

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Intent To Conduct Restoration Planning for the Bradley Beach Mystery Spill of February 2004, Monmouth and Ocean Counties, NJ**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Secretary of the Interior has designated the U.S. Fish and Wildlife Service (Service) to act on behalf of the U.S. Department of the Interior (DOI) as natural resource trustee (Trustee) with respect to the February 2004 oil spill in the Bradley Beach, NJ, area (the incident). The Service has determined that the impacts of the incident warrant conducting a natural resource damage assessment that will include restoration planning. The incident has been referred to by a number of names, including the Bradley Beach Mystery Spill, the Monmouth County Mystery Spill, the Monmouth and Ocean Counties Mystery Spill, the Brick Township Mystery Spill, and the Brick Township Tarball Mystery Spill.

The DOI is hereby providing notice of efforts to plan restoration actions for injuries resulting from the incident. The purpose of this restoration planning is to evaluate potential injuries to natural resources and lost services and use that information to determine the need for and scale of restoration actions.

ADDRESSES: Clay Stern, Environmental Contaminants Branch, New Jersey Field Office, U.S. Fish and Wildlife Service, 927 N. Main St., Pleasantville, NJ 08232.

FOR FURTHER INFORMATION CONTACT: Clay Stern, at 609-646-9310, extension 27 (telephone), or clay_stern@fws.gov (e-mail), or address under **ADDRESSES**.

SUPPLEMENTARY INFORMATION: On or about February 3, 2004, tar-balls and tar-patties that were chemically and physically consistent with a number 6 fuel oil began washing ashore from the Atlantic Ocean onto the South Mantoloking Beach in Brick Township, Ocean County, NJ. Within 24 hours, the New Jersey Department of Environmental Protection—Bureau of Emergency Response had determined that Oil had impacted beaches from Monmouth Beach to Sea Girt in Monmouth County (approximately 15 miles), with the heaviest oiling centered around Bradley Beach, Monmouth County; minor oil impacts had occurred at South Mantoloking Beach in Ocean County; and oiled birds had been observed from Sea Bright in Monmouth County south to Island Beach State Park

in Ocean County (approximately 40 miles). The U.S. Coast Guard determined that an “incident” as defined by the Oil Pollution Act (OPA) of 1990 (33 U.S.C. 2701 *et seq.*) had occurred and that the incident did not fall within the exclusionary conditions set forth in 33 U.S.C. 2702(c). Since a responsible party has not been identified, the incident was federalized and assigned Federal Project Number P04006. The total quantity of the oil discharged was estimated at no more than 1,000 gallons.

Immediately following notification of the incident, the Service initiated pre-assessment data collection activities, pursuant to OPA, to make an initial determination as to whether natural resources or services were injured or were likely to be injured by the discharge. More than 160 migratory birds, or parts thereof, were recovered during the initial spill response; spill response and bird recovery activities were coordinated. Although most of the birds were recovered within the first week after notification of the incident, the Service continued to recover oiled birds throughout February 2004.

Findings from the pre-assessment efforts demonstrated that exposure to the incident-related oil caused the deaths of 73 birds, representing at least 16 species. Those birds are Federal trust resources protected under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 701 *et seq.*). The injured resources and their supporting habitats are under the trusteeship of the DOI.

Under OPA, State and Federal agencies and Indian tribes are designated to act as natural resource trustees, responsible for assessing natural resource losses and restoring those losses to baseline conditions, *i.e.*, the condition that would have existed had the incident not occurred. The Trustee for the Bradley Beach incident is the DOI, U.S. Fish and Wildlife Service. The Trustee is designated pursuant to 33 U.S.C. 2706(b), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605.

In its role as the Natural Resource Trustee, the Service has made the following determinations required by 15 CFR 990.41(a):

The Service, as Natural Resource Trustee, has jurisdiction to pursue restoration pursuant to OPA (33 U.S.C. 2702 and 2706(c)); 40 CFR Part 300, and the OPA Natural Resource Damage Assessments Regulations, 15 CFR part 990.

The discharge of oil in the Bradley Beach area and its environs on or about February 3, 2004, was an incident as defined in 15 CFR 990.30.

Natural resources under the trusteeship of the DOI have been injured as a result of the incident. The oil discharged contains components that may be harmful to aquatic organisms, birds, wildlife and vegetation.

In addition, the U.S. Coast Guard has notified the Trustee that:

The discharge was not permitted under Federal, State, or local law.

