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.10 Initiating On-The-Ground Actions. A BLM decision affecting a ROW application carries the “full force and effect” of the decision, meaning that activities allowed by the grant can be implemented immediately even if the decision is appealed to the IBLA.

A. Immediate Starts. Unless the AO had reason to delay the start, the holder may begin activities immediately, and without further communication from the BLM, upon issuance of the grant.

B. Delayed Starts. It may be appropriate to delay the initiation of on-the-ground activities for a number of reasons. This is usually enforced by a stipulation in the grant requiring a Notice to Proceed before specified on-the-ground activities occur. The AO must be prepared to respond promptly when such conditions have been met by the holder.

1. Plan of Development (POD). One reason to delay the start of construction is to allow a grant to be issued while preventing the holder from beginning surface disturbing activities before a POD is approved.

2. Appeal Likely. Another is to ensure that activities do not start prematurely if it is likely an appeal will be filed and granting of a petition for a stay of the decision is possible.

3. Notice to Proceed. When the condition for delay is resolved, use a Notice to Proceed (Form 2800-15) to allow the holder to initiate surface disturbing activities. This may be a single notice or the situation may require a series of notices as construction of facilities occur.

.11 Grant Administering Agency(ies).

A. Grant Decisions. All decisions which affect the terms and conditions of the grant, such as rent determination, approval of amendments or assignments, renewals, etc., are made by the BLM (as the Secretary of Interior’s delegate).

B. Public Land Only. Where only public lands are involved, the BLM is the administrator of the grant for all activities.

C. Other Federal Agencies. Unless there is an interagency agreement concerning the administration of a multi-agency grant, the individual Federal agencies are responsible for administration of the terms and conditions relating to the land that the agency administers.

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.12 Contacts Between the Holder and the BLM. Maintaining communications between the holder and the BLM is a requisite to development of approved facilities and minimizing adverse impacts on other resources and the environment.

A. Contact by the Holder.

1. Grant Terms. The AO must be prepared to timely respond to terms placed in the grant.

a. Pre-Construction. A grant may contain a stipulation requiring the holder to contact the BLM for a pre-construction conference or pre-construction field examination before surface disturbing activities begin.

b. Post-Construction. A grant may also contain a requirement for the holder to submit post-construction plans, drawings or maps, including "as built" information on the ROW facility, to the BLM in digital form.

2. Substantial Deviation. A substantial deviation is a proposed use or location not authorized in an existing grant, or a change in the authorized types of use. The holder must apply for the proposed additional ROW use/area and obtain a grant amendment or additional grant.

a. Determination. In determining whether a proposed change in location or use is a substantial deviation from that which is currently authorized, the AO should consider those activities that are normally required to operate and maintain the facility, what is actually authorized by the grant, and proposed changes in the capacity of the facility.

b. Examples. Substantial deviation occurs when:

- (1) Adding a pumping station to a pipeline;
- (2) Adding a parallel pipeline to an existing pipeline ROW;
- (3) Straightening a curve with new pipe that would lie outside the existing ROW.

c. A Rule of Reason must be applied in making this determination. Certain minor changes or additions may be considered as within the scope of use authorized by the original grant.

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3. Changes in Holder Status. Normally the holder is required to inform the BLM of any change in the holder's business or corporate status, financial conditions, mailing address, or designated agents.

a. Assignment. Review submitted information to determine whether the changes require the filing of an assignment request. If yes, see 2887.11.

b. Rent Status. Review submitted information to determine whether the changes affect rent status.

c. Bonding. Review submitted information to determine whether the changes affect the status of existing bonds or require bonding.

B. Contact by the BLM. The BLM maintains formal and informal contact with ROW grant holders at various times during the grant term.

1. Compliance Examinations. A detailed discussion of the BLM's ROW compliance responsibilities is contained in the Compliance Handbook (H-2807-1).

2. Additional Proposed Uses. Notify the holder when an application(s) for other uses either within, or in the vicinity of, existing authorized ROWs or within a designated corridor. Provide the holder an opportunity to review and comment on third party or BLM proposals that could affect them.

3. When an Appeal is Filed. The BLM loses jurisdiction over a case when an appeal is filed, or that portion/issue involved in the appeal, but must still oversee any activity by the holder under the "full force and effect" status of the grant. The BLM may still communicate with a holder/appellant on such matters.

a. The Solicitor's Office must be involved in these contacts.

b. Meetings. Any arranged face to face communication, including telecommunications, must allow other parties to the appeal to participate. A summary of such communication must be furnished to the IBLA.

c. Written Material sent or received by the BLM must be copied and provided to other parties to the appeal and to IBLA.

