

AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, May 20, 2013, at 9:00 a.m.
Justice Building, Supreme Court Courtroom
215 N. Sanders
Helena, MT

ACTION ITEMS

- 513-1 **FWP: Murray-Douglas Conservation Easements**
Benefits: NA (non-Trust Land)
Location: Powell County
APPROVED 5-0
- 513-2 **Agriculture and Grazing Leases: Competitive Bid Hearings**
- A. Lease No. 3060529 – John & Valerie Warehime (Lessee)/Brian Carrison (Bidder)**
Benefits: Common Schools
Location: Powell County
APPROVED 5-0
- B. Lease No. 3629 – Cayuse Livestock (Lessee)/Chris Kittler (Bidder)**
Benefits: Common Schools
Location: Sweet Grass County
APPROVED 5-0
- C. Lease No. 3997 – Gordon Williams (Lessee)/Leroy Ballard (Bidder)**
Benefits: Common Schools
Location: Jefferson County
APPROVED 5-0
- D. Lease No. 4247 – Hidden Valley Colony (Lessee)/Lowell Johnson (Bidder)**
Benefits: Common Schools
Location: Hill County
APPROVED 5-0
- E. Lease Nos. 4028, 4216 – Wyatt Wood (Lessee)/Heidi Billmayer (Bidder)**
Benefits: Common Schools
Location: Pondera County
APPROVED 5-0
- F. Lease No. 3854 – Elmer Habets, Kim Malcom, Jamie Parks (Lessees)/Sterling Miller (Bidder)**
Benefits: Common Schools
Location: Missoula County
APPROVED 5-0
- 513-3 **Timber Sales**
- A. Good Shepherd**
Benefits: Common Schools, Pine Hills
Location: Missoula and Powell Counties
APPROVED 5-0
- B. Scout Lake #6**
Benefits: Common Schools
Location: Lake County
APPROVED 5-0
- 513-4 **Communitization Agreement: Oasis Petroleum North America LLC**
Benefits: Common Schools
Location: Roosevelt County
APPROVED 5-0

513-5 Land Banking Parcels: Final Approval for Sale

Benefits: Common Schools

Location: Broadwater County

APPROVED 5-0

513-6 Request to File for Intervenor Status: *Friends of the Wild Swan et al. v. Salazar et al.*, Case No. C-13-61-M-DWM, U.S. District Court, Missoula Division

Benefits: Common Schools, Eastern College/Western College – University of Montana, Montana Tech, MSU 2nd, MSU Morrill, Pine Hills, Public Buildings, School for the Deaf and Blind

Location: Beaverhead, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Park, Ravalli, Sanders, and Silver Bow Counties

APPROVED 5-0

513-7 Easements

A. Rights-of-Way

Benefits: Common Schools, MSU Morrill, Montana Tech, Public Buildings, Public Land Trust

Location: Carter, Flathead, Lake, Lincoln, Missoula, Petroleum, Prairie, and Teton Counties

APPROVED 5-0

B. Cost Share: Mosquito

Benefits: Common Schools

Location: Sanders County

APPROVED 5-0

C. Cost Share: Pasture - Sawdust

Benefits: Common Schools & Public Buildings

Location: Ravalli County

APPROVED 5-0

PUBLIC COMMENT

513-1

FWP: MURRAY-DOUGLAS
CONSERVATION EASEMENTS

MURRAY-DOUGLAS CONSERVATION EASEMENTS**Montana Board of Land Commissioners****May 20, 2013**

- Agency:** Fish, Wildlife and Parks (FWP)
- Land Interest:** Three Conservation Easements – 10,760 acres – Powell County
- Project Description:** FWP proposes to **purchase three perpetual conservation easements totaling 10,760 acres** in the Murray Creek and Douglas Creek drainages 10 miles north of Drummond (Figures 1, 2). The easements, to be granted by The Nature Conservancy and two local ranching families, are part of the **Blackfoot Community Project** through which private landowners, the Blackfoot Challenge, TNC, State and federal agencies, and other partners are working to conserve 89,000 acres of former Plum Creek Timber land in the Blackfoot Valley. With successful completion of the Murray-Douglas project, **more than 90% of that goal will have been achieved.**
- Cost and Funding:** In 2010, FWP was awarded a **\$2.9 million grant from the Forest Legacy Program** (U.S. Forest Service) for the Murray-Douglas project. The 2013 appraisals place the combined value of the easements at \$4.2 million (an average of \$386/acre), and the **landowners have generously agreed to donate more than 30%** of this total, exceeding the federal 25% matching-fund requirement. As a result, **no additional funds** will be required for purchase of the three Murray-Douglas conservation easements.
- Resource Values:** The Murray-Douglas drainages provide **regionally important habitat** for elk, deer and other species; **diverse forested watersheds and streamflow to the Blackfoot River;** and **high-quality hunting opportunities.**
- Purpose and Need:** The purpose of the Murray-Douglas project is to **conserve fish and wildlife habitat** by preventing residential subdivision and other forms of habitat loss. The conservation easements will keep the land in private ownership, and ensure that the **resident landowners can continue timber management and livestock grazing.** The easements will also establish a program of managed **public hunting access** to all of the acreage during the Fall seasons.
- Process:** **FWP Environmental Assessment** was released for public review from March 22 through April 22, 2013. All testimony at the April 3 public hearing at the Drummond Community Center was in support, and **no opposing comments have been received on the project.**
- FWP Decision Notice** issued on April 30 recommends approval of the proposed action. **FWP Commission** gives its final consideration to this project on **May 9, 2013.**

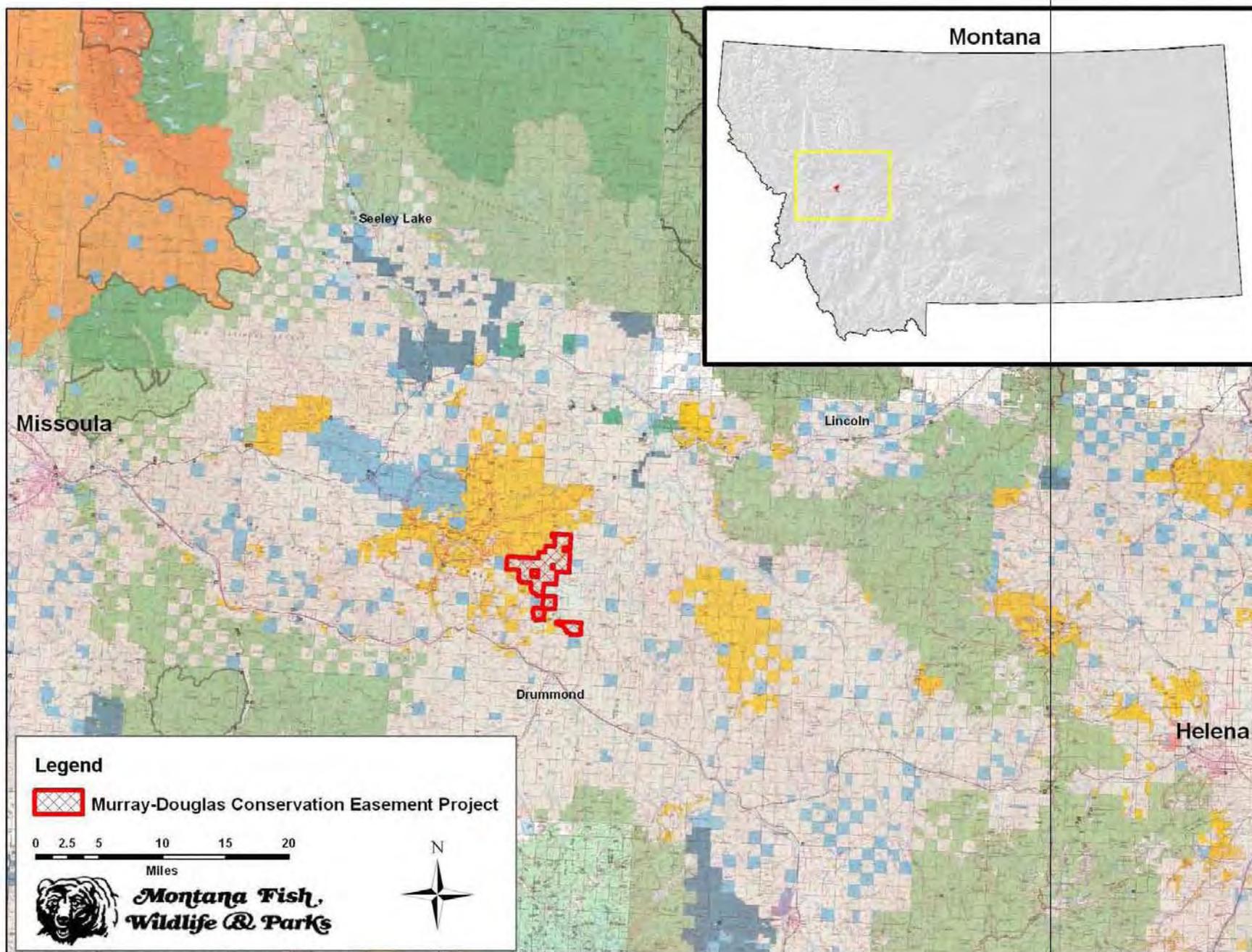


Figure 1. General location map of the Murray Douglas Project Area.

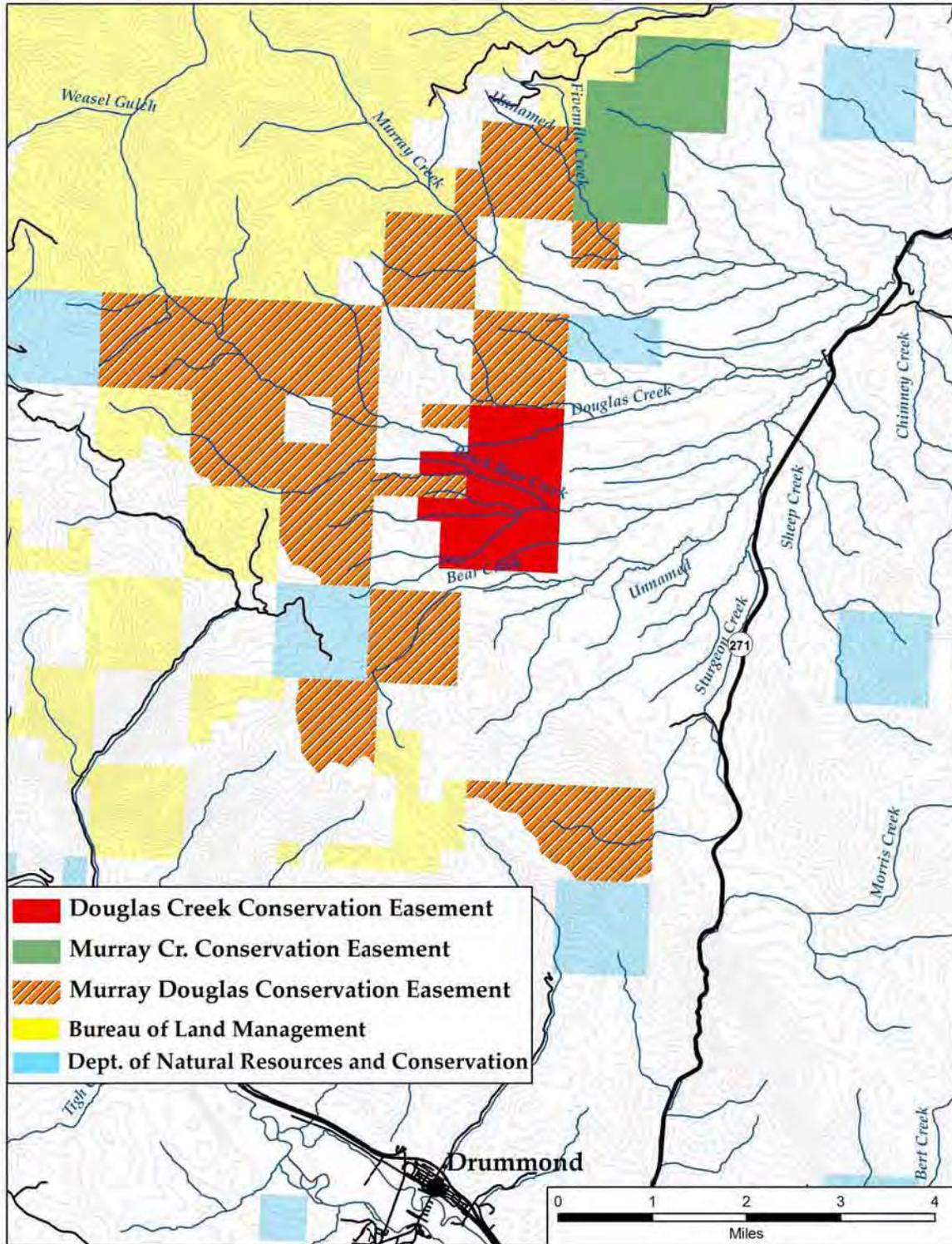


Figure 2. Location of the Murray Douglas Project Area in Powell County. Landowners of parcels proposed for conservation easements (CEs): Douglas Creek CE = Manley Family Limited Partnership; Murray Creek CE = Blackfoot River Ranch, Inc.; Murray Douglas CE = The Nature Conservancy. Approximately 10,760 acres total.

FWP COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: May 9, 2013

Agenda Item: Murray-Douglas, Murray Creek, and Douglas Creek Conservation Easements

Division: Wildlife

Action Needed: Final Approval

Time Needed on Agenda for this Presentation: 15 minutes

Background

FWP proposes to acquire an interest in about 10,760 acres of important fish and wildlife habitat in Powell County north of Drummond. The lands are owned by The Nature Conservancy, the Blackfoot River Ranch, Inc., and the Manley Family Limited Partnership. FWP began pursuing funds to conserve these properties in 2007. In 2010, FWP received \$2.9 million from the U.S. Forest Service's Forest Legacy Program to purchase these three conservation easements. All three private landowners generously agree to donate 30.2 percent of the easements' 2013 appraised values, which exceeds the required 25% match for the federal grant. FWP would agree to hold and monitor the easements in perpetuity.

The conservation easements would conserve regionally important fish and wildlife habitat by preventing subdivision, development, and other forms of habitat loss; perpetuate the ranching and logging lifestyle of the private landowners who own the land under easement; and guarantee fall public hunting access to the properties. The lands under easement would remain in private ownership and on state and county tax rolls. Traditional uses of the land, including livestock production and timber management, could continue under terms of the easements. The easements would endure in perpetuity, and would be enforceable upon future owners of the properties.

Public Involvement and Process Results

A draft environmental assessment, socio-economic assessment, and draft resource management plan were released for public review from March 22, 2013 through April 22. The DN issued May 2, 2013 supported the proposed action. Public review opportunities were advertised in the local, Missoula-area, and statewide media, and a copy of the draft EA was mailed to adjacent landowners and all parties who indicated an interest. A public hearing was held at the Drummond Community Center on April 3, and eighteen people attended the hearing. All testimony supported the proposed action.

Alternatives and Analysis

No action is the only practical alternative to this proposed action. No action would result in FWP returning the Forest Legacy Grant to the USFS, and may result in the eventual subdivision and development of important wildlife habitat and hunting areas.

Agency Recommendation and Rationale

FWP recommends approval to proceed with purchasing conservation easements to permanently conserve critical fish and wildlife habitat, maintain and enhance hunting access, and contribute to the rural ranching lifestyle of the community.

Proposed Motion

I move the FWP Commission approve the acquisition of the Murray-Douglas, Murray Creek, and Douglas Creek conservation easements.

Decision Notice for Murray Douglas, Murray Creek, and Douglas Creek Conservation Easements Environmental Assessment

Prepared by:
Montana Fish, Wildlife and Parks
Region 2 Wildlife
3201 Spurgin Road
Missoula, MT 59804
April 30, 2013

DESCRIPTION OF PROPOSED ACTION

Alternative B: FWP would purchase the Murray Douglas Conservation Easement (CE) from The Nature Conservancy, the Murray Creek CE from the Blackfoot River Ranch, and the Douglas Creek CE from the Manley Family Limited Partnership, using funds granted to FWP by the US Forest Service Forest Legacy Program (FLP).

Montana Fish, Wildlife and Parks (FWP) has the authority under state law (§ 87-1-201, MCA) to protect, enhance and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. To this end, FWP proposed to purchase and hold these three CEs, totaling approximately 10,760 acres, lying north of Drummond in the Garnet Mountain Range in Powell County. The land is comprised of both former corporate timber land acquired by The Nature Conservancy (TNC) as part of the Blackfoot Community Project and private ranch lands historically used for cattle production and timber production. The land sustains important fish and wildlife habitat and has long been a popular and productive area for big game hunting.

Funding would be provided by a \$2.9 million grant awarded to FWP in 2010 by the Forest Legacy Program. The private landowners will also donate 25% of the land's current market value to provide the required FLP matching funds.

