# BLM SAMPLE

# LAND EXCHANGE FEASIBILITY ANALYSIS

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| State: Oregon | Serial No.: OR 65927 FD/PT | Name: McGreer Land Exchange |

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| --- | --- |
| BLM Office:County: | Prineville DistrictWasco and Wheeler Counties, Oregon |
| Federal Acreage proposed for exchange: | 344.31 acres |
| Non-Federal Acreage proposed for exchange: | 15.43 acres |

**1.0 BACKGROUND**

Congress recognized the rugged beauty of the John Day River in central Oregon by designating it as a Wild and Scenic River (WSR) in 1988 (Public Law 100-557). Twenty-one years later, President Barack Obama signed into law the Omnibus Public Land Management Act of 2009 (the Omnibus Act), Public Law 111-11. Title I, Subtitle J, of the Omnibus Act provides for various land exchanges and the designation of the Spring Basin Wilderness Area (SBWA) in Wheeler County along the east bank of the middle segment of the John Day National WSR located in the Bureau of Land Management’s (BLM) Prineville District, Oregon.

Subtitle J, Section 1754(b) of the Omnibus Act provides for the McGreer land exchange, one of four separate exchanges authorized by this law. The Omnibus Act authorizes and directs the BLM to complete the McGreer land exchange if certain conditions are met and requires that, except for certain exceptions set out in the Omnibus Act, the exchange be carried out pursuant to Section 206 of the Federal Land Policy and Management Act (FLPMA).

SEC 1754. LAND EXCHANGES.

(b) MCGREER LAND EXCHANGE.—

(1) CONVEYANCE OF LAND.—Subject to subsections (e) through (g), if the landowner offers to convey to the United States all right, title, and interest of the landowner in and to the non-Federal land described in paragraph (2)(A), the

Secretary shall—

(A) accept the offer; and

(B) on receipt of acceptable title to the non-Federal land, convey to the landowner all right, title, and interest of the United States in and to the Federal land described in paragraph (2)(B).

(2) DESCRIPTION OF LAND.—

(A) NON-FEDERAL LAND.—The non-Federal land referred to in paragraph (1) is the approximately 18 acres of non-Federal land identified on the wilderness map as ‘‘Lands proposed for transfer from McGreer to the Federal Government.’’

(B) FEDERAL LAND.—The Federal land referred to in paragraph (1)(B) is the approximately 327 acres of Federal land identified on the wilderness map as ‘‘Lands proposed for transfer from the Federal Government to McGreer.’’

(3) SURVEYS.—The exact acreage and legal description of the Federal land and non-Federal land described in paragraph (2) shall be determined by surveys approved by the

 Secretary.

\* \* \* \* \*

(e) APPLICABLE LAW.-Except as otherwise provided in this section, the Secretary shall carry out the land exchanges under this section in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

 (f) VALUATION, APPRAISALS, AND EQUALIZATION.—

(1) IN GENERAL.—The value of the Federal land and the non-Federal land to be conveyed in a land exchange under this section—

(A) shall be equal, as determined by appraisals conducted in accordance with paragraph (2); or

(B) if not equal, shall be equalized in accordance with paragraph (3).

(2) APPRAISALS.—

(A) IN GENERAL.—The Federal land and the non-Federal land to be exchanged under this section shall be appraised by an independent, qualified appraiser that is agreed to by the Secretary and the owner of the non-Federal land to be exchanged.

(B) REQUIREMENTS.—An appraisal under subparagraph (A) shall be conducted in accordance with—

(i) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(ii) the Uniform Standards of Professional Appraisal Practice.

(3) EQUALIZATION.—

(A) IN GENERAL.—If the value of the Federal land and the non-Federal land to be conveyed in a land exchange under this section is not equal, the value may be equalized by—

(i) making a cash equalization payment to the Secretary or to the owner of the non-Federal land, as appropriate, in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)); or

(ii) reducing the acreage of the Federal land or the non-Federal land to be exchanged, as appropriate.

(B) CASH EQUALIZATION PAYMENTS.—Any cash equalization payments received by the Secretary under subparagraph (A)(i) shall be—

(i) deposited in the Federal Land Disposal Account established by section 206(a) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)); \*and

(ii) used in accordance with that Act.

(g) CONDITIONS OF EXCHANGE.—

(1) IN GENERAL.—The land exchanges under this section shall be subject to such terms and conditions as the Secretary may require.

(2) COSTS.—As a condition of a conveyance of Federal land and non-Federal land under this section, the Federal Government and the owner of the non-Federal land shall equally share all costs relating to the land exchange, including the costs of appraisals, surveys, and any necessary environmental clearances.

(3) VALID EXISTING RIGHTS.—The exchange of Federal land and non-Federal land under this section shall be subject to any easements, rights-of-way, and other valid rights in existence on the date of enactment of the Omnibus Act.

(h) COMPLETION OF LAND EXCHANGE.—It is the intent of Congress that the land exchanges under this section shall be completed no later than 2 years after the date of enactment of this Act.

