

AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, May 21, 2012, at 9:00 a.m.
State Capitol
Helena, MT

ACTION ITEMS

- 512-1 **CORRECTIVE DEED – NON-TRUST LAND TRANSFER TO THE CITY OF POPLAR UNDER 77-2-351, MCA**
 Benefits: NA
 Location: Roosevelt County
APPROVED 4-0 (Commissioner Lindeen absent)
- 512-2 **SIGNAL PEAK ENERGY COAL LEASE APPLICATION**
 Benefits: Common Schools
 Location: Musselshell County
APPROVED 4-0 (Commissioner Lindeen absent)
- 512-3 **EASEMENTS:**
A. RIGHTS-OF-WAY
 Benefits: Common Schools, Public Land Trust
 Location: Custer, Dawson, Fergus, Liberty, Meagher, Missoula, Prairie, and Teton Counties
APPROVED 4-0 (Commissioner Lindeen absent)
B. ONEOK PIPELINE EASEMENT
 Benefits: Common Schools, Public Land Trust
 Location: Carter, Fallon, Richland, and Wibaux Counties
C. YOUNGS CREEK MINING CO. LLC RAILROAD SPUR EASEMENT
 Benefits: Common Schools
 Location: Big Horn County
APPROVED 3-1, Superintendant Juneau dissenting (Commissioner Lindeen absent)
- 512-4 **COMMUNITIZATION AGREEMENT – WHITING OIL AND GAS CORPORATION**
 Benefits: Common Schools
 Location: Richland County
APPROVED 4-0 (Commissioner Lindeen absent)
- 512-5 **TIMBER SALES:**
A. LOGAN CREEK
 Benefits: Common Schools
 Location: Flathead County
APPROVED 4-0 (Commissioner Lindeen absent)
B. MYSTERY FISH
 Benefits: Common Schools
 Location: Flathead County
APPROVED 4-0 (Commissioner Lindeen absent)
C. REID DIVIDE
 Benefits: Common Schools
 Location: Flathead County
APPROVED 4-0 (Commissioner Lindeen absent)
- 512-6 **PRELIMINARY APPROVAL FOR LAND BANKING PARCEL**
 Benefits: Public Buildings
 Location: Mineral County
APPROVED 4-0 (Commissioner Lindeen absent)

POSTPONED

512-7

FINAL APPROVAL FOR SALE OF LAND BANKING PARCELS

A. DEER LODGE COUNTY

Benefits: Common Schools

Location: Deer Lodge County

APPROVED 4-0 (Commissioner Lindeen absent)

B. GALLATIN COUNTY

Benefits: Eastern/Western

Location: Gallatin County

APPROVED 4-0 (Commissioner Lindeen absent)

C. HILL COUNTY

Benefits: Common Schools

Location: Hill County

APPROVED 4-0 (Commissioner Lindeen absent): A substitute motion was made to postpone final approval of the Hill County Land Banking parcel until the next month to further explore what the Land Board's options are in the matter.

512-8

2012 AGRICULTURE AND GRAZING COMPETITIVE BID HEARINGS

A. LEASE NO. 9208 – BROKEN CIRCLE THREE LAND & CATTLE (LESSEE)/JASON KELLY (BIDDER)

Benefits: Common Schools

Location: McCone County

APPROVED 4-0 (Commissioner Lindeen absent): The lease was awarded to Broken Circle Three Land & Cattle as a cash lease at \$28 per acre.

B. LEASE NO. 9992 – BROKEN CIRCLE THREE LAND & CATTLE (LESSEE)/MARVIN STRAND (BIDDER)

Benefits: Common Schools

Location: McCone County

APPROVED 4-0 (Commissioner Lindeen absent): The lease was awarded to Broken Circle Three Land & Cattle at \$15 per AUM.

C. LEASE NO. 1528 – J&J LIVESTOCK INC. (LESSEE)/RANDY SMITH (BIDDER)

Benefits: Common Schools

Location: Carter County

APPROVED 4-0 (Commissioner Lindeen absent): The lease was awarded to J&J Livestock at \$30 per AUM.

D. LEASE NO. 2425 – JOSEPH & CHARLOTTE BRUMMER AND CONRAD INC. (LESSEE)/FREDERICK & SANDRA MILLER (BIDDER)

Benefits: Common Schools

Location: Blaine County

APPROVED 4-0 (Commissioner Lindeen absent): The lease was awarded to Frederick and Sandra Miller at \$27.90 per AUM.

PUBLIC COMMENT

LAND BOARD MEETING SIGN-IN SHEET
May 21, 2012

NAME	AFFILIATION	E-MAIL	Check to be added to the interested parties list.
Gary Macdonald	Roosevelt Co.	comm@rooseveltkounty.org	512-1
Nick Engelfried	Blue Skies	nicke.activism@gmail.com	X
Lowell Chandler	Blue Skies		
Bryan Nickerson	Blue Skies		
Leslie Kelly		leskelly@midrivers.com	X 512-84
Jason Kelly			512-84
Clayton Elliott	Northman Plains Res Cncl	clayton@northplains.org	
Dean Schillinger	Broken Circle Three LLC		
Laraine Schillinger	"		
Kali Schillinger	"		
Tom Sheehy	Conrad, Inc. Joe Brummer	tomatty@mtintouch.net	
CR20 ST 9 HL	Common Schools	Bildford St	
Anne Hedqos	MEIC	ahedqos@meic.org	
Fred Miller	Harlem, Mont		
ROBERT DENNER	SIGNAL PEAK	ROCKSNER@SIGNALPEAKENERGY.COM	(X)
E.A. Viren	Signal Peak	eviren@signalpeakenergy.com	X
Stephanie Krueger	Caseement-Bowling	krueglaw@3rivers.net	
Norma Jandee	St. Justus	njandee@yahoo.com	
Graig Jandee	"		

Contact Lucy Richards at lrichards@mt.gov or indicate on this sign-in sheet if you would like to be placed on the monthly agenda distribution list.

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Thursday, April 19, 2012, at 9:00 a.m.
State Capitol
Helena, MT

Please note: *The Land Board has adopted the audio recording of its meetings as the official record, as allowed by [2-3-212, MCA](#). These minutes provide an abbreviated summary of the Land Board discussion, public testimony, action taken, and other activities. The time designations listed are approximate and may be used to locate the referenced discussion on the audio recording of this meeting. Access to an electronic copy of these minutes and the audio recording is provided from the Land Board webpage at <http://dnrc.mt.gov/LandBoard>. The written minutes summary, along with the audio recordings, are listed by meeting date on the Land Board Archive webpage.*

Members Present

Governor Brian Schweitzer
Attorney General Steve Bullock
Commissioner of Securities and Insurance Monica Lindeen
Secretary of State Linda McCulloch
Superintendent of Public Instruction Denise Juneau

Members Absent

None

Testifying Staff

DNRC Director Mary Sexton
FWP Lands Program Manager Hugh Zackheim

Attachments

Related Materials, Attachment 1 – Sign-in Sheet

Call to Order

00:00:00 Governor Brian Schweitzer called the meeting to order.
00:00:07 Ms. McCulloch moved to approve the March 19, 2012, minutes. The motion was seconded by Mr. Bullock and carried unanimously.

Business Considered

412-1 FWP: Full Curl Wildlife Management Area Acquisition

00:00:16 Ms. Sexton gave an overview of the item.
00:00:38 Mr. Zackheim gave an overview of the item.
00:03:15 Mr. Bullock moved to approve the acquisition. The motion was seconded by Ms. Juneau.

Board Discussion/Questions

00:03:26 Governor Schweitzer
00:04:35 Mr. Zackheim
00:06:52 Governor Schweitzer

00:08:05 The motion to approve the acquisition was carried unanimously.

412-2 Timber Sales

- A. Ashley Lake**
- B. Liverstone**
- C. McNamara Landing**
- D. Scout Lake #1**
- E. Scout Lake #2**
- F. Upper Whitefish**

00:08:28 Ms. Sexton gave an overview of items 412-2A through 412-2F, which were taken as a block.

00:13:23 Ms. McCulloch moved to approve the items 412-2A through 412-2F. The motion was seconded by Mr. Bullock and carried unanimously.

412-3 Preliminary Approval for Land Banking Acquisition Milk River Ranch: Hill County

00:13:39 Ms. Sexton gave an overview of the item.

00:15:34 Ms. Juneau moved for preliminary approval of the acquisition. The motion was seconded by Ms. McCulloch.

Board Discussion/Questions

00:15:41 Governor Schweitzer

00:19:57 The motion for preliminary approval of the acquisition was carried unanimously.

412-4 Easements

A. Rights-of-Way

00:20:03 Ms. Sexton gave an overview of the item.

00:20:36 Ms. Lindeen moved to approve the rights-of-way. The motion was seconded by Ms. Juneau.

Board Discussion/Questions

00:20:50 Governor Schweitzer

00:21:11 Ms. Sexton

00:21:16 Governor Schweitzer

00:21:20 Ms. Sexton

00:21:32 Governor Schweitzer

00:21:57 The motion to approve the rights-of-way was carried unanimously.

B. Young's Creek Mining Co. LLC Railroad Spur Easement

00:22:03 Ms. Sexton gave an overview of the item.

00:28:44 Ms. McCulloch moved to postpone decision on the easement until next month so DNRC could perform more analysis. The motion was seconded by Mr. Bullock.

Board Discussion/Questions

00:28:59 Ms. Lindeen

00:29:27 Ms. Sexton

00:30:38 Ms. Lindeen

00:30:40 Ms. Sexton

00:31:21 Governor Schweitzer

00:35:34 Ms. Juneau

00:36:54 The motion to postpone decision on the easement until next month so DNRC could perform more analysis was carried unanimously.

General Public Comment

None

Adjournment

00:37:08 Adjournment

PRESIDENT

ATTEST

/s/ Brian Schweitzer

Brian Schweitzer, Governor

/s/ Mary Sexton

Mary Sexton, DNRC Director

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General Public Comment

None

Adjournment

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PRESIDENT

ATTEST

/s/ Brian Schweitzer
Brian Schweitzer, Governor

/s/ Mary Sexton
Mary Sexton, DNRC Director

512-1

CORRECTIVE DEED -- NON-TRUST LAND
TRANSFER TO THE CITY OF POPLAR
UNDER 77-2-351, MCA

REQUEST FOR CORRECTIVE DEED
Non-trust land transfer to
City of Poplar under Section 77-2-351, MCA

May 21, 2012

REQUEST: The City of Poplar requests approval to transfer to Roosevelt County a portion of land granted in 1999 by the state under Section 77-2-351, MCA. The County seeks to use the property for the site of a community center for its senior citizens. The request requires a corrective deed to clarify the operation of the reversionary terms of the original Grant Deed.

HISTORY: The Land Board approved in August 1999 transfer to the City of Poplar, in consideration of the City's promise to utilize the lands for low-income housing, Lots 14, 15 16 and 17, Block 19 of the Original Townsite of Poplar. This was the site of the former Poplar Armory. The grant deed dated November 8, 1999 contained a reversionary clause which would cause the property to revert to the state should the lands cease to be used for low-income housing or cease to be owned by the City.

PROPOSAL: The City of Poplar seeks to transfer Lot 14 and 15 to Roosevelt County, which will use the property as the site of a community center.

The attached Corrective Deed is intended by the State of Montana to modify the reversionary terms of the original Grant Deed to include a community center as an approved use and allow the transfer to Roosevelt County. The remainder of Grant Deed will remain unchanged.

BENEFICIARY: This is not trust land.

AGENCY RECOMMENDATION: DNRC requests final Land Board approval to grant a corrective deed to the City of Poplar.

CORRECTIVE DEED

This Corrective Deed is made by the State of Montana ("Grantor"), acting by and through the State Board of Land Commissioners, whose address is c/o Montana Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, and Town of Poplar ("Grantee"), a political subdivision of the State of Montana, whose address is PO Box 630, Poplar, MT 59255.

WHEREAS, a Grant Deed from the State of Montana, State Board of Land Commissioners, as Grantor, to the Town of Poplar, as Grantee, dated November 8, 1999, and recorded December 28, 1999 as Document No. 354855 at Book 597 of Deeds at Page 310 in the records of the Roosevelt County Clerk and Recorder's Office, the Montana State Board of Land Commissioners, pursuant to Section 77-2-351, MCA, previously conveyed to the Grantee, subject to a right of reversion, Lots 14, 15, 16, and 17, Block 19 of the Original Townsite of Poplar, Roosevelt County, Montana;

WHEREAS, the above-described lands were conveyed in consideration of the Grantee's promise to utilize the lands for public purposes associated with low-income public housing;

WHEREAS, the above-described conveyance contained a reversionary clause, which would cause the real property to revert to the Grantor, State of Montana, should the above-described lands cease to be used for low-income public housing or cease to be owned by the Grantee;

WHEREAS, the Grantee now wishes to confirm that the above-described lands may be developed for other public purposes and that the Grantee may transfer ownership of Lots 14 and 15 within Block 19 of the Original Townsite of Poplar in Roosevelt County, Montana to Roosevelt County to be used as the site for a community center, without triggering the reversionary clause provisions of the November 8, 1999 State of Montana Grant Deed to the Town of Poplar;

WHEREAS, this Corrective Deed is issued pursuant to Montana Code Annotated Section 77-1-205 to: confirm the allowable public uses for the described lands; to confirm and ratify the right of the Grantee, the Town of Poplar to transfer and assign Lots 14 and 15 within Block 19 to Roosevelt County, subject to the reversionary interest of the State of Montana;

NOW, THEREFORE, the Grantor, State of Montana, State Board of Land Commissioners, and the Grantee, Town of Poplar, in consideration of One Dollar, and other good and valuable consideration hereby modify the above-described State of Montana Grant Deed dated November 8, 1999, as follows:

The following language is stricken from the Deed:

PROVIDED FURTHER, that the public use of the above-described lands by the Town of Poplar is restricted to those uses associated with low-income public housing. However, whenever the above-described land shall cease to be used for the above-described public purposes, or cease to be owned by the Town of Poplar, title to the above-described lands shall revert to the State of Montana upon written notice to the Grantee. Within 30 days of this notice or reversion, the Town of Poplar may request a contested case hearing before the Board or the Board's designee to determine whether the terms of this Deed have been violated and reversion of these lands is warranted. The Board shall be the trier of fact and its decision shall be reviewable by the local District Court as any other decision under a contested case proceeding under § 2-4-701, et seq., MCA.

The following language is inserted into the Deed:

PROVIDED FURTHER, in accordance with §77-2-351, MCA, in the event that any portion of the above-described land shall cease to be used for a public purpose, such as low-income housing or a community center, or cease to be owned by the Grantee, Town of Poplar, or by

its Assignee, Roosevelt County, upon written notice to the Grantee, the Town of Poplar, or its Assignee, Roosevelt County, the title to that portion of the above-described land shall revert to the State of Montana. Within 30 days of such notice of reversion, the Grantee, the Town of Poplar, or its Assignee, Roosevelt County, may request a contested case hearing before the Board or the Board's designee to determine whether the terms of this Deed have been violated and reversion of this land is warranted. The Board shall be the trier of fact and its decision shall be reviewable by the local District Court as any other decision under a contested case proceeding under § 2-4-701, et seq., MCA.

This Corrective Deed is intended by the State of Montana only to modify, clarify, and correct the reversionary terms of the State of Montana Grant Deed dated November 8, 1999. The remainder of Montana Grant Deed dated November 8, 1999, and recorded December 28, 1999 in the office of the Roosevelt County Clerk and Recorder remains unchanged and is hereby ratified by the State of Montana.

IN TESTIMONY WHEREOF the State of Montana has caused these presents to be executed by the Governor and to be attested by the Secretary of State and countersigned by the Directors of the Department of Natural Resources and Conservation, and Department of Corrections and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this ____ day of _____, 2012.

**Great Seal of the
State of Montana**

Governor Brian Schweitzer

Attest: _____
Linda McCulloch, Secretary of State

Counter-signed: _____
Mary Sexton, Director
Department of Corrections

**Board of Land
Commissioners Seal**

Greg Norgaard, Mayor
City of Poplar

512-2

SIGNAL PEAK ENERGY COAL LEASE
APPLICATION

SIGNAL PEAK ENERGY COAL LEASE APPLICATION
Request to Initiate Lease Bidding Process

The Department of Natural Resources and Conservation received a coal lease application from Signal Peak Energy for a tract of State school trust land located at the Bull Mountain Mine, 12 miles south of Roundup, Montana. The State tract is adjacent to five Federal coal tracts, which were recently leased by the Bureau of Land Management to Signal Peak Energy via a competitive bid process. Signal Peak Energy was the sole bidder for the Federal coal tracts. Both the State and Federal tracts locate within Signal Peak Energy's proposed life of mine expansion area. Leasing the State tract does not convey the right to mine, but would trigger the preparation and submission of a detailed mine operation and reclamation plan for joint environmental and permitting review by both DNRC and DEQ. If approval were granted to continue the existing mining operation into the expansion area, the State would receive rental and royalty revenue for the Common School trust.

The Land Board must determine the fair market value of coal reserves prior to issuing a coal lease. Fair market value may be determined by competitive bid or through an appraisal. As laid out in the attached document, the Department recommends the Land Board utilize the competitive bid process in conjunction with the results of the Federal competitive bid process, as well as information from lease sales for underground coal mining in other states. The State coal lease form is attached for reference. Proposed lease terms are as follows:

Township 6 North, Range 27 East, Section 16: ± 640 acres

Royalty Rate:	10%
Annual Rental Rate:	\$3.00 per acre
Minimum Bonus Bid:	\$0.30 per recoverable ton

The Director requests Land Board approval to initiate the coal lease bidding process pursuant to the bonus, rental, royalty and lease terms proposed herein.

Grant: Common Schools

County: Musselshell

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Signal Peak Energy
Coal Lease Application and Request to Bid

Bull Mountain Mine
Musselshell County

May 8, 2012

Montana Department
of
Natural Resources and Conservation
Trust Land Management Division

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SUMMARY

Signal Peak Energy (SPE) operates the Bull Mountain mine, an underground mine located 12 miles south of Roundup, on the border between Musselshell and Yellowstone counties. The State of Montana owns a school trust section located within the path of future mining. Expressions of interest to lease the State section date back to at least the late 1980s. Bull Mountain Coal Properties, Inc. submitted an application in 2008. No lease was issued at that time, primarily due to uncertainty regarding market demand and infrastructure, the ability and timeframe required to obtain the Federal coal leases, and the requirement to have a State lease in production or within an approved permit area within the ten-year primary lease term.

Market demand and infrastructure have enabled SPE to successfully develop the mine, which produced about 5 million tons of coal in 2011. SPE also recently obtained coal leases from the BLM for five tracts of Federal coal located in a proposed life of mine expansion area. The State section contains approximately 11.93 million tons of recoverable coal and is also located within the proposed expansion area. The five Federal coal leases are located around three sides of the State section. Exhibit 1 shows the existing permitted mine area, the proposed life of mine expansion area, existing surface facilities and the location of the State tract and Federal leases within the mine expansion area.

The Department received a coal lease application on April 6, 2012 from SPE for the State section. The Department therefore seeks Land Board (Board) authorization to offer the State tract via a competitive, sealed bid process. The Department would return to the Board at a future date and present the bid results for consideration.

Recommended Lease Terms

The Department has reviewed the lease application and information for the Bull Mountain mine and other states. Recommended lease terms are as follows:

Township 6 North, Range 27 East, Section 16: ± 640 acres

Primary Term:	10 years
Royalty Rate:	10%
Annual Rental:	\$3.00 per acre
Target Bonus Bid:	\$0.30 per recoverable ton (\$3.58 million)
Beneficiary:	Common Schools

COAL LEASING PROCEDURE

State statute provides guidance and requirements relative to leasing procedure and evaluation of the coal resource to determine fair market value prior to issuing a lease:

77-3-312. Leasing procedures. (1) (a) Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on the evaluation.

