AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, October 21, 2013, at 8:30 a.m.
State Capitol
Helena, MT

ACTION ITEMS

1013-1 **FWP: Land Acquisition – North Shore Flathead Lake Wildlife Management Area (Addition)**
Benefits: N/A (non-trust land)
Location: Flathead County

1013-2 **FWP: Land Acquisition – Fishing Access Sites**

A. Upper Big Spring Creek
Benefits: N/A (non-trust land)
Location: Fergus County

B. Carroll Trail Addition (on Lower Big Spring Creek)
Benefits: N/A (non-trust land)
Location: Fergus County

C. Prickly Pear
Benefits: N/A (non-trust land)
Location: Lewis and Clark County

1013-3 **Timber Sale: Bitter Herrig**
Benefits: Common Schools, Public Buildings
Location: Flathead County

1013-4 **Communitization Agreements**

A. G3 Operating, LLC – Olson 1-21-16H Well
Benefits: Common Schools
Location: Roosevelt County

B. Whiting Oil and Gas – State 21-28H Well
Benefits: Common Schools
Location: Richland County

1013-5 **Land Banking Parcels: Preliminary Approval for Sale**

A. Stillwater County
Benefits: Common Schools
Location: Stillwater County

B. Yellowstone County
Benefits: Common Schools
Location: Yellowstone County

1013-6 **Land Banking Parcels: Final Approval for Sale**
Benefits: Common Schools
Location: Phillips County

1013-7 **Quiet Title: Salmond Ranch Road Stipulation of Easement and Disclaimer of Interest – Deep Creek Ranch and Management Co. LLC**
Benefits: Common Schools, Public Buildings
Location: Teton County

1013-8 **Easements**
Benefits: Common Schools, Public Land Trust
Location: Big Horn, Missoula, Sheridan, and Silver Bow Counties

PUBLIC COMMENT

1013-1

FWP: LAND ACQUISITION –

NORTH SHORE FLATHEAD LAKE WILDLIFE MANAGEMENT AREA (ADDITION)

Land Board Agenda Item
October 21, 2013

1013-1 FWP: Land Acquisition - North Shore Flathead Lake Wildlife Mangement Area

Location: Flathead County

Trust Benefits: N/A (non-trust land)

Trust Revenue: N/A (non-trust land)

Item Summary:

The purpose of FWP's acquisition is to increase habitat protection along the North Shore of Flathead Lake, enhance habitat for wildlife, and provide compatible public recreational opportunities.

The proposed fee title acquisition of approximately **189 acres** would be purchased for the bargain sale price of $1,600,000 which is **$130,000 below its appraised market value** of $1.73 million. **All acquisition funding would be provided by the Bonneville Power Administration.**

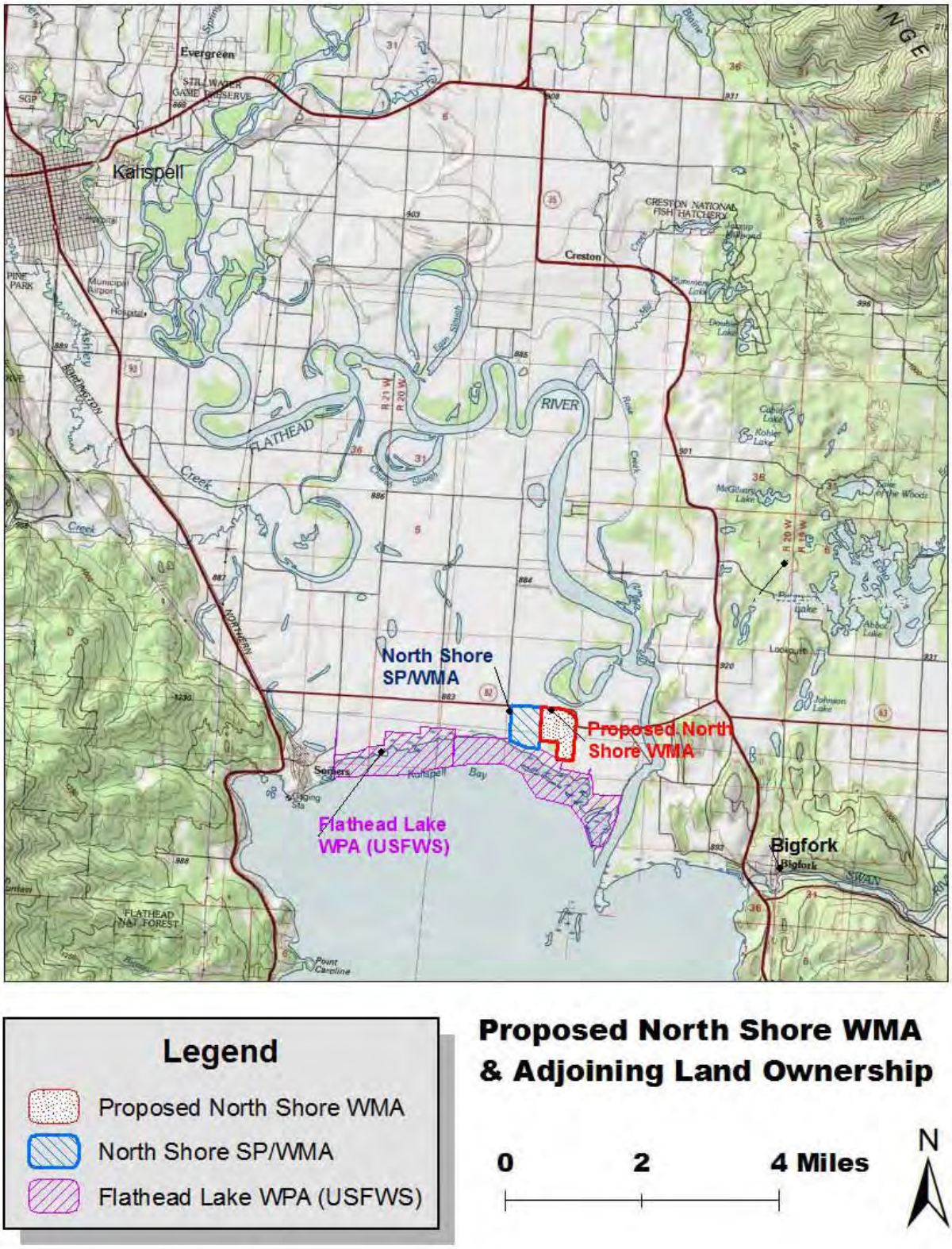
The property consists of approximately **189 acres** of primarily agricultural land located between Montana Hwy 82 and the U.S. Fish and Wildlife Service's Flathead Lake Waterfowl Production Area (WPA) along the North Shore of Flathead Lake. This acquisition adjoins FWP's 160-acre North Shore State Park/WMA and the 2,362-acre USFWS WPA (see attached map).

FWP spent two years in project development with numerous agencies, tribes, and community organizations within the Flathead River to Lake Initiative area prior to proposing this acquisition.. FWP issued the draft EA August 1, 2013 for a 31-day public review. FWP held an open house/public hearing on August 20, 2013, and notified the public about the project and hearing through legal ads, press releases, and emails/letters to all adjoining landowners and other interested publics. No opposition to the proposed action was received. The most common reasons for support included the conservation of important wildlife habitat, public desire to preclude development of the North Shore, public access for recreation and hunting, and benefits to water quality, local business, and conservation education.

FWP Commission final consideration will occur on October 10, 2013.

FWP Recommendation:

Because of the importance of conserving this landscape, the high level of public support for the project, and the availability of BPA funding, **FWP recommends that the Board of Land Commissioners approve the fee acquisition of the addition to the North Shore Flathead Lake Wildlife Management Area.**



The location of the proposed land acquisition is outlined in red. Also shown is FWP's existing North Shore State Park (SP)/Wildlife Management Area (WMA) and the federal Flathead Lake Waterfowl Production Area managed by the US Fish & Wildlife Service.

Location of FWP North Shore State Park/WMA , Flathead Lake WPA, and Proposed Land Acquisition in Flathead Valley, MT

0 0.125 0.25 0.5 Miles

N

Montana Fish, Wildlife & Parks

Region 1
490 N. Meridian Road
Kalispell, MT 59901

DECISION NOTICE
and
Finding of No Significant Impact
for the
PROPOSED NORTH SHORE WILDLIFE MANAGEMENT AREA LAND ACQUISITION

September 6, 2013

Description of the Proposed Action

Montana Fish, Wildlife & Parks (MFWP) proposes to purchase approximately 189 acres of farmland and wetlands located along the north shore of Flathead Lake about 4.5 miles east of the community of Somers. Funding for the project would be provided by the Bonneville Power Administration (BPA) through MFWP's fisheries mitigation program to help offset impacts associated with the construction of Hungry Horse Dam. The landowner has agreed to sell this land to MFWP for $1.6 million, below its appraised market value of $1.73 million. If the sale is completed, BPA would retain a perpetual conservation easement on the property to ensure long-term protection of the acquisition.

The primary purpose of the proposed land acquisition using BPA funding is to protect ground water, surface water, and wetlands on or near Flathead Lake. This will help improve or maintain the high water quality of Flathead Lake for benefits of aquatic life and fish and wildlife habitat. Other benefits of this project include protecting and managing this land to restore or improve natural riparian/wetland habitats, to continue annual crop production to benefit resident and migratory waterfowl, to improve and maintain habitat for other wildlife, and to provide opportunities for seasonal and compatible public recreation.

MFWP proposes to incorporate this parcel into MFWP's wildlife management area program and designate this land as the North Shore Wildlife Management Area (North Shore WMA). Proposed management is designed to meet the purposes of the acquisition and be consistent with BPA's conservation easement. The proposed Management Plan was included as part of the draft environmental assessment (EA). The Management Plan allows for restoration of riparian/ wetlands, upland buffers, and forest stands, as well as the continuation of some agricultural practices that also provide food and cover for migratory and resident birds.

The property borders the U. S. Fish & Wildlife Service (FWS) Flathead Lake Waterfowl Production Area to the south along the Flathead Lake shoreline. It also borders the 160-acre North Shore State Park/Wildlife Management Area (SP/WMA) that MFWP acquired in 2008 to the west.

