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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:16-CR-00051-BR

v.

AMMON BUNDY, et al.,

Defendants.

**GOVERNMENT'S MOTION FOR
JUDICIAL NOTICE REGARDING
OWNERSHIP OF THE
MNWR HEADQUARTERS AREA**

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and through Ethan D. Knight, Geoffrey A. Barrow, and Craig J. Gabriel, Assistant United States Attorneys, hereby moves the Court for judicial notice. The government has conferred with Marcus Mumford, counsel for defendant Ammon Bundy, who advises that defendant Bundy objects to this motion.

Federal Rule of Evidence 201 permits this Court to take judicial notice of adjudicative facts “not subject to reasonable dispute.” The Advisory Committee Note to the rule explains that “adjudicative facts” are those that “relate to the parties, their activities, their properties, their businesses.” Courts routinely take judicial notice of recorded property records. *See Grant v. Aurora Services, Inc.*, 736 F. Supp. 2d 1257, 1264 (C.D. Cal. 2010) (taking judicial notice of a recorded property deed, and listing seven other similar instances in which courts have taken judicial notice).

Filed concurrently with this motion for this Court’s consideration is the Declaration of Charles Houghton, a Department of Interior employee with knowledge of the ownership of the Malheur National Wildlife Refuge (MNWR). Mr. Houghton confirms that the MNWR is property of the federal government, and he attaches copies of recorded trust deeds to substantiate this fact. These deeds were recorded in Harney County, Oregon, and therefore, they constitute facts about a party (the federal government) that are not subject to reasonable debate. Consistent with Rule 201(f), however, the government’s proposal includes the caution that the jury “may” or “may not accept” this judicially notice fact as conclusive.

Pursuant to Fed. R. Evid. 201, the United States asks that this Court take judicial notice of the following adjudicative facts:

The Malheur National Wildlife Refuge is comprised of approximately 187,167 acres. On February 21, 1935, Harney County, Oregon, recorded a deed transferring land from a private entity to the federal government; the MNWR Headquarters is located on that property. The federal government also purchased the area located just north of the headquarters as reflected in
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another warranty deed, also recorded in Harney County, Oregon. You may or may not accept these noticed facts as conclusive.

Dated this 9th day of September 2016.

Respectfully submitted,

BILLY J. WILLIAMS
United States Attorney

s/ Ethan D. Knight

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

v.

AMMON BUNDY et al.,

**DECLARATION OF CHARLES
HOUGHTEN**

Defendants.

I, Charles J. Houghten, hereby make the following declaration, pursuant to 28 U.S.C. § 1746. I make this declaration on personal knowledge and if called upon to do so, I could and would competently testify to the following matters:

1. I am employed as the Regional Realty Officer for the U.S. Fish and Wildlife Service, an agency within the U.S. Department of the Interior. I have been employed by the Department of Interior since October 1980.

2. As the Regional Realty Officer, I have been delegated authority from the Director of the U.S. Fish and Wildlife Service (Service) to manage performance of the pre-and post-land

acquisition functions within the Pacific Region of the Service. My duties as the Regional Realty Officer include overseeing staff specialists that work to acquire lands and interests in land and maintain land records for the Region.

3. The acquisition of all lands that constitute the MNWR is accurately set forth in the USFWS 2015 Annual Report of Lands, available here:

https://www.fws.gov/refuges/land/PDF/2015_Annual_Report_of_LandsDataTables.pdf

4. The MNWR currently is comprised of approximately 187,167 acres.

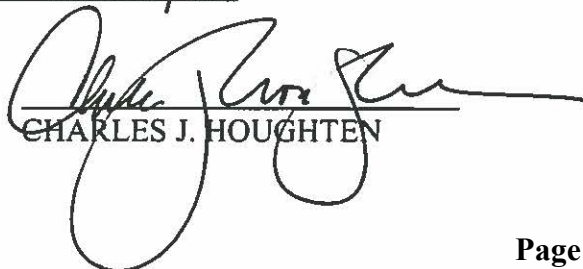
5. The lands comprising MNWR include lands reserved from the public domain, lands transferred by other federal agencies, and lands acquired from non-federal parties.

6. The Refuge Headquarters buildings are located within Township 26 South, Range 31 East (South of Malheur Lake), Willamette Meridian, Harney County, Oregon, section 35, lots 2 through 4, S1/2 SE1/4 (part of Tract 46). This land was purchased from the Eastern Oregon Land and Livestock Company. Title passed via an instrument recorded February 21, 1935 in Book 36 Page 437, Deed records of Harney County, Oregon. A true and correct copy of the deed is attached to my declaration, as Exhibit 1.