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4. Land Tenure Actions. When considering, either through the land use planning process or a specific land tenure action, the transfer or disposal of lands, early notification of the holders of existing ROW grants **is mandatory**. See .15 for subsequent ROW actions. The BLM must notify existing grant holders when an application(s) is received for other uses either within, or in the vicinity of, existing authorized ROWs or within a designated corridor. Provide the holder an opportunity to review and comment on such third party or BLM proposals. Existing rights shall be given priority when applications for new uses are received. The BLM shall not unduly impair an existing grant holder's rights by issuing a potentially conflicting authorization.

.13 Liability of Holder.

A. General Liability. All grant holders are fully liable to the United States (and third parties) for any damage or injury incurred in connection with the holder's use and occupancy of a ROW.

B. Strict Liability. When the AO determines that a foreseeable hazard, or risk of damage or injury to the United States, is present as a result of activities or facilities that will be conducted or placed on the ROW, strict liability is imposed as a term or condition of the grant. When strict liability is a condition of the grant be sure to enter this requirement into LR2000.

1. Not Imposed. Where the damage is caused by an act of war, act of God, or negligence of the United States, the BLM will not seek redress under strict liability.

2. Limit on Damages. Where damages exceed two million dollars, the BLM must show negligence to seek the overage. Exceptions to this limit are found at 43 CFR 2807.12(b)(3).

C. Enforcement. If injury or damage has occurred to the United States, the State Office should be informed in the event referral to the Solicitor's Office or the US Attorney's Office is required.

1. Measure of Damage. Prepare a report describing the incident, the injury or damage incurred by the United States and the value or cost involved, repair needed, etc.

2. Voluntary Redress. The holder should be contacted to determine whether repair, payment, restitution, etc., may be obtained voluntarily.

3. Strict Liability. Where strict liability is involved, the holder may be "billed" for up to two million dollars (or annually adjusted amount) without regard as to negligence.

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4. Negligence must be shown to achieve redress for damages other than any amounts under strict liability.

5. Bonds, Insurance, Etc. Where the holder has filed bonds, insurance, etc., to cover potential liability issues, the sureties should be notified early in the process of obtaining redress.

.14 State, Tribal, and Local Governments are liable to the fullest extent law allows at the time that the BLM issues their grant. If they lack the legal power to assume full liability, repair and/or restitution are required. Bonding may have been considered in grant issuance.

.15 Transfer of Servient Land. Where there is a proposal to transfer the land encumbered by a ROW(s) **notice must be given** to the holder(s) and a reasonable time must be provided to comment on the potential effect of the transfer on their ROW. Within reason and if legally possible, no transfer will be made until at least 30 days after notice has been given to the holder.

A. Notice. At a minimum the notice to the ROW holder must contain:

1. Type of Transfer being considered - withdrawal, sale, exchange, etc.
2. Description. Whether the transfer will affect all or only a portion of the ROW.
3. Name. If known, the name and address of the proposed new owner/agency.
4. Time Frame. The estimated time to process the transfer - date transfer is expected to occur.

5. Opportunity to Comment. Allow the holder a minimum of 30 days to review the proposed transfer and to provide comments on whether the transfer will diminish the holder's rights. And if so, in what manner or to what degree.

6. ROW Holder's Options. When the proposal is for conveyance out of BLM management or Federal ownership, the notice must provide the following options to the holder, and request that the holder inform the BLM of the option chosen:

a. Maintain the ROW under its current terms and conditions, including expiration date (status quo); or

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- b. Negotiate a new authorization with the prospective new owner that would become effective at the time of patent or deed issuance; or
- c. Apply with the BLM to amend the ROW, or portion thereof, to a maximum term; or
- d. Apply to replace the ROW, or portion thereof, with an easement grant; or
- e. Failure of the holder to respond will automatically put option 6.a in place.

B. Transfers to Another Federal Agency. Administration of the ROW grant will be transferred to the new Federal Agency except:

- 1. Partial ROW. Where the transfer affects only a portion of the ROW, the AO will determine if the BLM should still retain jurisdiction over the entire ROW grant;
- 2. Diminished Rights. Where the holder has commented that the transfer will diminish their rights, the AO shall determine whether such diminishment warrants retention of jurisdiction over the ROW by the BLM; and
- 3. Term Change. Whether a change to a maximum term or substitution of an easement should be offered to holders (see C.4.b. below).

C. Conveyances Out of Federal Ownership. Giving due consideration to the holder's comments, and others, the AO shall determine if the BLM should:

- 1. Withhold Conveyance of the land encumbered by the ROW. The AO shall determine whether the rights of the holder would be overly and unreasonably diminished or that the ROW (most likely a corridor) is of such National significance that the encumbered land should not be transferred.

Note: Normally the National significance of a corridor is determined at the Land Use Planning stage.

- 2. Accept Replacement Agreement which has been reached between the conveyance proponent and the holder. The AO shall arrange for escrow handling to allow relinquishment of the BLM ROW grant and proponent issuance of a replacement grant, easement or other agreed upon document prior to recordation of conveyance (patent). If relinquished, the BLM ROW grant will not be mentioned in the patent.