Public Involvement – Scoping

MFWP worked with the River to Lake Initiative partners and others in developing this project for two years prior to the decision to move forward. The River to Lake Initiative partners include

the Flathead Lakers, Flathead Land Trust, Flathead Audubon, American Bird Conservancy, Intermountain West Joint Venture, Flathead Conservation District, Flathead River Commission, Natural Resources and Conservation Service, U.S. Fish and Wildlife Service, and the Confederated Salish and Kootenai Tribes. MFWP completed the acquisition of the North Shore State Park/WMA in 2008. The public was strongly in favor of that acquisition. Based on these two outreach efforts, MFWP did not feel we needed to complete a specific scoping process for this project.

Draft Environmental Assessment and Public Comments

MFWP released the draft environmental analysis document for public review on August 1, 2013, and asked for public comments through August 31, 2013. MFWP scheduled the public open house/public hearing in Somers, Montana, for August 20, 2013, beginning at 6:30 p.m. MFWP sent postcards or electronic emails announcing the public comment period and public meeting to approximately 70 individuals and organizations and to about 25 adjoining or nearby landowners. MFWP ran two different legal ads that described the proposed project, the availability of the draft EA, and the public meeting information in two regional and two local newspapers. The draft EA was posted on MFWP's official web site. MFWP also issued a press release that described the project, availability of the draft EA, and the public comment timeline, and dates and locations of the public meeting in Somers. The proposed project was covered by an article in the Bigfork Eagle that was also picked up in the Daily Inter Lake and other newspapers, including the Missoula Independent. Another article was published in the Missoulian. The editors of the Daily Inter Lake also publicly supported the project in a weekly editorial. The story also ran on Montana Public Radio, the Montana Wildlife Radio Show on KOFI radio, and the local NBC and ABC television stations.

Summary of Public Comments and Public Meetings

MFWP received 36 emails or letters supporting or strongly supporting the proposed project. Supporters stated their approval for the project because it would benefit Flathead Lake north shore, water quality, wetlands, wildlife, and public recreation. Of the six people who attended the open house/public hearing in Somers, two voiced strong support of the project during the public hearing. No one opposed the project or mentioned concerns during either the open house or public hearing portion of the meeting. MFWP did not receive any written comments opposing the project. We did receive one letter that questioned the use of the BPA funding on this property and one that would like MFWP to restore native Palouse prairie on portions of the property. The comments and MFWP responses to these two comments are below.

MFWP Responses to Public Comments

1. **Comment about use of BPA funds for this project.** One individual questioned how MFWP could purchase property for fish that is not actually bordering a lake or river. To their knowledge, the Confederated Salish and Kootenai Tribes (CSKT) had turned down funding for a wetland conservation project within the Flathead Indian Reservation because it did not have fish habitat on it.

   MFWP Response: MFWP and the CSKT have worked closely over many years with BPA to design the overall goals, purpose, and criteria for the Hungry Horse fisheries mitigation program, and all three agencies are committed to using this funding to benefit native fisheries, especially bull trout and westslope cutthroat trout. From 2005-2009 we jointly reviewed and prioritized shared funding to implement fisheries habitat conservation projects. However, implementation of individual projects by MFWP or CSKT using BPA fisheries

mitigation funding is now conducted to a much greater extent independently of each other. We are not aware of the specific circumstances of the project that this person referenced with respect to CSKT, but MFWP believes this North Shore Wildlife Management Area Acquisition will directly benefit Flathead Lake water quality and, thereby, the fisheries and aquatic habitat values of Flathead Lake. As shown and described in the draft EA (Fig. 6, p. 10, and cover photo, draft EA), the existing linear slough or wetland on the proposed project lands runs across the property between Fennon Slough to the north and Flathead Lake to the south and is only separated from Flathead Lake by artificial dikes that were placed there many years ago (p. 13, draft EA). Surface water runoff from this property either goes directly into this wetland or into other shallow ground water or poorly drained areas on this property (pp. 4, 16-17, draft EA) and has the potential to flow via the ground water and surface runoff directly into Flathead Lake or the lower Flathead River system. The north end of Flathead Lake is an important foraging and staging area for bull trout, particularly during the spring and early summer when there is a higher likelihood of direct runoff from these lands to the lake or groundwater. BPA staff visited the property in May 2012 and supported the use of BPA fisheries funding for this project for all of the reasons outlined above. MFWP's proposed Management Plan emphasizes wetland protection and both upland and wetland restoration to buffer the existing wetlands and to protect both surface and ground water quality of this property and, thereby, Flathead Lake, consistent with the purposes of the BPA fisheries mitigation program.

2. **Comment about restoring Palouse prairie.** We received a suggestion to include complete Palouse prairie restoration as part of the future restoration of the property, including adding in native grasses and forbs/wildflowers, as well as including paved/gravel trails around the restoration area to enable use of fire and to restrict nonnative grass and other species invasion by rhizomes. Are there grants for this type of restoration?

   MFWP Response: Our future management plan for this property includes restoring uplands as well as wetlands. As stated on pages 53-54 of the draft EA, we propose to "***maintain/ enhance and possibly gradually expand native upland habitat, e.g., intact ponderosa pine stands with native understory.***" Although we appreciate the suggestion for Palouse prairie restoration in theory, we do not currently plan to implement complete Palouse prairie restoration at this time for a number of reasons.

   First, based on our experience and the experience of others, restoring the full native prairie ecosystem complete with the native grasses, forbs, and wildflowers, along with natural ecological processes (e.g., fire), is extremely difficult and expensive to implement and maintain at this scale over the long run. The problems of native prairie restoration are that native species cannot out-compete invasive and nonnative grasses and noxious weed species. This property and the general Flathead Valley are heavily populated by invasive, nonnative, sod-forming grasses (e.g., reed canary, quack grass, timothy) as well as numerous species of noxious weeds. Secondly, it is particularly hard, if not impossible, to maintain native forbs on a substantial acreage because noxious weeds tend to either establish first or gradually take over. Unfortunately, one cannot spray the noxious weeds without killing the native forbs/wildflowers, and pulling and managing weeds by hand is cost-prohibitive and never-ending on larger acreages. Native grasses are also difficult to establish for many of these same reasons; however, once established they can persist for some time and aren't killed by

typical noxious weed spraying. Even maintaining native or native-like grasses may require repeated planting efforts and ongoing maintenance to prevent nonnative takeovers.

As described in the Management Plan, MFWP is committed to trying to restore primarily native grasses (without the native forb/wildflower component) along with native shrubs and tree species because we believe this approach will be most successful for two reasons: (1) much of the land has been in grain production and should have a reduced seed bank that would compete with the native grass species, and (2) we will be able to promote native grass establishment by managing noxious herbaceous weeds using traditional methods, such as through the limited and careful application of appropriate herbicides. Should our attempts at native grass restoration fail, we may need to incorporate native-like species (pubescent or tall wheatgrass) that can better compete with nonnative invasive species and weeds and yet will also provide nesting and cover qualities for a variety of wildlife species. Adding in the complexity, costs, and risks associated with planting/establishing native forbs and wildflowers into this restoration project would be costly, limit management options, and require extensive maintenance.

Restoration of a complete prairie natural ecosystem on a very small portion of this property is clearly not precluded by this Management Plan and could be possibly incorporated into the Management Plan over time. We are not aware of any grants for native prairie restoration at this time, but we would be interested in any proposals from partners who are willing to take the lead to fund establishment and maintenance of Palouse prairie on a portion of this property.

MFWP Recommended Alternative and Final Decision Recommendation

In reviewing all the public comment and other relevant information, and evaluating the environmental effects, I recommend that MFWP pursue the acquisition of the North Shore WMA and recommend that the MFWP Commission approve the proposed action. This action will also require the approval of the Montana Land Board.

Through the public review process described above, MFWP found no significant impacts on the human or physical environments associated with this proposal. Therefore, the EA is the appropriate level of analysis, and an environmental impact statement is not required.

Noting and including the responses to public comments, this decision notice together with the draft EA will serve as the final document for this proposal. MFWP believes the completion of this project is in the best interests of protecting water quality, wetlands, and aquatic resources associated with Flathead Lake; it would provide opportunities to manage and improve habitat for wildlife, and it would provide the recreational opportunities for the public.

James R. Satterfield, Jr.

James R. Satterfield Jr., Ph.D.
Regional Supervisor

9/6/2013
Date

1013-2

FWP: LAND ACQUISITIONS – FISHING ACCESS SITES

A. Upper Big Spring Creek

B. Carroll Trail Addition (on Lower Big Spring Creek)

C. Prickly Pear

Land Board Agenda Item
10/21/13

1013-2A FWP: Land Acquisition – Fishing Access Sites – Upper Big Spring Creek

Location: Fergus County (near Lewistown, MT)
NW1/4 Section 5 Township 14 North, Range 19 East.

Trust Benefits: N/A (non-trust land)

Trust Revenue: N/A (non-trust land)