(b) (i) The board may determine fair market value by competitive bid or through an appraisal.

(ii) If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).

(2) Except as provided in subsection (1)(b), leases must be awarded by a competitive bid system, including a bonus bid for the first year's rental that may be amortized for a period of up to 5 years at the discretion of the board, and a lease may not be awarded at less than fair market value.

The Board has two methods for determining fair market value – either by competitive bid or through an appraisal. With either method, the Board must give opportunity for, and consideration of, public comments on the evaluation.

Proposed Timeline

The Department estimates the following timeframes would be required to complete the leasing process and provide the Board with information to determine whether to issue a coal lease on the state section.

- May-21-2012 Land Board – Department requests approval to proceed with the bid process.
- Prepare lease and bidding information for distribution.
 - Issue press release, place notice of lease sale and accompanying information on website.
 - Place notice of sale ads in major Montana newspapers for four consecutive weeks (required by ARM) prior to the sale date.
 - Mail or email a copy of the notice of sale to list of prospective coal lessees.
- Jun-##-2012 Sale Date – deadline for receiving bids.
- Department opens any bids received.
 - Prepare bid results/valuation document for Land Board consideration.
- Jul-16-2012 Land Board – request approval to put bid results/valuation document out for public comment.
- Solicit public comments on valuation document.
 - Press release, website, ads in major Montana newspapers.
- Aug-##-2012 Comment deadline.
- Prepare information document based on comments received for Board.
- Sep-17-2012 Land Board – review and determination of whether to issue lease.

MEPA

MEPA is not required prior to leasing if the leased lands are subject to further permitting and approval pursuant to Title 75 or 82. The Board's coal lease form contains express provisions implementing this requirement:

GRANTING CLAUSE. ...

All rights granted to Lessee under this Lease are contingent upon Lessee's compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee's mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

19. COMPLIANCE WITH LAWS AND RULES. This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

If a coal lease were issued on the State section, SPE would be in a position to finalize their proposed operating plan for the life of mine expansion area shown on Exhibit 1. This operating plan would then be submitted to DEQ and DNRC. This would trigger a new, comprehensive environmental review and permitting process for the life of mine expansion area. The Department would participate with DEQ in that process. Upon completion of that review, the Federal Office of Surface Mining (OSM) must approve the proposed operating plan for the Federal leases, DEQ must issue an amended mine permit, and the Board would have to approve the proposed operating plan as it relates to the State section.

COAL RESOURCE INFORMATIONMining Operation

The Bull Mountain mine is an underground mine located 12 miles south of Roundup, on the border between Musselshell and Yellowstone counties. The mine recovers coal using an underground continuous miner and longwall panels. A preparation plant processes run-of-mine coal into clean (shippable) coal. A 5.7 mile railroad spur and loadout facility is located adjacent to the mine. A 35 mile rail line runs from the mine to the BNSF main rail line at Broadview, Montana. The mine is permitted for up to 12 million tons per year. In calendar 2011, the mine produced about 5 million tons of coal.

Coal Quantity and Quality

The target coal is the Mammoth/Rehder coal seams in the Fort Union formation. Coal thickness ranges between 8 and 13 feet thick in the overall mine area. The Mammoth coal is approximately 10 foot thick in the State section. The interburden between the Rehder coal and the Mammoth Coal ranges in thickness from 13 feet in the western part of the section to 0 feet in the eastern part of the section. Where this interburden layer is thin, the 3 foot thick Rehder coal

is mined along with the Mammoth coal. The overburden (depth from the surface to the target coal seam) ranges from 400 to 800 feet on the State section.

Detailed reserve calculations conducted by the BLM determined that the State section contains an estimated 11.93 million tons of recoverable coal. SPE's reserve calculations for the State section are almost identical, at 11.62 million tons. The processing plant recovery factor averages 82%, which is the ratio of clean (shippable) coal to run of mine (recoverable) coal. Therefore the State section's shippable coal reserve is an estimated 9.78 million tons.

The Mammoth/Rehder coal seams are low sulfur, moderate BTU coal. Average quality values reported for this coal are as follows:

Ash:	10.2%
Sulfur:	0.87%
Fixed Carbon:	42.12%
Moisture:	17.65%
Volatile Matter:	29.68%
BTU/lb:	9,640

RENTAL AND ROYALTY TERMS

State statute (77-3-316) provides that the compensation to the State under all coal mining leases must be upon a rental and royalty basis, as fixed and determined by the Board.

Rental Rate

The Department recommends an annual advance rental of \$3.00 per acre, consistent with that charged by the Federal government on BLM coal leases. Pursuant to administrative rule, lease rentals are in addition to any royalty payment. Statute requires rental payments cannot be less than \$2.00 per acre per year.

Royalty Rate

The Department recommends a royalty obligation of 10% f.o.b. mine site, prepared for shipment, including production and value-based taxes. State statute (77-3-316(4)(b), MCA) requires that the royalty for coal mined may not be less than 10%. This royalty rate is significantly higher than that imposed by Federal and other state leases. The BLM, Colorado, Utah, Idaho and Wyoming all utilize an 8% royalty rate for underground mines.

VALUATION

By statute, the Board has two methods for determining fair market value – either by competitive bid or through an appraisal. With either method, the Board must give opportunity for, and consideration of, public comments on the evaluation.

With rental and royalty terms established, the remaining valuation component is the bonus. The bonus is also the component universally utilized by the BLM and surrounding states in a competitive bid process. The bonus is commonly expressed as an amount per ton of coal reserves. The Department recommends the Board adopt a target bonus bid of \$0.30 per recoverable ton, as discussed below.

The BLM has just completed an appraisal and competitive bid process for the five tracts of Federal coal adjacent to the State section. The location of the Federal and State tracts are shown on Exhibit 1. The State coal is of identical quality, would be recovered using the same mining methods, would incur the same mining costs, and would be sold for the same price as the Federal coal. The BLM bid process is nearly identical to ours, consisting of an up-front bonus bid for a coal lease that contains defined rental and royalty terms. The one difference between the BLM and State bidding process is that the BLM is able to keep the appraised value confidential and therefore unknown to the prospective bidders. The BLM utilizes a detailed appraisal process pursuant to formal instructions and requirements (H-3070-1 Economic Evaluation of Coal Properties). The BLM's acceptance of SPE's bid confirms that SPE's bid equaled or exceeded BLM's formal appraisal. BLM's lease issuance therefore explicitly establishes a fair market value comparable sales transaction that is directly applicable to the State coal.

BLM lease sale transactions for underground mines in other states are available. A lease for an underground mine was also recently issued by the State of Utah. While not as directly comparable as the BLM leasing action for the five Federal tracts surrounding the State section, the information available from other states provides a reference for comparison.

State	Description	Lease No.	Sale Date	Tons (millions)	Bonus Bid (\$/ton)
<u>BLM Underground Lease Sales</u>					
WY	Ten Mile Rim	WYW154595	03/19/2005	32.145	\$ 0.216
UT	Kenilworth	UTU081893	06/08/2006	14.900	\$ 0.189
UT	Mill Fork West	UTU084285	08/01/2006	0.325	\$ 0.302
CO	Twentymile (1)	COC067514	10/12/2006	2.100	\$ 0.250
CO	Twentymile (2)	COC072980	01/14/2009	1.400	\$ 0.250
UT	Consolidation Coal	UTU086038	09/03/2009	0.561	\$ 0.359
<u>State of Utah Underground Lease Sale</u>					
UT	West Ridge Resources	ML51744OBA	06/01/2010	0.146	\$0.300

While the Department recommends \$0.30 per ton as a target bonus, this amount represents a significant premium over the value that would be generated by a Federal or other state coal lease. All leases above, including the Federal leases at Bull Mountain, have an 8% royalty rate. At 10%, the State's royalty rate generates 25% more royalty revenue than these other leases. If the average coal price is \$12.00 per ton, the State's additional 2% royalty rate generates \$2.35 million in additional royalty payments over approximately 8 years. When discounted at 3%, the incremental royalty revenue has a present value of \$1.91 million. A \$0.30 per ton bonus translates to an upfront bid of \$3.58 million. If the present value of the additional royalty revenue is taken into account, the State would have to receive only \$0.14 per ton to generate the same total present value as the Federal lease terms. A \$0.30 per ton bonus bid would therefore

net the State the same bonus revenue as the adjacent Federal leases, plus royalty revenue 25% higher than what the Federal and other state 8% royalty rate leases would receive.

Total Revenue Projection

Assuming an average coal price of \$12.00 per ton, an annual rental of \$3.00 per acre, a 10% royalty rate, and a bonus bid of \$0.30 per recoverable ton, the State section would generate an estimated \$15.3 million in total lease revenue (undiscounted) over the life of the lease. The Common Schools would receive net revenues as both distributable (rentals and bonus) and permanent (royalties) funds.

The State of Montana also receives approximately one-half of the coal royalties generated on Federal lands. The Federal leases would generate an estimated 29 million tons of shippable coal. The State would receive an estimated \$14 million over the life of the Federal leases.

Production from the life of mine expansion area would generate an estimated \$98 million from severance (\$60 million) and gross proceeds (\$38 million) taxes.

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Exhibit 2

**State of Montana
COAL LEASE**

DS-459
Amended 10/2009

No. _____

THIS LEASE is made and entered into between the State of Montana, by and through its lawfully qualified and acting Board of Land Commissioners, hereinafter referred to as "Lessor", and

<Lessee Name and Address>

hereinafter referred to as "Lessee", under and pursuant to the authority granted Lessor by the terms and provisions of Title 77, Chapter 3, Part 3, MCA, and all acts amendatory thereof and supplementary thereto, and all rules adopted pursuant thereto.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

1. GRANTING CLAUSE. The Lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth, does hereby grant and lease to the Lessee, for the purpose of mining and disposing of coal and constructing all such works, buildings, plants, structures and appliances as may be necessary and convenient to produce, save, care for, dispose of and remove said coal, and for the reclamation thereafter, all the lands herein described as follows:

Land Located in: _____ County:

Description of land:

Total number of acres, more or less, _____, belonging to _____ Grant.

All rights granted to Lessee under this Lease are contingent upon Lessee's compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee's mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

2. EFFECTIVE DATE AND TERM. This Lease takes effect on <Lease Effective Date> and is granted for a primary term of ten (10) years and so long thereafter as coal is produced from such lands in commercial quantities, subject to all of the terms and conditions herein set forth. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under Section 82-4-221, MCA, or in a mine site location permit issued under Section 82-4-122, MCA, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

3. LEASE EXTENSION. The Board of Land Commissioners may grant reasonable extensions of the primary term of this Lease upon a showing that Lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating this Lease or is threatened with substantial economic loss due to litigation regarding this Lease or another lease in the same strip mine permit or mine site location permit held by the Lessee, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences.

4. RIGHTS RESERVED. Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this Lease; provided, however, that Lessor hereby agrees that subsequent sales, leases or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms of this Lease and shall not interfere with the Lessee's possession or rights hereunder.

5. BOND. Lessee shall immediately upon the execution of this Lease furnish a surety bond in the amount of <bond amount>, conditioned upon compliance with the provisions of this Lease, or, in the option of the Lessor, a cash deposit in the amount of <bond amount>, or an irrevocable letter of credit in a form approved by Lessor drawn upon an approved bank in the same amount. All rentals, royalties and interest must be paid and all disturbance must be reclaimed to the satisfaction of Lessor prior to release of any bond. Additional bonding may be required, or reduced bonding allowed, whenever Lessor determines it is necessary, or sufficient, to ensure compliance with this Lease.

6. RENTAL. Lessee shall pay Lessor annually, in advance, for each acre or fraction thereof covered by this Lease, beginning with the date this Lease takes effect, an annual money rental of <rental amount> per acre. Rental terms are subject to readjustment as provided in Paragraph 8, but in no case shall it be less than two (2) dollars per acre.

7. ROYALTY. Lessee shall pay Lessor in money or in kind at Lessor's option a royalty on every short ton (2,000 pounds) of coal mined and produced during the term of this Lease, calculated upon the f.o.b. mine price of the coal prepared for shipment, including taxes based on production or value. Lessee shall pay a royalty of <xx.x %> upon coal removed by strip, surface, or auger mining methods and a royalty of <xx.x %> for coal removed by underground mining methods. Royalty terms are subject to review and readjustment as provided in Paragraph 8, but in no case shall the royalty for the coal mined be less than ten (10) percent of the f.o.b. price of a ton prepared for shipment.

8. READJUSTMENT OF RENTAL AND ROYALTY TERMS. The rental and royalty terms of this Lease shall be subject to readjustment to reflect fair market value at the end of the primary term of ten (10 years) and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities.

9. OFFSETTING PRODUCTION. The obligation of Lessee to pay royalties under this Lease may be reduced by the Board for coal produced from any particular tract within the Lease upon a showing by Lessee to the Board that the coal is uneconomical to mine at prevailing market prices and operating costs unless Lessor's royalty is reduced. Under no circumstances may Lessor's royalty be reduced below ten (10) percent of the coal produced and sold f.o.b. the mine site, prepared for shipment, including taxes based on production or value.

10. LESSOR NOTIFICATION AND REPORTS. Lessee shall notify Lessor prior to the commencement of any prospecting, exploration, development or production operations. As soon as any mining operations are commenced, Lessee shall submit to Lessor, on or before the last day of each month, a royalty report and payment covering the preceding calendar month, which report shall be in such form and include such information as Lessor shall prescribe. Upon request, Lessee shall also furnish to Lessor, reports, plats, and maps showing exploration data, development work, improvements, amount of leased deposits mined, contracts for sale and any other information with respect to the land leased which Lessor may require. Lessor's point of contact for all matters related to this Lease is:

Department of Natural Resources & Conservation
Minerals Management Bureau
P.O. Box 201601
1625 Eleventh Avenue
Helena, MT 59620-1601

Lessor will notify Lessee of any subsequent change in point of contact.

11. INSPECTION. Representatives of the Lessor shall at all times have the right to enter upon all parts of the leased premises for the purposes of inspection, examination, and testing that they may deem necessary to ascertain the condition of the Lease, the production of coal, and Lessee's compliance with its obligations under this Lease. Representatives of Lessor shall also, at all reasonable hours, have free access to all books, accounts, records, engineering data, and papers of Lessee insofar as they contain information relating to the production of coal under this Lease, the price obtained therefor, and the fair market value of the production. Lessor shall also have free access to agreements relating to production of coal under this Lease. Lessor may copy at its own expense any book, account, record, engineering data, papers, or agreements to which it has access pursuant to this paragraph.

12. CONFIDENTIALITY. Lessor agrees that Lessee may request any materials obtained by Lessor pursuant to this Lease be designated as confidential. Lessor shall agree to keep any information so designated strictly confidential if Lessor determines that confidentiality is not unlawful. Further, the parties agree that the information Lessee is obliged to provide pursuant to this Lease is only that information relating to the reasonable administration and enforcement by Lessor of the provisions of this Lease and state law.

13. ASSIGNMENT. This Lease may not be assigned without the prior approval of Lessor in writing. Assignments must be made in accordance with any statutes or administrative rules pertaining to assignments in effect at the time of assignment. Each Lessee executing this Lease, or accepting an assignment of an interest in this Lease, is jointly and severally liable for all obligations attributable to the entire working interest under this Lease. Assignments may not extend the expiration date of this Lease.

14. TERMINATION. Lessee may surrender and relinquish this Lease by giving written notice to the Lessor at least thirty (30) days prior to the anniversary date of the Lease. It is understood and agreed that the Lessor hereby reserves the right to declare this Lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of Lessee to fully discharge all the obligations provided herein, after written notice from the Department and reasonable time fixed and allowed by it to Lessee for the performance of any undertaking or obligation specified in such notice concerning which Lessee is in default. Lessee, upon written application therefor, shall be granted a hearing on any notice or demand of the Department before the Lease may be declared forfeited or canceled.

15. SURRENDER OF PREMISES. Upon the termination of this Lease for any cause, Lessee shall surrender possession of the leased premises to Lessor, subject to Lessee's right to re-enter (1) for the purpose of removing all machinery and improvements belonging to Lessee, hereby granted at any time within six (6) months after the date of such termination, except those improvements as are necessary for the preservation of the deposit and access to the deposit, which improvements shall become the property of Lessor; and (2) for the purpose of complying with State and Federal laws adopted pursuant to the police power of State or Federal government. If any of the property of Lessee is not removed from the leased premises as herein provided, the same shall be deemed forfeited to Lessor and become its property.

16. PROTECTION OF THE SURFACE, NATURAL RESOURCES, AND IMPROVEMENTS. Lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by Lessor or by its grazing permittees or lessees. Upon any partial or total relinquishment or the cancellation or expiration of this Lease, or at any other time prior thereto when required by Lessor and to the extent deemed necessary by Lessor, Lessee shall fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, reclaim the disturbed area to a condition in keeping with the concept of the best beneficial use, including the removal of structures as and if required. Lessor may prescribe the steps to be taken and reclamation to be made with respect to the land and improvements thereon. Nothing in this section limits Lessee's obligation to comply with any applicable state or federal law, rule, or regulation.

17. TAXES. Lessee shall pay when due all taxes lawfully assessed and levied upon improvements, output of mines, or other rights, property or assets of the Lessee.

18. SUCCESSORS IN INTEREST. Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors and assigns of the respective parties hereto.

19. COMPLIANCE WITH LAWS AND RULES. This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

20. WATER RIGHTS. Lessee may not interfere with any existing water right owned or operated by any person. Lessee shall hold Lessor harmless against all claims, including attorney fees, for damages claimed by any person asserting interference with a water right.

21. MINE SAFETY. Lessee agrees to operate the mine in accordance with rules promulgated by the Mine Safety and Health Administration for the health and safety of workers and employees.

22. WASTE PROHIBITED. All mining operations shall be done in good and workmanlike manner in accordance with approved methods and practices using such methods to insure the extraction of the greatest amount of economically minable and saleable mineral, having due regard for the prevention of waste of the minerals developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the property for future use, and for the health and safety of workers and employees. If the Lessor has reasonable belief that the operations are not so being conducted, it shall so notify the Lessee in writing, and if compliance is not promptly obtained and the delinquency fully satisfied, the Lessor may, at its option, cancel the Lease pursuant to the provisions of paragraph 13 of this Lease.

23. SURRENDER OF DATA. All geological data pertaining to the leased premises, including reports, maps, logs and other pertinent data regarding trust resources shall be given to the Lessor upon surrender, termination, or expiration of the Lease. Lessor may refuse to release bond until surrender of such data to the Lessor. All drill core unused or undamaged by testing shall be saved. Upon surrender, termination, or expiration of the lease, Lessee shall contact the State Geologist, Montana Bureau of Mines and Geology, Butte, Montana, to determine if such drill core is of interest to the State Geologist for the drill core library. Any drill core determined by the State Geologist to be of interest shall be forwarded by Lessee, at Lessee's cost, to the drill core library.

24. WEED CONTROL. Lessee is responsible for controlling noxious weeds on the leased premises and shall prevent or eradicate the spread of noxious weeds onto land adjoining the leased premises.

25. COAL MINE GAS. Lessee may remove and vent, flare, or sell coal bed gas from the coal formation being mined only if such removal is a necessary safety procedure directly related to the normal physical process of mining the coal under this Lease. If Lessor owns oil and gas rights to lands herein described, Lessee must pay Lessor a royalty on any coal bed gas removed and sold. Coal bed gas royalty will be calculated according to Lessor's then current oil and gas lease terms. Venting or flaring of coal bed gas that is uneconomical to sell must comply with all applicable laws and rules. The right to remove and vent, flare, or sell coal bed gas, except under the circumstance described above, is expressly retained by Lessor.