*\* The Federal Land Disposal Account established by section 206(a) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)) has lapsed. The cash equalization payment of $15,000 will be deposited in the General Fund.*

Hugh Kelly and Rosemary McGreer submitted a land exchange proposal to the Prineville District Office on October 29, 2009. The initial proposal offered 26.47 acres of non-Federal land for 344.31 acres of Federal land as provided by the Omnibus Act. The non-Federal land was comprised of two separate Wheeler County tax lots: Tax Lot 700, 11.04 acres, owned by Hugh Kelly and Rosemary McGreer and Tax Lot 902, 15.43 acres, owned by Erin McGreer and William Cole. Subsequently, Hugh Kelly and Rosemary McGreer acquired Tax Lot 902 from their daughter and son-in-law by land exchange and are now offering the property to the BLM in this land exchange proposal.

The BLM coordinated with the Office of Valuation Services (OVS) to contract for a market value appraisal of the subject Federal and non-Federal land with an independent fee appraiser. The OVS administered the contract, prepared an Appraisal Review Report, and approved the values for agency use. The OVS received the appraiser’s final reports for both the Federal and non-Federal lands on January 11, 2012.  The approved market value opinion for the Federal land was $95,000. The approved market value opinion for the non-Federal land was $120,000 and included an individual value of $40,000 for tax Lot 700 and $80,000 for Tax Lot 902. A recent consultation with OVS indicates that these values are current and will remain valid through the 2013 calendar year.

Based on the approved values, it was immediately apparent that the exchange, as proposed, did not meet the requirements of FLPMA Section 206(b), which limits cash equalization payments to 25 percent of the value of the Federal land. The Prineville District Office consulted with the Washington Office to develop an equalization strategy that would meet both the requirements of FLPMA Section 206(b) and the intent of Subtitle J, Section 1754(b), of the Omnibus Act.

The BLM and the McGreer family considered many alternative exchange configurations and agreed upon an equalization strategy that divided the transaction into two separate components, a land purchase and a land exchange. The intent was to allow for the equalization of values within regulatory limits. To support this approach, Hugh Kelly and Rosemary McGreer offered to sell all right, title, and interest in Tax Lot 700 to the United States. On June 4, 2013, the United States accepted title of Tax Lot 700 by purchase with funding from the emergency account of the Land and Water Conservation Fund (LWCF). The purchase price offer was $40,000, the approved market value. The acquisition case is serialized OR-67600 and was processed separately from the exchange.

In this exchange transaction, the BLM will convey the Federal land valued at $95,000 for the non-Federal land (McGreer Tax Lot 902) valued at $80,000. This would include a cash equalization payment of $15,000 to the United States. This cash equalization payment is 15.79 percent of the value of the Federal land and within the 25 percent maximum difference established by regulation.

**2.0 EXCHANGE PROPOSAL**

**2.1 Parties to the Exchange**

The non-Federal party to the exchange is:

Hugh Kelly and Rosemary McGreer

P.O. Box 18

Antelope, Oregon 97001

Email: krmcgreer@gmail.com

Phone: 541-489-3251

The BLM office involved is:

 Prineville District Office

 Address 3050 NE Third Street

 Prineville, Oregon 97754

 District Manager: Carol Benkosky

 Phone: 541-416-6730

**2.2 Federal Land**

The United States would convey to Hugh Kelly and Rosemary McGreer the surface and mineral estates of a single, 344.31-acre parcel of Federal land, described in the attached Exhibit A, subject only to the exceptions set forth. The Federal land is on the edge of a large Federal parcel. It lies adjacent to the McGreer farm on the west side of the John Day River in Wasco County. This land is predominantly rangeland, with the exception of 15.7 irrigated acres along the north and south boundary of the Federal parcel that are cultivated. The Federal land has no river frontage and no legal access. Approximately 37.8 acres of the Federal land are located within the John Day WSR corridor.

**2.3 Non-Federal Lands**

Hugh Kelly and Rosemary McGreer would convey to the United States 15.43 acres of surface and mineral estate, as described in the attached Exhibit A, subject only to the reservations and exceptions of record as shown on a preliminary title report and subsequently approved by the Department of the Interior Regional Solicitor. Hugh Kelly and Rosemary McGreer will provide a Preliminary Title Report and certify that they have legal fee ownership of the non-Federal land.

The non-Federal land is comprised of a single tax lot (Tax Lot 902) situated along the east bank of the middle segment of the John Day WSR in Wheeler County, Oregon. Hugh Kelly and Rosemary McGreer acquired Tax Lot 902 for purposes of this exchange.

The wilderness area boundary in this immediate vicinity coincides with the east property line of the non-Federal land. This acquisition will extend the wilderness boundary west to the east right-of-way line of the existing transmission line easement and add a portion of the non-Federal land to the SBWA.

1. **PUBLIC BENEFITS**

The public benefits of the land exchange include the following:

* Acquisition of 15.43 acres and about 1,320 feet of river frontage within the John Day WSR corridor.
* Acquisition of a public access point to the John Day River from a county road.
* Disposal of Federal land that is difficult and uneconomic to manage with no legal access.
* Resolution of an inadvertent, 15.7-acre agricultural trespass. (It is likely that this trespass was first identified in 1977 following a dependent resurvey in this township by Cadastral Survey. Records of the State Department of Water Resources indicate the historical, long term nature of the water appropriation. The BLM authorized the use by issuing short term agricultural permits in accordance with 43 CFR 2900, until the trespass could be resolved.)