The terms of conservation easements prohibit residential, commercial and industrial development, while allowing managed timber harvest, livestock grazing, and fall public hunting access. The easements would be perpetual.

ALTERNATIVES CONSIDERED TO THE PROPOSED ACTION

Alternative A, No Action: FWP would *not* purchase the Murray Douglas Conservation Easement from The Nature Conservancy, the Murray Creek CE from the Blackfoot River Ranch, or the Douglas Creek CE from the Manley Family Limited Partnership.

TNC would need to explore other land-sale options that may jeopardize its desire to protect the entire habitat community as one unit through conservation easements. Private ranch lands subject to this proposal would also remain open to potential development (subdivision, etc.). Public hunting access to the nearly 11,000-acre properties would remain at the sole discretion of the individual parcels' landowners.

If the proposed action is implemented, neighboring ranch owners would immediately use funds generated from the sale of conservation easements on their lands to purchase fee title to adjacent TNC lands (also encumbered by CEs). This outcome would benefit local ranch and timber economies, enable long-term land management planning, and aid the maintenance and restoration of the properties' resource values. Neighboring landowners likely would not be able to purchase much of the TNC land if the No Action Alternative were selected.

MONTANA ENVIRONMENTAL POLICY ACT PROCESS

FWP is required to assess impacts to the human and physical environment under the Montana Environmental Policy Act (MEPA). The Murray Douglas, Murray Creek, and Douglas Creek Conservation Easements proposal and its effects were documented by FWP in a Draft Environmental Assessment (EA).

PUBLIC REVIEW PROCESS

FWP is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision based on this information. FWP released a draft environmental assessment (EA) for public review of this proposal (Murray Douglas, Murray Creek and Douglas Creek Conservation Easements) on March 22, 2013 and accepted public comment until 5:00 P. M. on April 22, 2013.

Legal notice of the proposal and availability of the Draft EA was published twice each in the *Independent Record* (Helena, March 22 & 29), *Missoulian* (March 22 & 29), *Philipsburg Mail* (March 21 & 28), *Seeley Swan Pathfinder* (March 14 & 21), and *Silver State Post* (Deer Lodge, March 20 & 27) newspapers.

FWP mailed approximately 53 copies of the EA (and sent approximately 51 email notifications of the EA's availability) to adjacent landowners and interested individuals, groups and agencies. The EA was available for public review on FWP's web site (<http://fwp.mt.gov/>, "Recent Public Notices" and "Submit Public Comments") from March 22 through April 22, 2013. An FWP statewide news release was issued March 29 and posted on FWP's website (<http://fwp.mt.gov/>, "News Releases") the same day.

A public hearing to explain the proposal, answer questions, and take public comment was held on April 3, 2013 (6:00 p.m. at the Drummond Community Hall), and approximately 19 members of the public attended.

SUMMARY OF PUBLIC COMMENT

FWP received 5 comments regarding the proposed conservation easements (Appendix A). Four comments were from individuals (2 from Missoula, 1 each from Butte and Emigrant), and one was from the Powell County Planning Board. The 4 individuals supported FWP's acquisition of the 3 proposed conservation easements, and the Powell County Planning Board did not specifically state support or opposition to the proposals.

Approximately 18 people attended the public meeting held April 3 in Drummond. Seven people offered testimony supporting the conservation easements (Table 1). No comments were received in opposition to the proposal.

Table 1. Public testimony on FWP's proposed Murray Douglas, Douglas Creek, and Murray Creek Conservation Easements received at the public hearing held April 3 in Drummond.

I fully support the project, especially keeping it in working lands, with timber, grazing, and public access.
I support the project 100%, as do the three shareholders of Rivercrest Ranch. He supports the timber management.
I think the project is a good idea, and especially the extra horsepower applied by TNC [The Nature Conservancy].
I support the project.
I support the project.
I support the project.
I support the project as proposed.

RESPONSE TO PUBLIC COMMENT

Comment 5 (Appendix A): The Planning Board wants to take the opportunity to express to the agency [FWP] the concerns it has regarding the grazing component found in the easements. As previously noted by the Planning Board, the Board is keen to see grazing language and/or standards in easements have sufficient flexibility ensuring they complement local conditions as well as the requirements of a landowner. The Planning Board communicated these same objectives to Rick Northrup when he appeared before the Board on March 7th to discuss the agency's approach to grazing with conservation easements. The Planning Board greatly appreciates the presence of Rick Northrup at its recent meeting and applauds FWP's efforts to improve overall functionality of conservation easements in Powell County; however, the Board still insists the agency needs to amend how it views grazing management in these documents.

FWP Response: FWP recognizes that managed livestock grazing is compatible with, and can even improve, wildlife habitat. FWP's interest in purchasing the Murray Douglas Conservation Easements is to maintain native plant communities, assure adequate forage for big game, provide nesting cover for forest grouse and other ground-nesting birds, and support ecological functions while also sustaining traditional agricultural uses of the land. We agree with the Planning Board that in order to succeed, grazing management plans must be adaptable over time in order to adapt to changing conditions and landowner needs. Therefore, for these easements, initial specific grazing prescriptions are described in Grazing Management Plans rather than in the recorded CEs themselves. This

approach allows for making adjustments if, after implementing the system, the landowner and FWP come to realize a need for future adjustments or refinements.

FINDING OF NO SIGNIFICANT IMPACT

FWP has reviewed the EA and applicable laws, regulations, and policies and has determined that this action will not have significant effect on the human environment. Therefore, I conclude that the EA is the appropriate level of analysis and the preparation of an Environmental Impact Statement is not necessary.

DECISION

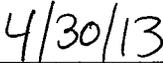
Based on the analysis in the Draft EA and the public comment, I have selected the "Proposed Action" alternative. I recommend to the Montana Fish, Wildlife & Parks Commission that it approve the proposed Murray Douglas, Murray Creek, and Douglas Creek Conservation Easements to conserve important native fish and wildlife habitat, secure fall hunting access, and support traditional productive use of the Land. FWP has worked closely with The Nature Conservancy, local landowners, and the Blackfoot community to develop this project in a manner that meets local, state and federal objectives for this important conservation area.

CONCLUSION

By notification of this Decision Notice, the draft EA is hereby made the final EA. The finding of selection for the "Proposed Action" alternative is the product of this Decision Notice.



Vivaca Crowser
Region 2 Acting Supervisor
Montana Fish, Wildlife and Parks
3201 Spurgin Road
Missoula, MT 59804



Date

APPENDIX A. Comments on Murray Douglas Conservation Easements Acquisition EA received by FWP via email and mail.

Com-
men-
ter #

Comment

- | | |
|---|--|
| 1 | I support the acquisition of the Murray Douglas CEs. It is important habitat and should be protected as important habitat for a variety of species. It is imperative the covenants on the property include a right of access for reasonable opportunities for hunting, fishing and recreation. This does not mean unfettered public access but reasonable access. Motorized use should be reasonably limited to avoid game disturbance. |
| 2 | I support the proposed purchase of the MURRAY DOUGLAS, MURRAY CREEK, AND DOUGLAS CREEK CONSERVATION EASEMENTS. Purchasing these distinct conservation easements, that total 10,760 acres, from willing private sellers using Forest Legacy Program grant funds and private donations is a great investment, in the future, for generations to come. At approximately \$271.00 a acre this is a great deal. Please Thank the existing landowners for their generosity of donating the remainder of the costs. |
| 3 | I would like to go on record in support of these proposed conservation easements in the Drummond area. |
| 4 | I'm very much for the proposed Conservation Easement proposal |
| 5 | See pg. A-2 (Powell County Planning Board) |
-



Planning Department

Powell County Planning Department • 409 Missouri Ave., • Suite 101 • Deer Lodge, Montana 59722
406.846.9729 / bbender@co.powell.mt.us

April 22, 2013

Sharon Rose
Comments Coordinator, Region 2
Montana Fish, Wildlife & Parks
3201 Spurgin Rd.
Missoula, MT 59804

RE: Murray Douglas, Murray Creek, & Douglas Creek Draft Environmental Assessment

Ms. Rose:

The Powell County Planning Board on April 11th discussed the Draft Environmental Assessment prepared by FWP prior to acquiring three conservation easements on approximately 10,760-acres of private land north of Drummond in Powell County. The Planning Board wants to take the opportunity to express to the agency the concerns it has regarding the grazing component found in the easements. As previously noted by the Planning Board, the Board is keen to see grazing language and/or standards in easements have sufficient flexibility ensuring they complement local conditions as well as the requirements of a landowner. The Planning Board communicated these same objectives to Rick Northrup when he appeared before the Board on March 7th to discuss the agency's approach to grazing with conservation easements. The Planning Board greatly appreciates the presence of Rick Northrup at its recent meeting and applauds FWP's efforts to improve overall functionality of conservation easements in Powell County; however, the Board still insists the agency needs to amend how it views grazing management in these documents.

If you have questions regarding the comments contained in this correspondence or Powell County planning / zoning in general, please contact me by telephone at 406.846.9729, or by email at bbender@co.powell.mt.us.

Sincerely,

Brian P. Bender, AICP, CFM
Planning Director

513-2

AGRICULTURE AND GRAZING LEASES: COMPETITIVE BID HEARINGS

- A. Lease No. 3060529 – John & Valerie Warehime (Lessee)
Brian Carrison (Bidder)
- B. Lease No. 3629 – Cayuse Livestock (Lessee)
Chris Kittler (Bidder)
- C. Lease No. 2997 – Gordon Williams (Lessee)
Leroy Ballard (Bidder)
- D. Lease No. 4247 – Hidden Valley Colony (Lessee)
Lowell Johnson (Bidder)
- E. Lease Nos. 4028 & 4216 – Wyatt Wood (Lessee)
Heidi Billmayer (Bidder)
- F. Lease No. 3854 – Elmer Habets, Kim Malcom &
Jamie Parks (Lessees)
Sterling Miller (Bidder)

2013 COMPETITIVE BID HEARINGS

**Findings and Recommended Rental Rates for
Agricultural and Grazing Lease and License Nos.
3060529, 3629, 3997, 4247, 4028, 4216, and 3854**

**A report to the State Board of Land Commissioners by
John E. Tubbs, Director
Montana Department of Natural Resources and Conservation
May 3, 2013**

TABLE OF CONTENTS

Introduction	3
1. Grazing License No.: 3060529, Lessee: John & Valarie Warehime High Bidder: Brian Carrison	6
2. Lease No. 3629, Lessee: Cayuse Livestock (Bill & Betsy Donald) High Bidder: Chris & Taunia Kittler	8
3. Lease No. 3997, Lessee: Gordon Williams High Bidder: Leroy Ballard	10
4. Lease No. 4247, Lessee: Hidden Valley Colony High Bidder: Lowell Johnson	12
5. Leases Nos. 4028 & 4216, Lessee: Wyatt Wood High Bidder, Heidi Billmayer.....	15
6. Lease No. 3854, Lessee, Elmer Habets, Kim Malcom & Jamie Parks High Bidder, Sterling Miller.....	17

INTRODUCTION

On May 2, 2013 the Department recently held Competitive Bid Hearings for State of Montana Grazing License No. 3060529 and State of Montana Agricultural and Grazing Leases Nos. 3629, 3997, 4247, 4028, 4216, which are being renewed in 2013. The Hearing on Lease No. 3854 was held on May 9, 2013. These new ten-year leases will expire on February 28, 2022. If a Lessee wishes to renew the lease for another term he must submit an application. If other persons inquire about the availability of a lease, their names and addresses are noted in the file and they are sent applications and bid forms at the time of lease renewal.

The statutory absolute preference right within Section 77-6-205(2), MCA, to renew a State agricultural and grazing lease was declared unconstitutional by Judge Jeffrey Sherlock in Broadbent v. State of Montana, et al., First Mont. Judic. Distr. Ct., Cause No. BDV-2003-361, because it impermissibly interfered with the constitutional power of the Land Board, under Art. X, Section 4 of the Montana Constitution, to choose its lessees. The Land Board, in response to Judge Sherlock's ruling, amended ARM 36.25.117 to exercise its constitutional prerogative to grant a qualified preference right to incumbent lessees in good standing. Through this rule, the Land Board has expressed its qualified preference to issue renewals of agricultural and grazing leases to the incumbent lessee provided that they have not committed illegal subleasing and do not have a history of lease violations. However, in all instances, the Board has reserved the right to choose the best-qualified lessee.

As part of its constitutional power, the Land Board may also determine the rate at which such leases will be issued. The Land Board has recognized that full market value encompasses the concept of sustained yield. Section 77-6-101 MCA. In Jerke v. State Dept. of Lands, 182 Mont. 294, at 296-297, 597 P.2d 49 at 50-51 (1979), the Montana Supreme Court held that a Grazing District which was not a lessee of a state grazing lease could not exercise a preference right. The Court described the rationale of the preference right to meet a high bid as follows:

Sustained yield is the policy which favors the long term productivity of the land over the short term return of income. State ex rel. Thompson v. Babcock, supra. The preference right seeks to further this policy by inducing the State's lessees to follow good agricultural practices and make improvements on the land. This is accomplished by guaranteeing that the lessees will not lose the benefits of their endeavors by being outbid when their leases terminate. They are preferred and may renew their leases by meeting the highest bid submitted.

Id.

Exercised in such a manner, such a preference is in the best financial interests of the school trust beneficiaries. All other things being equal, the Land Board has recognized that stability of land tenure encourages existing lessees to make greater improvements in the land, knowing that they will likely be able to utilize these improvements in the future, and that some stability of tenure allows lessees to operate more efficiently. The duty to prudently maximize revenue return to the trust estate from the trust properties is always subject to the duty to preserve the financial productivity of the trust lands. Oklahoma Education Association v. Nigh, 642 P.2d 230 at 238 (1982)

No Applicant for a grazing lease can compel the State Board of Land Commissioners to grant it an interest in state trust lands, especially where the concept of sustained yield is ignored. See, Skillman v.

Department of State Lands, 188 Mont. 383, 613 P.2d 1389 (1980); Gibson v. Stewart, 50 Mont. 404, 147 P. 276 (1915)(Whether a tract of state land shall be leased is a question addressed to the sole discretion of the Land Board.); §77-6-206, MCA ([T]he board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state”.)

Under ARM 36.25.117, if a Lessee exercises the qualified preference right but believes that the bid amount is excessive, he or she may request a hearing. The purpose of the hearing is twofold: 1) to determine the best-qualified Lessee for the upcoming lease term; and 2) to ascertain the appropriate rental rate for that term. Specifically, the Director inquires whether the high bid amount represents the fair market value of the lease and whether the rental rate is truly in the best interests of the trust. In determining whether the "high bid" rental rate is in the best interests of the beneficiaries of the trust, the Land Board must utilize the criteria set out in §77-6-205(2), MCA, and in Thompson v. Babcock, 147 Mont. 46, 409 P.2d 808 (1966). Under these criteria, the Montana Supreme Court has held that the "high bid" may be rejected where it is either "...above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity".

The Montana Supreme Court has recognized that an excessive rental rate, at some point, economically compels a Lessee to graze all the available forage on a grazing lease or reduce costly fertilizer, herbicide, and summer fallow treatments on agricultural leases. When state lands are over-grazed or farmed with minimal input costs, they produce more noxious weeds, less forage or crops, and less future income for the beneficiaries of the various trust lands. In extreme cases, the productivity of the land may be permanently damaged. Thus, it is in the best interests of the State to set a rental rate which balances the competing factors. In this "balancing act", the Land Board is attempting to maximize long-term income by allowing the Lessee a sufficient monetary incentive to exercise wise range management and agricultural practices. If the rate is too low, the State will not receive full market value for its lands. If the rate is too high, the Lessee may be induced to over-graze the tract, or reduce inputs such as herbicides, and long-term trust income to the trust beneficiary will inevitably suffer.

In the competitive bid hearing process, the Director is recommending the rental rate for the next term of the grazing or agricultural lease. The economic viability of these leases fluctuates according to prevailing weather conditions and commodity prices; both of which can vary wildly. Despite these fluctuations, the grazing rental charged by the Board must be paid by the Lessee whether or not any forage upon the lease is utilized. By contrast, private lessors generally do not collect rentals when they no longer have forage available for lease. Consequently, setting an appropriate rental rate, so as to sustain the long-term viability of "school trust" leases and maximize long-term income, is simply not as easy as accepting the highest bid. If it were, there would be no need for a hearing on the subject.

The best lessee is chosen according to nine criteria set out within ARM 36.25.117:

- 1) an intended grazing or cropland management plan for the new term of the lease;
- 2) experience associated with the classified use of the land;
- 3) other non-state lands that are fenced and managed in common with the state land;
- 4) intended grazing or cropland improvements that will benefit the health and productivity of the state lands;
- 5) a weed management plan;
- 6) management goals and objectives and monitoring procedures to determine if they are being met;
- 7) the method or route used to access the state land;
- 8) any other information the director deems necessary in order to provide a recommendation to the

- board; and,
- 9) the incorporation of all or part of this information as terms and conditions in the new lease agreement.

