

Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Confederated Tribes of the Warm Springs Reservation of Oregon.

## II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411

U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See *Seminole Tribe of Florida v. Stranburg*, No. 14–14524, \*13–\*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of “traditional notions of Indian self-government,” requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to “allow [T]ribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in [T]ribal communities.” 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes “flexibility to adapt lease terms to suit [their] business and cultural needs” and to “enable [Tribes] to approve leases quickly and efficiently.” *Id.* at 5–6.

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from

exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. See *id.* at 2043–44 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Confederated Tribes of the Warm Springs Reservation of Oregon.

Dated: June 11, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.*

[FR Doc. 2018–14519 Filed 7–5–18; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

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### Filing of Plats of Survey: Oregon/ Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the BLM, are necessary for the management of these lands.

**DATES:** Protests must be received by the BLM by August 6, 2018.

**ADDRESSES:** A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

**FOR FURTHER INFORMATION CONTACT:** Marshal Wade, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

#### Willamette Meridian, Oregon

T. 32 S., R. 1 W., accepted May 18, 2018  
T. 34 S., R. 7 W., accepted May 18, 2018  
T. 26 S., R. 20 E., accepted May 18, 2018  
T. 7 S., R. 4 E., accepted May 18, 2018  
T. 6 S., R. 1 E., accepted June 18, 2018

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the

notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Mary J.M. Hartel,**

*Chief Cadastral Surveyor of Oregon/  
Washington.*

[FR Doc. 2018-14510 Filed 7-5-18; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

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### Notice of Intent To Amend the Resource Management Plan for the Colorado River Valley Field Office, Colorado, and Prepare an Associated Environmental Assessment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Colorado River Valley Field Office (CRVFO), Silt, Colorado, intends to prepare a Resource Management Plan (RMP) Amendment with an associated Environmental Assessment (EA) to develop the Sutey Ranch and Haines Management Plan and by this Notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This Notice initiates the public scoping process for the RMP

Amendment with an associated EA. Comments on issues may be submitted in writing until August 6, 2018. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM website at: <https://go.usa.gov/xnvM5>. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation as appropriate.

**ADDRESSES:** You may submit comments on issues and planning criteria related to Sutey Ranch Management Plan by any of the following methods:

- **Website:** <https://go.usa.gov/xnvM5>.
- **Email:** [blm\\_co\\_si\\_crvfo\\_webmail@blm.gov](mailto:blm_co_si_crvfo_webmail@blm.gov).
- **Fax:** (970) 876-9090.
- **Mail:** Bureau of Land Management, Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652.

Documents pertinent to this proposal may be examined at the Colorado River Valley Field Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brian Hopkins, Assistant Field Manager, telephone (970) 876-9003; address 2300 River Frontage, Silt, CO 81652; email [blm\\_co\\_si\\_crvfo\\_webmail@blm.gov](mailto:blm_co_si_crvfo_webmail@blm.gov). Contact Brian Hopkins to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This document provides notice that the CRVFO, Silt, Colorado, intends to prepare an RMP Amendment with an associated EA for the future management of the recently acquired Sutey Ranch and Haines parcels. This Notice announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area encompasses approximately 669 acres of public land, including the 557-acre Sutey Ranch located in Garfield County, Colorado, and the 112-acre Haines parcel located along Prince Creek in Pitkin County, Colorado. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. The following preliminary