

FINDING OF NO SIGNIFICANT IMPACT

ISSUE PERMIT FOR INSTALLATION OF PUBLIC TELECOMMUNICATIONS EQUIPMENT

Lake Chelan National Recreation Area

May 2009

Purpose and Need

The purpose of this action is to issue a Special Use Permit to Westgate Communications, LLC, (a public telecommunications carrier doing business as “WeavTel”) to install and maintain public telecommunications equipment on NPS-owned land and facilities in Lake Chelan National Recreation Area. This action is needed in response to a revised request from WeavTel according to the Universal Service provisions of the Telecommunications Act of 1996 and associated regulatory policy guidance from the federal executive branch.

Overview and History of the WeavTel Proposal

In June 2001, the Washington Utilities and Transportation Commission (WUTC) issued a request to the telecommunications industry to provide telephone service to the private community of Stehekin (WUTC Docket No. UT-013060). This action was in response to requests from various members of the community who petitioned the WUTC for assistance in receiving public phone service. WeavTel was the only company that responded to the WUTC request.

WeavTel’s original proposal for phone service requested, among other things, use and occupation of private lands and National Park Service lands within Lake Chelan National Recreation Area. In October 2001, WeavTel contacted the National Park Service to begin the process of securing a permit to install telecommunications equipment on federal land as part of their effort to establish a public phone system.

The National Park Service began formal public scoping on the WeavTel proposal in February 2002. This process included public meetings in Stehekin and Chelan; written comments were also solicited. In April 2002, the National Park Service provided WeavTel with a summary of public scoping comments received, and stated its intent to begin preparation of an Environmental Assessment (EA) upon receipt of written authorization to proceed. WeavTel responded in November 2003 and asked the NPS to proceed with the EA process.

From January 2004 through September 2004, the NPS and WeavTel engaged in a series of written exchanges and at least one meeting to clarify the details of the proposed action because WeavTel’s proposal had substantially changed from its original design. For example, the design for the fiber optic “backbone” of the system had changed from overhead placement of fiber optic cable on the Chelan P.U.D. power line poles, to trenching and burying fiber optic cable down the Stehekin Valley Road and Company Creek road corridors.

In November 2004 the NPS began preparation of an EA with the goal of reaching a decision by April 2005 on whether or not to authorize installation of telecommunications equipment on NPS land. The EA was released on May 31, 2005. Various factors delayed the decision-making process including recovery from severe flood damages and issues involving the need for private property easements.

The NPS initially decided in July 2005 to deny WeavTel's request because alternative forms of telecommunications were readily available in the Stehekin Valley, and the proposed phone service would not significantly enhance emergency response capabilities. Shortly thereafter, WeavTel responded with a formal request for reconsideration. The National Park Service, with assistance from the Office of the Regional Solicitor, conducted a thorough review of that request, including a detailed analysis of regulatory and policy guidance.

In accordance with the conclusions of the EA, the public comments received, and the materials provided by WeavTel in their formal request for reconsideration of the permit denial, the NPS determined the proposal did not constitute a major federal action that would significantly affect the quality of the human environment. A Finding of No Significant Impact (FONSI) was approved on October 19, 2005.

As stated in the FONSI, the NPS would only issue WeavTel a Special Use Permit for use of federal land. However, to secure a Special Use Permit and implement the complete proposal, WeavTel would need to (a) acquire easements from private landowners whose property crosses the lower Stehekin Valley Road and Company Creek Road—or demonstrate that easements were not required; and (b) secure all necessary permits and approvals from Chelan County. WeavTel subsequently filed suit against the NPS, alleging it lacked the authority to impose the aforementioned permit conditions.

In September 2006, WeavTel submitted a substantially revised proposal which included partial wireless infrastructure so as to avoid crossing four parcels of private property. In addition, WeavTel no longer proposed to install a 25-foot tower with wireless receiver on NPS property adjacent to the Stehekin Valley Road in the vicinity of mile post 8 (WeavTel, R. Weaver, pers. comm., 2007). These substantial modifications, prompted preparation of another EA.

