## RECORD OF PLAN CONFORMANCE AND CATEGORICAL EXCLUSION (CX) DETERMINATION

**CX Log #:** DOI-BLM-ORV040-2014-016-CX
**CE Exemption category:** 516 DM 11.9, E.9: Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

**BLM Office:** Vale District Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918
**Phone #:** 541-473-3144

**BACKGROUND:**
Project Name: Renewal of existing water reservoir authorized under OR-37057.
Applicant: William J. Butler
Location of Proposed Action: T. 18S, R. 38E, Section: 17, 19, and 20

**DESCRIPTION OF THE PROPOSED ACTION**:
On September 27, 2013, the William Butler submitted an application (SF-299) requesting a renewal of right-of-way (ROW) OR-37057 for the continued use of a reservoir which is located at T. 18S., R. 38E., Sections 17, 19, & 20 in Malheur County, Oregon (Exhibit B). This project will require no new or additional construction. It is a renewal of an existing water facility.

**PLAN CONFORMANCE**
All actions approved or authorized by the BLM must conform to the existing land use plan where one exists (43 CFR 1610.5-3, 516 DM 11.9). Although it is not a NEPA requirement, the BLM includes within all its NEPA documents a statement about the conformance of the proposed action and alternatives with the existing land use plan. The BLM's planning regulations state that the term "conformity" or "conformance" means that "… a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or amendment" (43 CFR 1601.0-5(b)).

The proposed action is also in conformance with the management objectives of the Southeastern Oregon Resource Management Plan (SEORMP, Sept. 2002), *General Planning Criteria*, cited on page 9 of the RMP. The proposed action conforms to program-specific objectives of the SEORMP which are cited on page 108 – 111. This is a renewal of an existing ROW.

**DOCUMENTATION OF CATEGORICAL EXCLUSIONS: EXTRAORDINARY CIRCUMSTANCES**
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 circumstances described in 516 DM 2, Appendix 2, and listed below apply.

| Yes | No | Extraordinary Circumstances | Initials | Date |
|---|---|---|---|---|
| | | | | |
| | | 1. Have significant impacts on public health or safety. | | |
| | X | 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. | CB | 3/20/14 |
| | | 3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]. | | |
| | | 4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. | | |
| | | 5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. | | |
| | | 6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. | | |
| | X | 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. | CB | 3/20/14 |
| | X | 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. | SF (Plants) | 2.20.2014 |
| | | 9. Violate a Federal law, or a State, local, or Tribal law or requirement imposed for the protection of the environment. | | |
| | | 10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898). | | |
| | | 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). | | |
| | | 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). | | |

**DOCUMENTATION OF RECOMMENDED MITIGATION**

For any item(s) above checked "Yes", proposed mitigating measures for those items are listed below. If the extraordinary circumstances cannot be mitigated, the criteria required for a CE are not met and BLM must prepare an EA or EIS.

| Item No. | Can Be Mitigated | Cannot Be Mitigated | Mitigation Measures | Reviewer | Date |
|---|---|---|---|---|---|
| | | | | | |
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**SUMMARY OF FINDINGS AND DETERMINATION**

The proposed action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with the Departmental Manual Categorical Exclusions list, sections of which are cited and quoted above. The proposed action has also been reviewed in relation to the above listed 12 Extraordinary Circumstances in accordance with the Departmental Manual, and none of these circumstances apply.

**DECISION RECORD**

Based on the enclosed Categorical Exclusion Documentation, DOI-BLM-ORV040-2014-016-CX, I have determined that the proposed action to authorize the renewal of the existing water facility named Murphy Reservoir authorized as OR-37057 involves no significant impacts to the human environment and requires no further environmental analysis. It is my decision to authorize this action as proposed. For additional information concerning this project, contact Project Lead Trisha Skerjanec, Vale District Office, 100 Oregon Street, Vale, Oregon 97918. Phone (541) 473-3144.

Trisha A Skerjanec Realty Specialist March 20, 2014

Prepared By: Title Date

Reviewed By: Title Date

Field Mgr. 3/21/14

Authorizing Official Title Date

# Exhibit A
## OR-37057

a. This grant is subject to the provisions, limitations, and conditions of Title V, P. L. 94-579, Act of October 21, 1976, 90 State. 2473.

b. There is reserved to the Secretary of the Interior, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under, or adjacent to the land involved in this grant.

c. Holder shall survey and clearly mark the exterior limits of the right-of-way. All activities directly or indirectly associated with the construction or maintenance of this telephone line must be conducted within the limits of the right-of-way.

d. The Holder shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e. insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this Grant. The Holder shall obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc., to be controlled; the method of application; the location of or storage and disposal of containers; and other information that the Authorized Officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year (i.e., December 1, 2013, deadline for a fiscal year 2014 action.) If need for emergency use of pesticides is identified, the use must be approved by the Authorized Officer. The use of substances on or near the right-of-way shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this Grant.

e. Any cultural and/or paleontological resource (historic or prehistoric site or object, or fossil) discovered by the holder, or any persons working on his behalf on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and mitigation, and any decision as to proper avoidance, protection or mitigation measures will be made by the authorized officer after consulting with the holder and others under Section 106 of the National Historic Preservation Act.

f. Pursuant to 43 CFR 10.4(g), the holder of this authorization must immediately 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, pursuant to 43 CFR 10.4 (c) and (d), the holder 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 BLM Authorized Officer will determine avoidance, protection or mitigation measures in consultation with the Holder, Oregon SHPO, and affected Tribes. Costs associated with the discovery, evaluation, protection or mitigation of the discovery shall be the responsibility of the holder.

g. The holder shall notify the Authorized Officer at least 30 days prior to any non-emergency activities that would cause surface disturbance in the right-of-way. The Authorized Officer will determine if a cultural resource inventory, treatment or mitigation is required for the activity. The holder will be responsible for the cost of inventory, avoidance, treatment or mitigation; including any maintenance-caused damage. The Authorized Officer will determine avoidance, treatment and mitigation measures that are necessary after consulting with the holder and under Section 106 of the National Historic Preservation Act.

h. The holder shall not initiate any construction or other surface disturbing activities (including non-emergency operations or maintenance activities) on the right-of-way without the prior written authorization of the authorized officer. Such authorization shall be a written notice to proceed issued by the authorized officer. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.

i. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions of the Survey of the Public Lands of the Unites States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

j. The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (43 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

k. The holder shall conduct all activities associated with the construction, operations, and termination of the right-of-way within the authorized limits of the right-of-way.

l. The holder shall take such measures for prevention and suppression of fire on the grant area and adjacent public lands or public lands used or traversed by the holder in connection with operations as are required by applicable laws and regulations.

m. Ninety days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to,

removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

n. Prior to any activity on the ground in those areas where endangered, threatened and sensitive plants are known to occur, the holder will notify the Authorized Officer in order to schedule a site inspection to insure protection of these species.

# Additional Stipulations for Murphy Reservoir ROW Renewal
## Vale District BLM Engineering Department
## 2/25/2014

1. Permittee shall keep all brush and trees off of the embankment and out of the spillway channel.

2. Permittee shall visually inspect the dam annually for rodent holes and repair any rodent holes greater than 6 inches in diameter.

