

Decision Record

Beck Lake Mountain Bike Trail

WY-020-EA12-85

April 2013

BLM

Cody Field Office, Wind River/ Bighorn Basin District, Wyoming



DECISION RECORD

Beck Lake Bike Trail

DOI-BLM-WY-020-EA12-85

AUTHORITIES:

The authority for this decision is provided by the Federal Land Policy and Management Act, 43 U.S.C. § 1761-1766, as amended (FLPMA). The decision will be made in accordance with the National Environmental Policy Act, as amended (NEPA), 42 U.S.C. § 4321 *et seq.*, and its implementing regulations 40 CFR, as well as BLM's right-of-way (ROW) regulations contained in 43 CFR Part 2800. Other policy and guidance this assessment takes into consideration include:

Threatened and Endangered Species Act Stipulation (included within Instruction Memorandum No. 2002-174); Migratory Bird Species-Interim Management Guidance Policy (included within Instruction Memorandum No. 2008-050); Bureau of Land Management (BLM), Sensitive Species, Raptors, The Migratory Bird Treaty, and Prairie Dog Surveys; and Sage-Grouse; included within Instruction Memorandum No. WYW-2012-019, Expires 9/30/2013, "Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Including the Federal Mineral Estate", and other Washington Office and State guidance.

PUBLIC INVOLVEMENT:

Public Scoping

Public scoping was needed because of the project's size (approximately 5 miles of bike trail), location next to the Beck Lake Recreation Area, other uses present, interest from adjacent private landowners, and high local recreational interest. A public scoping meeting was held on February 15, 2012 followed by a 30 day comment period. Some of the adjacent landowners attended the meeting and provided comments from their perspective. A private meeting was held with the grazing permittee prior to the meeting who is also one of the primary adjacent landowners. In addition a notification letter was sent to Tri-Tel Inc., holder of buried fiber optic cable ROW grant (WYW-148672) crossed by several of the existing trails.

Fourteen written comments were received, of which 13 were in support of the proposal, and one other comment from Wyo-Ben Inc., expressed concern about the southern portion of the existing trail crossing some of their active mining claims. The active mining claims are outside the area of analysis and the proposed project.

Internal scoping

Internal scoping was conducted by a BLM CYFO interdisciplinary team. Scoping began in March 2012 and will end when this Decision Record is signed.

PLAN CONFORMANCE AND CONSISTENCY:

Issuance of a ROW grant to the City of Cody for the portion of the trail system on public land will enable the City and volunteer groups to better meet local recreational needs involving mountain biking and hiking. Currently there is no developed system of trails in the Cody area dedicated to mountain biking.

Development of skill areas and beginner trails help develop the next generation of cyclists and park supporters.

***“Decision to be Made:** The BLM will decide whether or not to grant the ROW, and if so, under what terms and conditions.”*

The BLM will decide whether or not to grant a right-of-way to construct, operate, and maintain 4.9 miles of mountain bike trails. Included in the ROW grant are conditions to protect paleontological, wildlife, cultural, soils, and other resources.

ALTERNATIVES CONSIDERED:

Alternative I – Proposed Action

Issue a ROW grant for 30 years to the City of Cody that authorizes approximately 5 miles of mountain bike (non-motorized) trail (3.3 miles of new trail, 1.6 miles of existing), having a ROW width of 100 feet as shown on Exhibit A. The trail footprint will be between 18 to 36 inches. The reason for the ROW width will allow for flexibility in construction as the trail alignment needs to fit the topography. An as-built alignment will be adopted as the final ROW trail route after construction. The proposed project is located in T. 52 N., R. 101 W., sec. 6, Lots 2 and 4; sec. 7, Lot 2, NWNE, S2NE, E2NW (see map, Exhibit A).

The area encompassed by the ROW grant will be approximately 59 acres however the trail footprint of disturbance will be less than 1.8 acres total (1.2 acres of new construction). The ROW grant will include a POD and stipulations that address the construction, development, use, and maintenance of the trail system. The proponents will coordinate with the WDEQ-WQD to obtain a Storm Water Discharge Permit (SWDP) and develop a Storm Water Pollution Prevention Plan (SWPPP) if required.

The proposed system bike trail will include a series of loops and diverse trail experiences for all skill levels. Several trails are proposed to create loops, reduce reliance on double tracks, minimize erosion and provide diverse experiences. Existing trail use was selected based upon route sustainability and alignment, logical trail connection and desired experience. The new trails will be marked prior to construction based on sustainable trail design principles, GPS tracks and site specific guidance from the consultant, IMBA. Additional components will include a pump track, gravity pump line, dirt jumps located on City of Cody property.

Existing access across the Cody canal is located on City property and will need to be upgraded and improved for safety reasons. The existing west end access across the canal is suitable for bikes and trail walkers and will need improvements to accommodate the proposed increased use. Vehicles will be limited to a designated parking area for unloading and loading trail bikes.

Proposed additional access along the east end of the trail system will also be located across City property to accommodate the increased visitor use and trail maintenance. Bike trail maintenance will be completed on an as needed basis and will be done by the volunteer group or designated City work crew.