The discharge was not from a public vessel.

The discharge was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act of 1973 (43 U.S.C. 1651 *et seq.*).

Because the conditions of 15 CFR 990.41(a) were met, as described above, the Service made the further determination under 15 CFR 990.41(b) to proceed with pre-assessment.

For the reasons discussed below, the Service, as Trustee, has made the determination required by 15 CFR 990.42(a) and is providing notice pursuant to 15 CFR 990.44 that it intends to conduct restoration planning in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of this incident.

Although response actions were pursued, the nature of the discharge and the sensitivity of the environment precluded prevention of injuries to some natural resources, such as migratory birds and their supporting habitats. The Service believes that injured natural resources could return to baseline through natural or enhanced recovery, but interim losses have occurred and will continue to occur until a return to baseline is achieved.

There are a number of injury assessment methods available to the Trustee to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services. These include, but are not limited to, literature reviews, field studies, laboratory studies, and modeling studies. These methods may be used alone or in combination. In order to scale restoration actions, the Service intends to prepare an injury assessment that integrates the degree and spatial and temporal extent of injury to estimate the total quantity of injury.

Feasible direct and compensatory restoration actions exist to address injuries from this incident. Restoration actions that could be considered include, but are not limited to, restoration, enhancement, and/or acquisition of nesting or wintering habitat of the injured species.

Pursuant to 15 CFR 990.44(c), the Trustee will seek public involvement in restoration planning for this incident through public review of and comments on the draft restoration plan.

Author: The primary author of this notice is Clay Stern.

Authority: The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and implementing Natural Resource Damage Assessments Regulations found at 15 CFR part 990.

Dated: October 24, 2006.

Richard O. Bennett,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service, DOI Authorized Official, U.S. Department of the Interior.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-140-1430-ES; COC-63586, COC-40272]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, 25 acres of public land in Eagle County, Colorado. The Eagle River Water and Sanitation District proposes to use the land for a biosolids treatment and storage facility.

DATES: Comments should be received by February 12, 2007.

ADDRESSES: Comments should be sent to the BLM, Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado, ATTN: Alan Kraus. Detailed information concerning this action, including appropriate environmental documentation, is available for review at the above address or at the BLM Glenwood Springs Field Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado 81602.

FOR FURTHER INFORMATION CONTACT:

Alan Kraus at the above address or by telephone at (970) 244-3078.

SUPPLEMENTARY INFORMATION: In response to an application from the Eagle River Water and Sanitation District (ERWSD), Colorado, the following public lands have been examined and found suitable for classification for conveyance under the

provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.* and 43 CFR Subpart 2743). The lands are currently used by the ERSWD under the terms of Bureau of Land Management Right-of-Way COC-40272 and would continue to be used to treat and store municipal wastewater treatment plant sludges. Additional adjacent land would also be used for this purpose.

Sixth Principal Meridian, Colorado

T 4 S., R 83 W.,
sec. 11; E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and
N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 25 acres, more or less, in Eagle County.

The lands are not needed for Federal purposes. Conveyance is consistent with current Bureau land-use planning and would be in the public interest. The patent, if issued, will be subject to the following reservations, terms, and conditions:

(1) Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

(2) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (hazardous substance as defined in 40 CFR Part 302.)

(3) A right-of-way thereon for ditches and canals constructed by authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

(4) Those rights for electric transmission line purposes granted by right-of-way COC-31358.

(5) Those rights for telephone line purposes granted by right-of-way COC-50820.

(6) Any other valid and existing rights of record.

(7) Eagle River Water and Sanitation District, its successors or assigns, shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States) from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from: Sixth Principal Meridian, Colorado, Sec.11:

E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States. In the event of payment, loss, or expense under this agreement, the patentee shall be subrogated to the extent of the amount of such payment to all rights, powers, privileges, and remedies of the United States against any person regarding such payment, loss, or expense.

(8) Such other provisions as may be required by law.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent or upon publication in the **Federal Register** of an opening order, whichever occurs first.

Classification Comments: Interested parties may submit comments involving the suitability of the land to treat and store municipal wastewater treatment plant sludge. Comments on the classification are restricted to whether the land is physically suited for the proposed use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed use.

All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words "CONFIDENTIALITY REQUEST" in uppercase letters in order for BLM to comply with your request. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. Any objections will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this