



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Ridgecrest Field Office
300 South Richmond Road
Ridgecrest, CA 93555-4436



IN REPLY REFER TO
2800(p)
CAC#46414
CAC#47464
(CA650.55)

Handwritten signatures and date: 9-14-06

JUL 17 2006

DECISION

CERTIFIED MAIL NO: 7005 3110 0004 3393 0937
RETURN RECEIPT REQUESTED

Deep Rose LLC : CACA#46414
1240 S. China Lake Blvd. : Road Right-of-Way
Ridgecrest, CA 93555 :
Attn: Terry Metcalf : CACA#47464
Water Line Right-of-Way

- Right-of-Way Application CACA#46414 Rejected-in-Part
Right-of-Way Application CACA#46414 for Road Authorized-in-Part
Right-of-Way Application CACA#47464 for Water Line Authorized
Right-of-Way Application CACA#47464 Grant Held for Issuance
Construction and Reclamation Bonds Required
Annual Rental Owed for 2006
Cost Reimbursement Agreement Amended
Cost Reimbursement Deposit Required
Grant Offered

On May 7, 2004, the Bureau of Land Management (BLM) received an application from Deep Rose LLC. (Deep Rose) pursuant to Title V of the Federal Lands Policy Management Act of 1976 (FLPMA), as amended, and Title 43 Code of Federal Regulations (CFR) 2800, as amended, for a linear right-of-way (ROW) to install and maintain a 20 foot wide haul access road for the purposes of supporting an exploratory geothermal well field. This application, for road access is for the construction, delivery, operation and maintenance of the project. The application was serialized as CACA#46414.

After serialization, and based on the projects plan of development (POD), BLM advised Deep Rose to file a second ROW Grant application for a temporary use water pipeline, up to 6 inches in diameter, and ancillary pump and storage tank facilities. On July 14, 2005, BLM received a properly

filed application from Deep Rose in accordance with law and regulations as cited above. This case was serialized as CACA#47464. Deep Rose's application is for a 10 foot wide easement to place the temporary pipeline and access road, as well as, up to 10 sites for booster pumps and three sites for water storage tanks on public lands. The booster pump sites will be 6 feet long x 4 feet wide and the water storage tank sites will be 120 feet long x 40 feet wide. These ancillary facilities constitute less than one acre and will therefore be considered part of the overall width of the road ROW and its approximate acreage.

Both ROW applications are to provide access to State lands on the southern end of McCloud Flats located within Section 16, T. 21S., R. 38E., Mount Diablo Meridian, County of Inyo, State of California. Application CACA#46414 is for the ingress and egress road access, and application CACA#47646 provides water pipeline access to the same sites. These ROW's are in support of the construction and development of a geothermal exploratory well field. It is the intent of Deep Rose to drill up to 4 exploratory wells to determine if development of a geothermal resource for electrical generation is viable. This route of access for both ROW's extends for approximately 12 miles from Highway 395 to the entry onto the State lands where the geothermal exploration wells will be drilled.

Within application CACA#46414 Deep Rose initially requested BLM to approve a 20 foot wide (10 feet either side of centerline) ROW. After development of the POD, this application was amended to a 50 foot width (25 feet either side of centerline). In the Environmental Assessment/Environmental Impact Report (EA/EIR) BLM has determined that a 24 foot wide road easement will be sufficient for an exploration project of this nature. As identified in Figure 2.1-2 within EA CA-650-2005-086, in addition to the road access, three truck turnouts that are 70 feet long x 10 feet wide will be needed. Although the overall width of this road ROW will be held at 24 feet, there are two areas along the route that due to terrain or other resource considerations, BLM will authorize a road width of up to 50 feet, if needed. These exceptions will be at the intersection of the Pumice Mine and Deep Rose access roads, and the road segment crossing over Center Pass. Upon the completion of the road construction, BLM will recalculate the final acreage based on the as-built surveys for these two excepted areas, and the turnouts.