The current policy of the Board authorizes the Director of the Department to hold the competitive bid hearings; hear the evidence; and make recommendations to the board. Since the rental rates are based upon the evidence presented at the hearing, the Board members must avoid consideration of information outside the hearing record.

This year the Director granted requests for hearing on seven licenses and leases. Six of the hearings were conducted on May 2nd and 9th, 2013 at the offices of the Department in Helena, Montana. All hearings were electronically recorded and all witnesses testified under oath. However, the hearings were conducted in an informal manner. Department personnel present at the hearings were: Director John E. Tubbs; Trust Lands Management Division Administrator Shawn Thomas; Agriculture and Grazing Management Bureau Chief Kevin Chappell; Trust Lands Attorney Tommy Butler. Land Use Specialist Monte McNally was present at the Hearing on Lease No. 2425. Clearwater Unit Manager Dave Poukish and Clearwater Unit Fire Supervisor Cory Calnan were present at the Hearing on License No. 3060529. Central Land Office Area Manager, Hoyt Richards and Conrad Unit Manager, Erik Eneboe were present at the Hearing on Leases No. 4028 and 4216. Trust Lands Program Manager, Bob Storer, and Missoula Unit Manager, Jon Hansen were present at the Hearing on Lease No. 3854.

In preparation for this hearing, both the Lessee and the High Bidder were notified of the time and place of the hearing and given copies of ARM 36.25.117. The testimony and evidence considered during the hearing; a summary of the hearing; and the findings and conclusions recommended are set out as follows:

livestock to reduce the spread of this noxious weed. Mr. Warehime also sprays for noxious weeds utilizing a 4-wheeler and calculates that he incurs a cost of approximately \$5.20/AUM to do so. He calculates that given a rate for labor of \$15.00/hour, fence maintenance on this tract costs approximately \$6.00/AUM.

The Lessee does not own or control any adjacent property to this tract, but accesses the State lease via the Monture Creek Road. Mr. Warhime resides in Potomac, Montana, and he typically utilizes this tract of State land for the seasonal grazing of 34 head of cattle. Because of its location two miles north of Ovando, Montana and its convenient accessibility to the public, this tract is a very popular site for public recreational use, and can receive heavy use at times. Mr. Warehime has picked up shards of broken clay targets, and carefully monitors this tract, because recreationists have occasionally left the gates open, resulting in straying livestock.

Mr. Warehime presented a variety of private grazing rental rates in the community surrounding this State tract:

- Pruyn – Murphy Ranch, \$21.00/AUM and Lessor is responsible for fencing;
- Rowland – BCCA, \$18.00/AUM and Lessee has opportunity to reduce the rental rate by conducting spraying, fencing, etc.;
- Iverson – McLaughlin \$10.50/AUM and Lessee must spray weeds and fence;
- Iverson – Bennett, \$14.64/AUM and Lessee maintains fence.

However, no testimony was given on how the forage and amenities on these private lands compare to this State tract. Because the High Bidder did not appear at the hearing to substantiate the basis for the High Bid, and given the evidence presented at the hearing, the Director concludes that the High Bid of \$30.10/AUM is clearly above community standards for a lease of this type, and that instituting such a rental rate would impair the long-term productivity of this tract.

With appropriate measures implemented to better distribute livestock, this tract has the potential to appreciably increase its productivity of forage, and provide greater mutual benefits for the State and the Grazing Licensee. **Given the evidence presented at the hearing, the Director recommends that Grazing License No. 3060529 be retained by the current Grazing Licensee, John T. and Valerie Warhime at a rental rate of \$17.00/AUM, with the stipulation that the Grazing Licensee enter into a supplemental lease agreement with the Department for a grazing management plan to better distribute livestock and monitor their season of use, while enabling native forbs and grasses to thrive.**

2013 COMPETITIVE BID HEARINGS

Hearing Time: Thursday, May 2, 2013 @ 10:00 a.m.

Lease No.: 3629

County: Sweet Grass

Lessee: Cayuse Livestock (Bill & Betsy Donald)

Tracts:

T4N R14E S16: All - 640 Ac. - Common School Grant

Grazing Acres: 640 AUM Rating: 244

Ag (Crop) Acres: 0

High Bidder: Chris Kittler

High Bid: \$30.00 per AUM

Other Bids: None

Previous Rental: Minimum

Prevalent Community Rental Information:

State Land County Bid Averages: \$15.45/AUM

MT Ag Statistics 2012 Private Lease Rate: \$20.50/AUM

Findings and Recommendation:

Bill Donald, Betsy Donald, and Elli Hawks appeared and testified on behalf of the Lessee, Cayuse Livestock. Chris Kittler and Taunia Kittler appeared and testified on behalf of the High Bidder.

This tract is located 1.5 miles west of the town of Melville, Montana. This tract is legally accessible via county road on its northern and western borders. There is abundant water for livestock since an irrigation ditch runs through the lease premises, and a large reservoir is located in the southeast corner of the tract. Cayuse livestock accesses this tract from the county road and its adjacent land in Section 8.

This lease is rated at 227 AUMS and the most recent field evaluation documents the excellent range condition despite drought conditions in the year 2012. Although maximal productivity has been held back by some incidence of snowberry in the clay, sub-irrigated, over-flow area of the lease tract, and a few isolated spots of Canadian thistle along the irrigation ditch, it is clear that the productivity of this tract has been maintained through excellent range management provided by Cayuse Livestock. The Lessee has historically utilized this tract as a bull pasture, and it has obviously received very light use. Mr. Donald testified that he shifted the season of use on this tract dependent upon the condition of the forage. Mr. Donald testified that he has made diligent efforts to control leafy spurge and Canadian thistle through

spot-spraying of herbicide.

During the hearing, Mr. Kittler mistakenly asserted that he owned land directly south of the State lease No. 3629, which is located in Section 16, Township 4 North, Range 14 East, MPM, in Sweet Grass County, Montana. Instead, it became apparent that Mr. Kittler owns land through Tatanka Land & Livestock, LLC, south of Section 36, Township 5 North, Range 14 East, MPM, which is another tract of State land, currently leased by Cremer Ranch. Mr. Donald submitted photographs of Mr. Kittler's private lands in Section 1, Township 4 North, Range 14 East, MPM, which showed heavy utilization of forage, and Mr. Donald argued that this un-restricted method of grazing would be detrimental to the lands in Lease No. 3629.

Mr. Kittler grazes Bison on his private land and he is interested in acquiring additional grazing acreage. His High Bid was purportedly based upon an advertisement he viewed in the local "Mini-Nickel" newspaper wherein a general solicitation was made for grazing land at \$30.00 to \$35.00/AUM. Mr. Kittler presented no evidence of private grazing leases on land with similar physical characteristics being successfully operated in Sweet Grass County at the rate of \$30.00/AUM. Ms. Taunia Kittler asserted that Bison generally graze in such a manner as to increase the incidence of native grasses and prairie birds. The Director finds that although Bison may have particular behavioral patterns distinct from domestic cattle breeds, active and prudent range management by a Lessee, exercised through the manipulation of livestock distribution, concentration, and timing of use, is still essential to maintain the productivity of this State grazing tract.

Mr. Donald asserted that Mr. Kittler's High Bid of \$30.00/AUM was unrealistic and excessive, and testified as to the prevailing grazing rental rates in the community surrounding this tract of State land. Competitive bids for State grazing lands in Sweet Grass County have exhibited a gradual increase over time: from \$15.00/AUM in 2006 to \$22.00/AUM in 2012. Mr. Donald knew of one private lease three miles distant from this State tract that possessed a rental rate of \$25.00/AUM, where the Lessor was responsible for weed control and maintenance of improvements.

Given the evidence presented at the hearing, the Director recommends that Grazing Lease No. 3629 be retained by the current Grazing Lessee, Cayuse Livestock at a rental rate of \$20.00/AUM. This rate is consistent with the prevailing community standard for leases of this type, and will allow the productivity of this grazing lease to be maintained.

that found on this State lease.

Mr. Ballard testified that he typically grazed 52 cow-calf pairs and replacement heifers on adjacent lands in Sections 26 and 35 in Township 2 North, Range 2 South, MPM, belonging to a relative. This use totaled 490 AUMs, for which he paid \$22,000.00 per year in grazing rentals. The Director finds that it is difficult to quantify exactly what amenities or other services were included in this private transaction, especially given the purported absence of water development on Section 35. Mr. Ballard purportedly knew of one private lease of former CRP ground that comprised 45 AUMS that rented for one year for \$40/AUM or \$1,800 dollars. However, little or no evidentiary weight can be ascribed to this private transaction where Mr. Ballard presented no evidence of private long-term grazing leases on land with similar physical characteristics being prudently operated in Jefferson County at the rate of \$43.00/AUM.

Given the evidence presented at the hearing, the Director recommends that Grazing Lease No. 3997 be retained by the current Grazing Lessee, Gordon Williams at a rental rate of \$22.10/AUM. The Lessee has successfully and prudently operated this grazing tract at that rental rate. Consequently, the Director finds that such a rate will allow the productivity of this grazing lease to be maintained.

2013 COMPETITIVE BID HEARINGS

Hearing Time: Thursday, May 2, 2013 @ 1:00 p.m.

Lease No.: 4247

County: Hill

Lessee: Hidden Valley Colony

Tracts:

T31N R11E S25: W½ - 320 Ac. - Common School Grant

Grazing Acres: 0

AUM Rating: 0

Ag (Crop) Acres: 317.91

High Bidder: Lowell Johnson

High Bid: 34% Crop Share or \$39.00/Acre, Which Ever is Greater

Other Bids: None

Previous Rental: Minimum

Prevalent Community Rental Information:

State Land County Bid Averages: 29.86% Crop Share and \$15.00/Ac Cash Guarantee

Findings and Recommendation:

Mr. John O. Wurtz, Samuel A. Hofer, David A. Hofer appeared and testified on behalf of the Lessee, Hidden Valley Colony. Lowell Johnson and Todd Hansen appeared and testified on behalf of the High Bidder.

This agricultural tract is located 15 miles west of the town of Box Elder, Montana, and is legally accessible from a County road running along the southern boundary of the lease premises. This tract is not irrigated and its highest and best use is dry-land farming. This tract is un-fenced.

Hidden Valley Colony acquired this lease in 2009, and owns private lands adjacent to the east side of this State tract. A prior Lessee, J.D. Flynn Farms General Partnership, had left the State tract in extremely poor condition, with a substantial infestation of noxious weeds, ground squirrels, and a large area of saline seep. Mr. Samuel Hofer described the initial condition of the State tract when Hidden Valley Colony acquired it as being full of weeds four to five feet tall and infested with Cheatgrass. Through exceptional stewardship and substantial investments of time and money, Hidden Valley Colony has restored this State agricultural tract to a clean and productive condition. Mr. Hofer testified that if properly managed, this tract could be a reasonably productive tract, since adjacent private lands had a Spring Wheat crop yield of

34 bushels/acre. Mr. Hofer has 35 years of experience farming, and typically consults with an Agronomist to make soil tests and in order to make the best management decisions.

Mr. Hofer stated that the tract is un-fenced because fences on crop lands typically produce only weeds. Hidden Valley Colony has continuously-cropped the State tract with a “clear-field”, a variety of wheat which is more tolerant to the spraying of herbicide which helps producers to eliminate wild rye, cheatgrass, and kochia. Utilizing this variety in conjunction with continuous cropping: the saline seep area has been greatly reduced down to a 20-acre patch in this State tract: yield-robbing noxious weeds have been largely eliminated; the tract produces cleaner grain with fewer discounts when sold at the elevator; and the productivity of the land has been markedly improved. Mr. Hofer stated that control of the saline area has been assisted by the cooperation of surrounding producers.

Mr. Samuel Hofer asserted that Mr. Johnson’s High Bid of a 34% crop share with a \$39.00/acre cash minimum guarantee was not economically viable and exceeded the prevailing community standard for leases of this type. Mr. Hofer testified that Hidden Valley Colony had in the past acquired agricultural leases on other private lands in the community at the following rental rates: 148 acres for an annual rental of \$4,144.00 (\$28.00/acre); and 2,347 acres at an annual rental of \$58,675.00 (\$25.00/acre). Mr. Hofer also knew of local leases in the area at cash rental rates of \$28.00 to \$32.00/acre, and one lease at the rate of \$37.50/acre for a term of three years, with no charge for summer fallow.

The High Bidder, Mr. Johnson, testified that he would farm this State tract on a summer-fallow crop-rotation basis, where only one-half of the land would produce a crop at any one time, and he would seed the saline patch to grass. He consulted his bank loan officer as to the prevailing agricultural lease rental rates. This bank loan officer reported that current rental rates are on the order of a 30% to 33% rental cropshare and cash rents are approximately \$40.00/acre. Mr. Johnson believed that this State tract could produce crop yields of 40 bushels/acre. Mr. Johnson testified that he knew of at least one agricultural lease in the area at a cash rent of \$50.00/acre, where the Lessor shared no input costs. Mr. Johnson offered no evidence how the physical characteristics or productivity of that private lease compared with this State tract. Little or no evidentiary weight can be ascribed to this private transaction where Mr. Johnson presented no evidence of private long-term agricultural leases on land with similar physical characteristics being prudently operated in Hill County with a rental rate with a combined crop-share of 34% with a \$50.00/cash minimum guarantee.

If set too high in relationship to the productivity of a tract, the combination of a crop-share rental with a cash minimum guarantee can disproportionately shift market and crop yield risk to the Lessee while reducing production incentives, especially where the State shares no input costs. Crop-share rentals apply only to actual crop yields, while cash rents apply to each acre regardless of yield. Crop-share rentals also decrease Lessee profits in “high-production” years. Cash rents, if appropriately set, provide an equitable arrangement between an agricultural Lessor and Lessee. Better agricultural producers seek leases upon a cash rental/acre basis because: it provides them with greater ability to manage risk with crop insurance; it provides a further incentive to maximize production; it provides an easier and more accurate method of budgeting for operational costs; and it provides increased flexibility for selecting crop types. Mr. Hofer testified that by harvest time, it was typical for the Lessee to have incurred up to \$160.00 in costs per acre.

Given the evidence presented at the hearing, the Director recommends that Agricultural Lease No. 4247 be retained by the current Agricultural Lessee, Hidden Valley Colony, at a cash rental rate of \$39.00/acre. This rate reflects the prevailing community standard for leases of this type. It is also

recommended that the Lessee work with the Department to further develop soil salinity control measures.

2013 COMPETITIVE BID HEARINGS

Hearing Time: Thursday, May 2, 2013 @ 2:00 p.m.

Lease No.: 4028 & 4216

County: Pondera

Lessee: Wyatt Wood

Tracts:

L#4028 T27N R1W S12: N $\frac{1}{2}$ - 320 Ac. - Common School Grant

L#4216 T27N R1E S5: S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$ - 400 Ac. - Common School Grant
T27N R1E S6: NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ - 120 Ac. - Common School Grant
T27N R1E S8: N $\frac{1}{2}$ - 320 Ac. - Common School Grant
T27N R1E S9: N $\frac{1}{2}$ - 320 Ac. - Common School Grant

Ag (Crop) Acres: L#4028 – 317.79
L#4216 – 1138.91

High Bidder: Heidi Billmayer

High Bid: 36% Crop Share or \$42.50/Acre, Which Ever is Greater

Other Bids: None

Previous Rental: L#4028 – 30% Crop Share
L#4216 – Minimum

Prevalent Community Rental Information:

State Land County Bid Averages: 37% Crop Share and \$22.84/Ac Cash Guarantee

Findings and Recommendation:

Mr. Wyatt Wood, George P. Wood, and Alicia Wood appeared and testified on behalf of the Lessee. Heidi Billmayer and Wendy Mobley appeared and testified on behalf of the High Bidder.

These two State agricultural tracts are located approximately 10 miles northeast of the town of Brady, Montana, and are legally accessible to the Lessee from Meridian Road, a County road running to the lease premises. This tract is not irrigated and its highest and best use is dry-land farming. This tract is unfenced.

The Lessee, Mr. Wyatt Wood, was awarded a Bachelor of Science degree in Agricultural Operation in 1995 from Montana State University – Bozeman. Mr. Wood possesses considerable experience in the production of small grain crops, and he operates sophisticated state-of-the-art GPS-guided farming

machinery. Mr. Wood also utilizes Environmentally Smart Nitrogen (“ESN”) fertilizer, which is a polymer-coated form of nitrogen that provides for the controlled-release of fertilizer to growing crops over time. ESN nitrogen can boost the protein content of wheat, and therefore the price received per bushel. Mr. Wood operates on a 50-50% chem-fallow basis to preserve soil moisture. He largely plants winter wheat and spring wheat, although he may plant lentils in the future to improve soil fertility. Mr. Wood utilizes a professional marketing consultant for his grain crops. A review of his agricultural lease rental payments to the State over the last lease term demonstrates his consistent skill at producing high yields of good quality small-grain crops on these State agricultural tracts.

