

Decision Record

*U.S. Department of the Interior
Bureau of Land Management*

*DOI-BLM-WY-D090-2014-0105-EA
Communication Use Lease: WYW-171448
Right-of-Way Grant: WYW-171457*

Fossil Butte Communication Site, access road and fiber optic cable

*6th Principal Meridian,
T. 21 N., R. 118 W., Sections 9, 11, 14, 15
Lincoln County, WY*

As Applied for by Silver Star Telephone Company

February 2015



DECISION RECORD
Environmental Assessment
DOI-BLM-WY-D090-2014-0105-EA
Fossil Butte Communication Site, access road and fiber optic cable

I have reviewed the alternatives as analyzed in the Environmental Assessment and have decided to implement the proposed action together with design features and/or mitigation measures, which will grant Communications Use Lease WYW-171448 and Right-of-Way Grant WYW-171457, to construct the Fossil Butte communication tower and facilities to Silver Star Telephone Company. The lease and right-of-way grant are located across the following lands:

6th. Principal Meridian,
T. 21 N., R. 118 W.,
Sections 9, 11, 14, 15.
Lincoln County, Wyoming

The Proposed Action is to construct a new cellular communication tower, 120 feet tall, on a 30ft x 30ft concrete pad. Additional equipment will consist of a 10ft x 12ft equipment building and a 10ft x 12ft generator building, both constructed on concrete pads, total disturbance for the tower site is approximately .1 acre. A propane tank could be installed in the future, depending upon customer needs, within the .1 acre area. The proposed cellular communication tower will be co-located on the Union Telephone Company site, approved on June 22, 2006. The proposed tower will be located to the southeast, behind the Union Tower site. An existing access road, currently being used by Union Telephone Company, will also serve as the access road for Silver Star. The fiber optic cable will be ripped in immediately adjacent to the access road. The existing road is 3.35 miles by 16 feet wide. No improvements are authorized for the access road. The fiber optic cable right-of-way will be 10-feet wide and 3.35 miles long, located on the south side of the road.

A plan of development has been submitted, to be incorporated into the lease and the right-of-way grant. Construction of the facilities will follow best management practices for construction and maintenance. The facilities would be installed using the smallest disturbance as possible. The fiber optic cable will be ripped into the soil, causing a very small disturbance, immediately adjacent to the access road, resulting in very limited vegetative disturbance. No top soiling would be required due to this construction technique. The hill top, where the tower and buildings are to be constructed is rocky in nature. There will not be a significant loss of habitat.

The facilities will be painted shale green to blend the buildings into the landscape. The structure will be constructed of weathering steel, which should not reflect sun light.

Authorities:

The right-of-way grant will be approved under the authority of Title V of the Federal Land Policy and Management Act of October 21, 1976. The proposal will be processed in accordance with 43 CFR §2800.

Compliance and Monitoring:

The location will be routinely patrolled and inspected to check for problems such as erosion, site condition, unauthorized encroachment on the Right-of-Way (ROW) and any other situations that could cause a safety hazard or require preventive maintenance.

Terms/Conditions/Stipulations:

The following terms and conditions of the right-of-way grant will be required:

- a. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibits A and B, dated April 23, 2013, attached hereto, are incorporated into and made a part of this permit instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this grant shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- g. In the event that the public land underlying the ROW encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed/ and/or the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800 or 2880, including any rights to have the holder apply to the Bureau of Land Management (BLM) for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and

conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW holder.

- h. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
- i. The holder shall 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 on April 23, 2014. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the Authorized Officer. A copy of the complete right-of-way grant, including all stipulations and approved plan of development, shall 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.
- j. Above ground equipment and/or facilities would be required to be painted to blend with the surrounding landscape using BLM color Shale Green. The exception to this requirement would be equipment, which if painted, would cause a safety issue. Any fencing material shall be neutral medium gray or color blended to match the building and surrounding environment. Metallic fencing shall be vinyl clad and grounded to prevent electrical interference.
- k. Silver Star would be responsible for development and implementation of a weed control/management plan per the Kemmerer Field Office weed stipulations on the disturbed areas within the limits of the ROW to prevent the spread of weeds on public lands, including halogeton (*Halogeton glomeratus*) and Cheatgrass (*Bromus tectorum*).
- l. All construction, operation, and termination activities shall be contained within the authorized limits of the right-of-way.
- m. The Holder shall comply with all applicable Federal, State and local laws and regulations, existing or hereafter enacted or promulgated, with regard to any hazmat, as defined in this paragraph, that will be used, produced, transported or stored on or within the ROW or any of the ROW facilities, or used in the construction, operation, maintenance, or termination of the ROW or any of its facilities.

