

COMPATIBILITY DETERMINATION

Use: Right-of-way (Utility). Establishment of utility power line to provide electric to pump station on Clarence Cannon National Wildlife Refuge.

Refuge Name: Clarence Cannon National Wildlife Refuge (NWR)

Establishing and Acquisition Authority(ies):

Refuge Established: August 11, 1964

Refuge Authorities: 16 U.S.C. § 715d (Migratory Bird Conservation Act); 16 U.S.C. § 460K-1 (Refuge Recreation Act)

Refuge Purpose(s):

“...for uses as an inviolate sanctuary, or for any other management purpose, for migratory birds.” 16 U.S.C. § 715d (Migratory Bird Conservation Act)

“...suitable for – (1) incidental fish and wildlife-oriented recreation development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species...” 16 U.S.C. § 460K-1 (Refuge Recreation Act)

National Wildlife Refuge System Mission:

“The Mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”

Description of Use: The proposed use is issuance of a Right-of-Way Permit (ROW), defined as the "right to use and possibly alter the landscape through construction, maintenance, and operation of ... power line, telecommunications line or tower..." on lands under control by the U.S. Fish and Wildlife Service (Service). The Secretary of the Interior, through his authorized representative, the Regional Director, United States Fish and Wildlife Service (Service), in accordance with applicable authorities, and regulations published in 50 CFR 29.21 et. seq., proposes to grant Cuivre River Electric Cooperative, a ROW to provide 3-phase electric power for the sole purpose of operation of the pump station on Clarence Cannon NWR.

The proposed ROW will enter Clarence Cannon NWR at the south boundary in Section 21, Township 52 North, Range 2 East and cross under Bryant’s Creek and end approximately 92

yards into the refuge. The proposed ROW will be 15 feet in width the entire length of the ROW. The ROW will have a total impact of approximately 0.1 acres of refuge. This ROW permit is necessary for Clarence Cannon NWR to operate the pumping station which provides management capability to the 3,751 acre refuge.

Is the use a wildlife-dependent public use? The use of this right-of-way for a power transmission line is not a wildlife-dependent public use. An appropriateness finding has been completed prior to developing this Compatibility Determination.

The issuance of ROW's across units of the National Wildlife Refuge System is governed by the provisions of 50 CFR §29.21. ROW permits of this nature are issued for terms of 50 years, or so long as it is used for the purpose granted, or for a lesser term when considered appropriate.

Where would the use be conducted? The use would be conducted near Annada, Missouri at the Clarence Cannon National Wildlife Refuge located in Pike County, Section 21, Township 52 North, Range 2 East.

See attached maps for the specific location of the transmission line and right-of-way.

How and when would the use be conducted? The use would be conducted continually under these specific terms and conditions referenced in **50 CFR §29.21-4(b)**:

(a) Any right-of-way easement or permit granted will be subject to outstanding rights, if any, in third parties.

(b) An applicant, by accepting an easement or permit agrees to such terms and conditions as may be prescribed by the Regional Director in the granting document. Such terms and conditions shall include the following, unless waived in part by the Regional Director, and may include additional special stipulations at his discretion. See § 29.21-8 for special requirements for electric power lines and § 29.21-9 for special requirements for oil and gas pipelines:

(1) To comply with State and Federal laws applicable to the project within which the easement or permit is granted, and to the lands which are included in the right-of-way, and lawful existing regulations there under.

(2) To clear and keep clear the lands within the easement or permit area to the extent and in the manner directed by the project manager in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such a manner as to decrease the fire hazard and also in accordance with such instructions as the project manager may specify.

(3) To prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the applicant has requested and received from the Regional Director approval of measures the applicant will take to perpetuate the location of aforesaid monument.

(4) To take such soil and resource conservation and protection measures, including weed control on the land covered by the easement or permit as the project manager in charge may request.

(5) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near, lands to be occupied under the easement or permit area, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(6) To rebuild and repair such roads, fences, structures, and trails as may be destroyed or injured by construction work and upon request by the Regional Director, to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(7) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the easement or permit, except where the easement or permit is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages. Where the easement or permit involves lands which are under the exclusive jurisdiction of the United States, the holder or his employees, contractors, or agents of the contractors, shall be liable to third parties for injuries incurred in connection with the easement or permit area. Grants of easements or permits involving special hazards will impose liability without fault for injury and damage to the land and property of the United States up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than \$ 1,000,000.

