

***Fruit Growers Supply Company Reciprocal Right-of-Way
Environmental Assessment (EA OR-105-07-02)***

Decision Document

Bureau of Land Management
South River Field Office, Roseburg District Office

Decision:

It is my decision to amend O&C Logging Road Right-of-Way Permit R-1204B (Permit), and Reciprocal Right-of-Way and Road Use Agreement R-1204B (Agreement) with Fruit Growers Supply Company in lieu of issuing a new agreement as described in the Fruit Growers Supply Company Reciprocal Right-of-Way Environmental Assessment (EA). The specifics of the amendment are as follows.

Lands under the administration of the BLM to be amended into the Permit include:

- W $\frac{1}{2}$ W $\frac{1}{2}$, Section 31, T. 29 S., R. 4 W., Willamette Meridian (W.M.),
- N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 1, T. 30 S., R. 5 W., W.M.,
- S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 5, T. 31 S., R. 5 W., W.M.,
- E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 5, T. 31 S., R. 5 W., W.M., and
- E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, T. 31 S., R. 5 W., W.M.

No road construction, including the proposed 300-foot extension of BLM Road No. 29-4-31.2 is authorized under this decision.

Roads under the control of the BLM to be amended into the Permit include:

- Road No. 29-4-31.0 beginning in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, T. 29 S., R. 4 W., W.M. and ending in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 31, T., 29 S., R. 4 W., W.M.,
- Road No. 29-6-21.0 beginning in the S $\frac{1}{2}$, Section 21, T. 29 S., R. 6 W., W.M. and ending in the SW $\frac{1}{4}$, Section 22, T. 29 S., R. 6 W., W.M.,
- Road No. 29-6-22.0 beginning in the SW $\frac{1}{4}$, Section 22, T. 29 S., R. 6 W., W.M. and ending in the NW $\frac{1}{4}$, Section 22, T. 29 S., R. 6 W., W.M., and
- Road No. 30-5-31.0 beginning in the N $\frac{1}{2}$, Section 6, T. 31 S., R. 5 W., W.M. and ending in the SE $\frac{1}{4}$, Section 5, T. 31 S., R. 5 W., W.M.

Roads under the administration of the BLM to be amended into the Permit shall be subject to the same terms and conditions of the Permit as roads already included on Schedule 1 of the Permit.

Use of BLM-administered roads will require Fruit Growers Supply Company to conduct necessary road renovation and maintenance utilizing BLM Best Management Practices (ROD/RMP, pp. 136-138). These may include, but are not exclusively limited to:

- Identifying ditch line and outlet erosion caused by excessive flows and adding necessary drainage facilities and armoring;

- Providing the basic care required for protecting the road and ensuring that damage to adjacent land and resources is held to a minimum;
- Carrying out blading and shaping in such a manner as to conserve existing surface material, retain the original crowned or out-sloped self-drainage cross section, prevent or remove rutting berms (except those designed for slope protection) and other irregularities that retard normal surface runoff. Avoid wasting loose ditch or surface material over the shoulder where it will cause stream sedimentation or weaken slump prone areas. Avoid undercutting of back-slopes; and
- Keeping road inlet and outlet ditches, catch basins, and culverts free of obstruction, particularly before prolonged winter rainfall. However, hold routine machine cleaning of ditches to a minimum during wet weather.

“Exhibit A”, Stipulation No. 9 of the Permit is modified to add the following reasons for objection to any proposed construction.

- An existing road is available and suitable for the removal of timber tributary to the proposed road; and
- In the event an objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act has been completed on the proposed road. Based on a Biological Opinion received from Fish and Wildlife Service, the objection may be withdrawn, modified, conditioned, or continued.

The new stipulations for objection to proposed road construction shall apply only to those lands in this amendment as listed above and to any BLM-administered lands added by future amendment. In all other respects, existing provisions of the Permit shall continue in full force and effect.