**3.1 Public Interest Determination**

The Omnibus Act authorized and directed this land exchange. The BLM believes that Congress and the President (by signing the Omnibus Act) have made the determination that these transactions would be in the public interest. Regardless, if the BLM did have to make this determination, the BLM would conclude that this exchange would be in the public interest, pursuant to Section 102(a)(1) and Section 206(a) of FLPMA and 43 CFR 2200.0-6(b), for the following reasons.

**3.1.1** In accordance with 43 CFR 2200.0-6(b)(1), the resource values and public objectives of the Federal lands to be conveyed are not more than the resource values and the public objectives that the non-Federal lands could serve if acquired. If retained in Federal ownership, the subject public lands would remain as an edge-holding that is difficult and uneconomic to manage. The exchange would consolidate public land ownership within the John Day WSR corridor to enhance recreational management opportunities.

**3.1.2** In accordance with 43 CFR 2200.0-6(b) (2), the intended use of the conveyed Federal land will not significantly conflict with Federal land management and programs. The Federal land is primarily rangeland in character with 15.7 irrigated acres that are cultivated. Hugh Kelly and Rosemary McGreer will manage these acquired lands without affecting the adjacent Federal land ownership that remains.

**3.1.3** In accordance with 43 CFR 2200.0-6(c), the lands to be exchanged shall be of equal value based on the market values of the Federal and non-Federal lands that will be estimated through self-contained appraisals performed by a qualified independent appraiser considered to be most appropriate for this assignment and mutually agreed upon by all intended users.

**3.1.4** The exchange would expand and consolidate public land ownership in the SBWA and the John Day WSR corridor, provide for better Federal land management, and be consistent with the public interest determination under Section 206(a) of FLPMA. Upon completion of the transactions, the BLM would manage the acquired lands in accordance with the provisions of the Spring Basin Wilderness Management Plan, the John Day River Management Plan, and the John Day Basin Resource Management Plan (RMP).

**3.1.5** Upon acceptance of title by the United States, the lands acquired that are within the

SBWA and the John Day WSR corridor will become segregated, withdrawn from mineral entry and managed as part of those respective units, in accordance with applicable laws as provided for by 43 CFR 2200.0-6(f).

**3.1.6** The BLM considers this exchange to be in conformance with land use planning objectives for the lands involved in accordance with 43 CFR 2200.0-6(g). The lands acquired by the exchange will automatically become public lands as defined in 43 USC 1702 and managed in conformance with the relevant land use plan, which is the Two Rivers RMP (as amended), and will soon be replaced by the John Day Basin RMP. Those lands within the designated boundary of the wilderness and the WSR will become part of those units without further action by the BLM.

**4.0 CONSISTENCY WITH LAND USE PLANNING, PUBLIC LAWS, AND EXECUTIVE ORDERS**

The Prineville District is in the final stages of completing the John Day Basin RMP. The BLM expects to publish the proposed RMP/Final Environmental Impact Statement in 2013. The Two Rivers RMP, dated June 1986, is currently in effect. The BLM amended this plan with the John Day River Management Plan and the Two Rivers, John Day, and Baker RMP Amendments, dated February 2001. The BLM classified the Federal land in the Two Rivers RMP as Zone 2 (Z-2), which provides an option for land exchange projects.

Land tenure designations in the proposed John Day Basin RMP identifies the Federal parcel as Z-2 and allows for conveyance by exchange if the United States receives equal or greater resource values in exchange. The non-Federal lands have been determined to have a greater benefit to the public than the Federal land.

The Branch of Geographic Sciences, Cadastral Survey, completed and approved a Land Description Review on May 11, 2012.

Acquiring the non-Federal lands is consistent with the intent of the Two Rivers RMP; the John Day River Management Plan; and the Two Rivers, John Day, and Baker RMP Amendments. The actions are also consistent with the management direction of the Proposed John Day Basin RMP that seeks to “consolidate public land ownership patterns by purchase or exchange, acquisition of easements, and through partnership agreements with willing landowners, to resolve public access issues and provide access to high value recreation opportunities” (see Proposed RMP Objective: WSR 1, Chapter 2, page 90).

The non-Federal land provides about 1,320 feet of river frontage and is situated entirely within the boundary of the John Day WSR corridor.

**4.1 Consistency with the Wild and Scenic Rivers Act (83 Stat. 906)**

The National Wild and Scenic Rivers Act, Public Law 100-557 (WSR Act), designated this segment of the John Day River as a recreational river on October 28, 1988, creating a land withdrawal, serialized as OR-44721.

The Federal lands are located both within and adjacent to the John Day WSR corridor. The exchange of Federal land within and adjacent to the John Day WSR corridor for private land that is wholly within the John Day WSR corridor would appear to be permitted under the WSR Act. The McGreer Land Exchange is specifically authorized by the Omnibus Act so it is clearly the intent of Congress for this exchange to be authorized even though a portion of the Federal land to be acquired by the private party was withdrawn as part of the Wild and Scenic River corridor by PL 100-557 (102 Stat. 2782, October 28, 1988).

