

Categorical Exclusion Determination and Decision Record for O&C Logging Road Right-of-Way Permit Number M-5061

DOI-BLM-OR-M050-2012-0009-CX

Description of Proposed Action

The Butte Falls Resource Area, Medford District BLM proposes to issue an O&C Logging Road Right-of-Way Permit to a private land owner under the provisions of 43 CFR Subpart 2812, and P.L. 94-579; 90 Stat 2743. This has been designated as Permit Number M-5061 (OR 067324). The requested period of use is for 5 years, with the possibility of 1-year extensions at the discretion of the Authorized Officer. The permit would allow commercial hauling of approximately 800 thousand board feet (MBF) of private timber over existing BLM roads. Use of these roads would, by itself, not facilitate any ground-disturbing actions on Federal lands. The permit would not be a determining factor as to whether ground-disturbing actions would occur on private lands.

The following table identifies the BLM roads to be used, estimated timber volumes to be hauled, road surface type, approximate haul volume, and BLM road or improvement only:

BLM Roads to be Used					
BLM Road and Segment Number	Segment Length (miles)	Length to be Used (miles)	Road Surface Type	Estimated Timber Volume to be Hauled (MBF)	BLM or BLM Improvement
33-2-29.01A	0.25	0.25	Aggregate Surface Course	800	BLM
33-2-29.02A	0.68	0.68	Aggregate Surface Course	800	BLM
33-2-29.02B	0.44	0.44	Aggregate Surface Course	800	BLM
33-2-32.01E2	0.58	0.58	Aggregate Base Course	800	Improvement
33-2-32.01F1	0.24	0.24	Aggregate Base Course	800	BLM
33-2-32.01F2	0.66	0.66	Natural	800	BLM
33-2-32.01G	0.70	0.70	Aggregate Base Course	800	Improvement
33-2-33.04A	1.57	1.57	Aggregate Surface Course	800	BLM

The haul route and affected roads are located on BLM-administered lands in Township 33 South, Range 3 West, sections 12 and 13 and Township 33 South, Range 2 West, sections 18, 19, 29, 30 and 33, Willamette Meridian, Jackson County, Oregon (Map 1). The proposed ROW authorization is in the Evans Creek fifth field watershed.

The following table lists roads that may be used as alternate routes:

Alternate BLM Roads that may be Used					
BLM Road and Segment Number	Segment Length (miles)	Length to be Used (miles)	Road Surface Type	Estimated Timber Volume to be Hauled (MBF)	BLM or BLM Improvement
33-2-33.00A	2.55	2.55	Bituminous Surface Treatment	800	BLM
33-2-33.00B	1.89	1.89	Bituminous Surface Treatment	800	BLM
33-2-17.00A	0.76	0.76	Aggregate Surface Course	800	BLM
33-2-17.00B	0.35	0.35	Aggregate Surface Course	800	Improvement
33-2-17.00C1	0.52	0.52	Aggregate Base Course	800	BLM
33-2-7.00A	0.42	0.42	Aggregate Surface Course	800	BLM
33-2-7.01A	0.10	0.10	Aggregate Surface Course	800	BLM
33-2-7.02A	0.60	0.60	Aggregate Surface Course	800	BLM
33-2-7.02B	1.00	1.00	Aggregate Base Course	800	Improvement
33-3-12.01B	0.60	0.24	Aggregate Base Course	800	BLM

The alternate haul route and affected roads are located on BLM-administered lands in Township 33 South, Range 2 West, sections 7, 17, 20, 21, 28, 29 and 33, Willamette Meridian, Jackson County, Oregon (Map 1).

Plan Conformance Review

This proposal is in conformance with objectives, land use allocations, and management direction in the 1995 *Medford District Record of Decision and Resource Management Plan* (1995 ROD/RMP) and any plan amendments in effect at the time this document is published.

This project also conforms with the 1994 *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (Northwest Forest Plan)

The proposed action was designed to be consistent with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937, Federal Land Policy and Management Act of 1976, Endangered Species Act of 1973, Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act of 1990 (as amended), and Archaeological Resources Protection Act of 1979.

This proposal is consistent with management direction in the 1995 ROD/RMP that directs the BLM to

Continue to make BLM-administered lands available for needed rights-of-way (USDI 1995, p. 82).

