

2809 – SPECIAL CONSIDERATIONS

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.10 Grants for Federal Agencies. With some exceptions, the policies and procedures in Manuals 2801-2807 are applicable to applications and grants issued to Federal agencies.

A. Federal Facilities. All Federal facilities placed on public lands that otherwise meet the definition of a ROW must be supported by a ROW grant.

B. Exceptions.

1. Suspension and Termination provisions do not apply unless:

- a. The grant terms and conditions allow such action, or
- b. The holder consents to such action.

2. Rent. Federal agencies are not required to pay rent unless a commercial purpose or activity is occurring on the ROW.

3. U.S. Forest Service (USFS).

a. Road Use. Authorizations for road use, construction, improvement, maintenance and transferring jurisdiction of roads are issued using the format of a license agreement or reservation as specified in the Bureau of Land Management and Forest Service Interagency Right-of-Way and Road Use Agreement (see Appendix 1).

b. 44 L.D. 513. A 44 L.D. 513 notation may be made to a Forest Reserve (National Forest) area on the public land records when such notation is requested by the USFS.

4. Federal Highway Administration (FHWA). ROW grants for highway purposes to the FHWA are in the format of a “Letter of Consent” to a public land appropriation pursuant to the law (23 USC 107 and 317) and an Interagency Agreement (AA-851-IA2-40) between the Bureau of Land Management and Federal Highway Administration (see Appendix 2).

C. Cost Recovery. Unless an active Inter-Agency Agreement provides otherwise, Federal agencies must reimburse the BLM for processing and monitoring costs.

1. BLM. For grants to the BLM, reimbursement will be from the benefiting activity.

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2. Requests for Reductions. Agencies requesting a reduction due to public benefits may only claim those public benefits that exceed the normal public benefit of the agency.

3. Method of Collection. The federal agencies will be billed by letter with an attached schedule of costs, issued from the BLM field office. IPACs will be used for bills and collection for federal agencies, except possibly the Military. The Military installations might pay the BLM by check.

D. Processing the Application. A ROW application from a Federal agency, other than the FHWA, is processed the same as any other application for ROW use.

E. Terms and Conditions. Special attentions should be paid to:

1. Suspensions. Determine whether there are conditions or situations that could occur for which the ability to temporarily suspend operations should be included in the grant, and

2. Terminations. Specify a date upon which the ROW grant will expire.

F. Grants shall be issued using Bureau form 2800-14, or its electronic equivalent.

G. Public Land Record Notations. All ROW grants issued to Federal agencies should be noted to the Public Land Records the same as any other grant, including ROWs granted to the BLM.

1. Other agency ROWs previously appropriated and noted to the Public Land Records under the principles of 44 L.D. 513 prior to the passage of FLPMA remain in an appropriated status, and no changes to the records are necessary.

2. Any BLM facilities or improvements previously appropriated under the principles of 44 L.D. 513 should be converted to FLPMA grants and noted to the Public Land Records.

.20 Pre-FLPMA Laws. These are ROW laws that were repealed as to public lands by §506 of FLPMA.

A. Types. The pre-FLPMA ROW laws consist of two types:

1. Discretionary. Those where the Secretary decided whether to issue a ROW, and

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2. Ministerial. Those that were granted by the Congressional Act and the Secretary had no more than a ministerial duty. It is this type of pre-FLPMA ROW with which we are most concerned.

B. Regulations. Prior and current regulations shall be utilized to the extent they do not impair the rights of the holder. Regulations involving procedures such as abandonment and termination activities or methods of review of proposed major maintenance or reconstruction generally do not impair rights so long as the BLM acts promptly.

.21 R.S. 2477, Highway ROW. This is an 1866 Act (14 Stat. 253) granting the ROW for the construction of highways over public land not reserved for a public use. No action by the Secretary was involved in the grant, although there have been occasions where the Secretary had opened otherwise unavailable land to the operation of R.S. 2477.

A. Definitions.

1. Public Highway status will generally be determined by looking at State law regarding public easement. In general it is a definite route or way that is freely open for all to use.

2. Construction means the preparation of the route for the proposed use at the time. It does not necessarily involve mechanical means. As long as the land remained available the use could be modified and further construction undertaken.

3. Reserved for a Public Use means the public lands are withdrawn from operation of the disposal laws and dedicated to a specific public use or purpose. Public land that was “withdrawn” but not reserved for any particular use remained subject to R.S. 2477. Land that was temporarily withdrawn from only certain kinds of private appropriation for study or later classification cannot be said to have been “reserved for public use.” The general classification withdrawals of the 1930s (Taylor Grazing Act) are not considered reserved for a public use.

4. Acceptance. What constitutes acceptance of the grant by the public may vary state by state. Affirmative acts of acceptance by local government authorities must be considered. Continuous public use over a specified period of time may be appropriate acceptance. Existence of state law purporting to create ROWs in advance of an apparent necessity would appear to override federal requirements and, therefore, would not be considered acceptance.

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5. Abandonment is the act of giving up a ROW with no intent of returning to again use the ROW. Again, State law in effect at the time of purported abandonment must be used in any analysis.

6. Reasonable Regulations are those which do not:

a. Impair rights the holder had under the pre-FLPMA law and regulations in effect at the time of ROW grant, or

b. Increase the holder's liability for past conduct, or

c. Impose new duties to transactions already completed.

7. Routine Maintenance Agreement (RMA) is an agreement between the AO and the R.S. 2477 claimant, developed with public participation, establishing allowable maintenance activities without prior BLM notification. It may also cover procedures of notice and review where the proposed action may be in excess of routine maintenance.

8. Non-Binding Determination (NBD) is a review of the record material and a determination by the AO whether the claimed R.S. 2477 ROW was granted or not granted under the statute. The determination should be based on a "preponderance of the evidence" standard.

9. Earlier Date of Inapplicability is the date prior to October 21, 1976 (repeal by FLPMA) on which the land became unavailable due to entry, title transfer, withdrawal for a public purpose, etc.

B. Notice to Claimants. For any asserted R.S. 2477 ROW claim on public lands within the jurisdiction of a District or Field Office, the Manager should notify the claimant that maintenance is "an activity that only maintains the status quo of the highway, road, way, or route." Also, should the claimant desire to take action over and above maintaining the status quo, the claimant must first notify the BLM and provide for an opportunity for BLM review **prior** to undertaking the action. It is also appropriate to discuss the following with the claimant:

1. FLPMA ROW. Because the legally binding determination of whether a R.S. 2477 ROW exists is a judicial one, the BLM should encourage and assist claimants to obtain a ROW pursuant to FLPMA or similar authority.

2. Routine Maintenance Agreements. Where the AO and the claimant agree that the highway should be maintained to preserve its status quo a RMA may be developed without the necessity of making a NBD.

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3. Non-Binding Determinations. The BLM may make a NBD when it is necessary to support a BLM position or for other resource management situations. A NBD is required whenever the BLM proposes to take an adverse action against a R.S. 2477 claimant.

4. Adverse Action. As a last resort the BLM will initiate trespass action where the AO believes that the claimant is operating beyond routine maintenance or otherwise taking on-the-ground action that is or will harm Federal resources.

C. State Law. While Federal law governs the interpretation of R.S. 2477 in determining what is required for acceptance of a ROW under the statute, Federal law ‘borrows’ from long-established principles of state law, to the extent that state law provides convenient and appropriate principles for effectuating Congressional intent.

1. Effective Date. To be applicable the state law must have been in effect on the date of repeal of the statute or earlier date of inapplicability of R.S. 2477.

D. Scope. While a R.S. 2477 ROW is a property right it is not fee simple ownership but an entitlement to use certain land in a particular way. The scope of a R.S. 2477 ROW is limited by the established usage of the route as of the date of repeal of the statute or earlier date of inapplicability of R.S. 2477. This does not mean that the road has to be maintained in the condition it was on October 21, 1976, or earlier inapplicability. Rather it can be improved as necessary to meet the exigencies of increased travel, so long as this is done in the light of traditional uses to which the ROW was put as of repeal of the statute in 1976 or earlier inapplicability.