**4.2 Consistency with the Oregon State Scenic Waterways Act**

The Oregon Scenic Waterways Act designated the John Day River system to emphasize the protection of scenic, historic, natural, and recreational qualities of the river. In 2005, the Oregon State Land Board adopted the findings and conclusions of the John Day River navigability study. The study determined the John Day River to be navigable from river miles 10 to 184 and asserted a State claim to that section of the river below the ordinary high water line. The Oregon Court of Appeals issued a decision supporting the navigability findings. The land exchange includes lands between river miles 132 and 111, classified by the Oregon Scenic Waterways Act as a scenic river area. This exchange is consistent with the State navigability determination. The BLM recognizes the navigability findings and the State claim to the bed and banks below the ordinary high waterline.

**4.3 Floodplains and Wetlands**

In accordance with Section 2(a) (2) (ii) of Executive Order 11988, portions of the Federal land to be exchanged are within a floodplain. The environmental analysis for the exchange will consider the effects of conveyance from Federal ownership, including the need for any restrictions on uses of the properties.

**4.4 Facilitation of Hunting Heritage and Wildlife Conservation**

On August 17, 2007, President G.W. Bush signed Executive Order 13443, “Facilitation of Hunting Heritage and Wildlife Conservation.” The Order directs the Department of the Interior and its component agencies, bureaus, and offices to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitats.

Acquisition of the non-Federal property provides public access to the river and expands fishing and hunting opportunities.

Conveyance of the Federal land would not diminish public hunting opportunities since there is no public hunting activity due to lack of legal road access.

**4.5 Consistency with State and Local Planning Requirements**

In Oregon, State land use laws are administered locally by county planning departments that require land partitions or property line adjustments when individual parcels are created or tracts are conveyed and assembled into the adjacent ownership. A property line adjustment provides for the relocation of a common boundary and is a necessary step to ensure that the exchange complies with Oregon State land use laws and county codes. Deeds and patents are recorded with the County Clerk.

The non-Federal land is located in Wheeler County. The Federal parcel is located in Wasco County. Both the non-Federal and Federal lands are zoned Exclusive Farm Use in the comprehensive plans of the respective counties. The following describes State and local land use planning considerations:

* Tax Lot 902 is situated on the east side of the John Day River in Wheeler County. Since this is an individual tax lot, it could assemble into the contiguous Federal Tax Lot 400 following the exchange through a “Combine and Cancel” process, in lieu of a property line adjustment. The Wheeler County Assessor would complete this in accordance with the following criteria: there are no delinquent taxes, the parcels are contiguous, the property classes are compatible, and the parcels have the same ownership interests. Hugh Kelly and Rosemary McGreer would be responsible for the mapping fee estimated by the County at $150.
* The application for property line adjustment in Wasco County requires a map to be prepared by a licensed surveyor. Wasco County does not require physical monumentation, boundary posting or on-the-ground survey for the plat map. The County Surveyor reviews and approves the map and then files it with the County Clerk’s Office. The County prepares a notice and mails it to surrounding landowners, with the right to appeal within a prescribed time-period.
* BLM Cadastral Survey completed the survey of the non-Federal lands and prepared maps with a precise acreage determination. The survey describes the Federal lands by aliquot part and government lots. Cadastral Survey conducted a Legal Description Review and certified the legal description for both the Federal and non-Federal lands.
* The BLM and the property owner must co-sign the Wasco County Property Line Adjustment/Re-plat (PLA) Application. Cadastral Survey reviewed the PLA Plat and on August 15, 2013, provided a Short Chain of Survey Certificate approving the plat for BLM signature. The current fee is $1,687. The processing time could take up to 65 days, followed by a 12-day appeal period.
* The property line adjustment would carve out 344.31 acres from the larger Federal Tax Lot 500 to assemble it into the contiguous McGreer Tax Lot 100 without creating a separate, legal parcel. The Federal parcel cannot be partitioned as a separate, individual tax lot due to the lack of legal access.

**5.0 RESOURCE VALUES AND ANTICIPATED FUTURE LAND USE**

The SBWA is situated upstream of the town of Clarno, Oregon, along the east bank of the John Day WSR in Wheeler County. The high wilderness characteristics in Spring Basin include the colorful geologic features and rugged cliffs, which give this area a unique beauty. Numerous vista points provide visitors a sweeping view of the John Day River valley. The remote canyons and vegetative diversity provide solitude. These highly scenic settings set the stage for outstanding opportunities for recreation activities such as photography, hiking, and nature study.

This area contains a unique combination of ecosystems, including: Palouse grassland province/wheatgrass, bluegrass, and sagebrush steppe. At present, there are no similar wilderness areas containing these ecosystems with this type of biological diversity.

