

**RECORD OF PLAN CONFORMANCE AND  
CATEGORICAL EXCLUSION (CX) DOCUMENTATION for  
CATEGORICAL EXCLUSIONS NOT ESTABLISHED BY STATUTE  
Bureau of Land Management (BLM)**

BLM Office: Lakeview District, Klamath Falls Resource Area      Lease or Serial #: OROR 67723  
Proposed Action Title/Type: **Claiborne Agricultural Permit**  
NEPA Log #: DOI-BLM-OR-L040-2013-23-CX  
Project Location: W. M. (Meridian 33), T40S., R12E., SEC 34 SENW, SENE.

## **A. Background**

### **Description of Proposed Action:**

Paul Claiborne has requested an Agricultural Permit OROR 67723 for hay and pasture use. The two areas requested and depicted on the map, have been cultivated by the various owners of the adjacent lands now owned by the Claiborne's since at least July 19, 1973 and encompass 11 acres. The public land triangulates Claiborne's property and discontinuance of its use by the Claiborne's would prevent efficient watering, weed mitigation, and seeding of their private lands. Granting the permit will facilitate the applicant growing hay and pasture on his private property as well as allow him to legally grow hay and pasture on the 11 acres of public lands. The applicant has expressed an interest in pursuing a land purchase to permanently alleviate this issue. An Agricultural Permit, issued for three year intervals, is a short-term remedy while a long-term solution is pursued. The Water Right Certificate issued on July 19, 1973 by the State of Oregon included the right to water the Public Lands requested in the permit.

A road right-of-way (ROW) for legal access to the applicant's private property has also been applied for separately and will provide for BLM Administrative access across the Claiborne property. This road is apparent on the Malin topo. map from 1988. A cadastral survey was completed in 2012 in conjunction with a suspected encroachment by the previous landowners and new brass caps were installed. The applicant has agreed to encase the caps in 6 to 8-inch PVC pipe tall enough to protect them from any and all machinery working in the field.

### **Purpose and Need for the Project:**

The purpose of the Proposed Action is to facilitate efficient agricultural use of the private property, and to authorize the continued agricultural use of public lands.

## **B. Land Use Plan Conformance**

Land Use Plan Name: Klamath Falls Resource Area Resource Management Plan

Date Approved/Amended: June 1995

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): (Refer to page 66) "Continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance areas identified in this Resource Management Plan.

## **C. Compliance with NEPA**

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 2, Appendix 1, E. Realty 20. *One time issuance of short-term (3 years or less) rights of way or land use authorization which authorize*

*trespass action where no new use or construction is allowed, and where the proposal includes rehabilitation to restore the land to its natural or original condition.*

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2, Appendix 2 apply. The following documentation describes whether or not the extraordinary circumstances apply to the project:

<b>CX Extraordinary Circumstances Documentation</b>		
<b>Will the proposed categorical exclusion action:</b>	<b>YES</b>	<b>NO</b>
2.1 Have significant impacts on public health or safety. Rationale: No significant impacts expected.		X
2.2 Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas. Rationale: No unique features present		X
2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]. Rationale: No highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].		X
2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. Rationale: No highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. Rationale: Will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. Rationale: No direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
2.7 Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office. Rationale: The fields are currently present and were inventoried for cultural resources, none are known to be present.		X
2.8 Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species. Rationale: No significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		X
2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment. Rationale: Does not violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.		X
2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898). Rationale: Does not have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		X
2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007). Rationale: Does not limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		X
2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112). Rationale: Refer to Exhibit A (attached) ROW project design features (PDFs) and best management practices (BMPs).		X

The proposed action would not meet any of the above extraordinary circumstances, or fail to comply with Executive Order 13212 (Actions to Expedite Energy-Related Projects) – to avoid direct or indirect adverse impact on energy development, production, supply, and/or distribution, or impact RMP exclusion and avoidance areas.

**Surveys and Consultation**

Surveys and/or consultation are not needed for special status plants and animals, for cultural resources, and other resources as necessary (appropriate fields are Initialed and Dated by responsible resource specialist):

Surveys	Are Completed	Will Be Completed	Are Not Needed
SS* Animals			MDB 5/2/2013
Cultural Resources	BMB 4/19/2013		
ROWs or Cadastral	db 3/27/2013		
Consultation	Is Completed	Will Be Completed	Is Not Needed
SS* Animal Consultation			MDB 5/2/2013
Cultural Consultation			BMB 4/19/2013
*(SS = Special Status)			

**Contact Person**

For additional information concerning this Categorical Exclusion, contact: Debora Boudreau, Realty Specialist, Klamath Falls Resource Area, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon 97603-7891 or telephone: 541-885-4150 or email dboudreau@blm.gov

**Determination for Claiborne Agricultural Permit  
ROW # OROR 67723  
DOI-BLM-OR-L040-2013-023-CX**

I have determined that it is appropriate to proceed with the Proposed Action as described in the attached Categorical Exclusion (CX) and shown on the attached map(s).