1. Use, Maintenance, and Improvement of ROW. Land managers must see that use of R.S. 2477 ROWs upon Public Lands does not violate the BLM’s duty to protect the surrounding and underlying lands. Such oversight, however, must not be in a manner to unreasonably interfere with the rights of the holder of the R.S. 2477 ROW nor may it be used to delay or unreasonably disapprove otherwise proper activities.

a. Non-traditional Use. The road may be improved as necessary to meet the exigencies of increased travel, so long as this is done in the light of traditional uses. The scope of the ROW may not be expanded beyond the established ROW as of the date of repeal or earlier inapplicability. Any use that goes beyond the traditional uses or outside the scope must be authorized under FLPMA or similar law.

b. Traditional Use, Routine Maintenance. The holder may conduct routine maintenance or use the ROW in the same manner as on the date of repeal or earlier inapplicability without consultation with the BLM. Keep in mind that routine maintenance only “preserves the status quo.”

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c. Traditional Use, Change in Character. Changes in traditional road use to meet exigencies of increase travel may still fall within the scope of the R.S. 2477 ROW. Such proposals, however, should be reviewed to determine whether the BLM believes the proposal to be:

- (1) Preserving the status quo and is therefore maintenance, or
- (2) Changing the nature of the road which involves consultation and may require further authorization.

E. Routine Maintenance Agreements. Where the AO agrees with the claimant on what would constitute routine maintenance for a specific road, they are encouraged to enter into a routine maintenance agreement (RMA). Such an agreement may also provide for the identification of activities that may fall outside routine maintenance and provide procedures for consultation and review of such activities.

1. NEPA, ESA, NHPA. Since the proposal involved is to maintain the status quo it would appear that use of a CX seems appropriate under NEPA. Execution of an agreement is a Federal action and would likely trigger §7 of the Endangered Species Act (ESA), (see *Western Watershed Project et al v. Matejko, et al*, No. 05-35208, 9th Cir. 2006). Consultation pursuant to the ESA and National Historic Preservation Act (NHPA) would seem prudent.

2. Public Involvement. Upon completion of a proposed RMA, but prior to signing, provide through mailing lists and newspaper publication, as appropriate, notice of the proposed agreement and opportunity for comment. While 30 days is sufficient for a comment period, the AO may provide a longer period for controversial proposals.

3. Protests may be made to the State Director.

4. The State Director's Decision is considered a final administrative decision.

F. Non-Binding Determinations. A NBD may be made by the BLM to satisfy itself whether a grant attached to or exists with a specific road. During development, work with the Field/Regional Solicitor in developing State law relationships.

1. Assemble Record Material.

a. Claimant. Request the claimant to submit records, data, evidence, etc., as to the existence of grant acceptance.

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b. BLM Records. Assemble a status report as to public lands not reserved for a public use for the appropriate period of time. Also review and assemble Cadastral Survey records, Grazing or Forestry files, etc. that may have a bearing on the claimed highway.

c. Other records that may prove helpful are State and County highway/road records; County Board of Supervisor records; historical society records; newspapers, etc.

2. Site Visit. Visit the road site and document scope and condition by photos or videotape.

3. Report. Prepare a report that discusses what the Record Material consist of and its relationship to the R.S. 2477 ROW issue. Draw a conclusion and prepare a preliminary NBD with the assistance of the Field/Regional Solicitor.

4. Public Review.

a. Publish a notice in a newspaper of general circulation in the area of the claimed ROW. The notice should provide:

(1) the preliminary determination,

(2) a brief statement of the reasoning supporting the determination,

(3) where and when the records/report may be examined,

(4) other information such as the availability of the information in electronic form, on a web site, etc., and

(5) allow a minimum of 30 days for the public to provide the BLM with information, comments, or additional evidence relevant to the determination.

b. Provide a copy of the notice to known parties of interest.

c. Post the notice on other appropriate sites, office's public bulletin board, web site if desired, etc.

5. Final NBD. After review of comments and evidence received from the public and with the concurrence of the Field/Regional Solicitor's Office, finalize the NBD. Specific responses to comments received are not required.

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a. Negative determination - a reasonable mind would question that a ROW exists. Claimant could still seek a FLPMA ROW or a binding determination by instigating an action under the Quiet Title Act.

b. Positive determination – a reasonable mind might find that a ROW exists. Consider entering into a RMA as the BLM still retains the right and obligation to avoid undue and unnecessary degradation to the surrounding and underlying public lands by enforcing reasonable regulations.

G. Record Notation. For management purposes locations of claimed ROWs may be posted to any of the BLM's record systems, including NEPA, RPM, and similar map documents.

1. RMA in Force. Where a RMA has been entered into with the claimant, the RMA and other record material associated with the asserted R.S. 2477 ROW must be placed in a case file, given a serial number, posted to the land status records, and entered into LR2000.

2. NBD Issued. Where a NBD has been finalized, the NBD and other record material associated with the R.S. 2477 ROW must be placed in a case file, given a serial number, posted to the land status records, and entered into LR2000.

H. Abandonment. With the assistance of the Field/Regional Solicitor review the laws of the State on the abandonment of public easements, streets, roads, highways, alleys, etc.

1. In many states abandonment or loss of easement occurs

a. With formal abandonment by the appropriate governing body – most likely the Board of County Commissioners; or

b. From adverse possession by another individual or entity blocking use of the road, or portion thereof, for some period of time.

2. A presumption of abandonment may appear where

a. Failure to use the road for some period of time occurs; or

b. The road has been realigned or reestablished some distance away.

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I. References.

1. Secretary's Memorandum of March 22, 2006 – Appendix 3.

.22 RS 2399, Ditch, Canal, Reservoir ROW.A. General.

1. Background. With the discovery of gold in California in 1848 numerous mines were developed. A basic requirement for mining was water, including large quantities for hydraulic mining. At the same time water was necessary for developing mills and agriculture in the Central Valley of California. Many of the streams and rivers of the Sierra Nevada Mountains were dammed for reservoirs and diverted through ditches and canals to serve mines, farms and mills. For nearly 20 years this appropriation and diversion of water in the western States was acceded to by the Federal government and were recognized and acknowledged by local customs, laws, and the decisions of courts.

In 1866 a number of ROW bills were introduced in Congress. H.R.365 was a comprehensive bill providing a ROW for Californians possessing vested water rights for mining, manufacturing, etc. This bill was amended to include the States of Nevada and Oregon and passed by the House. The Senate had been considering a general mining bill that also contained water right and ROW language. Needing a parliamentary move to get its mining bill passed, the Senate Committee substituted its general mining language for H.R. 365; received Senate passage and House concurrence. Thus the 1866 Lode Mining Act is entitled "Granting the Right of Way to Ditch and Canal Owners over the Public Lands in the States of California, Oregon, and Nevada."

2. Conditions. A ROW under RS 2339 is a grant by Congress. All that is required is that the holder has a recognized vested water right and constructed the ROW facility over public land. No filing with the Secretary or the General Land Office was required nor approval from any Federal agency. There is limited, if any, regulatory control by the current Federal land management agency over normal operation and maintenance of the ROW. The ROW is not subject to cost recovery or rent.

3. Repeal of ROW Grant Authority. In 1976 Congress repealed the ROW grant language in RS 2339 as to public land or lands in the National Forest System but did not cancel any existing ROWs. (§706(a) of FLPMA)

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4. General Description. The ROW shall include, but is not necessarily limited to, the right to enter the land across which the ROW extends, for the purposes of cleaning, maintaining and repairing the ditch, canal, or conduit, and to occupy such width of the land along the banks of the ditch, canal, or conduit as is necessary, but not to exceed fifty feet from either side of the ditch, canal, or conduit, to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work.

B. Water Right.

1. State Law. The establishment and maintenance of a water right (vesting) is a matter of State law and local customs. In most cases the existence of a vested water right is recorded with or granted by the State water agency. Abandonment, forfeiture or loss of a water right is also a matter of State law. Most western States have a forfeiture provision for non-use of the water over some period of time - say five, six, or ten years.

2. Records. For a particular ROW case State records should be reviewed to determine when the water right vested, the source of the water, the point of diversion, the beneficial use and the place(s) of beneficial use. Other information such as annual water use may also prove important.

3. Appurtenance. Generally the ROW is appurtenant to the water right. This means that the ROW transfers with a transfer of the water right, unless the transfer document is specific as to non-transfer of the ROW. In some cases, usually an exception, the ROW may be appurtenant to the beneficial use land.

