

**Decision Record
And
Finding of No Significant Impact**

**Brownlee-Oxbow #2 Transmission Line Project
Environmental Assessment OR-035-03-01**

**Baker Resource Area
Vale District
Bureau of Land Management
Baker City, Oregon**

This Decision Record and Finding of No Significant Impact (FONSI) documents my decision to adopt the Brownlee-Oxbow #2 Transmission Line Project as presented under the Proposed Action in Environmental Assessment (EA) OR-035-03-01. My decision is to approve Idaho Power Company's Right of Way (ROW) application to build and maintain this transmission line. I have included in my decision mitigation measures identified by my staff and concurred upon by the US Fish and Wildlife Service (USFWS) through consultation required under Section 7 of the Endangered Species Act (ESA). The EA is tiered to and the project is within the bounds of the Baker Resource Management Plan (RMP) Record of Decision (ROD, 1989).

Public Comment Review

Prior to completion of the environmental analysis for this project, the Baker Resource Area of the Bureau of Land Management solicited comments from local governments, area landowners, recreation users and other members of the public. A public meeting was held in Halfway, Oregon on March 13, 2002 at which Idaho Power set forth the need for the proposed project and the BLM solicited issues the public had concerning the proposal.

Subsequent to the preparation of the EA, a Legal Notice setting forth the EA's availability for public comment was published. During the 30-day public comment period, only one comment letter was received. The issues and concerns that were raised are discussed below:

Visual Quality

1. This project will seriously undermine the visual quality along the Oxbow Reservoir. Much of the route is designated VRM Class II, under which the goal is to retain the existing character of the landscape. And in the project area "the natural landscape of the canyon is still visually dominant." (EA at p. 95). While there is an existing, smaller transmission line along the route, one need only look at the maps VS-1 through VS-7 to see that the visual impact of this new transmission will be much more significant than the existing line. The new line and towers so dominate the landscape that under no circumstances could the new line be said to retain the existing character of the landscape. In fact, the EA admits that along a total of 5.9 miles of the route, the transmission line "would not be compatible with the VRM Class II objective." (EA at p. 101 and Table 4-1). To quote again from the EA: "[A] multi-transmission line corridor would be more visible at a greater distance because of the cumulative physical contrast with the natural landscape than a single transmission line. Cumulative visual impacts would increase within the project area." (EA at p. 125). The Baker Resource Management Plan (RMP) states that VRM class values are to be maintained in the Sheep Mountain Geographic Unit. (RMP at p. 92). We ask that you follow these management requirements.

RESPONSE: The discussion on page 95 of the EA is to give the reader context of how the existing industrial features are noticeable within the canyon and how much the natural landscape still visually dominates over the existing facilities. With the removal of the existing 69kV transmission line and

placement of a new single 230kV transmission line corridor, the natural landscape would be altered, but would not lose its overall visual dominance as a result of the Project.

The commentor's quote of EA page 125 is taken out of context. The proposed Project is a single transmission line corridor (see project description on page 21 of EA) not a multi transmission line corridor as quoted above. The cumulative visual impacts would not increase within the project area because one additional industrial feature would be placed amongst several other existing industrial features including other transmission lines visible in the distance on the Idaho side of the reservoir.

BLM's VRM guidelines indicate that a deciding officer may authorize project activities that fail to satisfy established VRM management objectives without completing an RMP amendment. The activities proposed in the EA do breach VRM objectives in some locations. However, they have been designed and would be mitigated so as to minimize the impact.

Effects to the Sheep Mountain Wilderness Study Area and Area of Critical Environmental Concern

*2. We are also concerned about the intrusion into the Sheep Mountain Wilderness Study Area and Area of Critical Concern. Tied to this concern are the effects to Bighorn Sheep, Bald Eagles and extensive road-building associated with this project. This project will enter the Sheep Mountain Area of Critical Concern and will be immediately adjacent to the Big Sheep Wilderness Study Area. The EA states that the Area of Critical Concern will be entered in several locations and the Wilderness Study Area will not be **directly** affected. (EA at p. 110, emphasis added). It is obvious from EA, however, that there will be indirect effects to the Wilderness Study Area. When an action will affect a Wilderness Study Area, the Baker RMP requires that the possibility that the area may be designated as wilderness be recognized in any site-specific planning process. We see no such discussion in the EA. Nor does the EA discuss the impacts of these new roads on the Sheep Mountain Wilderness Study Area or Area of Critical Concern. The Baker RMP states that the Sheep Mountain Area of Critical Concern should be managed "to protect outstanding scenic qualities, and maintain or improve wildlife and crucial bald eagle winter habitat." (RMP at 47). It also states that the wilderness values of the Sheep Mountain Wilderness Study Area shall be maintained. (RMP at 92). As noted above, the scenic qualities are explicitly not being met by this project. And this project will also negatively affect Bald Eagles and Bighorn Sheep.*