'Hazardous material' means any substance, pollutant or contaminant that is listed as hazardous under the CERCLA of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any 'Hazardous waste' as defined in the RCRA of 1976, as amended, 42 U.S.C. 6901 et seq. and its regulations. The term hazardous materials, also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended. 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

The Holder of Communications Use Lease WYW-171448 and Right-of-Way no. WYW-171457 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 ROW (unless the release or threatened release is wholly unrelated to the ROW Holder's activity on the ROW). This agreement applies without regard to whether a release is caused by the Holder, its agent, or unrelated third parties.

- n. 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 three inches deep, the soil shall be deemed too wet to adequately support construction equipment.
- o. Authorized construction, routine maintenance, or surface disturbance is not allowed during the following periods for protection of these special status species:
 - From November 15 through April 30 for the protection of crucial big game winter range;
 - From November 15 through March 14 for sage grouse winter range habitat;
 - From March 15 through July 15 for sage grouse nesting and brood rearing habitat;
 - Motor vehicle travel is seasonally limited and is closed from January 1 to April 30.

The Holder may request an exception in writing to the above stipulation. Any exceptions to the stipulation must be approved in writing by the Authorized Officer prior to conducting any surface disturbing or prior to conducting activities disruptive to wildlife. The exception request must explain the reason(s) for the exception, why the proposed activities will not impact the species or their habitat, and the dates for which the exception is requested. Data supporting the exception must accompany the written request.

- p. A performance bond is required for this authorization. The amount of the bond shall be determined as follows: the holder shall furnish a report within 90 days estimating all costs for the BLM to fulfill the terms and conditions of the grant in the event that the holder was not able to do so. This estimate shall be prepared by an independent State certified engineer who is approved in advance by the BLM authorized officer, and shall include such information including but not limited to administrative costs and Davis Bacon wages potentially incurred by the BLM. The report shall detail the estimated costs and shall be accompanied by the engineer's seal. All costs of preparing and submitting this report shall be borne solely by the holder. This report along with inflationary estimates shall be the basis of the bond, and shall remain in effect until such time that the authorized officer determines that conditions warrant a review of the bond. This bond may be periodically adjusted by the authorized officer in the method described above when, in his/her sole determination, conditions warrant a review of the bond. Surface disturbing activities shall not commence until the BLM authorized officer has accepted the bond and issued a notice to proceed.
- q. The holder shall seed all disturbed areas, using an agreed upon method suitable for the location. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the authorizing officer upon evaluation after the second growing season. Seed mixes would include two native forbs and two native grasses with at least one bunchgrass species. All seed would be required to be certified weed-free seed for rehabilitation projects.
- r. 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.
- s. For the purpose of determining joint maintenance responsibilities, the holder shall make road use plans known to all other authorized users of the road. Failure of the holder to share proportionate maintenance costs on the common use access road in dollars, equipment, materials, or manpower with other authorized users may be adequate grounds to terminate the use agreement. The determination as to whether this has occurred and the decision to terminate shall rest with the authorized officer. Upon request, the authorized officer shall be provided with copies of any maintenance agreement entered into.
- t. Ninety days prior to termination of the right-of-way, the holder shall 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 shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

PLAN CONFORMANCE AND CONSISTENCY

The selected alternative complies with environmental laws, regulations, and policies pertinent to the decision, including the Endangered Species Act, the National Historic Preservation Act, the Clean Water Act, the Federal Land Policy and Management Act, the Clean Air Act, and Executive Orders (EO) covering Environmental Justice (EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), Noxious Weeds (EO 13112, Invasive Species), and Wetlands (E) 11990, Protection of Wetlands).