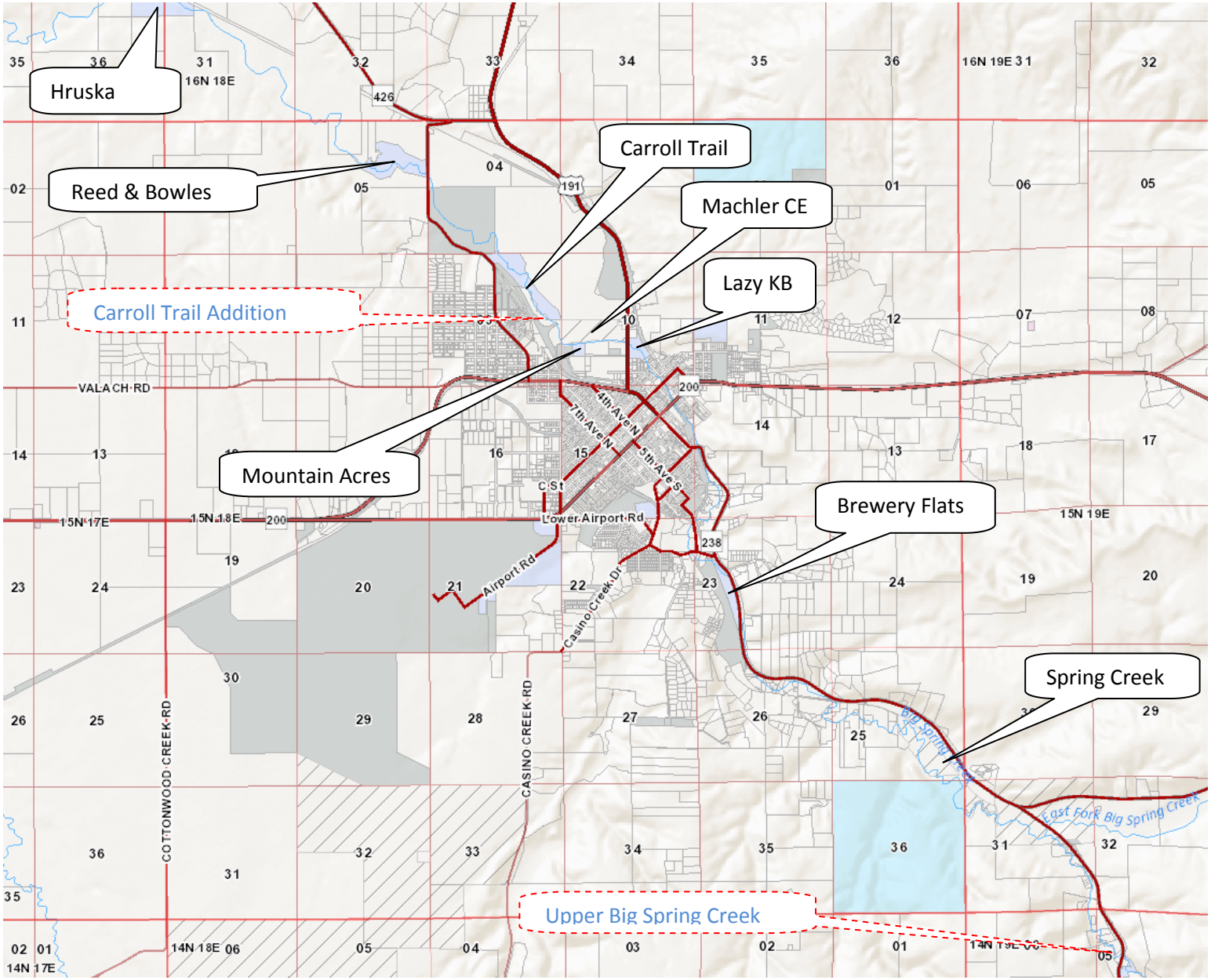
Item Summary

Big Spring Creek is a very popular and heavily used recreational stream due to its excellent fishing opportunities, beautiful scenery, and close proximity to Lewistown. Big Spring Creek is the best trout fishing stream near Lewistown and is open for fishing year round. Because Big Spring Creek is not a floatable stream, all anglers fish from the streambank or wade into the stream. There are six FWP-managed FASs on Big Spring Creek, with Spring Creek FAS (stream mile 27) being the closest to the proposed Upper Big Spring Creek FAS (stream mile 29) (see attached map). Limited public access to Upper Big Spring Creek has forced anglers to use of the steep bank at the bridge crossing near the lower unit of Big Spring Trout Hatchery for stream access, which can be difficult to use. Vehicles also park along Fish Hatchery Road creating a public safety hazard as the road is heavily used as an access route to residences. Montana Fish, Wildlife & Parks (FWP) proposes to acquire two adjacent parcels of land in fee title totaling approximately 2.8 acres along the upper reach of Big Spring Creek in Fergus County, Montana. The acquisition and development of the approximate 2.8-acre parcel along Big Spring Creek would allow FWP to preserve this stretch of riparian and open-space habitat for the benefit of wildlife and fisheries species: reduce angling pressure on nearby FAS's by redistributing angler use; and allow permanent public access to this stretch of the popular Big Spring Creek for fishing, picnicking, and wildlife viewing. FWP proposes to develop approximately 0.5 acres of those acres, to include a parking area, concrete vault latrine, fencing, informational and directional signs, and picnic tables. The total cost of approximately 2.8 acres is $150,934. This price is consistent with the cost of water front land/lots in the area.

FWP has worked closely with the local community to improve access to the creek through many stream restoration projects associated with these sites and the trail system along Big Spring Creek. The access and trail system have tremendous support and is heavily used by the community. An environmental assessment was released for public comment on June 18, 2013 for 30-day comment period. 9 comments were received. A summary of those comments and FWP's responses are outlined in the Decision Notice released October 2, 2013 (attached) FWP regional staff recommended to the FWP Commission to approve the acquisition of the site. *FWP Commission action is due October 10, 2013.*

FWP Recommendation

FWP recommends that the Land Board approve FWP's acquisition and development of approximately 2.8 acres of land for a fishing access site on Upper Big Spring Creek.


Hruska
Reed & Bowles
Carroll Trail
Machler CE
Lazy KB
Carroll Trail Addition
Mountain Acres
Brewery Flats
Spring Creek
Upper Big Spring Creek
VALA CH RD
Lower Airport Rd
Airport Rd
Casino Creek Dr
CASINO CREEK RD
COTTONWOOD CREEK RD
7th Ave N
4th Ave N
5th Ave S
C St
East Fork Big Spring Creek
16N 18E
16N 19E
15N 17E
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15N 19E
14N 18E
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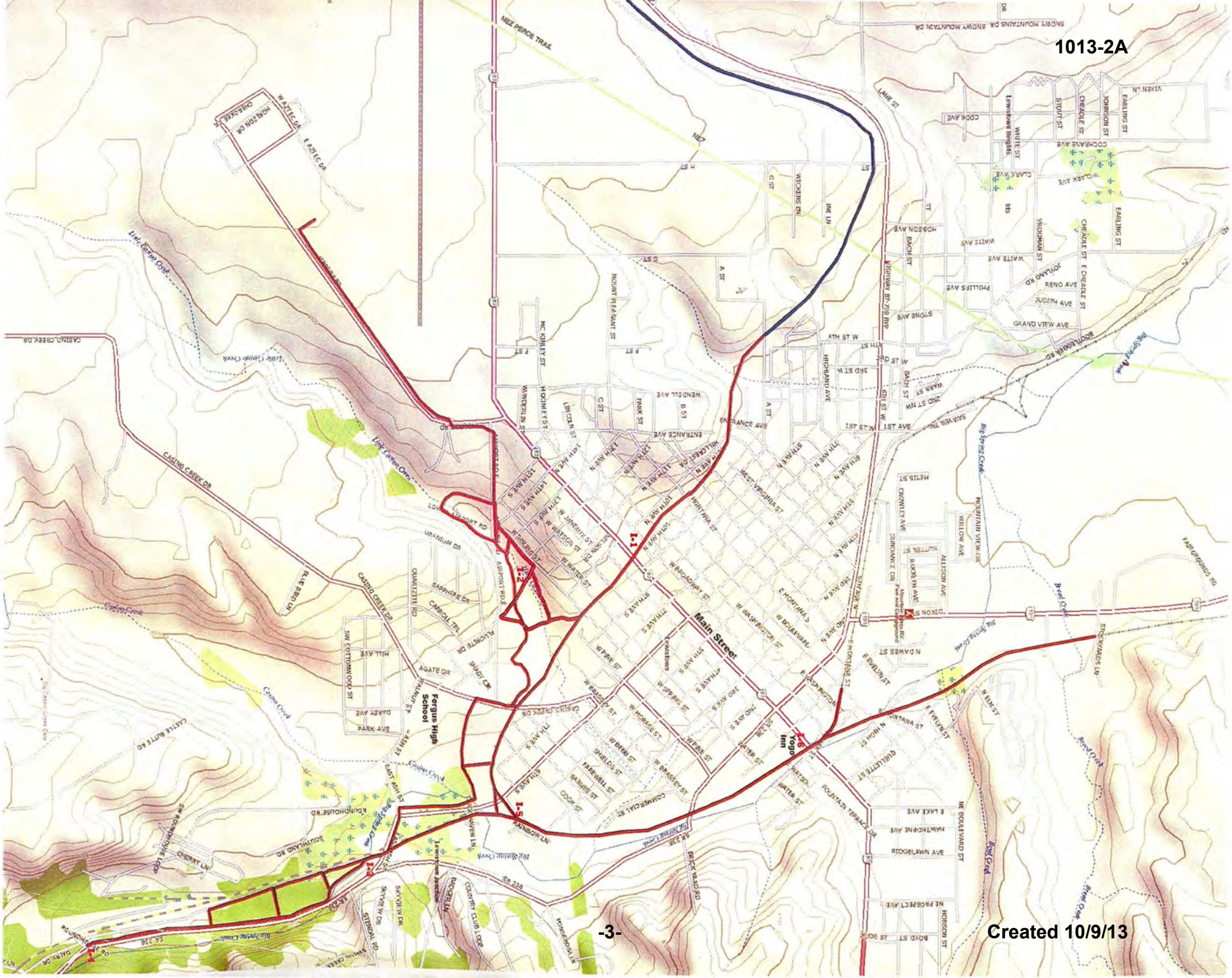

1013-2A
Main Street
Fergus High School
Yogo Inn
T-1
T-2
T-3
T-4
T-5
T-6
T-7
NEZ PERCE TRAIL
CASINO CREEK DR
Little Casino Creek
Big Casino Creek
Casino Creek
Big Spring Creek
Brand Creek
Big Spring Creek
Big Spring Creek
Big Spring

UPPER BIG SPRING CREEK

Montana Fish, Wildlife & Parks

Region 4
4600 Giant Springs Road
Great Falls MT 59405-0901

Environmental Assessment Decision Notice:
Proposed Acquisition and Development of the Upper Big Springs Creek Fishing Access Site

October 2, 2013

Proposal
Montana Fish, Wildlife and Parks (FWP) proposes to acquire approximately 3-acres of land in Fergus County, Montana along the upper portion of Big Spring Creek for the purpose of establishing a fishing access site (FAS). The proposed FAS is located across the highway from the lower unit of the Big Spring Creek Hatchery. This document serves as the Decision Notice for the Environmental Assessment (EA) addresses the acquisition and subsequent development of the property.

Montana Environmental Policy Act Process (MEPA) and Public Involvement
On June 18, 2013, FWP released a draft EA for the Upper Big Spring Creek Fishing Access Site Parcel Proposed Acquisition and Development. The EA evaluated the potential impacts of the following alternatives:

Alternative A: No Action
If no action were taken, FWP would lose the opportunity to acquire this property and develop safe, public access to this reach of Big Spring Creek. The public would continue to access Big Spring Creek from the steep bank at the Big Spring Trout Hatchery bridge crossing and vehicles would continue to park along Fish Hatchery Road creating a potential public safety hazard. Opportunities for fishing and associated outdoor recreational activities would continue to be limited in this area.