26. SURFACE OWNER AND SURFACE LESSEE RIGHTS. Lessee shall notify the surface owner, if the surface owner is not the Lessor, and any surface lessee of the location of any facilities or access roads on the leased premises prior to their construction.

27. DAMAGES. Where Lessor owns the surface estate above the leased premises, Lessee shall compensate Lessor or Lessor's surface lessees or permittees for all damages to authorized improvements on the leased premises, including penalties and charges assessed by the FSA on CRP lands, as a result of Lessee's prospecting, exploration, development or mining operations. All such damages will be assessed by and paid directly to the Lessor. Lessee shall also make all payments required by law to surface owners and lessees if Lessor is not the owner of the surface estate above the leased premises.

28. INDEMNIFICATION. The Lessee shall protect, defend, and save the Lessor, its agents and employees harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death, which injury, death or damage, in whole or in part, arises out of or in any way results from the negligent acts or omissions of the Lessee, its contractors, agents or subcontractors.

29. SPECIAL CONDITIONS.

30. NON-WARRANTY OF TITLE. Regardless of any of the above provisions of this Lease, actual or implied, the State of Montana does not warrant title to its lands.

IN WITNESS WHEREOF, the parties hereto set their hands and Lessor has caused this agreement to be executed with the official seal of the State Board of Land Commissioners on this ___ day of _____, 20__.

THE STATE OF MONTANA
Lessor

<lessee name>
Lessee

By Its State Board of Land Commissioners

By: _____

Its: _____

DIRECTOR

SAMPLE

512-3

EASEMENTS

A. Rights-of-Way

~~B. One Oak Pipeline Easement~~

C. Youngs Creek Mining Co. LLC Railroad Spur
Easement

SUMMARY SHEET – RIGHTS OF WAY APPLICATIONS

HISTORIC COUNTY ROAD - *Dawson County* (Page 1)
 - *Prairie County* (Pages 2-3)

HISTORIC PRIVATE ROAD - *Charles & Karen Lessnau* (Page 4)
 - *Debra Hocking* (Page 5)
 - *William and Sean Batterson* (Page 6)

NEW TELECOMM. UTILITY – *Northern Telephone Coop.* (Pages 7-9)
 - *Central Montana Communications* (Page 10)

ENCROACHMENT EASEMENT – *John & Tenda Aye* (Page 12)

PRIVATE ACCESS ROAD – *Robert Bowling* (Page 13)

STATE HIGHWAY – *MT. Department of Transportation* (Page 11)

AFFECTED GRANTS AND PROPOSED INCOME:

Common Schools	\$ 19,137
Public Land Trust	\$ 100

AFFECTED COUNTIES: Custer, Dawson, Fergus, Liberty, Meagher, Missoula, Prairie,
 Teton

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Dawson County 207 W Bell Glendive, MT 59330
Application No.:	16022
R/W Purpose:	public county road
Lessee Agreement:	N/A (Historic)
Acreage:	3.64
Compensation:	\$637.00
Legal Description:	30-foot strip through S2S2, Sec. 34, Twp. 21N, Rge. 55E, Dawson County
Trust Beneficiary:	Common Schools
Classification:	III



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

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Prairie County P.O. Box 125 Terry, MT 59349-0125
Application No.:	16023
R/W Purpose:	public county road
Lessee Agreement:	N/A (Historic)
Acreage:	2.27
Compensation:	\$397.00
Legal Description:	30-foot strip through SW4SW4, SW4SE4, SE4SW4, Sec. 4, Twp. 16N, Rge. 50E, Prairie County
Trust Beneficiary:	Common Schools
Classification:	III



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

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Prairie County P.O. Box 125 Terry, MT 59349-0125
Application No.:	16024
R/W Purpose:	public county road
Lessee Agreement:	N/A (Historic)
Acreage:	3.64
Compensation:	\$637.00
Legal Description:	30-foot strip through W2W2, Sec. 26, Twp. 16N, Rge. 50E, Prairie County
Trust Beneficiary:	Common Schools
Classification:	III



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

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Charles D. and Karen A. Lessnau P.O. Box 978 Bonner, MT 59823
Application No.:	16025
R/W Purpose:	a private access road for a single family residence and resource management activities
Lessee Agreement:	N/A (Historic)
Acreage:	1.82
Compensation:	\$1,183.00
Legal Description:	30-foot strip through SW4, Sec. 16, Twp. 12N, Rge. 15W, Missoula County
Trust Beneficiary:	Common Schools
Classification:	III



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

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Debra Hocking P.O. Box 1324 Florence, MT 59833
Application No.:	16026
R/W Purpose:	a private access road for farming and ranching activities
Lessee Agreement:	N/A (Historic)
Acreage:	1.791
Compensation:	\$3,009
Legal Description:	30-foot strip through NE4NE4, SW4SW4, Sec. 25, Twp. 27N, 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 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	William B. and Sean S. Batterson P.O. Box 1324 Florence, MT 59833
Application No.:	16026
R/W Purpose:	a private access road for a single family residence and farming and ranching activities
Lessee Agreement:	N/A (Historic)
Acreage:	1.791
Compensation:	\$3,009
Legal Description:	30-foot strip through NE4NE4, SW4SW4, Sec. 25, Twp. 27N, 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 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Northern Telephone Cooperative P.O. Box 190 Sunburst, MT 59842
Application No.:	16028
R/W Purpose:	buried telecommunications cable
Lessee Agreement:	ok
Acreage:	1.303
Compensation:	\$391.00
Legal Description:	20-foot strip through S2SE4, Sec. 11, Twp. 37N, Rge. 4E, Liberty County
Trust Beneficiary:	Common Schools
Classification:	III



Applicant is proposing to install new telecommunications facilities to upgrade the current services in the Devon exchange area around Whitlash, Montana. The proposed route is the most direct route between terminus locations and will be located primarily along existing roadways. Minimal impacts are expected to occur from the trenching of this line. The Department recommends approval.

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Northern Telephone Cooperative P.O. Box 190 Sunburst, MT 59842
Application No.:	16029
R/W Purpose:	buried telecommunications cable
Lessee Agreement:	ok
Acreage:	1.541
Compensation:	\$435.00
Legal Description:	20-foot strip through SW4SW4, N2SW4, SW4NE4, Sec. 12, Twp. 37N, Rge. 4E, Liberty County
Trust Beneficiary:	Common Schools
Classification:	III



See Explanation on Page 7

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Northern Telephone Cooperative P.O. Box 190 Sunburst, MT 59842
Application No.:	16030
R/W Purpose:	buried telecommunications cable
Lessee Agreement:	ok
Acreage:	0.684
Compensation:	\$205.00
Legal Description:	20-foot strip through NE4SW4, NW4SE4, Sec. 8, Twp. 37N, Rge. 5E, Liberty County
Trust Beneficiary:	Common Schools
Classification:	III



See Explanation on Page 7

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Central Montana Communications, Inc. P.O. Box 751 Havre, MT 59501
Application No.:	16031
R/W Purpose:	buried telecommunications cable
Lessee Agreement:	Needed
Acreage:	0.591
Compensation:	\$1,773.00
Legal Description:	20-foot strip through Lots 1 and 2, Sec. 16, Twp. 9N, Rge. 10E, Meagher County
Trust Beneficiary:	Common Schools
Classification:	III



Applicant is proposing to install new telecommunications facilities to upgrade existing services in the White Sulphur Springs exchange area. Minimal impacts are expected from this project. The Department recommends approval.

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Montana Department of Transportation P O Box 201001 Helena MT 59620-1001
Application No.:	16032
R/W Purpose:	highway construction and maintenance, including occupancy by public utilities as defined in §69-4-101, MCA
Lessee Agreement:	ok
Acreage:	7.33
Compensation:	\$5,131.00
Legal Description:	Tract of land in SE4SW4, SW4SW4, NW4SW4, Sec. 36, Twp. 23N, Rge. 16E, Fergus County
Trust Beneficiary:	Common Schools
Classification:	III



Due to wet conditions a portion of a hill side slid on Secondary Highway #236, northwest of Winifred, blocking the road. Because of the emergency nature of this situation, the MDoT was authorized to conduct emergency repairs under a land use license. This tract is adjacent to the Upper Missouri National Wild and Scenic River and the Upper Missouri River Breaks National Monument and this road provides access to the PN Bridge Campground. This easement is a follow-up to the emergency license for the purpose of recontouring the slope and removal of waste/debris associated with the slide. The Department recommends approval of this permanent easement request for additional highway right of way.

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	John and Trenda Aye 4820 Valley Drive East Miles City, MT 59301
Application No.:	16033
R/W Purpose:	an encroachment easement for residential purposes
Lessee Agreement:	N/A (No Lessee)
Acreage:	0.085
Compensation:	\$100.00
Legal Description:	Tract of land through the Tongue River Channel (slough) adjoining Lot A and Lot B, Block 12, Baker Addition to the the City of Miles City in Sec. 28, Twp 8N, Rge. 47E, Custer County
Trust Beneficiary:	Public Land Trust
Classification:	III



This request is based upon uncertain fee title by the State of Montana to the original Tongue River bed as it existed within the city limits of Miles City. Because title to the property is in flux it affects the ability of the applicant to sell their property. The Department recommends the approval of this encroachment request with an exception that the State does not warrant any title to the described easement parcel.

Rights of Way Applications

May 21, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Robert C. Bowling 1680 NE 135 Miami FL 33181
Application No.:	15045
R/W Purpose:	a private access road to a single-family residence and associated outbuildings and for conducting normal farming and ranching activities
Lessee Agreement:	ok
Acreage:	2.33
Compensation:	\$2,330.00
Legal Description:	30-foot strip of land through E2NW4, W2NE4, SE4NE4, Sec. 36, Twp. 5S, Rge. 3W, Madison County
Trust Beneficiary:	Common Schools
Classification:	III



Applicant is requesting a permanent easement for access on an existing road on the above-referenced state land section. Applicant qualifies for a historic easement for farm and ranch use only, however, he wishes to construct a home on the property. Under the historic statute an applicant may only receive an easement associated with the uses of their private lands prior to 1997. The access road currently has a culvert that is in need of replacement. As a condition of this easement applicant will be required to replace the old, existing culvert with a new 36" culvert engineered and designed to meet a 25 year flood event. The Department recommends approval of this easement request with the stipulation of the culvert replacement.

**ONEOK PIPELINE EASEMENT
Land Board
May 21, 2012**

This item has been removed from this month's agenda and postponed until a later date.

Benefits: Common Schools, Public Land Trust

Location: Carter, Fallon, Richland, and Wibaux Counties

POSTPONED

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Youngs Creek Mining Company LLC
1949 Sugarland Drive, Suite 220
Sheridan WY 82801

Application No.: 14929
R/W Purpose: a 40-year limited term easement for the construction of a single line railroad, including access road and associated electrical and telecommunications cable

Lessee Agreement: ok
Acreage: 31.91
Compensation: \$63,820 initial cost with easement value review on a 10 year cycle basis, added compensation on annually compounded 2.5% interest.

Legal Description: 600-foot strip through Gov. Lots 1, 2, 3 & 5, Sec. 36, Twp. 9S, Rge. 39E, Big Horn County

Trust Beneficiary: Common Schools
Classification: II



This application has been on hold since the initial presentation to the Land Board at the August 10, 2009, meeting. At that time, the Board requested additional information on relocation of the railroad which is attached.

Additionally, the Department proposes to stipulate in the easement document that the applicant must secure all permits and approvals associated with mining operations and operation of the rail spur as may be required by law in both Montana and Wyoming. Further, applicant must adhere to all terms and conditions of said permits. If a default of any term or condition occurs, applicant will be in non-compliance and must cure the violation or face revocation of the easement.

Based on similar easements, the value of the easement is set at \$2000 per acre for the issuance of this easement request. Per Land Board direction, the Department has reviewed various methodologies for the grant of commercial industrial easements which would apply to this proposed rail spur. The Director recommends approval of this easement request as follows:

- 40-year limited term easement;
- Review of compensation on a 10-year cycle until the easement is up for renewal, at which point compensation methods will be reassessed; and
- Initial easement cost of \$63,820. The beginning easement value will be compounded annually at a flat 2.5% rate to establish the additional compensation due at the end of the first 10-year period. The beginning easement compensation will only be used for compounding purposes within the first 10-year review period.

YOUNGS CREEK EASEMENT REQUEST

OVERVIEW:

This proposed easement is for a rail spur line that would connect the Youngs Creek coal mine in Wyoming to the existing Burlington Northern-Sante Fe Railway (BNSF) Decker spur line. The coal mine lies approximately one mile from the Montana state line and lies east of the Tongue River. The rail line will transport coal from the Youngs Creek mine to the BNSF Decker spur in Montana, which heads south to Wyoming and then loops back in to Montana, connecting to the main BNSF line heading to east and west markets.

A 40-year limited term easement is recommended due to the life expectancy of the mine. It is possible that additional coal deposits may be expanded, possibly into Montana, which would extend the life of the mine. Should this occur, the easement would need to be renewed, at which point a new valuation for compensation to the Common School trust would occur. Once terminated, the easement corridor will be reclaimed to the specifications of DNRC.

Because this rail line is not in a common carrier status, no federal permits are required. Additionally, other than possible permits needed from DEQ for air quality and stormwater discharge. The Tongue River will not be crossed and the proposed line avoids coming close in proximity to the river banks.

ANALYSIS OF RELOCATION:

Alternate routes were reviewed in detail. Given the construction constraints regarding track curvature and alignment with the existing BNSF Decker spur, limited possibilities exist.

Preferred Alternative – State Land:

The proposed rail spur would traverse grazing lands that are rated as being less productive than the state average. The state lessee requested a modification to their lease agreement and assigned to Youngs Creek the portion of the lease over which the proposed rail spur would be constructed. Youngs Creek is currently paying the annual AUM rate applicable to that portion of the lease.

The proposed route into Montana and crossing the State section is less environmentally invasive and stays a safe distance from the Tongue River. It also avoids construction of difficult track alignments and curvatures that were not acceptable to BNSF if the line were constructed solely in Wyoming.

North of State Land:

This route is not considered viable. Properties north and west of the state land contain federal coal deposits that may be extracted in the future. Placement of a rail spur through this area would impact future potential of mining additional coal reserves.

South of State Land:

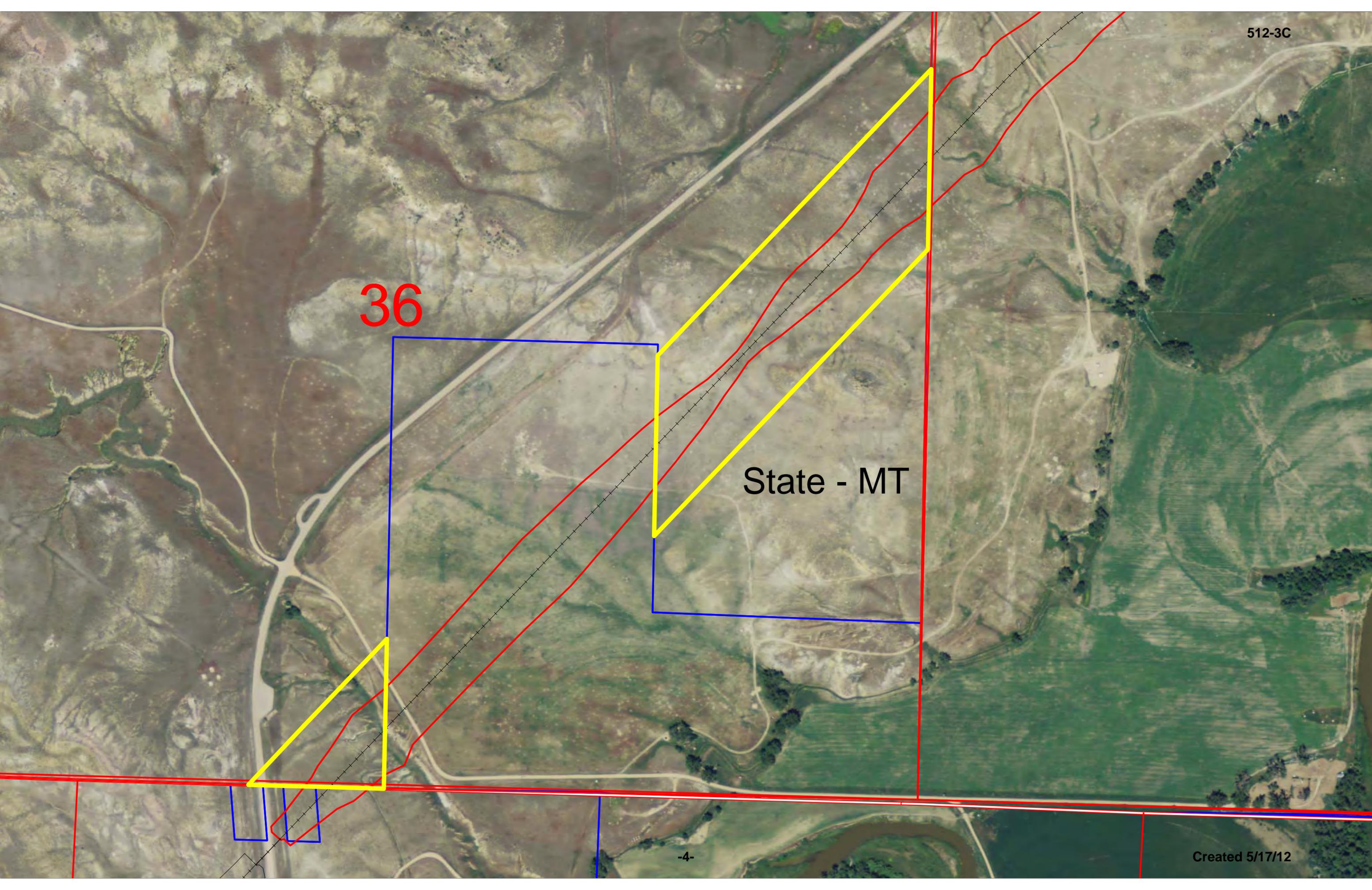
Placement of a rail line south of the State land would impact and cause relocation of a major ditch system, the Interstate Ditch, and destroy irrigated hay land. The landowner impacted has stated he would be adamantly opposed to such a location. In addition, this proposed alignment would place the center of the rail line within 1,700 feet of his private residence and within 500 feet of the Tongue River. The southern route would require an additional one million cubic yards of fill material, which would rise 95 feet from the lowest point on the route up to the rail bed.