Mr. Wood did not know of any private agricultural leases in Pondera County utilizing a crop-share rental together with a minimum cash per acre guarantee. In consulting with his Bank Loan Officer, he was told that such combinations increase the risk to the Lessee beyond either rental method individually because the combination limits the profitability to a productive Lessee too much in “the good years”. Generally, he testified, one will not see private leases above a 35% crop-share rental rate unless the Lessor proportionately shares all the crop production costs. Mr. Wood questioned whether grain prices will remain at their current level, and expressed concern whether the High Bid was viable if grain market prices declined. Mr. Wood testified that his input costs averaged \$200.00/acre, which did not include amortized costs for replacement of farming equipment or his living expenses. Mr. Wood emphasized his proven record as a dependable producer and Lessee. He has one other private agricultural lease at the rate of \$35.00/acre, but that lease also provides additional amenities, such as grain bin and machinery storage.

Ms. Heidi Billmayer began farming with her husband, Josh Billmayer about 9 years ago, and they are seeking additional acreage to expand their small-grain operation. The High Bidder controls lands directly south of State Lease No. 4028. Like Mr. Wood, the Billmayers utilize a crop consultant and implement 50-50% crop-rotation and chem.-fallow techniques on their private lands. Billmayers have the ability to truck their grain to Lewiston, Idaho, which often yields up to a \$2.00/bushel greater price. Their farming equipment is not as technologically advanced as the equipment utilized by Mr. Wood, but Ms. Billmayer testified that it is kept in good operating condition. Ms. Billmayer stated that their crop production costs generally averaged \$228/acre, which included fuel, equipment maintenance, fertilizer, seed, and seed treatment.

If set too high in relationship to the productivity of a tract, the combination of a crop-share rental with a cash minimum guarantee can disproportionately shift market and crop yield risk to the Lessee while reducing production incentives, especially where the State shares no input costs. Crop-share rentals apply only to actual crop yields, while cash rents apply to each acre regardless of yield. Crop-share rentals also decrease Lessee profits in “high-production” years. Cash rents, if appropriately set, provide an equitable arrangement between an agricultural Lessor and Lessee. Better agricultural producers seek leases upon a cash rental/acre basis because: it provides them with greater ability to manage risk with crop insurance; it provides a further incentive to maximize production; it provides an easier and more accurate method of budgeting for operational costs; and it provides increased flexibility for selecting crop types.

Given the evidence presented at the hearing, the Director recommends that Agricultural Leases Nos. 4028 and 4216 be retained by the current Agricultural Lessee, Wyatt Wood, at a cash rental rate of \$42.50/acre. This rate reflects the prevailing community standard for leases of this type.

banks of the River to protect the riparian zone from trampling by livestock. This fencing prevents bank disturbance by livestock and enables the well-sodded streambanks to gradually erode to create undercuts important to fish as hiding cover. The Lessees have conscientiously maintained these fences even though they are frequently damaged by high water and driftwood from the River. The light grazing and excellent stewardship that this State tract has received is evident from the superb condition of this tract. The Lessees lightly uses this tract twice a year for up to 12 cow-calf pairs: a short period in early Spring and a short period in the Fall. Historically, the Lessees have not grazed the portion of the State lease east of the River.

The Lessees have diligently controlled the incursion of noxious weeds on this State tract by maintaining excellent range condition, spraying herbicide to control knapweed, hound's tongue, and thistle, and by releasing flea beetles to control leafy spurge. Moreover, they have installed culverts to preserve water quality and they have allowed the public to cross their private lands to access this State tract. This tract receives substantial recreational use by the public in the form of hunting, fishing, and floating.

Mr. Malcolm consulted with Tara Comfort of the local NRCS office to determine the prevailing grazing rates for this community. She reported that prices vary according to a multitude of factors, but a general rate was \$15.00/AUM. Mr. Malcolm testified that the High Bid of 78.13/AUM is not an economically sustainable rate for a smaller operation such as the Lessee's, simply because such costs cannot be absorbed. Ms. Miller testified that she has entered into a lease of local school district lands at the rate of \$50/acre, and that horse boarding costs in the area can be as much as \$250/horse/month. However, it is unclear what additional amenities or services are included in those contracts, and therefore the Director ascribes little weight to that evidence submitted by Millers as to the value of the forage on these lands.

Ms. SuzeAnn Miller and Mr. Sterling Miller began their guest ranch operation on adjacent lands in 1997, and have a Land Use License to conduct commercial horseback trail rides on this State tract. Ms. Miller is a Biometrician, while Mr. Miller is a wildlife biologist. They attempted to maintain 17 head of horses on approximately 12 acres of land, and now seek additional grazing acreage for their horse herd. The Millers acknowledged that they were relatively new to Agricultural management, and that they have learned that horses can impose profound impacts upon grazing lands if not properly managed. Consequently, they have worked with a grazing consultant in an effort to better manage their private lands.

Ms. Miller proposed to remove all interior fencing present on the State tract and utilize a portable electric fence or "hot-wire" to intensively graze portions of the State tract. Ms. Miller proposed using a vaguely-described "high-intensity, short-duration" grazing system. This would require trailing horses from her private property a couple times each day (evenings and mornings) to a portable enclosure which would be moved across the pasture. Implementation of such a grazing system is both labor intensive, and requires the skill of an experienced range manager. Although Ms. Miller stated that she would monitor any grazing by plant transects, it is significant that she did not commit to any forage utilization standard, or any particular rest-rotation grazing pattern which would allow a full season of rest for the vegetation at any point in time. Ms. Miller contemplated grazing the entirety of the tract, including that portion east of the River. Ms. Miller stated that the Millers were amenable to creation of livestock enclosures for portions of the tract, but offered no particular commitments beyond Mr. Miller's concern about the need for fencing to perpetuate cattails in a marshy area of the lease.

Given the light stocking rate by the current Lessees, livestock have been allowed maximum dietary selectivity throughout the grazing season. Cattle will preferentially select forbs (i.e., broad-leaved plants)

during certain times of the year, which can greatly reduce grazing pressure on grasses. The high-intensity, short duration grazing method proposed by the Miller would restrict livestock from part of the range during the growing season, which can waste much of the forb crop because some forb species complete their life cycle quickly and become unpalatable after maturation. Likewise, the trailing of livestock several times a day, and the concentration of horses in a small portable enclosure, on sub-irrigated lands has the potential to trample vegetation, compact soils, and decrease water infiltration rates.

The Miller's proposed grazing plan, which deliberately imposes repeated periods of heavy defoliation followed by nonuse, does not leave much room for operator error. Extra care and measures must be taken with such a grazing system to avoid long-term damage to riparian lands. Such grazing systems are not for the inexperienced. Although the Millers submitted a letter from their consultant which spoke of a seeding and rest rotation grazing system recently implemented on Miller's private property, no photographs or other documentation were submitted by Millers of the condition of their private grazing lands by which the Director could evaluate Miller's range management abilities.

Ms. Miller and Mr. Miller failed to present any evidence or testimony that they have successfully implemented a "high-intensity, short-duration" grazing system on any grazing lands. Proposal of a sophisticated grazing plan does not eliminate the need for the demonstrated ability to comply with the basic principles of grazing management (stocking rates, season of use, frequency of use, kind or mix of animals, animal selectivity, etc.). The grazing system proposed by the High Bidder requires greater management skill and attention than the light stocking rates historically and successfully utilized by the Lessee. By contrast, the physical condition of this State lease clear demonstrates that Mr. Habets has the ability to wisely manage these State grazing lands.

Given the evidence presented at the hearing, the Director recommends that Grazing Lease No. 3854 be retained by the current Agricultural Lessees, Elmer Habets, Kim Malcolm, and Jamie Parks, at a rental rate of \$41.10/AUM. The Lessees have successfully and prudently operated this grazing tract at that rental rate. Consequently, the Director finds that such a rate will allow the productivity of this grazing lease to be maintained.

513-3

TIMBER SALES

- A. Good Sheperd
- B. Scout Lake #6

GOOD SHEPHERD TIMBER SALES

May 20, 2013
Land Board

Location of Sale:

- Clearwater Unit (SWLO) – Approximately 10 miles northwest of Ovando, Montana.
- Missoula and Powell Counties - Sections 6, 7, T15N-R13W and Sections 31, 32, T16N-R13W
- 85% Common Schools, 15% Pine Hills School
- This sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP as well as the State Forest Land Management Plan (SFLMP) and the Administrative Rules (ARM) for Forest Management.
- These sections of trust land are within the Blackfoot Clearwater Game Range. Montana Fish Wildlife and Parks (FWP) holds a conservation easement on all of the project area. DNRC and FWP have worked together throughout the planning of this timber sale, and followed the process outlined by the Conservation Easement's Management Plan.

Sale Volume & Estimated Value:

- The estimated sale volume is 12,605 tons (1,962 MBF) of sawlogs with a conversion factor of 6.42 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
\$15.49	\$3.54	\$19.03	*12,605	\$239,873.15

*The estimated volume is equivalent to approximately 12,772 cubic meters.

Sale & Harvest Treatments:

- The sale consists of 6 harvest units totaling 728 acres. .
- The silvicultural prescription for this sale is an individual tree selection and would primarily target the removal of Douglas-fir. This prescription would favor retaining healthy western larch and ponderosa pine and would promote appropriate species for the area and reduce the amount of insect infested or disease infected trees. Tree spacing would be random based on tree quality to develop an irregular pattern.
- No old growth stands are present or would be harvested in the project area. .

Harvest Systems:

- 100% Tractor

Road Construction& Maintenance:

- Existing access to the timber sale area is on Missoula and Powell county roads. In conjunction with the timber sale, DNRC would maintain 8.1 miles of existing road. Approximately 0.4 mile of new road construction would take place along with 0.4 mile of road abandonment to improve the transportation system within DNRC ownership.

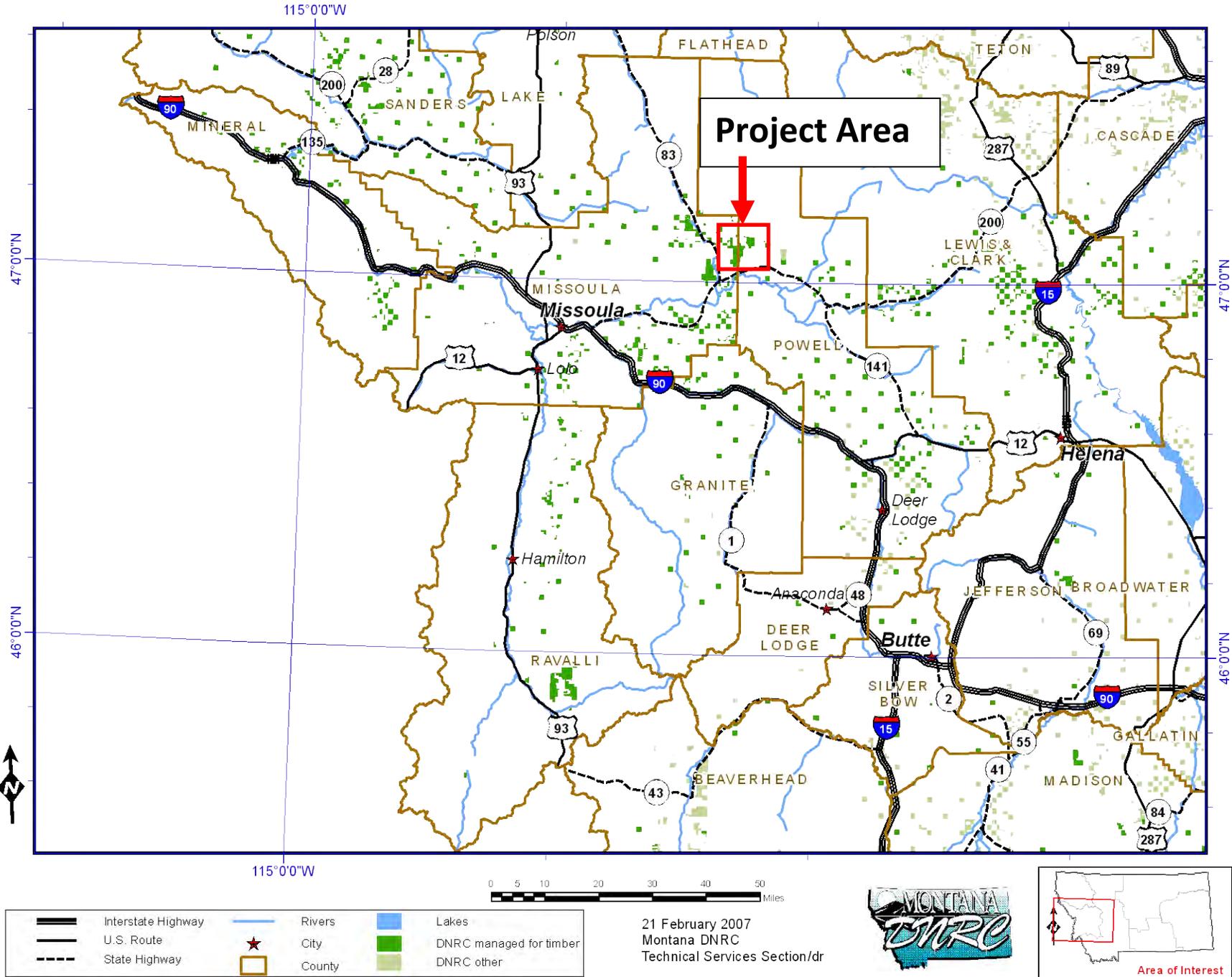
Public Involvement:

- Public scoping for this project was initiated in November 2010 with a letter to known interested parties. DNRC also placed public notices in the *Missoulian* and *Silver State Post* newspapers. The public comment period for the initial project proposal was open for 30 days. Adjacent landowners have been updated on sale progress throughout the planning process. One comment from a local logger was received in support of the timber sale.

Issues and Mitigations

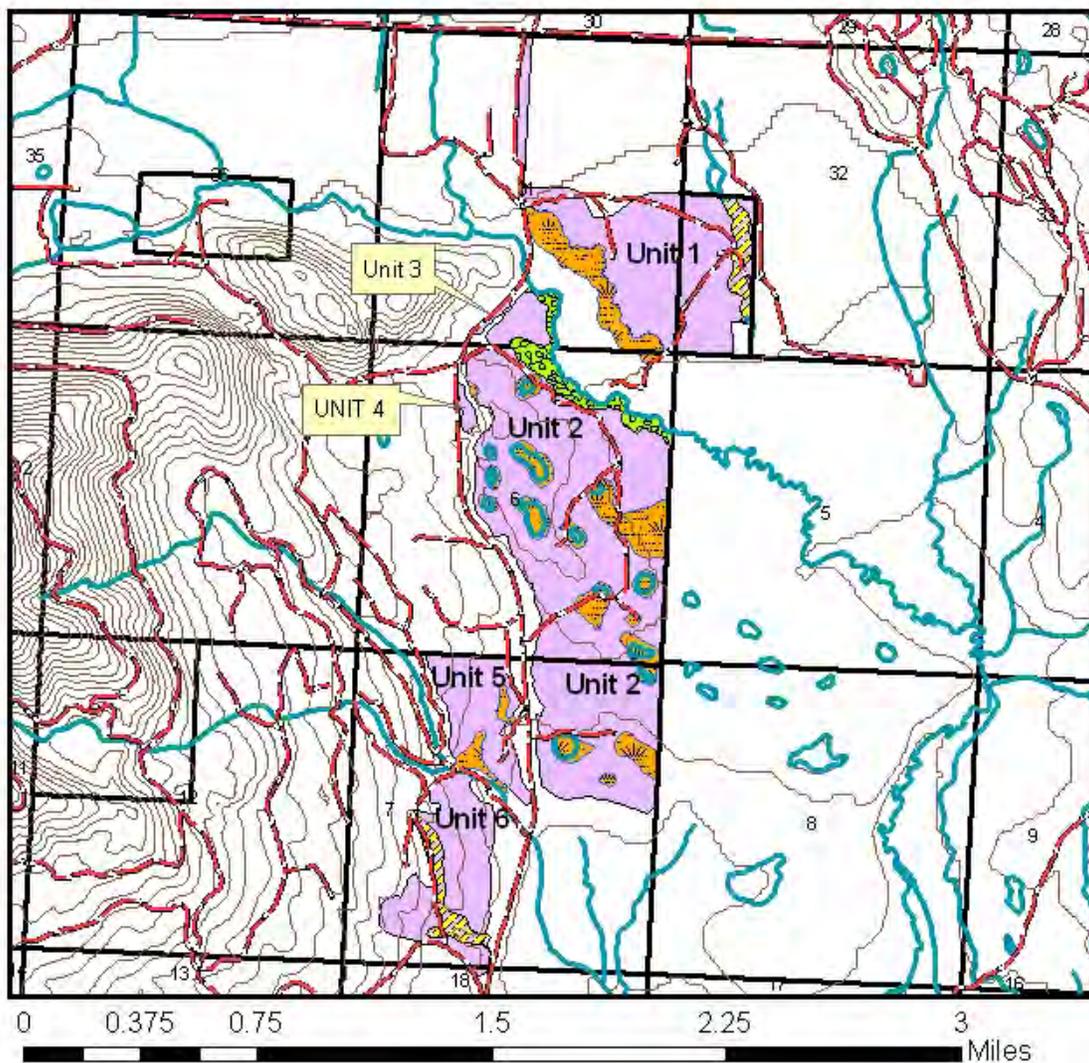
- **Grizzly Bears:** The timber sale is within grizzly bear non-recovery occupied habitat. Vegetative screening cover would remain intact around riparian areas. To minimize disturbance to bears no harvesting activities will be allowed during the spring period and during the general big game rifle season.
- **Lynx Habitat:** The timber sale prescription emphasizes retention of downed logs 15-inch diameter or larger where they occur. Retention of patches of shade-tolerant trees would break up sight distances and continue to provide hiding cover for lynx.