No Action Alternative

Deny the right of way grant. Construction of new trails and upgrading of existing trails will not take place. Although rights of way are a discretionary action, denial will require a valid reason.

Alternatives Considered but not Analyzed in Detail

Authorizing use and maintenance of existing trails was considered but eliminated from further analysis. The existing trails were originally cow trails that over time were used for biking and hiking. The existing trails are not designed for grade changes in the terrain nor are there any drainage structures such as water bars to prevent soil erosion.

Additionally the trails do not connect well to the access points on City property. For these reasons this alternative was dismissed as not meeting the purpose and need of providing quality and safe mountain biking opportunities in this area.

SELECTED ALTERNATIVE:

It is my decision to implement Alternative I, the Proposed Action. This alternative along with the Stipulations and Plan of Development are made part of the ROW Grant will minimize any impacts associated with the construction and rehabilitation of the mountain bike trail.

RATIONALE FOR DECISION:

My decision is to approve the ROW grant to The City of Cody for use and maintenance of a mountain bike trail is based on the following:

Mitigation Measures will be included as part of the proposed project. The proposed action is not expected to result in any substantial changes to existing conditions in the project area. ROW grant stipulations are incorporated which will help minimize the impacts to resources.

The proposed system bike trail will include a series of loops and diverse trail experiences for all skill levels. Issuance of a ROW grant to the City of Cody for the portion of the trail system on public land will enable the City and volunteer groups to better meet local recreational needs involving mountain biking and hiking. Development of skill areas and beginner trails help develop the next generation of cyclists and park supporters.

Project Design Features/ Terms / Conditions / Stipulations/Monitoring

The holder will ensure compliance with all local, State, and Federal regulations.

BLM requires future maintenance on all ROWs and that compliance checks will be done by the Realty Specialist, and other staff specialist as needed, to make sure seeding and rehabilitation measures in the Plan of Development (POD) are completed and are in compliance with the stipulations required by the ROW grant.

ROW grant stipulations will be incorporated which will help minimize the impacts to resources. The additional stipulations will also be attached to the ROW grant.

Appeal Language:

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 attached 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 this decision. The appellant has the burden of showing that the decision appealed from 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.

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 appropriated Office of the Solicitor (see 43 CFR § 4.413) Office of the Regional Solicitor, Rocky Mountain Region, 755 Parfet Street, Suite 151, Lakewood, CO 80215, at the same time the original documents are filed with the Cody Field Office 1002 Blackburn Street, Cody, Wyoming 82414. 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 will 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.



Michael P. Stewart
Field Manager, Cody

Date



4/30/2013

ADDITIONAL STIPULATIONS
WWY-166001

- A. The holder will construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with the plan of development which was approved and made part of the grant April 15, 2013. Any relocation, additional construction, or use that is not in accord with the approved plan of development, will not be initiated without the prior written approval of the authorized office. A copy of the complete right-of-way grant, including all stipulations and approved plan of development will be made available on the right-of-way area during construction, operation, and termination to the authorized officer. Noncompliance with the above will be grounds for immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
- B. The holder will not initiate any construction or other surface-disturbing activities on the right-of-way without the prior written authorization of the Authorized Officer. Such authorization will be a written notice to proceed issued by the Authorized Officer. Any notice to proceed will authorize construction or use only as therein expressly stated and only for the particular location or use therein described.
- C. Cultural Resources, Standard Stipulation The holder is responsible for informing all persons associated with this project that they may be subject to prosecution for knowingly damaging, altering, excavating or removing any archaeological, historical, or vertebrate fossil objects or site. If archaeological, historical, Native American, or vertebrate fossil materials are discovered, the holder is to suspend all operations that further disturb such materials and immediately contact the Authorized Officer. Operations are not to resume until written authorization to proceed is issued by the Authorized Officer.

The Authorized Officer will evaluate, or will have evaluated, such discoveries not later than five working days after being notified, and will determine what action will be taken with respect to such discoveries. The decision as to the appropriate measures to mitigate adverse effects to significant cultural or paleontological resources will be made by the Authorized Officer after consulting with the holder.

The holder is responsible for the cost of any investigations necessary for the evaluation and any mitigative measures required by the Authorized Officer. The Authorized Officer will provide technical and procedural guidelines for the conduct of evaluation and mitigation. Upon verification from the Authorized Officer that the required evaluation and/or mitigation have been completed, the operator will be allowed to resume operations.

Human Remains

If human remains are discovered or suspected the holder will suspend operations immediately, physically guard the area, and notify the Bureau of Land Management immediately.

- D. The holder will contact the Authorized Officer at least five days prior to the anticipated start of construction and/or any surface-disturbing activities. The Authorized Officer may require and schedule a pre-construction conference with the holder prior to the holder's commencing construction and/or surface-disturbing activities on the right-of-way. The holder and/or his representatives will attend this conference. The holder's contractor, or agents involved with construction and/or any surface-disturbing activities associated with the right-of-way, will also attend this conference to review the stipulations of the grant including the plan(s) of development, if applicable.
- E. Use of pesticides will comply with the applicable Federal and state laws. Pesticides will be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder will obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the Authorized Officer. Emergency use of pesticides will be approved in writing by the Authorized Officer prior to such use.
- F. The holder will be responsible for 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 weed control methods within limits imposed in the grant stipulations).

