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MEMORANDUM OF UNDERSTANDING  
BETWEEN  
US DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT-OREGON STATE OFFICE  
and the  
STATE OF OREGON  
DIVISION OF STATE LANDS

Purpose

The purpose of this Memorandum of Understanding (MOU) between the Bureau of Land Management (BLM) and the Division of State Lands (DSL) is to establish procedural guidelines to complete all in-lieu or indemnity land selections to which the State of Oregon is entitled.

Authority

1. Revised Statutes 2275 and 2276, 43 USC 851, 852, as amended
2. The Federal Land Policy and Management Act of 1976 (FLPMA), 43 USC 1701
3. Oregon Constitution, Article VIII, Section 2 through 5

Background

- When Oregon was admitted into the Union, the enabling legislation (Act of February 14, 1859, 11 Stat. 383) granted Sections 16 and 36 of every township to the state for support of its public schools. If any of those lands had already been disposed of or were otherwise unavailable, the US government is required to indemnify the state for the losses pursuant to 43 USC §§ 851 and 852.
- The State of Oregon has currently received approximately 3.5 million acres of school land, including in-place and indemnity selections.
- In the late 1800's and early 1900's, the state sold some of the school sections to private citizens. It was later found that the state did not have title to some of these sections because they were not surveyed or located in national forests.

- ORS 273.620 provided that parcels of land in Sections 16 and 36 which were erroneously conveyed prior to 1916 could be reconveyed to the state by the present successors in interest in exchange for federal lands. ORS 273.620 was repealed on June 19, 1967, and replaced with ORS 273.356 et seq. Under the new statute, a grantee no longer has the right to make a selection of new land, but is entitled to a refund of the original purchase price plus interest.
- Under Section 8 of Chapter 422 [1967] Oregon Laws, the earlier law was modified to provide that grantees who had complied with ORS 273.620 prior to June 19, 1967, would continue to have the right to select lands pursuant to the provisions of the former statute.
- In 1968, the state applied for indemnity land from the BLM on behalf of itself and three applicants known as Ocean View, Baldwin, and Crater Title. The BLM rejected the applications based on its audit which showed that the state had overdrawn its entitlement. Oregon appealed the BLM's finding. In 1991, a final judgment in favor of the state was issued by the US District Court (see Exhibit A) State of Oregon v. BLM-USDI (85-646 MA).
- The court found that the state had a remaining entitlement of 5202.29 acres of school trust land. Subsequently, BLM has clearlisted 798.72 acres to the state. Therefore, the remaining entitlement is now 4,403.57 acres.

### Objectives

The objective of this MOU is to facilitate and expedite the completion of all indemnity or in-lieu land selections.

1. Meet the long-range management objectives of both agencies to resolve indemnity/in-lieu selections and issues in accordance with the 1991 court settlement;
2. Develop procedures for conveyance that are most expeditious and cost effective, while remaining within the constraints of existing laws, regulations and land-use plans or amendments; and
3. Convey all remaining indemnity selections to the state no later than April 6, 1996, in accordance with the direction of the Secretary of the Interior.

## General Criteria for Indemnity or In-lieu Land Selections by State of Oregon

### A. The DSL criteria are:

1. Lands with commercial, industrial, residential, or agricultural development potential within "path of progress" areas such as along the Interstate Highway 5 corridor, Central Oregon or coastal areas.
2. Forest land offering manageability and value comparable to existing common school trust forest lands.
3. Lands identified by DSL on behalf of other parties to which the State of Oregon has an obligation via previous land agreement or similar legally-binding obligation.

### B. The BLM criteria are:

1. Only unappropriated public domain lands may be selected. (O&C lands are not considered to be unappropriated public lands and are not selectable.)
2. Lands must be surveyed and described in accordance with the official plat of survey.
3. No lands mineral in character may be selected, except to the extent that the selection is made as indemnity for mineral base lands. BLM will be responsible for making the mineral in character determination for the base and selected lands.
4. Selected lands must be determined to be suitable for transfer to the State of Oregon and classified for disposal under section 7 of the Taylor Grazing Act of June 28, 1934 (43 USC 31f) and the procedures under 43 CFR 2400.
5. Generally, it is preferred that selected lands not be identified for retention in the BLM Resource Management Plans. Retention lands may be selected but final transfer may be contingent upon an amendment to the applicable plan.
6. Selected lands must be reviewed in accordance with NEPA, ESA, etc. and a finding made by BLM that disposal will have no significant impact.