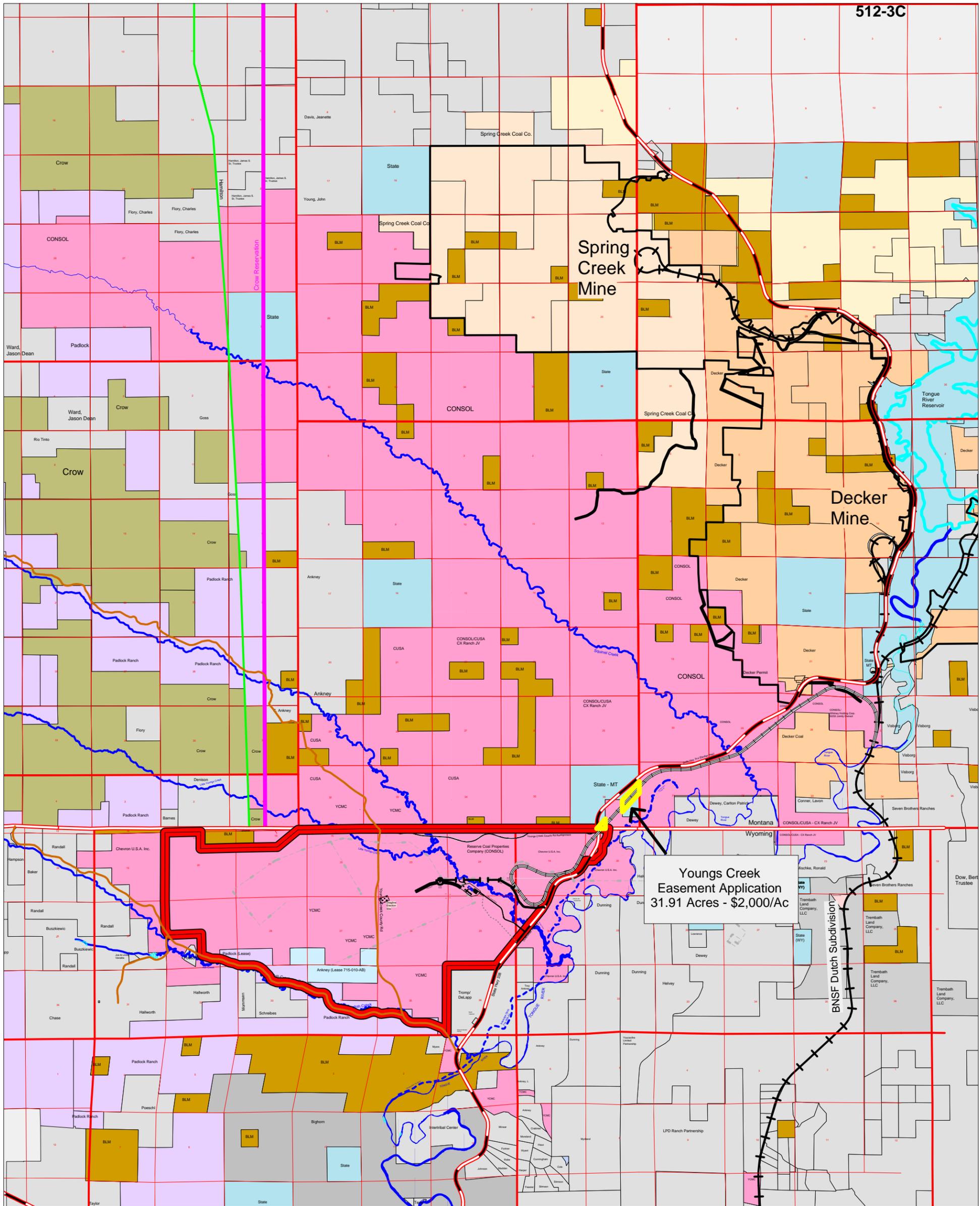
Wyoming Side:

Proposing a route strictly through Wyoming would severely impact highly productive agricultural lands and require multiple crossings of the Tongue River. In addition, given the curvature of the BNSF spur in Wyoming a connection at that location would be much less desirable to BNSF.

36

State - MT





1949 Sugarland Drive, Suite 220
 Sheridan, WY 82801



Youngs Creek
 Permit Boundary



Youngs Creek & Partner
 Controlled Surface
 Approx. 38,000 Acres

512-4

COMMUNITIZATION AGREEMENT –
WHITING OIL AND GAS CORPORATION

REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
May 21, 2012
Land Board

Whiting Oil and Gas Corporation
 1700 Broadway, Suite 2300
 Denver, CO 80290-2300

Township 25 North, Range 57 East
 Section 25: ALL
 Section 36: ALL
 1280 Acres
 Richland County

State Tract
 Section 36: NW4, S2
 480 Acres
 Common Schools Trust = 100%

Whiting Oil and Gas Corporation 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.

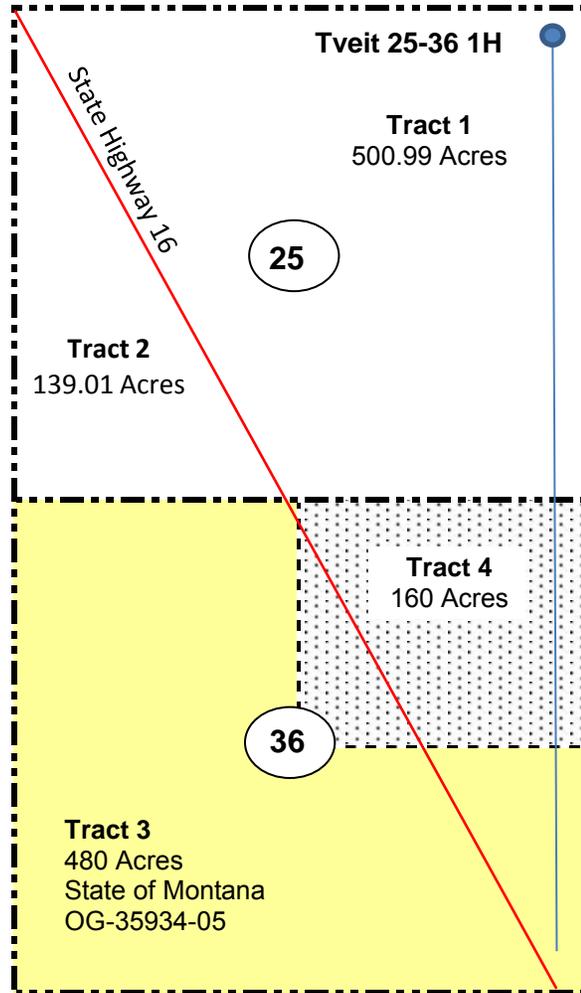
The Tveit 25-36 1H well, which is a Bakken formation oil well, was drilled in the NE4NE4 of Section 25. This spacing unit has a total of 1280 acres. The Department owns 480 acres of the 1280 mineral acres in the permanent spacing unit that will be communitized. All the mineral owners in the spacing unit will share in the royalty from this well. The Communitization Agreement shall include said lands from the Bakken Formation only in Sections 25 & 36.

The Department's tract comprises 37.5% 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 Department will consequently receive 6.25% of all oil production (16.67% royalty rate x 37.5% 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 25 North Range 57 East

Sections 25 & 36



Recapitulation

Tract No.	Type	Acres	Tract Participation	Royalty %	Owners Interest Decimal
1	Tveit	500.99	39.14%	12.50%	0.048925
2	Johnson, et al.	139.01	10.86%	18.75%	0.020363
3	State of Montana	480.00	37.50%	16.67%	0.062513
4	Wayne L. Berry, et al.	160.00	12.50%	various	various
Total		1280.00	100.00%		

* The Operator of the Communitized Area is Whiting Oil and Gas Company

512-5

TIMBER SALES

- A. Logan Creek
- B. Mystery Fish
- C. Reid Divide

LOGAN CREEK TIMBER SALE

May 21, 2012
Land Board

Location of Sale:

- Kalispell Unit (NWLO) – Located approximately 14 air miles west of Whitefish, Montana
- Flathead County – Section 16, T30N-R24W
- 100% CS
- This sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP.

Sale Volume & Estimated Value:

- The estimated volume is 1,601 tons (245 MBF) with a conversion factor of 6.53 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
\$15.09	\$3.85	\$18.94	1,601	\$30,322.94

Sale & Harvest Treatments:

- The sale consists of two harvest units totaling 21 acres.
- Silvicultural treatments would improve forest health and promote the regeneration of western larch.
- Timber harvest would focus on improving the current and future productivity of forest stands in the project area and ensuring the future forest stands meet the objectives of biodiversity and productivity.
- Timber harvesting would occur in 13 acres of old growth. Due to the use of old growth maintenance treatments, these acres would remain classified as old growth after harvesting activities.

Harvest Systems:

- 100% tractor.

Roads:

- No new road construction is needed.

Public Involvement:

On 8/23/11, the DNRC sent scoping letters to adjacent landowners and other known interested parties and organizations. A public notice was posted in *The Daily Interlake* on 8/28/11 and 9/04/11. One letter was received and offered support of the project as proposed. Hydrological, soils, wildlife and vegetative issues were identified by DNRC specialists and field foresters for both the No Action and the Action Alternative.

The Interdisciplinary Team (ID Team), made up of DNRC's wildlife biologist, hydrologist, and a FWP wildlife biologist, began compiling the issues and gathering information related to current conditions. The issues and concerns identified through public scoping were summarized and used to further refine the project.

Issues & Mitigations

- Old Growth – There are 13 acres of old growth within the project area. Old growth maintenance treatments would retain enough large live trees to meet DNRC's old growth definition. While some old growth attributes would be reduced, these stands would remain classified as old growth following harvest.

The Director recommends the Land Board direct the Department to approve the Logan Creek Timber Sale.

49°00'N

115°00'W

512-5A

49°00'N

Vicinity Map
Logan Creek
Timber Sale

Attachment A

Logan Creek
Project Area

48°00'N

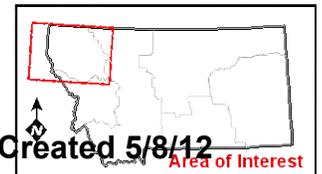
48°00'N

115°00'W

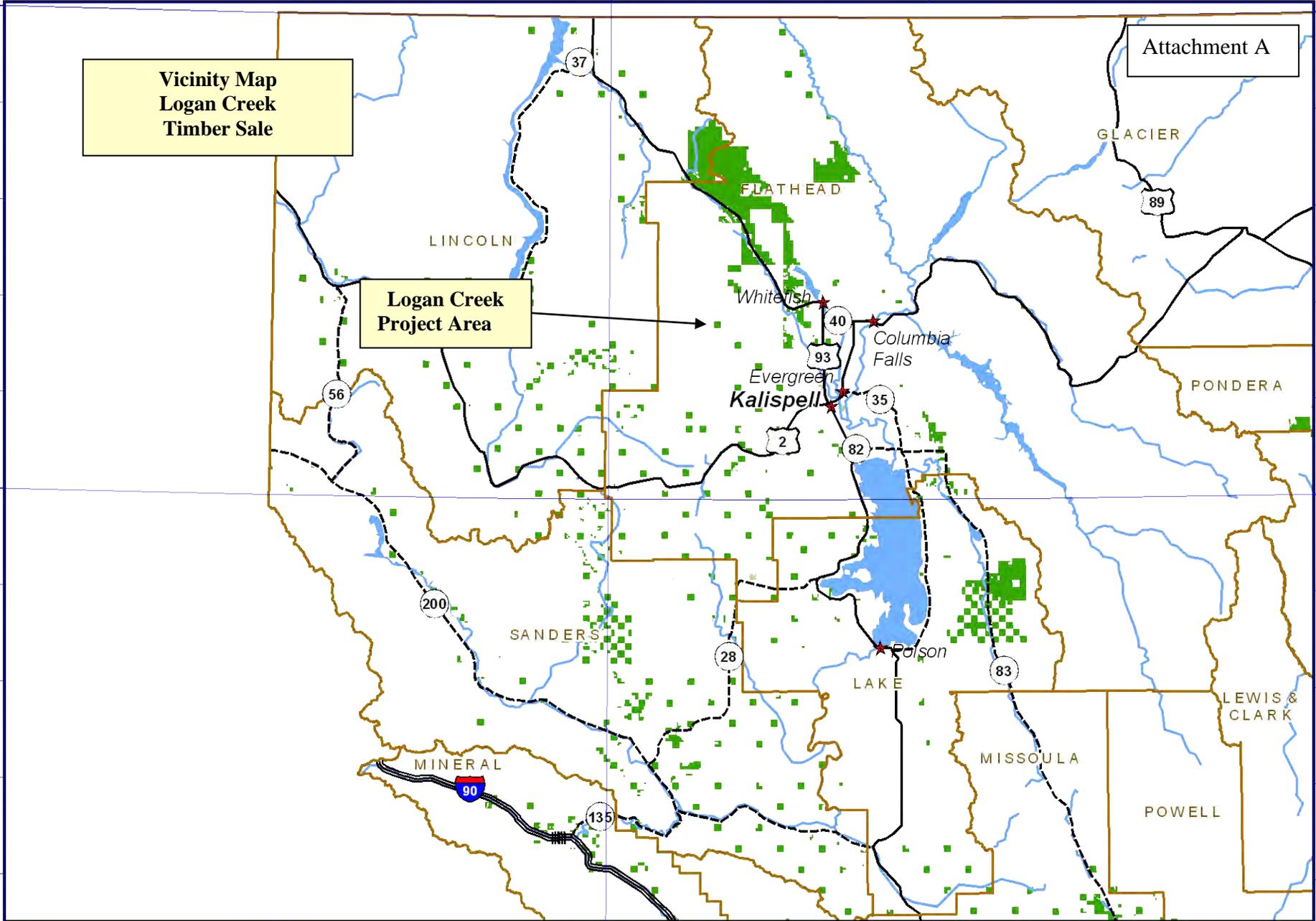


	Interstate Highway		Rivers		Lakes
	U.S. Route		City		DNRC managed for timber
	State Highway		County		DNRC other

21 February 2007
Montana DNRC
Technical Services Section/dr

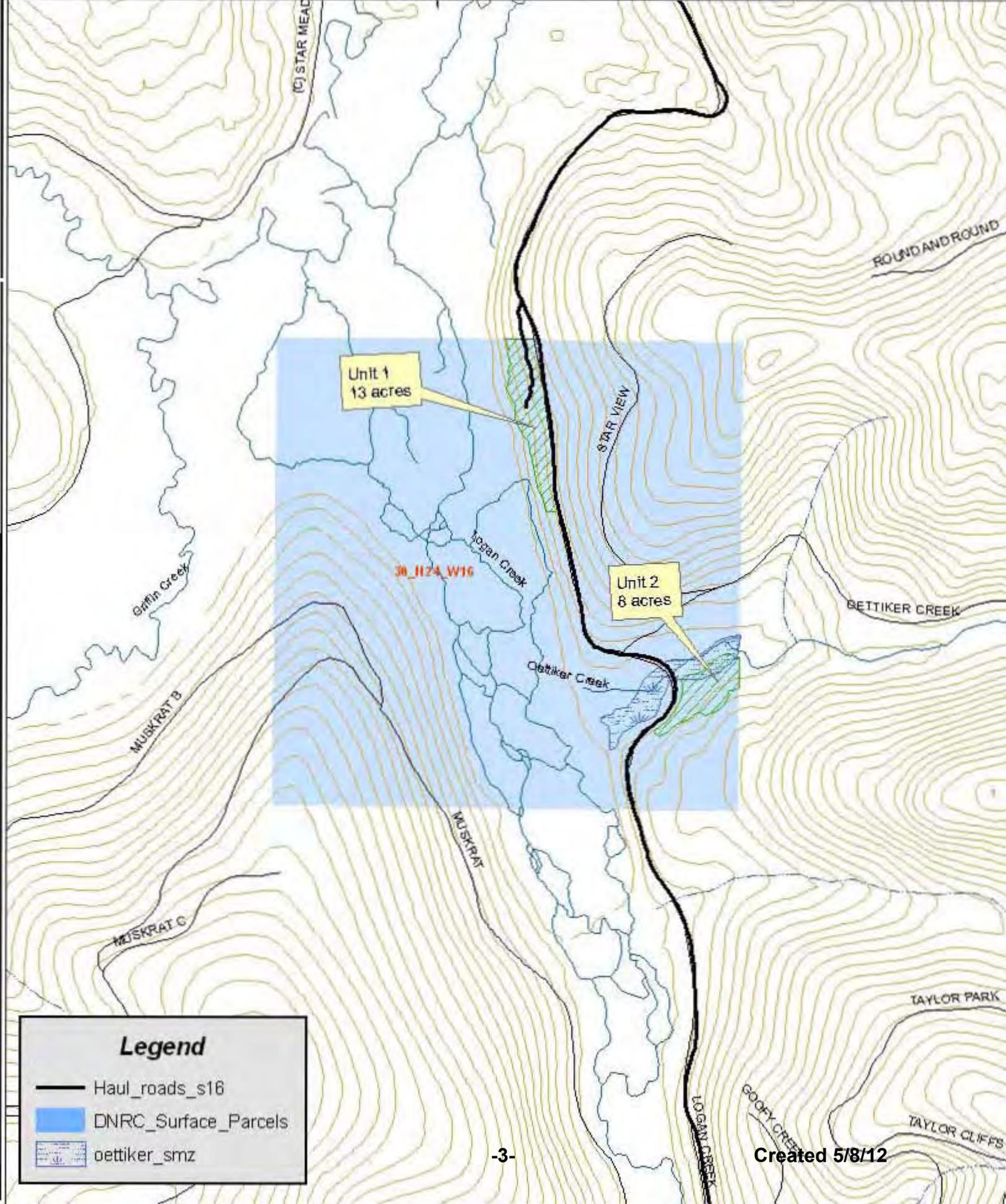


Created 5/8/12
Area of Interest



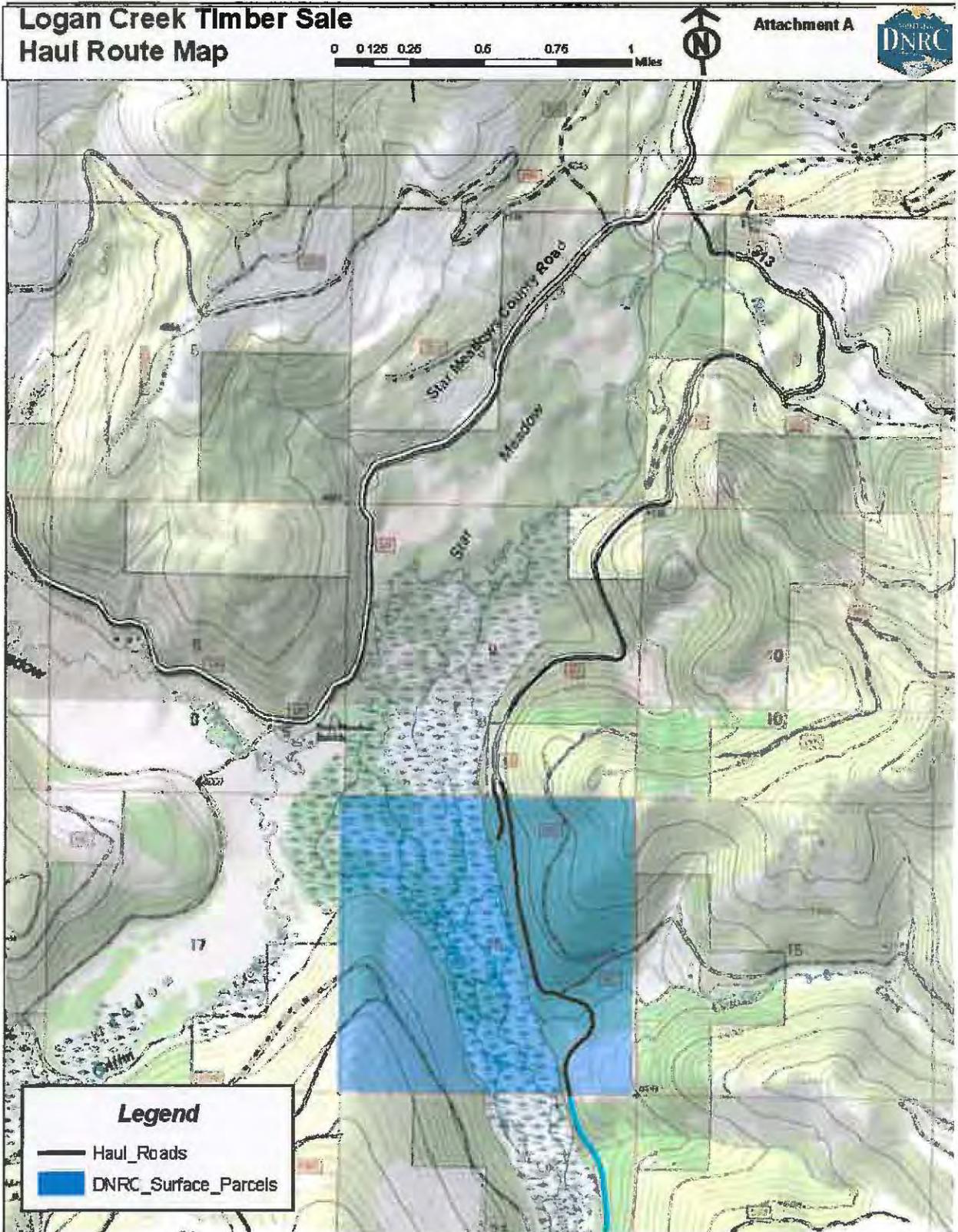
Logan Creek Timber Sale

S. 16, T30N, R24W



Legend

- Haul_roads_s16
- DNRC_Surface_Parcels
- oettiker_smz



MYSTERY FISH TIMBER SALE

May 21, 2012
Land Board

Location of Sale:

- Stillwater Unit (NWLO) – Approximately 5 air miles north of Olney, Montana.
- Flathead County – Sections 7, 8, 16, 17, 18, 20, and 21, T33N-R23W and Section 12, T33N-R 24W.
- 100% CS Trust
- This sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP.