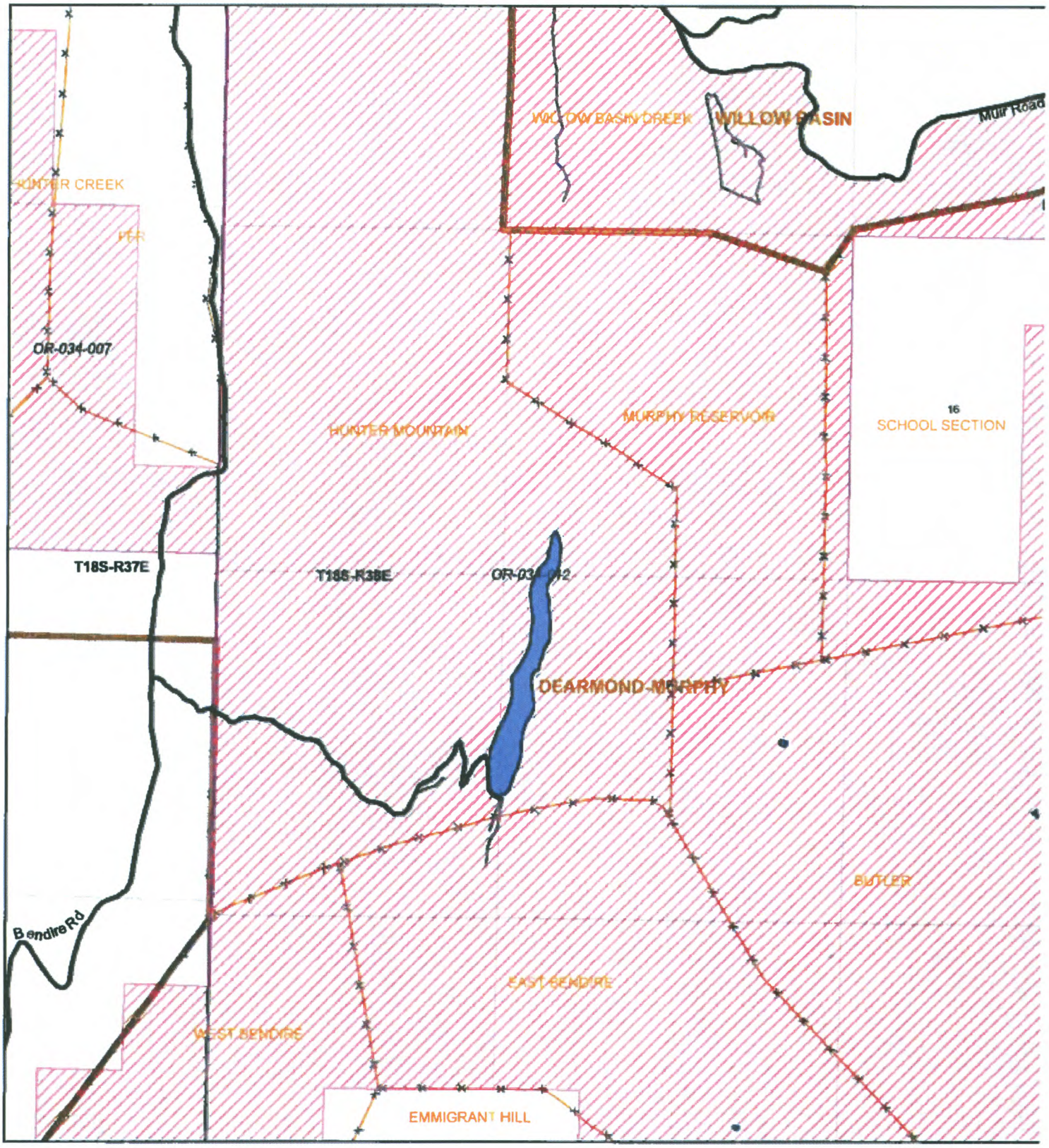
3. Permittee shall cycle the control works annually by fully opening and closing the gate to insure proper operation. Permittee shall keep control works in operating condition by performing all need maintenance including but not limited to insuring openings are free of debris and silt, the gate operator is properly oiled, the ability to operate the gate is easily accessible, and fixing any damage to the gate structure.

4. Permittee shall perform any maintenance recommended by OWRD, the Malheur Watermaster, or the BLM within 60 days of notification, unless deficiency requires immediate action.

5. This dam is currently a low hazard dam. If downstream development results in a hazard classification change to either Significant or High, an Emergency Action Plan (EAP) will be required. At that time, the Permittee shall provide the BLM with a copy of the EAP and any subsequent EAP updates. The EAP shall meet FEMA and OWRD standards.

6. This dam will be inspected routinely by the OWRD and/or Malheur Watermaster; however the BLM reserves the right to perform additional inspections on the dam at its discretion.

7. If major deficiencies are not corrected by the Permittee in a timely manner, the BLM reserves the right to empty the reservoir and/or breach the dam in order to protect downstream public lands.