C. Ditches and Canals. The Congressional grant of ROW attached when the facility was constructed and water flowed. While the Act only lists ditches and canals it has been interpreted by administrative and judicial decisions to include reservoirs, pipelines, and flumes.

D. Public Land. The ROW must have been public land at the time the grant attached. The definition of public lands is usually determined from the context in which it is used. At a minimum, the term 'public lands' includes those lands of the United States that are open to sale or entry. The context of this 1866 Act went beyond public land that was open to sale or entry by including unsurveyed lands which were not open to sale or entry.

1. Available Land would include but not necessarily be limited to:

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- a. Open, unreserved public land.
- b. Public lands withdrawn pending classification by the Taylor Grazing Act and related Executive Orders.
- c. Public lands withdrawn from entry pending a resource classification - coal, power site reserve, etc.
- d. Public lands withdrawn from one or more forms of sale or entry without being dedicated to a specific purpose.

2. Unavailable lands would include but not necessarily be limited to:

- a. National Parks
- b. National Forests
- c. Wildlife Refuges
- d. Military Bases
- e. Wild and Scenic Rivers
- f. Indian Trust Lands
- g. Public lands withdrawn from one or more forms of sale or entry and dedicated to a specific purpose.

E. Scope. There is nothing in the legislation to set a definitive scope for the ROW granted. Legislative history is questionable due to the parliamentary method of enactment. However, the 50 foot each side provision in the House version of HR 365 does indicate a maximum being considered by the Congress. Common law suggests that the grant of the ditch or canal ROW includes use of the servient property necessary to affect the purpose of the ROW - conveyance of water. It is also generally understood that such a grant should be read favorably to the grantor - the U.S.

1. Purpose. The purpose of the grant is to provide for the collection and transportation of vested appropriated water. Thus the scope would include the area necessary for collection (reservoir, weir, or dam) and transportation (ditch, canal, flume, or pipeline).

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2. Points of Diversion and Beneficial Use. Such points may or may not exist on public land as part of the ROW. They may be on land owned or controlled by the claimant or holder or on land of another individual. In such a case the claimant or holder must have authority to keep and maintain such points and the ability to move the water to the ROW facilities on public land.

3. Water. Only vested appropriated water may be transported. The transportation of non vested appropriated water may be grounds for forfeiture of the grant of ROW.

4. Width. Besides the area occupied by the facility - reservoir, ditch, or canal, etc., the ROW contains areas necessary for operation and maintenance. In some cases such areas may exist on both sides of the facility, in other cases perhaps only on one side of the facility. Historic and customary operation and maintenance must be considered along with 'best management practices' in identifying these access and maintenance areas. The width may not exceed 50 feet on either side of the ROW facility.

5. Duration. Grants are perpetual so long as used for the specified purpose.

6. Other. As this is a grant directly from Congress, no action was or is required from or with a Federal Agency. The grant is freely transferable and is rent free.

F. Operation and Maintenance. The level of normal operation and maintenance is that which was occurring or necessary at the time of repeal of the grant authority - October 21, 1976 - or an earlier date caused by a land status change. The AO or Realty Specialist should obtain as much information as possible from the claimant or holder - What are their O&M schedule(s), methods, etc.? Also seek information from State water files - use, non-use, etc. and other sources of such information.

G. Substantial Deviation is an action not within the scope of the ROW and requires an appropriate authorization such as a FLPMA ROW.

1. New Surface Disturbance activity should have prior review by the BLM as to whether it is within the scope of the existing ROW or it is a substantial deviation.

a. Reasonable Regulation. It is not unreasonable to ask the claimant or holder to inform the BLM in advance when such activity is planned.

b. Prompt Review and response of such advance information by the BLM is a necessity.

c. Enforcement is after the fact and may involve a trespass action.

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2. Change in Use would be a substantial deviation in that it would increase the burden on the servient estate - the public lands. One and only one use exists for a ROW authorized by RS 2339 and that is the storage and transportation of vested water.

H. Record Notation.

1. Discovery. Upon discovery by Field Examination or Claimant or holder contact obtain:

- a. A physical description of the facility, access, and width claimed, etc...
- b. Identification of the water appropriation involved.
- c. Identification of the land where the water is put to beneficial use.
- d. Claimant or holder's normal annual operation procedure - period(s) of use, amount of water, annual maintenance, etc.
- e. Major maintenance requirements - what, how often, methods, etc.

2. Case File. Establish a case file to hold the information collected.

a. Serial Page. Note the serial page as a "claimed ROW" unless or until the ROW is verified as a RS 2339 grant by a Federal Court. The case should remain "pending", becoming "authorized" only with Court verification.

3. Land Status Records. The MTP should be annotated in the normal manner for a ROW. Show "claimed" on the HI until such time as a Court verifies the Congressional grant.

I. Abandonment and Forfeiture. Normally final determinations of abandonment and forfeiture are made by the court system. Where the BLM believes abandonment and forfeiture has occurred it may seek relinquishment or serve the claimant or holder with a show cause notice.

1. Abandonment is the walking away or leaving something with no intent to return and again use the item. Discontinuation of use of a ditch for transportation of water could amount to abandonment if the discontinuation is for a sufficient period.

2. Forfeiture of the rights to something, the ditch, is usually the result of abandoning the use of the ditch. Failure to use the ditch for some reasonable period results in the loss of the rights to the use of the ditch.

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3. Relinquishment is a voluntary action by a claimant or holder to give up rights to the ditch.

a. A relinquishment eliminates the need to formally show that use of the ditch has been abandoned and any rights to use the ditch forfeited.

b. Should the claimant or holder offer a relinquishment, review the conditions and, if accepted, the case can be noted as relinquished and closed.

4. Loss of Water Right. State law controls water rights in the western United States. Many States have laws that forfeit the water right if not used for a period of time or is misused. Where such loss has been affirmed in court it may be used, otherwise the BLM should use the non-use aspect as an act of abandonment.

5. Discontinuance of Ditch, Canal, Reservoir. Failure to use the ROW for transportation of the appropriated water for a reasonable period of time may be considered an act of abandonment. The use of another method or route to transport the appropriated water may also be considered an act of abandonment. State law concerning easements should be reviewed for abandonment and forfeiture principals within the State.

6. Notice to Show Cause. Where the BLM believes the claimant or holder has abandoned the ROW, a show cause notice should be issued. The Notice should:

a. Identify the ROW involved, including any water right;

b. Request the claimant or holder to explain how they have not abandoned the ROW. Allow a reasonable period of time to respond (60 days);

c. Explain the BLM's reasoning for suspecting abandonment; and

d. Request a relinquishment of the ROW if the claimant or holder agrees that the ROW has been abandoned.

7. Maintain Case if claimant or holder's response is considered sufficient.

8. Trespass action should be instituted if claimant/holder's response is considered insufficient.

J. ROW Oversight. Claimant's or holder's activities on public land areas are subject to reasonable oversight by the BLM. Work with the claimant or holder to establish a relationship to foster coordinated or cooperative use of the ROW and other public land uses and values.

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1. Reasonable Regulations are not necessarily formal regulations (43 CFR) but are requests which do not:

a. Impair rights the claimant or holder had under the pre-FLPMA law and regulations in effect at the time of ROW grant, or

b. Increase the claimant's or holder's liability for past conduct, or

c. Impose new duties to transactions already completed.

2. Land Managers must see that use of RS 2339 ROWs within Public Lands does not violate the BLM's duty to protect the surrounding and underlying lands. However, such oversight must not be in a manner to unreasonably interfere with the rights of the claimant or holder of the RS 2339 ROW nor may it be used to delay or unreasonably disapprove otherwise proper activities.

a. The continued stockpiling of cleared vegetation, slash, may present a fire danger to adjacent public lands. It is not unreasonable to request the claimant or holder to chip the slash or otherwise reduce the fire danger.

b. Endangered Species Act. While the BLM may discuss the issue with the claimant or holder, the possible taking of threatened or endangered species during normal operation or maintenance of the ROW facility is a matter for the U.S. Fish and Wildlife Service.

c. National Historic Preservation Act. Requiring the claimant or holder to undertake a cultural or historical study or evaluation within the ROW would be unreasonable. Should damage or destruction of a site occur during normal maintenance, the BLM may enforce the law.

