

DECISION MEMO
Patoka Water FLPMA Permit

USDA Forest Service, Eastern Region, Hoosier National Forest
Tell City Ranger District
Orange County, Indiana
Township 1 South, Range 1 West

I. DECISION

A. Description of Decision

My decision is to grant a 10-foot wide buried waterline right-of-way (ROW) permit across 1,000 feet of National Forest System (NFS) land to Patoka Lake Regional Water and Sewer District (Patoka Water) in Orange County, Indiana. The ROW will be adjacent to and east of Orange County road 150. The waterline will be buried in the existing aerial powerline ROW clearing on the west side of the power poles. My decision also includes the project features referred to in Section IV of this document. The location of my decision is displayed on the attached map and is described as Township 1 South, Range 1 West, SESW Section 23.

My decision includes issuing a ten-foot wide ROW authorization or permit for a buried waterline. It will utilize the Orange County aerial power ROW clearing of County Road 150 West. The permit will be authorized under authority of the Federal Land Policy and Management Act of 1976 (FLPMA).

A special use fee is required according to the Code of Federal Regulations at Title 36 Part 251.57 Rental Fees. The rental rate is based on “fair market” value and a fee schedule derived from land values.

Mitigation measures include removing brush in the powerline ROW by mowing (all brush is less than three inches diameter). Two small trees would be removed on the north end of the ROW. The waterline will be buried by digging the trench, burying the line and covering the trench with soil from the trench. The soil will be held in place by seeding and mulching the disturbed soil.

The existing ROW is an “outstanding right” of Orange County REMC and mowing and herbicide may be used to maintain the ROW. Patoka Water will be issued a permit, and it will state that herbicide may not be used to maintain the ROW at this time; however, powerline ROW maintenance will also treat the same ROW as the ROW is shared.

B. Purpose of Decision

The issuance of this waterline ROW permit complies with the Hoosier National Forest (the Hoosier) Land and Resource Management Plan (*Forest Plan*) Forest-Wide Guidance on page 2-23, Special Use Utility Corridors and is consistent with a major goal of the *Forest Plan*: to provide for human and community development (*Forest Plan* page 2-3). My decision responds to a request by Patoka Water to provide water to customers north of Fargo, Indiana by utilizing an existing powerline ROW. The project is in Management Area 2.8, which is associated with general forest management.

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2 and there are no extraordinary circumstances.

A. Category of Exclusion

The waterline ROW permit is within the category of exclusion FSH 1909.15 section 31.2 (3) Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.

B. There are resource conditions that must be considered in determining whether a proposed action warrants further analysis and documentation in EA or EIS. The mere presence of one of these resource conditions does not preclude the use of a categorical exclusion. It is the degree of the potential effect of a proposed action on the resources conditions that determines whether extraordinary circumstances exist. Several resource conditions should be considered in determining whether extraordinary circumstances exist:

1. Threatened and Endangered (T&E) Species or Their Critical Habitat - Wildlife Biologist Clark McCreedy found no T&E species or their habitat in the project area. It was determined that this decision will have 'no effect' on listed species or their critical habitats because no manifest alteration of habitat will occur.

2. Floodplains, Wetlands, or Municipal Watersheds -

Floodplains: Executive Order 11988 directs Federal agencies to avoid adverse impacts associated with the occupancy and modification of floodplains—that is, the area subject to a one percent or greater chance of flooding in any one year. Map validation confirmed that the project is not in or near floodplains and will not affect them.

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Wetlands: Executive Order 11990 directs Federal agencies to avoid adverse impacts associated with destruction or modification of wetlands, which are “ areas inundated by surface or ground water with a frequency sufficient . . . to support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction.” The project is not located in or near wetlands, as was validated by map. This decision will not affect wetlands.

Municipal watersheds: Such watersheds are managed under multiple-use prescriptions in forest plans. There are two municipal watersheds on the Forest, one being Patoka Reservoir and the other Monroe Reservoir. We confirmed by map that the permit area is within the Patoka Reservoir watershed. The proposed buried waterline will utilize an existing utility ROW. The minimal short-term impact will be limited to the road and utility corridor for this short segment crossing Federal land. This decision, with impacts limited to the immediate area of activity, will not negatively affect municipal watersheds.

3. Congressionally Designated Areas - No Congressionally designated areas, such as wilderness, wilderness study areas, national recreation areas, or wild and scenic rivers, exist in or near the project area. The closest wilderness, the Charles C. Deam Wilderness, is 45 miles north of the project. This decision, with impacts limited to the immediate area of activity, will not affect the wilderness, any wilderness study area, or any National Recreation Area. There will also be no impact on wild and scenic rivers.