The Proposed Action and alternatives have been reviewed and found to be in conformance with one or more of the following BLM Land Use Plan goals and objectives:

- Land Resources – Lands and Realty: Goal, LR:2, Objective LR:2:1.

The Proposed Action is subject to the Kemmerer Resource Management Plan/ Final Environmental Impact Statement/Record of Decision (KRMP/FEIS/ROD), as approved on May 24, 2010. The plan has been reviewed to determine if the proposed action conforms to the Land Use Plan's terms and conditions, as required by 43 CFR 1610.5-3.

The Proposed Action/decision has been analyzed for consistency with WY-IM-2012-019 "Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands" and WO-IM-2012-043 "Greater Sage-Grouse Interim Management Policies and Procedures."

The Resource Management Plan (RMP) for the Kemmerer Field Office is currently undergoing amendment as part of the Wyoming Greater Sage-Grouse Land Use Plan Amendment (Amendment). The Draft Amendment and Environmental Impact Statement was released in December 2013.

The Proposed Action/decision was screened against the Draft Amendment to ensure that the Proposed Action/decision would not preclude BLM's ability to select any alternative in a ROD. The proposed action/decision was also determined to not be inconsistent with the direction outlined in the Amendment's Preferred Alternative.

With application of SOPs, applied mitigation, required BMPs and Conditions of Approval identified for Greater Sage-Grouse under the Proposed Action/decision, impacts caused by surface-disturbing and disruptive activities would be minimized.

Laws governing the management and use of BLM lands allow federal agencies to grant utility uses on federal land. Decision to grant utility uses require environmental protection. The agencies must: 1) determine whether the Project would conform to applicable federal land management plans and policies; 2) determine whether the environmental protection measures identified by the Proponents are adequate to protect the environment; and 3) decide whether the Project is in the public interest, considering environmental impacts. Additional protections and monitoring plans may be required. Major federal authorizing actions required for the proposed project to proceed are described below.

Specifically, 43 CFR 2801.9 requires a BLM CUL/ROW Grant for use of public lands for "systems or facilities over, under, on, or through public lands". Subpart 2804 describes the process for filing applications for an application, which was followed by the Proponents in submitting the application.

Alternatives Considered:

Section 1502.14(d) of the NEPA requires that the alternative analysis in the EA include the alternative of no action. No Action would imply the proposed action would not be approved, and the current management practices and activities would continue on public lands. Under the "no action" alternative, the Proposed Action would not be constructed on public lands

The applicant had looked at other locations in the general vicinity of the Fossil Ridge site, but management prescriptions in the Kemmerer RMP did not support development in those areas. The Fossil Ridge communications site is designated as a communications site by type in the Kemmerer RMP. Union Telephone Company already has a tower in this location, and policy supports consolidating facilities in a central location to minimize impacts to multiple resources.

The alternative(s) were developed as a result of consideration/review of the Proposed Action that the applicant described in the submitted plan of development. Consideration was given to location, type of action, developments surrounding the project, obstacles that would affect the project or the project location, impacts to other developments/resources and potential benefits of the project. Additionally the alternative(s) were developed to give the deciding official a range of choices from which to base a decision.

Rational for Decision:

This decision is based on the attached Environmental Assessment and FONSI, which concludes that approval of the proposed action, given the implementation of the required design features and/or mitigation measures, would not result in any unnecessary or undue degradation of resources, and conforms to the existing Kemmerer Resource Management Plan.

Appeal Language:

Right-of-way decisions are issued in "full force and effect" in accordance with the regulations in 43 CFR 2801.10. Full force and effect means that the decision can be implemented immediately even if the decision is appealed to the Interior Board of Land Appeals (IBLA). The appellant has the opportunity to file a petition for a stay with IBLA. A stay is a request to prevent implementation of the decision until the appeal can be reviewed by IBLA. Procedures for filing an appeal or stay are discussed below.

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 this decision. The appellant has the burden of showing that the decision appealed from is in error.

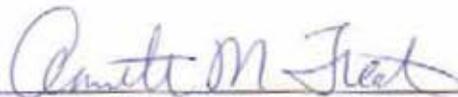
If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal.

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.

for 
William A. Mier
Field Manager

2-24-15
Date