3. Access to the ROW facility other than along the ROW may require the claimant or holder to obtain a FLPMA ROW. Consider such a situation where, for maintenance purposes, heavy equipment must access the ROW facility by crossing public lands from a public highway - the heavy equipment is too large to be brought along the ROW facility.

4. Enforcement of reasonable regulation of the ROW use is normally "after the fact" through the BLM's trespass regulations and or through injunctive relief by the courts.

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.23 Act of March 3, 1891, 43 U.S.C. 946 et seq. This is an Act granting the ROW through public lands and reservations for irrigation or drainage purposes to the extent of the ground occupied and 50 feet beyond the marginal limits thereof. For cause, the Secretary could have authorized the use of additional land. It is primarily a ‘ministerial’ type but could involve a discretionary action involving reserved lands or needed additional width.

A. Reservations. Irrigation or drainage facilities are not to interfere with the occupation of the reserve by the Government. Maps of such facilities were to be approved by the Department having jurisdiction over the reserve.

B. Other Uses. In 1898 the Act was amended to allow use for purposes of water transportation, for domestic purposes, or for the development of power, **as subsidiary** to the main purpose of irrigation or drainage. (See *Kern River Co. v United States*; 257 US 147, November 21, 1921.)

C. Reasonable Regulation. Holder’s activities on public lands are subject to reasonable oversight by the BLM. Work with the holder to establish a relationship to foster coordinated or cooperative use of the ROW and other public land uses and values. Reasonable regulations are those which do not:

1. Impair rights the holder had under the pre-FLPMA law and regulations in effect at the time of ROW grant, or
2. Increase the holder’s liability for past conduct, or
3. Impose new duties to transactions already completed.

.30 Grants for Railroad ROW. In 1988 Congress amended the National Trails Act and provided administrative direction to the management of ROW lands in abandoned or forfeited railroad ROWs (16 U.S.C. 1248).

A. Management of ROWs. Based on this direction, a railroad ROW that was granted directly by Congress or by Congress through ministerial action by the Department of the Interior, the General Land Office, or the BLM will be managed by:

1. Other Agency. ROW is located within or adjacent to a Federal area (land) managed by an agency other than the Department of the Interior and no public lands are involved. **Managed by that Federal Agency.**

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2. BIA, NPS, FWS. ROW is located on Indian Lands or within or adjacent to Units of the National Park or National Wildlife Systems. **Managed by the BIA, NPS or FWS as appropriate.**

3. BLM. ROW is located on lands other than 1 or 2 above. **Managed by the BLM.**

B. Definitions.

1. Limited Fee is a grant made by Congress and is the transfer of the fee (with or without minerals) subject to a stated or implied reversion of the ROW to the United States. The land in the ROW is not considered to be public land. These grants are often referred to as “pre-1871” grants.

2. Exclusive Easement is a grant made by Congress pursuant to the General Railroad Act of 1875, and similar acts. Generally the Secretary has reviewed maps of the route submitted by the holder and approved them as to the public land involved. The holder has the exclusive right to use the ROW for the stated purpose(s).

3. STB is the Surface Transportation Board, a regulatory agency charged with overseeing the public service interests in interstate transportation such as railroads.

4. Railbanking is the preservation of the railroad ROW through interim use for recreational trail purposes. (See 16 U.S.C. 1247.)

5. Court of Competent Jurisdiction is considered to be a Federal District Court, Circuit Court of Appeals, or the Supreme Court.

C. Policy.

1. STB. Before the BLM takes final action to accept a relinquishment of a railroad ROW grant, to terminate or cancel a railroad ROW grant, or to invoke the reversion in a limited fee railroad ROW grant, it shall determine whether the STB has any remaining jurisdictional actions with respect to the Public Service Interest in railroad transportation.

2. Termination of a railroad ROW grant requires one of the following events:

a. Expiration. The railroad ROW grant provides(ed) for expiration upon a date certain or upon the occurrence of a specific event and the STB has determined that there are no public service interests remaining.

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b. Relinquishment. The owner of the railroad ROW grant files an acceptable relinquishment of all interest in the ROW, the STB has determined that there are no public service interests remaining, and the BLM formally accepts the relinquishment.

c. Forfeiture. A finding is made, through an Act of Congress or a Court of Competent Jurisdiction, that the owner of the railroad ROW grant has forfeited the grant.

d. Abandonment. A finding is made, through an Act of Congress or a Court of Competent Jurisdiction, that the owner of the railroad ROW grant has abandoned the ROW grant.

3. Compliance. Periodic compliance examinations shall be made of all railroad grants of ROW to determine whether a corrective or termination action should be sought. State Directors shall establish appropriate periods between compliance examinations for the types of railroad grants of ROW within their areas of jurisdiction.

4. Abandonment Actions.

a. STB. From time to time it is expected that the BLM will become aware of abandonment actions being considered by the STB (notice is normally given to the Department and published in the Federal Register). Where such actions involve **limited fee** or public land railroad ROW grants, the BLM will take a position on the matter.

(1) Railbanking. Where railbanking is being considered, the BLM will be supportive unless the State Director, in consultation with the Director, determines that other public land values outweigh the recreational trail purposes.

(2) Service Abandonment. Where railbanking is not a consideration, the BLM will express its interest in the return of the ROW to public land status. The BLM will also advise of any environmental or restoration issues that the holder should be required to do as part of the abandonment proceedings.

b. Judicial Actions. The BLM also hears of or is formally advised of abandonment or quiet title actions before Federal or State courts. Where such actions involve **limited fee** or public land railroad ROW grants, the BLM will assert the rights of the United States (see 16 U.S.C.1248(c)) by seeking action by the Solicitor's Office/U.S. Attorney to present the interest of the United States to the courts.

.40 Reciprocal and Cost Share Road Use Agreements.

A. Reciprocal Grants.

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1. General. The authority for reciprocal granting of ROWs between the BLM and applicants for road ROWs under FLPMA is found at 43 CFR 2805.12(i)(7). It must be for road access and in the public interest.

a. Public Interest. When the AO determines, from analysis of the land use plan and/or other management decisions, that a need exists for access across land owned or controlled by the applicant, the AO may require the applicant to grant the BLM equivalent rights. The requirement will be a condition of granting the ROW and refusal is cause for denying the ROW application.

b. Extent of Reciprocal Grants. ROWs granted reciprocally shall be equivalent. Thus the BLM may acquire only such rights as the BLM can grant under a FLPMA ROW; similar to those the BLM receives under a nonexclusive easement, which gives the United States administrative access and the right to authorize road use by contractors and licensees. It does not authorize public access.

2. Equivalent Grant.

a. Scope. The grants must be equal in use, rights, duration, terms and conditions, but not necessarily in value.

b. Standards. While the two grants need not be equal in length the difference must be reasonable – a ratio of 1 to 2 may be reasonable, however 1 to 10 would not be reasonable. Situations where the values are greatly different should be avoided. Minor differences between the value of the reciprocal grant and the rent for the ROW grant may be equalized by waiving rent and/or paying an appropriate part of the acquisition consideration.

c. Applicability. Do not use the reciprocal approach where major capital expenditures are required for road construction or improvement or where public access is required.

d. Terms and Conditions should be of approximately equal requirements.

e. Vicinity. These procedures should be used only when the two authorizations are within the same generally vicinity; for example, within the same road system, drainage, unitized lease area, or tributary area.

f. The term of the reciprocal grant must be commensurate with the reason for acquiring it, however, the term of the reciprocal grant must coincide with the term of the ROW grant.

.40A2g

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g. Acquisition procedures for reciprocal grants must follow the procedures in BLM Manuals 2100 and 2102.

h. Concurrent Processing. The Row grant and the reciprocal grant documents must be processed concurrently. The applicant should be advised of the need for reciprocal rights as early as possible; even as early as the pre-application meeting. The reciprocal grant document and ROW grant should be presented to the applicant for signature at the same time; and the AO should then execute the documents simultaneously.

i. Termination and Renewal. Termination of the ROW grant does not terminate the reciprocal grant. The reciprocal grant shall not contain a renewal clause even if the ROW grant is subject to renewal.