## Procedures

To carry out the objectives and follow the criteria for the indemnity or in-lieu land selection program, the following selection are agreed upon:

1. Proposals: The indemnity/in-lieu selections of the DSL will be timely processed by BLM according to the procedures for selection under 43 CFR Part 2621.
2. Mineral Report/Environmental Assessments: BLM will prepare these documents covering the resources on the BLM lands. When the environmental report is completed, DSL will be provided an opportunity to review and comment.
3. Permits/Leases: To the greatest extent possible, in-lieu/indemnity selections should not interfere with valid existing rights. Input from existing lessees or permittees will be obtained jointly by BLM and DSL as soon as possible and critical issues will be considered and resolved as appropriate.
4. Improvements: Improvements on BLM lands may be owned either by a permittee/lessee or the BLM. A record of privately-owned improvements will be provided to DSL if available to BLM. Title to the BLM improvements may be transferred to DSL and a list of these improvements and a copy of the authorization will be provided to DSL.
5. Public Participation: The DSL, as required in 43 CFR 2621.2, will publish a public notice of the proposed selection.
6. Sensitive, Threatened and Endangered Plants and Animals: BLM will coordinate with the US Fish and Wildlife Service on actions which may affect federally-listed species listed in the Endangered Species Act of 1973, as amended. DSL will coordinate with the appropriate state agencies pursuant to compliance with state T&E statutes.
7. Cultural Resources: BLM and DSL will seek to comply with the provisions of the 1982 Memorandum of Understanding regarding cultural resource management responsibilities.
8. Water Rights: All water rights shall be transferred to DSL. Where water uses occur without water rights, application for these rights shall be prepared by the BLM grantor in a form satisfactory to the Oregon Water Resources Department.
9. Base Lands: The final judgment issued by the US District Court in State of Oregon v. BLM-USDI (85-646-MA) concluded that there were 11,947.47 acres of unused base lands and 6,745.47 acres of overdrawn base lands, leaving a balance of 5,202.29 acres of land due to the State of Oregon as indemnity. Attached Exhibit B contains a list of the descriptions of the

11,947.47 acres of unused base lands). The Court did not provide any direction as to which particular unused base lands could be selected or which unused base lands would be used to offset the overdrawn base lands. Therefore, BLM and DSL agree that DSL may use any of the unused 11,947.47 acres as base lands to make its remaining selections. After all the selections are made, the remaining unused base lands will be used to offset the overdrawn base lands.

BLM and DSL will evaluate the value of the base lands and selected lands and determine that they are of "roughly equivalent value" as provided in the US Supreme Court decision in Andrus v. Utah, 446 US 500 (No. 78-1522, May 19, 1980).

DSL may elect to "pool" all or portions of its unused base lands of a sufficient total value to select less acreage of public lands of a higher value, provided the total values of base lands and selected lands are determined to be of "roughly equivalent value." In other words, the remaining selections may be made on an equal value basis, rather than an equal acreage basis. Each clearlist issued will contain a value certification by BLM for both the base and selected lands.

10. The DSL shall attempt to complete all remaining indemnity selections as soon as is practical. The BLM shall attempt to complete all actions on these selections, including the conveyance of approved land selections in a timely and efficient manner.

#### Coordination

Formal and informal meetings between the designees of the DSL and BLM to exchange information, coordinate activities, develop procedures, expedite tasks, and facilitate achieving the purpose and objective of the MOU shall be held monthly with additional meetings scheduled as necessary or desirable.

#### Effective Date, Termination, Amendment

This MOU shall be effective upon approval by both parties and shall remain in effect until termination by mutual agreement or by either party upon thirty (30) days notice in writing to the other.

Amendments and supplements to this MOU are subject to the review and approval of the Director, Division of State Lands, and the State Director, Bureau of Land Management.

This MOU is subject to the laws of the State of Oregon, the laws of the United States, and the delegated authority assigned in each instance. Nothing in this MOU shall be construed as obligating either party, heretofore, the expenditure of funds or for future payment of money in excess of appropriations authorized by law.

Approved:

Elaine Zielinski  
Elaine Zielinski  
Oregon State Director  
Bureau of Land Management  
US Department to the Interior

7/26/95  
Date

John E. Lilly  
John E. Lilly  
Acting Director  
Oregon Division of State Lands

7/26/95  
Date

Attachments