Prior to any surface-disturbing activities an invasive plant survey will be conducted by a qualified vegetation specialist, if needed. This assessment will show the location and species of invasive or noxious plants. These findings will be presented to the BLM.

Operators will be responsible for suppression and/or control of any invasive or noxious plant species within the authorized area. If chemical herbicide control methods are used on public lands, only BLM approved chemicals and application methods will be permitted. A Pesticide Use Proposal (PUP) must be submitted and approved by the BLM before initiating chemical control methods.

All mulch, seed and other vegetative reclamation materials must be certified weed free. If available all sand, gravel, and fill materials will be certified weed free.

- G. The holder will protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of

obliteration or disturbance of any of the above, the holder will immediately report the incident, in writing, to the Authorized Officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder will secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder will record such survey in the appropriate county and send a copy to the Authorized Officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder will be responsible for the survey cost.

- H. No construction or routine maintenance activities will be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 4 inches deep, the soil will be deemed too wet to adequately support construction equipment.
- I. All design, material, and construction, operation, maintenance, and termination practices will be in accordance with safe and proven engineering practices.
- J. Fences, gates, and brace panels will be reconstructed to appropriate Bureau standards and/or specifications as determined by the Authorized Officer.
- K. Ninety days prior to termination of the right-of-way, the holder will contact the Authorized Officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan will include, but is not limited to, removal of facilities, drainage structures, or surface material, re-contouring, top soiling, or seeding. The Authorized Officer must approve the plan in writing prior to the holder's commencement of any termination activities.
- L. Holder will maintain the right-of-way in a safe, usable condition, as directed by the Authorized Officer. (A regular maintenance program will include, but is not limited to, blading, ditching, culvert installation, and surfacing).
- M. Holder will save, hold harmless, defend, and indemnify the United States of America, its agents, and employees for losses, damages, or judgments and expenses on account of bodily injury, death, or property damage, or claims for bodily injury, death, or property damage of any nature whatsoever, and by whomsoever made, arising out of the maintenance or use of the permitted land use by the holder, his employees, subcontractors, agents, social guests, licensees, permittees, or invitees.
- N. Standard Paleontological Resource Protection Stipulation
 - 1. **Collecting:** The project proponent/Operator is responsible for informing all persons associated with this project including employees, contractors and subcontractors under their direction that they will be subject to prosecution for damaging, altering, excavating or removing any vertebrate fossils or other scientifically-significant paleontological resources from the project area. Collection of vertebrate fossils (bones, teeth, turtle shells) or other scientifically-significant paleontological resources is

prohibited without a permit. Unlawful removal, damage, or vandalism of paleontological resources will be prosecuted by federal law enforcement personnel.

2. **Discovery:** If vertebrate or other scientifically-significant paleontological resources (fossils) are discovered on BLM-administered land during operations, the Operator will suspend operations that could disturb the materials, and immediately contact the BLM Cody Field Office Manager (Authorized Officer). The Authorized Officer will arrange for evaluation of the find by a BLM Geologist or Paleontologist within an agreed timeframe, and determine the need for any mitigation actions that may be necessary. Any mitigation will be developed in consultation with the Operator who will be responsible for the cost of site evaluation and mitigation of project effects to the paleontological resources. Depending on site evaluation, operations within 50 feet of a paleontological discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer.

3. **Avoidance:** All vertebrate or scientifically-significant paleontological resources found as a result of the project/action will be avoided during operations. Avoidance in this case means “No action or disturbance within a distance of at least 50 feet of the outer edge of the paleontological locality”.

- O. To comply with the Migratory Bird Treaty Act of 1918 (MBTA) as amended, 16 U.S.C. §703, 50 CFR Subchapter B, Executive Order 13186, IM No. 2008-050, and M.O.U between the BLM and USFWS 2010, the stipulation will protect nests, nestlings, and nesting habitat for migratory birds as to not cause “take” as defined by the MBTA. Surface disturbing activity will not be allowed during the nesting season (April 15 through July 15) unless an avian nesting survey by a wildlife biologist confirms an absence of nesting birds in the affected area. The nesting survey must be conducted in the affected area and will be coordinated with the BLM wildlife biologist (protocol will be provided) and a report documenting the survey and results will be sent to the BLM wildlife biologist. If the survey shows an absence of nesting birds, then surface disturbance can proceed during the nesting season within 72 hours of the survey to avoid harming new nesting arrivals. After 72 hours have lapsed, a new survey will be required. If the survey shows nesting birds are present and or if the permitted activity will likely cause “take”, then the activity will be delayed until the nestlings have fledged.
- P. The BLM will schedule compliance checks as needed. The cooperators and volunteers will monitor the trail condition, hazards, volume of traffic, visitor and trail-use trends and other emerging issues as needed.