B. Cost Share Road Use Agreements. [Reserved]

2809.50 Military. [Reserved]

2809.60 Federal Highways. [Reserved]

2809.70 Facilities under the provisions of 44 L.D. 359 and 44 L.D. 513 [Reserved]

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WATER RIGHT STATUTES - WESTERN STATES

Arizona Revised Statutes

Title 45 - Waters

Article 4 - Public Nature and Use of Surface Water

45-141 - Public nature of waters of the state; beneficial use; reversion to state; actions not constituting abandonment or forfeiture

Article 5 - Appropriation of Water

Article 6 - Rights to Water

Article 7 - Water Rights Registration

Article 8 - Reservoirs and Canals

Article 9 - General Adjudication of Water Rights

California Statutes

California Water Code

Division 2. Water

Part 1. General Provisions

Part 2. Appropriation of Water

Chapter 10. Change of Point of Diversion, Place of Use, or Purpose of Use

Chapter 10.5. Change of Point of Diversion, Place of Use, or Purpose of Use, Involving the Transfer of Water

Part 3. Determination of Water Rights

Colorado Revised Statutes

Title 37 - Water and Irrigation

Article 92 - Water Right Determination and Administration

Part 3 Determination and Administration of Water Rights

Part 5 Regulation of Water - Violations

Idaho Statutes

Title 42 Irrigation and Drainage -- Water Rights and Reclamation

Chapter 1 Appropriation of Water -- General Provisions

Chapter 2 Appropriation of Water -- Permits, Certificates, and Licenses -- Survey

Chapter 3 Appropriation of Water -- Cancellation of Permits

Chapter 4 Appropriations for Use Outside State

Chapter 5 Appropriations by Bureau of Land Management of United States Department of Interior

Chapter 6 Distribution of Water Among Appropriators

Chapter 7 Headgates and Measuring Devices

Chapter 11 Rights of Way

Chapter 12 Maintenance and Repair of Ditches

Chapter 14 Adjudication of Water Rights

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Montana Annotated Code 2005

Title 85 Water

Chapter 2. Surface Water and Ground Water

Part 1. General Provisions

Part 2. Adjudication of Water Rights

85-2-404. Abandonment of appropriation right.

Part 3. Appropriations, Permits, and Certificates of Water Rights

Part 4. Utilization of Water

Nevada Revised Statutes

Title 48—Water

Chapter 533 - Adjudication of Vested Water Rights; Appropriation of Public Waters

Chapter 536 - Ditches, Canals, Flumes and Other Conduits

Chapter 539 - Irrigation Districts

New Mexico Statutes

Chapter 72 Water Law

Article 1. Water Rights in General

Article 4. Surveys, Investigations and Adjudication of Rights

Article 5. Appropriation and Use of Surface Water

Oregon Revised Statutes

45. Water Resources: irrigation, Drainage, Flood Control, Reclamation

536. Water Resources Administration

537. Appropriation of Water Generally

538. Withdrawal of Certain Waters From Appropriation; Special Municipal and County Water Rights

539. Determination of Water Rights Initiated Before February 24, 1909; Determination of Water Rights of Federally Recognized Indian Tribes

540. Distribution of Water; Watermasters; Change in Use, Transfer or Forfeiture of Water Right

543. Hydroelectric Projects

543A. Reauthorizing and Decommissioning Hydroelectric Projects

545. Irrigation Districts

547. Drainage Districts

Utah Code

Title 73 -- Water and Irrigation

Chapter 03 - Appropriation

Chapter 04 - Determination of Water Rights

Chapter 05 - Administration and Distribution

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Revised Code of Washington

Title 90 - Water rights — environment

90.03 - Water code.

90.08 - Stream patrolmen.

90.14 - Water rights -- Registration -- Waiver and relinquishment, etc.

90.14.130 - Reversion of rights to state due to nonuse -- Notice by order --
Relinquishment determinations -- Appeal.

90.14.140 - "Sufficient cause" for nonuse defined -- Rights exempted.

90.14.150 - Rights arising from permit to withdraw public waters not affected -- Extensions.

90.14.160 - Relinquishment of right for abandonment or failure to beneficially use without
sufficient cause -- Prior rights acquired through appropriation, custom or general
adjudication.

90.14.170 - Relinquishment of right for abandonment or failure to beneficially use without
sufficient cause -- Rights acquired due to ownership of land abutting stream, lake, or
watercourse.

90.14.180 - Relinquishment of right for abandonment or failure to beneficially use without
sufficient cause -- Future rights acquired through appropriation.

90.14.190 - Water resources decisions -- Appeals -- Attorneys' fees.

90.14.200 - Implementation and enforcement of chapter -- Proceedings under RCW 90.14.130
deemed adjudicative -- Application of RCW sections to specific proceedings.

90.16 - Appropriation of water for public and industrial purposes.

90.22 - Minimum water flows and levels

90.24 - Regulation of outflow of lakes.

90.28 - Miscellaneous rights and duties.

Wyoming Statutes

Title 41 - Water

Chapter 3 - Water Rights; Administration and Control

41-3-101. Nature of water rights and beneficial use.

41-3-401. Failure to use water; extension of time; initiation by benefited or injured user;
hearing; appeal.

Title 99 - Noncodified Statutes

Chapter 1 - Miscellaneous Water Project

Chapter 2 - Water Development Projects 1991 Through 1997

Chapter 3 - Authorization for Water Development Construction Projects

Appendix 2

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BLM-USFS Interagency Agreement

BUREAU OF LAND MANAGEMENT
AND
FOREST SERVICE
INTERAGENCY
RIGHT-OF-WAY
AND
ROAD/TRAIL USE AGREEMENT

MAY 20 1980
DATE

Amendment drafted
June 16, 2006

BLM-FS Interagency Right-of-Way
and Road/Trail Use Agreement

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United States Department of Agriculture
Forest Service

United States Department of the Interior
Bureau of Land Management

I. Purpose. This agreement provides procedures for granting and acquiring property rights by each agency from the other necessary for road or trail use, construction, improvement, maintenance, and transferring jurisdiction of roads or trails.

For the purpose of land management under the principles of multiple use, including the removal of forest and mineral products, the procedures set out herein are established for the use of roads, trails and lands under the jurisdiction of the Forest Service and the Bureau of Land Management.

II. Authority

A. Bureau of Land Management

1. The Federal Land Policy and Management Act of 1976, (90 Stat. 2766; 43 U.S.C. 1737) and (90 Stat. 2781; 43 U.S.C. 1767).

B. Forest Service

1. Organic Administration Act of 1897 (30 Stat. 34 as supplemented and amended; 16 U.S.C. 551) and the Federal Land Policy and Management Act of 1976 (90 Stat. 2781; 43 U.S.C. 1767).

III. Definitions. The following definitions are hereby adopted:

A. "*The Agencies*" means the Forest Service (FS) and the Bureau of Land Management (BLM).

B. "*Road*" means an existing road or interest therein on lands or easements administered by one of the agencies which the other agency needs to use in carrying out its functions; provided, the interest owned allows either qualified or unqualified use by the other agency.

C. "*Management*" means any of the multiple use activities on the land under the jurisdiction of each agency including but not limited to the harvesting and removal of forest and mineral products.

D. "*Principal sale*" means that timber sale to be served by the roads as opposed to the right-of-way timber on that road.

E. "*Licensee*" means any person who is authorized to remove mineral or forest products in commercial quantities from lands administered by either agency.

F. "*Road construction*" means the locating, relocating, clearing, constructing, or reconstructing of any road under the jurisdiction of either agency.

G. "*Road improvement*" means the improvement, widening, surfacing, or the locating of additional structures upon any existing road.

H. "*Trail*" means an existing trail or interest therein on lands or easements administered by one of the agencies which the other agency needs to use in carrying out its functions; provided, the interest owned allows either qualified or unqualified use by the other agency.

I. "*Right-of-Way*" means agency approved instrument, including exhibits and attachments, provided by the agency having jurisdiction or control of the road/trail to be used. For BLM the *BLM Right-of-Way Grant/Temporary Use Permit, Form 2800-14*, together with appropriate exhibit(s). For FS the...