Of the 12 miles of road access, approximately 8 miles will be subject to the terms and conditions of a formal ROW grant. As to the remaining 4 miles of road under this ROW application, BLM will not grant a ROW to Deep Rose under the authority of FLPMA. This determination is based on: 1) a portion of the road crosses private land where BLM has no authority to grant legal ROW's; and 2) the remaining portion, although crossing public lands is subject to the statutory authority of Revised Statute (RS) 2477. In accordance with Title 43 CFR 2801.6(b) (5), the BLM does not issue ROW grants on roads which have been constructed and maintained under the statutory authority of RS-2477. Based on road management information provided by the County of Inyo, it is the opinion of the BLM that the paved segment of the Coso Gill Station Road from a point along the boundary between private and public lands east to a point in which it intersects with the Pumice Mine Road has been previously authorized pursuant to the authority of RS-2477.

Based on the existence of both the private land and the RS-2477 ROW, that portion of ROW application CACA-46414, as described below, is hereby rejected. These are described as being within the State of California, County of Inyo, Mount Diablo Meridian, T. 22S., R. 37 E., Section 1:

S1/2NW1/4 and N1/2NE1/4; Section 2: SE1/4 (private), Section 31: Lots 9, 13, 14, 15 and 16; Section 32: Lots 1, 2, 3, & 4; and Section 33: NE1/4SE1/4 (RS-2477), containing approximately 15 acres.

Upon filing Deep Rose's ROW application for the water pipeline and ancillary facilities, BLM required the environmental analysis of the application to be completed at the same time as the road ROW application. The majority of the land applied for under this application follows the same route as the road. The purpose of the pipeline is to support the geothermal exploration well facilities on State land by providing water for dust abatement and drilling operations. This water pipeline is an option to trucking the necessary water supply to the site and operational support areas. The water pipeline will be a surface laid pipeline covering an approximate 16 mile distance across public land. The source and well head is located on private land owned by Deep Rose. This water pipeline route is not subject to RS 2477 and will be fully addressed within this decision.

The ROW's approved by this decision occurs within Public Lands described as:

State of California
Mount Diablo Meridian
County of Inyo

T. 21S., R. 38E., (CACA#46414 Road Access)

Section 03: S1/2SE1/4 and SE1/4SW1/4;
Section 09: E1/2SE1/4;
Section 10: W1/2NW1/4;
Section 11: NW1/4NW1/4;
Section 15: E1/2E1/2;
Section 22: N1/2NE1/4, SE1/4NW1/4, W1/2SE1/4;
Section 28: NE1/4NE1/4, S1/2NE1/4, NW1/4SE1/4 & SE1/4SW1/4; and
Section 33: E1/2E1/2W1/2.

Containing approximately 35 acres.

T. 21S., R. 37E., (CACA#47464 water pipe line)

Section 23: E1/2E1/2SE1/4;
Section 24: SW1/4SW1/4SW1/4;
Section 25: Lots 2, 3, 4, 5, 8 & SW1/4SW1/4SE1/4; and
Section 36: NE1/4 and NE1/4NE1/4SE1/4.

T. 21S., R. 38E.,

Section 03: S1/2SE1/4 and SE1/4SW1/4;
Section 09: E1/2SE1/4;
Section 10: W1/2NW1/4;
Section 11: NW1/4NW1/4;

Section 15: E1/2E1/2;
Section 22: N1/2NE1/4, SE1/4NW1/4, W1/2SE1/4;
Section 28: NE1/4NE1/4, S1/2NE1/4, NW1/4SE1/4 and SE1/4SW1/4;
Section 31: Lots 9, 13, 14, 15 and 16;
Section 32: Lots 1, 2, 3, & 4; and
Section 33: E1/2E1/2W1/2 and NE1/4SE1/4.

Containing approximately 20 acres.

Both ROW applications have been appropriately reviewed through an EA-CA-650-2005-086 in accordance with the National Environmental Policy Act and all other laws, rules and regulations. Based on the EA's findings, in accordance with Title 40 CFR 1508.13 a Finding of No Significant Impact (FONSI) and Decision Record have been signed. All stipulations associated with the FONSI will be carried forward to the specific grants upon their issuance. Additionally, all mitigations identified within EA-CA-650-2005-086 and the POD will be carried forward into the ROW Grant documents for both CACA#46414 and CACA#47464.