The revised EA was completed June 2007. Several substantive public comments requested that wireless technology be considered for the entire telecommunications system as a way to avoid extensive trenching and claims by WeavTel of the ability to exercise eminent domain. Further discussions with WUTC staff revealed their regulations are designed to insure quality service and do not specify the type of technology. In response to public comment, to reduce environmental impact and to avoid issues of crossing private land, the NPS requested WeavTel consider design of an all-wireless system. As a result, WeavTel submitted a revised proposal in August 2007 to install and maintain an all-wireless telecommunication system.

In December 2007, a consent order was issued, US District Court Eastern District of Washington # CV-06-0062-EFS "Consent Order and Judgment" (appendix A) requiring the following:

1. The NPS to issue a Finding of No-Significant Impact (FONSI) for the installation, maintenance and operation of a public telecommunications system on NPS managed lands and facilities in the Lake Chelan National Recreation Area.
2. The NPS to issue a Special Use Permit to WeavTel to install, maintain and operate a wireless telecommunications system. Should the wireless system be determined ineffective for its designed purpose, the NPS agrees to issue a Special Use Permit to allow the burying of fiber optic cable on lands administered by NPS as necessary to establish reliable telecommunications where wireless telecommunications are not feasible.
3. WeavTel to reimburse the NPS for costs of completing compliance documentation as required by the National Environmental Policy Act.

Management Alternative Selected for Implementation

The NPS will issue WeavTel a Special Use Permit to occupy lands administered by NPS in order to install, maintain and operate an all-wireless telecommunications system. Should the wireless system be determined ineffective for its designed purpose, the NPS will rescind the Special Use Permit for an all-wireless system and issue another Special Use Permit to allow both wireless technology and the burying of fiber optic cable as necessary where wireless telecommunications are not feasible. Should fiber optic cable be necessary, the Special Use Permit will only authorize burying on NPS administered lands and will not authorize crossing of private land. This alternative will result in less ground disturbance and telecommunications infrastructure, consequently reducing environmental impact when compared with Alternative B of the 2007 Environmental Assessment.

The NPS will only issue a Special Use Permit for occupation of federal land, including operation of a telecommunications service to the public within Lake Chelan National Recreation Area. The Special Use Permit does not affect the regulatory processes of Chelan County, the Washington Utilities and Transportation Commission, or other federal agencies with regulatory jurisdiction over public telecommunications service or equipment (e.g. the Federal Communications Commission). This FONSI and the Special Use Permit do not authorize nor endorse any actions proposed on private land. Issues relating to actions on private land are to be handled between WeavTel, the private land owners, Chelan County and the State of Washington. Any private land right-of-way issues must be resolved between WeavTel and the property owner either through negotiation and purchase or eminent domain proceedings. The NPS will not facilitate or engage in any eminent domain action. Such proceedings would be exclusively between WeavTel and the State of Washington.

The project will help to enable public telecommunications services for residents and businesses in the Stehekin Valley. All construction and maintenance of the proposed infrastructure on federal land will be conducted or contracted by WeavTel. All work with potential to affect natural and cultural resources will be monitored by the NPS.

WeavTel will construct its telecommunications system in two phases. Construction of Phase I will begin spring 2009. The first phase will provide coverage for telecommunications service

from the Stehekin Landing down lake to Moore Point (approximately 5.5 miles) and extend from the Landing up valley approximately 2 miles. The second phase will provide coverage for telecommunications service to customers up valley of Stehekin Valley Rd mile 2 to the Company Creek Road antenna site (NPS Tract # 07-178) on the west side of the Company Creek Road near the end of the road.

Construction of Phase II will not commence until installation of Phase I is complete and an effective level of service is provided. Should installation of fiber optic cable or other infrastructure be necessary to provide effective service, a new Special Use Permit will be issued to authorize infrastructure installation on NPS administered lands. Phase II work will not begin on NPS administered areas until connected actions proposed to be undertaken on non-NPS areas have been reviewed and approved by local regulatory agencies. If any revision of the system results in a reduced need for infrastructure, the materials will be removed and the site restored to natural appearing conditions.