4. Inventoried Roadless Areas - No inventoried roadless areas exist in the project area (Forest Service Roadless Area Conservation, Final Environmental Impact Study (FEIS) Volume 2 - Maps of Inventoried Roadless Areas, p79). Located 24 miles south of the project area, the 8,000-acre inventoried roadless area on Mogan Ridge will not be affected by this project.

5. Research Natural Areas - There are no research natural areas in the decision area (Forest Plan FEIS, p.2-26). The closest research natural area, Pioneer Mothers Research Natural Area, is 7 miles north of the project. This decision, with impacts limited to the immediate area of activity, will not affect research natural areas.

6. American Indians and Alaska Native Religious or cultural Sites, and

7. Archaeological Sites, or Historic Properties or Areas

Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in, the National Register. Other applicable laws include the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. Similar past projects in this area were determined to have no significant impacts to Native American religious or cultural sites, archaeological sites, or historic properties or areas (Krieger 2003). This decision should not result in significant impacts to such resources. The Patoka Waterline project was

reviewed. No heritage resources will be affected as the trenching and earth-disturbing activities are scheduled only on disturbed soil in the road ROW (Krieger 2003). No historic or prehistoric properties are present, so there will be no impact.

No other extraordinary circumstances were identified.

III. PUBLIC INVOLVEMENT

Initial public involvement for the project included direct mailings (April 9, 2003). One person responded to the letter and was in favor of the project. Permittees (special use permit holders) potentially affected by this decision have been contacted for their input. The scoping letter was sent to 172 individuals and groups from the Tell City Ranger District interested party list.

IV. FINDINGS REQUIRED BY OR RELATED TO OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

Federal Land Policy and Management Act - This act allows the granting of special use authorization for rights-of-way across National Forest System lands. The regulations at 36 CFR 251 guide the issuance of permits, leases, and easements under this act. Permits, leases, and easements are granted across National Forest System lands when the need for such is consistent with planned uses and Forest Service policy and regulations. This decision is consistent with this act.

Forest Plan consistency (National Forest Management Act) - This act requires the development of long-range land and resource management plans (forest plans) and consistency between projects and the *Forest Plan*. The Regional Forester approved the *Forest Plan* in September 1985. Amended seven times since then, the *Forest Plan* provides guidance for all natural resource management activities on the Forest. After reviewing the *Forest Plan* in consideration of this easement, I have decided this decision is responsive to guiding direction contained in the *Forest Plan*, as summarized in the first section (Decision) of this document. This decision is consistent with the standards and guidelines contained in the *Forest Plan* p 2-23 special uses/utility corridors.

Vegetation Manipulation (National Forest Management Act) - This act and its implementing regulations require that vegetation manipulation of tree cover for any purpose must comply with the following seven requirements found at 36 CFR 219.27(b). This project will trench the Orange County REMC ROW clearing along Orange County road 150 West for the waterline; the waterline is to be located on the west side of the power poles in the ROW clearing.

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- Be best suited to the goals in the *Forest Plan*. The applicable goals are stated in Section I of this document. This decision is responsive to those goals and is best suited to meet those goals.

- Assure that technology and knowledge exists to adequately restock lands within five years after final harvest. Restocking is not applicable, as the water and powerline ROW area and the adjacent road ROW will be maintained in an open condition.

- Not be chosen primarily because they give the greatest dollar return or the greatest output of timber (although these factors shall be considered). This decision was based on a variety of reasons. No timber is involved in this project.

- Be chosen after considering potential effects on residual trees and adjacent stands. We considered the effects on residual trees and adjacent stands during development of the *Forest Plan* (1990 Forest Plan Draft EIS p. B6-6). The overall direction and the Standards and Guidelines contained in the *Forest Plan* are designed to provide the desired effects of management practices on the resource values.

- Be consistent with the *Forest Plan*. This decision complies with the *Forest Plan* and provides the desired effect on residual trees and adjacent stands.

- Be selected to avoid permanent impairment of site productivity and to ensure conservation of soil and water resources. This decision avoids impairment of site productivity. The powerline and waterline ROW corridor will be managed as open land as it was before the Hoosier acquired the property.

- Be selected to provide the desired effects on water quality and quantity, wildlife and fish habitat, regeneration of desired tree species, forage production, recreation users, aesthetic values, and other resource yields. This decision provides the desired effect on the above resources. The overall direction, standards, and guidelines contained in the *Forest Plan* are designed to provide the desired effects of management practices on the resource values. This decision is consistent with the *Forest Plan* and provides the desired effect on the above resources.