Sale Volume & Estimated Value:

- The estimated volume is 28,942 tons (5,015 MBF) of sawlogs with a conversion factor of 5.77 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
\$13.53	\$4.36	\$17.89	28,942	\$517,772.38

Sale & Harvest Treatments:

- The sale consists of 12 harvest units that total 456 acres.
- All of the 456 acres are to be regenerated, through seed tree with reserve treatments (323 acres) and clearcut with reserve treatments (133 acres).
- Harvest units will have site preparation to promote western white pine and western larch regeneration; an estimated 150 acres will be interplanted with western white pine or western larch.
- Approximately 159 acres of old growth would be harvested. These 159 acres would not maintain their old growth status because all of the units are to be treated with a regeneration treatment. Following harvest 10.6% of the acres on Stillwater Unit would remain in old-growth stands.

Harvest Systems:

- 54% Tractor
- 46% Cable

Road Construction & Maintenance:

- Approximately 4.4 miles of new road construction is required to access harvest units. Following harvesting operations and site preparation, 2 miles of road will be reclaimed and returned to near-natural contour.
- Approximately 26 miles of existing road will receive various levels of maintenance, including replacement of two stream crossing structures to reduce sediment delivery to streams.
- Current road restrictions for the public as described in the HCP will remain in place to maintain wildlife security, reduce the spread of noxious weeds, and minimize future maintenance costs.

Public Involvement:

- DNRC actively sought input from the public throughout this project. Public involvement was solicited by placing notices in the Whitefish Pilot and Daily Interlake, and sending the Initial Proposal Letter with maps to individuals, agencies, industry representatives, and other organizations that have expressed interest in Stillwater Unit's management

activities. The scoping period was open for 30 days. Public input received consisted of (3) emails. The issues and concerns identified through public scoping were summarized and used to further refine the project.

- The Draft EA was distributed for a 30-day public review period during which time interested individuals had the opportunity to review the document and send comments to the Interdisciplinary Team (ID Team).
- Public Input consisted of one e-mail and one letter.

Public Comments, Issues, & Mitigations:

Wildlife - This project area is within a grizzly bear recovery area, specifically the Stryker Subunit. The design measures in the recently passed Habitat Conservation Plan related to grizzly bears and Canada lynx, were incorporated into the project. Other ARMs for wildlife species were met and included fisher, pileated woodpecker, and gray wolf habitats.

Mature Forested Habitat & Connectivity - Mature forested habitat will be reduced by 19.5% in the project area and connectivity of mature forest would be altered, but substantial connectivity would remain in between harvest units and along riparian areas.

Old Growth - The project design criteria prompted foresters to locate old growth stands within the project area and assess the general health of those stands. 775 acres of old growth was identified in the project area and 159 acres of his old growth will be harvested. In approximately 43 acres of old growth to be harvested in the sale, the western larch is heavily infested with dwarf mistletoe and the Douglas-fir shows the presence of *Armillaria* root rot and Douglas-fir bark beetle activity. At the current rate of mortality in large-diameter trees, these 43 acres of old growth would likely not meet the criteria for old-growth within the next 10 years. The other 116 acres of old-growth forest stands identified for proposed harvest were generally stands with lower abundance of large trees (>21" DBH), and higher levels of disease/insect mortality compared to other stands within the project area. The old-growth stands selected for retention contain higher habitat quality that are expected to persist in old-growth status longer on the landscape than those selected for harvesting. Stillwater Unit will still retain approximately 10.6 percent of their acres in old growth.

Sediment Delivery - On roads segments planned to be used in this sale the current sediment delivery will be reduced by approximately 7.3 tons per year.

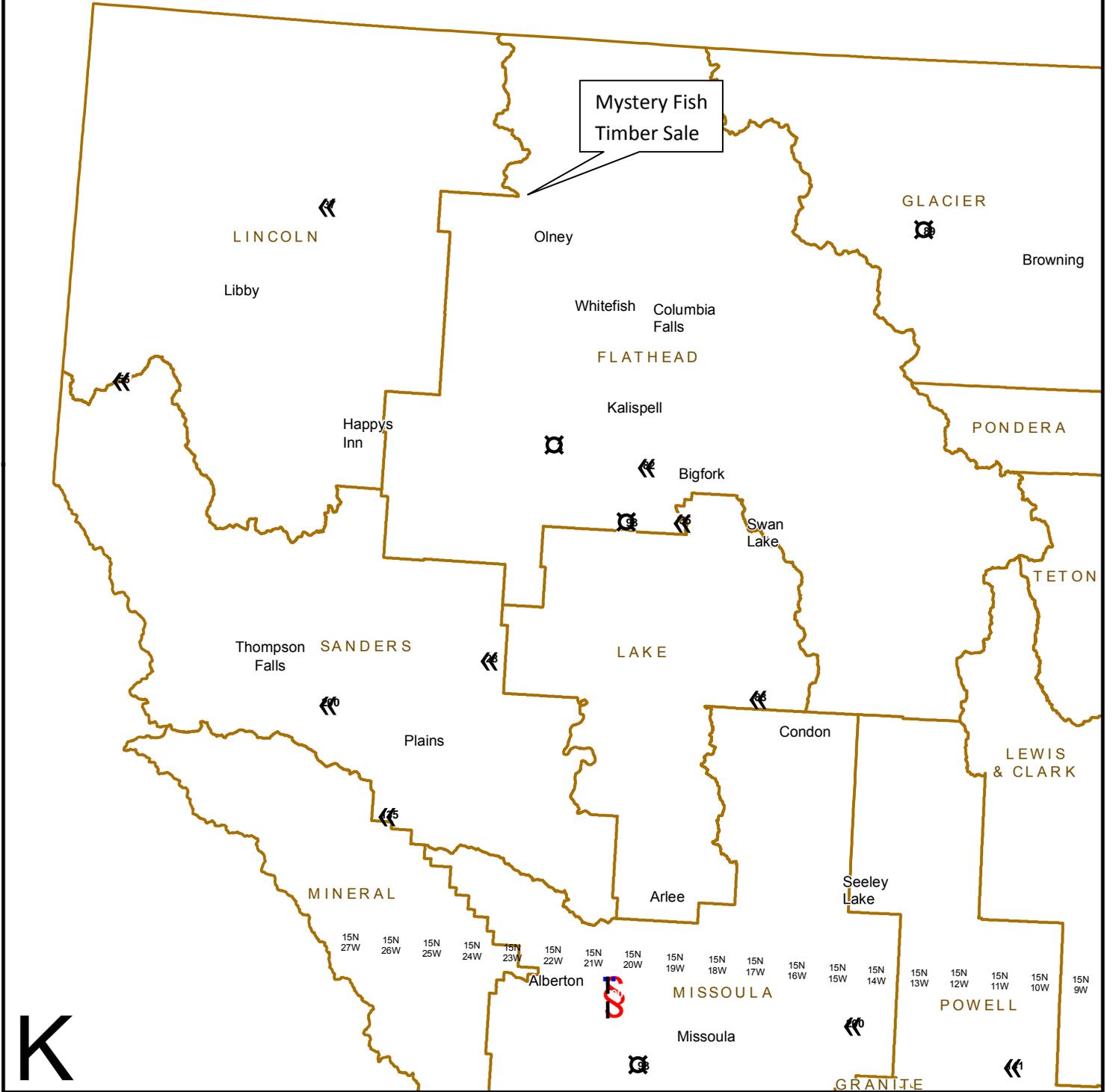
Noxious Weeds - An integrated weed management program which includes washing and inspection of off road equipment, grass seeding disturbed areas, and weed spraying.

Aesthetics -

- The new road and the temporary roads would be located to minimize cut and fill sections of the road and use terrain features such as locating the road on benches to reduce the road's visibility
- There would be a larger component of sapling and overstory trees retained below the cut /fill sections to help mask the road
- The temporary roads would be reclaimed following harvest-related use; the cut and fill portions would be reclaimed,
- The timber harvest units have irregular boundaries and irregular spacing of leave trees which will lessen the visual effects
- Small inclusions (up to 10% of each stand) of existing brush and small trees would remain interspersed within these harvested areas.

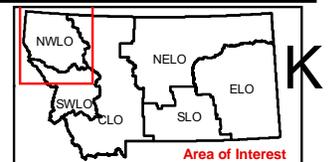
The Director recommends the Land Board direct the Department to sell the Mystery Fish Timber Sale.

Mystery Fish Timber Sale Map
Attachment A- 1 of 4 (Vicinity Map)



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

6 December 2010
Montana DNRC
Technical Services Section/dr





Mystery Fish Timber Sale Map

512-5B



Attachment A , page 2 of 4
 Sections 7, 8, ,16,17, 18, 20, and 21T33N, R23W,
 and Section 12, T33N, R24W

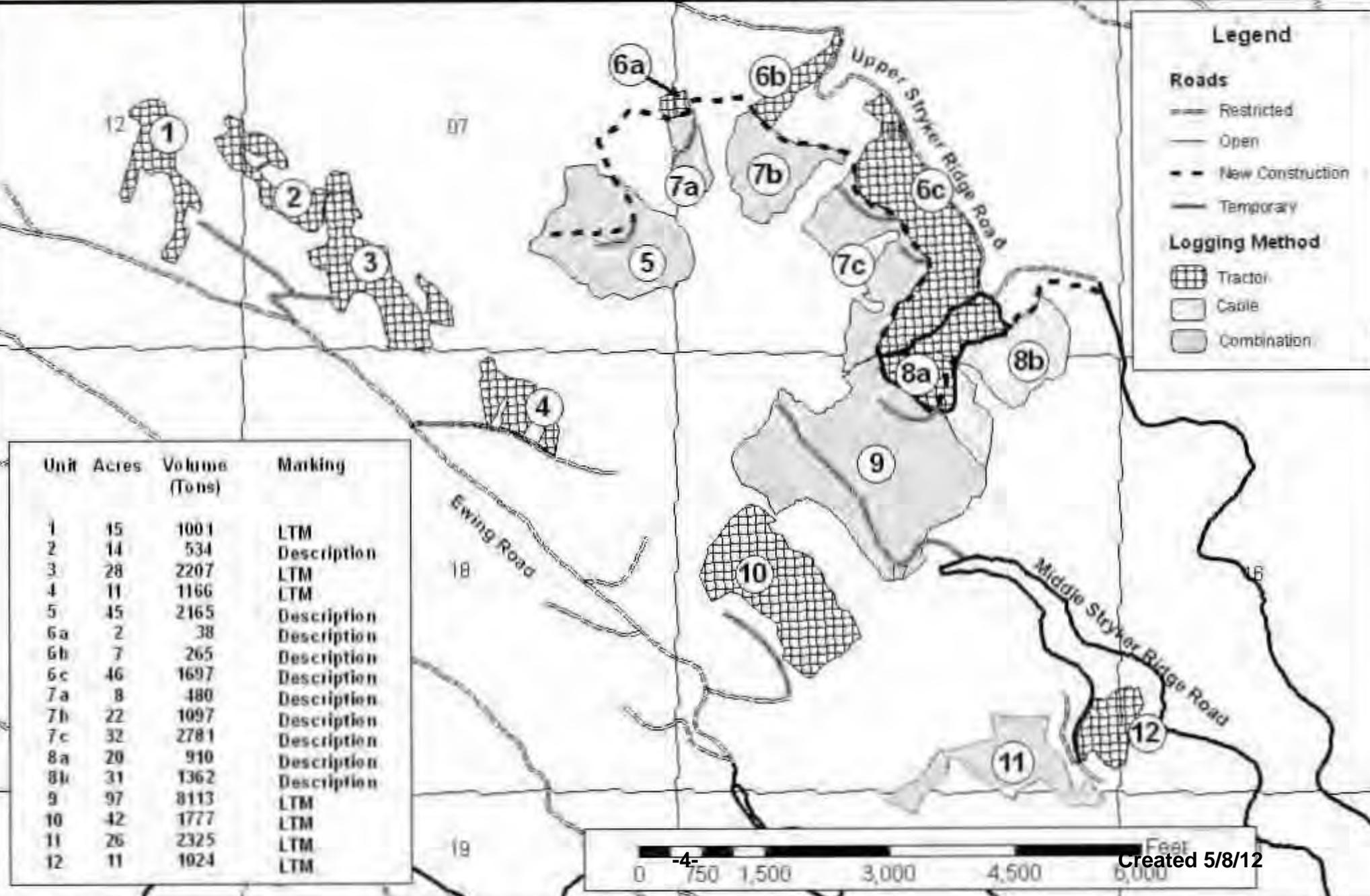
Legend

Roads

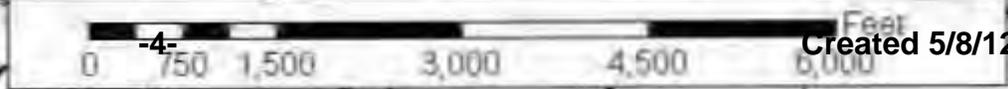
- Restricted
- Open
- - - New Construction
- Temporary

Logging Method

- Tractor
- Cable
- Combination



Unit	Acres	Volume (Tons)	Marking
1	15	1001	LTM
2	14	534	Description
3	28	2207	LTM
4	11	1166	LTM
5	45	2165	Description
6a	2	38	Description
6b	7	265	Description
6c	46	1697	Description
7a	8	480	Description
7b	22	1097	Description
7c	32	2781	Description
8a	20	910	Description
8b	31	1362	Description
9	97	8113	LTM
10	42	1777	LTM
11	26	2325	LTM
12	11	1024	LTM



Created 5/8/12

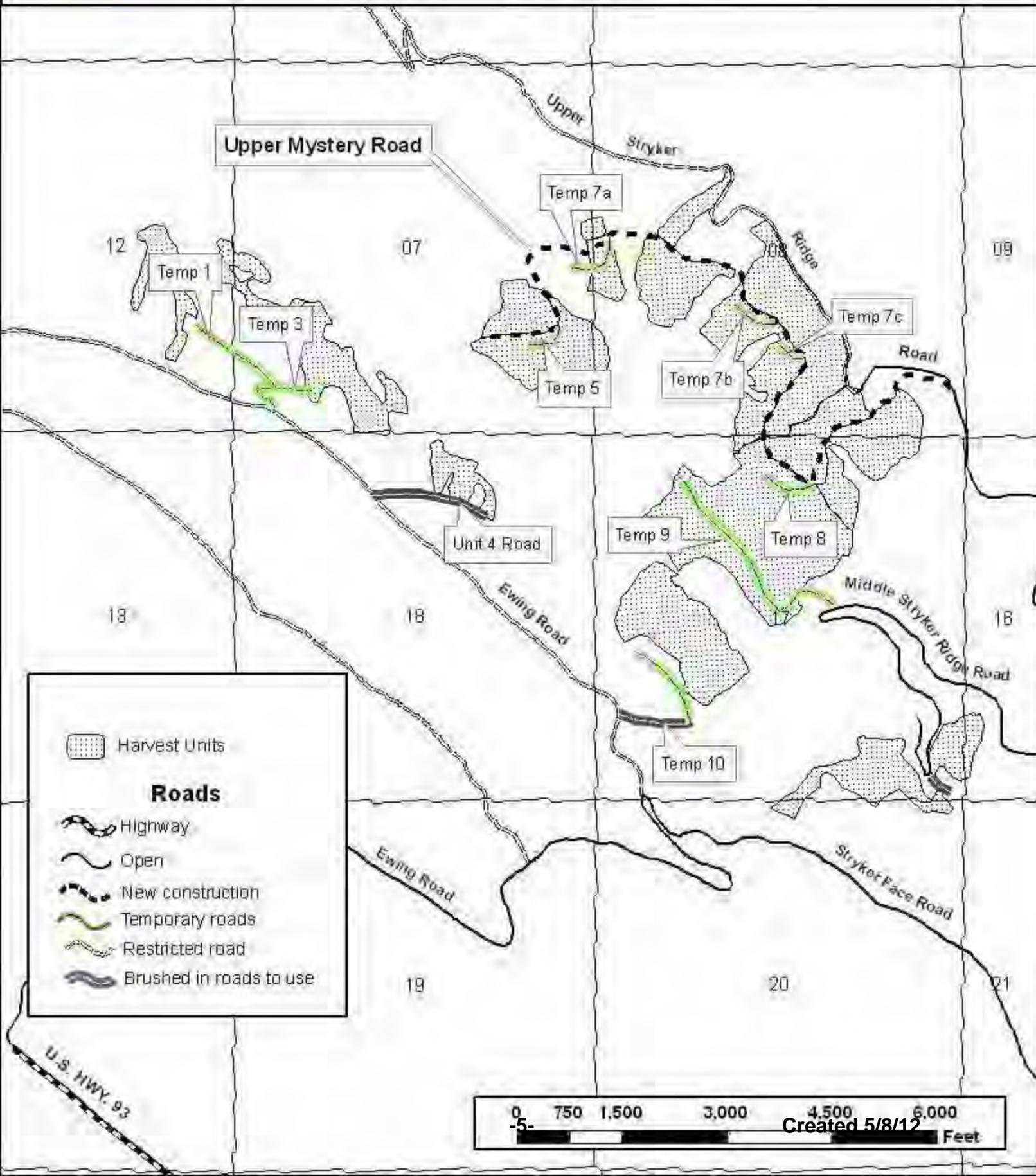


Road Work Map

512-5B

Attachment A, page 3 of 4

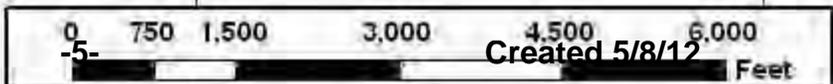
Sections 7, 8, 16, 17, 18, 20, and 21, T33N, R23W
and Section 12, T33N, R 24W



Harvest Units

Roads

- Highway
- Open
- New construction
- Temporary roads
- Restricted road
- Brushed in roads to use