Lands under the ownership and management of Fruit Growers Supply Company to be amended into the Agreement include:

- SE¹/₄NE¹/₄ and SE¹/₄ of Section 36, T. 29 S., R. 5 W., W.M.,
- NE¹/₄NW¹/₄ and N¹/₂SE¹/₄NW¹/₄ of Section 22, T. 29 S., R. 6 W., W.M., and
- W¹/₂SE¹/₄SW¹/₄NE¹/₄, SW¹/₄SW¹/₄NE¹/₄ and NW¹/₄NW¹/₄SE¹/₄ and W¹/₂NE¹/₄NW¹/₄SE¹/₄ of Section 5, T. 31 S., R 5 W., W.M.

The rights of the United States and its licensees, pursuant to 43 Code of Federal Regulations 2812-3-1(b), are perpetual and include the right to use the roads and rights-of-way owned or controlled by Fruit Growers Supply Company across the lands described in the Agreement, lands described in this amendment, and any subsequent amendment or assignment to the Agreement.

The new stipulations for objection to proposed road construction, described above, shall also be added to “Exhibit B”, Stipulation No. 10 of the Agreement.

The Permit and Agreement will also allow either party to use tailhold, guyline, and tieback trees on lands of the other party. Large, late-seral trees on BLM-managed lands to be used by Fruit Growers Supply Company for tailhold, guyline, or tieback trees will not be cut unless prior approval is granted by the BLM.

Rationale for the Decision

Amending existing Permit and Agreement R-1204B between the BLM and Fruit Growers Supply Company will achieve the stated objective of providing Fruit Growers Supply Company legal access to their company lands, while securing BLM access to public lands for safe, economical, and environmentally responsible accomplishment of management objectives of BLM programs. The consequences of amending the existing Permit and Agreement, in lieu of issuing a new one, will not exceed the consequences described in the EA, and will actually be less as this decision does not authorize the requested road construction.

The decision to deny the request to construct a road across BLM-administered lands in Section 31, T. 29 S., R. 4 W., W.M. is based on the presence of nesting goshawks immediately adjacent to the proposed road location. Management direction from the Roseburg District *Record of Decision and Resource Management Plan* (p. 49) specifies that a 30-acre buffer of undisturbed habitat be retained around the nest tree and that human activity and disturbance be restricted within one-quarter of a mile of active sites during the nesting and fledging period. Authorizing the requested road construction would not comply with this direction.

Public Comment

The EA was made available for a 30-day period for public review and comment. Comments were received from one organization. These comments did not provide any new information or identify any relevant issues the BLM should have considered in the analysis, and some do not pertain to this decision.

As this decision does not authorize the proposed road construction described in the Fruit Growers Supply Company Reciprocal Right-of-Way EA, there will be no removal of vegetation or soil disturbance associated with road construction. One other comment, separate from the subject of road construction and road use is addressed below.

“The EA is allowing the timber industry to have free choice of publicly owned mature or old growth trees to facilitate their private land logging operations. Instead, the BLM should not make it so easy to destroy these trees when sensible alternatives are available.”

This is a misinterpretation of the rights being granted under the amendment. As is clearly stated in the EA (p. 5), large, late-seral trees on BLM-managed lands to be used as tailhold, guyline, or tieback trees would not be cut unless approved by the BLM.

Wildlife

The use of existing roads will not affect northern spotted owls because suitable or dispersal habitat will not be removed and potential disturbance activities will not occur within prescribed disturbance threshold distances of any known spotted owl nest site during the critical breeding season from March 1 to June 30.

Use of existing roads will not affect northern goshawks because suitable habitat will not be removed and potential disturbance activities will not occur within one-quarter mile of the known goshawk nest site in Section 31, T. 29 S., R. 4 W., W.M. between March 1 and July 30, or until it is determined that the young have dispersed.

There will be no effects to Oregon shoulderband or Chace sideband snails from the use of existing roads because suitable habitat will not be removed.

Botany

Existing roads are not managed as plant and wildlife habitat, and the use of these roads will not affect any Special Status vascular plants, lichens or bryophytes. There will be no effects to Special Status fungi as there will be no habitat disturbance.

Wayside aster identified in Section 31, T. 29 S., R. 4 W., W.M. in June of 2005 will not be affected because the proposed road construction is not authorized under this decision.

