

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT**

Shoshone Field Office
400 West F Street
Shoshone, ID 83352

Decision Record

**Monument Resource Management Plan
Amendment and Buschhorn Sale**

IDI-35577

NEPA # DOI-BLM-ID-T030-2010-0005-EA

INTRODUCTION:

The Bureau of Land Management (BLM), Shoshone Field Office, has conducted an Environmental Assessment (EA) and Plan Amendment (DOI-BLM-ID-T030-2010-0005-EA) to assess a land sale proposal submitted to the BLM by Todd and Bridget Buschhorn (Applicant). The proposal identifies 7.45 acres of public land adjacent to the Applicant's private property in Jerome County to be sold to the Applicant to resolve an unintentional trespass when their residence was built. Disposal of public lands is allowable on BLM-administered lands at the discretion of the Secretary of the Interior or their delegated officer pursuant to Title II of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, and the BLM regulations at 43 Code of Federal Regulations (CFR) 2700. The disposal of the proposed parcel is consistent with the Monument Resource Management Plan, as amended. The EA and Plan Amendment analyze the environmental effects of the proposal; document the findings; and determine that the sale meets disposal criteria as described in FLPMA Sec. 203(a).

The BLM is proposing to dispose of a parcel of public land in response to a proposal submitted by the Applicant. The disposal of the 7.45 acre subject parcel in fee simple would allow the Buschhorns to legally gain clear title to their existing facilities and to acquire the land with the unauthorized improvements. The sale would allow the BLM to dispose of part of an isolated parcel of public land, which is currently encumbered by improvements associated with the unauthorized development.

An EA (DOI-BLM-ID-T030-2010-0005-EA) was prepared describing a proposed action and alternatives. This EA is available at the following website: <http://www.blm.gov/id/st/en/info/nepa.html> or at the Shoshone Field Office, and is incorporated by reference for this Decision Record.

PLAN CONFORMANCE AND CONSISTENCY:

The 1985 BLM Monument Resource Management Plan, as amended, (2003 Amendments to Shoshone Field Office Land Use Plans for Land Tenure Adjustment and Areas of Critical Environmental Concern) identifies this parcel of land to be within the adjustment area of land

tenure Zone 4. Zone 4 lands are small to medium-sized blocks of public lands that are isolated from one another and from other public land tracts in the Field Office area. The general management philosophy of Zone 4 is to allow disposal of public lands through sale or exchange. This parcel is available for disposal as described in the 2003 Amendment; however, a plan amendment was prepared to validate that the parcel has been screened according to the process outlined in the 2003 Amendment and found to meet the FLPMA criteria for sale. Notice of this process was published in the Federal Register on May 18, 2011. All action alternatives met the FLPMA criteria for sales, under Sec. 203 (a) (1) – “such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency”. This disposal involves an isolated Federal parcel with no public access, primarily surrounded by private farmlands.

Disposal of public land through sales actions at the discretion of the Secretary of the Interior or their delegated officer is allowable per Title II of the FLPMA, as amended, and the BLM regulations at 43 CFR 2700. Section 2711.3-5 allows for the use of a direct sale action when the public benefit would best be served by this type of disposal action.

DECISIONS:

This Decision Record contains two components:

- 1) a land use plan amendment identifying 7.45 acres described as Boise Meridian, Township 10 South, Range 19 East, Section 25: Lot 10 as available for sale, approved by the Idaho State Director; and
- 2) an implementation decision to sell said property to the Applicant.

RATIONALE FOR THE DECISIONS

The decision to offer the Applicant 7.45 acres of public land, including both surface and subsurface estates, via a direct sale is in conformance with the Monument Resource Management Plan (RMP), as amended. It has been determined that the lands are not needed for Federal purposes and that conveyance is consistent with current BLM land use planning as per the amendment approved in this Decision Record.

Per 43 CFR 2711.3-3(a), direct sales may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to: ... (3) there is a need to recognize an authorized use such as an existing business which could suffer a substantial economic loss if the tract were purchased by other than the authorized user; or (4) the adjoining ownership pattern and access indicate a direct sale is appropriate; or (5) a need to resolve inadvertent unauthorized use or occupancy of the lands.

The subject parcel of public land has been under a land use permit since 2008 for occupancy of the residence and agricultural purposes, of which the Applicant is the current permit holder. The Applicant owns the adjoining private property, approximately 120 acres on the north and east sides. Authorization of the direct sale would allow for the subject parcel to be formally

consolidated with the Applicant's adjacent private property for continued agricultural and residential purposes while alleviating the unauthorized uses. It was determined that the No Action alternative would not allow for the land transfer and would not best meet the purpose and need; it would also require relocation of the residence and removal of all other structures (including the septic tank) and cause economic hardship to the Applicant. A competitive sale was not selected because there is no legal access to this parcel except through the Applicant's private property and there is a need to recognize the economic loss if the tract were purchased by someone other than the Applicant. A smaller parcel (less than 7.45 acres) was not selected because part of the purpose and need was to resolve the agricultural trespass at the same time as the residential trespass; the agricultural trespass existed prior to the purchase of the adjacent private property by the Applicant. A smaller parcel than 7.45 acres would not resolve the agricultural trespass and would leave a small strip (less than 4 acres) of BLM land between a residence and a cultivated field.