**Rationale**

The Proposed Action has been reviewed by the Klamath Falls Resource Area staff and appropriate project design features (PDFs) and best management practices (BMPs), as specified in Exhibit A, will be incorporated into the proposal. The Proposed Action would not create adverse environmental effects, meet any of the above extraordinary circumstances, or fail to comply with Executive Order 13212 (Actions to Expedite Energy-Related Projects) – to avoid direct or indirect adverse impact on energy development, production, supply, and/or distribution.

Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the human environment and no further environmental analysis is required.

**Signature**

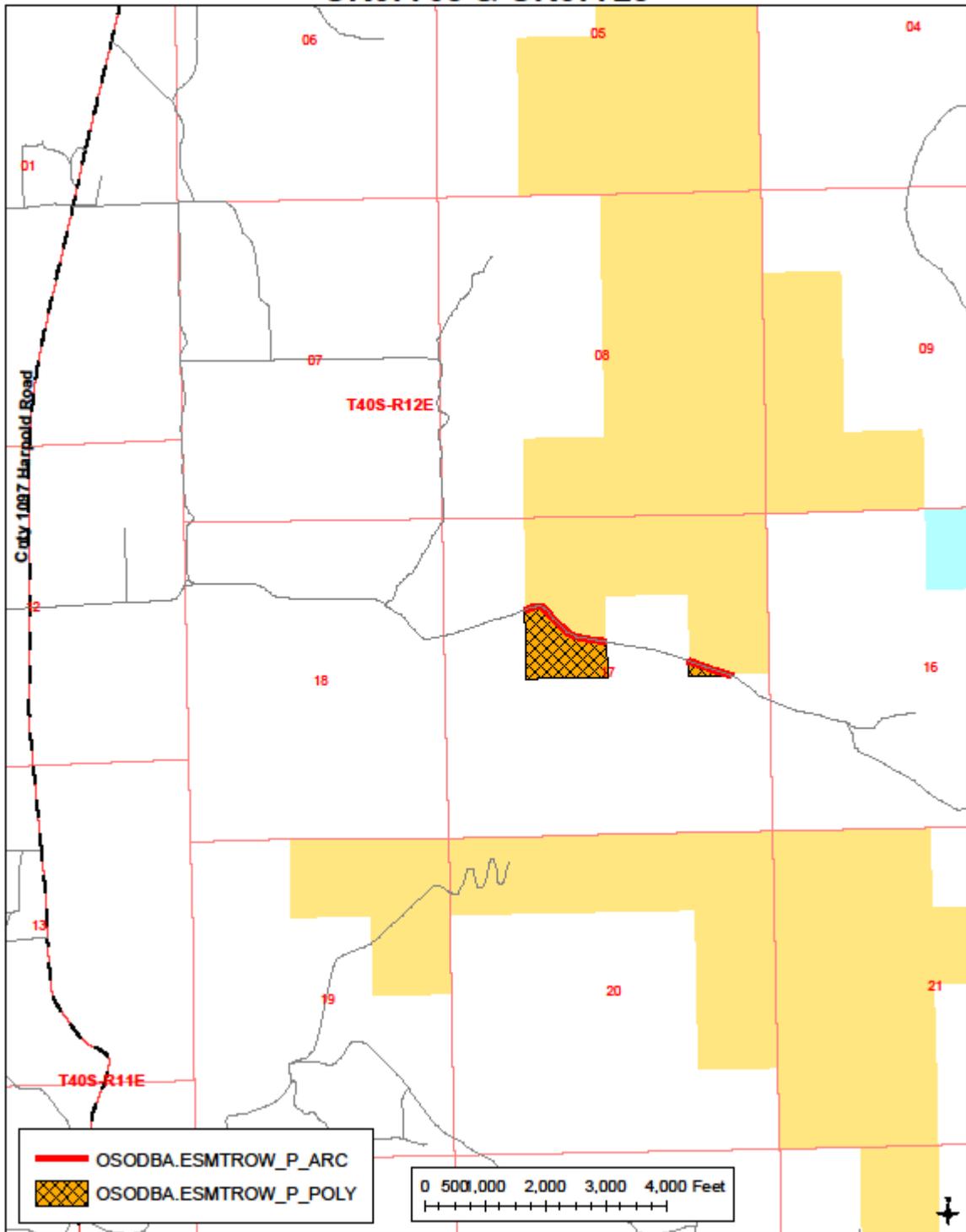
Authorizing Official: /s/ Donald J. Holmstrom  
(Signature)

Date: 5/13/2013

Name: Donald J. Holmstrom  
Title: Field Manager, Klamath Falls Resource Area

EXHIBIT B  
MAP

OR67703 & OR67723



Orange Cross-hatched polygon = agricultural permit area

**EXHIBIT A**  
**Project Design Features (PDFs) and Best Management Practices (BMPs)**

During construction, operation, maintenance, and termination of the project, the grantee must agree to the following PDFs and BMPs:

1. To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use.
2. Rebuild and repair roads, fences, and established trails destroyed or damaged by the project and or use by ROW holder.
3. Build and maintain suitable crossings for existing roads and significant trails that intersect the project.
4. Do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area.
5. Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate.
6. Pay monitoring fees and rent described in 43 CFR Sec. 2805.16 of this subpart and subpart 2806 of this part.
7. If BLM requires, you must obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant.
8. Assume full liability if third parties are injured or damages occur to property on or near the right-of-way (see 43 CFR Sec. 2807.12 of this part).
9. Comply with project-specific terms, conditions, and stipulations.
10. Restore, re-vegetate, and curtail erosion or conduct any other rehabilitation measure BLM determines necessary.
11. Ensure that activities in connection with the grant comply with air and water quality standards or related facility citing standards contained in applicable Federal or state law or regulations.
12. Control or prevent damage to Scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat; Public and private property; and Public health and safety;

13. Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way in a manner consistent with the grant.
14. Notify the Authorized officer of any maintenance or repairs prior to taking any action on the rights-of-way.
15. When the state standards are more stringent than Federal standards, comply with state standards for public health and safety, environmental protection, and citing, constructing, operating, and maintaining any facilities and improvements on the right-of-way.
16. Immediately notify all Federal, state, tribal and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared.
17. Not dispose of or store hazardous material on your right-of-way, except as provided by the terms, conditions, and stipulations of your grant.
18. Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., when you receive, assign, renew, amend, or terminate your grant.
19. Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized under the grant. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material.
20. Comply with all liability and indemnification provisions and stipulations in the grant.
21. As BLM directs, provide diagrams or maps showing the location of any constructed facility.
22. Comply with all other stipulations that BLM may require.
23. Conditions of Approval to Protect Cultural Values

If subsurface cultural resources are unearthed during operations, activity in the vicinity of the cultural resource will cease and a BLM representative notified immediately. Pursuant to 43 C.F.R. 10.4 the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, the project leader/operator/permittee/etc. must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures that are made by the authorized officer (BLM).

The project leader/operator/permittee/etc. is responsible for informing all persons associated with this project that they will be subject to prosecution for knowingly disturbing Native American Indian shrines, historic and prehistoric archaeology sites, or for collecting artifacts of any kind, including historic items and/or arrowheads from Federal lands pursuant to the

1906 American Antiquities Act (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 432, 433), the Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470ee as amended), and/or other federal laws.

#### 24. Wildlife

If it is necessary for construction activities to take place during the bird nesting season (May 15 through August 15), a pre-construction site survey by a qualified Biologist would be required. If it is determined that nesting birds are present, a buffer zone (100 feet is recommended for migratory birds) would be established and maintained until the young birds have fledged.

##### Raptor Nests

For Bald Eagles and Golden Eagles use the Fish and Wildlife Service Bald Eagle Management guidelines. Seasonal Restriction period would occur from Jan 1- August 31. These guidelines can be found at the following web site:  
<http://www.fws.gov/pacific/eagle/NationalBaldEagleManagementGuidelines.pdf>

For all other raptors use the latest information of the critical nesting period for the raptor species and implement seasonal restrictions from human caused disturbance that may result in nest failure or abandonment.

25. The Lessee or Right-of-Way (ROW) Holder shall post the lease or ROW Serial Number on all structures authorized by the lease or grant where practical.

#### 26. Weeds

All vehicles and equipment will be cleaned off prior to operating on BLM lands. Removal of all dirt, grease, and plant parts that may carry noxious weed seeds or vegetative parts is required and may be accomplished with a pressure hose.

High concentrations of noxious weeds in the immediate area of mechanical operations shall be mowed to ground level prior to the start of project activities.

All equipment and vehicles operating off of main roads shall be cleaned off prior to leaving the job site when the job site includes noxious weed populations. Removal of all dirt, grease, and plant parts that may carry noxious weed seeds or vegetative parts is required and may be accomplished with a pressure hose.

27. You are required to contact the Authorized Officer in the event of a name change or address change.
28. You are required to contact the Authorized Officer in writing 180 days prior to the expiration of this grant for renewal or relinquishment procedures.
29. Holder shall protect Cadastral Brass Cap Survey markers with 6-8 inch wide PVC pipe at a height that will make them visible and avoidable to any and all machinery.
30. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the

Secretary of the Interior. Prior to the use of pesticides, the permittee shall obtain from the authorized officer written approval of a plan showing the type and application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the Authorized officer to such use.

31. The permittee shall indemnify the United States against any liability for damage to life or property arising from the occupancy of use of public lands under this permit.
32. If the permittee does not use the subject lands for a continuous one year period for the purpose for which the permit was issued, other than crop rotation (e.g. summer fallow), the subject land will be presumed abandoned.

Prior to abandonment the lands authorized for use under this permit, the permittee shall contact the authorized office to arrange a joint inspection of the subject lands for the purpose of agreement on a rehabilitation plan. This plan must be approved in writing by the Authorized officer prior to the permittee commencing and rehabilitation activities. The plan may include removal of drainage structures or surface material, re-contouring, replacement of topsoil, reseeded, mulching, fencing or other actions deemed necessary by the authorized officer. Any abandoned structures or improvements not removed within a reasonable time period, as determined by the authorized officer, they will become the property of the United States and the permittee will become liable for any expense incurred removing any structures and or restoration of the public lands.

33. The permittee shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration or damage.