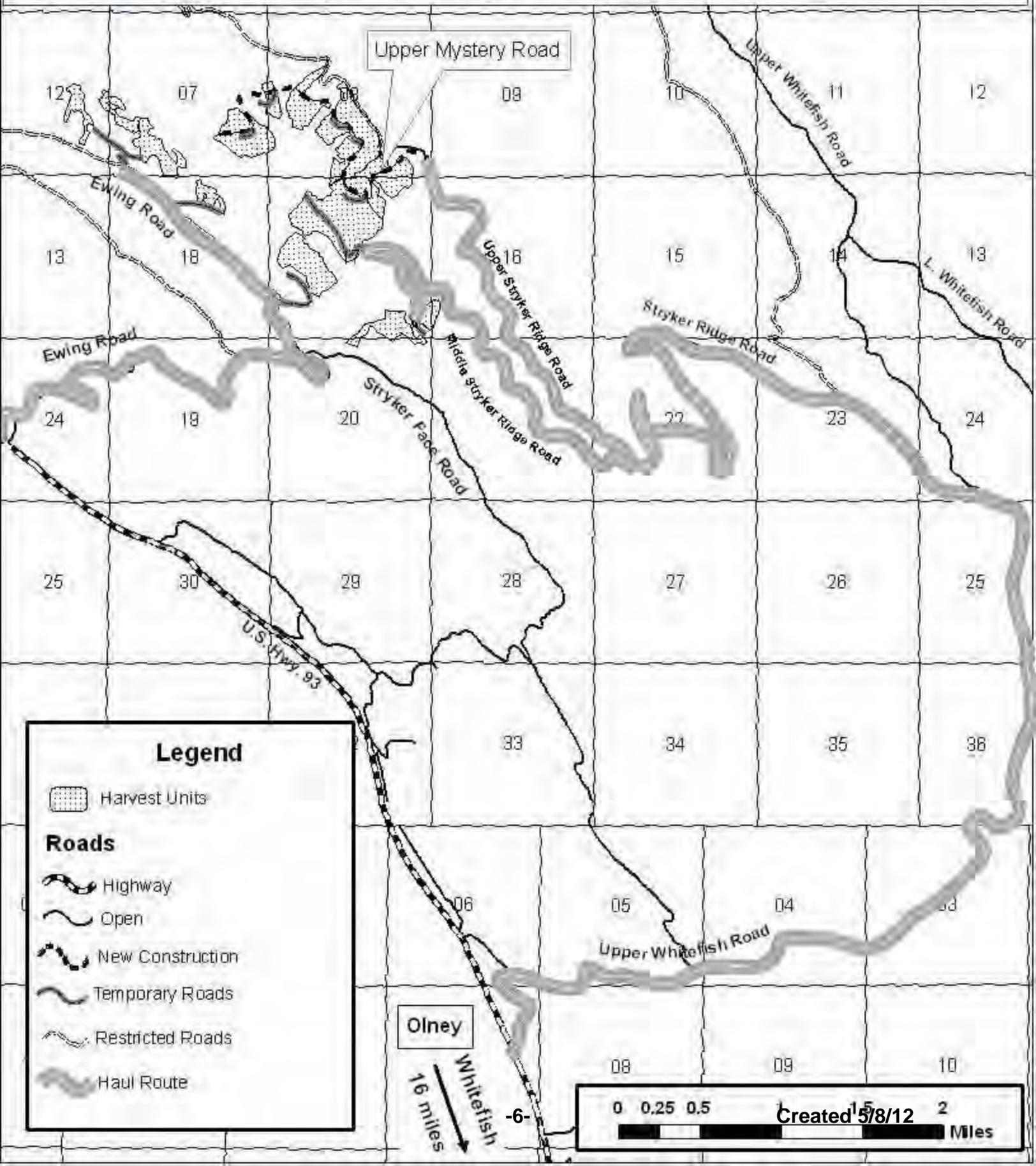
Created 5/8/12



Haul Route Map

512-5B

Attachment A, page 4 of 4
Sections 7, 8, 16, 17, 18, 20, and 21, T33N, R23W
and Section 12, T33N, R 24W



Legend

- Harvest Units
- Roads**
- Highway
- Open
- New Construction
- Temporary Roads
- Restricted Roads
- Haul Route

Olney

Whitefish
16 miles



Created 5/8/12

REID DIVIDE TIMBER SALE

May 21, 2012
Land Board

Location of Sale:

- Kalispell Unit (NWLO) – Located approximately 16 air miles west of Whitefish, Montana
- Flathead County – Section 36, T30N-R24W
- 100% CS
- This sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP.

Sale Volume & Estimated Value:

- The estimated volume is 27,497 tons (4,640 MBF) with a conversion factor of 5.93 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
\$14.87	\$4.24	\$19.11	27,497	\$525,467.67

Sale & Harvest Treatments:

- The sale consists of 4 harvest units totaling 290 acres.
- Silvicultural treatments would improve forest health and promote the regeneration of western larch.
- Timber harvest would focus on improving the current and future productivity of forest stands in the project area and ensuring the future forest stands meet the objectives of biodiversity and productivity.
- Timber harvesting would occur in 111 acres of old growth. Due to the use of old growth maintenance treatments these acres would remain classified as old growth after harvesting activities.

Harvest Systems:

- 100% tractor.

Roads:

- Approximately 3,000 feet of temporary road may need to be constructed.

Public Involvement:

On 8/23/11, the DNRC sent scoping letters to adjacent landowners and other known interested parties and organizations. A public notice was posted in *The Daily Interlake* on 8/28/11 and 9/04/11. One letter was received and offered support of the project as proposed. Hydrological, soils, wildlife and vegetative issues were identified by DNRC specialists and field foresters for both the No Action and the Action Alternative. The Interdisciplinary Team (ID Team), made up of DNRC's wildlife biologist, hydrologist, and a FWP wildlife biologist, began compiling the issues and gathering information related to current conditions. The issues and concerns identified through public scoping were summarized and used to further refine the project.

Issues & Mitigations

- Old Growth – There are 111 acres of old growth within the project area. Old growth maintenance treatments would retain enough large live trees to meet DNRC's old growth definition. While some old growth attributes would be reduced, these stands would remain classified as old growth following harvest.

The Director recommends the Land Board direct the Department to approve the Reid Divide Timber Sale.

49°00'N

115°00'W

512-5C

49°00'N

Vicinity Map
Reid Divide
Timber Sale

Attachment A

48°00'N

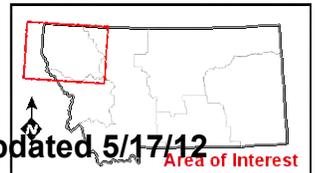
48°00'N

115°00'W



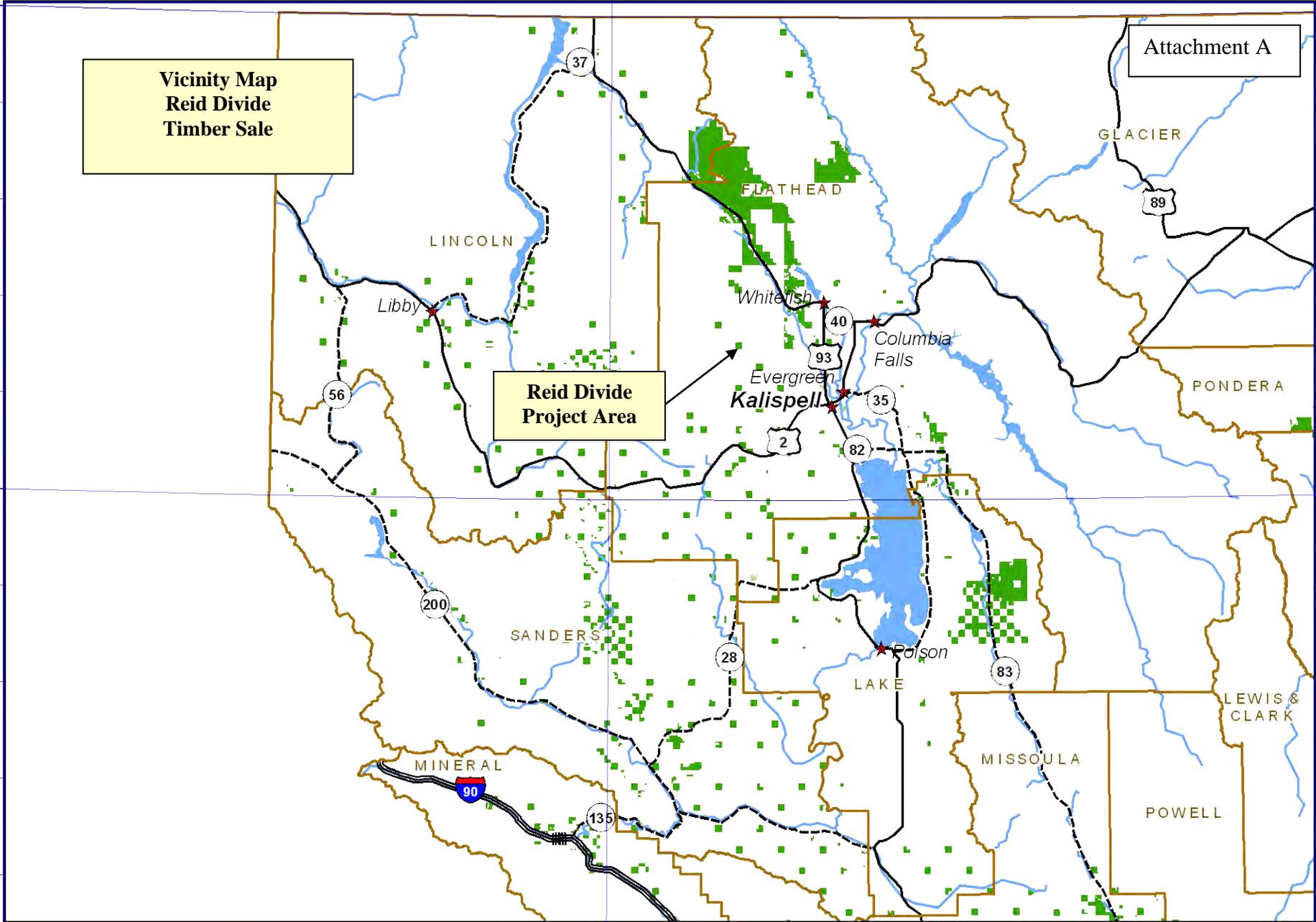
- | | | | | | |
|--|--------------------|--|--------|--|-------------------------|
| | Interstate Highway | | Rivers | | Lakes |
| | U.S. Route | | City | | DNRC managed for timber |
| | State Highway | | County | | DNRC other |

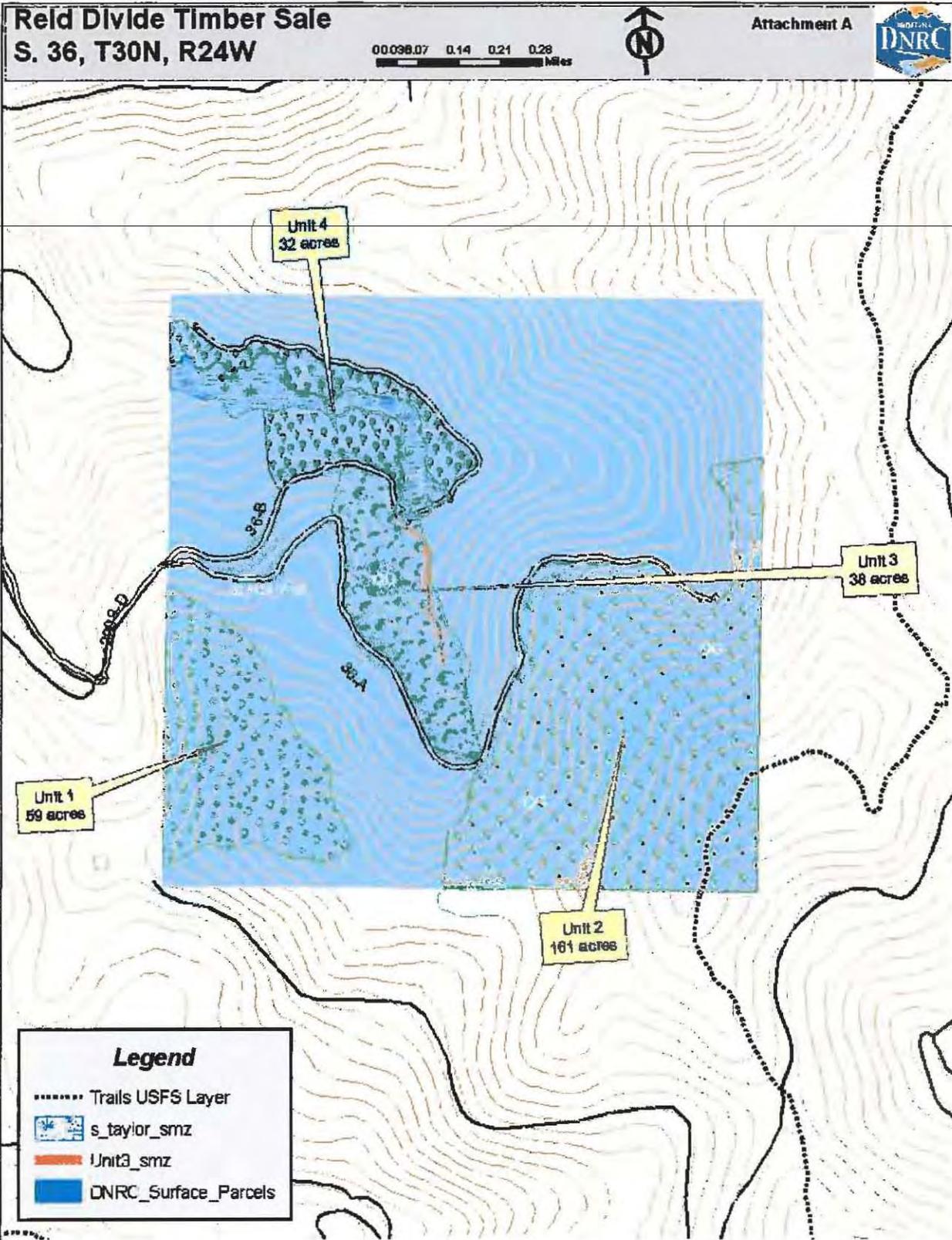
21 February 2007
Montana DNRC
Technical Services Section/dr

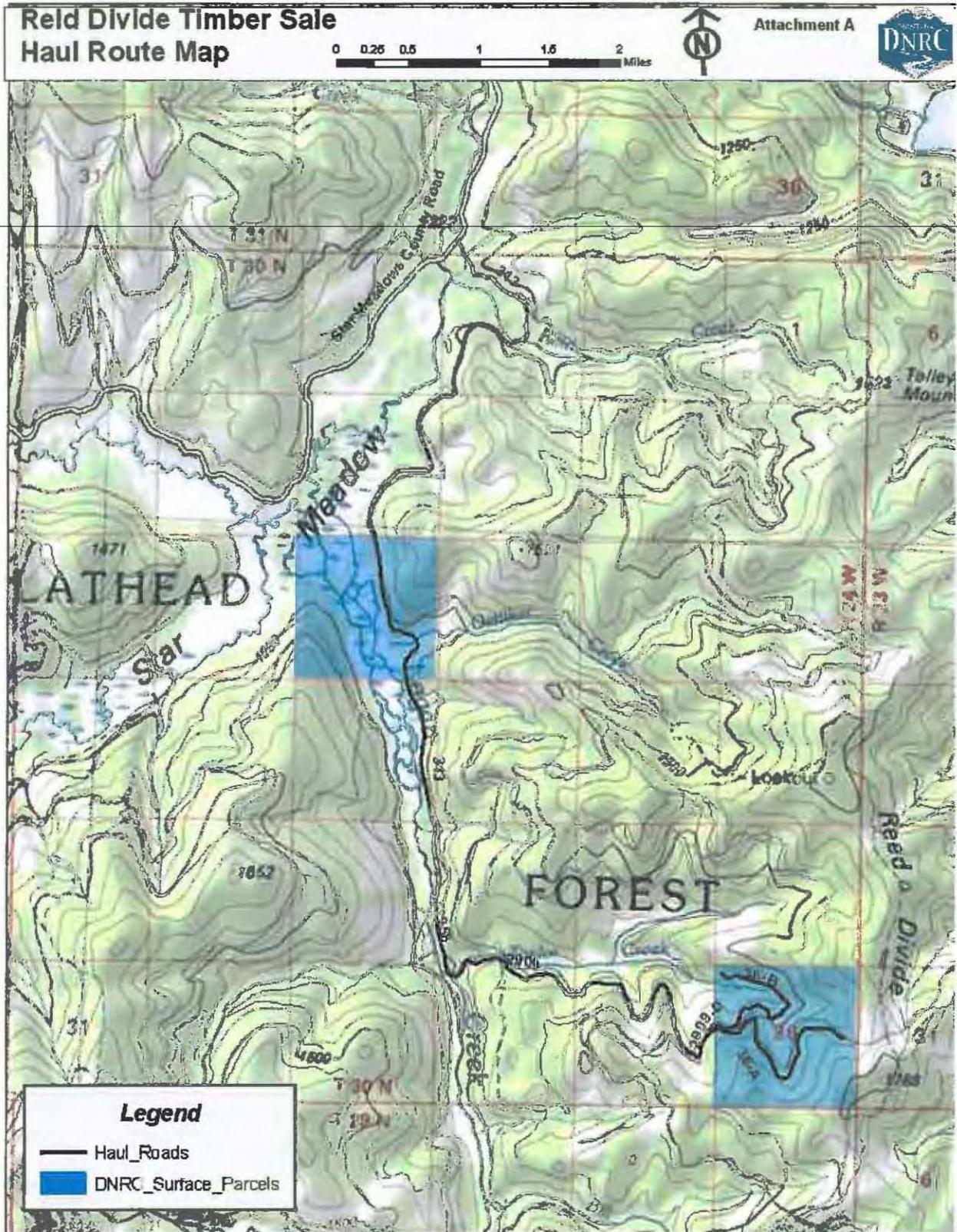


Updated 5/17/12

Area of Interest







512-6

Preliminary Approval for Land Banking Parcel

LAND BOARD AGENDA ITEM
May 21, 2012

PRELIMINARY APPROVAL FOR SALE OF LAND BANKING
PARCEL # 684
MINERAL COUNTY

Seller: State of Montana, Department of Natural Resources and Conservation

Nominators: Parcel 684 – Lessee - MT Dept. Environmental Quality

Location: Parcel 684 – is located approximately 2 miles north of Superior.

Property Characteristics: Parcel 684 – This parcel is primarily forested and currently being leased as a repository to safely accumulate mine waste in conjunction with the clean-up of the Iron Mountain Mine Project.

Access: Parcel 684 - This parcel has legal public access via Flat Creek Road. The parcel is adjacent to state lands to the North, East and West. Private land located to the South. The site is currently restricted from public access to prevent any damage or disturbance to the materials capping and hazardous waste repository therefore provides no recreational opportunities for the public.