In October 2009, the Applicants proposal to acquire public land through a direct sale was listed as an action for which the BLM was preparing an EA on the BLM Idaho National Environmental Policy Act (NEPA) database webpage. A Notice of Realty Action (NORA) describing the proposed sale and soliciting public comments was published in the Federal Register on April 29, 2010. The NORA was also published in the Times-News on May 7, 13, and 20, 2010, and sent to the interested parties of record. A final NORA was published in the Federal Register on May 23, 2011. The final NORA was also published in the Times-News on June 26, July 3, and 10, 2011. A Notice of Intent to Prepare a Resource Management Plan Amendment for the Shoshone Field Office, Idaho was published in the Federal Register on May 18, 2011, and also published in the Times-News on June 26, 2011. The interested parties included the Shoshone-Bannock Tribes, Jerome County Commissioners, Jerome County Planning and Zoning, Idaho Department of Fish and Game, U.S. Environmental Protection Agency, Pioneer Mountain Group (interested party), Doug Carlquist (adjacent landowner), Western Lands Project (interested party), the Honorable Mike Crapo (U.S. Senator), the Honorable James Risch (U.S. Senator), the Honorable Mike Simpson (U.S. Representative), the Honorable C.L. Otter (Idaho Governor), and Todd and Bridget Buschhorn. Tribal consultation with the Shoshone-Paiute Tribes is conducted monthly and this project was presented during those meetings (see EA for dates).

A Minerals Report was prepared to describe and assess the mineral potential on the lands identified for sale. Based on indirect evidence the potential for locatable, salable and leasable minerals was determined to be low. In addition, for the sale parcel, the locatable, salable and leasable minerals do not meet the economic criteria for value as stipulated in 43 CFR 2720.0-5(b), and therefore all of the subject lands are classified as having "no known mineral value". Based on these findings the Minerals Report recommends that the mineral estate should be conveyed with the surface estate with no reservation of mineral rights.

LAND USE PLAN AMENDMENT

This land use plan amendment decision amends the 1985 Monument RMP to allow for the sale of 7.45 acres within the Shoshone Field Office described as Boise Meridian, Township 10 South, Range 19 East, and Section 25: Lot 10. The approved amendment is the same as the Proposed Amendments identified in the May 2011, Buschhorn Sale Environmental Assessment # DOI-BLM-ID-T030-2010-0005-EA.

This amendment was prepared according to the planning regulations (43 CFR Part 1600) implementing the FLPMA. An Environmental Assessment was prepared for this amendment, in compliance with the NEPA.

Approval of this RMP amendment considers public input, Tribal consultation, coordination with state and county governments, and other Federal agencies. Approval of this amendment has been determined to be the best approach to addressing the proposal, issues and purpose and need.

The BLM provided a protest period for the proposed land use decision as per 43 CFR 1610.5-2, and no protests were received. The BLM coordinated with the Idaho Governor's Office during a consistency review and no issues or concerns were identified.

Having considered a full range of reasonable alternatives, associated effects, public input and Tribal and governmental coordination, I approve the Buschhorn Sale Amendment.

SALE OF LAND

This decision represents my selection of the Proposed Action in accordance with the NEPA and the BLM regulations at 43 CFR 2700. It is also my decision, in accordance with Section 203 and Section 209 of the FLPMA and the BLM regulations, to offer to the Applicant 7.45 acres of public land via a direct sale for the amount of \$5,600 as determined by a fair market value appraisal. This disposal would include both the surface and subsurface estates for the 7.45 acres of public land described as follows:

Boise Meridian, Township 10 South, Range 19 East
Section 25: Lot 10

Upon receipt of the purchase price, BLM will issue a patent to the subject property in the name of Todd and Bridget Buschhorn. Any patent issued will contain the following terms, conditions and reservations:

1. A reservation of right-of-way to the United States for ditches canals constructed by the authority of the United States under the Act of August 30, 1890, 43 U.S.C. 945;
2. A condition that the conveyance be subject to all valid existing rights of record;
3. A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(W)), indemnifying, and holding the United States harmless from any release of hazardous materials that may have occurred; and
4. Additional terms and conditions that the authorized officer deems appropriate.

This land sale decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4. Public notification of this decision will be considered to have occurred when the legal notice is published in the Times News. Within 30 days of this decision, a notice of appeal must be filed in the office of the authorized officer at 400 West F Street, Shoshone, Idaho, 83352. If a statement of reasons for the appeal is not included with the notice, it must be filed with the IBLA, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, Virginia 22203 within 30 days after the notice of appeal is filed with the authorized officer.

If you wish to file a petition for stay pursuant to 43 CFR Part 4.21(b), the petition for stay should accompany your notice of appeal and 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 irreparable harm to the appellant or resources if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the authorized officer. A copy of the notice of appeal, any statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, 960 Broadway Avenue, Suite 400, Boise, Idaho, 83706, not later than 15 days after filing the document with the authorized officer and IBLA.



Steven A. Ellis
Idaho State Director
Bureau of Land Management



Date