Project Design Features

- The Permittee shall discontinue hauling under this permit upon written notice of the Authorized Officer that such operations are causing damage to the existing facilities.
- The Permittee shall be responsible for maintenance of the BLM roads used under this permit.

Categorical Exclusion Determination

This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11.9 E (16). This section allows for *issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.*

Before any action described in the list of categorical exclusions may be used, the “extraordinary circumstances,” included in the Code of Federal Regulations (CFR) at 43 CFR 46.205(c) must be reviewed for applicability. After review, the BLM determined no extraordinary circumstances exist that would cause the proposed action to have a significant environmental effect. The action will not require additional analysis.

Contact Person

For additional information concerning this project, contact Dave Allen, Project Leader, at 541-618-2472.

NEPA Categorical Exclusion Review**Proposed Action:**

Issue an O&C Logging Road Right-of-Way Permit to a private land owner to allow commercial hauling of approximately 800 MBF of private timber over an existing rocked BLM road. The requested period of use is for 5 years, with the possibility of 1-year extensions at the discretion of the Authorized Officer.

The Code of Federal Regulations at 43 CFR 46.205(c) requires that “any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215” (listed below). Additional analysis and environmental documents must be completed for any normally categorically excluded action which may

1. *Have significant impacts on public health or safety.*

Yes No

Initial RW Remarks:

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.*

Yes No

Initial Cre Remarks:

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

Yes No

Initial RW Remarks:

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*

Yes No

Initial RW Remarks:

5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

Yes No

Initial RW Remarks:

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

Yes No

Initial SLS Remarks:

7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.*

Yes No

Initial CE Remarks:

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.*

Plants Yes No

Initial mw Remarks:

Animals Yes No

Initial DR Remarks:

Fish Yes No

Initial DJ Remarks:

9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*

Yes No

Initial CE Remarks:

10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

Yes No

Initial EW Remarks:

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).*

Yes No

Initial CE Remarks:

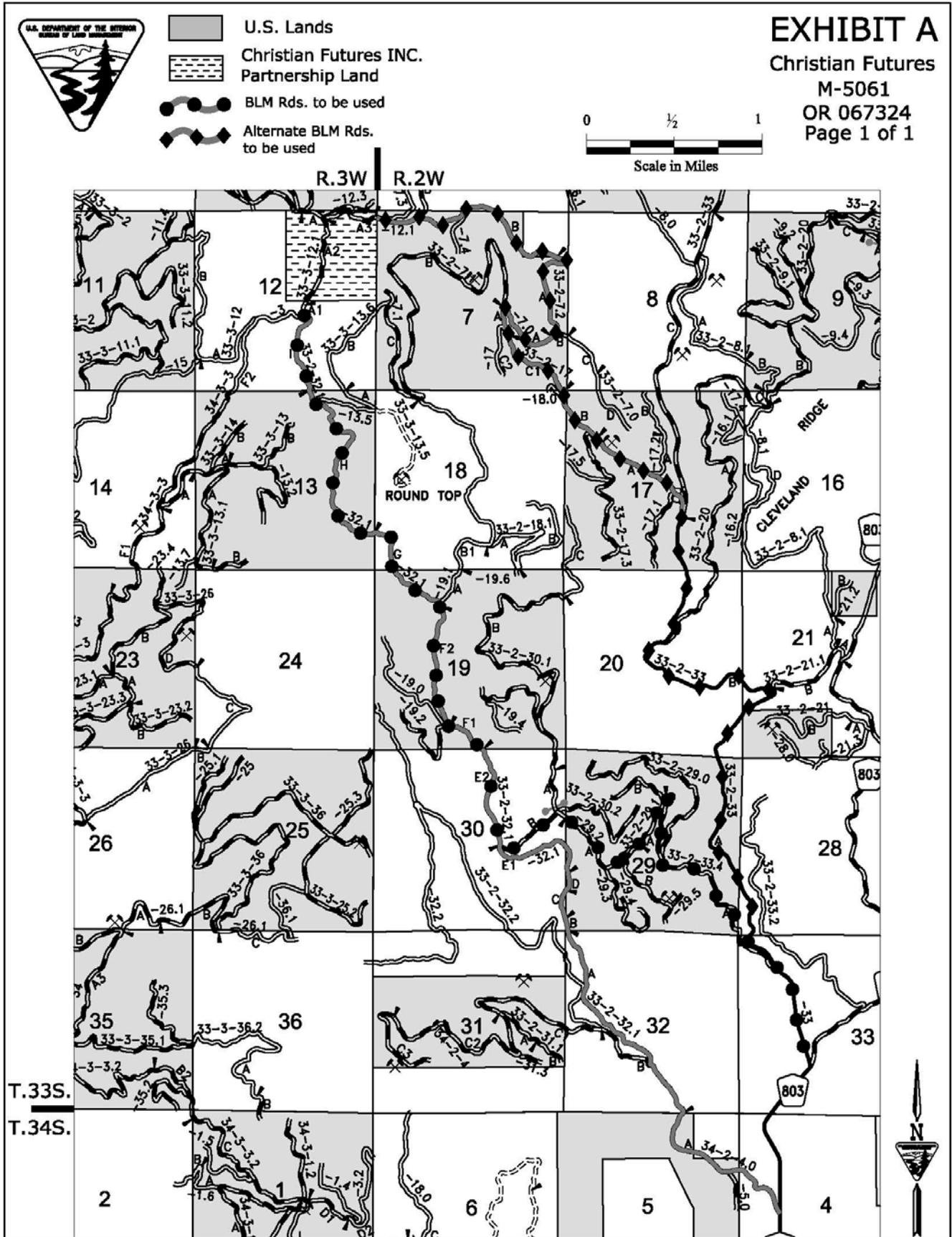
12. *Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).*

