

**Decision Record
for the
Nancy Charley Family Trust Direct Land Sale EA #OR-014-05-07**

INTRODUCTION

The Bureau of Land Management (BLM), Lakeview District, Klamath Falls Resource Area (KFRA) discovered an unintentional land trespass on BLM-administered public land. A barn and corral were built on BLM property in the 1940s-1950s and a shed was put on skids and moved to BLM property from Forest Service property in the 1970s. A land survey completed on May 18, 2005 partitioned a small portion of land, segregating the encroachment (2.6 acres) from the remaining 31.07 acre parcel of BLM land. The affected public lands are described as follows: T. 38 S., R.05 E., Sec. 13, Government lot 9, Willamette Meridian, Klamath County, Oregon

The KFRA completed the Nancy Charley Family Trust Direct Land Sale Environmental Assessment (EA) #OR-014-05-07 to analyze alternative methods to resolve the unintentional trespass. Four alternatives were considered:

Alternative A (Proposed Action) – Disposal of Public Lands by Sale

The proposed action is to sell 2.6 acres of BLM-administered public land by direct sale to the Nancy Charley Family Trust (“The Trust”) for the appraised fair market value of the property.

Alternative B - Lease the Public Land

The subject 2.6 acres of public land would be retained in public ownership. The public land would be leased to The Trust at fair market value, as determined by appraisal, pursuant to 43 CFR 2920.

Alternative C – Removal of Structures and Land Restoration

The subject 2.6 acres of public land would be retained in public ownership. The Trust would cease use of the lands, remove existing buildings and other structures, and take actions deemed necessary to re-establish native vegetation.

Alternative D – No Action

Under this alternative, no action would be taken to resolve the trespass. This alternative was presented for analysis purposes only because BLM is required, per 43 CFR 2711.3-3(5), to resolve inadvertent unauthorized use on BLM lands.

DECISION

It is my decision to authorize the implementation of the proposed action as analyzed in the EA. Specifically, this decision will result in the direct sale of 2.6 acres of BLM-administered land, as described above, to the Nancy Charley Family Trust for the appraised fair market value of the property. The sale will include the surface and mineral estates, except oil and gas and geothermal resources which are reserved to the United States. The sale will include the value of ponderosa pine timber that is present on the 2.6 acres, determined through a separate timber cruise and appraisal to be approximately forty thousand board feet.

DECISION RATIONALE

Implementation of Alternative A, the proposed action, meets the purpose and need identified in the EA and would be consistent with objectives and potential impacts analyzed in the EA and the KFRA RMP.

Selection of Alternative B – Lease the Public Land, would meet the purpose and need in the EA, however it would add additional administrative responsibilities and financial obligation for the BLM for issuance and annual management of the lease.

Selection of Alternative C – Removal of Structures and Land Restoration, would meet the purpose and need in the EA, but ultimately the Trust would be liable for removal of existing buildings and other structures, and take actions to re-establish native vegetation. I think that it would be a hardship on the Trust to have to remove the historic barn and other structures and restore the land, and thus is not a preferred action when compared with the minimal reduction in public land ownership. The land sales program is designed to manage unintentional trespasses in this fashion.

Alternative D, the no action alternative, is rejected because it does not meet the purpose and need for action identified in the EA.

Surveys

The proposed area to be sold has been surveyed for cultural resources using BLM Class III survey methods. One historic site (the barn and corrals) was documented, but this site was determined to be not eligible for the National Register. No noxious weeds, special status plant or wildlife species were located within the proposed sale area.

Consultation and Coordination

There are currently no listed species or Designated Critical Habitat present and no federally listed species would be affected from the proposed action. A “No Effect” determination has been made for all Federally Listed species for implementation of the proposed land sale.

Public Involvement

A legal notice was published in the Klamath Falls Herald and News newspaper on July 13, 2005, notifying the public of the possible land sale and soliciting their participation. No comments were received in response to either the public notice or the letters to individuals. A notice of availability and 30-day comment period for the completed EA was published in the Klamath Falls Herald and News newspaper on March 7, 2008 and mailed to individuals and organizations who have expressed interest in the sale/disposal of public land.