The Director recommends the Land Board direct the Department to sell the Good Shepherd Timber Sale.





Good Shepherd Timber Sale
DNRC-CLEARWATER UNIT
Sections 31,32 T16N R13W & Sections 6 & 7 T15N R13W



Roads	Class 3 SMZ
Streams	GS Wetlands
Class 1 SMZ	
Good Shepherd Units	



A. Helena
8/28/2012

SCOUT LAKE SALE 6

May 20, 2013
Land Board

This project is the sixth timber sale proposed under the Scout Lake Multiple Timber Sale Project Environmental Impact Statement (EIS).

Location of Sale:

- Swan Unit (NWLO) – Approximately 8 air miles south of Swan Lake, Montana
- Lake County – Sections 28 & 29, T24N-R17W.
- 100% Common Schools
- This sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP as well as the State Forest Land Management Plan (SFLMP), Administrative Rules (ARM) for Forest Management, and Swan Valley Grizzly Bear Conservation Agreement (SVGBCA)

Sale Volume & Estimated Value:

- The estimated volumes are 2,783 tons (463 Mbf) of sawlogs with a conversion factor of 6.01 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
\$25.19	\$4.18	\$29.37	*2,783	\$81,736.71

*The estimated volume is equivalent to approximately 2,650 cubic meters.

Sale & Harvest Treatments:

- The sale consists of 2 harvest units totaling 94 acres. All 94 acres are currently classified as old growth.
- The silvicultural prescription for the harvest units is commercial thin. This treatment would be conducted in accordance with old growth restoration and maintenance treatments as defined by ARM 36.11.418. Post-treatment, all 94 acres would remain in old growth status.
- A minimum of 2 large snags per acre would also be retained in each harvest unit where snags are available.
- Western larch, Douglas-fir, western white pine, and other species where present, would also be retained throughout the sale.
- The harvest treatment is meant to: address insect and disease issues; promote appropriate species composition and desired future conditions; and balance revenue recovery with environmental considerations such as wildlife habitat, watershed health, and soil stability.

Harvest Systems:

- 100% tractor

Road Construction:

- No new roads would be constructed. Approximately 3.3 miles would be used and would receive maintenance improvements to meet Best Management Practices for Forestry (BMPs).
- These roads are currently and would continue to be closed to public motorized use.

Public Involvement & Issues:

Public scoping for the Scout Lake Multiple Timber Sale EIS began on April 16, 2010 with a 30-day public comment period. The project proposal was mailed to interested individuals, owners of adjacent land, State Land Board staff, organizations, private industry, State representatives, local newspapers, and federal and state agencies. Public notices were also published in the *Bigfork Eagle*, the *Kalispell Daily Interlake*, and the *Swan Valley Pathfinder*. As a result of these initial scoping efforts, a total of 8 letters/emails, 4 phone calls, and 13 requests to remain informed were received from a wide range of interested parties.

- In November 2010 and July 2011, DNRC sent out newsletters to update interested parties about the project. No responses were received as a result of the newsletters.
- The Project Team conducted one public field tour of the project area on October 20, 2010. A second tour was offered in September 2011 but was canceled due to a lack of participation. One party requested and received maps of the project area and potential harvest units.
- The Draft EIS was prepared and mailed out for comments on December 16, 2011 with a 30-day comment period which closed on January 17, 2012. A total of three comments to the Draft EIS were received.
- Primary concerns by those who commented (Friends of the Wild Swan, Stephen Braun, and F.H. Stoltze) throughout the project development include: impacts of timber harvesting and road construction on old growth and wildlife habitat, protection of water quality and fisheries habitat, maintaining biodiversity, project economic viability, project cost analysis, aesthetics, and forest health and vigor. These resource concerns and others were addressed and incorporated into the project's design through the development of appropriate mitigation measures and contractual language
- The Final EIS was published and mailed out on March 3, 2012. Alternative B was identified as the proposed decision in Final EIS with final decision made on March 25, 2012.

Issues and Mitigations:

Old Growth – Timber management of the old growth stands for this sale would concentrate on the removal of insect and disease problems. A total of 94 acres of old growth would be treated as a part of this sale and 94 acres of the treated acres are expected to meet the Department's definition of old growth post-harvest. The proposed sale would not reduce the classified old growth acreage on the Swan River State Forest from the current amount.

- Many of the larger trees in these old growth stands are in declining vigor, dying or dead as a result of insect and disease issues. In addition, many of the seral species are declining in presence while shade tolerant species are increasing and moving away from desired future conditions. Commercial thin harvest treatments in old growth stands correspond to old growth maintenance treatments (ARM 36.11.418) which are meant to emulate non-lethal or mixed severity fire regimes on these sites. This type of treatment is designed to reduce short and long-term insect and disease problems, increase the presence of seral species (western larch, western white pine, etc.) and reduce the amount of shade tolerant species such as subalpine fir, balance value recovery of dead and dying trees with environmental considerations, and move these stands toward desired future conditions.
- Western larch, Douglas-fir, and western white pine would be favored for retention when present within the harvest units. Leave trees would represent various size and age classes.

Stands would move from predominantly shade tolerant or climax species, such as Engelmann spruce, grand fir, and subalpine fir, to shade intolerant or seral species such as western larch, Douglas-fir, and western white pine. This would also move these stands towards the department's desired future condition for the Swan River State Forest. This proposed treatment is consistent with the SFLMP, HCP, and Administrative Rules for Forest Management.

Wildlife – Road closures would remain in place. Forest connectivity to allow animals to move between areas would be slightly reduced. At least 2 large snags per acre would be retained after harvest where available. Thermal cover for deer and elk would be slightly reduced.

Threatened and Endangered Species –

- **Grizzly Bear** – This sale conforms to the SVGBCA. Harvest activities are not permitted during the non-denning period within a closed subunit. Harvest activities would occur during the denning period of November 16 through March 1 within a closed subunit. Harvest activities could also occur from June 16 through March 31 within an active subunit.
- **Bull Trout** – No timber harvest is planned within streamside management zones (SMZs) along streams containing bull trout.

Water Quality/Streams – There are no plans to harvest within SMZ or riparian management zone (RMZ) buffers.

All road maintenance and/or renovation would meet current BMPs for water quality.

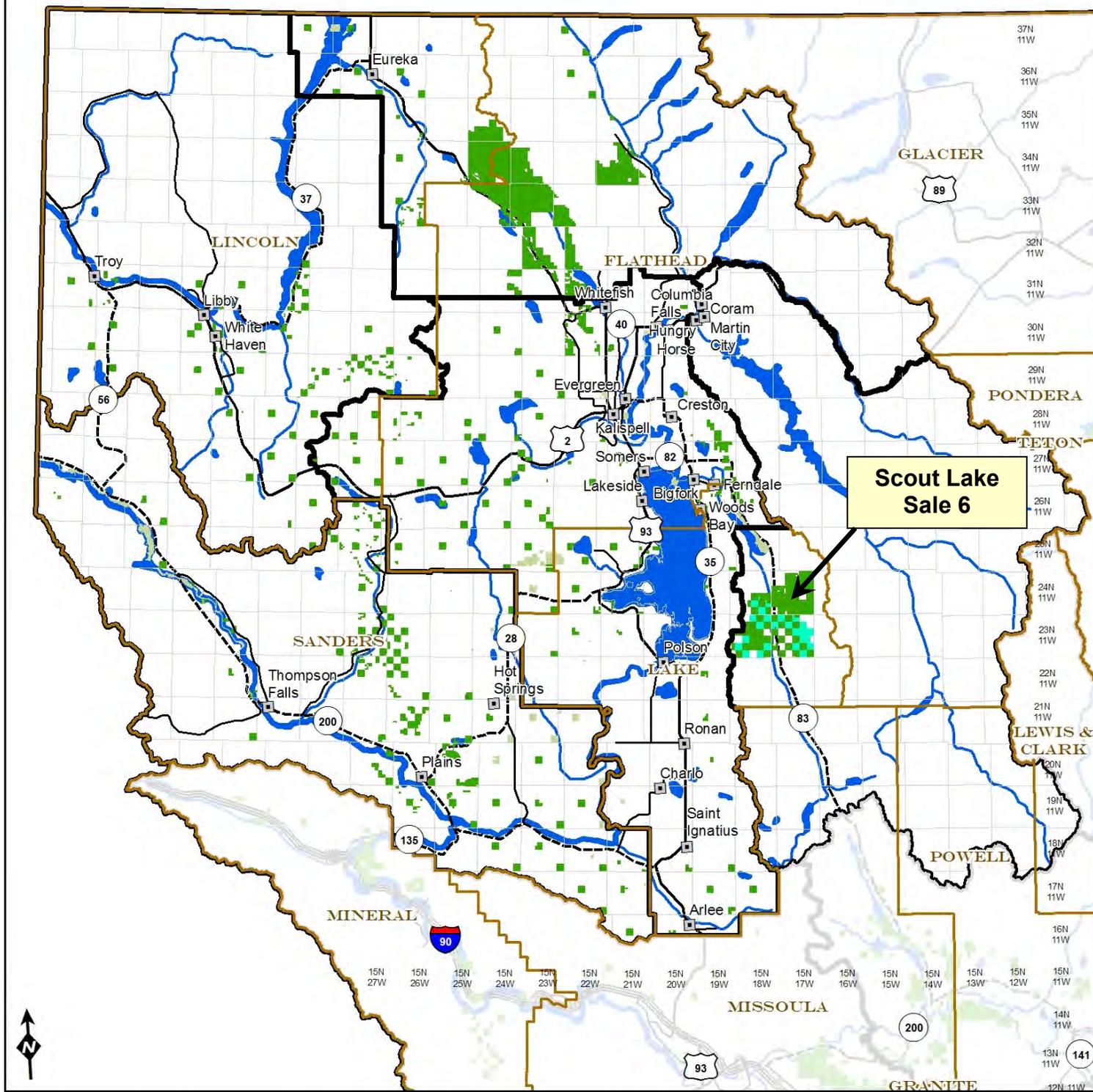
Biodiversity – The harvest prescriptions would have a variety of size and age classes present after harvest. Seral stands would replace the non-typical climax stands identified for treatment. Harvest prescriptions along with post-harvest treatments of pile and scarification, pile burning and planting would contribute to creating a variety of stands that are more reflective of historic species composition on the landscape.

Economics – The sale is expected to generate a minimum of \$81,736.71 for the Common School Trust. The sale would also spur the local economy through creating or sustaining as many as 12 higher paying timber industry related jobs.

Forest Health – This sale is designed to address forest health issues by treating stands with significant insect and disease problems. The stands selected for treatment have active insect and disease problems. This area has been affected by dwarf mistletoe, Pini rot, white pine blister rust, and Indian paint fungus resulting in moderate defect and mortality in species such as western larch, western white pine, and grand fir. Without treatment, these problems will likely worsen and spread as documented by regular aerial survey flights. Treatments would remove dead and dying or infected trees to capture the associated revenue and allow for healthy trees to take their place or to allow healthy residual trees to grow to full potential.

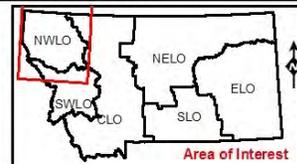
The Director recommends the Land Board direct the Department to sell the Scout Lake Sale 6.

**Scout Lake Sale 6
Vicinity Map
Attachment A1**



28 January 2013
Montana DNRC
OIT/GIS dr

	Interstate Highway		County		City
	U.S. Route		DNRC other		Township/Range
	State Highway		DNRC acquired Dec 2012		Management Unit
	Secondary Roads		DNRC managed for timber production		

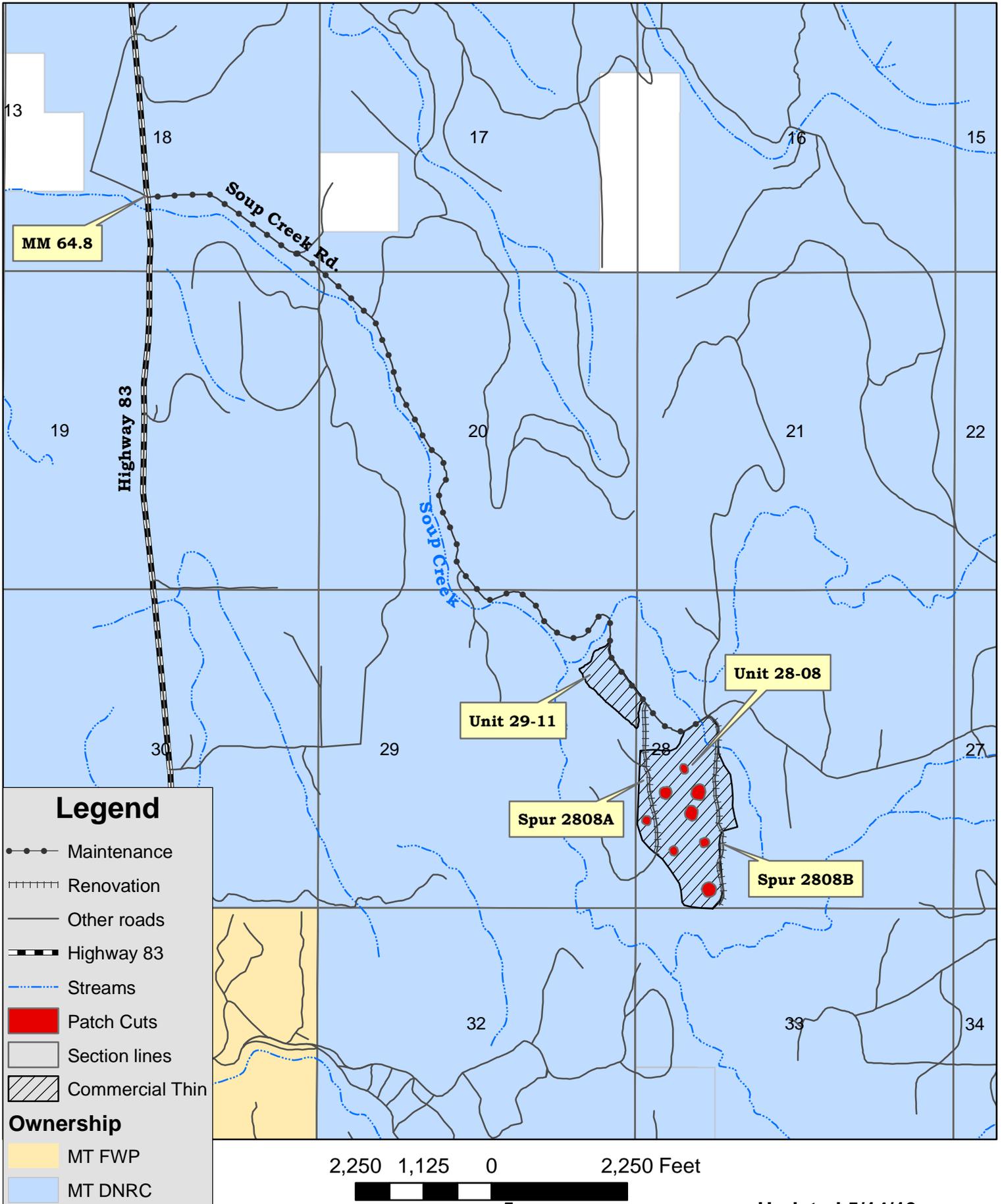


Scout Lake Sale 6

Project Area Map

Section 28 and 29 T24N R17W

Attachment A2



513-4

COMMUNITIZATION AGREEMENT:
OASIS PETROLEUM NORTH AMERICA LLC

REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
MAY 20, 2013
LAND BOARD

Oasis Petroleum North America LLC
1001 Fannin Street, Suite 1500
Houston, TX 77002

Township 27 North, Range 59 East
Section 18: ALL
Section 19: ALL
1280 Acres
Roosevelt County

State Tract
Section 18: SW4SE4, S2SW4
120 Acres
Common Schools Trust = 100%

Oasis Petroleum North America LLC has filed a request with the Department for the approval of a communitization agreement to communitize State-owned acreage to permit development in conformity with regulations of the Montana Board of Oil and Gas Conservation Commission (BOGC).