The predominant vegetation in the Spring Basin area is big sagebrush/bunchgrass and, to a lesser extent, juniper/bunchgrass. There is a scattering of rabbitbrush and low sagebrush; associated grasses include bluebunch wheatgrass, needlegrass, Idaho fescue, Sandberg’s bluegrass, sand dropseed, and cheatgrass. The area contains numerous other plant species as well.

The BLM identified four plant species of special interest within the area. Two species, *Castilleja xanthotricha* (yellow-hairy Indian paint brush) and *Astragalus diaphanous*, are Federal candidates for listing under the Endangered Species Act. The other two, *Penstemon eriantherus* var. *argillosus* (fuzzy tongue penstemon) and *Pediocactus simpsoni* var. *robustior* (Hedgehog cactus), are of limited concern within Oregon according to the Oregon Natural Heritage Data Base.

Most portions of the Spring Basin area appear in a natural condition, primarily affected by the forces of nature. Wildlife observed in the area includes mule deer, pronghorn antelope, elk, black bear, cougar, bobcat, mink, river otter, and bighorn sheep. The area provides important big game wintering habitat for deer and elk. Other species common in the area include golden eagles, prairie falcons, chukar, California quail, meadowlark, and mountain bluebirds. The northern bald eagle, listed as threatened in Oregon, is a winter resident.

**5.1 Federal Land**

The subject Federal land is adjacent to the McGreer family farm on the west side of the John Day River in Wasco County, Oregon. This land is predominantly rangeland with the exception of irrigated areas along the north and south boundary of the Federal parcel. These cultivated areas comprise 15.7 acres with water rights included under certificate numbers 53715, 65824, 83272, and 83294. The point of diversion is located on McGreer property. The McGreers will manage the Federal lands similar to current BLM management.

H. Kelly McGreer is the holder of a grazing lease for the Spud Allotment (#2588). There are approximately 608 acres supporting 40 Animal Unit Months (AUM) in the Spud Allotment. The exchange will decrease the Federal land in this allotment by 344.31 acres with a reduction in the grazing preference by 15 AUMs. A total of 264 acres supporting 25 AUMs would remain in this allotment following the exchange. There are no constructed assets or range improvements on the affected public lands.

A formal notification of the exchange proposal was sent to the operator, H. Kelly McGreer, who signed and returned a Grazing Cancellation Waiver dated July 1, 2013, unconditionally waiving his right to a 2-year notice in accordance with 43 CFR 4110.4-2(b). Federal regulations require that a 2-year notification be given to the operator prior to cancelling or adjusting grazing privileges.

Based upon an evaluation of available literature, a review of BLM mineral records, and a field inspection, the mineral potential of the areas covered under the proposed conveyance is evident, but low. A search of the BLM Legacy Rehost 2000 lands and minerals record system showed no record of past mining activity on or near the subject parcels. The Federal and non-Federal lands have low or unknown mineral resource values. Considering the lack of locatable and leasable minerals as well as the low potential for development of salable minerals, the BLM does not expect the transfer of the Federal land to interfere with overall mineral development in central Oregon.

As part of the property evaluations within Federal land exchange procedures, the BLM approved an Environmental Preliminary Analysis on the Federal land on October 23, 2012. The BLM conducted the evaluation in accordance with the American Society for Testing and Materials (ASTM) Standards to meet the “All Appropriate Inquiry” (AAI) requirements per 40 CFR Part 312. The BLM inventoried the Federal lands in compliance with the AAI regulations to determine that there are no hazardous substances present on the subject parcel.

There are no known issues involving threatened and endangered species or cultural resources on the subject Federal land. The exchange will improve manageability of the Federal and non-Federal land.

**5.2 Non-Federal Lands**

The non-Federal lands are adjacent to the SBWA with frontage along the John Day WSR corridor. They provide public access to the river with approximately one quarter of a mile of frontage along the east bank of the John Day River. These lands contain a small area of wetland vegetation along the northern portion of the property, and the entire area west of the county road is subject to seasonal flooding.

As part of the property evaluations within Federal land exchange procedures, the BLM approved a Pre-Acquisition Liability Survey (PALS) on October 23, 2012. The BLM conducted the evaluation in accordance with the ASTM Standards to meet the AAI requirements per 40 CFR Part 312. The BLM inventoried the non-Federal lands in compliance with the AAI regulations to determine that there are no hazardous substances present on the subject parcels.

The non-Federal lands are adjacent to the SBWA and have low-bank river frontage with vehicular access provided by an improved county road. The BLM has determined that the non-Federal lands provide for a greater public interest value within the WSR corridor than the Federal lands, which are relatively inaccessible. The non-Federal lands can provide public access to the river from the adjacent county road. Wheeler County Road #29, known as the Clarno Road, extends through the non-Federal parcels.

Some public users refer to the non-Federal lands as the Clarno East boat launch site and use the property for access to the river. The current owners closed access to the public due to management concerns. There may be public interest to add a new boat launch and take-out site; however, the John Day River Management Plan requires closure of an existing recreation site prior to development of a new site. The BLM will make decisions regarding closing, opening, or developing launch sites through the National Environmental Policy Act (NEPA) process with appropriate input from recreation/NLCS and the public.

