

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

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**Notice of Availability for the Tri-State
Fuel Breaks Project Final
Environmental Impact Statement,
Idaho and Oregon**

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Boise District Office, Boise, Idaho, and the BLM Vale District Office, Vale, Oregon, have prepared the Tri-state Fuel Breaks Project Final Environmental Impact Statement (DOI-BLM-ID-B000-2015-0001-EIS) (Final EIS) and, by this notice, are announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Interested persons may also review the Final EIS and accompanying background documents on the project website: <https://go.usa.gov/xPruu>. If you are unable to access the documents online and would like a paper copy, please contact the Project Lead identified below.

FOR FURTHER INFORMATION CONTACT:
Lance Okeson, Project Lead, telephone: 208-384-3300; 3948 South Development Ave., Boise, ID 83705; email: blm_id_tristate@blm.gov. Contact Mr. Okeson 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 Mr. Okeson during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or a question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Southwestern Idaho, southeastern Oregon, and northern Nevada (the Tri-state area) comprise one of the largest intact strongholds of sagebrush-steppe habitat in the Northern Great Basin. This area supports big game and sagebrush-dependent species and provides for a variety of multiple-use activities. Assessments have identified the project area as a landscape

particularly threatened by wildfire and the subsequent spread of invasive annual grasses. For example, the 2010 Rapid Eco-regional Assessment of the Northern Basin and Range and Snake River Plain identified the tri-state area as being at high risk for large-scale wildfires. Wildfires in this remote area can grow quickly and affect hundreds of thousands of acres of sagebrush-steppe habitat and working landscapes within a matter of days. The 2012 Long Draw Fire (558,198 acres), the 2014 Buzzard Complex Fire (395,747 acres), the 2015 Soda Fire (285,360 acres), the 2018 Martin Fire (435,569 acres), and the 2018 Sugar Loaf Fire (233,462 acres)—all of which were in or near the project area—each impacted over a hundred thousand acres within 24 hours.

The sagebrush-steppe landscape within this area represents one of the most impacted ecosystems in the United States. The Secretary of the Interior's 2017 Wildland Fire Directive and Secretarial Order 3372 call for active management of public lands to reduce the risk of catastrophic wildfire to America's forests and rangelands. Management of wildfire has been identified as one of the key issues for maintaining sage-grouse populations in sagebrush-dominated landscapes.

Purpose and Need

The purpose of the action is to provide a network of fuel breaks to enable wildland fire suppression resources in the tri-state area to more safely, rapidly, and effectively protect natural and cultural resources from wildfires. The strategy proposes to create and maintain fuel breaks along established roads through mechanical, biological, chemical, and prescribed fire treatments. Fuel breaks reduce fuel accumulations and disrupt fuel continuity in order to modify fire behavior and provide safe anchor points for firefighters. Fuel breaks allow firefighters to more rapidly contain and control wildland fires and increase suppression efficacy by enabling firefighters to engage wildfires over a larger area. This network would improve firefighters' opportunities for protecting one of the few remaining large areas of intact sagebrush-steppe habitat from the threat of wildland fire.

Alternatives

Under the No Action Alternative (Alternative 1), a fuel break network would not be created. Fuels adjacent to roadways would not be treated to reduce fuel accumulations and disrupt fuel continuity. Fire suppression personnel would continue to use existing paved and other improved BLM

and county roads and natural topographic features to attempt holding and controlling wildfire.

Under all action alternatives, fuel breaks would only be implemented alongside existing roads. Fuel breaks would extend up to, but no farther than, 200 feet from both sides of roadways. Environmental constraints such as adjacent vegetation, terrain, soil type, and resource concerns would dictate width and treatment type in a given area. No fuel breaks would be constructed in designated wilderness. Fuel breaks could be established along the non-wilderness side of boundary roads adjacent to designated wilderness and along boundary roads surrounding wilderness study areas (WSAs).

The methods for fuel break creation and maintenance analyzed in the Final EIS include mowing, hand cutting, seeding (including seedbed preparation techniques), herbicide treatment, prescribed fire (e.g., pile burning), and targeted grazing. These methods may be implemented in combination or as stand-alone treatments as necessary to meet the treatment objectives. Depending on available funding, implementation could occur over 15 years.

Alternative 2 contains the highest number and density of fuel breaks of all action alternatives. The BLM would implement and maintain a fuel break network along approximately 1,539 miles of existing roads: 731 miles in Idaho and 808 miles in Oregon.

Alternative 3 was developed to protect natural resources from large wildfires while minimizing impacts to cultural resources. Alternative 3 emphasizes avoidance of cultural resources and limiting impacts to special management areas (e.g., wilderness and WSAs). The fuel break network would span 1,063 miles of existing roads: 505 miles in Idaho and 558 miles in Oregon.

Alternative 4 emphasizes protection to wildlife and their habitat while providing a network of fuel breaks that meets the purpose and need. The fuel break network would span 910 miles of existing roads: 450 miles in Idaho and 460 miles in Oregon.

The Final EIS introduces Alternative 5, the preferred alternative, which blends elements of Alternatives 2, 3, and 4 to provide a strategic fuel break network that limits adverse impacts to wildlife and cultural resources. This alternative reflects adjustments to fuel break routes previously analyzed in the Draft EIS under Alternatives 2, 3, and 4 based on the analysis of impacts and public comments received. The fuel break network for this alternative would

span 987 miles of existing roads: 435 miles in Idaho and 552 miles in Oregon.

Comments on the Draft EIS received from the public and internal BLM review were considered and incorporated as appropriate into the Final EIS. Public comments resulted in the development of Alternative 5, which is within the range of alternatives analyzed in the Draft EIS.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, and 43 CFR 1610.2)

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Acting Boise District Manager, Idaho.