A communitization agreement brings together small tracts sufficient for the granting of a well permit under applicable spacing rules. Communitization agreements are not formed until after a well has been drilled and proven to be productive. The communitization agreement provides for distribution of royalties and must be approved and signed by the Department to be effective. Communitization is important in the prevention of drilling of unnecessary and uneconomic wells which would result in physical and economic waste.

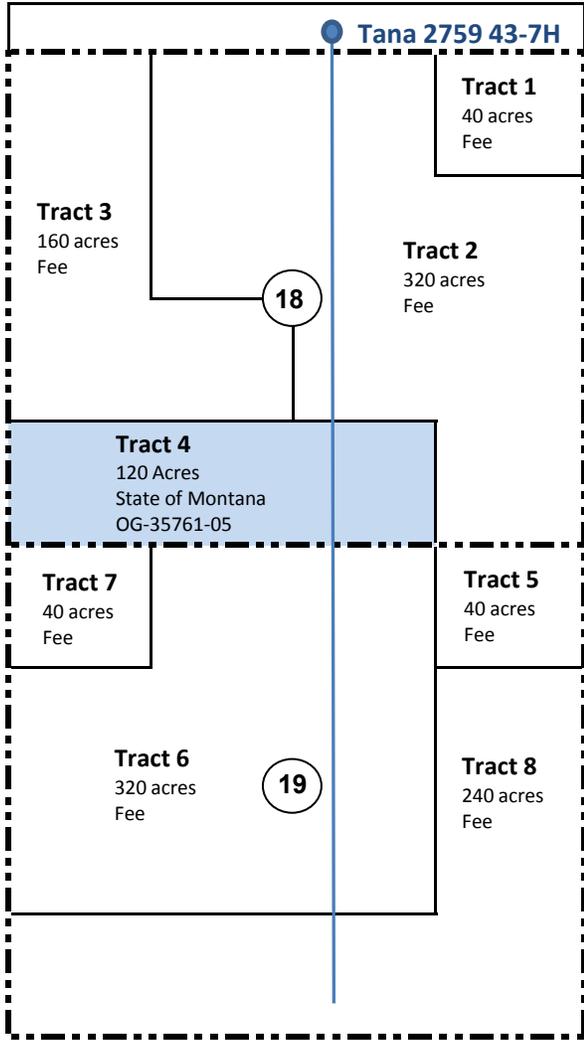
The Tana 2759 43-7H well, which is a Bakken formation oil well, was drilled in the SW4SE4 of Section 7. The State owns 120 acres of the 1280 mineral acres in the permanent spacing unit that will be communitized. All the mineral owners in the spacing unit will share in the royalty from this well. The Communitization Agreement shall include said lands from the Bakken and Three Forks Formations only in Sections 18 and 19.

The State's tract comprises 9.375% of the communitized area. The communitized production will be allocated to each tract based upon the relationship of its acreage to the total acreage within the communitized area. The State will consequently receive 1.2188% of all oil production (13% royalty rate x 9.375% tract participation).

The Communitization Agreement will allow the State to receive its proper share of production from the spacing unit. Therefore, the Director recommends approval of this Communitization Agreement.

Township 27 North Range 59 East

Sections 18 & 19



Recapitulation

Tract No.	Type	Acres	Tract Participation	Royalty %	Owners Interest Decimal
1	Fee	40	3.125%	16.67%	0.005209
2	Fee	320	25.000%	various	0.046427
3	Fee	160	12.500%	various	0.022466
4	State of Montana	120	9.375%	13.00%	0.012188
5	Fee	40	3.125%	16.67%	0.005209
6	Fee	320.00	25.000%	18.75%	0.046875
7	Fee	40.00	3.125%	16.67%	0.005209
8	Fee	240.00	18.750%	various	0.032813
Total		1280.00	100.00%		

* The Operator of the Communitized Area is Oasis Petroleum North America LLC

513-5

LAND BANKING PARCELS:
FINAL APPROVAL FOR SALE
BROADWATER COUNTY

LAND BOARD AGENDA ITEM

May 20, 2013

**FINAL APPROVAL FOR SALE OF LAND BANKING
PARCELS # 302, 303, & 336
BROADWATER COUNTY**

- Seller:** State of Montana, Department of Natural Resources and Conservation
- Nominator:** Parcels 302, 303 & 336 – Lessee – MCL Land & Livestock
- Location:** Parcels 302, 303 & 336 – are located approximately 5 miles northeast of Three Forks.
- Property Characteristics:** Parcels 302, 303 & 336 –Low value grazing land with very little recreational value due low productivity and open terrain.
- Access:** Parcels 302, 303 & 336 - These parcels are entirely surrounded by private lands and are not legally accessible.
- Economic Analysis:** Short term – The rate of return on the sale parcels is 0.56% for Common Schools Grant. They would continue to receive this return if the parcels remain in state ownership.
- Long term – The sale of these parcels would result in the acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 2.06%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

The Schmitt Site (24BW559) is located immediately adjacent to (east of) the state parcel in Section 4, T2N R2E (Sale 302) on private land. This unique Native American mine complex and associated campsite was operated ca. 2,700-2,000 years ago, but its full purpose is not understood. Montana State University conducted excavations at one of the mine features over a 15 year period beginning in the mid-1970's. The site and all of its components have not been mapped. Subsurface testing of the state land in Section 4, T2N R2E did not reveal any cultural materials. Sale of this parcel should have No Effect to Heritage Properties.

Background:

In May 2008, the Board granted preliminary approval for these parcels to continue through the Land Banking sale evaluation process. In March 2013 the Board set the minimum bid at the appraised value with access as follows:

Sale #	# of Acres	Legal	Minimum Bid	Price/Acre	Trust
302	161.63 ±	Lot 4, SW¼NW¼, W½SW¼, Section 4, T2N, R2E	\$85,000	\$525	Common Schools
303	160 ±	NE¼, Section 8, T2N, R2E	\$84,000	\$525	Common Schools
336	637.84 ±	Lots 1,2,3 & 4, N½, N½S½, Section 16, T3N, R2E	\$191,000	\$300	Common Schools
Total Sale Price			\$360,000		

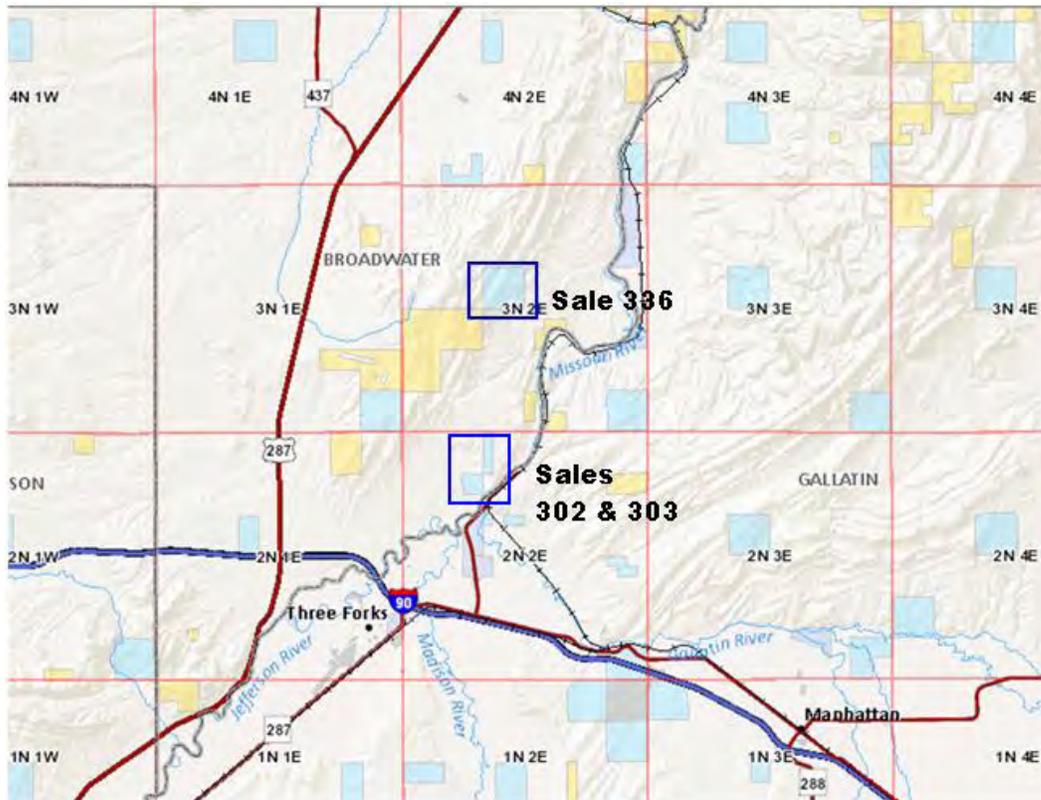
Sale Price:

These parcels were sold at public auction on May 9, 2013. Each parcel had only one bidder, and were sold for the minimum bid amounts listed above. The total for the above sales is \$ 360,000.

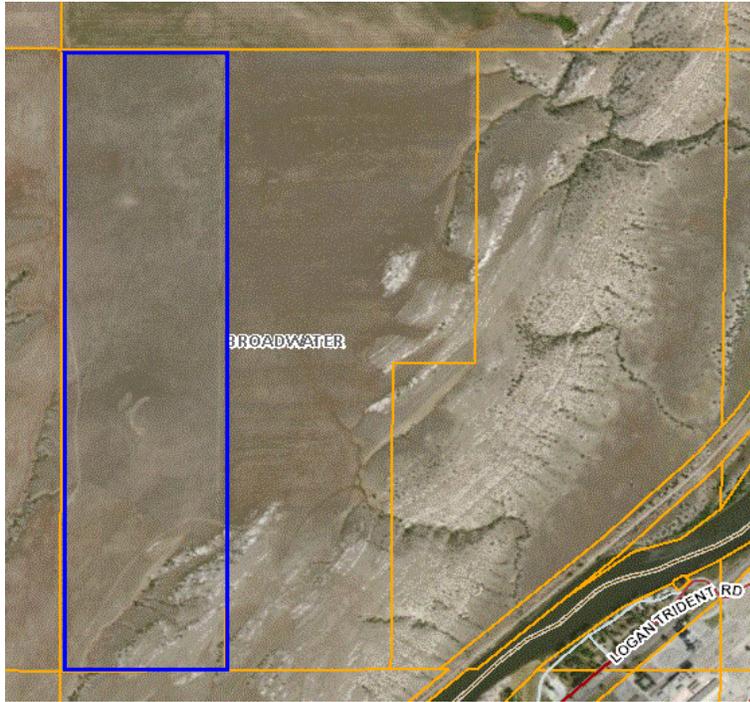
Recommendation:

The Director recommends final approval of Land Banking Sales #302, 303 & 336 for the purchase price listed above. The sales will be closed within 30 days of approval.

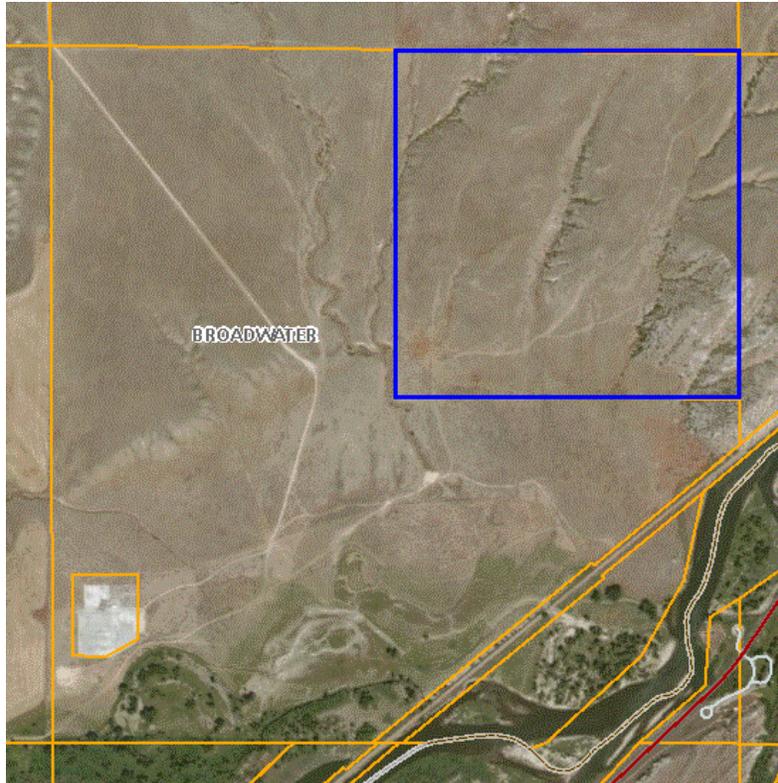
Broadwater County Sales Location Map



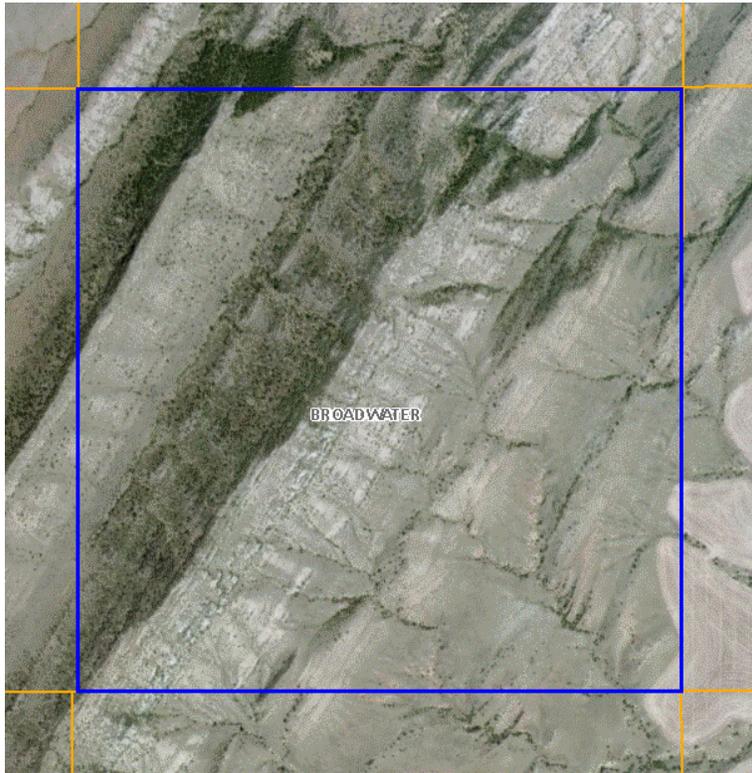
Sale #302



Sale #303



Sale #336



513-6

REQUEST TO FILE FOR INTERVENER
STATUS:

*FRIENDS OF THE WILD SWAN et al. v.
SALAZAR et al., CASE NO. C-13-61-M-DWT,*
U.S. DISTRICT COURT, MISSOULA, MONTANA

Request to File for Intervener Status:
***Friends of the Wild Swan et al. v. Salazar et al.*, Case No. C-13-61-M-DWM, U.S.**
District Court, Missoula Division

Land Board
May 20, 2013

**Montana Department of Natural Resources and Conservation Forested State Trust Lands
Habitat Conservation Plan History Overview**

In 2003, the Department of Natural Resources and Conservation (DNRC) began the process of developing a Habitat Conservation Plan (HCP) in order to apply for an Incidental Take Permit (Permit) pursuant to Section 10 of the federal Endangered Species Act (ESA). Under Section 10, non-federal entities may apply to the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service for Permits in situations where otherwise lawful activities may result in the incidental take of species listed under the ESA. An HCP is a required component of the application for a Permit and describes the species, activities, length of time, and lands to be covered by the Permit as well as the conservation strategies that will be followed to avoid, minimize, and/or mitigate incidental take to the maximum extent practicable.

The Montana Forested State Trust Lands HCP outlines conservation strategies aimed at minimizing or mitigating impacts to grizzly bear, Canada lynx, bull trout, westslope cutthroat trout, and Columbia redband trout while sustaining forest management on state trust lands. The HCP and associated Permit cover forest management activities on approximately 548,000 acres of state trust land in Beaverhead, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Park, Ravalli, Sanders, and Silver Bow counties.

On December 19, 2011, the Land Board approved the [HCP/EIS Record of Decision](#) to adopt the HCP. In February 2012, a Permit was issued to DNRC by the USFWS for a 50-year period.