**6.0 LAND VALUES ANALYSIS**

The BLM coordinated with the Office of Valuation Services (OVS) to contract for a market value appraisal with an independent fee appraiser. The OVS administered the contract, prepared an Appraisal Review Report, and approved the values for agency use.

The approved market value opinion for the Federal land is $95,000. The approved market value opinion for the non-Federal land is $80,000. The effective valuation date is November 29, 2011. A recent consultation with the OVS indicates that these values are current and will remain valid through the calendar year 2013.

**6.1 Equalization Strategy**

The land exchange regulations allow equalization of value by adjusting acreage or by cash equalization not to exceed 25 percent of the total value of the Federal lands. The preferred option would be to modify the proposal to minimize cash equalization. However, section 1754(f)(3)(A)(ii) of the Omnibus Act only allows modification to the parcels involved in the exchange by reducing the acreage of the Federal or non-Federal land.

During the informal review of the Feasibility Analysis, a value equalization strategy was developed by the Washington Office that divides the transaction into two separate components, a land purchase and a land exchange. The intent is to allow for the equalization of values within regulatory limits. To support this approach, Hugh Kelly and Rosemary McGreer have offered to sell all right, title, and interest in Tax Lot 700 to the United States. The BLM has acquired by purchase Tax Lot 700 with funding from the emergency account of the Land and Water Conservation Fund (LWCF). The purchase price offer was $40,000 – the approved market value that the OVS verified in January 2013. The OVS confirmed that the value of the Federal and non-Federal lands remains valid through calendar year 2013. The acquisition case is serialized OR-67600 and was processed separately from the exchange.

In this exchange transaction, the BLM will convey the Federal land valued at $95,000 for the non-Federal land (McGreer Tax Lot 902) valued at $80,000. This would include a cash equalization payment of $15,000 to the United States. This cash equalization payment is 15.79 percent of the value of the Federal land and within the 25 percent maximum difference established by regulation.

**7.0 TITLE CONSIDERATIONS**

**7.1 Federal Land**

The BLM Cadastral Survey Group conducted a Dependent Resurvey under Special Instructions, Group Number 2329, Oregon, as follows: “Dependent Resurvey of a Portion of the Sub-divisional Lines of Section Lines of Sections 3 and 10; the Further Subdivision of Sections 3 and 10; and Survey of Meanders of a Portion of the Right Bank of the John Day River, through Sections 3 and 10, T. 8 S., R. 19 E., Willamette Meridian, Oregon.” They approved the final official plat of survey determining the total acreage to be 15.43 acres on September 28, 2011.

The WSR Act (enacted in 1968, Public Law 90-542; 16 U.S.C. 1271 et seq.) affects portions of the Federal land. The WSR Act safeguards the special character of rivers while also recognizing the potential for their appropriate use and development. The designated boundary, established primarily by aliquot part description as well as utilizing existing roads and geographic features, often exceeds one quarter of a mile from the river’s bank.

The Federal land lies along the edge of a larger Federal parcel adjacent to the McGreer family farm in Wasco County. These lands are predominantly dry rangeland, with the exception of irrigated areas along the north and south boundary. These cultivated areas on the Federal land comprise 15.7 acres of water rights included under certificate numbers 53715, 65824, 83272, and 83294, as indicated in the table below:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Township | Range | Section | Quarter / Quarter | Certificate # | Acres of Water Right |
| 8 S. | 19 E. | 9 | SESW | 53715\* | 0.2 |
| 8 S. | 19 E.  | 9 | SWNE | 65824 | 0.1 |
| 8 S. | 19 E. | 9 | SENE | 65824 | 1.7 |
| 8 S. | 19 E. | 4 | NWSE | 83272 | 0.5 |
| 8 S. | 19 E. | 4 | NWSE | 83294 | 12.2 |
| 8 S.  | 19 E | 4 | NESE | 83294 | 1.0 |

\*Point of Diversion

The Federal land would be conveyed subject to a reservation of ditches and canals pursuant to the Act of August 30, 1890, (43 U.S.C. 945) and a right-of-way for an irrigation canal pursuant to the Act of March 3, 1891, (26 Stat. 1101) serialized OR-015772.

The Federal lands are included in the Spud grazing allotment (#2588). Hugh Kelly McGreer is the holder of a grazing lease for this allotment containing approximately 608 acres and supporting 40 AUMs. The exchange would decrease the Federal land in this allotment by 344.31 acres with a reduction in the grazing preference by 15 AUMs. A total of 264 acres supporting 25 AUMs would remain in this allotment following the exchange.

A formal notification of the exchange proposal was sent to the operator, Hugh Kelly McGreer, who signed and returned a Grazing Cancellation Waiver dated July 1, 2013, unconditionally waiving his right to a 2-year notice in accordance with 43 CFR 4110.4-2(b). Federal regulations require that a 2-year notification be given to the operator prior to cancelling or adjusting grazing privileges.