The following section describes the specifications, construction details and locations of the telecommunications infrastructure for the all-wireless system.

Phase I. Wireless Telecommunications Infrastructure at Stehekin Landing

1. NPS Satellite Antenna / Radio Antenna (behind Golden West Visitor Center)
 - 2 “Yagi” antennas (24”x 6”) attached to existing NPS antenna.
 - 1 “Sector” antenna (48”x13”) attached to existing NPS antenna.
 - Radio device in existing NPS Electronics Hut
 - 1 Channel unit in NPS Electronics Hut
 - 1 Protected Power supply in NPS Electronics Hut
 - Twisted pair and coax to antennas

2. Water Quality Lab / Office (outside of building)
 - Electronics box on side of building
 - Power from building into electronics box
 - Protected power supply
 - 2 “Yagi” antennas on 6 ft pole
 - 1 “Sector” antenna on pole

3. Waste Water Treatment Plant (WWTP)- outside the fenced area
 - 4 meter antenna (satellite dish) on a 13ft² concrete pad.
 - 1 building similar to NPS Testing Hut to house electronics.
 - 2 “Yagi” antennas on side of electronic building
 - Coax and Twisted pair to antennas.

Phase II. Wireless Telecommunications Infrastructure – Remainder of Lower Stehekin Valley

There is no infrastructure proposed for installation at this time. The following sites have been identified to accommodate infrastructure. Final site selection is dependent on Phase I results.

4. NPS Tract #04-170 (vicinity of the “Pickens A-frame”)
5. NPS Tract #05-122 (NPS housing – the “Castle” Residence)
6. NPS Tract # 06-110 (NPS Maintenance Shop)
7. NPS Tract # 07-178 (Company Creek Rd. antenna site identified in 2007 environmental assessment)

Other Management Alternatives Considered in the Environmental Assessment

No action – continue Current Management (Alternative A)

As required by the regulations for implementing the National Environmental Policy Act, the No Action Alternative must be analyzed in all Environmental Assessments because it provides the baseline for the analysis of other “action” alternatives. In this instance, the “No Action” alternative analyzed the impact of continuing current management activities without implementing the proposed action.

Specifically, the NPS would not issue a Special Use Permit to WeavTel to build and operate their proposed telecommunications infrastructure using NPS facilities and lands within the Lake Chelan National Recreation Area (NRA). It is assumed that homeowners, businesses, and visitors would continue to use various commercial services that are currently available (e.g. satellite-based internet). It is also assumed that the existing public telephone service WeavTel is currently providing on private lands within Lake Chelan NRA would remain in operation.

Alternatives Considered but Dismissed

Limit the public phone system to satellite phones only

This alternative was considered but rejected as a stand-alone alternative because the use of satellite phones would be beyond the scope of the WeavTel proposal, and outside the jurisdiction of the Washington Utilities and Transportation Commission. Satellite phones, however, are one commercially available option for telecommunications services in Stehekin currently. Their use is described in the No Action alternative.

Environmentally Preferred Alternative

Alternative A, No Action, would result in the least impact to the biological and physical environment of Lake Chelan NRA; therefore it is considered the Environmentally Preferred Alternative.

Mitigation Measures

Construction, Maintenance, Operational Details and Mitigation Measures

The following measures will be implemented in order to lessen the impact of the selected action on the resources and values of Lake Chelan NRA.

1. Install wireless technology to the greatest extent possible while still providing an effective level of service (as determined by the WUTC) to minimize environmental impacts.
2. Above ground structures and facilities will be sited or screened so as to minimize impacts to the view shed. Equipment will be collocated with NPS facilities where feasible; antennas will be camouflaged; and any structures housing equipment will be constructed

according to the compatibility standards of the GMP (e.g. wood-sided, non-reflective roofs, natural appearing colors, anodized coatings).