U.S. District Court Complaint

On March 18, 2013, Earthjustice filed a complaint against the USFWS in the U.S. District Court for the District of Montana, Missoula Division, on behalf of Friends of the Wild Swan, Montana Environmental Information Center, and Natural Resources Defense Council (*Friends of the Wild Swan et al. v. Salazar et al.*, Case No. C-13-61-M-DWM). The complaint alleges that the USFWS improperly issued the Permit to DNRC in violation of the ESA and the National Environmental Policy Act (NEPA). The complaint specifically targets strategies associated with bull trout and grizzly bear and includes several statements or allegations about the role of DNRC and the Land Board in formulating the HCP that implicate these entities' authority to manage state trust lands. These allegations cannot be adequately addressed by the USFWS.

Request to Intervene

In order to adequately defend the interests of the State of Montana and the trust beneficiaries, it is recommended that the DNRC and the Land Board seek to intervene in this litigation as Defendants to support the Incidental Take Permit issued by the U.S. Fish and Wildlife Service. If authorized by the Board, the DNRC, in consultation with the Montana Attorney General's

office, will file a motion to intervene in this litigation on both behalf of the Department and the Land Board.

Affected Trust Beneficiaries

Common Schools, Eastern College - MSU/Western College – University of Montana, Montana Tech, MSU 2nd, MSU Morrill, Pine Hills, Public Buildings, and School for the Deaf and Blind.

The Director recommends the Land Board direct the Department to file a Motion to Intervene according to the stated request.

513-7

EASEMENTS

- A. Rights-of-Way
- B. Cost Share: Mosquito
- C. Cost Share: Pasture - Sawdust

SUMMARY SHEET – RIGHTS OF WAY APPLICATIONS

HISTORIC COUNTY ROAD – *Petroleum County* (Page 14)

HISTORIC ELECTRIC UTILITY – *Flathead Electric Coop.* (Pages 1-12)

HISTORIC PRIVATE ACCESS – *C. Thomas & Patricia Pezzarossi* (Page 13)
Gary L. Passmore (Pages 23-26)

NEW TELEPHONE UTILITY – *Mid-Rivers Telephone Coop* (Pages 15-17)
3 Rivers Telephone Coop (Pages 18-22)
Blackfoot Telephone Coop. (Page 28)

PRIVATE ACCESS ROAD – *Stillwater Land Co. Road Users Assoc.* (Page 27)

AFFECTED GRANTS AND PROPOSED INCOME:

Common Schools	\$ 23,196.00
MSU – Morrill	\$ 2,290.00
Montana Tech	\$ 3,480.00
Public Buildings	\$ 12,163.00
Public Land Trust	\$ 1,539.00

AFFECTED COUNTIES: Carter, Flathead, Lake, Lincoln, Missoula,
 Petroleum, Prairie, Teton

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16228
R/W Purpose: a 7.2 kV overhead electric distribution line
Lessee Agreement: N/A (Historic)
Acreage: 1.02
Compensation: \$3,480.00
Legal Description: 8-foot strip through S2NW4, E2SW4,
Sec. 24, Twp. 28N, Rge. 27W, Flathead County
Trust Beneficiary: Montana Tech
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16229
R/W Purpose: a 7.2 kV overhead electric distribution line
and 120/240 V overhead service line

Lessee Agreement: N/A (Historic)
Acreage: 0.07
Compensation: \$238.00
Legal Description: 8-foot strip through E2NE4,
Sec. 36, Twp. 28N, Rge. 27W, Flathead County

Trust Beneficiary: Common Schools
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16230
R/W Purpose: a 7.2 kV overhead electric distribution line
and 120/240 V overhead service line

Lessee Agreement: N/A (Historic)
Acreage: 0.25
Compensation: \$2,825.00
Legal Description: 8-foot strip through W2NE4,
Sec. 18, Twp. 26N, Rge. 19W, Lake County

Trust Beneficiary: Public Buildings
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16231
R/W Purpose: a 7.2 kV overhead and buried electric distribution line
Lessee Agreement: N/A (Historic)
Acreage: 0.22
Compensation: \$1,392.00
Legal Description: 8-foot strip through SE4NW4, and 8-foot strips through SW4NE4,
Sec. 16, Twp. 27N, Rge. 23W, Flathead County
Trust Beneficiary: Common Schools
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16232
R/W Purpose: a 7.2 kV overhead and buried electric distribution line
and 120/240 V overhead service line

Lessee Agreement: N/A (Historic)
Acreage: 0.41
Compensation: \$2,365.00
Legal Description: 8-foot strip through S2SW4, NW4SW4,
Sec. 8, Twp. 27N, Rge. 23W, Flathead County

Trust Beneficiary: Public Buildings
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16238
R/W Purpose: a 7.2 kV overhead electric distribution line
Lessee Agreement: N/A (Historic)
Acreage: 0.65
Compensation: \$2,618.00
Legal Description: 8-foot strip through the W2NW4, NE4NW4, NW4SW4,
Sec. 16, Twp. 31N, Rge. 31W, Lincoln County
Trust Beneficiary: Common Schools
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16239
R/W Purpose: a 7.2 kV overhead electric distribution line
Lessee Agreement: N/A (Historic)
Acreage: 0.01
Compensation: \$100.00
Legal Description: 1-foot strip across Kootenai River in SE4SW4,
Sec. 19, Twp. 31N, Rge. 31W, Lincoln County
Trust Beneficiary: Public Land Trust
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16240
R/W Purpose: a 7.2 kV overhead electrical distribution line
Lessee Agreement: N/A (Historic)
Acreage: 0.01
Compensation: \$100.00
Legal Description: 1-foot strip across Kootenai River in W2SW4, NE4SW4,
Sec. 14, Twp. 31N, Rge. 32W, Lincoln County
Trust Beneficiary: Public Land Trust
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16241
R/W Purpose: a 7.2 kV overhead electric distribution line
Lessee Agreement: N/A (Historic)
Acreage: 0.01
Compensation: \$100.00
Legal Description: 1-foot strip across Kootenai River in E2SE4,
Sec. 24, Twp. 31N, Rge. 32W, Lincoln County
Trust Beneficiary: Public Land Trust
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16242
R/W Purpose: a 34.5 kV overhead electric transmission line
and 12.5 kV distribution line

Lessee Agreement: N/A (Historic)
Acreage: 0.25
Compensation: \$500.00
Legal Description: 20-foot strip across Kootenai River in SE4SE4,
Sec. 30, Twp. 31N, Rge. 30W, Lincoln County

Trust Beneficiary: Public Land Trust
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16243
R/W Purpose: a 34.5 kV overhead transmission line
and 12.5 kV distribution line

Lessee Agreement: N/A (Historic)
Acreage: 0.30
Compensation: \$610.00
Legal Description: 20-foot strip across Kootenai River in NE4NW4, NW4NE4,
Sec. 32, Twp. 31N, Rge. 30W, Lincoln County

Trust Beneficiary: Public Land Trust
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Flathead Electric Coop.
2510 US Hwy 2E
Kalispell, MT 59901

Application No.: 16244
R/W Purpose: a 12.5 kV overhead electric distribution line
Lessee Agreement: N/A (Historic)
Acreage: 0.06
Compensation: \$129.00
Legal Description: 8-foot strip through SE4SE4,
Sec. 33, Twp. 31N, Rge. 31W, Lincoln County
Trust Beneficiary: Public Land Trust
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: C. Thomas & Patricia Pezzarossi
1747 Red Lodge Creek Road
Roberts, MT 59070

Application No.: 16249
R/W Purpose: a private road access for the purpose of conducting
normal farming and ranching operations

Lessee Agreement: N/A (Historic)
Acreage: 2.18
Compensation: \$381.00
Legal Description: 15-foot strip W2W2, Sec. 16, and SW4SW4, SE4SE4, Sec. 20,
and NE4NW4, SW4NE4, NE4SE4, S2NW4, W2SW4, Sec. 21,
and NE4NW4, N2NE4, Sec. 29, Twp. 2S, Rge. 55E, Carter County

Trust Beneficiary: Common Schools
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Petroleum County
P.O. Box 226
Winnett, MT 59087-0226

Application No.: 16259
R/W Purpose: a public county road known as Lower River Road
Lessee Agreement: N/A (Historic)
Acreage: 8.28
Compensation: \$1,863.00
Legal Description: 60-foot strip through Gov. Lots 3, 7, 9 and 10,
Sec. 36, Twp. 17N, Rge. 29E, Petroleum County
Trust Beneficiary: Common Schools
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Mid-Rivers Telephone Coop, Inc.
P.O. Box 280
Circle, MT 59215

Application No.: 16262
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 0.13
Compensation: \$100.00
Legal Description: 16-foot strip through W2SW4,
Sec. 31, Twp. 12N, Rge. 52E, Prairie County
Trust Beneficiary: Common Schools
Classification: III



Applicant is upgrading facilities south of Terry, MT, in Prairie County. The route chosen was the most direct, and follows an existing fiber optic corridor. Minimal impacts are expected to occur from the installation of this proposed facility. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Mid-Rivers Telephone Coop, Inc.
P.O. Box 280
Circle, MT 59215

Application No.: 16263
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 1.46
Compensation: \$438.00
Legal Description: 16-foot strip through SW4NW4, W2SW4, SE4SW4,
Sec. 36, Twp. 12N, Rge. 51E, Prairie County
Trust Beneficiary: Common Schools
Classification: III



Applicant is upgrading facilities south of Terry, MT, in Prairie County. The route chosen was the most direct, and follows an existing fiber optic corridor. Minimal impacts are expected to occur from the installation of this proposed facility. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Mid-Rivers Telephone Coop, Inc.
P.O. Box 280
Circle, MT 59215

Application No.: 16264
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 0.01
Compensation: \$100.00
Legal Description: 16-foot strip through SW4SW4,
Sec. 23, Twp. 11N, Rge. 51E, Prairie County
Trust Beneficiary: Common Schools
Classification: III



Applicant is upgrading facilities south of Terry, MT, in Prairie County. The route chosen was the most direct, and follows an existing fiber optic corridor. Minimal impacts are expected to occur from the installation of this proposed facility. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: 3 Rivers Telephone Coop, Inc.
P.O. Box 429
Fairfield, MT 59436

Application No.: 16265
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 1.27
Compensation: \$1,270.00
Legal Description: 20-foot strip through S2SE4,
Sec. 29, Twp. 25N, Rge. 6W, Teton County
Trust Beneficiary: Common Schools
Classification: III



Applicant is upgrading facilities to provide a fiber optic cable connection to the Teton County DLC, and for future Fiber To Home connections in the area. The proposed corridor follows the Teton Canyon Road corridor. The route chosen was the most direct, and minimal impacts are expected to occur. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: 3 Rivers Telephone Coop, Inc.
P.O. Box 429
Fairfield, MT 59436

Application No.: 16266
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 1.20
Compensation: \$1,200.00
Legal Description: 20-foot strip through Gov. Lot 4, SE4SW4,
Sec. 30, Twp. 25N, Rge. 6W, Teton County
Trust Beneficiary: Public Buildings
Classification: III



Applicant is upgrading facilities to provide a fiber optic cable connection to the Teton County DLC, and for future Fiber To Home connections in the area. The proposed corridor follows the Teton Canyon Road corridor. The route chosen was the most direct, and minimal impacts are expected to occur. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: 3 Rivers Telephone Coop, Inc.
P.O. Box 429
Fairfield, MT 59436

Application No.: 16267
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 2.42
Compensation: \$2,420.00
Legal Description: 20-foot strip through S2S2,
Sec. 28, Twp. 25N, Rge. 7W, Teton County
Trust Beneficiary: Public Buildings
Classification: III



Applicant is upgrading facilities to provide a fiber optic cable connection to the Teton County DLC, and for future Fiber To Home connections in the area. The proposed corridor follows the Teton Canyon Road corridor. The route chosen was the most direct, and minimal impacts are expected to occur. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: 3 Rivers Telephone Coop, Inc.
P.O. Box 429
Fairfield, MT 59436

Application No.: 16268
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 0.60
Compensation: \$600.00
Legal Description: 20-foot strip through SW4SW4,
Sec. 29, Twp. 25N, Rge. 7W, Teton County
Trust Beneficiary: Public Buildings
Classification: III



Applicant is upgrading facilities to provide a fiber optic cable connection to the Teton County DLC, and for future Fiber To Home connections in the area. The proposed corridor follows the Teton Canyon Road corridor. The route chosen was the most direct, and minimal impacts are expected to occur. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: 3 Rivers Telephone Coop, Inc.
P.O. Box 429
Fairfield, MT 59436

Application No.: 16269
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: ok
Acreage: 1.22
Compensation: \$1,220.00
Legal Description: 20-foot strip through S2SE4,
Sec. 30, Twp. 25N, Rge. 7W, Teton County
Trust Beneficiary: Public Buildings
Classification: III



Applicant is upgrading facilities to provide a fiber optic cable connection to the Teton County DLC, and for future Fiber To Home connections in the area. The proposed corridor follows the Teton Canyon Road corridor. The route chosen was the most direct, and minimal impacts are expected to occur. The Department recommends approval of this request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Gary L. Passmore
809 1st Street, N.E.
Choteau, MT 59422

Application No.: 16270
R/W Purpose: a private road access to single family residence and associated out buildings and to conduct normal farming and ranching operations

Lessee Agreement: N/A (Historic)
Acreage: 0.97
Compensation: \$1,212.00
Legal Description: 16-foot strip through W2SW4,
Sec. 10, Twp. 23N, Rge. 8W, Teton County

Trust Beneficiary: Public Buildings
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Gary L. Passmore
809 1st Street, N.E.
Choteau, MT 59422

Application No.: 16271
R/W Purpose: a private road access to single family residence and associated out buildings and to conduct normal farming and ranching operations

Lessee Agreement: N/A (Historic)
Acreage: 0.97
Compensation: \$321.00
Legal Description: 16-foot strip through NW4NW4,
Sec. 15, Twp. 23N, Rge. 8W, Teton County

Trust Beneficiary: Public Buildings
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Gary L. Passmore
809 1st Street, N.E.
Choteau, MT 59422

Application No.: 16272
R/W Purpose: a private road access to single family residence and associated out
buildings and to conduct normal farming and ranching operations

Lessee Agreement: N/A (Historic)
Acreage: 0.97
Compensation: \$2,713.00
Legal Description: 16-foot strip through N2N2,
Sec. 16, Twp. 23N, Rge. 8W, Teton County

Trust Beneficiary: Common Schools
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Gary L. Passmore
809 1st Street, N.E.
Choteau, MT 59422

Application No.: 16273
R/W Purpose: a private road access to single family residence and associated out buildings and to conduct normal farming and ranching operations

Lessee Agreement: N/A (Historic)
Acreage: 0.97
Compensation: \$638.00
Legal Description: 16-foot strip through SE4NE4,
Sec. 17, Twp. 23N, Rge. 8W, Teton County

Trust Beneficiary: Common Schools
Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Stillwater Land Co. Road Users Association
1404 W. Lakeshore Dr.
Whitefish, MT 59937

Application No.: 16276
R/W Purpose: a private road access and buried utilities to eleven parcels of land, with one single family residence and associated out buildings per parcel and for timber management activities.

Lessee Agreement: N/A (Unleased)
Acreage: 0.29
Compensation: \$2,290.00
Legal Description: 60-foot strip through NW4NW4,
Sec. 28, Twp. 32N, Rge. 23W, Flathead County

Trust Beneficiary: MSU Morrill (ACI)
Classification: III



Stillwater Land Company is the successor in interest to a 1974 easement granted by the State to the previous private landowner. The original easement was granted for a 20-foot wide road, which connects to Highway 93 on a curve. This original easement does not provide adequate access or address issues with maintenance. The Department recommended the applicant apply for a 60-foot width to address curvature, cuts and fills and maintenance. The private lands to be accessed are parceled out under different certificates of survey and the likelihood exists that these parcels will be individually sold, rather than all lands sold as one unit. Thus the Department required Stillwater Land Company to form a Road User's Association and make application under the name of the Association. This easement will be subject to the Access Road Policy and should individual parcels be sold over time, the Association will be responsible for paying the 1% conveyance fee on each specific parcel at the time of sale. In addition, to address concerns of future traffic issues, the Department will require the applicant to install a "Slow" sign on the state land parcel to address potential speed concerns. The Stillwater Land Company is in complete agreement with these requirements. The Department recommends approval of this easement request.

Rights of Way Applications

May 20, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Blackfoot Telephone Coop, Inc.
1221 North Russell Street
Missoula, MT 59808

Application No.: 16277
R/W Purpose: a buried fiber optic telecommunication cable
Lessee Agreement: N/A (Unleased)
Acreage: 3.27
Compensation: \$11,445.00
Legal Description: 20-foot strip through E2NE4, S2N2, N2S2,
Sec. 9, Twp. 16N, Rge. 15W, Missoula County
Trust Beneficiary: Common Schools
Classification: III



Applicant is upgrading facilities to provide a fiber optic cable connection to the Double Arrow Lookout Cell site. The route chosen was the most direct, and cost effective. Minimal impacts are expected to occur from the installation of this proposed facility. The Department recommends approval of this request.