One comment letter and an e-mail message supporting that letter were received. The letter expressed a point that “*the BLM parcel gives the government direct access to Spencer Creek and allows for monitoring and evaluation of streamside conditions*”, and that it “*is important for the government to have access for streamside monitoring without being dependant upon private landowners*”. The implication in the letter is that if the land were sold under the proposed action the government would no longer have access to the stream. In reality, the BLM does not anticipate needing access to this part of the creek, but access to the stream is available through Forest Service managed lands and thus this public concern is not an issue for non-selection of the proposed action. There were no resource related concerns expressed by the public.

Finding of No Significant Impact

No significant impacts were identified. No impacts beyond those anticipated in the KFRA RMP Environmental Impact Statement (EIS) would occur. (Refer to the Finding of No Significant Impact for EA #OR-014-05-07.)

CONCLUSION

Based on the information in the EA and project record, I conclude that the decision to sell the 2.6 acres is consistent with the Klamath Falls Resource Area Record of Decision and Resource Management Plan (June 1995). This decision is consistent with the Endangered Species Act, The Native American Religious Freedom Act and cultural resource management laws and regulations. It is also consistent with Executive Order 12898 on Environmental Justice and will not have any adverse impacts to energy development, production, supply and/or distribution per Executive Order 13212.

ADMINISTRATIVE REMEDIES

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1 (1999). 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.

Manager, Klamath Falls Resource Area
Bureau of Land Management
2795 Anderson Ave, Building 25
Klamath Falls, OR 97603

To file a petition pursuant to regulation 43 CFR 4.21 or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that an appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal 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 (see 43 CFR 4.413) at the same time the original documents are filed with this office. The person requesting a stay has 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 regulation, 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.

/s/ Donald J. Holmstrom
Donald J. Holmstrom, Manager
Klamath Falls Resource Area

6/12/08
Date

FINAL FINDING OF NO SIGNIFICANT IMPACT (FONSI)
for the
Nancy Charley Family Trust direct Land Sale Environmental Assessment
EA #OR-014-05-07

The Bureau of Land Management (BLM), Lakeview District, Klamath Falls Resource Area (KFRA), has completed an Environmental Assessment (EA) and analyzed alternative proposals to resolve an unintentional land trespass discovered on BLM lands. The unintentional land trespass consists of a barn and corral that were built on BLM property in the 1940s-1950s and a shed that was put on skids and moved to BLM property from Forest Service property in the 1970s. The EA considered four alternatives:

Alternative A (Proposed Action) – Disposal of Public Lands by Sale

The proposed action is to sell 2.60 acres of BLM-administered public land by direct sale to The Trust for the appraised fair market value of the property as per 43 CFR 2711.3-3(5). The sale would include the surface and mineral estates, except oil and gas and geothermal resources which would be reserved to the United States. The sale would also include the value of ponderosa pine and white fir timber that is present on the 2.60 acres as determined through a separate timber cruise and appraisal.

Alternative B – Lease the Public Land

Under this alternative, the subject 2.60 acres of public land would be retained in public ownership. The Trust would be issued a land use lease pursuant to 43 CFR 2920. The public land would be leased at fair market value, as determined by appraisal. It is assumed that most existing uses would continue and resulting effects would be very similar to the proposed action. The lease would contain stipulations to offer resource protection.

Alternative C – Removal of Structures and Land Restoration

Under this alternative, the subject 2.60 acres of public land would be retained in public ownership. The Trust would cease use of the lands, remove existing buildings and other structures, and take actions as necessary to re-establish native vegetation (i.e., ripping compacted soil and planting).

Alternative D – No Action

Under this alternative, the status quo would be continued. No action would be taken to resolve the trespass. BLM is required to resolve inadvertent unauthorized use on BLM lands and thus this alternative was presented for analysis purposes only.

A legal notice was published in the Klamath Falls Herald and News newspaper on July 13, 2005, notifying the public of the possible land sale and soliciting their participation. No comments were received in response to the public notice.