3. Portions of the Project Area lie within the 100-year floodplain and high flood influence areas. Telecommunications equipment in these areas will have automatic shutdown circuits and related safety features.
4. Stehekin currently suffers periodic shortages of electrical power due to high seasonal demand for electricity and limits on generational capacity due to the aging hydroelectric generation facility. To minimize demand for electricity, WeavTel facilities will be heated with LP gas as opposed to inefficient electrical induction-type heaters. The security plan if necessary will use a listening approach (two-way intercom) as opposed to lighting.
5. Construction equipment will be thoroughly cleaned and will be inspected by NPS personnel prior to use to minimize the risk of importing invasive weeds.
6. Construction activity within 1000 feet of an occupied residence will be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday to Friday; and 7:00 a.m. to 8 p.m. on weekends.
7. Any activities requiring traffic delays will be limited to 15 minutes or less and will not delay traffic during the times of ferry boat arrival and departure. WeavTel will also provide traffic control as needed.
8. All construction and maintenance activities within historic structures or districts will comply with the National Historic Preservation Act. This includes Section 106 clearance and approval in advance by NPS Cultural Resource Dept. and if appropriate, the Washington State Historic Preservation Officer.
9. In keeping with NPS “green power” goals, incorporation of alternative energy sources such as solar power for lighting or other energy requirements is strongly encouraged. Outdoor lighting must be “night sky” amenable.

Public Review

A public scoping letter dated February 20, 2007 was sent summarizing the history of the WeavTel proposal since 2005 and informing the public of WeavTel’s revised proposal and inviting public comment. Nineteen comments were received.

The EA was released for public review from June 13, 2007 to July 11, 2007. Hard copies of the document were mailed to 143 individuals, organizations, agencies and public libraries in Wenatchee and Chelan, Washington. An electronic copy was placed online at the NPS Planning Environment and Public Comment database. A News Release was also sent out to a wide variety of news media outlets.

Fourteen public comment letters and one agency comment letter were submitted during the public review period of those fourteen comments, twelve opposed the proposed phone service and two were in support. Several of the comments in opposition included the following issues:

a) there are more sophisticated wireless technologies available to provide phone service and these should be considered as an alternative to the current proposal b) the EA lacked sufficient specificity with respect to demand for phone service c) the EA lacked specificity necessary to comment adequately on the analysis d) the proposed telecommunications infrastructure would need to be protected from flooding, and those protective measures would further restrict the Stehekin River and its associated floodplain processes e) general concern for the 25' tower at the end of Company Creek Rd. The two letters were in support of the phone system for personal convenience and emergency situations.

Agency Consultation

Washington Utilities and Transportation Commission

The National Park Service consulted with staff from the Washington Utilities and Transportation Commission when preparing the EA which included discussions of the use of wireless technology as an alternative to burying fiber optic cable.

Chelan County Planning Dept and Sheriff

The National Park Service consulted with several Chelan County officials when preparing the EA to discuss private land constraints and whether phone service would improve public safety.

U.S. Fish and Wildlife Service (USFWS)

During the public comment period, the NPS informally consulted with the USFWS. The consultation included a written Biological Assessment (BA) describing the potential effects of the proposed action. The BA concluded the project “may affect, but is not likely to adversely affect” any federally listed species that may be present in the Lower Stehekin Valley. The USFWS issued a letter of concurrence to the NPS on August 3, 2007. The concurrence was issued with the condition that the proposal be implemented as described in the BA.

Why Selected Alternative Will Not Have a Significant Effect

The NPS has determined that the selected alternative can be implemented with no significant adverse impacts on natural or cultural resources, ecosystem functions and values, human health and safety, socioeconomic considerations or NPS operations. The following criteria were used to determine the significance of each impact:

Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts that require analysis in an EIS

No major adverse impacts were identified that would require analysis in an EIS. The selected alternative will cause adverse, minor and long-term impacts to soil resources and vegetation. There will be adverse, short-term and negligible impacts to water resources, air quality, and wildlife. Impacts to rare and listed species of wildlife range from No Effect to Not Likely to Adversely Affect; there will be no harm to listed species. Public phone service will have a beneficial financial impact of up to \$900-\$1,140/year for those residents and businesses who secure the public service in place of commercial alternatives. Adverse impacts to the social fabric of the community will be negligible to minor and adverse, and will largely depend upon individual values and the degree to which commercial telecommunications technologies continue to proliferate in the Valley. The cumulative impact to the biological and physical environment will be adverse, and negligible to minor in intensity.

