



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
ASHLAND RESOURCE AREA
3040 Biddle Road
Medford, Oregon 97504



DECISION RECORD

For the

KEELER CREEK PUBLIC LAND SALE (OR 57811)

EA No. OR116-03-03

INTRODUCTION

This document describes my decision, and reasons for my decision, regarding the selection of a course of action to be implemented for the Keeler Creek Public Land Sale. The Revised Environmental Assessment (EA) for the Keeler Creek Public Land Sale documented the environmental analysis conducted to estimate the site-specific effects on the human environment that may result from the implementation of Alternative 1, the proposed action. The Revised EA was available for public comment from October 12 through November 11, 2011. The original EA, released for public review on November 12, 2003 did receive comments, which resulted in some changes in the Revised EA.

BACKGROUND

The Ashland Resource Area of the Medford District Bureau of Land Management (BLM) is proposing to sell, at fair market value, a parcel of BLM administered public domain lands in the Keeler Creek drainage near Applegate, Oregon. The Revised Environmental Assessment (EA) for the Keeler Creek Public Land Sale (OR116-03-03) documented the environmental analysis conducted to estimate the site-specific effects on the human environment that may result from the implementation of the Keeler Creek Land Sale proposal. The Revised EA, available for public comment from October 12 through November 11, 2011, did not receive any comments during the review period. The original EA, released for public review on November 12, 2003 did receive comments, which resulted in some changes in the Revised EA.

The BLM-administered lands are described as follows: T. 38 S., R. 4 W., Section 25, Lot 7, Willamette Meridian, Jackson County, Oregon (Map 2). The land parcel proposed for sale is approximately 9.26 acres in size. A Dependent Resurvey and Subdivision of Section 25 was completed by the BLM cadastral survey staff, and a subsequent plat was approved on January 31, 1997.

The parcel was identified in the Medford District 1995 Resource Management Plan (amended August 2, 2002) as Land Tenure Zone 3 lands, which are suitable for sale or exchange.

However, the RMP identified the parcel as:

T. 38 S., R. 4 W., Section 25, Lot 4

A “Dependent Resurvey and Subdivision” approved by the BLM in 1997 renumbered the parcel as:

T. 38 S., R. 4 W., Section 25, Lot 7.

Plan Maintenance correcting the legal description in the RMP to Lot 7 was approved on May 21, 2013.

Land Tenure Zone 3 lands meet the criteria for disposal as outlined in section 203 of the Federal Land Policy and Management Act (FLMPA). Due to the lack of legal access (the parcel is surrounded on all sides by private land) and the small size and irregular shape of the land parcel, federal management of this parcel would be difficult, uneconomical to manage, and would provide minimal benefits in the public’s interest. . Therefore, there is a need to dispose of this land parcel as identified in the 1995 Medford District RMP (amended August 2, 2002), “Dispose of Land Tenure Zone 3 lands through sale under section 203(a) of FLPMA if no viable exchange proposals can be identified.” The land parcel is surrounded by rural residential property zoned for agricultural use. No suitable land exchange options were identified.

THE DECISION

As the Responsible Official, it is my decision to implement Alternative 2.

My decision authorizes the following actions:

The 9.26 acres parcel of land Public Domain land would be sold using a modified competitive sale. The parcel is L-shaped, with one leg approximately 1,320 feet in length by 74 feet wide, and the second leg approximately 1,070 feet in length by 246 feet wide.

In response to public comment and Level I Fish Consultation (2003), the proposed action includes a deed restriction that would run with the land (in lieu of a conservation easement) to protect Keeler Creek and the un-named tributary riparian zones. The deed restriction (Revised EA, Map 3) would have stipulations specific to protecting the wetland/riparian zones, which are described below.

The deed would contain a wetland-riparian covenant pursuant to the authority contained in Section (4) of Executive Order 11990 of May 24, 1997, and section 203 and 209 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2750, 43 U.S.C. 1713 and 1719, the deed is subject to a restriction which constitutes a covenant running with the land. The land at the location of Keeler Creek, containing wetland-riparian habitat must be managed to protect and maintain that habitat on a continuing basis and no use will be allowed that compromises the integrity of the floodplain or wetland-riparian habitat. Uses within the wetland-riparian areas can only occur after the approval of local government planning offices in accordance with EO 11990 and must be in compliance with the following deed covenant restrictions:

- 1) No ground disturbing activities shall be conducted on the conveyed land, such as grazing, motorized vehicle use/storage/maintenance, water development, construction (commercial, residential or recreational), road construction, renovation, or road use, within 150' of waters of the State, including, but not limited to, Keeler Creek, unnamed tributaries, springs, and outflow channels.
- 2) Vegetation shall not be removed from within the identified 150' riparian buffer except for the purpose of on-site fisheries enhancement projects to be approved and administered by local fish and wildlife agencies, Oregon primarily Department of Fish and Wildlife.