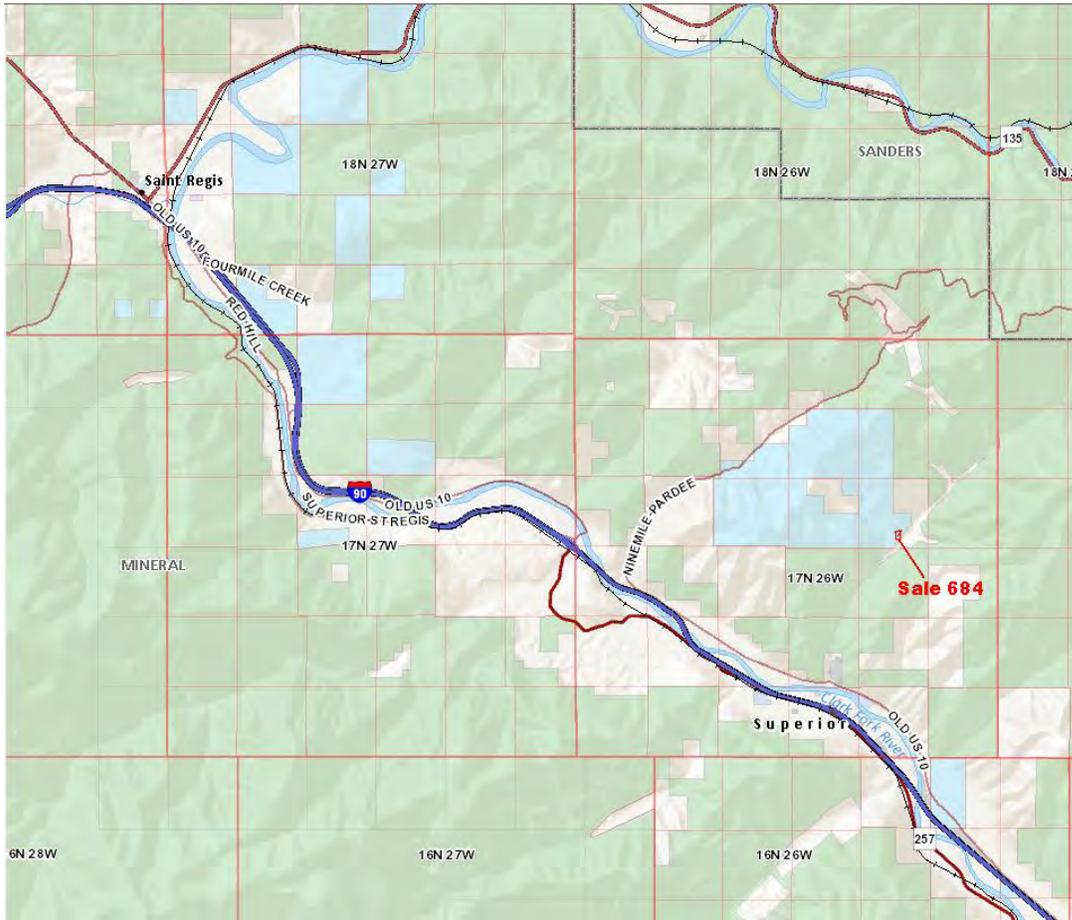
County	Sale #	# of Acres	Legal	Trust
Mineral	684	12 ±	Pt Lots 4 & 5, Section 14, T17N-R26W	Public Buildings
Total Acres		12 ±		

MEPA Issues: Parcel 684 – None

Recommendation: The Director recommends that the Board give preliminary approval to sell Parcel # 684.

Mineral County Sale Location Map

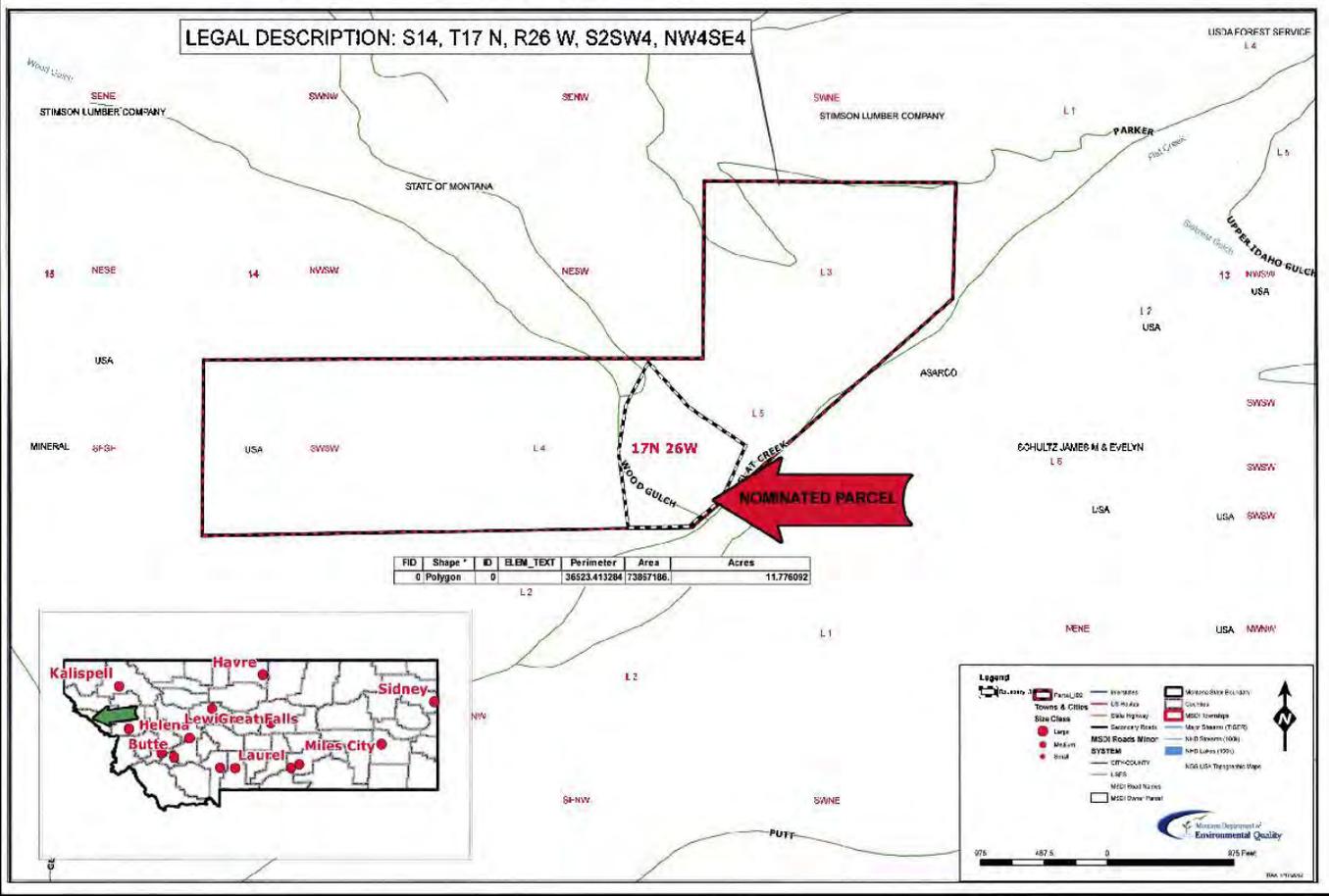
512-6



Sale #684



LEGAL DESCRIPTION: S14, T17 N, R26 W, S2SW4, NW4SE4



512-7

FINAL APPROVAL FOR SALE OF LAND BANKING PARCELS

- A. Deer Lodge County
- B. Gallatin County
- C. Hill County

LAND BOARD AGENDA ITEM

May 21, 2012

**FINAL APPROVAL FOR SALE OF LAND BANKING
PARCEL # 631
DEER LODGE COUNTY**

Seller: State of Montana, Department of Natural Resources and Conservation

Nominator: Parcel 631 – Lessee, Don Ueland

Location: Parcel 631 – is located 5 miles northeast of Anaconda.

Property Characteristics: Parcel 631 – This parcel is relatively flat and used for grazing and hay production. Soils in the parcel are moderately affected by pollutants from the historic Anaconda Smelter. This parcel is included on the EPA Superfund CERLIS site. The lessee of this parcel has contributed to remediation of the heavy metal influenced soils by deep tilling, lime amendments, adding organic top-dressing and seeding to improve soil properties and range productivity. Hay land comprises 98 acres of this parcel while grazing land is 222 acres.

Access: Parcel 631 – Is legally accessibly by the public. Access is via a county road, from Highway 273.

Economic Analysis: Short term – The rate of return on the sale parcel is 0.68% for Common Schools. They would continue to receive this return if the parcel is not sold.

Long term – The sale of this parcel would result in acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 1.91%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

This parcel was inventoried to Class III standards for cultural and paleontologic resources on August 17th, 2009, prior to remediation work being done. No Heritage Properties or Paleontological Resources were identified. Further, neither Judith River nor Hell Creek geological formations occur on or beneath the ground surface of the subject state tract. A cultural and paleontologic resources inventory report has been prepared and is on file with the DNRC, and the Montana State Historic Preservation Office.

Background:

In June 2011, the Board approved this parcel to continue through the Land Banking sale evaluation process. In March 2012 the Board set the minimum bid at the appraised value with access as follows:

Sale #	# of Acres	Legal	Minimum Bid	Price/Acre	Trust
631	320	W½, Section 16, T5N-R10W	\$272,000	\$850	Common Schools
Total Sale Price			\$272,000		

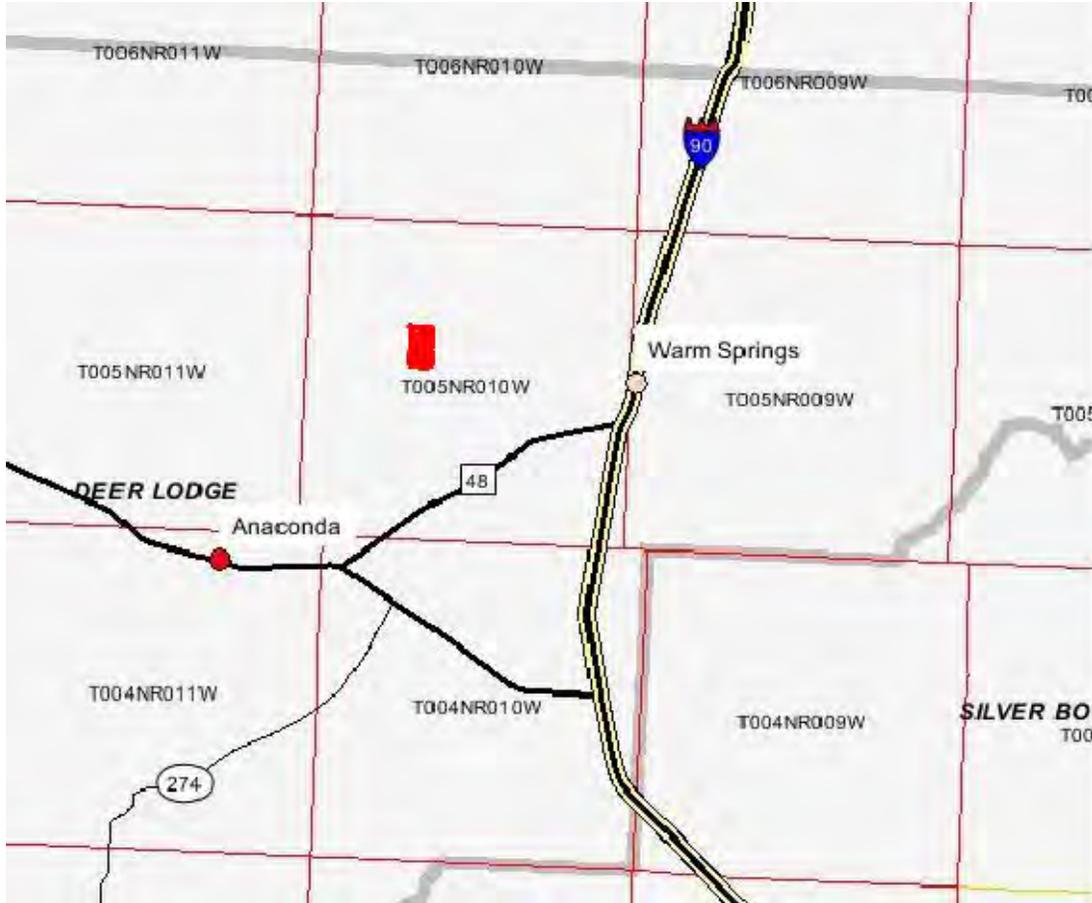
Sale Price:

This parcel was sold at public auction on May 3, 2012. The parcel had only one bidder, and was sold for the minimum bid amount listed above. The total for the above sale is \$ 272,000.

Recommendation:

The Director recommends final approval of Land Banking Sale #631 for the purchase price listed above. The sale will be closed within 30 days of approval.

Deer Lodge County Sale Location Map



Sale #631



LAND BOARD AGENDA ITEM

May 21, 2012

**FINAL APPROVAL FOR SALE OF LAND BANKING
PARCEL # 540
GALLATIN COUNTY**

- Seller:** State of Montana, Department of Natural Resources and Conservation
- Nominator:** Parcel 540 – DNRC, Central Land Office
- Location:** Parcel 540 - is located 1 mile southeast of Bozeman, off Fort Ellis Road.
- Property Characteristics:** Parcel 540 – This parcel is typical farmstead tract, with trees, dwelling, and outbuildings.
- Access:** Parcel 540 - There is legal public access via Fort Ellis Road.
- Economic Analysis:** Short term – The rate of return on the sale parcel is 1.79% for Eastern/Western Grant. They would continue to receive this return if the parcel is not sold.
- Long term – The sale of this parcel would result in acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 1.91%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

This parcel, which is a developed farmstead tract in the SE¼SE¼NE¼, Section 21, T2S R6E, was reviewed by DNRC staff archeologist for cultural and paleontological resources. No *Antiquities*, as defined under the Montana State Historic Preservation Act, were identified. Further, neither Judith River nor Hell Creek geological formations occur on or beneath the ground surface of the subject state tract.

Background:

In July 2008, the Board approved this parcel to continue through the Land Banking sale evaluation process. In October 2011 the Board set the minimum bid at the appraised value with access as follows:

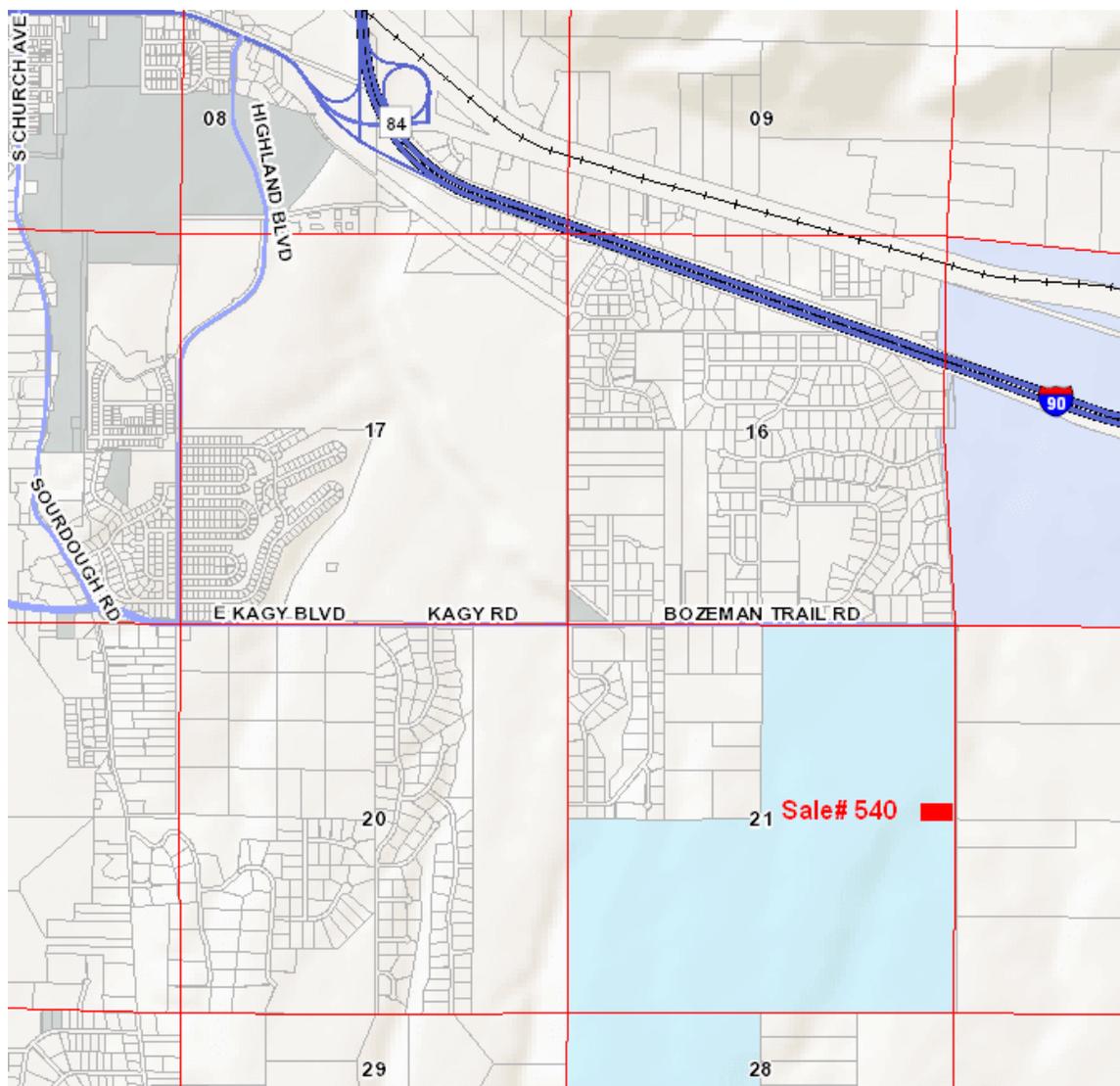
Sale #	# of Acres	Legal	Minimum Bid	Price/Acre	Trust
540	8.493	Tract A in the NE¼, COS 2797, Section 21, T2S-R6E	\$240,000	\$30,000	Eastern/Western

Total Sale Price \$240,000

Sale Price: This parcel was sold at public auction on May 2, 2012. The parcel had only one bidder, and was sold for the minimum bid amount listed above. The total for the above sale is \$ 240,000.

Recommendation: The Director recommends final approval of Land Banking Sale #540 for the purchase price listed above. The sale will be closed within 30 days of approval.

**Gallatin County Sale Location Map
(Southeast of Bozeman)**



Sale #540



LAND BOARD AGENDA ITEM

May 21, 2012

**FINAL APPROVAL FOR SALE OF LAND BANKING
PARCEL # 632
HILL COUNTY**

Seller: State of Montana, Department of Natural Resources and Conservation

Nominator: Parcel 632 – Lessee, Gilford Hutterian Brethren Inc.

Location: Parcel 632 – is located 32 miles northwest of Havre.

Property Characteristics: Parcel 632 – This parcel is flat to gently rolling and used primarily for livestock feeding and grazing. There is a seasonal reservoir that backs up onto this parcel from a dam located downstream on private land.

Access: Parcel 632 – Is legally accessible by the public, access is via a county road. The parcel has minimal recreational value due to its limited size and being bordered by a farm/ranch operation.

Economic Analysis: Short term – The rate of return on the sale parcel is 1.8% for Common Schools. They would continue to receive this return if the parcels were not sold.

Long term – The sale of these parcels would result in acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 1.91%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

This parcel was inventoried to Class III standards for cultural and paleontologic resources in January of 2012. No cultural or paleontologic resources were identified. Further, neither Judith River nor Hell Creek geological formations occur on or beneath the ground surface of the subject state tract. The geology of the project area is described as moderately hard sandstones with soft gray and black shales. Soils at and near the ground surface of the state tract are previously and actively cultivated glacial till.

A cultural and paleontologic resources inventory report has been prepared and is on file with the DNRC, and the Montana State Historic Preservation Office.