RESPONSE: The Project would cross the Sheep Mountain ACEC in two locations, once at MP 2.5 and once again at MP 6.6 (the EA says MP 7.6 which is in error). At MP 2.5, the ACEC would have one pole placed within it and .05 miles of new access road would be built within it. This access road would be revegetated post Project construction. At MP 6.6, the ACEC would simply be spanned with overhead transmission line conductors.

There are no direct effects to the WSA because it would not be physically crossed by the proposed Project. The BLM manages all WSA's in accordance with BLM Manual H-8550-1, "Interim Management Policy for Lands Under Wilderness Review", however lands outside of WSA boundaries are not constrained by this policy. While the RMP does state the Sheep Mountain WSA shall be maintained, the existing transmission line was present prior to the areas receiving the WSA and ACEC status, and the WSA and ACEC are currently managed with the existing transmission line in place. Therefore, the indirect impacts of replacing one line for another (though larger) is negligible.

The ACEC is concurrently managed with a designated utility corridor that traverses the ACEC and allows new utility rights of ways be located within the corridor at MP 2.5. The WSA is concurrently managed with a designated utility corridor adjacent to the WSA boundary at MP 6.6.

Concerning the potential for road impacts, upon completion of Project construction, many new and existing access roads would be closed to the public and gated and/or permanently obstructed as detailed in the Project's Plan of Development (POD) document. Furthermore, any new and many existing access roads that would potentially provide public access would be gated, resulting in a net loss of public access. Also see previous response to visual comment # 1 above.

Effects to Bighorn Sheep and Bald Eagles

3. In addition to the management direction specific to the Sheep Mountain Area of Critical Concern, another management objective for the entire Sheep Mountain Geographic Unit is to "maintain or improve bald eagle winter habitat." (RMP at 92). Yet this project will possibly displace individual bald eagles and will occur very near Bald Eagle roosts and at least one nest. (EA at 102). It is not clear how this will maintain or improve the crucial bald eagle winter habitat. Additionally, the project will possibly displace wintering or lambing sheep in the spring. (EA at 105). While there are seasonal restrictions within 400 meters of two specific sheep lambing areas between April 15 and May 15, it is also not clear how the project will maintain or improve the wildlife habitat for Bighorn Sheep.

RESPONSE: This project might displace individual bald eagles if no mitigation measures were applied. However, as stated in the EA, no construction would occur near bald eagle roosts or nests during occupancy periods. The USFWS has concurred with the may effect, not likely to adversely effect finding for bald eagles in the project area. Mitigation measures 4-8, 4-9, 4-11, 4-12, 4-13, and 4-16 have been established in an effort to maintain existing nesting, roosting and foraging conditions for bald eagles. Similarly, bighorn sheep lambing areas would not be displaced as a result of the Project. Mitigation measures have been established in an effort to maintain existing lambing conditions for bighorn sheep.

Road Building

4. The EA discusses the effects to Bald Eagles and Bighorn Sheep based on construction issues, but contains little discussion of the long-term effects of the 12.3 miles of new or improved roads necessary for this project. See EA at p. 105 (no discussion of long-term road impacts to Bighorn Sheep) and EA at p. 103 (in discussing long-term impacts to Bald Eagles, it states "new access roads would be minimal."). Nor does the EA discuss the impacts of these new roads on the Sheep Mountain Wilderness Study Area or Area of Critical Concern. We are concerned about the extensive amount of new roads that will likely open up the Sheep Mountain Wilderness Study Area and Area of Critical Concern to more motorized vehicle intrusions, thus reducing the wilderness values of the area and creating significant wildlife harassment issues. Road construction and use is also a source of ground disturbance and a known vector of invasive plant species.

RESPONSE: The EA (p. 25) states that the "Access roads would be revegetated with grass and forb species following construction..." Many of the new access roads would consist of short spur roads that would not provide additional public access to sensitive habitat. Furthermore, any new significant access roads that would potentially provide public access would be gated or otherwise closed. Within bighorn sheep lambing areas the new 230kV line is adjacent to the existing 69kV line. This would result in no net increase in traffic through these areas. Because the 69kV line would be dismantled, the number of transmission lines through these areas would not increase.