- Be practical in terms of transportation and harvesting requirements and total costs of preparation, logging, and administration. As the project area is adequately roaded, no new permanent or temporary roads are necessary to carry out this decision. The treatment in this decision is appropriate to accomplish project objectives and is economically practical.

Endangered Species Act - See Section II, Item B1 of this document.

Sensitive Species (Forest Service Manual 2670) - This manual direction requires analysis of potential impacts to sensitive species, those species for which the Regional

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Forester has identified population viability as a concern. There will be no impact to sensitive species as the proponent will use an existing road corridor (McCreedy 2003).

Clean Water Act - This act relates to restoring and maintaining the integrity of waters. The Forest Service complies with the Act through *Forest Plan* guidance (p. 2-7, *Forest Plan* Appendices J and K). This decision incorporates BMPs to ensure protection of soil and water resources. The February 1998 edition of the Forestry Best Management Practices Field Guide is on file at both Tell City and Bedford offices. Additionally, the project does not affect rivers or streams.

Wetlands (Executive Order 11990) - See Section II, Item B2 of this document.

Floodplains (Executive Order 11988) - See Section II, Item B2 of this document.

Federal Cave Resources Protection Act - This act provides direction to secure, protect, preserve, and maintain significant caves, to the extent practical. Site features and field review substantiate that no caves are in the decision area. No known cave resources will be affected by this decision. Subsequently identified caves will be protected (*Forest Plan* p.2-10 to 2-11).

National Historic Preservation Act and Archaeological Resources Protection Act - See Section II, Item B7 of this document.

Native American Graves Protection and Repatriation Act - See Section II, Item B6 of this document.

Environmental Justice (Executive Order 12898) - This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this act. Public involvement for this project did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act - This act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this act.

V. ADMINISTRATIVE REVIEW OR APPEAL

This decision is not subject to administrative appeal. It is not subject to appeal pursuant to 36 CFR 215.8 (4): Decisions for actions that have been categorically excluded from documentation in an environmental assessment or environmental impact statement in pursuant to FSH 1909.15, Chapter 30.

VI. IMPLEMENTATION DATE

This decision may be implemented immediately.

VII. CONTACT PERSON

Further information about this decision can be obtained from Tom Krueger at the Tell City Ranger District (Address: 248 15th Street, Tell City, IN 47586; Voice: 812-547-7051; Fax: 812-546-6144.

VIII. SIGNATURE AND DATE

I have concluded that this decision may be categorically excluded from documentation in an environmental impact statement or environmental assessment because it is within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no extraordinary circumstances that would warrant further analysis and documentation in an environmental assessment or environmental impact statement. My conclusion is based on information presented in this document and the entirety of the planning record.

/s/ *JAMES E. DENONCOUR*
JAMES E. DENONCOUR
District Ranger

October 9, 2003
Date

IX. REFERENCES CITED

Division of Forestry, Indiana Department of Natural Resources. 1998. Logging and forestry BMP's for water quality in Indiana. 85 p.

Krieger, Angie. 2003. Cultural Resource Reconnaissance Report and findings of no historic or prehistoric properties. On file with: Forest Supervisor, Hoosier National Forest; 811 Constitution Ave.; Bedford, IN 47421.

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McCreedy, Clark. 2003. Biological Evaluation for Federally Threatened and Endangered Species, Determination of no presence or critical habitat of protected species. On file with: Forest Supervisor, Hoosier National Forest, 811 Constitution Ave., Bedford, IN 47421.

McCreedy, Clark 2003. Biological Evaluation for Regional Forester Sensitive Species, Management Indicator Species, Forest Species of Concern, Determination of no presence or critical habitat of protected species. On file with: Forest Supervisor, Hoosier National Forest, 811 Constitution Ave., Bedford, IN 47421.

U.S. Department of Agriculture, Soil Conservation Service and Forest Service, 1984. Soil Survey of Orange County Indiana. 145 p.

U.S. Department of Agriculture, Forest Service. 2000. Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2 – Maps of Inventoried Roadless Areas. Washington, DC. 222 p.

U.S. Department of Agriculture, Forest Service. 1991a. Land and Resource Management Plan, Final Environmental Impact Statement, Hoosier National Forest. 177 p.

U.S. Department of Agriculture, Forest Service. 1991b. Land and Resource Management Plan, Plan Amendment, Hoosier National Forest. 90 p.

U.S. Department of Agriculture, Forest Service. 1990. Land and Resource Management Plan Draft Environmental Impact Statement, Hoosier National Forest. 294 p.

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