**U.S. FOREST SERVICE COST SHARE SUMMARY
Supplement No. 42, Kootenai and Lolo National Forests**

(Mosquito)

May 20, 2013

RIGHT-OF-WAY-APPLICATION FILE NO. 16284

I. Applicant:

United States of America (USDA-Forest Service)
Region 1
Lolo National Forest
Missoula, MT 59804

II. Purpose of Reciprocal Cost-Share Agreement:

State land is intermingled with National Forest System lands administered by the Kootenai and Lolo National Forests. In order for both the State of Montana and the U.S. Forest Service to gain legal access, it is necessary to exchange easements as provided by the Master Cost Share Agreement with the US Forest Service, Northern Region.

III. Legal Description:

The State of Montana DNRC will grant the USA Forest Service standard Cost Share easements, 60 feet in width, over the following described lands:

State Lands: Section 16, T22N, R30W

IV. General Information:

Tributary area, right of way area, and miles of road are summarized as follows:

	State	USFS	3rd Party	Total
Tributary Area:	360 acres	4,594 acres	160 acres	5,114 acres
Miles of Road:	3.49 miles	0 miles	0 miles	3.49 miles
Right of Way Area:	12.16 acres	0 acres	0 acres	12.16 acres

Land Office: NWLO
Unit Office: Plains
Land Classification: Forest
Beneficiary: C.S. – Common Schools
County: Sanders

V. Costs to be Borne by Each Party:

Excess costs, by land value and road costs, were determined by negotiation with the USFS Lolo National Forest in accordance with the principals found in the Master Cost Share Agreement. It was agreed that under this Supplement the State has a net excess cost of \$48,887 (Forest Service owes State), which will be entered on the Master cost share balance sheet.

VI. Results of MEPA Analysis:

The Northwest Land Office, Plains Unit prepared an Environmental Assessment and USFS prepared a Letter to the File (March 1, 2013) for the project.

VII. Benefits to State:

The cost share easements provide for sharing of future maintenance and reconstruction costs.

Integrated transportation planning results in reduced total road density

VIII. Recommendation/Action:

After review of the documents, exhibits, and benefits to the State, the Director of the Department of Natural Resources and Conservation recommends approval of the Mosquito Cost Share Supplement No. 42 with the US Forest Service.

FACT SHEET
for
SUPPLEMENT No. 42, (Kootenai and Lolo National Forests)
to
STATE OF MONTANA,
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
USDA – FOREST SERVICE, REGION 1
ROAD RIGHT-OF-WAY CONSTRUCTION AND USE AGREEMENT
(Mosquito)

I. AREA

The area served by the roads in this Supplement are located approximately 7 air miles northwest of Thompson Falls, Montana, in the Mosquito Creek and Little Beaver Creek drainages. The existing roads are located on the Plains/Thompson Falls Ranger District of the Lolo National Forest.

The tributary areas for this Supplement include approximately 4,594 acres of National Forest System lands, 360 acres of State of Montana lands, and 160 acres of third party lands (Stimson Lumber Company), for a total of 5,114 acres. Exhibit 1 shows the road segments and the tributary areas for this Supplement. The tributary areas and acres are summarized in Exhibits 3 and 4.

II. COOPERATING PARTIES

Parties to this Agreement are the United States of America, acting through the Regional Forester, Forest Service, Department of Agriculture, hereinafter referred to as "Government", and the State of Montana, Department of Natural Resources and Conservation, hereinafter referred to as "State".

Government will assume third party ownership.

The State is the initiating party.

III. IDENTIFICATION OF ROADS AND ROAD SEGMENTS

A. Mosquito Creek Road No. 300, Segment A-B (M.P. 0.00 – 1.82)

Beginning at the junction with Little Beaver County Road No. 62913 on the east line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ section 16, T.22N., R.30W., P.M.M., being approximately 1.82 miles in length, and ending on the south line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ section 16, T.22N., R.30W., P.M.M., and in the approximate location shown on Exhibit 1.

Certified correct as to consideration, description and conditions.
By: Mark Petersen Date: 4-15-13

XI. SIGNATURES

The parties hereto have caused this Fact Sheet for Supplement No. 42 (Mosquito), (Kootenai and Lolo National Forests), to the State of Montana, Department of Natural Resources and Conservation/USDA Forest Service, Region 1, Road Right-of-Way Construction and Use Agreement to be executed by their authorized representatives on this 15th day of April, 2013.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: 
NORMAN KUENNEN
Right-of-Way Acquisition Specialist

USDA – FOREST SERVICE
KOOTENAI and LOLO NATIONAL FORESTS

By: 
MARK PETERSEN
Realty Specialist

SUPPLEMENT NO. 42
(KOOTENAI and LOLO NATIONAL FORESTS)
to the
STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION,
USDA – FOREST SERVICE, REGION 1
ROAD RIGHT-OF-WAY CONSTRUCTION AND USE AGREEMENT
(Mosquito)

WHEREAS, the STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, hereinafter referred to as "State," and the UNITED STATES OF AMERICA, by and through the Regional Forester, Northern Region, Forest Service, Department of Agriculture, hereinafter referred to as "Government," on the 13th of January, 2003, entered into a Road Right-of-Way Construction and Use Agreement, hereinafter referred to as "Agreement," providing for construction and use of roads within the State of Montana and within and adjacent to the National Forests in the Forest Service's Northern Region within the State of Montana, and

WHEREAS, said Agreement provides that a supplement thereto will be executed to cover any jointly financed roads, and

WHEREAS, the parties have now determined that the roads hereinafter described are to be jointly financed roads,

NOW, THEREFORE, in accordance with the provisions of said Agreement, the parties mutually agree as follows:

1. Identification of Roads

The roads to be jointly financed are as follows:

A. Mosquito Creek Road No. 300, Segment A-B (M.P. 0.00 – 1.82)

Beginning at the junction with Little Beaver County Road No. 62913 on the east line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ section 16, T.22N., R.30W., P.M.M., being approximately 1.82 miles in length, and ending on the south line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ section 16, T.22N., R.30W., P.M.M., and in the approximate location shown on Exhibit 1.

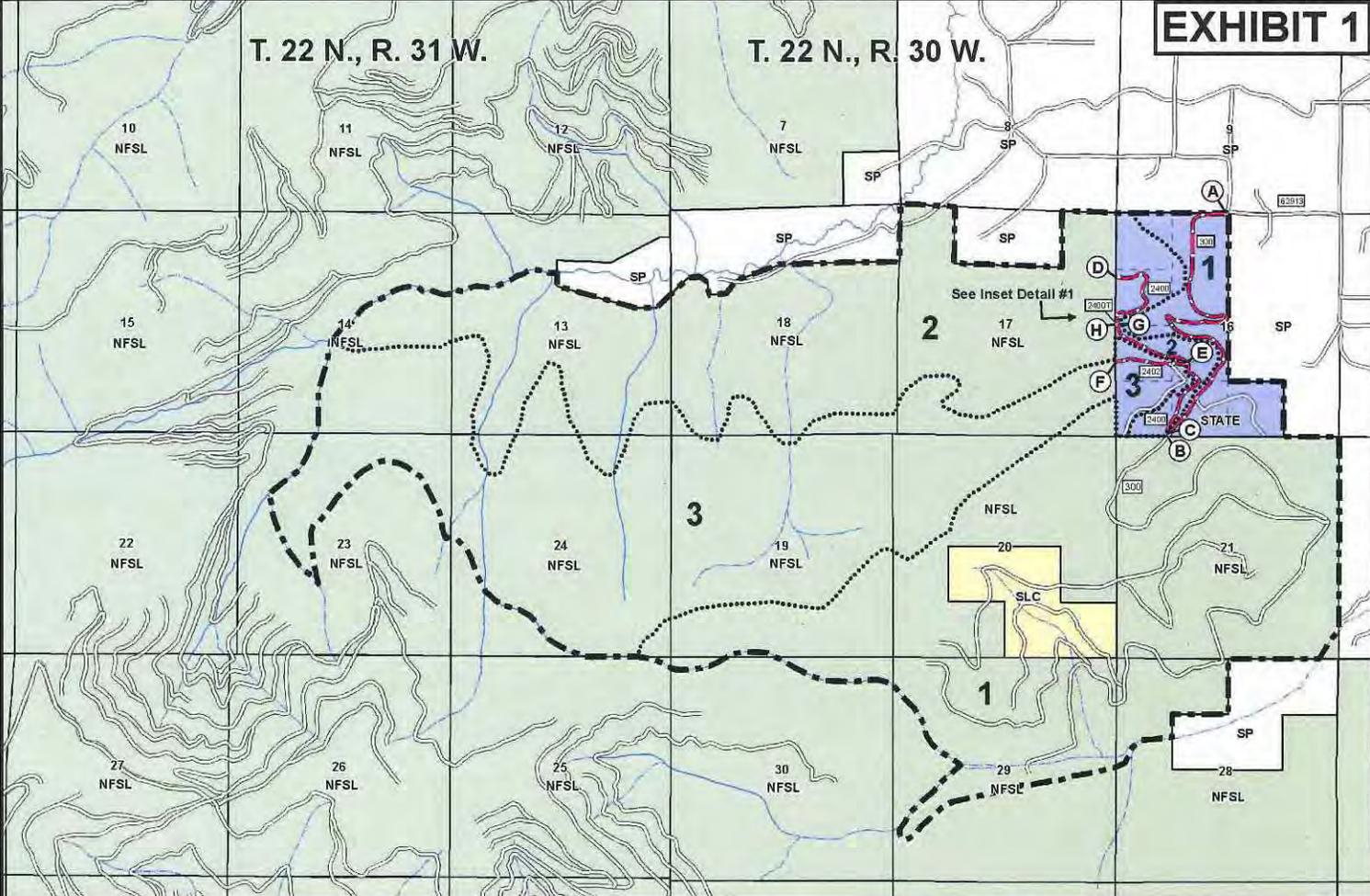
B. Lower Little Beaver Road No. 2400, Segment C-D (M.P. 0.00 – 1.30)

Beginning at the junction with Mosquito Creek Road No. 300 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ section 16, T.22N., R.30W., P.M.M., being approximately 1.30 miles in length, and ending on the west line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ section 16, T.22N., R.30W., P.M.M., and in the approximate location shown on Exhibit 1.

Certified correct as to consideration, description and conditions.
By: Mark Peterson Date: 4-15-13

T. 22 N., R. 31 W.

T. 22 N., R. 30 W.



State of Montana
ROAD RIGHT-OF-WAY CONSTRUCTION AND USE
AGREEMENT AREA

SUPPLEMENT NO. 42

MOSQUITO

Forest Service, State of Montana Department
of Natural Resources and Conservation

U.S.D.A. - Forest Service - Region One
KOOTENAI NATIONAL FOREST
Cabinet Ranger District
LOLO NATIONAL FOREST
Plains/Thompson Falls Ranger District
Sanders County, Montana
Principal Meridian, Montana

LEGEND

- Supplement Boundary
- Tributary Boundary
- 1** Tributary Area Number
- Subdivision
- Jointly Financed Roads
- Non-Jointly Financed Roads
- Road Number
- Termini of Road Segment
- NFSL National Forest System Lands
- STATE State of Montana
- SLC Stimson Lumber Company
- SP Small Private

Based on Geographic Coordinate Data Base and
USGS Quads: Helwick Peak (1992), Belknap (1992)

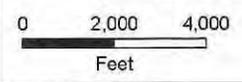
R/W Width: 60 ft (STATE)

R/W Area: 12.14 acres (STATE) C/S
0.02 acres (STATE) NC/S

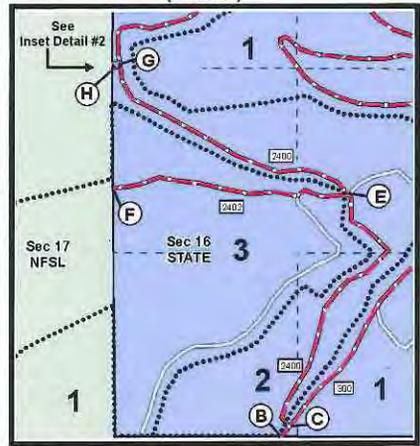
Prepared by M. Slaten Date 2/7/2013

Checked by *[Signature]* Date 2-7-2013

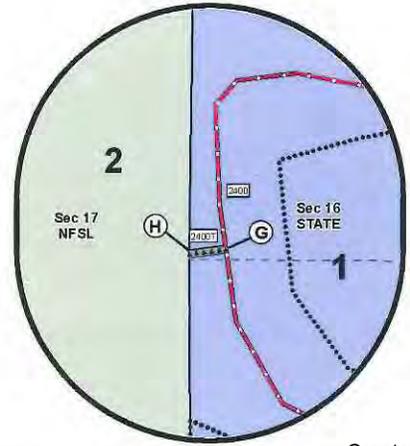
Checked by *Mark Peterson* Date 4-15-13



Inset Detail #1
(No Scale)



Inset Detail #2
(No Scale)



**U.S. FOREST SERVICE COST SHARE SUMMARY
Supplement No. 43, Bitterroot National Forest**

(Pasture - Sawdust)

May 20, 2013

RIGHT-OF-WAY-APPLICATION FILE NO. 16285

I. Applicant:

United States of America (USDA-Forest Service)
Region 1
Lolo National Forest
Missoula, MT 59804

II. Purpose of Reciprocal Cost-Share Agreement:

State land is intermingled with National Forest System lands administered by the Bitterroot National Forest. In order for both the State of Montana and the U.S. Forest Service to gain legal access, it is necessary to exchange easements as provided by the Master Cost Share Agreement with the US Forest Service, Northern Region.

III. Legal Description:

The State of Montana DNRC and the USA Forest Service will exchange standard Cost Share easements, 60 feet in width, over the following described lands:

State Lands: Sections 26, 34, 35, T2N, R19W
National Forest System Lands: Sections 26, 27, T2N, R19W
Small Private Lands: Sections 26, 34, T2N, R19W

IV. General Information:

Tributary area, right of way area, and miles of road are summarized as follows:

	State	USFS	Small Private	Total
Tributary Area:	2,268 acres	183 acres	597 acres	3,048 acres
Miles of Road:	1.00 miles	1.41 miles	0.36 miles	2.77 miles
Right of Way Area:	7.28 acres	10.26 acres	2.62 acres	20.16 acres

Land Office: SWLO
Unit Office: Hamilton
Land Classification: Forest
Beneficiary: C.S. – Common Schools
P.B. – Public Buildings
County: Ravalli

V. Costs to be Borne by Each Party:

Excess costs, by land value and road costs, were determined by negotiation with the USFS Bitterroot National Forest in accordance with the principals found in the Master Cost Share Agreement. It was agreed that under this Supplement the Government has a net excess cost of \$10,168 (State owes Forest Service), which will be entered on the Master cost share balance sheet.

VI. Results of MEPA Analysis:

The Southwest Land Office, Hamilton Unit prepared an Environmental Assessment (Decision on Feb. 2013) and USFS prepared a Categorical Exclusion for the project.

VII. Benefits to State:

This exchange of cost share easements will provide permanent legal access on the existing transportation system and in particular, to 2,268 acres of Trust Lands.

The cost share easements provide for sharing of future maintenance and reconstruction costs.

The State will receive access rights across private land acquired from Forest Service on not only a "share basis" but also at the original cost basis.

Integrated transportation planning results in reduced total road density.

By utilizing the Forest Service road system, fewer acres of State land will be encumbered by roads and therefore more acres of State Land are available for resource production.

VIII. Recommendation/Action:

After review of the documents, exhibits, and benefits to the State, the Director of the Department of Natural Resources and Conservation recommends approval of the Pasture-Sawdust Cost Share Supplement No. 43 with the US Forest Service.

State of Montana

ROAD RIGHT-OF-WAY CONSTRUCTION AND USE AGREEMENT AREA

SUPPLEMENT NO.43 PASTURE - SAWDUST

Forest Service, State of Montana Department of Natural Resources and Conservation
U.S.D.A. - Forest Service - Region One
BITTERROOT NATIONAL FOREST
Sula Ranger District
Ravalli County, Montana
Principal Meridian, Montana

LEGEND

-  Supplement Boundary
-  Tributary Area Boundary
- 1** Tributary Area Number
-  Jointly Financed Roads
-  Road Number
-  Termini of Road Segment
-  Subdivision
- NFSL National Forest System Lands
- STATE State of Montana
- SP Small Private

Based on Geographic Coordinate Data Base and USGS Quads: French Basin (1998) and Sula (1998)

R/W Width: 60 ft

R/W Area: 10.26 acres (NFSL)
7.28 acres (STATE)
2.62 acres (SP)

Prepared by M. Slaten Date 2/12/2013

Checked by _____ Date _____

Checked by _____ Date _____

