



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
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August 31, 2015

EMS TRANSMISSION 09/03/2015
Information Bulletin No. ID-2015-017

To: District and Field Managers

From: State Director

Subject: Authorization of Access Routes Associated with Rights-of Way (ROW)

The Bureau of Land Management (BLM) grants ROW for many linear and site facilities on public land in accordance with the Federal Land Policy and Management Act (FLPMA), Title V, Sec. 504 [43 U.S.C. 1764] (a), Federal regulations found at 43 CFR 2800, and policy guidance in BLM Manual 2801. Facilities include such things as ditches, canals, pipelines, power transmission and distribution lines, communications, and railroads. Under Sec. 504(a), FLPMA directs the BLM to specify the boundaries for each ROW, including the lands necessary for the operation and/or maintenance of a facility. Access is an important component to the construction, operation, and maintenance of most facilities authorized under a ROW on public land.

The principal purpose of this Information Bulletin (IB) is to ensure consistency when authorizing access routes associated with ROWs. Consistency can be achieved if all Idaho District and Field Offices use the same approach when addressing access needs. The following screening criteria reflect current requirements of law, regulations, and policy. It is important to note that this IB does not trigger the need to take immediate action on existing ROWs and other land use authorizations. The criteria should be used when adjudicating future ROW applications for new facilities, as well as amendments, assignments, and renewals of existing ROWs.

Screening Criteria.

The following two screening criteria should be used when processing ROW applications.

1. *An authorization is required for an access route* when an applicant or holder requests construction of a route or improvements to or maintenance of an existing route regardless if it is for short-term or long-term use. In addition, if the sole purpose for the route is for the holder and/or applicant to access their ROW facilities, an authorization (typically a ROW) is required.

2. *An authorization for the route may not be required if 1) access is within an existing route, 2) there is no need to construct, improve, or maintain the route, and 3) the proposed use is consistent with the designated use of the route. If access/route designations have not been established (in land use planning and/or travel management planning) the route must be available for use by the general public. Without an authorization for the access route, the applicant is committed to the same type and level of use as the general public, and that use cannot result in disturbance to surrounding lands, resources, or improvements. The BLM should advise the holder and/or applicant of potential risks associated with not obtaining an authorization for access.*

Under the second criterion, the holder may incur potential risk if or when the status of the access route changes. For example, the route could change from open to closed during a planning process which would then make the route unavailable for use by the general public and the holder. The holder would no longer have access to operate and maintain their ROW facility under this scenario.

Another potential risk may occur where there is a change in the route, such as damage to the surface, or the use of the route begins to disturb or damage adjacent lands or resources. In these situations, the route may need to be improved or maintained which would require an authorization. Until the authorization is granted, the holder would not be able to access their ROW.

With the completion of the Idaho and Southwestern Montana Greater Sage-grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement and the anticipated Record of Decision, consistency in identifying and authorizing access routes will be important to the implementation and success of the plan.

Other considerations:

Existing rights. If the applicant proposes to obtain access within an existing route where there is an authorization to another holder or where the route is claimed or recognized under Revised Statute (R.S.) 2477, the BLM must ensure coordination occurs between the two parties and the coordination is documented in the case file (administrative record).

Reciprocals. If the applicant proposes to use access routes on public land, the Authorized Officer may require the applicant to grant the BLM an equivalent authorization for access across their land in accordance with 43 CFR 2805.12(7).

Rental. When the authorized facility under a ROW is linear (i.e., pipelines, telephone lines, power lines, etc.), the rent for that facility follows a linear schedule. In accordance with 2806-Rent Manual, Section 10(A)(3)(b), when an access route is included in the ROW for a linear facility, the acreage for both the facility and access route(s) are factored into the advanced rental because both features are linear.

In accordance with 43 CFR 2806.15 (B)(2), when determining rent for a ROW, the Authorized Officer has the discretion to reduce or waive rental if the ROW provides a valuable benefit to the public or to one of BLM's programs.

Case Processing. The access route may be authorized in the ROW for the primary facility, or may be authorized under a separate authorization. Regardless of the type of authorization, it is important to keep accurate records and, whenever possible, have the routes noted to the Master Title Plats.

Other Types of Authorizations. In addition to Rights-of-Way, FLPMA allows the BLM to consider authorization of roads under Cost-Share Agreements and Memorandums of Understanding. See 43 CFR 2806.15 and Sections 502(a), 304(b) and 504(g) of FLPMA.

Non-linear or site ROWs. Communication use sites, solar facilities, and wind projects follow specific non-linear rent schedules or appraisal determinations. According 2806-Rent Manual Section .10(A)(3)(b)), when an access route is authorized in association with these types of facilities, it may be considered ancillary to the primary use and not factored into the annual rental.

Background. The BLM Idaho has historically granted ROWs that do not address related access needs, either because the ROWs were established prior to FLPMA or were authorized during a time when there was less focus on travel management. The BLM is tasked with implementing Executive Orders 11644 and 11989 which establish policies and procedures to ensure off-road vehicle use is controlled to protect public lands. In recent years, several Idaho BLM offices have completed Travel Management Plans where motorized travel on public land is often limited to "Designated Routes Only" and any motorized travel off designated routes is prohibited. To ensure holders with existing rights are able to access, operate, and maintain their facilities, and to protect public lands when authorizing future facilities, the BLM must consistently consider and authorize access routes where appropriate.

If there are questions or concerns, please contact Natalie Cooper, Realty Specialist, at (208) 373-3905, ncooper@blm.gov.

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