Preferred Alternative B: Proposed Action
FWP proposes to acquire two parcels totaling approximately 3-acres in fee title along Big Spring Creek in Fergus County, Montana for the purpose of providing public access to Big Spring Creek and establishing a fishing access site (FAS). In addition, FWP proposes to develop approximately .5 acres of the approximately 3-acres to include a

parking area, a concrete vault latrine, fencing, picnic tables, and informational and directional signs.

Summary of Public Comment
FWP received comments from eight individuals and one local conservation group. Three individuals supported the proposed action. The others opposed the proposed action. Supporters acknowledged the importance of public access sites on Big Springs Creek in order for anglers to safely fish this creek and avoid trespassing on private property. Opposition to this proposal included concern that purchase of this site would preclude purchase of other critical parcels further downstream on Big Springs Creek and desire to use funding for other stream improvement projects on Big Springs . There was concern that this site is unnecessary for access to the creek and could lead to conflicts with landowners. FWP had a subsequent meeting with the conservation group and individuals that opposed the project and contacted adjacent landowners to discuss concerns and provide additional information regarding the project. Comments and the department's responses are as follows:

1. **Comment:** ***The expenditure of funds will not provide additional public fishing access:***

   Response: The current condition does not provide safe or legal angler parking. In addition anglers must negotiate a rip rapped stream bank to access the creek which does not meet FWP's criteria for safe or prudent access.

2. ***Comment: None of the adjacent landowners are in support of this acquisition. Landowners who now allow fishing with permission would start denying access.***

   Response: FWP has been in contact with the immediate adjacent landowner, who has expressed support for FWP's proposal and has additionally agreed to sell FWP a small portion of property that will provide additional creek frontage for anglers. FWP has contacted other landowners in the area who have also expressed support of the proposed FAS acquisition and development.

3. ***Comment: Attracting additional angler pressure to spawning fish may result in a decline of productivity especially if the no retention of fish above state highway 191 bridge regulation is rescinded.***

   Response: A repeal of the catch and release regulation was proposed to the Fish and Wildlife Commission, but was rejected. The catch-and-release regulation will remain in effect.

4. ***Comment: We do not see an adverse risk to angler opportunity or stream habitat if this property is not purchased by FWP.***

Response: Angler opportunity would be increased by the acquisitions, since Big Spring Creek is primarily a wade-fishery, and opportunity is closely tied to the number of access points. There is no certainty that angling on the creek via permission on private land will be allowed at current levels into the future. Therefore, the only guaranteed future public angling access there will be publicly owned sites, potentially including those currently proposed for acquisition.

There are no stream habitat issues that will be immediately addressed as a result of this purchase, although the property does have current—bearing and sloughing banks that currently provide good trout habitat. If these become unstable or in need of work in the future, FWP will use fish-friendly habitat protection techniques, something that might not be expected from all landowners.

5. ***Comment:*** ***The cost per acre of this acquisition ($50,000 per acre) seems excessive and is greater than the benefits being received. We support acquisitions but not at this cost.***

Response: FWP contracted with an independent appraiser in the area to determine the Spark's property value. The landowner was offered the appraised value, no more – no less. The adjacent property evaluation was then derived from the original appraisal on a per acre basis.

6. ***Comment:*** ***We would like to know the restrictions on use of the Monsanto settlement fund money and we highly recommend that these funds be used towards the acquisition of the Bank of the Rockies (BOR) property or applied to the Machler stream restoration project.***

Response: There are no specific restrictions on use of the Monsanto settlement funds other than the PCB cleanup efforts are ranked first in the order of priority for use of the funds. This includes the long term efforts of stream monitoring that will go on for years to come. FWP has evaluated the use of Monsanto funds for the BOR property as well as for the Machler stream restoration project and may use remaining funding (if there is any), after completion of the PCB cleanup, to pay for at least a portion of each of these projects. Currently the Fish and Wildlife Conservation Fund has approved a grant for up to $60,000 towards acquisition of the BOR property. FWP is committed to funding the balance of the costs either through its FAS acquisition account, the Monsanto settlement funding or a combination of all three. FWP is committed to all of these projects and as well as acquisition of the upper Big Spring Creek property and we can assure you this acquisition would not negatively impact progress on either the purchase of the BOR property or the Machler stream restoration project. FWP already has a Purchase Agreement on the BOR as well as on the upper Big Spring Creek parcels. Each project is evaluated on its own merit and funded accordingly.

7. ***Comment:*** ***Are there water rights included with this property? If so, what is their value?***

   Response: Yes, the water rights are included with this property. The water rights are non-consumptive so the value would be difficult to assess. Outside of rearing fish for consumption, the water use could potentially be converted to hydropower generation. A detailed cost benefit analysis would have to be undertaken to determine what value the water rights would have in this situation and almost any other potential business venture. See attached memo regarding the water rights from FWP's water rights specialist.

8. **Comment:** ***In places, especially below the lower boundary of this property, it is difficult to wade and I suspect many anglers at this point will climb out of the stream and trespass onto private land to continue fishing downstream.***

   Response: Enforcement is an integrated component of the administration and operations of the fishing access site program. Montana Fish, Wildlife & Parks is mandated by Montana laws to protect, perpetuate, enhance, and regulate the wise use of the state's natural and cultural resources for the benefit of the general public. This would include being responsive to the landowner complaints and to investigate trespass for unlawful use.

9. **Comment:** ***Providing another fishing access site at this location may only provide another secluded party spot which law enforcement does not need.***

   Response: The proposed parking area is located at the top of the site where it is visible from the highway. The purpose for this particular parking design is to discourage people from using the FAS as a party site. This is also only a day use site and after dark activities are not allowed. Again, if necessary, FWP will use Enforcement personnel to effect its regulations.

10. **Comment:** ***I wish to withdraw all objections to the proposed purchase of the Sparks property below the lower State Hatchery site due to additional information received. … I am in total agreement that the removal of any potential of re-opening the private hatchery is worthwhile. …Although the need for additional access at the site is questionable, a small parking lot capable of holding a few vehicles hopefully will not appreciably change present use, and as I now feel that the purchase is justified for good reason other than access, I agree that modest parking facilities are in order and should be included.***

    Response: Your comment of support is duly noted.

11. **Comment:** ***As a fly fisherman who loves Big Spring Creek, I can fully support the Upper Spring Creek FAS this part is not easy for one to access, difficult to fish from, or travel the banks. The new site would help ease the***

problem, and be a real plus to the improvements planned for the Fish Hatchery land.

Response: Your comment of support is duly noted.

12. **Comment:** ***This acquisition would be a welcomed addition to the state of Montana, giving additional safe access and parking, along this spring creek.***

Response: Your comment of support is duly noted.

13. **Comment:** ***The main thing is that the opportunity to get any amount of spring creek frontage (on both sides) into public ownership is an opportunity that does not come along frequently and that it outweighs the potential negatives.***

Response: Your comment of support is duly noted.

Decision

Based on the Environmental Assessment, public comment, and FWP evaluation, it is my decision to proceed with Alternative B, the proposed action of acquiring approximately 3-acres of land, and developing the site as described in the EA, for purposes of establishing a fishing access site along upper Big Springs Creek.

I find there to be no significant impacts on the human and physical environments associated with this project. Therefore, I conclude that the Environmental Assessment is the appropriate level of analysis, and that an Environmental Impact Statement is not required.

Gary Bertellotti
FWP Region Four Supervisor

Land Board Agenda Item
10/21/13

1013-2B FWP: Land Acquisition – Fishing Access Sites – Carroll Trail Addition (on Lower Big Spring Creek)

Location: Fergus County (near Lewistown, MT)
Section 9 Township 15 North, Range 18 East.

Trust Benefits: N/A (non-trust land)

Trust Revenue: N/A (non-trust land)

Item Summary

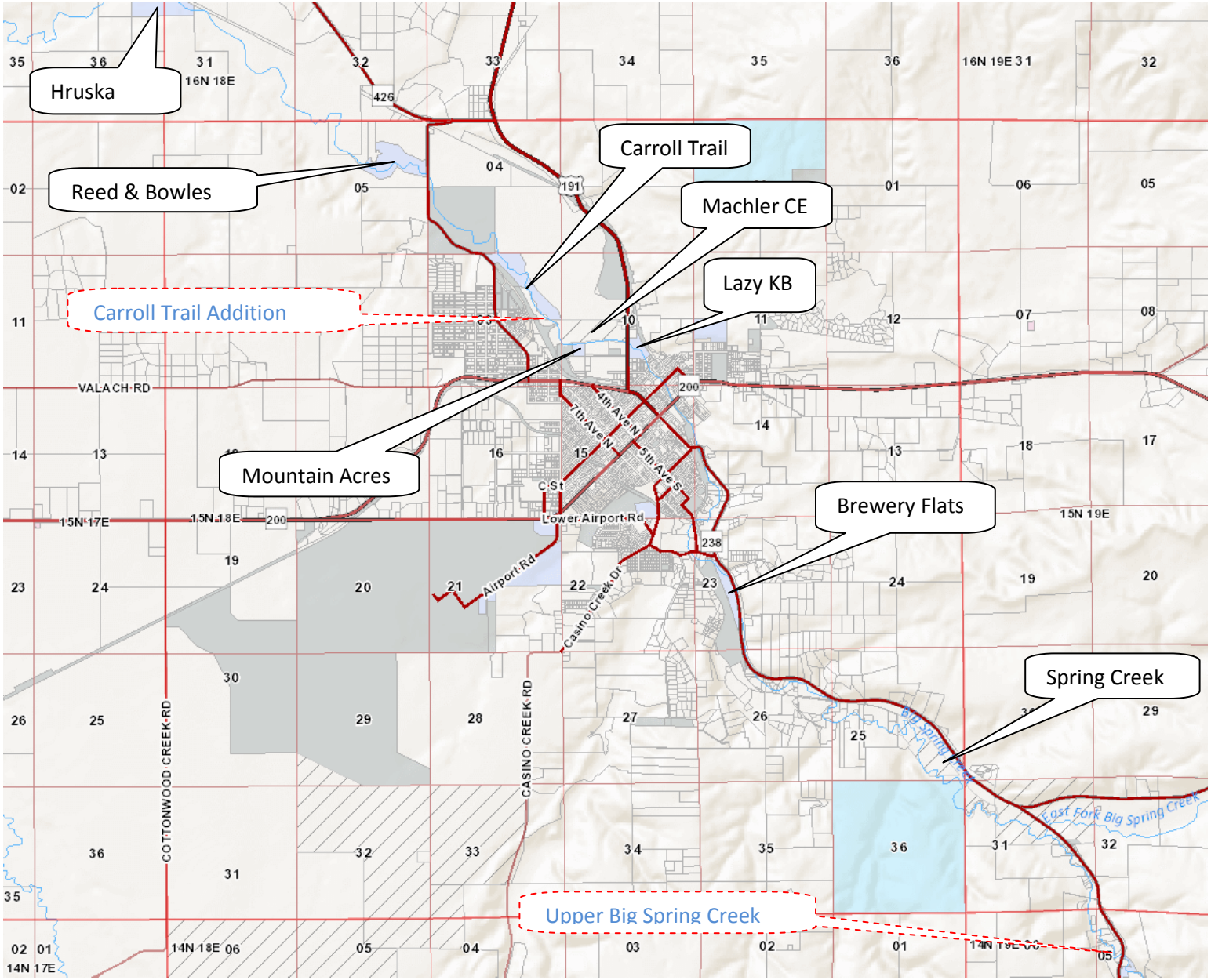
Big Spring Creek is a very popular and heavily used recreational stream due to its excellent fishing opportunities, beautiful scenery, and close proximity to Lewistown. Big Spring Creek is the best trout fishing stream near Lewistown and is open for fishing year round. Because Big Spring Creek is not a floatable stream, all anglers fish from the streambank or wade into the stream. There are six FWP-managed FASs on Big Spring Creek. Montana Fish, Wildlife & Parks (FWP) proposes to acquire an approximately 20.7 acre parcel in fee as an addition to its existing Carroll Trail FAS. The acquisition the approximate 20.7-acre parcel along Big Spring Creek would allow FWP to preserve this stretch of riparian and open-space habitat for the benefit of wildlife and fisheries species: reduce angling pressure on nearby FAS's by redistributing angler use; and allow permanent public access to this stretch of the popular Big Spring Creek for fishing, picnicking, and wildlife viewing. In addition, this acquisition is needed to complete Phase II of the Big Spring Creek stream restoration project that will reestablish Big Spring Creek into its original channel.