7. The area immediately north of the Refuge Headquarters (Township 26 South, Range 31 East (South of Malheur Lake), Willamette Meridian, Harney County, Oregon, section 35, lots 5 through 7 (part of Tract 19)), was purchased from Paul C. and Ruth Stewart. Title passed via Warranty Deed recorded November 27, 1940 in Book 39 Page 214, Deed records of Harney County, Oregon. A true and correct copy of the deed is attached to my declaration, as Exhibit 2.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2016, at FAULS CHURCH, VA.


CHARLES J. HOUGHTEN

KNOW ALL MEN BY THESE PRESENTS, that EASTERN OREGON LIVE STOCK COMPANY, a corporation organized and existing under the laws of the State of Oregon, in consideration of the sum of Six Hundred Seventy-five Thousand Dollars (\$675,000.00), to it paid by THE UNITED STATES OF AMERICA, does hereby grant, bargain, sell and convey unto said The United States of America, its successors and assigns forever, the following described real property situate in the County of Harney, State of Oregon, to-wit:

In Township 26 South, Range 31 East of the Willamette Meridian:

- In Section 32, Lots 2, 3, 4, 5, 6, (South of Malheur Lake);
- In Section 34, Lots 1, 4, the southwest quarter of the southwest quarter;
- In Section 35, Lots 1, 2, 3, 4, the south half of the southeast quarter;

In Township 27 South, Range 30 East of the Willamette Meridian:

- In Section 25, The southeast quarter of the northeast quarter, the southeast quarter;
- In Section 36, The northeast quarter;

In Township 27 South, Range 31 East of the Willamette Meridian:

- In Section 2, The northeast quarter of the northwest quarter, the west half of the west half;
- In Section 3, All;
- In Section 4, All;
- In Section 8, The south half of the southeast quarter;
- In Section 9, All;
- In Section 10, All;
- In Section 11, The west half of the west half;
- In Section 14, The west half of the west half;
- In Section 15, The north half;
- In Section 16, All;
- In Section 17, The northeast quarter, the south half of the northwest quarter, the south half, the northeast quarter of the northwest quarter;

1850

Exhibit 1

Eastern Oregon Livestock (46 & An)

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, including specifically all water rights attaching or appurtenant to said lands, estimated at about 150,000 acre feet per annum, with all dams, ditches, canals, headgates and other facilities, appliances and appurtenances; and also all of its estate, right, title and interest, at law and in equity, therein and thereto.

~~EXCEPTING THEREFROM~~, however, those portions of Section 2, Township 32 South, Range 32 East, Willamette Meridian, comprising the townsite of Frenchglen, particularly described as follows, to-wit:

- (a) Beginning at a point on the East line of the street through Frenchglen, Oregon, which is South 89° 10' East 156.53 feet from the sixteenth corner on the North line of the southeast quarter of Section 2, Township 32 South, Range 32 East, and from such point South 12° 57' East a distance of 4.5 feet, such point being the place of beginning:

(Said sixteenth corner being marked by half Ford axel housing, small end up, buried 6 inches under ground, and being midway between the center of said Section 2, marked by 1½" x 30" pipe, and the quarter section corner on the east line of said Section 2, also marked by a 1½" x 30" pipe, and the center of the street above described, on said line being marked by a steel shaft 7/8" x 30", marked X on top, set six inches beneath the surface, South 89° 10' East a distance of 85.34 feet from said sixteenth corner, these four monuments in line marking the course 89° 10' so determined)

thence South 12° 57' East 320 feet; thence north 77° 03' East 200 feet; thence north 12° 57' West 720 feet; thence south 77° 03' West 200 feet; thence South 12° 57' East 400 feet to the point of beginning.

- (b) Also a tract on the West side of the street through Frenchglen, Oregon, known as the Bradeen Tract and described as follows: Beginning at a point on the West line of the street through Frenchglen, Oregon, found as follows: Beginning at the sixteenth corner on the North line southeast quarter of Section 2, Township 32 South, Range 32 East, Willamette Meridian, thence South 89° 10' East a distance of 85.35 feet to a steel shaft 7/8" x 30" buried 6" below the surface of the street and marking the center of the street, thence South 12° 57' East along the center line of said street a distance of 330.8 feet to a point, from last point, thence South 77° 03' West 40 feet, the place of beginning of the tract herein described. Thence South 77° 03' West a distance of 124.9 feet; thence North 0° 32' East a distance of 72 feet; thence North 77° 03' East a distance of 108.6 feet; thence South 12° 57' East a distance of 70 feet to the place of beginning.

All of the above described and granted premises are subject to the rights of way heretofore granted for road and highway purposes.