Yes No

Initial mw Remarks:

Categorical Exclusion Reviewers:

Name	Title	Date	Initials
Robyn Wicks	NEPA Coordinator	6/28/12	RW
Marcia Wineteer	Botanist	4/20/12	mw
Dave Roelofs	Wildlife Biologist	6/20/12	DR
Dale Johnson	Fisheries Biologist	6/25/12	DJ
Shawn Simpson	Hydrologist	6/20/12	SS
Amy Meredith	Soil Scientist	6/20/12	AM
Al Mason	Fire/Fuels Specialist	6/19/12	AM
Cheryl Foster-Curley	Archaeologist	6/28/12	CF
Leo Kalvels	Engineer	6-25-12	LK
Trish Lindaman	Outdoor Recreation Planner	6/19/12	TL



Administrative Review or Appeal Opportunities

Effective Date of Decision

This is a lands decision on a right-of-way action in accordance with BLM regulations under 43 CFR Part 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after this decision is signed) 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 pm) not more than 30 days after the latest date of service of this decision upon the proponent and other affected parties. Only signed hard copies of a notice of appeal that are delivered to the Medford District Office, 3040 Biddle Road, Medford, Oregon will be accepted. Faxed or emailed appeals will not be considered.

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:

- The relative harm to the parties if the stay is granted or denied,
- The likelihood of the appellant’s success on the merits,
- The likelihood immediate and irreparable harm if the stay is not granted, and
- 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, and the ROW applicant at the same time such documents are served on the deciding official at this office. Service must be accomplished within 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 Board will review any petition for a stay and may grant or deny the stay. If the Board 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 the Board makes a final ruling on the case.

How to File an Appeal

See attached Form 1842-1 for complete instructions on filing an appeal.

Contact Information

For additional information, contact Jon Raby, Field Manager, Butte Falls Resource Area, 3040 Biddle Road, Medford, OR 97504, 541-618-2260; or Dave Allen, Roads and Right-of-Way Specialist, 541-618-2472.

Additional contact addresses include:

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, VA 22203

U.S. Department of the Interior
Office of the Regional Solicitor
805 SW Broadway, Suite 600
Portland, OR 97205

Rick Christian
Christian Futures INC.
3112 Industrial Avenue
Springfield, OR 97478

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 NOTICE OF APPEAL..... WITH COPY TO SOLICITOR...	U.S. Department of the Interior Bureau of Land Management Medford District Office 3040 Biddle Road Medford, OR 97504 U.S. Department of the Interior Office of the Regional Solicitor 805 SW Broadway, Suite 600 Portland, OR 97205
3. STATEMENT OF REASONS WITH COPY TO SOLICITOR.....	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). U.S. Department of the Interior Office of the Regional Solicitor 805 SW 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)