IV. Existing Roads/Trails. Roads/Trails that are now existing or hereafter constructed or acquired are available for joint use as follows:

A. Road Jurisdiction Will Not Transfer.

1. Each agency is hereby authorized to use such roads/trails in the exercise of its administrative function.
2. Contractors or permittees of the agencies shall be and are hereby authorized to use such roads for the removal of forest or mineral products upon; a) filing of a completed application using form (SF 299) in accordance with accepted agency procedures (see 43 CFR 2804.10 for BLM) (see 36 CFR 251.54 for FS); and, b) issuance of a satisfactory Right-of-Way instrument. The accepted form of such Right-of-Way instrument for issuance by BLM is attached hereto and designated Exhibit A and made a part hereof by reference. The BLM Right-of-Way Grant shall include as an attached stipulation (see Exhibit B) together with an executed license agreement between the contractors or permittees and the agency having jurisdiction or control of the roads to be used. The form of such license agreement is attached hereto and designated Exhibit C and made a part hereof by reference. The accepted form of Right-of-Way instrument for issuance by FS is Exhibit C, without further authorizing documentation. Upon written request, such license agreements shall be furnished unsigned to the requesting agency prior to advertising, sale, or the removal of timber or mineral materials.
3. If the grants to the United States will permit, licensees of each agency shall be authorized to use roads constructed or controlled by third parties. Such use shall be subject to and limited by the terms and conditions of the agreements or grants to the United States.

Where there is an unliquidated collection right against the United States timber or mineral products on such a road, the license agreement issued by one agency to the timber or mineral purchaser of the other will contain a provision requiring payments as authorized by the terms of the collection right or a higher payment as agreed to by the two agencies.

4. Nothing in this agreement shall have the affect of curtailing or limiting the administrative use of the agency having the primary administrative control, which control must remain paramount in the event of a conflict.
5. It is understood that if the rights of one agency across private lands are inadequate for the use of the other agency, the latter may acquire additional rights in the name of the United States.
6. Upon completion of the sale or contract for which the license is issued and all requirements of the license agreement have been satisfied, the requesting agency shall notify the Licensor that the bond may be released.

B. Road/Trail Jurisdiction Will Transfer.

1. If it is agreed to by both parties that the transfer of road/trail jurisdiction is desirable and will result in a more reasonable, manageable transportation system, the procedure set forth under Section V.A. - "Construction or Transfer of Roads/Trails" shall be followed to accomplish the transfer.

C. Road Improvement. In the event one agency seeks the use of a road under the jurisdiction of the other that will require improvement to serve the proposed use, the two agencies will confer at the annual meeting, or at any other time as necessary. Transfer of jurisdiction will be considered, particularly where mutual transportation planning indicates such action. If transfer is not appropriate, the agencies will determine which agency will be responsible for improving the road. The improving agency will be permitted to recover a portion of its investment from any subsequent third party, non-United States users.

If transfer is determined to be appropriate, the agency to which the road/trail is to be transferred shall file an application as set forth in Section V.A. of this agreement.

Any road/trail improvement to be made by one agency, its Contractors or permittees upon a road/trail which remains under the jurisdiction of the other agency shall be made using the Road/Trail Improvement Pre-application Data Sheet (Exhibit G) prepared by the constructing agency as part of its application and filed in accordance with accepted procedures of the agency having jurisdiction over the road/trail. The agency having jurisdiction over the road/trail will review the Road/Trail Improvement Pre-Application Data Sheet together with the application, and, if in order, any conditions and standards in the application shall be made a part of the approved Right-of-Way instrument and shall be inserted in the License Agreement to be executed by the licensee and the agency having jurisdiction over the road.

D. Road Maintenance. Each agency or its licensee shall be responsible for performing the work to maintain the road or for payment of pro rata maintenance expense. The pro rata maintenance expense shall be determined by the total use of the road or part thereof by the agencies. Each year, the agencies shall mutually agree, insofar as is possible, upon the required maintenance and resurfacing work to be done upon the particular road(s) involved. Agency expenditures for the benefit of the other agency's use shall be reimbursed by the benefiting agency under the Act of June 30, 1932, as amended (31 U.S.C. 686), or it shall make other arrangements to provide funds to meet such expense. Maintenance work shall include such work as is reasonably necessary to place the particular road in a satisfactory condition for use, to keep it in such condition, and to reasonably protect said road from weather conditions, and may include blading and shaping, watering or oiling, ditching, repair of drainage improvements, slide removal and such other measures as may be required by the agency having jurisdiction. Upon discontinuing use of a road or any portion of a road, the road shall be placed, as a minimum requirement, in as good a condition as it was prior to commencement of use.

E. Road Use Rules. Roads that are jointly used shall be subject to reasonable road use rules to be administered and enforced by the agency having jurisdiction. Both agencies shall jointly make a periodic study and review of such roads. Road rules shall be uniformly applicable to all road users, and may include but not be limited to, matters of speed, load limits, fire and safety equipment, and road closures. The road rules will be posted and made available to the road user.

V. Construction or Transfer of Roads/Trails

A. Construction. It is understood that prior to construction or transfer of a road/trail by or for one agency on lands under the jurisdiction of the other, status will be cleared through the appropriate office of the administering agency. Concurrently therewith, a BLM-FS Road/Trail Right-of-Way Transfer/Reservation Pre-Application Data Sheet in the form of Exhibit D shall be completed by the constructing agency and submitted to the appropriate Forest Supervisor or District or Field Office Manager with the required attachments as part of its application filed in accordance with accepted procedures of the agency having jurisdiction over the road/trail. After review and any necessary consultation, the administering agency will execute an agency appropriate Right-of-Way instrument. The accepted form of such Right-of-Way instrument for BLM is Exhibit A, together with attached stipulations shown in Exhibit E. The accepted form of Right-of-Way instrument for FS is attached as Exhibit F, without further authorizing documentation. The administering agency will execute and forward the approved Right-of-Way instrument to the constructing agency.

B. Timber. The clearing limits on each side of the road/trail centerline shall be designated by the constructing agency. Unless otherwise agreed upon, such timber shall be cruised, appraised and sold by the agency having jurisdiction of the timber.

The following methods may be used for timber disposal:

1. The agency having jurisdiction of the right-of-way timber may sell it and have it removed prior to road/trail construction.

2. The party constructing the road/trail may be required to buck that timber into standard log lengths and deck the logs at locations designated along the right-of-way by the agency having jurisdiction of the timber.

3. The party constructing the road/trail may be required to buy the timber from the agency having jurisdiction of the timber prior to cutting the timber. The timber will be sold lump sum based on the cruise and appraisal of that agency. The appraisal shall be on a stumpage basis with no road/trail construction cost allowance.

4. Where the purchaser of a principal sale is to construct the road/trail the purchaser may be required to buy the right-of-way timber. Such timber shall be appraised by the agency having jurisdiction of the timber. Appraisal shall be on a stumpage basis with no road/trail construction cost allowance. Following the receipt of bids on the principal sale, the sale price for right-of-way timber shall be determined by increasing the appraised or advertised price of the right-of-way timber, species by species, by the monetary difference between the appraised or advertised and bid prices of the principal sale.

When method 3 or 4 is used, the necessary timber sale contracts shall be furnished to the constructing agency prior to the advertising of the constructing agencies road/trail contract, timber, or mineral products sale.

In the event that the road/trail is constructed by the United States through a road/trail contract or by force account, the agency having jurisdiction of the timber will specify the method of disposal after consultation with the constructing agency.

C. Minerals. In the event saleable or leaseable minerals are known to be within the right-of-way or discovered subsequent to the commencement of construction, the agency having jurisdiction over the minerals shall make arrangements with the constructing agency for sale or stockpiling.

VI. General Provisions.

A. Expenditure of Appropriated Funds. Nothing in this agreement shall require either agency to spend money in excess of appropriations.

B. Exemption/Waiver of Fees for Processing, Monitoring and Rental Fees. FS is hereby exempt from BLM assessment of fees for processing and monitoring pursuant to (43 CFR 2804.16(b)) associated with processing and issuance of Rights-of-Ways granted under this agreement. BLM will waive assessment of fees to FS for annual rent pursuant to (43 CFR 2806.15(b)(2) and (4)) associated with Rights-of-Ways granted under this agreement.

FS will waive the assessment of fees for processing and monitoring to BLM pursuant to (36 CFR 251.58 (f)(i)), associated with the processing and issuance of Rights-of-Ways granted under this agreement. BLM is hereby exempt from FS assessment of annual rental fees pursuant to (36 CFR 251.57(c)) associated with Rights-of-Ways granted under this agreement.

C. Termination of Agreement. This agreement shall remain in effect unless terminated by mutual agreement or one agency giving the other agency ninety (90) days prior written notice. Such notice and termination shall not affect any outstanding rights under this agreement that are held by either agency over lands of the other agency. All outstanding rights will either continue or terminate in accordance with the terms of the document with which they were acquired.