RESERVING unto the grantor, its successors and assigns, for a period of five years from the date hereof, the right to occupy and use 160 acres of land at the "P" Ranch headquarters in Section 6, Township 32 South, Range 32½ East, Willamette Meridian, with all buildings, corrals and other improvements upon said land, together with the right to use the existing highway from the said "P" Ranch headquarters to the main road; provided, however, that in the event of the sale by grantor of the property known as the Catlow Ranch, the said right herein reserved to the grantor shall cease and expire.

TO HAVE AND TO HOLD the above described and granted premises, together with the appurtenances, unto

said The United States of America, its successors and assigns forever. And the said Eastern Oregon Live Stock Company, grantor above named, does covenant with the above named grantee, The United States of America, its successors and assigns, that it is lawfully seized in fee simple of the above described and granted premises; that the said real property is free from all encumbrances, and that it will, and its successors shall, warrant and defend the same, and every part and parcel thereof, unto the said grantee, its successors and assigns forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, Eastern Oregon Live Stock Company, pursuant to a resolution of its board of directors duly and legally adopted, has caused these presents to be signed by its vice-president and secretary, and its corporate seal to be hereunto affixed this 18th day of February, 1935.



EASTERN OREGON LIVE STOCK COMPANY

By H.B. Tuff
Vice-president.

EASTERN OREGON LIVE STOCK COMPANY

By W. Ebering
Secretary.



STATE OF OREGON)
 ; ss.
County of Multnomah)

On this 18th day of February, 1935, before me appeared H. B. DUFF and H. A. EBLING, both to me personally known, who being duly sworn did say that he, the said H. B. Duff is the vice-president, and he, the said H. A. Ebling, is the secretary of EASTERN OREGON LIVE STOCK COMPANY, the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said H. B. Duff and H. A. Ebling acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this the day and year first in this my certificate written.



Dan F. Phillippe
Notary Public in and for said
County and State

My commission expires Dec. 29, 1936.

WARRANTY DEED

EASTERN OREGON LIVE STOCK
COMPANY, a corporation,

to

THE UNITED STATES OF
AMERICA

#45235

Indeed Compared

W. M. CARROLL, ss.
County of Harney,

I certify that the within instrument of writing
was prepared for record on the 21st day of
February A. D. 1935 at 9.00 o'clock
A. M. and recorded in Book 36, at page 437 of
Deed Records of said County.

W. M. CARROLL, Clerk
By *Halter Powell*, Deputy

1662

RECEIVED

APR 30 1935

LEGAL DIVISION

214

#57267

G. McGUIRE PIERCE, ET UX

TO

EDITH HAYES

THE GRANTORS G. McGUIRE PIERCE and LULU HAYES PIERCE, his wife For and in consideration of ONE AND 00/100 DOLLARS in hand paid, convey and warrant to EDITH HAYES, a widow the following described Real Estate:

The West 39.82 feet of the East 83.5 feet of the North Half of Lot Eight (8) in Block Twenty-one (21) of the Original Town of Burns.

Situated in the County of HARNEY, State of OREGON.

Dated this 5 day of November, 1940.

WITNESSES:

G. McGuire Pierce (Seal)
Lulu Hayes Pierce (Seal)

STATE OF WASHINGTON,)
COUNTY OF King) SS.

I, Genevieve Robertson, a Notary Public, do hereby certify that on this 5 day of November, 1940, personally appeared before me G. McGuire Pierce and Lulu Hayes Pierce to me known to be the individuals described in, and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 5th day of November, A.D. 1940.

(Notarial Seal)

Genevieve Robertson

Commission Expires Nov. 23-1944
Notary Public in and for the State of Washington, residing at Seattle

ORIGINAL ENDORSED: Received for Record November 25 A.D. 1940 at 1:25 P.M.

Wm. M. Carroll, County Clerk

By Curtis Smith, Deputy.

o-o
#57287

PAUL C. STEWART, ET UX

TO

UNITED STATES OF AMERICA

KNOW ALL MEN BY THESE PRESENTS, that PAUL C. STEWART AND RUTH STEWART, his wife, of Crane, Oregon, in consideration of the sum of FOURTEEN THOUSAND EIGHT HUNDRED SEVENTY DOLLARS AND SEVENTY-ONE CENTS (\$14,870.71) to them in hand paid by the United States of America, Washington, D. C., have bargained and sold, and by these presents do grant, bargain, sell and convey unto the said United States of America and its assigns all of the following bounded and described real estate, situate in the County of Harney, State of Oregon:

Lots 5 and 6, Section 34, and Lots 5, 6, 7 and 8, the SE 1/4, S 1/2 and the NW 1/4, Section 35, all in Township 26 South, Range 31 East, Willamette Meridian, containing 317.41 acres, more or less, excepting therefrom a parcel of land described as follows: Beginning at the southwest corner of Lot 6, Section 34, running thence N. 0° 10' W., 18.48 chains, thence S. 89° 57' E., 0.26 chain, thence S. 0° 22' E., 18.45 chains, thence S. 84° 37' W., 0.33 chain to the place of beginning, containing 0.54 acre more or less, which deducted from the above leaves a net area of 316.87 acres, be the same more or less

and together therewith all and singular the water rights and other rights, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title and interest in and to the same including dower and claim of dower.