Effects on public health and safety

Past comments on this project expressed concern for health risk associated with Radio Frequency exposure (“RF”). WeavTel will be required to demonstrate compliance with all FCC guidelines as a condition of their Special Use Permit. Also, technical specification data provided by WeavTel indicate RF exposures well below current FCC guidelines.

The selected alternative may indirectly enhance the safety of residents and visitors by offering an additional telecommunications alternative to those already available to residents and visitors. However, based upon information provided by EMS personnel familiar with Stehekin, the availability and quality of medical and emergency services will probably remain unchanged since the limiting factor for emergency medical services is the distance and isolation of Stehekin as opposed to the limited availability of telecommunications services. Therefore, the indirect impact on the health and safety of residents and visitors will be negligible.

Unique characteristics of the area (proximity to historic or cultural resources, wild and scenic rivers, ecologically critical areas, wetlands or floodplains, and so forth).

The NPS has determined the reach of the Stehekin River within the Project Area is eligible for designation as “Recreational” under the Wild and Scenic Rivers Act. Silt fencing will be used to prevent sediment from entering the Stehekin River and its tributaries. WDFW may also require other measures on a site-specific basis. These measures will mitigate to a negligible level the potential adverse impact to surface waters during construction and future maintenance of the system. No other unique characteristics of the area will be adversely affected.

Degree to which impacts are likely to be highly controversial or are highly uncertain or involve unique or unknown risks

During the 30-day review period, twelve comments were received in opposition to the proposed action. None of the comments identified any substantive issues beyond those evaluated in the EA. Potential impacts that could result from the selected alternative are not likely to be uncertain or involve unique or unknown risks since similar wireless communication systems have been installed in Stehekin and other locations. During scoping as well as in comments on the previous EA, there were no such impacts.

Whether the action may establish a precedent for future actions with significant effects, or represents a decision in principle about a future consideration

Issuing a Special Use Permit neither establishes a precedent for future actions with significant effects, nor represents a decision in principle about a future consideration.

Whether the action is related to other actions that may have individual insignificant impacts but cumulatively significant effects.

The selected alternative will have a negligible to minor, adverse cumulative impact to the biological and physical environment in the Lower Stehekin Valley because the impacts will be barely detectable given the previously disturbed conditions in the Project Area. Modern technology, including other forms of private telecommunications services, will continue to permeate the vicinity of the Project Area irrespective of the proposed service. This trend

contributes to the gradual but cumulative shift from historic to modern in the visual character of the Project Area.

Degree to which the action may adversely affect historic properties in or eligible for listing in the National Register of Historic Places, or other significant scientific, archeological, or cultural resources.

The sites identified for infrastructure have been surveyed for historic structures and archeological resources. No historic or archeological resources have been identified at these sites. Because this action will have no effect on known historic cultural resources, the State Historic Preservation Office was not consulted for the project.

Degree to which an action may adversely affect an endangered or threatened species or its habitat.

The NPS determined that the selected alternative will have no effect on bull trout and that it may affect but is not likely to adversely affect bald eagle, gray wolf, Canada lynx, grizzly bear, northern spotted owl, pacific fisher, California wolverine, western gray squirrel, Townsend's big-eared bat, northern goshawk, golden eagle, merlin, flammulated owl, Vaux's swift, Lewis' woodpecker, black-backed woodpecker, pileated woodpecker, bull trout, western toad, Columbia spotted frog. The US Fish and Wildlife Service concur with these determinations.

Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.

The selected alternative does not violate any federal, state, or local law, or requirements imposed for protection of the environment.