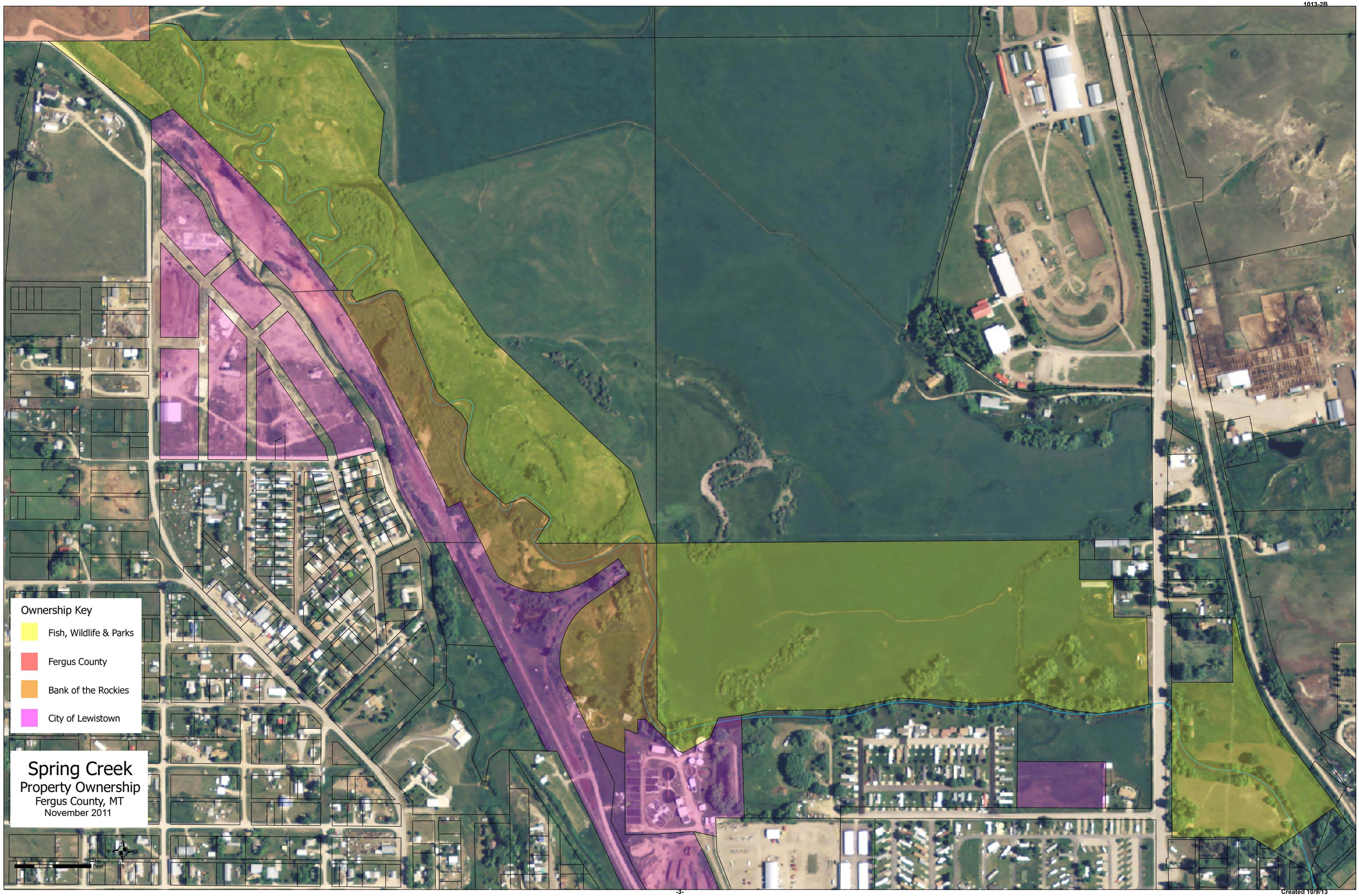
The total cost of approximately 20.7 acres is $188,000. The appraised value of the parcel was $250,000. Bank of the Rockies, the owner, is donating the $62,000 to assist in funding the channel restoration project. Funding sources are Montana Fish & Wildlife Conservation Trust - $60,000 and Monsanto 2010 Settlement funds - $128,000.

FWP has worked closely with the local community to improve access to the creek through several site acquisitions and stream restoration projects. The access and trail system along Big Spring Creek have tremendous support and is heavily used by the community. An environmental assessment was released for public comment on August 16, 2013 for 30-day comment period. FWP received a total of 18 comments. Sixteen were in agreement with the proposed action and two were opposed. The two opposing comments were directly related to the cost of the property. A summary of those comments and FWP's responses are outlined in the Decision Notice released _____(attached) FWP regional staff recommended to the FWP Commission to approve the acquisition of the site. *FWP Commission action is due October 10, 2013.*

FWP Recommendation

FWP recommends that the Land Board approve FWP's acquisition of approximately 20.7 acres of land for an addition to its Carroll Trail FAS.


Hruska
Reed & Bowles
Carroll Trail
Machler CE
Lazy KB
Carroll Trail Addition
Mountain Acres
Brewery Flats
Spring Creek
Upper Big Spring Creek
VALA CH RD
Lower Airport Rd
Airport Rd
Casino Creek Dr
CASINO CREEK RD
COTTONWOOD CREEK RD
C St
7th Ave N
4th Ave N
5th Ave S
East Fork Big Spring Creek
16N 18E
16N 19E
15N 17E
15N 18E
15N 19E
14N 18E
14N 17E
14N 19E


Ownership Key
Fish, Wildlife & Parks
Fergus County
Bank of the Rockies
City of Lewistown
Spring Creek
Property Ownership
Fergus County, MT
November 2011
0 100 200 400
Feet
N
W
E
S

Land Board Agenda Item
October 21, 2013

1013-2C FWP: Land Acquisition – Fishing Access Sites – Prickly Pear

Location: Lewis and Clark County

Trust Benefits: N/A (non-trust land)

Trust Revenue: N/A (non-trust land)

Item Summary

Montana Fish, Wildlife and Parks (FWP) proposes to acquire a **36-acre parcel along Prickly Pear Creek in Lewis & Clark County for the purpose of establishing a public fishing access site**. The property is currently owned by the Prickly Pear Land Trust (PPLT), and is being offered **free of charge** to FWP.

Acquisition of this property would preserve a **high-quality stretch of riparian habitat** along Prickly Pear Creek, and provide **needed trout-stream access on the outskirts of Helena**. The property would also offer day-use recreation for picnicking, hiking, and wildlife viewing.

The project has been a **cooperative venture led by the Prickly Pear Land Trust, with funding support from the Lewis & Clark County Open Lands Program and the Montana Fish and Wildlife Conservation Trust**. The property also includes the homesite where Helena artist Bob Morgan was raised. Volunteer efforts have removed all building and fencing hazards from the property, while an historic stone icehouse is being preserved and restored on site. In a related transaction (not involving FWP), the Prickly Pear Land Trust placed a conservation easement on the adjoining 230 acres to the west, and this property is now owned and managed for agricultural production by the neighboring private landowner.

Rationale for Land Board Action

FWP prepared an environmental assessment on the proposed land acquisition, with a 30-day public comment period that ended on July 14, 2013. Ten comments were received in support of the proposal, and none in opposition. FWP issued a decision notice recommending approval of the project. On August 8, the **Montana Fish and Wildlife Commission approved the acquisition of the Prickly Pear Creek Fishing Access Site**.