TO HAVE AND TO HOLD the above described and granted premises unto the said United States of America and its assigns forever.

AND the grantors above named do covenant to and with the United States of America and its assigns that they are lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all encumbrances, and they and their heirs, executors and administrators shall warrant and forever defend the above granted premises and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF the grantors above named do hereunto set their hands and seals this 9th day of November, 1940.

Signed, sealed and delivered
in the presence of us as witnesses:
Leonard H. Waterman
J. W. Biggs

Paul C. Stewart (L.S.)
Ruth Stewart (L.S.)

ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF HARNEY) SS.

Be it remembered, that on this 9th day of November, 1940, before me the undersigned, a Notary Public in and for said County and State, personally appeared the within named Paul C. Stewart and Ruth Stewart, husband and wife, known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

#57287

PAUL C. STEWART, ET UX

TO

UNITED STATES OF AMERICA (Cont.)

In testimony whereof, I have hereunto set my hand and notarial seal the day and year last above written.

(Notarial Seal)

Leonard H. Waterman

My commission expires: June 2, 1942.

Notary Public

\$16.50 U. S. I. R. Stamps Affixed and Cancelled.

ORIGINAL ENDORSED: Received for Record Nov. 27 A.D. 1940 at 10:15 o'clock A.M.

Wm. M. Carroll, County Clerk

By Norma McGee, Deputy.

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#57290

WILLIAM H. CRAVEN, ET UX

TO

J. B. FINE

grantors

THIS INDENTURE, Made by and between William H. Craven and Ellen S. Craven, his wife, and J. B. Fine Grantee

WITNESSETH: That said grantors for and in consideration of the sum of Ten and No/100 (\$10.00) DOLLARS, to them in hand paid, the receipt whereof is hereby acknowledged, have remised, released and quitclaimed, and by these presents do hereby remise, release and forever, quit-claim unto the said grantee J. B. Fine, his heirs, and assigns, the following described real property, in Harney County, State of Oregon, to-wit:

NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, Township 33 S., Range 33 E. W. M., and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, of Section 13, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 14, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24, all in Township 33 S., Range 32 3/4 E. W. M.

\$1.50 U. S. I. R. Stamps Affixed and Cancelled.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and also all their estate, right, title and interest in and to the same.

TO HAVE AND TO HOLD the said premises with their appurtenances, unto the said grantee his heirs and assigns forever.

IN TESTIMONY WHEREOF, We have hereunto set our hands and seals this 30th day of October, 1940.

Executed in the presence of

WILLIAM H. CRAVEN (Seal)

By Paul C. Stewart (Seal)

His Attorney-In-Fact

ELLEN S. CRAVEN (Seal)

By Paul C. Stewart (Seal)

Her Attorney-In-Fact

STATE OF OREGON,)
) ss.
County of Harney)

BE IT REMEMBERED, that on this 30th day of October, A.D. 1940, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Paul Stewart, Attorney-in-Fact, for William H. Craven and Ellen S. Craven, his wife, who is known to me to be the identical individual described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily, as and for the act and deed of William H. Craven and Ellen S. Craven, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

Leonard H. Waterman

(Notarial Seal)

Notary Public for Oregon

My Commission Expires June 2, 1942.

ORIGINAL ENDORSED: Received for Record November 27 A.D. 1940 at 2:50 o'clock P.M.

Wm. M. Carroll, County Clerk

By ~~Merita Sobell~~, Deputy.

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#57291

J. B. FINE, ET UX

TO,

W. S. RIDDLE

KNOW ALL MEN BY THESE PRESENTS, That J. B. Fine and Ethel Fine, his wife in consideration of Ten and no/100 Dollars and other valuable consideration to them paid by W. S. Riddle do hereby remise, release and forever QUITCLAIM unto the said W. S. Riddle and unto his heirs and assigns all their right, title and interest in and to the following described parcel of real estate, situate in County of Harney State of Oregon, to-wit:

NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, Township 33 S. Range 33 E. W. M. and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 14, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24, all in Township 33 S., Range 32 3/4 E. W. M.

\$1.50 U. S. I. R. Stamps Affixed and Cancelled.

TO HAVE AND TO HOLD, the same, together with all and singular the hereditaments and appurtenances