Background:

In October 2011, the Board approved this parcel to continue through the Land Banking sale evaluation process. Prior to nomination of this parcel the Gilford Colony had agreed to a minimum bid of at least \$450 per acre. In March 2012 the Board set the minimum bid at the previously agreed upon value of \$450 per acre:

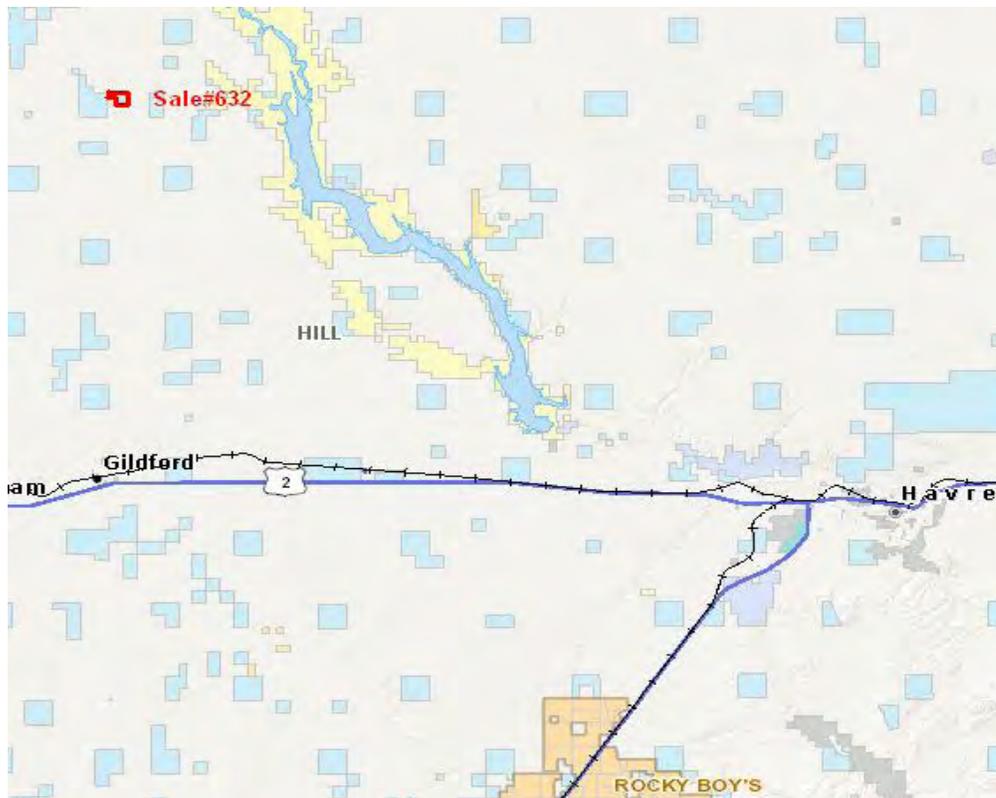
Sale #	# of Acres	Legal	Minimum Bid	High Bid	Trust
632	200	NW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, Section 15, T35N-R11E	\$90,000	\$210,000	Common Schools
Total Sale Price			\$210,000		

Sale Price:

This parcel was sold at public auction on May 4, 2012. The parcel had two bidders (Gilford Colony and Todd Hansen of Hansen Grain Company), and was sold for the high bid amount listed above. The total for the above sale is \$ 210,000.

Recommendation:

The Director recommends final approval of Land Banking Sale #632 for the purchase price listed above. The sale will be closed within 30 days of approval.

Hill County Sale Location Map

Sale #632



512-8

2012 AGRICULTURE AND GRAZING COMPETITIVE BID HEARINGS

- A. Lease No. 9208 – Broken Circle Three Land & Cattle (Lessee)/Jason Kelly (Bidder)
- B. Lease No. 9992 – Broken Circle Three Land & Cattle (Lessee)/Marvin Strand (Bidder)
- C. Lease No. 1528 – J&J Livestock Inc. (Lessee)/Randy Smith (Bidder)
- D. Lease No. 2425 – Joseph & Charlotte Brummer and Conrad Inc. (Lessee)/ Frederick & Sandra Miller (Bidder)

2012 COMPETITIVE BID HEARINGS

Findings and Recommended Rental Rates for

Agricultural and Grazing Lease Nos.

9208, 9992, 1528, and 2425

A report to the State Board of Land Commissioners by

Mary Sexton

Montana Department of Natural Resources and Conservation

May 3, 2012

TABLE OF CONTENTS

Introduction	3
1. Lease No. 9208, Lessee: Broken Circle Three Land & Cattle (Dean Schillinger) High Bidder: Jason Kelly.....	6
2. Lease No. 9992, Lessee: Broken Circle Three Land & Cattle (Dean Schillinger) High Bidder: Marvin Strand.....	8
3. Lease No. 1528, Lessee: J & J Livestock Inc. (Clayton Jardee) High Bidder: Randy Smith.....	10
4. Lease No. 2425, Lessee: Joseph & Charlotte Brummer and Conrad Inc. High Bidder: Frederick & Sandra Miller.....	12

INTRODUCTION

On April 11, 2012 the Department recently held Competitive Bid Hearings for State of Montana Agricultural and Grazing Leases Nos. 9208, 9992, and 2425, which are being renewed in 2012. The Hearing on Lease No. 5208 was held on May 2, 2012. These new ten-year leases will expire on February 28, 2021. 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 stability of tenure allows lessees to operate more efficiently. The duty to 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 the 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. 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 will be induced to over-graze the tract, or reduce inputs such as herbicides, and long-term trust income 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 must be 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 four leases. Three of the hearings were conducted on April 11, 2012 at the offices of the Department in Helena, Montana. One was conducted via a video link to the Department's offices in Miles City, Montana on May 2, 2012. 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 Mary Sexton; 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. Eastern Land Office Area Manager, Chris Pileski and Land Use Specialist Scott Aye were present at the Hearing on Lease No. 1528.

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:

2012 COMPETITIVE BID HEARINGS

Hearing Time: Wednesday, April 11, 2012 @ 8:30 a.m.

Lease No.: 9208

County: McCone

Lessee: Broken Circle Three Land & Cattle (Dean Schillinger)

Tracts: T21N R49E S6: Lots 1 & 2, S½NE¼, SE¼ - 320.06 Ac. - Common School Grant

Grazing Acres: 116.7

AUM Rating: 55

Ag (Crop) Acres: 202.3

High Bidder: Jason Kelly

High Bid: \$15.00 per AUM and 35% crop share or \$25.00 per Acre

Other Bids: None

Previous Rental: \$9.00 per AUM and 30% crop share

Prevalent Community Rental Information:

State Land County Bid Averages: \$21.88 /AUM and ⅓ crop share

MT Ag Statistics 2011 Private Lease Rate: \$19.40/AUM

Findings:

Mr. Dean Schillinger and Mrs. Loraine Schillinger appeared on behalf of the Lessee. Mr. Jason Kelly appeared on behalf of the High Bidder. Mr. Schillinger possesses no private property directly adjacent to Lease No. 9208. He emphasized that proper stewardship of these lands were essential to maintain their productivity. Mr. Schillinger testified that he utilized a continuous-cropping method on the agricultural acres of Lease 9208 by annually spraying Round-up herbicide and then seeding wheat, peas, lentils, and Sudan grass in rotating crops. Mr. Schillinger has considerable experience and skill in this method of farming and he has obtained excellent results and good crop yields given the limited potential of the soils upon this parcel of State land. Utilizing a series of photographs of the State land (Photographs Nos. 1 – 27), Mr. Schillinger described how no-till farming practices benefit the health and productivity of this State parcel by preserving soil moisture, preventing soil erosion, and increasing soil fertility. Mr. Schillinger also submitted photographs 109 through 111, which show heavy erosion on other similar local lands where continuous-cropping is not utilized by those operators. The weeds on this Lease No. 9208

are virtually non-existent due to careful application of herbicide by the Lessee. Mr. Schillinger stated that he knew of other State leases within 10 miles of Lease No. 9208 whose rental rates varied from a 25% to a 35% cropshare.

Mr. Schillinger has constructed a well-built set of fences on this parcel to control livestock use. This parcel is directly accessible by Mr. Schillinger via a County road.

The High Bidder, Mr. Kelly possesses private lands directly west of Lease No. 9208 in the West half of Section Six. Mr. Kelly confirmed that Mr. Schillinger had been a good Steward of Lease No. 9208, and Mr. Kelly's application for this lease is purely predicated upon his interest in expanding his agricultural operation and the convenience of operating additional acreage in direct proximity to his private lands. Although he has not farmed long, Mr. Kelly has enjoyed some success farming the last two years and recently raised a crop of Sudan grass yielding 3 tons to the acre on 170 acres. Mr. Kelly stated that he contacted the bank in Jordan for information on cash rates for crop and pasture lands. They recommended he bid \$35.00 per acre for cropland and \$19 - \$22 per AUM for pasture. Mr. Kelly believed this was too high as he had leased his own crop land for \$20.00 per acre and his tenant had agreed to increase the rent to \$22.00 per acre before Mr. Kelly decided to farm the land himself. For the grazing land, Mr. Kelly decided to bid approximately double the minimum rate.

Recommendation:

Although the lessee provided evidence of how his conservation practices have improved the condition of these lands since acquiring the lease, he did not provide sufficient factual information as to why the bid rate was above community standards or would cause long term damage to the tract. The Director recommends that Lease No. 9208 be re-issued to Broken Circle Three Land and Cattle (Dean Schillinger) at the rate of the High Bid of \$15.00/AUM and 35% crop share with a \$25.00/acre cash minimum guarantee.

2012 COMPETITIVE BID HEARINGS

Hearing Time: Wednesday, April 11, 2012 @ 9:30 a.m.

Lease No.: 9992

County: McCone

Lessee: Broken Circle Three Land & Cattle (Dean Schillinger)

Tracts: T23N R47E S36: All - 640 Ac. - Common School Grant

Grazing Acres: 640

AUM Rating: 153

Ag (Crop) Acres: 0

High Bidder: Marvin Strand

High Bid: \$17.90 per AUM

Other Bids: None

Previous Rental: \$9.00 per AUM

Prevalent Community Rental Information:

State Land County Bid Averages: \$21.88 /AUM

MT Ag Statistics 2011 Private Lease Rate: \$19.40/AUM

Findings:

Mr. Dean Schillinger appeared on behalf of the Lessee. Mr. Marvin Strand appeared on behalf of the High Bidder.

Mr. Schillinger testified that his objective in managing this State parcel of grazing land was to safeguard its productivity, and observed that without conservation of the land's productivity, it would not produce any revenue. In the last ten years this State parcel has sustained damage from hail and grasshoppers, yet through prudent stewardship, the Lessee has still been able to utilize this tract. The Lessee has installed an electric cross-fence as a tool to better distribute and control livestock use, and has constructed a water pipeline, a 6,000-gallon storage tank, and a stock tank to provide a dependable source of water for livestock. (See, photographs Nos. 2, 12, 15, and 17) The range evaluation and photographs submitted by the Lessee show this State parcel to be in good condition with a very low incidence of noxious weeds (See, photographs 18, 19, 20, 21, 22, and 23). Cow Creek meanders through the northern portion of the lease and provides potable water during the early part of the grazing season. There is direct public access

to this State parcel via the Cow Creek Road on the northern section line of Section 36.

Mr. Schillinger challenged the notion that rental rates for private and State leases are directly comparable, noting that in private leases, the lessor usually takes financial responsibility for major costs like fencing, and other improvements.

Mr. Strand testified that he has leased grazing lands in the same area for \$14.00/AUM for yearling heifers, and contended that his High Bid of \$17.90/AUM was reasonable. He gave no examples of local leases at the rate of \$17.90/AUM for comparable lands. He previously had a private grazing lease where the lessor provided the fencing. Mr. Strand has experience as a licensed chemical dealer, but he is more interested in biological control methods to suppress noxious weeds. He has private property one-half mile to the west of this State parcel. Mr. Strand confirmed that Mr. Schillinger has done a good job of managing this parcel of State grazing land, but Mr. Strand would like to have this State lease to expand his operating acres. He observed that warm weather grasses shouldn't be grazed in the Spring; but should be grazed when mature.

Recommendation:

The Director recommends that Lease No. 9992 be re-issued to Broken Circle Three Land and Cattle at the rate of \$15.00/AUM, which is the same rental rate recommended for Lease No. 9208.

2012 COMPETITIVE BID HEARINGS

Hearing Time: Wednesday, May 2, 2012 @ 1:00 p.m.

Lease No.: 1528

County: Carter

Lessee: J & J Livestock Inc. (Clayton Jardee)

Tracts: T1N R61E S16: All - 640 Ac. - Common School Grant

Grazing Acres: 624

AUM Rating: 150

Ag (Crop) Acres: 0

High Bidder: Randy Smith

High Bid: \$50.00 per AUM

Other Bids: None

Previous Rental: Minimum

Prevalent Community Rental Information:

State Land County Bid Averages: \$20.18 /AUM

MT Ag Statistics 2011 Private Lease Rate: \$19.40/AUM

Findings:

Mr. Clayton Jardee appeared on behalf of the Lessee, J & J Livestock, Inc. Mrs. Mary Smith appeared on behalf of the High Bidder, Randy Smith.

Mr. Jardee testified that it was his belief that the High Bid of \$50.00/AUM was excessive and made no economic sense. However, when questioned about the prevailing private grazing rental rates in the local community, Mr. Jardee professed to have no knowledge of any private grazing rental rates. He stated that he only knew of other State grazing leases that required cumulative annual rental payments of \$2,000 to \$2,500 per section of grass. Mr. Jardee stated that the Lessee diligently attempted to control weeds by spraying herbicide from a spray unit on an all-terrain vehicle. Water for livestock is available via Box Elder Creek and Spring Creek, which both run through this parcel. The Lessee has constructed five water gaps in Box Elder Creek by which to provide water to livestock. The Lessee accesses this parcel via an unimproved road on the southern boundary of the parcel directly from the Lessee's adjacent private lands in Section 21. The Lessee also controls lands directly to the east of this parcel in the NW¼ of Section 15.

Mr. Jardee testified that the Lessee implements a conservative grazing management policy of “taking half the grass and leaving half the grass” and utilizing this forage in the Fall grazing season, typically from September 15th to the end of October, so as to promote the vigor of the native grasses. Mr. Jardee questioned whether some of the fencing for this State parcel was on the boundary line, or whether it would be necessary to re-locate the fence should another party obtain this lease.

Mrs. Smith acknowledged that the High Bid of \$50.00/AUM was high, but testified that the High bid reflected the value of controlling this State lease to the High Bidder. The State lands are directly adjacent to the High Bidder’s privately-controlled lands in the SW¼ of Section 15 and Section 22. Mrs. Smith said that, should the High Bidder be awarded the lease, the resulting convenience and reduction of traffic on the access road running through the High Bidder’s lands in Section 22, outweighed the increased economic burden of the High Bid. This lease would consolidate and simplify the High Bidder’s ranching operation. The High Bidder simply recognized that a high bid would be necessary to obtain the lease. Mrs. Smith testified that this State lease was previously operated by her Grandfather and her Uncle and that the High Bidder was familiar with the characteristics of the parcel. She stated that the High Bidder intended to manage the forage on this parcel conservatively, keep the water gaps maintained, and, if necessary, re-locate any fences and make them “sheep – tight”. Mainly, the High Bidder intended to graze this parcel in the Spring with cow – calf pairs, but wished to maintain some flexibility in its season of use to reflect changing forage conditions and weather. Mrs. Smith stated that the High Bidder intended to control weeds via use of a backpack sprayer.

Recommendation:

The good range condition of this State parcel amply demonstrates the skill and capability of J & J Livestock, Inc. to continue to wisely manage this tract. Although the High Bidder did propose management scenarios for the parcel, she did not present enough evidence by which to confidently judge the High Bidder’s grazing management experience. High Bidder did assert the economic and convenience factors in support of the high bid.

Although the high bid of \$50.00 per AUM is substantially higher than other bids received for state leases in Carter County, J & J Livestock, Inc. failed to present any evidence at this Hearing of prevailing community grazing rental standards in order to justify any rental reduction. Where a Lessee fails to compare the qualities of a State parcel with other leased lands in the local community, together with their comparative rental rates, no evidentiary basis exists for a rental reduction. Thus, the Director recommends that State Lease No. 1528 be re-issued to the Lessee, J & J Livestock, Inc. at the rate of the High Bid: \$50.00/AUM.

2012 COMPETITIVE BID HEARINGS

Hearing Time: Wednesday, April 11, 2012 @ 1:00 p.m.

Lease No.: 2425

County: Blaine

Lessee: Joseph & Charlotte Brummer and Conrad Inc.

Tracts: T33N R21E S36: N½, SW¼ - 480 Ac. - Common School Grant

Grazing Acres: 459

AUM Rating: 113

Ag (Crop) Acres: 0

High Bidder: Frederick & Sandra Miller

High Bid: \$27.90 per AUM

Other Bids: None

Previous Rental: Minimum

Prevalent Community Rental Information:

State Land County Bid Averages: \$ 16.20/AUM

MT Ag Statistics 2011 Private Lease Rate: \$19.40/AUM

Findings:

Joseph and Charlotte Brummer appeared on behalf of the Lessees. Frederick and Sandra Miller appeared on behalf of the High Bidders.

Mr. Brummer testified that his family had acquired this lease in 1963 and that for the past 49 years they have tried to work cooperatively with the Department to maintain the range condition of this State parcel. Thirty acres of this lease lying in the SW¼ of Section 36 south of Highway 2 is not utilized by the Lessees, although it remains a part of this lease. Recently due to ill-health, Mr. Brummer has taken a less active role in the on-going management of this State parcel. The Brummers own private property adjacent to this State parcel in the North half of Section 31 and the Southwest quarter of Section 30. Brummers are in the process of selling their livestock to Conrad, Inc., which is a co-Lessee of this State parcel. Mr. Brummer submitted a letter from James A. & Jennifer L. Conrad, who are the President and Secretary, respectively, of Conrad, Inc., authorizing Mr. Brummer to speak on their behalf at this competitive bid. However, the Conrads did not appear at the hearing. The Conrads now perform the

majority of the active management of this State parcel.

This State parcel is directly accessible on its eastern section line by the "Eight-Mile Road" which is a County Road, and the State parcel is bisected by the Fort Belknap irrigation canal, which runs East and West across the North half of Section 36.

Mr. Brummer contended that the High Bid of \$27.90/AUM was an exorbitant rate for the local area. He knew of other State lands that were better quality soils that were being leased at the minimum rate of \$7.90/AUM. However, Mr. Brummer admitted that he was currently leasing his adjacent private lands to the Conrads at the rate of \$22.50/AUM.

This land has developed some saline seep concerns due to a plugged drainage ditch under the railroad trestle on the southern section line of the State parcel. Although the Lessees and the High Bidders have discussed a cooperative effort to clean this ditch, no action has been taken by the Brummers to do so which would reduce the static water level and allow the affected lands to be remediated. There is some incidence of burdock near the corral on this parcel, and some Canadian Thistle present along the canal. Mr. Brummer stated that he has sprayed herbicide at the corral, but that the Lessees typically depend upon a contract with the County to spray weeds upon this State land.

The Millers possess a 4-wheel ATV with a spray attachment and affirmed that with that equipment they could easily and promptly control noxious weeds on this State parcel. The Millers own private land that is directly adjacent to this State parcel in the SE $\frac{1}{4}$ of Section 36 and the SW $\frac{1}{4}$ of Section 31. The Millers currently truck their livestock 61 miles to reach their summer grazing pasture. Mr. Miller stated that nearby Tribal lands are leased at a rate of \$30.00/AUM. Consequently, to the Millers, the High Bid of \$27.90/AUM was considerably cheaper and more convenient than trucking their livestock a great distance, and represents a savings to them in terms of time and money.

Recommendation:

The high bidder provided specific information as to why their bid of \$27.90 per AUM was reasonable given that the tract is immediately adjacent to their property. They also spoke directly to the items contained in ARM 36.25.117 (9b) regarding the basis for why they should be selected as lessee, detailing their experience in farming & ranching, how they would manage the property and control weeds.

The Director recommends that Lease No. 2425 be issued to the High Bidders, Frederick & Sandra Miller, at the rate of the High Bid - \$27.90/AUM, upon the following conditions:

- 1) that prior to use of the State parcel, a rest-rotation grazing management plan shall be submitted for approval by the local Unit Office;
- 2) that prior to use of the State parcel, the lease be cross-fenced with an electric moveable "hot-wire";
- 3) that the lease contain a prohibition against feeding hay on the parcel;
- 4) that a plan be submitted to the local Unit Office to clean the drainage ditch on the Southern area of this State parcel to as to provide for proper drainage and remediation of the saline seep problem developing on this State parcel; and
- 5) that the lessee shall annually report to the Department's Havre Office, the class of livestock, livestock numbers and on/off dates for the lease.