FWP Recommendation

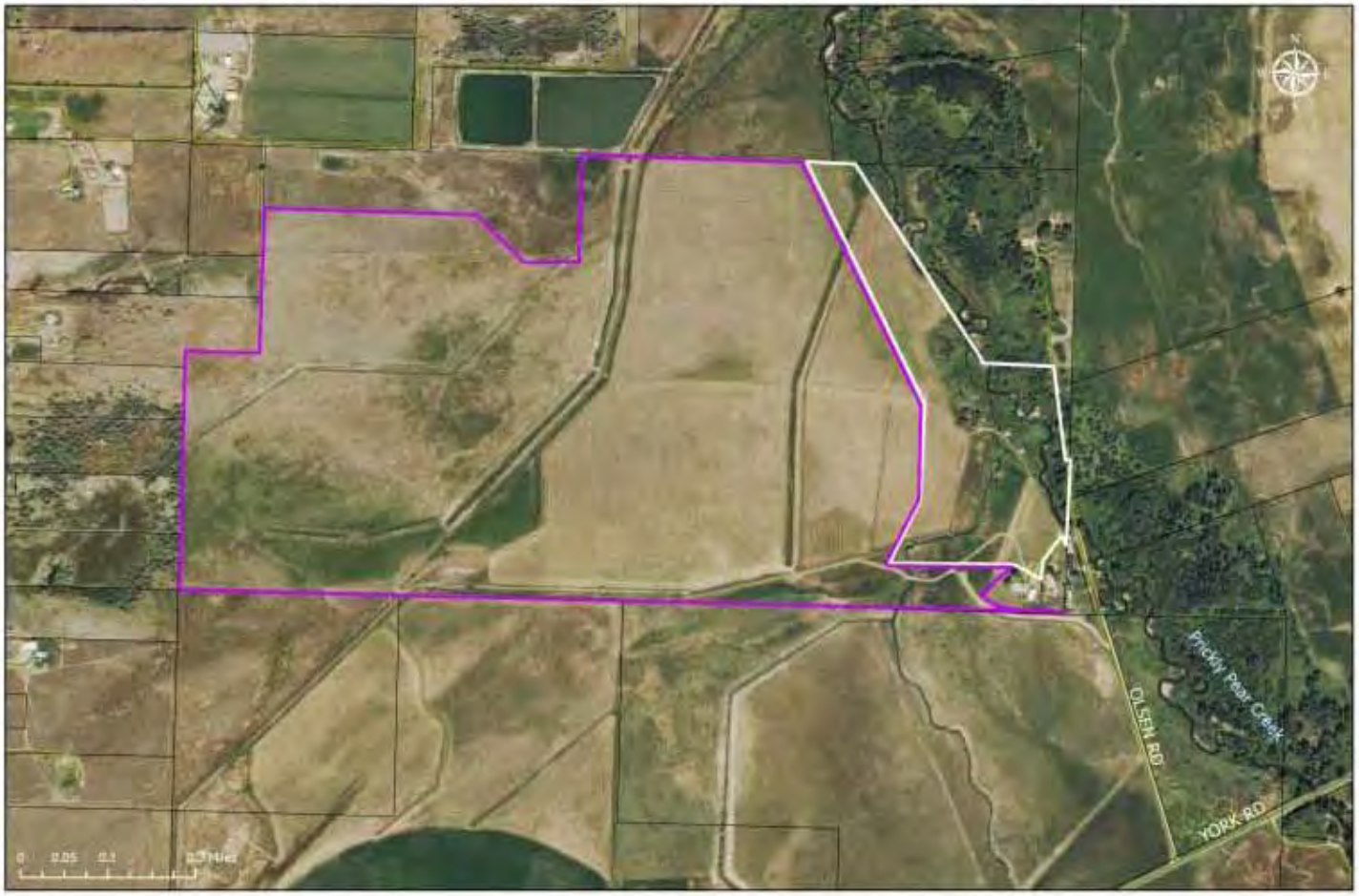
Because of the importance of this site for public stream access – and in light of the generous offer of a land donation by the Prickly Pear Land Trust, as supported by contributions from the Lewis & Clark County Open Lands Program and the Montana Fish and Wildlife Conservation Trust – FWP recommends that the Board of Land Commissioners approve the acquisition of the Prickly Pear Fishing Access Site.

Prickly Pear Fishing Access Site (proposed)

Location Map

Prickly Pear Fishing Access Site (proposed)

The 36-acre parcel proposed for acquisition by Montana Fish, Wildlife and Parks is outlined in white, and would be donated to FWP by the Prickly Pear Land Trust (PPLT). PPLT holds a conservation easement on the adjoining property (outlined in magenta), which is now owned by a neighboring agricultural operator.



Aspen Trails Ranch
Conservation Easement and
Public Open Space Project

Conservation Easement Parcel
Potential Open Space Parcel

Map Prepared By:
Andrea Silverman
July 2012

PRICKLY PEAR LAND TRUST

Region 4
4600 Giant Springs Road
Great Falls MT 59405-0901

Environmental Assessment Decision Notice
for the Prickly Pear Creek Fishing Access Site Proposed Acquisition
July 15, 2013

Proposal
Montana Fish, Wildlife & Parks (FWP) proposes to acquire approximately 36 acres of land in Lewis and Clark County, Montana along Prickly Pear Creek for the purpose of establishing a fishing access site (FAS). Prickly Pear Land Trust, the current landowner, has offered to donate the property in fee title to FWP. The proposed FAS is located 3.5 miles northeast of Helena north of Olsen Road in the Helena Valley in Lewis and Clark County. This Environmental Assessment (EA) addresses the acquisition of the property only. A separate EA would be issued prior to any site development work.

Montana Environmental Policy Act Process (MEPA) and Public Involvement
On June 14, 2013, FWP released a draft EA for the Prickly Pear Creek Fishing Access Site Parcel Proposed Acquisition. The EA evaluated the potential impacts of the following alternatives:

Alternative A: No Action
If no action were taken, Prickly Pear Land Trust could retain or dispose of the property at their option, but FWP would lose the opportunity to obtain this property and provide safe, public access to Prickly Pear Creek.

Preferred Alternative B: Proposed Action
FWP would accept the donation of a 36-acre tract of land along Prickly Pear Creek in order to establish a FAS and provide public access to Prickly Pear Creek for fishing, picnicking, walking, and wildlife viewing.

Summary of Public Comment
Ten comments were received from eleven respondents during the public comment period. No comments voiced opposition to the proposed acquisition of the parcel. Two respondents raised issues that were not addressed in the Environmental Assessment.

Comment: Seven respondents to the proposed action voiced support for Alternative B as the preferred alternative.

Response: These comments of support are noted.

Comment: One of the respondents that raised issues not addressed in the EA involved the seasonal presence of an apiary on an adjoining parcel on the eastern boundary of the proposed acquisition that is registered for 60 colonies.

Response: The comment noted that this situation was not inherently dangerous, but would warrant signing the area to advise the public of the apiary and suggest avoidance of the immediate area. Based on the advice of beekeepers consulted, these steps appear to be adequate and warranted to address this issue.

Comment: The second respondent that raised an issue not addressed in the EA involved human health that was not addressed under 8.-Risk/Health Hazards; the respondent questioned the compatibility of using the acquisition as a FAS while a neighbor sprayed raw sewage on the property.

Response: No raw sewage will be sprayed on the parcel identified as the proposed acquisition. However, the Treasure State Acres Sewage Lagoon is located northwest of the proposed acquisition. A neighboring landowner may be in negotiations to utilize treated waste water from the system for spray irrigation as the final treatment to allow the vegetation/crop to uptake and utilize the nutrients, which eliminates the need for a discharge permit. This is a practice that has been applied on other nearby parcels for years. DEQ regulations require a buffer zone of 200 feet between fencing and the irrigated land. Other requirements including signing the area, low trajectory nozzles and prohibition of an end gun to reduce the possibility of aerosol drift. A consultant for the Treasure State Acres system was quoted that this treated water is the equivalent of “pond water”. Consequently, if local, state and federal laws are complied with on the adjoining properties, the public would be not be exposed to a greater health risk on the proposed acquisition than along other areas of Prickly Pear Creek.

Comment: Another respondent also requested the EA be modified to identify horseback riding as a recreational opportunity on the FAS.

Response: Horseback riding is another form of recreation and would be an issue addressed during the development of the site or when establishing rules for the site if it

was acquired. Any compatible use would be considered that does not result in resource damage to the area.

Comment: One additional comment involved the Butte newspaper listing an incorrect email address for providing comments in new article.

Response: The commenter was provided the correct email address and a link to a comment page but did not submit comments regarding the proposed acquisition.

Revisions to the Draft Environmental Assessment

There were no potentially significant negative impacts raised during the public comment period that relate to the acquisition of the parcel; therefore, there are no substantive changes to the draft EA, and the draft EA becomes the final EA. The Draft EA, together with this decision notice, will serve as the final document for this proposal.

Decision

I find there to be no significant impact on the human or physical environment associated with this proposed acquisition, except to increase public access along Prickly Pear Creek. Therefore, I conclude the Environmental Assessment is the appropriate level of analysis, and that an Environmental Impact Statement is not required. Based on the environmental assessment and public comment, it is my decision to recommend to the FWP Commission that FWP proceed with the proposed action, Alternative B, to accept the donation of the 36 acre tract of land along Prickly Pear Creek for inclusion into the FAS program.

George Liknes

_____ Date: July 16, 2013

George Liknes
Acting Region 4 Supervisor

1013-3

TIMBER SALE: BITTER HERRIG

Land Board Agenda Item
October 21, 2013

1013-3 Timber Sale: Bitter Herrig

Location: Flathead County
Sections 22, 34, and 36, T28N-R25W

Trust Benefits: Common Schools and Public Buildings

Trust Revenue: $679,537 (estimated, minimum bid)

Item Summary

The Bitter Herrig timber sale is approximately 25 miles west of Kalispell, MT. The sale includes seven harvest units totaling 895 acres with an estimated volume of 38,048 tons (5,561 MBF or 35,641 cubic meters) of sawlogs. The minimum bid value is $17.86 per ton.

Prescriptions will consist of commercial thin on 138 acres, old-growth restoration on 71 acres, and seed tree on 686 acres. Treatments are designed to: improve the stand health by removing the diseased and insect infested trees; reduce the stocking level and fuel loading; and promote desired cover types composed of ponderosa pine, western larch, and Douglas-fir. Acres receiving old-growth restoration treatment will remain classified as old-growth after harvest.

In conjunction with the sale, approximately 4 miles of new road will be built and 11 miles of road will be improved and maintained to meet Best Management Practices. DNRC will maintain existing road use restrictions in the project area.

