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Bureau of Land Management Contact: Tom Gorey

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BLM to Issue Guidance on Existing and Proposed Uses Within Railroads' Rights-of-Way Authorized under the 1875 Act

Bureau of Land Management Director Bob Abbey today announced that he will issue guidance shortly in light of the Interior Department Solicitor's issuance of Opinion M-37025, a legal opinion regarding a railroad's authority to authorize activities within a right-of-way authorized under the General Railroad Right-of-Way Act of 1875 (1875 Act).

The Solicitor's opinion, known as a Memorandum or "M" Opinion, clarifies a railroad's authority to allow uses within an 1875 Act railroad right-of-way is limited to activities that derive from or further a railroad purpose, and partially withdraws a 1989 M Opinion that concluded a railroad may undertake or authorize any activities within their 1875 Act rights-of-way, regardless of purpose. The 1875 Act was repealed by the Federal Land Policy and Management Act (FLPMA) in 1976, but rights-of-way established prior to the enactment of FLPMA were recognized by Congress as valid existing rights. The new Opinion is based, in part, on the fact that the 1989 Opinion is inconsistent with a longstanding Supreme Court interpretation of the 1875 Act and two more recent court decisions that did not follow the prior opinion's interpretation.

"As we move forward with implementation of this opinion, we will evaluate future and prior uses on a case-by-case basis. This opinion clarifies BLM's responsibilities to ensure a fair return to taxpayers from commercial uses of public lands," stated Director Abbey.

As a result of Opinion M-37025, the BLM will issue guidance shortly to its field offices on a process for evaluating proposed new uses as well as initiate a review of existing uses on railroad rights-of-way granted under the 1875 Act. After completing this review of existing uses, the BLM will issue additional guidance on a process for evaluating those uses within 1875 Act rights-of-way in light of the new M Opinion. Proposed new uses within 1875 Act ROWs will be evaluated as they occur. If a railroad purpose exists for a proposed use, then no further action would be required by the BLM and the activity could be authorized by the railroad rights-of-way holder at its discretion. If, however, the proposed activity does not derive from or further a railroad purpose, then the proponent of the proposed use would have to submit an application to the BLM that would be processed in accordance with applicable laws, regulations, and agency policies. "Railroad purpose" is described further in the new Opinion.

A copy of Opinion M-37025 is available at <http://on.doi.gov/sWG635> . The BLM has also prepared Questions and Answers that provide additional information about the new opinion, which are available at <http://on.doi.gov/sVqwOu> .

Interested parties should contact the BLM's Washington Office, Branch of Rights of Way, at 202-912-7342 for further information concerning Opinion M-37025.