The proposed action and alternatives were analyzed for significant effects as per the Council on Environmental Quality (CEQ) Regulations - 40 CFR § 1508.27. The following criteria listed under 40 CFR § 1508.27(b) were considered and found to be not applicable to this action: significant beneficial or adverse effects; significant effects on public health or safety; effects on the quality of the human environment that are likely to be highly controversial; anticipated cumulatively significant impacts; highly uncertain or unknown risks; and precedents for future actions with significant effects.

The following unique characteristics (Critical Elements of the Human Environment), listed in 40 CFR § 1508.27(b)(3), are not present and will not be affected: Areas of Critical Environmental Concern (ACECs); prime or unique farmlands; floodplains; wilderness; solid or hazardous waste; and Wild and Scenic Rivers.

In regard to 40 CFR § 1508.27 (b)(8), no adverse impacts are expected to cultural, scientific, or historical resources. The proposed area to be sold has been surveyed for cultural resources using BLM Class III survey methods. One historic site (including the barn and corrals) was documented, but this site was determined to be not eligible for the National Register of Historic Places.

There will be no significant impacts to any special status species or habitat that has been determined to be critical under the Endangered Species Act [40 CFR § 1508.27 (b)(9)]. Surveys of the proposed treatment area were conducted for Threatened and Endangered species and special status species. No Designated Critical Habitat or known sites of special status species occur within the project area.

As per 40 CFR § 1508.27(b)(10), this action conforms with all applicable Federal, State, and local laws and regulations.

The action is consistent with Executive Order 12898 which addresses Environmental Justice. No potential impacts to low-income or minority populations have been identified internally by the BLM or externally through public notification and involvement. Consultation with local tribal governments has not identified any unique or special resources providing religious, employment, subsistence or recreation opportunities.

Pursuant to Executive Order 13212, the BLM must consider effects of this decision on the National Energy Policy. There will be no known adverse effect on the National Energy Policy or on energy resources. Within the project area there are no known energy resources with commercial potential and energy producing or processing facilities.

The 2.60 acre parcel proposed for sale is part of a large acreage in western Oregon that was revested back to the government to be managed under the requirements of the Oregon and California Lands Act of 1937 (O&C Act, Public Law 75-405. Section 3 of Public Law 105-321 (*Oregon Public Lands Transfer and Protection Act of 1998*) established a “No Net Loss” policy for O&C lands under BLM management in western Oregon. The policy requires that changes in land ownership over a ten year period result in no loss of O&C land within western Oregon as a whole. To date, there has been a net increase of 50 acres of O&C land within western Oregon. The sale of 2.60 acres would not result in a net loss of O&C land. The entire parcel is within a generally reserved land allocation (Riparian Reserve) designation and is not considered as part of the “lands available for timber harvest” or included as part of the harvest land base upon which Allowable Sale Quantity (ASQ) is calculated.

Based on the analysis of potential environmental impacts contained in the environmental assessment, it is my determination that neither alternative analyzed constitutes a significant impact affecting the quality of the human environment greater than those addressed in the following:

- Final - Klamath Falls Resource Area Management Plan and EIS (FEIS), 1994

- Klamath Falls Resource Area Record of Decision and Resource Management Plan and Rangeland Program Summary, 1995 (KFRA ROD/RMP)
- Klamath Falls Resource Area Management Plan (RMP) Amendment on Unintentional Encroachments and Survey Hiatuses, 1998

I have determined that this action will not have any significant impact on the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969, and an environmental impact statement is not required. I have further determined that the proposed action conforms to management direction from and will contribute to meeting the objectives of the Klamath Falls Resource Area Record of Decision and Resource Management Plan, as amended. Therefore, an Environmental Impact Statement, or a supplement to the existing RMP or Environmental Impact Statement, is not necessary and will not be prepared.

Signed: /s/ Donald J. Holmstrom
Donald J. Holmstrom, Field Manager
Klamath Falls Resource Area

Date: 6/12/08