Impairment

The impacts documented in the EA, and summarized above, will not affect resources or values key to the natural or cultural integrity of the Lake Chelan National Recreation Area. Nor will the impacts alter opportunities for public enjoyment of Lake Chelan National Recreation Area. Therefore, the proposed action will not violate the NPS' Organic Act of 1916 or related provisions of law.

Appendix A. Consent Order

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NOV 28 2007

U.S. ATTORNEY
SPOKANE, WA

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WESTGATE COMM., LLC, d/b/a/
WEAVTEL,

Plaintiff,

vs.

U.S. NATIONAL PARK SERVICE, et
al.

Defendants.

NO. CV-06-0062-EFS

CONSENT ORDER AND
JUDGMENT

The parties, Westgate Communications, d/b/a Weavtel, Plaintiff, and the United States of America and the National Park Service (NPS), et al., Defendants, wish to settle all issues arising out of the allegations of this case involving the issuance of a Permit to Plaintiff for certain activities on lands administered by Defendant, and hereby agree to the entry of this Consent Order as indicated by the signatures below. This Consent Order constitutes a full and final resolution of the claims set forth in the Complaint and any and all claims that could be brought by Plaintiff to install, maintain and operate telecommunication services in and on lands owned by the United States of America and managed by the National Park

CONSENT ORDER AND JUDGMENT - 1

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1 Service in the Stehekin Valley within Lake Chelan National Recreation Area.
2 Therefore, it is hereby Ordered, Adjudged and Decreed as follows:
3 1. Defendants United States of America and the National Park Service
4 shall issue a Finding of No-Significant Impact (FONSI) for the installation,
5 maintenance and operation of a public telecommunications system on NPS
6 managed lands and facilities in the Lake Chelan National Recreation Area. This
7 FONSI is based on the proposed activities already reviewed by NPS as required by
8 NEPA. Additionally, Defendants will issue a Special Use Permit to Plaintiff to
9 install, maintain and operate a wireless telecommunications system. Should the
10 wireless system be determined ineffective for its designed purpose, the NPS agrees
11 to issue a Special Use Permit to allow the burying of fiber optic cable on lands
12 administered by NPS as necessary to establish reliable telecommunications where
13 wireless telecommunications are not feasible, but in no event will permission be
14 given beyond that set forth in the Environmental Assessment issued by the
15 National Park Service in June, 2007.
16 2. Plaintiff shall pay to Defendants the costs incurred by Defendants in
17 preparing both the initial Environmental Assessment and the Environmental
18 Assessment prepared in June, 2007. The balance remaining due on the first
19 Environmental Assessment is \$6,876.58. The cost incurred for preparation of the
20 second Environmental Assessment is \$3, 682.00.
21 3. This Consent Order constitutes a judgment against Plaintiff in the
22 amount of \$10,558.58.
23 4. A copy of this Order shall be provided to the USDA Rural Utilities
24 Service (RUS). Plaintiff shall provide written authority to the RUS to direct a
25 portion of loan monies, otherwise payable to Plaintiff, to the National Park Service
26 to satisfy the judgment set forth above. If otherwise legally permitted to do so, at

27 CONSENT ORDER AND JUDGMENT - 2

28 P70927jmm.PD1.wpd

1 the time loan proceeds are released to Plaintiff, the RUS shall pay to Defendants a
2 portion of the proceeds to ~~NPS~~ to satisfy this judgment. Nothing in this Consent
3 Order prevents Defendants from pursuing other enforcement remedies to collect
4 this judgment. A Satisfaction of Judgment shall be entered when Plaintiff has fully
5 paid the amount of the Judgment.

6 5. All parties shall be responsible for their own attorney's fees and Court
7 costs.

8 **IT IS SO ORDERED** this ____ day of _____, 2007.

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EDWARD F. SHEA
United States District Judge

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Approved as to form and content:

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For Plaintiff, WESTGATE COMM.,
14 LLC, d/b/a/ WEAVTEL

For the Defendants, United States
of America, et al.


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26 RICHARD WEAVER
27 Title: MANAGER OF OPS

28 CONSENT ORDER AND JUDGMENT - 3

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