Access roads constructed in the vicinity of the Bald Eagle nest would be constrained by the following:

- Roads would be constructed beyond (usually well beyond) the 400-meter buffer recommended in the Pacific Bald Eagle Recovery Plan.
- Construction of the road would be timed to avoid bald eagle nesting.
- The access road that provides indirect access to the vicinity of the bald eagle nest would be gated, thus restricting access by the public.
- The USFWS has concurred with the effectiveness of the mitigation measures 4-8, 4-9, 4-11, 4-12, 4-13, and 4-16 and a finding of "may affect but not likely to adversely affect" for bald eagles in the project area.

Concern for invasive plant species and noxious weeds will be addressed in accordance with the preparation of a Weed Control Plan required by both BLM and Baker County.

Effects to Bull Trout

5. Finally, we would like to see a more thorough discussion of the effects to Bull Trout in relation to the proposed Bull Trout critical habitat areas. While the project will not cross any stream reach that contains Bull Trout (EA at p. 104), the US Fish and Wildlife Service has proposed critical habitat for Bull Trout in Oxbow and Brownlee Reservoirs, Pine Creek and Wildhorse River. This entire proposed critical habitat is within the project area. Yet the effects to the proposed critical habitat have not been discussed in the EA.

RESPONSE: The only perennial creek that the Project would cross is Black Canyon Creek. However, this creek does not support bull trout. Pine Creek and Brownlee Reservoir both support bull trout (Chandler 2002); neither water body would be affected by the Project.

According to the Proposed Designation of Critical Habitat for the Klamath River and Columbia River Distinct Population Segments of Bull Trout (50 CFR 17), Proposed Critical Habitat— The FWS has proposed the designation of critical habitat for the Klamath River and Columbia River distinct population segments of bull trout. The Project lies within Unit 12 (Hells Canyon Complex); subunit i (Pine-Indian-Wildhorse) of the Columbia River distinct population segment. This subunit includes Pine Creek, Indian Creek, Wildhorse River, and Oxbow Reservoir.

The Project area only impacts Oxbow Reservoir and a portion of the mouth of Pine Creek, however the Oxbow Reservoir/Snake River portion of proposed critical habitat within this subunit is adjacent to the project for its entire length and the proposed right-of-way does not fall within proposed critical habitat except for the span downstream of Brownlee Dam. This span would not affect proposed critical habitat because no towers would be placed in habitat and the conductor would merely span the habitat.

The USFWS concurred with this finding in a letter of concurrence to the Biological Assessment dated February 10, 2003. The only effects that this project would have on proposed critical habitat would be temporary (only during construction) and related to siltation. However, mitigation measures described in the construction erosion and sediment control plan (currently being developed for ODEQ) would eliminate stormwater and soil erosion from entering the habitat.

The BLM also received a verbal comment/concern from another member of the public about the possible effect to an archaeological site.

RESPONSE: Potential effects to 35 BA 893 were further investigated and evaluated by contract archaeologists. One structure would be located in the vicinity of the site. Among the mitigations stipulated for the site are: no new road construction; use existing roads for access; limit the impact area; monitor for archaeological resources during construction; evaluate and mitigate features if any are encountered during monitoring. Consultation with the Oregon State Historic Preservation Office concluded that, with mitigations, the proposed project would have No Adverse Effect on the site.

Decision

My decision to select the proposed action, is based upon the interdisciplinary analysis contained in the Environmental Assessment OR-035-03-01, as well as the supporting record, field review, public comments received, and consultation with the US Fish and Wildlife Service as well as the Oregon State Historic Preservation Office.

The decision is to grant BLM Right-of-Way OR 56711 to IPCo for that portion of the Brownlee to Oxbow #2 Transmission Line Project that would cross public lands administered by the BLM. The right-of-way shall be granted for 30 years subject to the applicable regulations at 43 CFR 2800, the standard right-of-way stipulations, and appropriate special stipulations. The right-of-way granted is 6.7 miles long by 160 feet wide for the transmission line and 2.13 miles by 14 feet wide for new and existing roads, outside of the transmission line corridor, and two short taps to existing facilities. Additionally, a Temporary Use Permit is to be granted for a laydown/storage area of 5 acres, pulling/tension sites totaling 1.27 acres, a construction width of 18 feet on each side of all permanent roads (2.13 miles) and .04 miles x 50 feet of temporary construction roads.