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Vale District Manager, Oregon/Washington.
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2017 and September 13, 2017,¹ which “revealed that [Registrant] was unable to account for large volumes of controlled substances.” *Id.* The Order also alleged that PIC Johnson “engaged in the practice of pharmacy at [Registrant] while under the influence of controlled substances, including some of the same controlled substances for which [one of the audits] showed significant discrepancies.” *Id.* The OSC further alleged that Registrant failed to maintain adequate records in violation of 21 U.S.C. 827(a) and 21 CFR 1304.03-04, 1304.11, 1304.21, and 1305.13(e), and that PIC Johnson placed customers in danger by dispensing controlled substances to a patient without a valid prescription. *Id.* at 2-4.

Based on his “preliminary finding that controlled substances were diverted from [Registrant] in connection with failure to maintain complete records and dispensing controlled substances without a valid prescription,” the former Acting Administrator concluded that Registrant’s registration “is inconsistent with the public interest.” *Id.* at 5. The former Acting Administrator also made the preliminary finding that Registrant’s “continued registration during the pendency of these proceedings would constitute an imminent danger to the public health and safety because of the substantial likelihood of an imminent threat that death, serious bodily harm or abuse of controlled substances will occur in the absence of this suspension.” *Id.* The former Acting Administrator thus concluded that Registrant’s continued registration during the pendency of the proceeding “constitutes an imminent danger to the public health and safety” and suspended its registration “effective immediately.” *Id.* (citing 21 U.S.C. 824(d)). Pursuant to 21 U.S.C. 824(f) and 21 CFR 1301.36(f), the former Acting Administrator authorized the DEA Special Agents and Diversion Investigators serving the OSC on Registrant to place under seal or to remove for safekeeping all controlled substances Registrant possessed pursuant to the immediately suspended registration. *Id.* The former Acting Administrator also directed those DEA employees to take possession of Registrant’s Certificate of Registration AB6785161 and any unused order forms. *Id.*

The OSC notified Registrant of its right to request a hearing on the

allegations or to submit a written statement while waiving its right to a hearing, the procedures for electing either option, and the consequence of failing to elect either option. *Id.* at 5-6 (citing 21 CFR 1301.43).

On October 31, 2017, a DEA Diversion Investigator (DI) personally served the OSC on Brian Johnson, Registrant’s PIC at Registrant’s address. GX 3, at 3. On the same day, Diversion Investigators took custody of Registrant’s DEA Certificate of Registration and removed all controlled substances in Registrant’s possession, pursuant to the Immediate Suspension Order. *Id.* See also GX 3, Appendix 4 (Inventory of Seized Items).

According to the Government, since the date of service of the Order, neither Registrant, nor anyone purporting to represent it, has filed a written statement or made any communication in writing to the Agency since the OSC was served. Request for Final Agency Action (hereinafter, RFAA), at 2; see also GX 3, at 3. Based on the Government’s representation, I find that more than 30 days have now passed and Registrant has neither requested a hearing nor submitted a written statement while waiving its right to a hearing. I therefore find that Registrant has waived its right to a hearing or to submit a written statement, and issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. See 21 CFR 1301.43(e).

On February 25, 2019, I issued an Order taking notice of the Agency’s registration records, which showed that on January 16, 2018, DEA approved the registration of a different retail pharmacy, called “Brewster Marketplace Pharmacy & T.V. Hardware LLC” at the same street address as Registrant. Order dated February 25, 2019 (hereinafter, February Order). The February Order directed the Government “to investigate and to address whether Registrant has discontinued its business practice as a retail pharmacy and whether its DEA registration has thus terminated pursuant to 21 CFR 1301.52.” *Id.* at 2. Additionally, the Order directed the Government to determine whether Registrant has forfeited its right, title and interest in the seized controlled substances. *Id.* at 2-3.

On March 25, 2019, I received the Government’s Reply to Administrator’s February Order (hereinafter, GR), which confirmed that Registrant discontinued business on December 29, 2017, and sold the business to Brewster Marketplace Pharmacy and Hardware, LLC (hereinafter, Marketplace). GR, at 2. The Government asserts that because

¹The Government did not include any further mention of the September 13, 2017 audit in the record provided to me; therefore, the findings herein are limited to the August 15, 2017 audit.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Brewster Drug, Inc.; Decision and Order

On October 26, 2017, the DEA Acting Administrator issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter collectively, OSC), to Brewster Drug, Inc. (hereinafter, Registrant), of Brewster, Washington. The OSC informed Registrant of the immediate suspension of its DEA Certificate of Registration AB6785161 and proposed its revocation, the denial of any pending application for renewal or modification of such registration, and the denial of any applications for additional DEA registrations, on the ground that its “continued registration is inconsistent with the public interest.” OSC, at 1 (citing 21 U.S.C. 824(a)(4) and 823(f)).

The OSC alleged that Registrant is a corporate entity in the state of Washington. *Id.* at 2. It further alleged that “Brian Johnson and Nikki Johnson are the [Registrant’s] ‘Governing Persons’—as defined in the Revised Code of Washington (RCW) 23.95.105(12),” and that “Brian Johnson is listed as the Pharmacy’s Registered Agent by the Washington State Corporation commission.” *Id.* It further alleged that Brian Johnson is Registrant’s Pharmacist-in-Charge (hereinafter, PIC). *Id.*

The OSC alleged that “DEA’s investigation [of Registrant] has revealed separate types of misconduct, which, taken together, pose an imminent danger to public health or safety.” *Id.* at 2. Specifically, DEA conducted inspections of Registrant on August 15,