D. Annual Meeting. Each year during November or December, representatives of the regional, State, district, and forest offices shall meet to review joint transportation planning, desirable transfers of road jurisdiction, joint use, maintenance, improvement and construction of roads within their respective jurisdictions. It is the responsibility of the respective Forest Supervisors and District Managers who share routes of access to arrange such meetings, unless it is determined among them that such a meeting is not desirable. The annual meeting will also be utilized to discuss problems associated with the use of the agreement and decide upon a mutual course of action to solve the problems. Issues that cannot be resolved at the State Director/Regional Forester level are to be referred to the respective Washington Headquarters Office.

FOREST SERVICE
U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C.

Date: _____

Date: _____

VI. EXHIBITS

EXHIBIT A

(Sample BLM RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT, FORM 2800-14)

Form 2800-14
(August 1985)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Issuing Office

Serial Number

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

2. Nature of Interest:

a. By this instrument, the holder:

**United States of America acting by and through the (Forest Service, U.S. Department of Agriculture)
Office
Address
City, State Zip Code**

receives a right to (construct, operate, maintain and terminate a ROAD / TRAIL on public lands described as follows:

A plat showing the right-of-way described above is attached hereto as Exhibit A and made a part hereof.

b. The right-of-way area granted herein is ___ feet wide, ___ feet long and contains ___ acres, more or less.

c. This instrument (shall terminate on XXXXXX XX, 20XX, 20 years from its effective date, unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation. (Refer to Part 4. d.)

d. This instrument may be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental: **Rental fees are waived in accordance with (BLM; 43 CFR 2806.15 (b) (2) and (4))**

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

a. This grant or permit 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 120 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.

- c. Each grant issued pursuant to the authority of paragraph (1)(a) 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 or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) **(insert appropriate interagency agreement stipulations here as Exhibit "B")**, dated _____, attached hereto, are incorporated into and made a part of this grant 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 right-of-way grant or permit 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. The holder shall conduct all activities directly or indirectly associated with the operation or maintenance of the right-of-way within the authorized limits of the right-of-way.
- h. This right-of-way may be renewed. If renewed, the right-of-way will be subject to the regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant.

(Signature of Holder)

(Title)

(Date)

(Signature of Authorized Officer)

(Title)

(Effective Date of Grant)

EXHIBIT B

Standard Stipulations
(for Short-term use authorization by Licensee of Holding Agency w/o transfer of Jurisdiction)
To be attached to BLM ROW Grant 2800-14 per Item 4.d.

The right-of-way herein granted is for the full use of the above described property as a road by the Bureau of Land management, its licensees, permittees, agents, and contractors.

Said use shall be in accordance with the terms and conditions of that certain License Agreement No. _____ dated _____, a partially executed copy of which is attached and made a part hereof as Exhibit _____.

Attached following this stipulation would be Exhibit C

Agreement No. _____

LICENSE AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____ by and between _____ hereinafter called "Licensor" and _____ hereinafter called "Licensee."

WITNESSETH

WHEREAS, Licensee has purchased (Mineral Material or Timber Sale) or Certain Forest Products or Mineral Products under (permit) or (contract) dated _____, Number, _____ located in (Sec., T&R, County, State) or appropriate geographic location and desires to use roads under the jurisdiction of the Licensor in order to (operate said sale) (remove said products), and

WHEREAS, Licensor is willing to grant said access subject to the terms and conditions set forth herein,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Licensor hereby grants to Licensee a nonexclusive license to use the existing roads of the Licensor as listed in Section 3 of this Agreement, and shown on the map attached hereto.

2. Said existing roads shall be open at all times to full use and enjoyment by the Licensor and its permittees for any and all purposes deemed necessary or desirable in connection with the control, management and administration of Licensor's lands or the resources thereof, and insofar as compatible therewith, use by the general public.

3. Licensee shall maintain the road or shall pay his proportionate share as indicated below. Maintenance shall include all expenditures reasonably necessary to place the road in satisfactory condition for heavy hauling, to keep it in such condition, and to reasonably protect the road from winter weather. Maintenance also includes replacement of surfacing lost through wear or displacement resulting from the use of the road.

A. ^{1/} Licensee shall maintain the following roads in accordance with the specifications shown in the aforesaid (timber sale) (mineral sale or lease) (permit) (contract) or (in Exhibit attached hereto):

<u>Road No.</u>	<u>Segment</u>	<u>Miles</u>	<u>Applicable Specification</u>
-----------------	----------------	--------------	---------------------------------

^{1/} Use A, B, C, D, or E, or any combination applicable.

B. ^{1/} Licensee shall make payments into a cooperative account for maintenance to be performed by Licensor at the following rates:

Road No.	Segment	Miles	\$/Mbdft	\$/cu yd
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C. ^{1/} Licensee shall replace surfacing on the following roads in accordance with the provisions shown in Exhibit ____ attached hereto:

Road No.	Segment	Miles
----------	---------	-------

D. ^{1/} Licensee shall make payments into a cooperative account for resurfacing to be performed by Licensor at the following rates:

Road No.	Segment	\$/Mbdft	\$/cu yd
----------	---------	----------	----------

E. ^{1/} With the prior written approval of the Licensor, the Licensee may arrange for cooperative maintenance with other users of the roads described above; provided, that such cooperative arrangement shall not relieve the Licensee of his liability for the maintenance and repair of the road.

4. The Licensee shall comply with the following requirements:

A. No commercial timber or minerals shall be cut, mined, removed, or destroyed on the right-of-way unless Licensee first obtains specific authority from Licensor.

B. Licensee shall take adequate precaution to prevent and suppress forest, brush, and grass fires and shall endeavor with all reasonably available personnel to suppress any fire originating on or threatening the right-of-way. Licensee shall do no burning on or near the right-of-way without a State permit during seasons when permits are required, and shall set no fires on or near the right-of-way that will result in damage to any natural resource or improvement.

C. All truck drivers shall have a valid chauffeur's license.

D. Licenses shall abide by all reasonable traffic regulations imposed by the Licensor; provided, however, such regulation shall be uniformly applicable to all users of the road, including Licensor.

^{1/} See footnote on preceding page

E. ^{2/} _____ Company retains a collection right on this road. Licensee shall pay (\$ _____ lump sum) (\$ _____ per Mbd. ft.) (\$ _____ per cu. yd.) (to _____ Company) (to Licensor for transmittal to the Company.)

Any lump sum payment shall be made prior to start of hauling. Per Mbd. ft. or per cu. yd. payments shall be made on or before the 25th day of each calendar month for all forest or mineral products hauled in the preceding calendar month. Such payments shall be accompanied by a copy of the applicable timber cutting report or weight slip or other appropriate documentation if minerals are involved, certified as correct by the officer in charge of the sale.

5. All of Licensee's equipment operating upon the road shall be maintained, in a good and safe operating condition and shall be operated cautiously so as to minimize accidents or hazards.

6. Licensor may suspend the use of the road during periods when the forests are closed by lawful authority. Licensor may also suspend the use of the road when, due to weather conditions, unrestricted use would cause excessive damage to the road. Any suspension shall be applicable to all heavy haulers on the road.

7. Licensee shall not construct landings for loading logs nor yard loss on the road without express written permission from Licensor. Licensee shall not permit slash or debris from its operation to fill in or close the ditches or culverts of the roads.

8. The Licensee shall provide a performance bond in the amount of \$ _____ acceptable to the Licensor, conditioned upon faithful performance of this agreement ^{3/} (and shall obtain comprehensive liability insurance covering all operations, including vehicles, of the Licensee under this agreement in amounts not less than the following: (a) bodily injury, \$ _____ for injury or death of one person, \$ _____ for any one occurrence; (b) property damage, \$ _____ for any one occurrence). ^{4/}

Before exercising any of the rights granted herein, the Licensee shall deliver the required bond to the Licensor (and shall deliver a certificate from the insurance company stating that such insurance is in force and that the insurance company will give to the Licensor 10 days written notice prior to any cancellation or modification of such insurance, together with evidence that all automotive equipment to be used by the Licensee is covered by insurance). ^{4/} Any insurance or bonding company furnishing bonding or insurance services required by this license shall be duly authorized to do business in the State of _____, and registered pursuant to its Statutes.