(8) To notify promptly the project manager in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States in advance of construction such sum of money as the project manager may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(9) That all or any part of the easement or permit granted may be terminated by the Regional Director, for failure to comply with any or all of the terms or conditions of the grant, or for abandonment. A rebuttable presumption of abandonment is raised by deliberate failure of the holder to use for any continuous 2-year period the easement or

permit for which it was granted or renewed. In the event of noncompliance of abandonment, the Regional Director will notify in writing the holder of the easement or permit of his intention to suspend or terminate such grant 60 days from the date of the notice, stating the reasons therefore, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may grant an extension of time within which to complete corrective actions when, in his judgment, extenuating circumstances not within the holder's control such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons warrant. Should the holder of a right-of-way issued under authority of the Mineral Leasing Act, as amended, fail to take corrective action within the 60-day period, the Regional Director will provide for an administrative proceeding pursuant to 5 U.S.C. 554, prior to a final Departmental decision to suspend or terminate the easement or permit. In the case of all other right-of-way holders, failure to take corrective action within the 60-day period will result in a determination by the Regional Director to suspend or terminate the easement or permit. No administrative proceeding shall be required where the easement or permit terminates under its terms.

(10) To restore the land to its original condition to the satisfaction of the Regional Director so far as it is reasonably possible to do so upon revocation and/or termination of the easement or permit, unless this requirement is waived in writing by the Regional Director. Termination also includes permits or easements that terminate under the terms of the grant.

(11) To keep the project manager informed at all times of his address, and, in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(12) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(13) That the grant of the easement or permit shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby. The applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the easement or permit area not actually occupied for the purpose of the granted rights to the extent that it does not interfere with the full and safe utilization thereof by the holder. The holder of an easement or permit also agrees that authorized representatives of the United States shall have the right of access to the easement or permit area for the purpose of making inspections and monitoring the construction, operation and maintenance of facilities.

(14) That the easement or permit herein granted shall be subject to the express covenant that any facility constructed thereon will be modified or adapted, if such is found by the Regional Director to be necessary, without liability or expense to the United States, so

that such facility will not conflict with the use and occupancy of the land for any authorized works which may hereafter be constructed thereon under the authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon continuity of energy and delivery requirements.

(15) That the easement or permit herein granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easement or permit area unless approved in writing by the Regional Director.

Additionally, per 50 CFR § 29.21-8 electric power transmission line rights-of-way, the following terms and conditions apply:

By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, except those which the Secretary may waive in a particular case, in addition to those specified in § 29.21-4(b) (items 1-15 above):

(a) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph and power transmission lines from contact and all highways and railroads from obstruction and to maintain his transmission lines in such manner as not to menace life or property.

(b) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

Special terms and conditions:

(1) Any cultural and/or paleontological resources (historic or prehistoric sites or object including burials or skeletal material) discovered by the easement holder, or any person working on its behalf, on public or Federal land shall be immediately reported to the authorized officer, District Manager, Winona District, Upper Mississippi River National Wildlife and Fish Refuge (507-494-6229). Permit holder, or its representative shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer or a Service approved Archeologist to determine the appropriate actions to take pursuant to the provisions of law and 36 Code of Federal Regulations 800.7 (resources discovered during construction) to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of the evaluation. Any decision as to proper mitigation measures will be made by the authorized officer after consulting the holder.

Why is this use being proposed? The current pumping station on Clarence Cannon NWR is highly deteriorated and is scheduled to be replaced. Currently, two diesel powered engines are used to operate the pumping station. In an effort to utilize a more environmentally friendly and efficient power source, the new station will utilize electric motors for pumping which require 3-phase electricity to operate. This type of electrical power is currently not available on-site, and issuance of the proposed ROW is necessary.

Availability of Resources: It is expected that administrative costs incurred by the Refuge in administration are minimal, and generally limited to a site visit to monitor for line maintenance activities annually. An increased amount of administrative costs are expected to oversee the clearing of the ROW, and placement of new line. It is determined that adequate resources exist to properly manage this Refuge use.

Anticipated Impacts of the Use: Impacts would be minimal as the process for laying the line includes drilling which will result in very little disturbance to the above ground environment. Removal of a few trees and other shrubby material is anticipated along the right-of-way within the refuge. The only trees/shrubs present lie along the banks of Bryants Creek which will extend no more than 45 yards of the total 92 yard distance onto the refuge. All other areas include the creek and mowed levees.

A small concrete pad (6 feet by 6 feet) will be installed approximately 20 yards east of the existing pump station. The pad will be precast with walls to contain the transformer and be placed above major flood levels. Impacts are expected to be minimal due to the expected footprint of the pad, its ability to contain any material which may be lost from the transformer and its positioning above flood levels.

Public Review and Comment:

Determination:

Use is Not Compatible

Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility: To ensure compatibility with National Wildlife Refuge System and Clarence Cannon National Wildlife Refuge goals and objectives and to minimize or exclude adverse impacts as described above, the activity can only occur under a number of stipulations:

