

DECISION RECORD
Farmland Reserve, Inc., and Craig G. and Peggy S. Means Revocable Trust
Disposal of 212 Acres in 9 Tracts, Environmental Assessment (EA), WY-070-EA12-186
Bureau of Land Management, Buffalo Field Office, Wyoming

DECISION. The BLM approves the direct sale of 8 parcels, represented in Table 1, below to Farmland Reserve, Inc., (FRI) and 1 parcel, represented in Table 2, below, to Craig G. and Peggy S. Means Revocable Trust, (MRT), as described in Alternative B of the EA, WY-070-EA12-186 which BLM incorporates here by reference.

Compliance. This decision complies with:

- Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701); DOI Order 3310.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- National Historic Preservation Act of 1966 (NHPA) (16 USC 470).
- Buffalo Resource Management Plan (RMP) 1985, Amendments 2001, 2003, 2011.

This decision has analytical support from the following by tiering to or incorporating by reference:

- Buffalo RMP and Final Environmental Impact Statement (FEIS), 1985;
- Buffalo RMP Update FEIS, 2001;
- Powder River Basin (PRB) FEIS, amendment (2011), and Records of Decision 2003;
- Cow Creek Holding Co. Land Exchange Environmental Analysis (EA), WY-070-EA07-198;
- Summary of the Analysis of the Management Situation Buffalo Resource Management Plan Revision (SAMS), 2009, pp. 3-23 to 3-24, Table 3-27, Lands and Realty: Current Decisions, p. C-12 of Appendix C, Map 12 Lands and Realty: Disposal Areas;
- 178 Interior Board of Land Appeals, 062, Ted Lapis (2009) (IBLA Lapis); and
- South Stones Throw and Prong EA, WY-070-EA10-277.

BLM summarizes the details of the approval of Alternative B, below. The EA includes the proposal description, including specific terms and conditions of the land disposals. The BLM approves the conveyance of land title – its rights, privileges, and responsibilities therein; water rights-allotments, authorizations, appropriations; and air rights for the parcels in Tables 1 and 2, below, to the respective parties. BLM and the parties completed separate but related agreements to modify the grazing allotments' records noted in Tables 1 and 2, with a conveyance of surface titles.

Table 1. BLM¹ approves the following direct land sales to Farmland Reserve, Inc.:

#	Name/Abbreviation	Twn	Rng	Sec	Q/Q	Tr/Lot	Acres	Disposal Type	Allotment
1	Buffalo Creek 1 / BC1	56N	79W	13		51-B	39.75	Sale	SE of Buffalo Creek
2	Buffalo Creek 2 / BC2			17		1	12.00		
3	Buffalo Creek 3 / BC3			23		1	11.80		
4	Buffalo Creek 4 / BC4			26		1	10.06		
5	Buffalo Creek 5 / BC5			26		2	14.51		
6	Buffalo Creek 6 / BC6	55N	80W	23	NESE		40.00		
7	Buffalo Creek 7 / BC7			24	SWSW		40.00		
8	Whitmeyer 1 / WM1			26	NESW		40.00		

Table 2. BLM¹ approves the following direct sale to Craig G. and Peggy S. Means Revocable Trust:

#	Name/Abbreviation	Twn	Rng	Sec	Q/Q	Tr/Lot	Acres	Disposal Type	Allotment
9	East Fork 1 / EF1	56N	73W	8		17	4.15	Sale	East Fork

1. #s 1-8: 6th Principal Meridian, Sheridan County, WY; #9: 6th Principal Meridian, Campbell County, WY.
 Acreage is approximate for all tracts; see administrative record (AR) for more details.

Limitations/reservations. Conveyance of the identified public land is subject to valid existing rights and encumbrances of record including, but not limited to, rights-of-way for roads and public utilities. All minerals will be reserved to the United States. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of way applications or existing authorizations to increase the term of the grants per 43 CFR 2807.15 and 2886.15. The patent, if issued, will be subject to the following reservations: 1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and 2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance. This recitation is not exhaustive; see the rationale #5, below, the administrative record (AR), and BLM Instruction Memorandum (IM)-2007-063 for details.

THE FINDING OF NO SIGNIFICANT IMPACT (FONSI). Analysis of Alternative B of the EA, WY-070-EA12-186, and the FONSI, both incorporated here by reference, found the proposal for the Disposal of 212 acres in 9 Tracts will have no significant impacts on the human environment, beyond those described in the Buffalo RMP and its FEIS, and PRB FEIS and Record of Decision (ROD). The EAs the BLM incorporates by reference; see above, found no significant impacts to the environment. There is no requirement for an EIS.

COMMENT OR NEW INFORMATION SUMMARY. The public involvement included the notices of realty action (NORA) posted in the Federal Register, one for each county (Campbell and Sheridan) for segregation from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws, except for the sale provisions of the FLPMA; see FR Vol. 78, No. 23, pp. 7809-7810; and for the land sales; see FR Vol. 78, No. 244, pp. 76854-76855. A 45-day comment period followed the publications. BLM sent notices to specified federal, state, local representatives, and interested persons – which had a 60-day comment period (January 13, 2014). BLM also published the specified sale information in local newspapers of general circulation once a week for 3 weeks (last date: January 31, 2014) with a 45-day comment period lapsing from the date of final publication (some comment periods somewhat overlapped). Also BLM posted the EA and public notice on its website.

The segregation NORAs resulted in 5 public comments. The comments raised 3 substantive issues; see AR. The EA resulted in 3 public comments which raised 5 substantive issues; see AR. The proposals' publication in area newspapers of general circulation resulted in 0 public comments. The public provided 11 comments as a result of the land sale NORAs. The comments raised 4 substantive issues, see AR. The publics' elected and appointed representatives provided 0 comments as a result of BLM's direct letter solicitation for input. The 19 comments raised 12 substantive issues, see AR BLM addressed the substantive issues in this DR's Appendix 1, incorporated here by reference.

DECISION RATIONALE. BLM bases the decision authorizing the direct land sales on:

1. Competent and public land use planning established and reaffirmed that these lands received designation as available for disposal; see the Buffalo RMP's ROD which adopted Map 7A, Land Disposal, Alternatives A & C from the 1984 draft EIS, see ROD at pp. 13-14. The BLM updated the RMP, see p.17, Map 5, and Appendix F of the 2001 update, affirming and not changing the land management or disposal criteria for the parcels identified in RMP. BLM's land use planning Summary of the Analysis of the Management Situation Buffalo Resource Management Plan Revision (SAMS), 2009, pp. 3-23 to 3-24, Table 3-27, Lands and Realty: Current Decisions, p. C-12 of Appendix C, Map 12 Lands and Realty: Disposal Areas affirmed earlier planning decisions. BLM further clarified the parcels' locations through a land use planning Maintenance Plan Change 20120720 that BLM posted on its website. The least restrictive means of disposal for all 9 parcels was through a direct sale, 43 CFR Part

2710. BLM precluded a land exchange because neither conveyee had land or an interest in land which held a value to the BLM supported by the Buffalo RMP.

2. BLM analysis concluded, per FLPMA section 203(a), that each of the 9 parcels was difficult and uneconomic to manage and are unsuitable for management by another federal agency. Characteristics of these lands includes: isolation with no public access via the surface, possess no outstanding resource values, or scattered lands. BLM analysis determined that there are no lands with suitable resource values in which FRI or MRT had an ownership interest that were worth consideration for acquisition via exchange in land or resource value interest. None of the 9 parcels is in the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails.

3. BLM's discovery of an inadvertent trespass, see Table 2, in Campbell County led to issuing land use permit WYW-168364 for an agricultural use, culminating in a proposal by MRT and BLM to resolve the unauthorized use and end the need for continued permitting through a direct sale of the smallest divisible tract. This resolution of the trespass was in the public interest of the US public, the Bureau, and MRT.

4. FRI and Craig G. and MRT are corporations subject to the laws of the United States of America, thus qualify as conveyees.

5. All 9 of these conveyances of title reserve to the United States of America all mineral resources, comprising the mineral estate in the lands, together with the right to prospect for, mine, and remove the mineral resources under applicable law and such regulations as the Secretary may prescribe. All mineral resources, the entire mineral estate includes, but is not limited to, the minerals contained in federal law; see generally, 43 CFR Subchapter C, Minerals Management: leasables – crude oil, natural gas, coalbed natural gas (natural, and enhanced production through methanogenesis or similar process), geothermal energy, coal, sodium minerals, potassium minerals, etc.: salables – sand, gravel, clinker (porcellanite), common limestone, building stone, moss rock, petrified wood, etc.: locatables – gold, silver, platinum, lithium, precious gems, chemical or metallurgical grade limestone, chemical grade silica sand, nickel, copper, lead, zinc, iron, uranium vanadium, molybdenum, manganese, cobalt, beryllium, tungsten, zeolites, Wyoming-type bentonite, gypsum, barite, fluorspar, rare earth minerals, etc. The parcel conveyance documents, to include the land title, should list in detail the mineral class and mineral type to reflect the above recitation of the reservation of the entire mineral estate by specific mineral to the United States. This mineral severance authority is from FLPMA, Title II, Section 209, 43 U.S.C. 1719. See, *Watt v. Western Nuclear, Inc.*, 462 U.S. 36 (1983); *Miller v. WY*, 757 P. 2d 1001 (WY, 1988); and *Reeves, The Meaning of the Word "Minerals,"* 54 N.D.L.Rev. 419 (1978); and see generally, WY Information Bulletin-WY-2009-003 (labeled as 2008-003).

6. BLM notified the Governor of the State of Wyoming, elected federal representatives, and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area wherein such lands are located, at least 60 days prior to offering for sale or otherwise conveying public lands under this Act, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance. The BLM shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands.

7. These sales of public lands are made at a price of not less than full fair market value as determined by the Secretary through his representative with the Office of Valuation Services.

8. BLM posted Notices of Realty Action in the Federal Register for the proposed sales and accepted public comments for 45-days after publication. BLM posted the sale notice proposals in area newspapers of general circulation weekly for 3 weeks and accepted public comments for 45-days after the final publication. BLM sent letter notifications to appropriate and specific federal, state, and local elected

officials, interested persons and accepted their comments for 45-days after receipt of the letters; see the BLM's Briefing Paper, 3 pp. AR.

9. BLM determined ownership of water rights, minerals, grazing privileges, and reviewed the rights-of-way, and easements of record. BLM then analyzed each, in turn for each parcel to support decisions on whether those rights or encumbrances should flow with the title conveyance of the land.

10. BLM, FRI, and MRT included mitigation measures to reduce environmental impacts in the sales' terms and conditions while meeting the BLM's need. The Buffalo FEIS, 2001 Amendment, and 2009 SAMS predicted and analyzed land tenure changes of the nature proposed with this project and similar projects. BLM Instruction Memorandum Number WY-2012-19 directs the BLM to coordinate with the Wyoming Game and Fish Department (WGFD) for projects that fall into designated Greater Sage-Grouse (GSG) connectivity habitat areas. The WGFD, on August 27, 2012, informed the BLM that impacts to breeding GSG will be minimal for this proposal. The proposal may contribute to the PRB Greater Sage-Grouse (GSG) decline, in the unlikely and unforeseen event of land use changes creating cumulative significant impacts; yet the small size of this project is within the parameters of the impacts in those analyses in the PRB FEIS, State of Wyoming GSG Executive Order Wyoming (EO 2011-5), and BLM Instruction Memorandum (WY-2012-19) GSG conservation strategies.

11. Nothing in this decision approving the conveyances of title (patents) constitute a violation of any law or regulation pursuant to federal, state, and local land use plans or programs. The approval of Alternative B complies with FLPMA, other laws, and directives, and is in the public interest, the BLM, FRI, and MRT. The approval of Alternative B is also the reason for adjusting rights-of-way and grazing allotment records as addressed in EA Sections 3.6, 4.2.6, 3.8, and 4.2.8, respectively.

12. There were no range improvements of record on the FRI parcels.

13. The MRT-owned earlier existing range improvements are not subject to a claim. There were no subsequent range improvements of record on the MRT parcel.

14. All parties are responsible for their own attorney costs and fees, aside from those regulatorily ascribed to the conveyees or BLM.

15. The project parcels clearly lack wilderness characteristics as the parcels are less than 5,000 acres.

ADMINISTRATIVE REMEDIES. An adversely affected party may be appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (2006). If an appeal is taken, the notice of appeal must be filed in this office (at the address below) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. Address: Manager, Buffalo Field Office; Bureau of Land Management; 1425 Fort Street; Buffalo, WY 82834

Field Manager: 

Date: 4/22/14

Appendix 1, Responses and Analysis to Public Comments and New Information Summary Supporting the Decision Record, Disposal of 212 Acres in 9 Tracts, Environmental Analysis (EA), WY-070-EA12-186

The public provided 19 timely comments; see the administrative record (AR). The public provided comments on 12 substantive issues; see below. The segregation NORAs resulted in 5 public comments. The comments raised 3 substantive issues; see administrative record (AR). The EA resulted in 3 public comments which raised 5 substantive issues; see AR. The proposals' publication in area newspapers of general circulation resulted in 0 public comments. The public provided 11 comments as a result of the land sale NORAs. The comments raised 4 substantive issues, see AR. The public's elected and appointed representatives provided 0 comments as a result of BLM's direct letter solicitation for input. One commenter opposed the proposed land disposals using a theory of no-net-loss. Seven commenters either supported the proposals or had no concerns. BLM used 5 regulatory means to solicit public, federal, state, and local governmental representatives' input to the land sale proposals. BLM solicited comments from the publication of the Environmental Assessment (EA), WY-070-EA12-186, Disposal of 212 Acres in 9 Tracts; from notices of realty action (NORAs) for segregation of future claims on the property interests and for the land sales; from public notices in local newspapers; from direct solicitation among affected federal, state, and local political representatives; and from posting a public notice on the BLM's Buffalo Field Office (BFO) website. BLM's response to new information after the publication of the EA and / or NORAs, and substantive public issues follows.

1. One commenter preferred no-net-loss on public land and 3 preferred that BLM use a land exchange to consolidate public lands.

Reply: The BLM explained the regulatory environment and site-specific posture of these parcels in the EA regarding a land exchange; see Section 2.3, the 'second alternative' paragraph. The absence of contrary or new information causing BLM to re-evaluate the regulatory environment or site-specific posture of the parcels supports the EA's analysis and determination.

2. Three commenters supported the proposed land disposals and similarly 4 had no concerns.

Reply: Noted.

3. Two commenters noticed the appraisal of the East Fork 1 (EF1) parcel omitted a value for the water well, hydrant, tanks, and other infrastructure.

Reply: The water well, water right, and none of the improvements are the property of the United States. The value of improvements owned by anyone other than the United States upon the lands being sold shall not be included in the determination of fair market value; 43 CFR 2710.0-6(f). The EF1 parcel of 4.15 acres the BLM proposes selling to the Means Revocable Trust (MRT) has 1 water (stock) well - not 3 as stated on the EA's p. 8. The Wyoming State Engineer Office permitted water well on this parcel is well number, WR # P55885.0W. It was drilled in 1958, adjudicated in 1981 to establish a water right in the name of the predecessor in interest to the MRT Ranch, Brug Land and Livestock. The other 2 water wells cited in the EA are materially away from the BLM parcel yet have a similar history. The EA's Appendix A, Plats Summarized View, p. 3, shows 1 water well, 1 hydrant, and 2 livestock water tanks – this is correct and clarifies the information in the EA's text.

4. Two commenters wrote that resolving a trespass through a direct sale may encourage future trespass, the sale to resolve a trespass may set precedent, and that this method of trespass resolution was not in the public interest.

Reply: Here a competitive sale of the EF1 parcel was not appropriate as the parcel is isolated, has no public surface access, and no adjoining landowner; 43 CFR 2710.0-6(c)(3). The authorized officer determined that a competitive sale was not appropriate and that a direct sale was in the public interest; 43 CFR 2711.3-3(a)(1)-(5). The cost of securing the title to 4.15 acres is unlikely to encourage future trespass. The BLM's Buffalo Field Office conducted no other trespass land sales in at least 20 years. BLM considers the circumstances of each trespass on its own site-specific facts, the cooperation of the trespasser, whether the trespass was willful, the law, the regulations, and the land use plan when the Bureau crafts a resolution for a trespass.

The potential patentee must pay for the interim land rent, back rent, the land title, the cadastral survey, the administrative time to process the appropriate ROW or permit as well as the trespass resolution and the sale – to include vehicle mileage, notices in the Federal Register, notices in local newspapers of record, a trespass penalty fee, and a trespass liability fee (if willful and may be 2 to 3 times the rent). The fees and costs are multiples in excess of the title payment. The trespasser in cases of trespass sales is not offered a whole parcel, merely a reasonable least-divisible tract – and that is the proposed resolution here. BLM uses the law, regulation, 43 CFR subpart 2710, and BLM Handbook, H-9232-1, Trespass Abatement to resolve trespasses. See also; Chapter VII, Settlement of Trespass Liability, from BLM Handbook, H-9232-1, and BLM Briefing Paper, 3 pp., AR.

5. One commenter argued that the use of best practices in private party to private party sales precludes some public land trespasses for the purchaser whom should have known what they were purchasing.