The modified competitive bidding process allows the agency to designate the actual bidders that would be allowed to bid on the parcel. Only two adjacent landowners would be allowed to bid on this parcel since there is no legal access for others to access the land. The two qualified bidders are: Kurt and Toree Wilkening for the Wilkening Living and Leslie C. and Rachel A. Martin,

In no case will the parcel be sold at less than fair market value as determined by the qualified appraiser. The parcel has been appraised with fair market value of \$4,500 approved by the Department of the Interior, Office of Valuation Services (OVS) on April 29, 2013 with the date of valuation as of April 20, 2013. This approved fair market value of \$4,500 will be public information and will be considered the minimum bid.

The parcel is currently zoned Exclusive Farm Use. The county land use zone of this parcel will most likely not change after the sale. The minimum lot size for Exclusive Farm Use is currently 80 acres. Although requests for partitioning of the parcel may occur through Jackson County Planning, the parcel, or portions thereof, would need to be incorporated into existing adjoining land parcels.

The Mineral Potential Report approved on May 1, 2003 summarizes that the mineral potential for the occurrence and development of coal, oil and gas, geothermal, and for sodium and potassium is low. The potential is also low for saleable mineral materials (primarily sand and gravel resources). There is a moderate potential for locatable mineral resources. The report recommends that all mineral interests are to be conveyed to the purchaser. The current mining claim on the parcel, Rock Solid-ORMC 167217, currently held by one of the adjacent landowners (Kurt Wilkening), would be relinquished by the claimant as a contingency prior to the sale of the land. No mining notices or plans have been submitted to the BLM for proposed mining activities on the claim.

RATIONALE

The BLM does not have a legal easement to access the land parcel described above; therefore, this parcel is legally inaccessible to BLM making the management of this parcel difficult. The BLM parcel is small (9.26 acres), "L" shaped, and narrow (74 to 246 feet across) and is surrounded on all sides by private landowners.

The parcel was identified in the Medford District 1995 Resource Management Plan (as amended August 2, 2002) as Land Tenure Zone 3 lands, which are suitable for sale or exchange. Land Tenure Zone 3 lands meet the criteria for disposal as outlined in section 203 of the Federal Land Policy and Management Act (FLMPA). Due to the lack of legal access and the small size and irregular shape of the land parcel, federal management of this parcel would be difficult,

uneconomical, and would provide minimal benefits in the public's interest. Therefore, there is a need to dispose of this land parcel as identified in the 1995 Medford District RMP (as amended August 2, 2002), "Dispose of Land Tenure Zone 3 lands through sale under section 203(a) of FLPMA if no viable exchange proposals can be identified." The land parcel is surrounded by rural residential property zoned for agricultural use. No suitable land exchange options were identified. Alternatives considered, but which were subsequently eliminated from further consideration, included selling part, but not all, of the parcel, and obtaining legal access to the parcel.

The required implementation of project design features will provide for the protection of resources consistent with existing laws, policy, and the direction of the 2008 Medford District Resource Management Plan (RMP) and the 1995 RMP (see Plan Consistency below and the Finding of No Significant Impact (FONSI) document for the Keeler Creek Land Sale).

CONSULTATION AND COORDINATION

Pursuant to the Endangered Species Act (ESA), The BLM determined that there would be no effect on federally listed wildlife species as a result of implementation of the proposed action. No listed species are known to occur on the property, and it is not within designated critical habitat. Approximately one acre of the parcel has structural characteristics of northern spotted owl habitat, but given the agricultural and rural residential uses of the adjacent private property, the parcel is not considered to be functional spotted owl habitat.

A no effect determination was made by BLM regarding federally listed plant species. Surveys were performed by qualified botany contractors, and no listed species were found. And, due to the small scope and extent of the proposed action, coupled with the design features, notably the deed restriction, the BLM has determined that there is no effect on coho salmon or coho critical habitat.