**7.2 Non-Federal Lands**

The non-Federal lands are within a State Scenic Waterway and subject to the provisions of the Oregon Scenic Waterways Act, Oregon Revised Statutes 390.805 to 390.940. The Oregon Parks and Recreation Department administers this law. Landowners must notify the State of certain activities proposed within one quarter of a mile of the bank of Oregon’s designated scenic waterways. Such activities include: cutting of trees; mining; and construction of roads, railroads, utilities, buildings, or other structures. The landowner may implement the proposed uses or activities upon written notification of approval or 1 year after the notice is accepted. This landowner will convey title to the lands subject to this designation (encumbrance). Post-acquisition management activities by the BLM would be subject to provisions of the Oregon Scenic Waterways Act.

Hugh Kelly and Rosemary McGreer have provided preliminary title reports for the non-Federal lands through Wheeler County Title, Inc. These reports show the current record title owners and encumbrances. The Preliminary Title Report (PTR) lists and describes existing rights-of-way including: Wheeler County Road #29, known as the Clarno Road. The PTR also lists and describes rights-of-way for both aerial and buried utility lines granted to Trans-Cascades Telephone Company and Wasco Electric Cooperative, Inc. The BLM granted rights-of-way for these uses on the adjacent public lands as well. Acceptable title is required in accordance with Department of Justice Title Standards (2001).

**8.0 POSSIBLE PROBLEMS OR CONFLICTS**

The exchange must comply with county land use planning requirements. The non-Federal lands are located in Wheeler County, and the Federal lands are located in Wasco County. Both counties require property line adjustmentsto be recorded in order to correct past land use actions and conform with land use requirements pertaining to the exchange. The process requires applications, with filing fees, to the respective counties with a map. A surveyor licensed in the State of Oregon must prepare the map. The county surveyor must review and approve the map. The applicant must then file the map with the County Clerk’s Office. The county process is subject to notification of surrounding landowners with the right to appeal.

**9.0 PROCESSING COSTS AND FUNDING**

The Hugh Kelly and Rosemary McGreer reviewed and agreed with the cost-sharing responsibilities listed below. Upon approval of the feasibility package by the Director and execution of the Agreement to Initiate a Land Exchange, the BLM will request payment from Hugh Kelly and Rosemary McGreer that will be deposited in the contributed funds account and used to cover the shared costs of the land exchange.

There is an administrative economy in combining and not duplicating project work for tasks needed for both the Confederated Tribes of Warm Springs Reservation of Oregon (CTWSRO) and the McGreer exchanges. The field office developed a methodology to determine the proportionate share of the various tasks by the respective acreage for each exchange. The BLM, the CTWSRO, and Hugh Kelly and Rosemary McGreer will proportionately share the costs associated with the Mineral Potential Report, Environmental Site Assessment, and various tasks related to the National Environmental Protection Act (NEPA) as indicated in the tables below.

| **Project Management****Combining Tasks to Share Costs****In Proportion to Acreage Equivalents** |
| --- |
| **Exchange****Acreage** | **Exchange****Acreage** | **Total Acres** | **Proportionate Share****McGreer** | **Proportionate Share****CTWSRO** |
| 4,547.93 - CTWSRO+ 4,507.15 – Federal9,055.08 | 26.47 - McGreer+ 344.31- Federal359.74 | 9,425.86 | .0382 | .9618 |
| **Description of Work** | **Cost Share****Estimate For Both****Exchanges** | **Proportionate Share****McGreer****.0382** | **Proportionate Share****CTWSRO****.9618** |
| NEPA ComplianceCultural, Botanical, Wildlife, Threated & Endangered SpeciesField Work - Report Writing | $50,000Fed - $25,000Non-Fed - $25,000 | $25,000 x.0382 = $955 | $25,000 x .9618 = $24,045 |
| Environmental Site Assessment – ESAPre-Acquisition Liability Survey - PALS (Hazardous Materials Reports) | $12,000Fed - $6,000Non-Fed - $6,000 | $6,000 x .0382 = $230 | $6,000 x.9618 = $5,771 |
| MineralReports | $11,000Fed - $5,500Non-Fed - $5,500 | $5,500 x .0382 = $210 | $5,500 x.9618 = $5,290 |
|  |
|  | **McGreer** | **CTWSRO** |
| Total Share of NEPA, ESA, and Mineral Report Costs | $1,395$1,440 rounded | $35,10635,100 rounded |

**9.1 Responsibilities and Estimated Costs**

| **Description of Work** | **Total****Cost Estimate** | **Cost Sharing Estimates** |
| --- | --- | --- |
|  |  | **BLM** | **McGreer** |
| Cadastral SurveyDependent ResurveyLand Description Review | $11,800 | $5,900 | $5,900 |
| Mineral Report | $420 | $210 | $210 |
| Environmental Site Assessment (ESA)Pre-Acquisition Liability Survey (PALS) | $460 | $230 | $230 |
| NEPA ComplianceCultural, Botanical, WildlifeStaff work | $1,910 | $955 | $955 |
| Wheeler / Wasco County Property Line AdjustmentsApplication FeesSurvey Plat Map | $2,500 | --- | $2,500 |
| Appraisal Reports and OVS Review/Approval | $18,600 | $12,300 | $6,300 |
| Notice of Exchange Proposal (NOEP)Notice of Decision (NOD) Publication Costs | $500 | --- | $500 |
| Escrow / Closing CostsRecording Fees | $3,000 | --- | $3,000 |
| **TOTAL** | **$39,190** | **$19,595** | **$19,595** |

