeds with the method of treatment approved by the Rio Puerco Field Office. Holder will provide for noxious weed treatment at existing site.

16. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.

17. Avoid leaving trenches open overnight. Where trenches cannot be back-filled immediately, escape ramps should be constructed at least every 90 meters.

18. All disturbed areas shall be seeded with the seed mixture(s) listed below. The seed mixture(s) shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be NO primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s). Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the Authorized Officer.

The seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to ensure this does not occur.) The seeding will be repeated until a satisfactory stand is established as determined by the Authorized Officer. Evaluation of growth will not be made before completion of the growing season after seeding. The Authorized Officer is to be notified a minimum of **3 days** prior to seeding of the project. Planting should occur before **planting surface freezes**.

GRASSLAND VEGETATION TYPE (Sagebrush Draws)

Common Name	Variety	Drilled Rate	Broadcast Rate	% for Mix	Lbs/Acre
Alkali Sacaton	Salado	0.5	1.0	15%	0.2
Western Wheatgrass	Arriba	8.0	17.0	25%	4.3
Galleta	Viva	6.0	11.0	20%	2.2
Blue Grama	Lovington	1.5	2.5	25%	0.6
Scarlet Globemallow		4.0	8.0	5%	0.4

Blue Flax	Appar	8.0	16.0	10%	1.6

Alternative Species for Consideration:

Grass: Sand Dropseed, *Sporobolus cryptandrus*

**Forbs: Desert Marigold, *Baileya multiradiata*
 Rocky Mountain Beeplant, *Cleome serrulata*
 Purple Coneflower, *Echinacea purpurea*
 California Poppy, *Eschscholtzia californica*
 Annual Sunflower, *Helianthus annuus*
 Yellow Evening Primrose, *Oenothera biennis*
 Purple Prairie Clover, *Petalostemum prupureum*
 Prairie Coneflower, *Ratibida columnaris*
 Desert Globemallow, *Sphaeralcea ambigua*
 Purple Verbena, *Verbena stricta***

** Hand seed these species prior to drilling the mixtures.

Species shall be planted in pounds of pure live seed per acre:

Percent Pure Live Seed (PLS) = Purity X Germination/100

Two lots of seed can be compared on the basis of PLS as follows:

<u>Source No. One (poor quality)</u>		<u>Source No. Two (better quality)</u>	
Purity	50 percent	Purity	80 percent
Germination	40 percent	Germination	63 percent
Percent PLS	20 percent	Percent PLS	50 percent

5 lb. bulk seed required to make 1 lb. PLS.

2 lb. bulk seed required to make 1 lb. PLS.

Seed mixture used must be **certified**. There shall be NO primary or secondary noxious weeds in the seed mixture.

Seeding shall be accomplished between July 1 and September 15 (later date may be extended on a case-by-case basis with Authorized Officer approval. Seed labels from each bag shall be available for inspection while seeding is being accomplished.

Compacted areas shall be ripped to a depth of twelve inches and disked to a depth of six inches before seeding. Seed with a disk-type drill with two boxes for various seed sizes. The drill rows shall be eight to ten inches apart. The seed shall be planted at not less than one-half inch deep or more than one inch deep. The seeder shall be followed with a drag, packer, or roller to ensure uniform coverage of the seed, and adequate compaction. Drilling shall be done on the contour where possible, not up and down the slope.

Where slopes are too steep for contour drilling a "cyclone" hand seeder or similar broadcast seeder shall be used. Seed shall then be covered to the depth described above by whatever means is practical, i.e., hand raked. If the seed is not covered, the prescribed seed mixture amount (pounds/acre/PLS) will be doubled.

Seeding shall be repeated if a satisfactory stand is not obtained as determined by the Authorized Officer upon evaluation after the second growing season.

19.. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 6 inches deep, the soil shall be deemed too wet to adequately support construction equipment.

20. All reseeded areas will be mulched with the following:

Straw used for mulching shall be from oats, wheat, rye, or other approved grain crops, and free from noxious weeds or other objectionable material as determined by the Authorized Officer. Straw mulch shall be suitable for placing with mulch blower equipment.

21. The holder of Right-of-Way No. **NMNM 123622** agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.* or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way. This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

22.. Prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a pre-termination conference. This conference will be held to review the termination provisions of the grant.

/s/ Frank Lewark (Acting)
Field Manager, Rio Puerco Field Office

November 4, 2009
Date