Aquatic Habitat, Fish, and Essential Fish Habitat

As described in the EA (pp. 22-23), there will be no added effects from the use of existing roads to fish and aquatic habitat or Essential Fish Habitat.

Where existing roads cross streams there is little potential for additional sediment to reach streams because the crossings occur on relatively low gradient rocky roads with flat approaches. This concentrates road derived sediment in ditches and cross drains above stream crossings where it is rerouted onto the forest floor, allowing run-off to quickly infiltrate and deposit sediment on the forest floor rather than transport it into streams.

There will be no affect to large woody debris or its source areas because the use of existing roads will not remove any large woody debris from streams or Riparian Reserves.

Stream channels are stable and have riparian vegetation sufficient to prevent erosion caused by high stream flow. Use of existing roads will not disturb stream banks or affect their stability, and no riparian vegetation will be removed allowing for erosion.

Fish access to streams will be unaffected because there will be no new roads crossing fish-bearing streams with the potential to block upstream and downstream migration.

Water Quality

Current road densities and drainage on BLM-administered lands will remain the same within the affected watersheds and there will be no additional contribution by roads to potential changes in peak flows and sediment.

Cultural/Historical Resources

As described in the EA (p. 18), there are no cultural and historical resources on the lands to be amended into the existing reciprocal right-of-way agreement considered important enough to warrant listing on the National Register of Historic Places.

Noxious Weeds

As no road construction is authorized, there will be no soil disturbance or alteration of current vegetative conditions that would create a favorable environment for the establishment or spread of noxious weeds or non-native invasive plant species.

Effective Date of the Decision

This is a lands decision on a right-of-way action made in accordance with governing regulations at 43 Code of Federal regulations (CFR) Subpart 2812. All BLM decisions issued under these regulations will become effective on the day after the expiration of the appeal period, 30 days following publication of the legal notice of decision, where no petition for a stay is filed, or 45 days after the expiration date of the appeal period where a timely petition for stay is filed, unless the Director of the Office of Hearing and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR § 4.21 (b).

Right of Appeal

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board). If an appeal is taken, a written notice of appeal must be filed with this office by close of business (4:30 PM PST) not more than 30 days after the publication of the decision notice in *The News-Review*, Roseburg, Oregon. Only signed hard copies of a notice of appeal that are delivered to the Roseburg District Office will be accepted. Faxed or e-mailed appeals will not be accepted. Information for the filing an appeal is provided on the enclosed Form 1842-1.

According to 43 CFR Part 4, you have the right to petition the Board to stay implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay 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.

In addition to the applicant, Fruit Growers Supply Company, anyone who has participated in the National Environmental Policy Act process for this project through the submission of public comments on the environmental assessment will qualify as a party to the case, as provided for in 43 CFR § 4.410 (b).

However, in order to qualify as an appellant, a "party to the case," you also have the burden of showing possession of a "legally cognizable interest" that has a substantial likelihood of injury from the decision, as described above. Furthermore, you may raise on appeal only those issues raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed, as provided in 43 CFR § 4.410 (c).

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal was filed.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor, and Fruit Growers Supply Company, at the addresses listed below, at the same time such documents are served on this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations at 43 CFR § 4.413 (a). At the end of your notice of appeal you must sign a certification that service has or will be made in accordance with the applicable rules found in 43 CFR §§ 4.410 (c) and 4.413, and specify the date and manner of such service.

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, MS 300-QC
Arlington, Virginia 22203

Regional Solicitor, Pacific Northwest Region
U.S. Department of the Interior
500 NE Multnomah Street, Suite 607
Portland, Oregon 97232

Fruit Growers Supply Company
1445 Gateway Blvd.
Cottage Grove, Oregon 97424

The Board will review any petition for stay and may grant or deny the stay request. If the Board takes no action on the stay request within 45 days of the expiration of the time for filing an appeal, you may deem the request for stay as denied, and my decision will remain in full force and effect until the Board makes a final ruling on the case.

Ralph L. Thomas
Field Manager
South River Field Office

Date

Enclosure (1):
1 - Form 1842-1