Scoping notices were sent on February 16, 2011 to Federally Recognized Tribes, the Klamath Tribe, the Confederated Tribes of the Siletz, the Confederated Tribes of the Grand Ronde, the Cow Creek Band of the Umpqua Indians, and the Quartz Valley Indian Reservation.

Jackson County Commissioners, Oregon Department of Fish and Wildlife, and Oregon Department of Forestry were also notified of this project during the scoping period.

PUBLIC INVOLVEMENT

The original EA was made available for a 30 day public comment period on November 12, 2003. Several comments were received at that time, which resulted in some changes to the proposal, notably, the deed restriction. The Revised EA was made available for a 30 day public comment period on October 12, 2011. No comments were received.

PLAN CONFORMANCE

The BLM initiated planning and design for this project to conform and be consistent with the Medford District's 1995 Record of Decision (ROD) and Resource Management Plan (RMP),

which incorporated the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan) (USDA and USDI 1994).

Following the March 31, 2011 decision by the United States District Court for the District of Columbia in *Douglas Timber Operators et al. v. Salazar*, which vacated and remanded the administrative withdrawal of the Medford District's 2008 ROD and RMP, we evaluated this project for consistency with the 2008 ROD and RMP. The proposed Keeler Creek Public Land Sale is located on lands allocated by the 2008 Medford District RMP to Uneven Age Timber Management Area, Timber Management Area, and Riparian Management Area. The 2008 Medford District ROD/RMP specifically states: "Manage forests to achieve continuous timber production that could be sustained through a balance of growth and harvest" (USDI 2008, p. 38).

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Sherman, et al.*, No. 08-1067-JCC (W.D. Wash.), granting Plaintiffs' motion for partial summary judgment and finding NEPA violations in the *Final Supplemental to the 2004 Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (USDA and USDI, June 2007). In response, parties entered into settlement negotiations in April 2010 and the Court filed approval of the resulting Settlement Agreement on July 6, 2011. Projects that are within the range of the northern spotted owl are subject to the survey and management standards and guidelines in the 2001 ROD, as modified by the 2011 Settlement Agreement. The Rio Climax Project is consistent with the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (2001 ROD), as modified by the 2011 Settlement Agreement.

This decision is also in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act, and the Archaeological Resources Protection Act of 1979.

LANDS AND REALTY-

The Keeler Creek land sale (serial No. OR 57811) meets the disposal criteria in the regulations at 43 CFR 2710.0-3(3): "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." The sale will be made pursuant to the regulations at 43 CFR 2710, Subparts 2710 and 2711 and subject to a land description approved by the BLM Cadastral Survey staff.

The parcel would be offered for sale utilizing the modified competitive bidding procedures found in 43 CFR 2711.3.2 with bidding limited to two adjacent landowners and shall be sold at no less than fair market value as determined by appraisal using the principles found in the *Uniform Appraisal Standards for Federal Land Acquisitions*.

ADMINISTRATIVE REMEDIES

EFFECTIVE DATE OF DECISION

This is a lands decision for a land sale in accordance with BLM regulations at 43 CFR Subpart §§2710 and 2711. All BLM decisions under 43 CFR §§2710 and 2711 will become effective on the day after the expiration of the appeal period (30 days after publication of the legal notice of decision) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after publication of this decision in the *Medford Mail Tribute*. Only signed hard copies of a notice of appeal that are delivered to the *Medford District Office, Ashland Resource Area, 3040 Biddle Road, Medford, OR 97504* will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project by providing public comments on the environmental assessment will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a “party to the case,” you also have the burden of showing possession of a “legally cognizable interest” that has a substantial likelihood of injury from the decision. (See 43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed. (See 43 CFR § 4.410(c)).

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal 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 immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations. 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

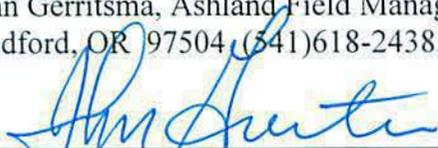
The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

See attached Form 1842-1 for more information on filing appeals.