All mitigating measures, stipulations, design features, and monitoring described in the EA and concurred upon by the USFWS are to be incorporated into the Right-of-Way stipulations and Plan of Development. Among these are:

Rehabilitation - All disturbed areas on public lands will be restored as required by the BLM. The rehabilitation will involve the personnel and equipment as shown in Figure 3-3 of the Brownlee to Oxbow #2 Transmission Line Project EA (February, 2003). IPCo will be responsible to restore all lands disturbed by construction, operation, and maintenance activities, including but not limited to access roads, pulling and tensioning sites, structure sites, and other construction sites or storage areas.

Construction Access – New roads or existing roads improved by IPCo will be seeded according to the specifications outlined in the “Seed Specifications” section of the Brownlee-Oxbow #2 Transmission Line Plan of Development. Following construction, all roads will be revegetated and stabilized by erosion control methods where necessary. All construction equipment and vehicles will stay on designated access routes constructed for the project. In some instances the contractor may need to add a spur road or travel overland to reach a pulling/tensioning or guard structure site not accessible by the access roads. In these cases IPCo will consult with the Authorized Officer for clearance and approval. All of these access routes will also be revegetated using the same methods described above.

Structure, Tensioning and Pulling Sites - Work sites will be restored using excess materials, vegetation, and topsoil that will be stockpiled for that purpose. After grading activities and seedbed preparations, seeding will take place according to the specifications outlined in the Brownlee-Oxbow #2 Transmission Line Plan of Development.

Alternatives Considered

To address concerns raised in public and agency scoping, while fulfilling IPCo’s stated purpose and need for the project, IPCo explored a number of alternatives. Several would have avoided construction of new transmission facilities. Seven alternatives were considered and eliminated from detailed analysis for the Brownlee to Oxbow #2 Transmission Line Project:

- Brownlee to Palette Junction 230kV Transmission Line Project – This alternative would meet IPC’s Purpose and Need, however, because of the long length of this transmission line alternative and its associated costs, environmental impacts and lengthy permitting time, it was eliminated from further consideration.
- Brownlee to McNary 230kV Transmission Line Project - This alternative would partially meet IPC’s Purpose and Need, however, because this transmission line alternative would be much longer (165 miles) and would require extensive upgrades to IPC’s transmission system between Brownlee and the Treasure Valley, the costs would be prohibitive. The lengthy transmission line would also have many associated environmental impacts and permitting time would be considerable. As a result, it was eliminated from further consideration as a means of meeting the Purpose and Need.
- New gas-fired generation within the Treasure Valley would be several times more expensive and would be limited by the amount of gas that would be provided by the existing natural gas lines.
- Underground transmission line construction is generally limited to lower voltage (e.g., distribution lines), can require extensive cooling systems, and could involve extensive environmental impacts similar to that of a gas pipeline. There would also be a risk of upset (i.e., spills).
- Alternative Voltages Considered for the Project – Lower voltages would require additional lines to carry the projected load and additional substations to convert the load at the tie points. Higher voltages are not economically feasible because the existing transmission and substations in the area are 230kV or lower.
- Energy Efficiency and Demand Side Management- As a stand-alone alternative to the

proposed Project, use of energy conservation and demand-side management programs does not meet IPC's Purpose and Need and were considered and eliminated from further consideration.

- Routing alternatives were considered. Refer to Figure 2-2 in the EA.
 - 1) As a result of the preliminary assessment of the Pine Creek Route, it was determined to potentially meet IPC's Purpose and Need. However it was eliminated from further consideration because of landowner concerns, potential conflicts with National Scenic Byway and All-American Road criteria, ground disturbance in un-roaded areas, and potentially causing environmental impacts to T&E species, such as bull trout. Segments were rerouted to address site-specific environmental concerns and concerns of landowners.
 - 2) The Idaho Route alternative was eliminated from further consideration because of reliability (i.e., potential loss of three 230kV circuits in a fire) and constructability concerns that would keep it from meeting IPC's Purpose and Need. In addition, ground disturbance would result in impacts to a known Research Natural Area (RNA) for protected plants and un-roaded areas used by big game for wintering habitat.
- Helicopter construction was considered as an alternative to conventional construction that would utilize access roads. The primary purpose of the helicopter construction was to eliminate views of new access roads from viewpoints thereby reducing overall visual impacts. This alternative was eliminated due to the remaining visual impacts that wouldn't be substantially reduced.