Reply: Whether Means Revocable Trust, (MRT) learned of the trespass at a real estate closing with Brug or earlier is important to MRT but is not material to BLM. What is material to BLM is that MRT reported to BLM the apparent long-standing trespass on an isolated parcel, and that MRT cooperated with BLM in all phases of resolving the trespass at MRT's substantial monetary and time expense. MRT brought the trespass to the BLM's attention in November 2010, shortly after it purchased the ranch. Knowing of the trespass set BLM on a trespass review, see #s 3 and 5, above, and land inventory; see Federal Land Policy and Management Act, Section 201, (inventory requirement). BLM determined the nature of the trespass and the circumstances of the adjacent grazing allotment precluded the BLM from retroactively adopting the improvements into the range improvement program for the improvements were in-place and exceeded the scope of regulatory range improvement projects. See, BLM Handbook, H-9232-1, Chapter V, Realty Trespass Resolution. Powder River Energy Corporation (PreCorp) requested a right-of-way permit from the BLM in January 2011 authorizing a 1960s-era powerline (built by a predecessor in interest. Knowing of the MRT trespass prompted BLM to concurrently order a cadastral survey and to process an interim land use permit for agricultural use (rent).

6. One commenter argued that BLM subjected itself to regulatory capture over the land disposals.

Reply: BLM followed the law, the regulations embodied in 43 CFR subpart 2710, and the Buffalo Resource Management Plan. The fees and costs charged to MRT and to a lesser extent, Farmland Reserve, Inc., (FRI) also color the discussion on regulatory capture in these proposals.

7. Two commenters wrote the BLM should have used competitive bidding for these land disposals.

Reply: The BLM used a direct sale to resolve this trespass because it is lawful; see 43 CFR 2710.0-6(c)(3)(iii) and 2711.3. The use of competitive bidding is for situations where, in the judgment of the authorized officer, there are a number of interested parties where lands are accessible or adjoining – none of which apply to these parcels; see the EA and 43 CFR 2710.0-6(c)(3)(i). Modified competitive bidding is for situations where there is an adjoining landowner – which does not apply to these parcels; see the EA and 43 CFR 2710.0-6(c)(3)(ii). Furthermore the BLM used a direct sale to resolve

this trespass because MRT brought the trespass to the attention of the BLM. MRT facilitated a resolution, timely settlement, and materially assisted the BLM with ensuring the proper interim permits were in place and effective prior to a sale. See, 43 CFR 2711.3-3, BLM Handbook, H-9232-1, Chapter IX, Planning for Realty Trespass Prevention, Detection, and Resolution.

8. Two commenters argued that 8 parcels should not be offered to tax-exempt buyers as such a sale deprives the county of tax revenue.

Reply: BLM, here, clarifies the EA's Sections 3 and 4, that FRI has a nonprofit status. Whether or not a land disposal sale is allowed to a nonprofit is a matter of public policy that is not determined by the BLM. BLM notes that nonprofits are qualified conveyees as they are corporations subject to the laws of the US; 43 CFR 2711.2; and direct sales to nonprofits maybe in the public interest, as may be sales to state or local government; 43 CFR 2711.3-3.

9. One commenter challenged that the 9 parcels lack legal public access via the land surface.

Reply: BLM's RMP maps cited in the EA, the EA Appendix A, and the BLM's surface on-site inspections of the parcels revealed the 9 parcels are landlocked, having no public access. The absence of contrary evidence supports the BLM's determination.

10. One commenter challenged that the proposals to dispose of 9 parcels comprised too much land.

Reply: BLM manages about 780,291 acres in the Buffalo planning area. These 9 disposal proposals comprise about 0.027% of the surface acres managed by the BLM's Buffalo Field Office.

11. Some commentators asked why the land sale Notices of Realty Action did not list the fair market value of the parcels and / or that the fair market value (FMV) was low.

Reply: The land sale Notices of Realty Action, both published on December 14, 2013 in the Federal Register, Vol. 78, No. 244, pp. 76854-76855, list the FMV in the first sentence. The notice serving the 8 parcels for Sheridan County are consolidated in one FMV. Also see; # 3, above. Commenters did not offer alternative assessments, FMVs, or lawful rationale that BLM should consider in rejecting the published FMVs.

12. Four commenters asked BLM to provide maps locating the 9 proposed parcels with either a Federal Register notice or a private local newspaper of general circulation.

Reply: BLM provided maps with the EA, pp. 1-2 and Appendix A, and references to land use planning documents that included maps. BLM provided the legal descriptions or where to find the legal descriptions of the parcels in public press releases, newspaper government notices, and Federal Register notices. BLM has no authority to determine whether the newspapers of general circulation in the area of the proposals publish maps locating the parcels.