Legend
- Wilderness Characteristics - Poly
- County route
- Bureau of Land Management
- Bureau of Land Management
- State Agency
- Bureau of Reclamation
- Bureau of Indian Affairs
- Private

0 0.225 0.45 0.9 Miles

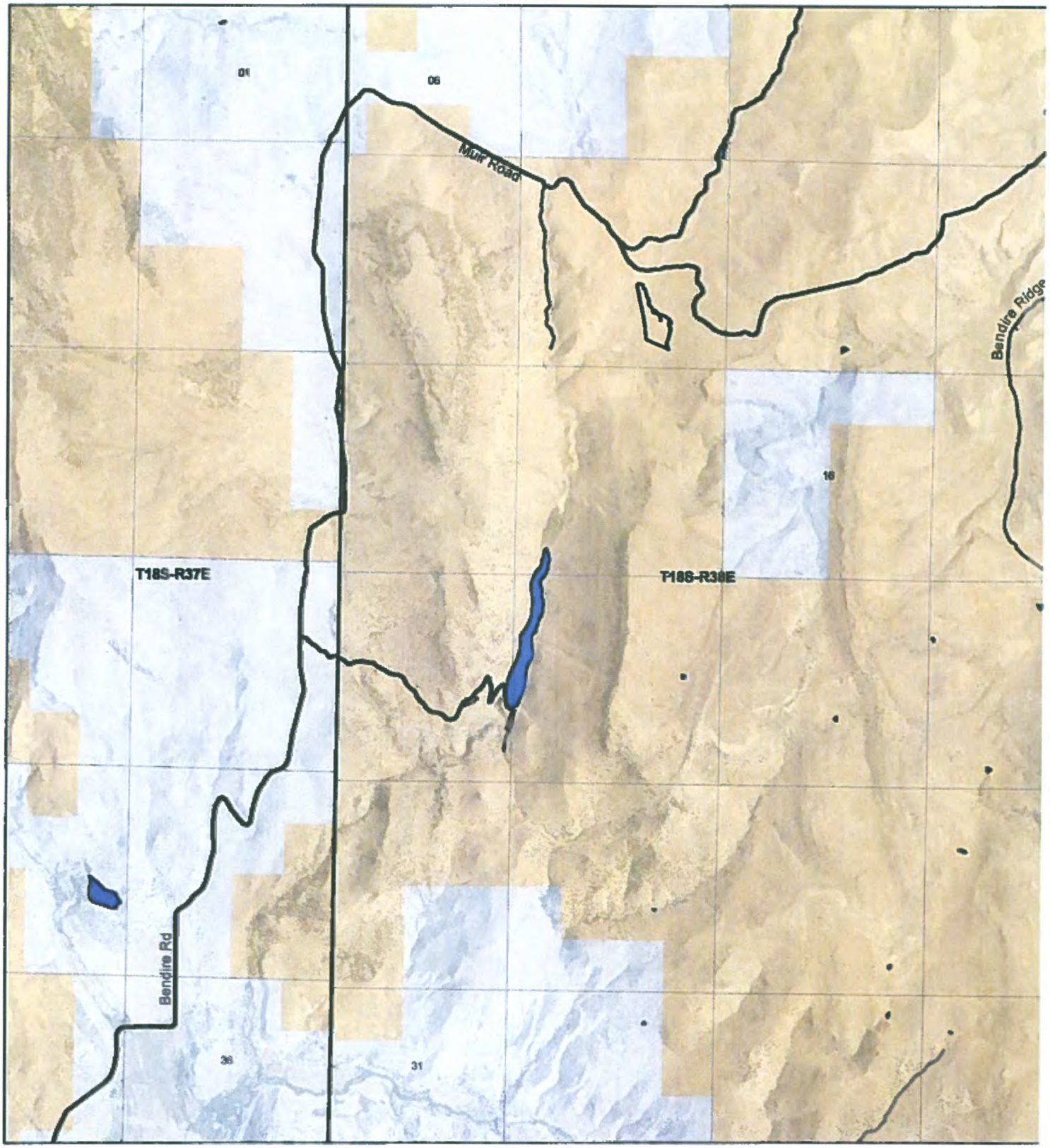
0 355 710 1,420

N W E S

U.S. Department of Interior
Bureau of Land Management

Vale District
September 2013

**OR-37057 William Butler - Murphy Reservoir**




Legend
- County route
- Bureau of Land Management
- Bureau of Land Management
- State Agency
- Bureau of Reclamation
- Bureau of Indian Affairs
- Private