Each of the alternatives considered but eliminated from detailed analysis either failed to meet the purpose and need for the proposed action or were not feasible due to siting constraints.

The following alternatives were analyzed in detail:

- Proposed Action
- No Action

The discussion of alternatives considered and those analyzed in detail are found in chapter 2 of the Brownlee to Oxbow #2 Transmission Line Project EA (February 2003). Through the scoping, assessment, and review processes the preferred alternative was refined to minimize the impact to the human environment and natural environment.

The proposed project is for the construction, operation, and maintenance by Idaho Power Company (IPCo) of an 11-mile (of which 6.7 miles is on BLM), double-circuit electrical transmission line extending from the Brownlee Substation at Brownlee Dam to the Oxbow Substation at Oxbow Dam. One circuit of the new Brownlee-Oxbow #2 Transmission Line would replace the existing Pine Creek to Duke 69kV transmission line. One circuit to be constructed would be energized to 230kV while the other circuit would be energized to 69kV. The line would be supported by tubular steel, single pole structures that would range in height from 85 to 120 feet. The new 230kV transmission line structures would consist of tubular steel structures in line between turning points and double pole structures at the turning points and at specific intervals to support longitudinal load and act as anchoring structures. The proposed structures will be double circuit tubular steel, with a corten (i.e., unpainted steel) surface that will develop a rust-colored patina over time.

Other line components include foundations, conductors, and transmission line cabling and support. The single pole structure foundations in soil will be concrete piers 6-7 ft. in diameter and anywhere from 20 to 30 ft. deep. The proposed project also consists of acquisition and/or use for the transmission line corridor, substation, and access roads. Construction will be appropriately staged to comply with the mitigation requirements (see figure 3-3 in EA) and other constraints for a one-year time period.

Decision Rationale

After reviewing the EA developed for this project and the letters commenting on environmental impacts, the BLM has selected the proposed action alternative for the following reasons:

Electrical utilities have a public responsibility to provide adequate supplies of reliable and economical electricity to all classes of customers. To continue to meet this responsibility, the IPCo proposes to construct the Brownlee to Oxbow #2 Transmission Line Project, an 11-mile transmission line extending from the Brownlee Substation to the Oxbow Substation. The proposed project would increase the Oxbow South capacity which allows for efficient use of west-side imports, maintains IPCo's compliance with Western System Coordinating Council criteria, and provides adequate capacity for load growth. It has been identified as the most cost-effective alternative to expand transmission capacity and import electrical power from other general sources through the interconnected transmission line grid in the western United States.

The EA prepared for the proposed project concludes that the route is logical and that proper adherence to the right-of-way stipulations will ensure that the impacts are acceptable and not significant for the area. A Biological Assessment was completed and it was determined that the proposed action may affect but not likely to adversely affect any sensitive, threatened, or endangered species. The Project may affect but will not likely destroy or adversely modify proposed critical habitat for bull trout. The monitoring and resource protection plan has been reviewed and are included as part of the Brownlee to Oxbow #2 Transmission Line Project Plan of Development for this project. The proposed transmission facility is a reasonable way of meeting the growing electrical demands in IPCo's service area, and a prudent commitment to system reliability through transmission line redundancy. Alternative sources of power or means of power transmission involve increased reliance on fossil fuels, greater transmission line impacts, or a failure to meet transmission line reliability.

The analysis completed during preparation of the EA found no adverse impacts to cultural resources and low to moderate impacts would occur to listed species, visual resources, soils, and water quality. Mitigation would be effective in eliminating or reducing most of these impacts. For example, construction timing restrictions will be implemented to eliminate the potential to impact sensitive wildlife species, such as wintering big game and bald eagles, and lambing big game. Similarly, corten steel structures and non-specular (treated to have a dull, rather than shiny surface) conductors would be used to reduce visual contrast. Rehabilitation techniques will minimize soil erosion and sediment loading during construction. No identifiable impacts to land uses were identified as a result of the proposed project.

The action is consistent with the Baker Resource Area Resource Management Plan (1989) Record of Decision as well as existing laws, regulations, BLM planning, and State and local planning and zoning regulations.

Finding of No Significant Impact

While any land management activity invariably and by definition entails environmental effects, I have determined, based upon the analysis of environmental impacts contained in the referenced EA (OR-035-03-01), that the potential impacts raised by the proposed project will not be significant and that, therefore, preparation of an environmental impact statement is not required.