^{2/} Delete if not applicable.

^{3/} Performance bond will normally be computed at the rate of \$500 per mile or fraction thereof, to a \$10,000 maximum.

^{4/} Generally, insurance will be required only in those cases where underlying easements or agreements require road users to have insurance and shall be required only in the amount required by the easements or agreements.

9. Concurrently with conclusion of Licensee's use of said roads, Licensee shall clean up and remove from the road or right-of-way all debris, refuse and waste material which may have resulted from Licensee's use or operations, shall repair any damage to the road resulting directly or indirectly from Licensee's use or operations; Provided however, that when Licensor is performing the maintenance of the road, Licensee shall not be required to repair any damage resulting from normal use of the road for the removal of forest or mineral products; Provided further that when Licensee is performing the maintenance the road shall be left in as good condition as when Licensee first began to use it.

10. The Licensee shall undertake every reasonable measure to minimize damage to waterways, streams, lakes, or reservoirs near the roads under this agreement. The Licensee shall immediately discontinue operations under this agreement upon receipt of written notice from an authorized officer that such operations or any part thereof are causing any damage or injury to the waterways and watercourses near the roads under this agreement.

11. The rights granted hereunder are not assignable without the prior written consent of the Licensor.

12. The Licensee shall maintain the right-of-way clearing by chemicals only after specific written approval has been given by the (BLM Authorized Officer) (Regional Forester). Application for such approval must be in writing and specify the time, method, chemical(s), pest to be controlled, quantity of chemical to be used, and exact portion of the right-of-way that will be chemically treated.

13. By prior agreement between the Licensor and the (administering agency), the latter will be responsible for administration, and enforcement of the terms of this agreement. A copy of any notice under this agreement shall be sent to the Licensor.)^{5/}

14. The terms of this Agreement shall be from the date hereof until the termination of the aforesaid timber or mineral contract or permit.

IN WITNESS WHERE OF, the parties have executed this Agreement in duplicate originals on the day and year first above written.

LICENSOR

By _____

Title _____

LICENSEE

By _____

Title _____

^{5/} Optional, if not used delete and renumber 14.

Exhibit D

R/W No. _____
Serial No. _____

BLM-FS ROAD/TRAIL RIGHT-OF-WAY PRE-APPLICATION DATA SHEET

1. Name of Agency	National Forest or BLM District	Date of Application
-------------------	------------------------------------	---------------------

Hereby applies for a right-of-way across land administered by _____ (Name of Agency) pursuant to the BLM-FS Right-of-Way and Road Use Agreement dated _____.

1. Legal description

2. Specify period of time for which right-of-way is requested.

Perpetual Term _____
(years)

3. Plan and profile of road/trail to be constructed is attached?

Attached On file at _____
Identified as _____

4. Construction specifications are attached?

Attached On file at _____
Identified as _____

5. Environmental assessment is attached?

Attached On file at _____
Identified as _____

6. Appropriate maps or right-of-way plat attached.

7. Right-of-way width _____ acreage _____.

Constructing Agency

By: _____ Title: _____

Standard Stipulations
(for Short or Long-term use authorization with transfer of Jurisdiction to the Forest Service)
To be attached to BLM ROW Grant 2800-14 per Item 4.d.

The right-of-way herein granted includes in addition to those rights described in part 2.a., the rights to locate, use, control, improve and repair. The right-of-way herein granted is for the full use of the above described property as a road/trail by the Forest Service, its licensees, permittees, agents, and contractors including the right of access for the people of the United States generally to lands owned, administered, or controlled by the UNITED STATES OF AMERICA subject to reasonable rules and regulations of the Secretary of Agriculture, and subject to the following terms and conditions:

1. The road/trail authorized / constructed under the provisions of this right-of-way will be under the control and jurisdiction of the Forest Service.
2. The Forest Service, having jurisdiction of the road/trail alone may extend or grant rights and privileges for use of the road/trail to other users, including members of the public and other Government Departments and Agencies, States, and local subdivisions thereof. Such grants may be in the form of regulations, permits, easements, or licenses, as appropriate.
3. Any forest products or other resources on lands within the right-of-way shall remain under the jurisdiction of the Bureau of Land Management and may be severed or extracted and disposed of only in accordance with applicable law and regulation of the Secretary of the Interior. The extraction, severance, and disposal of any such resources shall be subject to such stipulations, if any, that the agencies agree are needed to avoid unreasonable interference with the use of the road.
4. The Bureau of Land Management retains the right to occupy and use the right-of-way, and to issue or grant rights-of-way or other land uses for other than road/trail purposes, upon, over, under, and through the lands, provided that the occupancy and use will not unreasonably interfere with the rights granted herein.
5. This right-of-way shall remain in effect (until terminated by mutual agreement of the agencies.) (for a term commencing on the date shown below and continuing until _____,_____.

FOREST SERVICE FEDERAL RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS, that in accordance with Section 507 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2781, 43 U.S.C. 1767) that the United States of America acting by and through the Forest Service, U.S. Department of Agriculture, does hereby issue and reserve to the Bureau of Land Management, U. S. Department of the Interior, and its assigns, a right-of-way to locate, construct, use, control, maintain, improve, and repair a (road/trail) over and across the following described real property situated in the County of _____, State of _____, to wit:

The parcel of land to which the above description applies contains _____ acres, more or less.

A plat showing the right-of-way described above is attached hereto as Exhibit A and made a part hereof.

The right-of-way herein granted and reserved is for the full use of the above described property as a (road/trail) by the Bureau of Land Management, its licensees, permittees, agents, and contractors including the right of access for the people of the United States generally to lands owned, administered, or controlled by the UNITED STATES OF AMERICA subject to reasonable rules and regulations of the Secretary of the Interior, and to the following terms and conditions:

1. The (road/trail) authorized / constructed under the provisions of this right-of-way will be under the control and jurisdiction of the Bureau of Land Management.
2. The Bureau of Land Management having jurisdiction of the (road/trail) alone may extend or grant rights and privileges for use of the road/trail to other users, including members of the public and other Government Departments and Agencies, States, and local subdivisions thereof. Such grants may be in the form of regulations, permits, easements, or licenses, as appropriate.
3. Any forest products or other resources on lands within the right-of-way shall remain under the jurisdiction of the Forest Service and may be severed or extracted and disposed of only in accordance with applicable law and regulation of the Secretary of Agriculture. The extraction, severance, and disposal of any such resources shall be subject to such stipulations, if any, that the agencies agree are needed to avoid unreasonable interference with the use of the (road/trail).

4. The Forest Service retains the right to occupy and use the right-of-way, and to issue or grant rights-of-way or other land uses for other than (road/trail) purposes, upon, over, under, and through the lands, provided that the occupancy and use will not unreasonably interfere with the rights granted herein.

5. This Federal Right-of-Way reservation shall remain in effect (until terminated by mutual agreement of the agencies.) (for a term commencing on the date shown below and continuing until _____,_____.

Dated this _____ day of _____, _____.

Signature of Authorized Officer of the Forest Service

Title

ROAD/TRAIL IMPROVEMENT PRE-APPLICATION DATA SHEET

Date _____

The (Bureau of Land Management)(Forest Service) in accordance with the Cooperative BLM-FS Right-of-Way and Road/Trail Use Agreement, dated _____ hereby requests approval of the following special conditions for the improvement of _____.

(Number or Name of Road/Trail)

1. Location as shown on attached map of scale not less than 1 inch equals 1,000 feet.

(Drawing No. _____, name, date, or other identification)

2. Construction Specifications for improvement

3. Slash Disposal Specifications

4. Maintenance

5. Other Conditions

6. Contract or Permit Designation

7. Timber Sale Allowance or Contract Cost of Improvement

8. Improving agency may collect road use fees from third party private users in an amount proportionate to third party use.

Constructing Agency:

Approving Agency:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

2809 – SPECIAL CONSIDERATIONS

BLM - Federal Highways Interagency Agreement

Appendix 4

2809 – SPECIAL CONSIDERATIONS

Departmental Implementation of *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735 (10th Cir. 2005); Revocation of January 22, 1997, Interim Policy; Revocation of December 7, 1988, Policy

2809 – SPECIAL CONSIDERATIONS

Sample – Notice to Show Cause