0 0.375 0.75 1.5 Miles

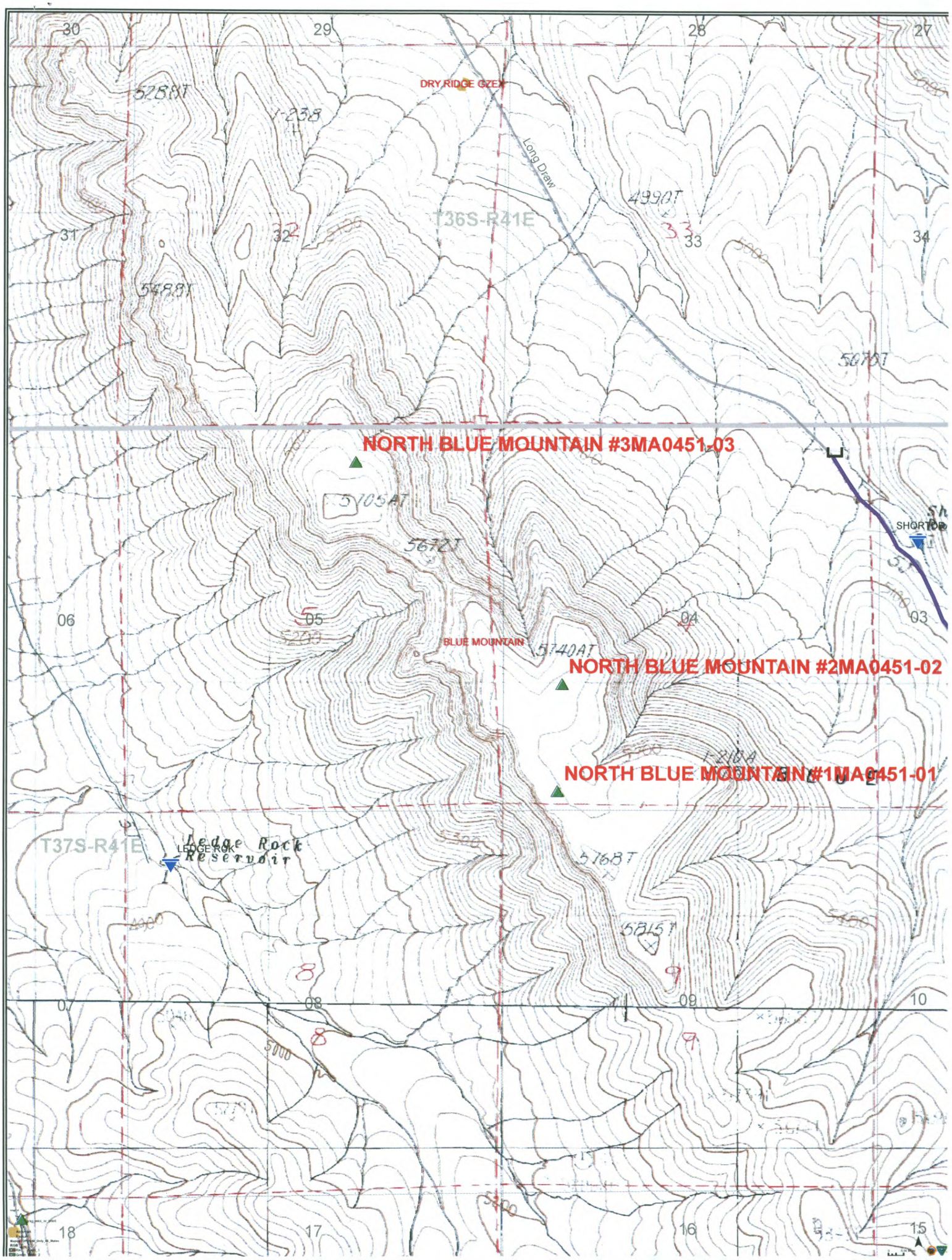
0 550 1,100 2,200

N W E S

U.S. Department of Interior
Bureau of Land Management

Vale District
December 2013

**OR-37057 William J. Butler**


DRY RIDGE GZE
Long Draw
T36S-R41E
NORTH BLUE MOUNTAIN #3MA0451-03
SHORTOP
BLUE MOUNTAIN
NORTH BLUE MOUNTAIN #2MA0451-02
NORTH BLUE MOUNTAIN #1MA0451-01
T37S-R41E
LEDGE ROK
Ledge Rock Reservoir