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3. Retain Jurisdiction. The AO shall determine whether 1) the rights of the holder would be sufficiently diminished by the transfer or 2) the Federal interest in the ROW facility is so important that administration over the ROW grant should be retained by the BLM.

4. Transfer Jurisdiction. The conveyance document will be made “subject to” the ROW grant, or portion of the ROW grant involved, where .15.A. through C. above do not apply, and

a. Without Modified Grant. ROW grant holder has not responded to notice and/or has not requested a modified grant.

b. With Modified Grant. Where the ROW grant holder requests a modified grant, the AO shall:

(1) Conduct Initial Review.

(a) Receive the request as an application for amendment of the grant, or portion of the grant, involved with the proposed conveyance.

(b) Determine appropriate cost recovery category and collect the fee.

(c) Consider it a categorical exclusion under NEPA.

(d) Prepare a replacement grant for the existing ROW grant, or portion thereof.

(i) Changing the grant term to a maximum term; or

(ii) Convert the grant to an easement.

(2) Use Escrow. Provide for simultaneous escrow process with the replacement grant to be recorded prior to recording of patent, clear list, warranty deed, or other transfer document. Follow up with cancellation of the original grant and appropriate LR2000 and records notation.

(3) Process. [Reserved]

.16 Immediate Temporary Suspensions are to be used only when there is a violation of the terms and conditions of the grant and it is necessary to protect public health and safety or prevent or stop damage to the environment.

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A. Notice may be given orally or written. If given orally, it must be confirmed in writing within 5 working days. Notice must specify the violation, the effect on or protection needed for the public or environment involved, and corrective measure(s) required.

B. Resumption of Activity. The holder may file a written request with the AO to resume activity.

1. Resolved. If the AO determines that the adverse situation has been resolved the holder is notified that activities may be resumed. This may be by letter or formal decision.

2. Unresolved. If the AO determines that the situation has not been resolved, the holder's request must be denied by formal decision.

3. 5-day Rule. If the BLM's formal decision is not made within 5 business days, the holder's request for resumption is considered denied and the holder may file an appeal within 30 days.

C. Holder Fails to Suspend Activities. If the holder refuses or fails to suspend activities, the AO shall:

1. Assure that the holder received notice of temporary suspension;
2. Immediately contact the State Director to determine whether:
 - a. Law Enforcement assistance is needed and/or
 - b. Assistance from the Solicitor's Office is needed; and
3. Issue a Notice of Trespass.

.17 Suspensions and Termination. Unless there are mutual advantages to suspending a ROW grant, it is the BLM's policy to seek termination.

A. Suspension is the cessation of all activities on the ROW other than limited activity necessary to protect public health and safety or the environment.

1. Use suspension where cessation of activities is necessary and

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a. The BLM needs time to demonstrate violations of terms or conditions such as abandonment; or

b. Issues require considerable time to resolve - such as resolution of a new occurrence of an endangered species requiring action by the US Fish and Wildlife Service.

2. Rent may not be collected for any full calendar year falling into the suspension period.

B. Termination may occur as the result of a stated condition or be sought upon a major or repeated violation of the terms and conditions of the ROW grant.

1. Stated Condition. If the terms of the ROW grant provide for termination upon a stated condition, such as a date certain, the BLM will issue an appealable decision terminating the grant.

2. Non-Conformance. If termination is to be sought based on the violation of a term or condition of a grant, the BLM must issue Notice of Non-Compliance to the holder that identifies the stipulation not complied with, the curative action required (and the timeframe), and that the BLM intends to suspend or terminate the grant in the event of continued non-compliance.

a. Appropriate action is then taken based on the response or lack of response.

b. These actions should be coordinated with the Solicitor's Office.

.18 Notice. All holders must be given advance notice of the intent to suspend or terminate their ROW grant. Where the action is based on a stated condition, provide advance notice (use the "Pending Action" code features of LR2000 wherever possible) of the upcoming condition to the holder. For other conditions, use of a "show cause" decision is recommended as the notice.

.19 Disposition of Facilities. The holder is to be allowed a reasonable amount of time to remove facilities when 'terminating' the grant.

A. POD. If a POD exists, disposition of facilities and restoration of the area should take place in accordance with that document.

B. Abandon in Place. The AO may allow the holder to abandon in place those facilities where the AO determines that significant damage may result from the removal.

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C. Failure to Remove. Should the holder fail to remove facilities or restore the area, the BLM:

1. Declare as Property. May declare the facilities to be the property of the United States where the AO determines that the facilities have value to a program or programs of the BLM.

2. Collect on Bond. Where a bond exists, advise the surety that the bond is attached and allow an opportunity for the surety to arrange for removal and restoration.

3. BLM Removal and restoration, as a last resort, may be necessary for public health and safety and for environmental considerations. Where this is done, the holder is to be billed for any costs.