**9.2 Proposed Schedule:** The following schedule outlines some of the general tasks to be performed and a projected timeframe for accomplishing the work:

|  |  |
| --- | --- |
| **Processing Tasks** |  |
| Feasibility Package Approved by the Director | 09/15/2013 |
| Agreement to Initiate signed | 09/30/2013 |
| Notice of Exchange Proposal Published | 10/01/2013 |
| **Land Appraisals\*** |  |
| Appraisal Cost Estimate Provided by OVS | 02/15/2011 |
| Request Appraisals and Review | 07/01/2011 |
| OVS Prepares Appraisal Statement of Work | 08/01/2011 |
| OVS Issues Appraisal Contract | 09/01/2011 |
| Contract Appraisal Completed | 12/12/2011 |
| OVS Completes Review and Approves Values | 01/17/2012 |
| Appraisal Consultation – OVS Confirms Current Values to end of CY | 01/15/2013 |
| BLM Cadastral Survey – Dependent Resurvey Group 2329 completed | 08/01/2011 |
| BLM Cadastral Survey – LDR completed | 05/11/2012 |
| **Hazardous Materials Inventories**  |  |
| Work initiated by BLM Staff Assistant EP | 06/01/2011 |
| ESA and PALS report completed and approved by BLM | 10/23/2012 |
| PALS report – Update | 02/21/2013 |
| **NEPA – Environmental Assessment Process** |  |
| NEPA Field Work Initiated Cultural/Botanical/Wildlife Inspections | 06/01/2011 |
| Environmental Assessment Report draft completed | 05/01/2013 |
| Notice of Availability of EA Issued with NOEP | 07/15/2013 |
| **Decision Stage** |  |
| Draft Decision Package to Solicitor and NLET for Informal Review | 10/01/2013 |
| Comments from Solicitor and NLET included in the Formal Review Package sent to the Washington Office | 10/01/2013 |
| Decision Package Approved by the Director | 12/01/2013 |
| NOD published | 12/15/2013 |
| Binding Exchange Agreement signed by both parties | 01/15/2014 |
| First Certificate of Inspection and Possession | 02/01/2014 |
| Submit Request for Preliminary Title Opinion | 02/15/2014 |
| Second Certificate of Inspection and Possession | 04/01/2014 |
| Complete Closing Actions – Record Deeds | 06/01/2014 |
| Obtain Final Title Policy U.S. Alta Policy – 9/28/91 | 06/15/2014 |
| Submit Request for Final Opinion of Title  | 07/01/2014 |
| Issue Notice to Governor and local governments | 07/01/2014 |

**10.0 RECOMMENDATION**

Congress authorized and directed this land exchange, subject to certain terms and conditions, presuming that the McGreer family makes the appropriate exchange proposal. The exchange improves land management for both parties. The exchange consolidates public land ownership within the John Day WSR corridor and provides edge-holdings to the SBWA.

Recommended by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Carol Benkosky Date

Prineville District Manager

Approved by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jerome E. Perez Date

State Director, Oregon/Washington

Attachments:

1. Exhibit A− Legal Descriptions

2. Exhibit B − Map of Federal and Non-Federal Land

**Exhibit A**

**Legal Land Descriptions**

1. **The Federal Land -- OR-65927-FD**

T. 8 S., R. 19 E., W.M., Wasco County, Oregon

Section 4, SE¼SW¼, SE¼; 200.00 acres

Section 9, Lots 5, 6, 9 and 10; 144.31 acres

Total Federal Acres: 344.31 acres

Together with the following water rights included under Certificate numbers 53715, 65824, 83272, and 83294 that comprise 15.7 acres.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Township | Range | Section | Quarter / Quarter | Certificate # | Acres of Water Right |
| 8 S. | 19 E. | 9 | SESW | 53715\* | 0.2 |
| 8 S. | 19 E.  | 9 | SWNE | 65824 | 0.1 |
| 8 S. | 19 E. | 9 | SENE | 65824 | 1.7 |
| 8 S. | 19 E. | 4 | NWSE | 83272 | 0.5 |
| 8 S. | 19 E. | 4 | NWSE | 83294 | 12.2 |
| 8 S.  | 19 E | 4 | NESE | 83294 | 1.0 |

\*Point of Diversion

The Federal land would be conveyed subject to a reservation of ditches and canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945) and a right-of-way for an irrigation canal pursuant to the Act of March 3, 1891, (26 Stat. 1101), serialized OR-015772.

1. **The non-Federal Land - OR-65927-PT**

All that part of the Southeast Quarter of the Northwest Quarter of Section 10, Township 8 South, Range 19 East, Willamette Meridian, lying South and East of the John Day River, excepting the County Road, Wheeler County, Oregon, also known as Tax Lot 8S19E-902; comprising 15.43 acres.

**Exhibit B**

**Map**

**Federal and Non-Federal Land**