In terms of context, I find that the impacts described would occur only along the route of the proposed Project and to viewpoints near the route but not in the Hells Canyon National Recreation Area. Societal and regional impacts would relate to improved reliability of electrical power supplied to the applicant's service territory. There would be no adverse impact on potentially affected interests.

In terms of intensity, I have evaluated the effects of the proposed Project, together with the proposed Project mitigating measures, against the test of significance found at 40 CFR 1508.27. I find that:

1. The proposed Project would cause no significant impacts, either beneficial or adverse. All impacts would be moderate to low; most would be of short duration.

2. The proposed Project would have some beneficial effect to public health and safety, due to the improved reliability of electric power provided to residents within the applicant's service territory.

3. The proposed Project would not adversely affect unique characteristics of the geographic area.

4. The proposed Project would have no highly controversial effects. The EA examines five issues that have the potential to generate controversy. The proposed mitigation is expected to render any controversy not significant. Those issues are:

- The proposed transmission line would impact visual resources from construction activities and long-term operation of the proposed Project. The visibility of transmission structures and associated access roads from key observation points (residences, recreation areas, and Oxbow-Brownlee Road) would be the main source of visual impacts. Corten steel poles, non-specular conductors and colored concrete would be used to reduce visual contrast. The route was designed to minimize impacts caused by new access roads and other Project facilities contrasting with existing landscape. Established Visual Resource Management objectives would not be fully met in all locations. However, due to other resource considerations, I have determined mitigation measures have reduced the visual contrast to acceptable levels. The impacts are therefore not significant.
- The proposed Project's location is near an active bald eagle nest, but the proposed route avoids the nest site by 400 meters. The area is also an important eagle roost area. Seasonal restrictions on construction would be applied to minimize the effects on eagles. Additionally, the conductor spacing would be sufficient so that the project would not pose an electrocution hazard to raptor species.
- Temporary soil surface disturbance would likely result from the proposed Project construction causing some increased wind and water erosion rates and compaction levels. The potential for large-scale erosion may be increased in areas because of severe slopes and highly erodible soil types. In areas where potential impacts to water resources and wetlands are possible, required mitigation measures would be expected to be effective in reducing or eliminating those potential impacts.
- The proposed Project area is known habitat for bighorn sheep. Bighorn sheep use the area for lambing in the spring. Disturbance from construction activities could potentially impact the lambing but mitigation measures prevent construction near the lambing areas during critical times.
- Two developed recreation areas are located adjacent to the proposed Project area and much of the area is used for dispersed recreation (e.g., hunting, fishing, camping, wildlife viewing). The Project would not directly impact the developed recreation areas or change the availability of areas used for dispersed recreation. The Sheep Mountain Wilderness Study Area and Sheep Mountain Area of Critical Environmental Concern are adjacent to the proposed Project, and may be indirectly impacted by increased non-motorized access with the construction of new access roads. Mitigation measures require blockage of most of these new roads as well as their revegetation which should minimize this potential impact.

5. The proposed Project would have no uncertain effects and would not involve unique or unknown risks.

6. The proposed Project is a typical project located within a designated utility corridor and does not establish a precedent for future actions.

7. The proposed Project is not related to any other action being considered by BLM.

8. The proposed Project would avoid one historic site (BO1), and would have no adverse effect on two sites potentially eligible for the National Register (35 BA 893 and BO6/BL-28). Monitoring and other mitigations are stipulated for 35 BA 893, and photo-documentation required for the historic barn/field property BO/BL-28 was completed. Cultural resource reports describing potential effects were reported to Tribal Governments for review and comment, and no concerns were identified. Determination of effects was reached in consultation with the Oregon State Historic Preservation Office.

9. The proposed Project would not adversely affect any endangered or threatened species, or any habitat critical to an endangered or threatened species.

10. The proposed Project does not violate any law or requirement imposed for the protection of the environment.

Appeal Rights

The decision to grant the right-of-way and Temporary Use Permit is an appealable action. The decision, unless a petition for a stay is approved, remains in full force and effect pending the completion of the appeal process (43 CFR 2804.1(b)).

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 which is available at any Bureau of Land Management Office. If an appeal is taken, your notice of appeal must be filed in the BLM Oregon State Office within 30 days from the Legal Notice of this Decision Record and Finding of No Significant Impact appearing in the Baker City Herald which is expected to be on July 7, 2003. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you must have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except for otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors granting the stay.

s/Penelope Dunn Woods

July 7, 2003

Penelope Dunn Woods
Field Manager
Baker Field Office, Vale District BLM

Date