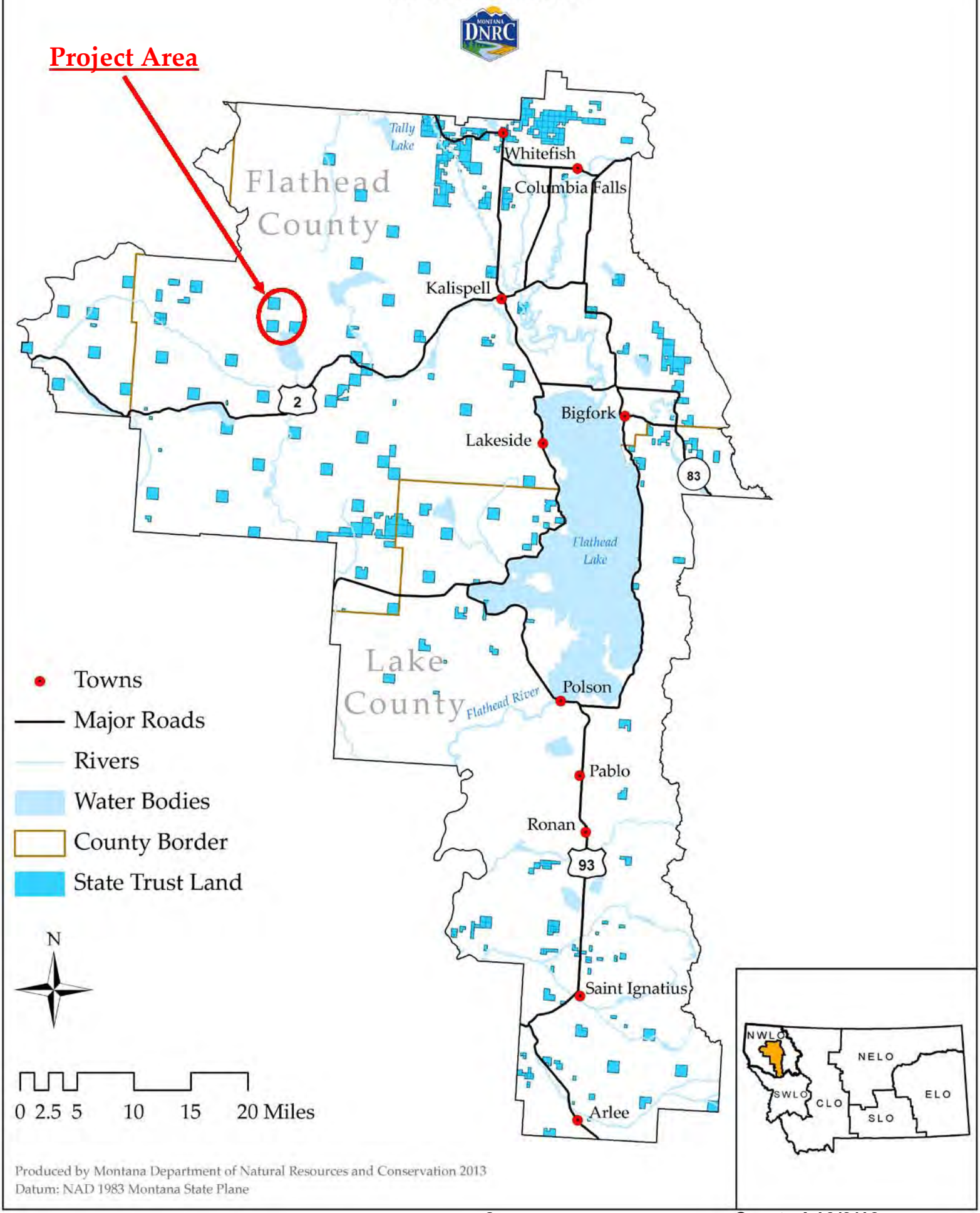
In September 2011, DNRC placed notices in the Kalispell *Daily Inter Lake* and mailed scoping letters to potentially interested parties. Scoping generated one phone call and two letters. The phone call and one letter were supportive of forest management and timber harvest. DNRC has reviewed the proposal and comments, analyzed conditions, and recommended mitigation measures to reduce the potential for impacts.

DNRC Recommendation

The Director recommends the Land Board direct DNRC to sell the Bitter Herrig timber sale.

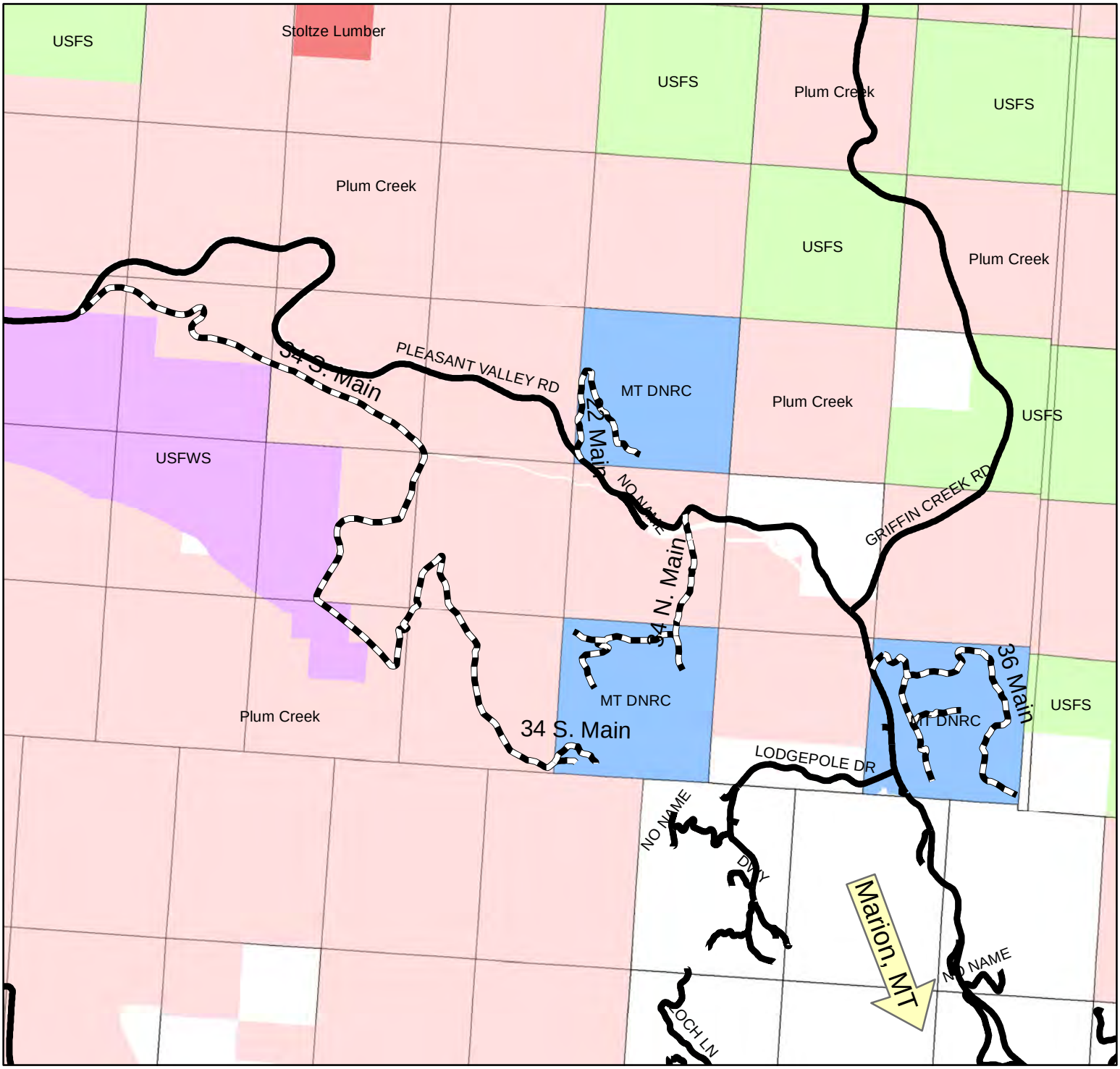
BITTER HERRIG TIMBER SALE VICINITY MAP

KALISPELL UNIT



Produced by Montana Department of Natural Resources and Conservation 2013
Datum: NAD 1983 Montana State Plane