The subject applications have met the conditions set forth within the laws and regulations; therefore ROW applications CACA#46414 and CACA#47464 are hereby approved and issued to Deep Rose for a term of 5 years, with a right of renewal. At the request of Deep Rose, the approval for a ROW Grant for CACA#47464 for the water pipeline has been made; however, issuance of the Grant will be held until it is determined by Deep Rose whether or not the ROW is needed for the level of operations associated with the exploratory well operations.

As required under the stipulations set forth within Grant CACA#46414, Deep Rose will be required to pay annual rental for each right-of-way by January 1st of each calendar year and to maintain a cost reimbursement account with a positive balance throughout the life of the ROW Grant. Further, Deep Rose will be required to maintain a construction bond during the development of the road, and a reclamation bond for the life of the Grant.

The amount of the construction and reclamation bond has been determined to be \$150,000.00. This is based on the anticipated costs of reclamation if the BLM is required to complete the work. The amount of the bond takes into consideration the total number acres being disturbed, as well as, the two special resource protection mitigation areas. The bond may be in the form of Surety, CD or Cash and must be in place prior to receiving a Notice to Proceed on construction.

On September 7, 2004, BLM and Deep Rose entered into a Memorandum of Agreement (MOA) for the direct costs associated with the processing of the subject application(s) and grant(s). This MOA is being amended to now address the issue of compliance during construction and the post-construction, case file management and site monitoring. The amended MOA will also cover the final costs associated with the Phase I application processing and grant issuance which has left the cost reimbursement account with a negative balance. At the time of this Decision, the BLM accounting records are only current through June 10, 2006, which identifies a negative balance of \$9,768.00. This figure does not represent the monies charged against this account for the work associated with

the FONSI, ROW grant development and amending the MOA for the next phase of the project. After the ROW Grant is issued, a final accounting will be completed for Phase I of the project. Deep Rose will be billed for the completed work at that time.

As to the amended MOA, BLM requires a deposit of \$42,569.47 to cover the labor and operations costs associated with the construction and monitoring phases of the project and a payment to correct the negative balance in the current account. The total amount due is \$52,337.47. This money will be placed into Deep Rose's cost reimbursement account. Based on the current level of authorization this amount should be sufficient to cover staff and operational costs associated with Phase II construction of the road (excluding the final accounting of Phase I as identified above).

Rental for this ROW Grant has been prorated for calendar year 2006 and an annual billing provided for the remaining years of the Grant. The Grant for CACA-46414 will be in full force and effect at the time they are properly executed by the parties and the fair market value rent is paid to the United States for the use of the ROW's. The first year's prorated rental for ROW Grant CACA-46414 equals \$281.40. In addition to rental, the cost reimbursement amount of \$52,337.47 is also due. Please remit these amounts in separate checks at the time of signing and accepting the terms of the grant. Checks must be made payable to the DOI/BLM. The Grant will be considered properly executed when the applicant signs both original copies of the Grant, returns both of them to our office along with the aforementioned payments, and the Authorized Officer accepts them. One original copy of each document will be returned to you after signature.

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 the enclosed Form 1842-1.

If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from 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 have the burden of proof to demonstrate that a stay would be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law and other pertinent regulation, a petition for a stay of 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 the immediate and irreparable harm if the stay is not granted; and
- 4) Whether the public interest favors granting a stay.

If you have any questions on this matter please contact Michael T. Hogan, Lead Realty Specialist at 760-384-5455.

/s/ Hector A. Villalobos

Hector Villalobos
Field Manager

Enclosures:

- 1) Right-of-Way Grant CACA#46414 (2 Copies)
- 2) Amended Memorandum of Agreement for Cost Reimbursement (2 Copies)
- 3) Map
- 4) Form 1842-1