CONTACT INFORMATION

For additional information contact:

John Gerritsma, Ashland Field Manager, Bureau of Land Management, 3040 Biddle Road,
Medford, OR 97504, (541)618-2438,

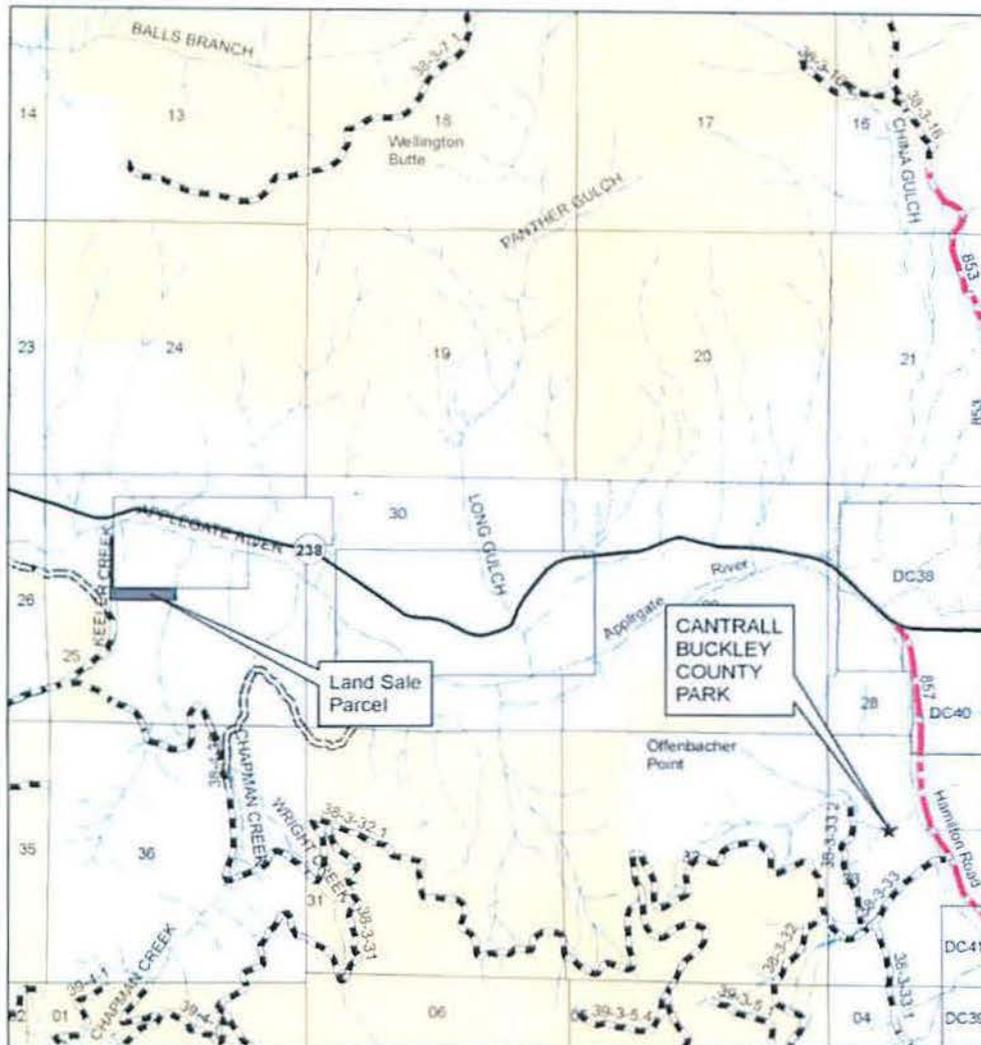


John Gerritsma
Field Manager, Ashland Resource Area
Medford District, Bureau of Land Management

6-7-13

Date

Attachment 1
Map 2. Detailed Location Map



T 38 S - R 4 W
Section 25

Legend
Bureau of Land Management

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

| | |
|------------------------------------|---|
| 1. NOTICE OF APPEAL..... | A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413). |
| 2. WHERE TO FILE | US Department of the Interior, Bureau of Land Management Medford District Office 3040 Biddle Road Medford, OR 97504 |
| NOTICE OF APPEAL..... | |
| WITH COPY TO SOLICITOR... | Regional Solicitor, Pacific Northwest Region U.S. Department of the Interior 805 S.W. Broadway, Suite 600 Portland, OR 97205 |
| 3. STATEMENT OF REASONS | Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413). |
| WITH COPY TO SOLICITOR..... | Regional Solicitor, Pacific Northwest Region U.S. Department of the Interior 805 S.W. Broadway, Suite 600 Portland, OR 97205 |
| 4. ADVERSE PARTIES..... | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). |
| 5. PROOF OF SERVICE..... | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)). |
| 6. REQUEST FOR STAY..... | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal 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 immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821—GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)