Bitter Herrig Timber Sale-Haul Route



0 0.75 1.5 3 4.5 6 Miles

Legend

Roads

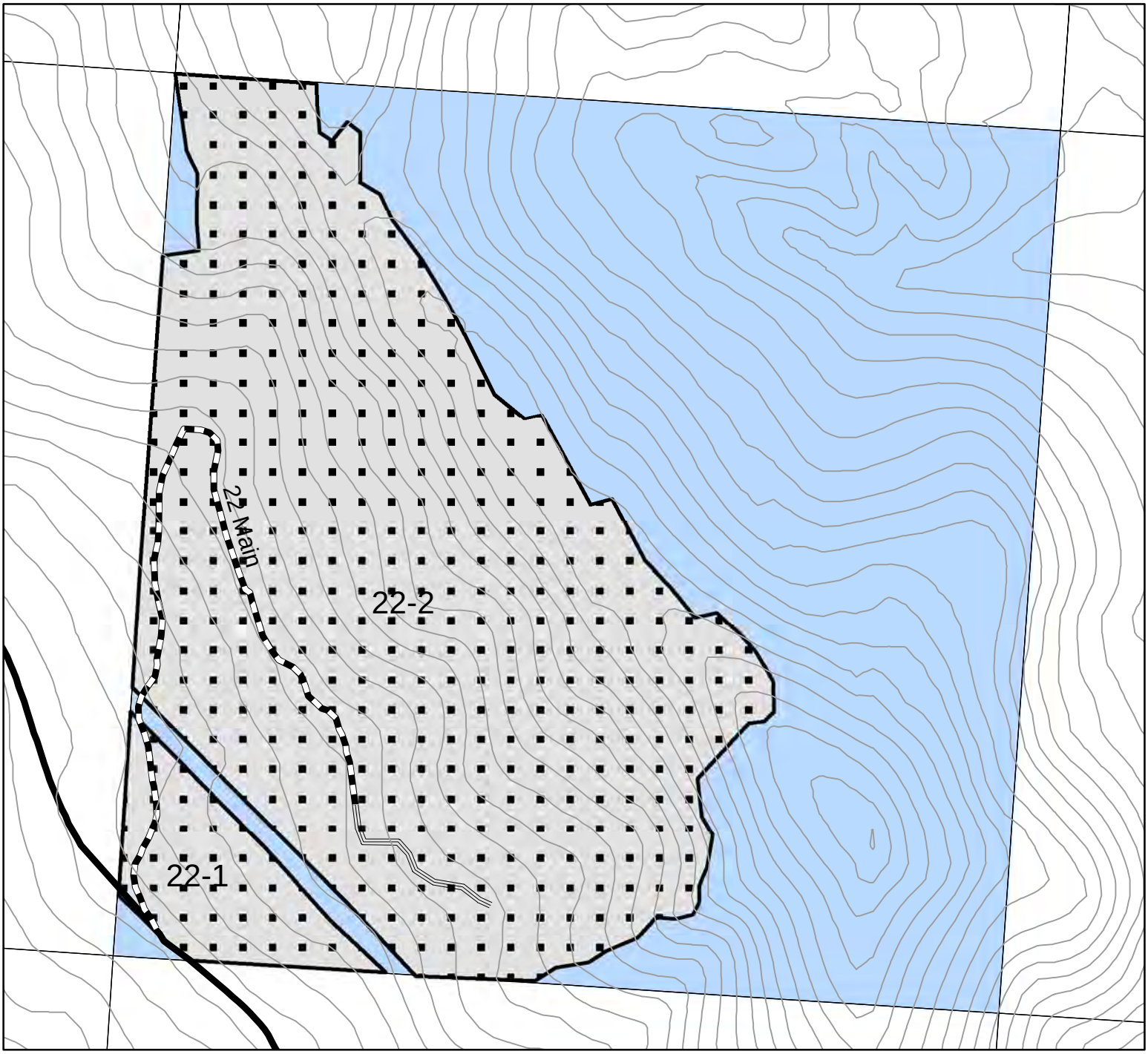
Flathead County Roads

Montana DNRC
Northwest Land Office
Kalispell Unit

Created 10/9/13

Bitter Herrig Timber Sale-Harvest Map

Section 22 T28N R25W



0 0.1 0.2 0.4 0.6 0.8 Miles

Legend

Roads

Existing

New

Flathead County Road

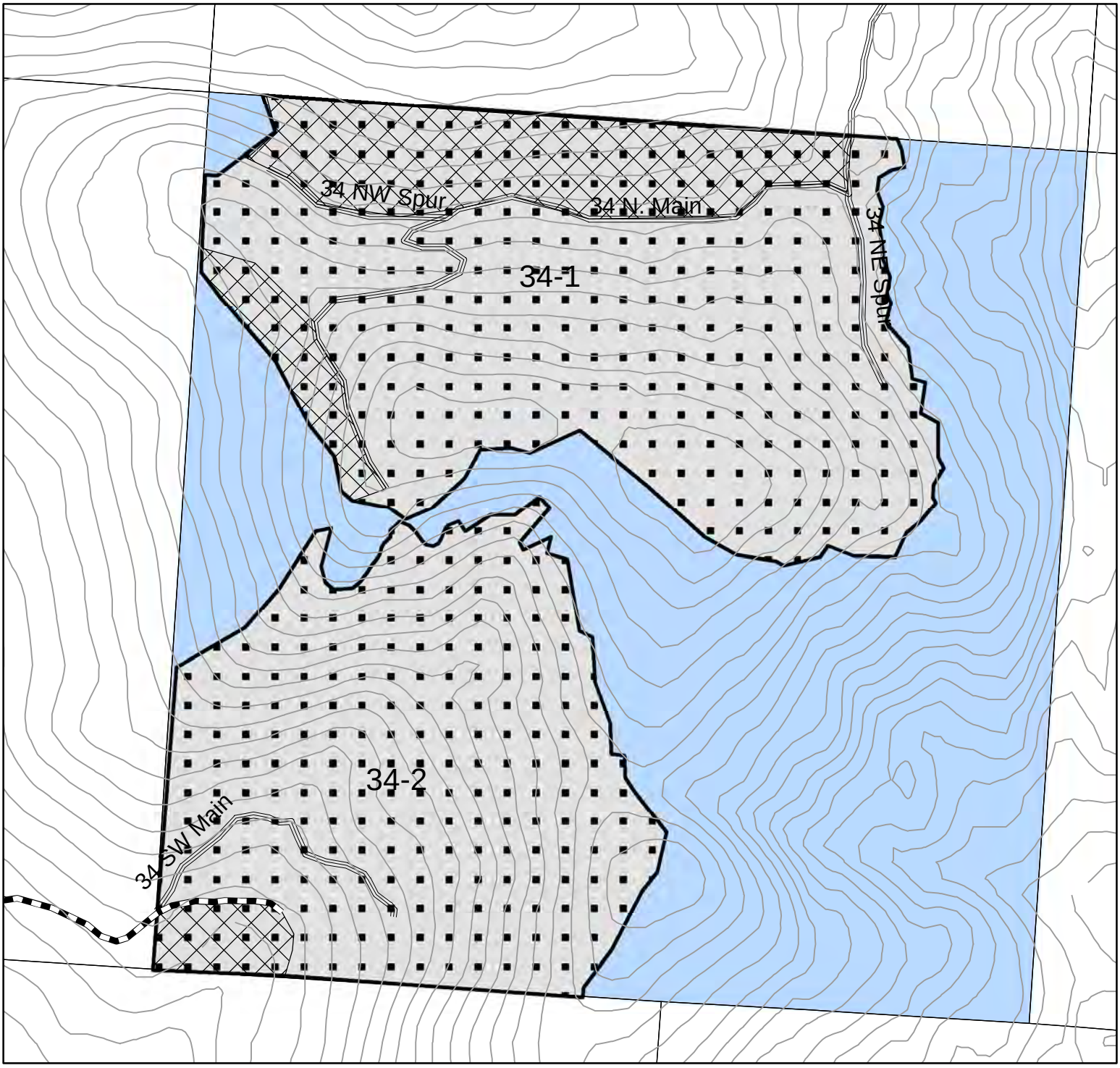
Harvest Units

Montana DNRC
Northwest Land Office
Kalispell Unit

Created 10/9/13

Bitter Herrig Timber Sale-Harvest Map

Section 34 T28N R25W



0 0.1 0.2 0.4 0.6 0.8 Miles

Legend

Roads

Existing

New

Line Ground

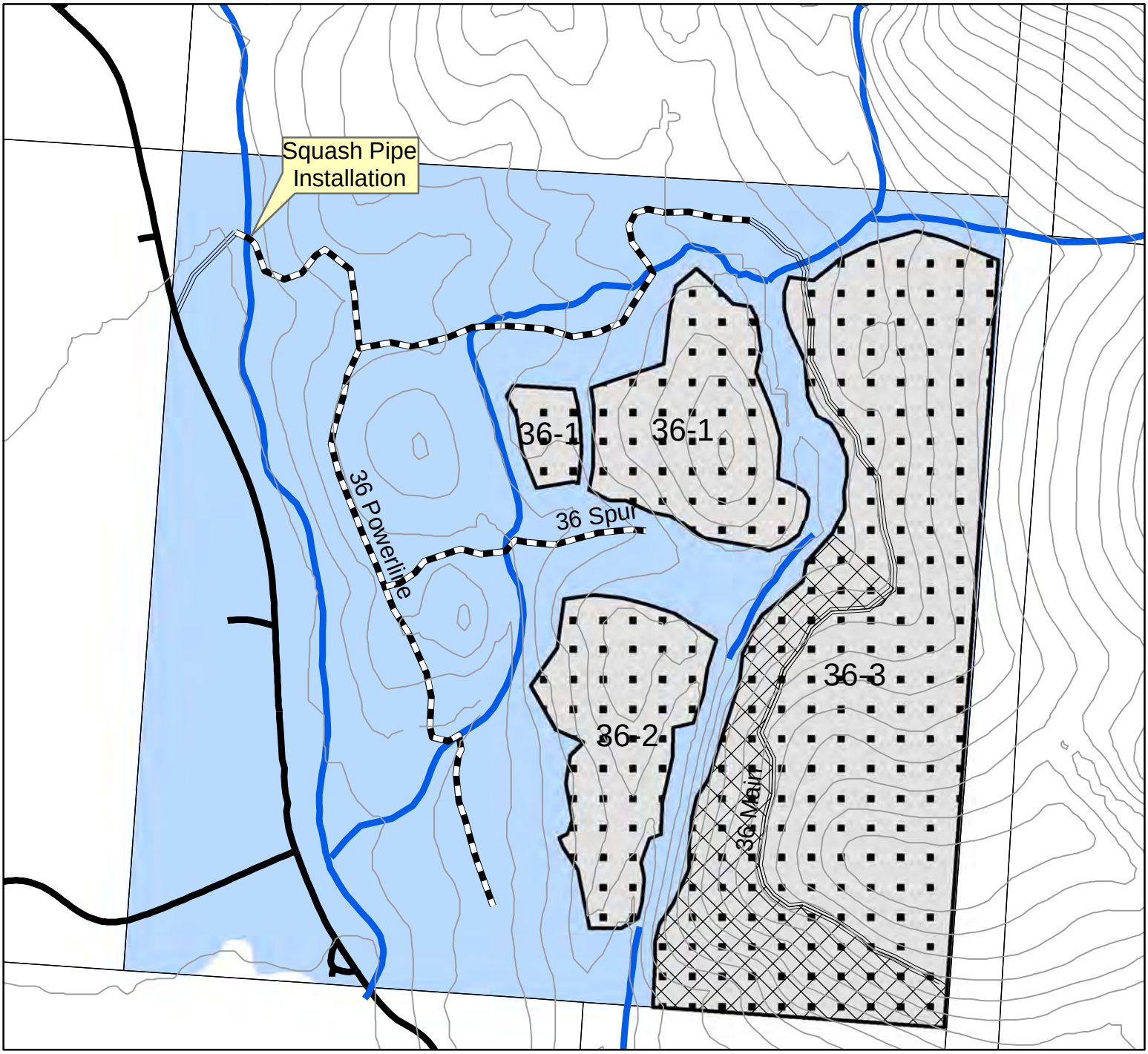
Harvest Units

Montana DNRC
Northwest Land Office
Kalispell Unit

Created 10/9/13

Bitter Herrig Timber Sale-Harvest Map

Section 36 T28N R25W



0 0.125 0.25 0.5 0.75 1 Miles

Legend

Roads

- Existing
- New
- Flathead County Road
- Line Ground
- Harvest Units
- Streams

Montana DNRC
Northwest Land Office
Kalispell Unit

Created 10/9/13

1013-4

COMMUNITIZATION AGREEMENTS

A. G3 Operating, LLC – Olson 1-21-16H Well

B. Whiting Oil and Gas – State 21-28H Well

Land Board Agenda Item
October 21, 2013

1013-4A Communitization Agreement: G3 Operating, LLC – Olson 1-21-16H Well

Location: Roosevelt County
T29N R57E Section 16: All

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

G3 Operating, LLC has filed a request with the Department for the approval of a communitization agreement to communitize State-owned acreage in conformity with Montana Board of Oil and Gas Conservation Commission (BOGC) regulations.

A communitization agreement brings together small tracts sufficient for the granting of a well permit under applicable spacing rules. The Agreement allows the State to receive its proper share of production from the spacing unit and must be approved by the Department for state lands.

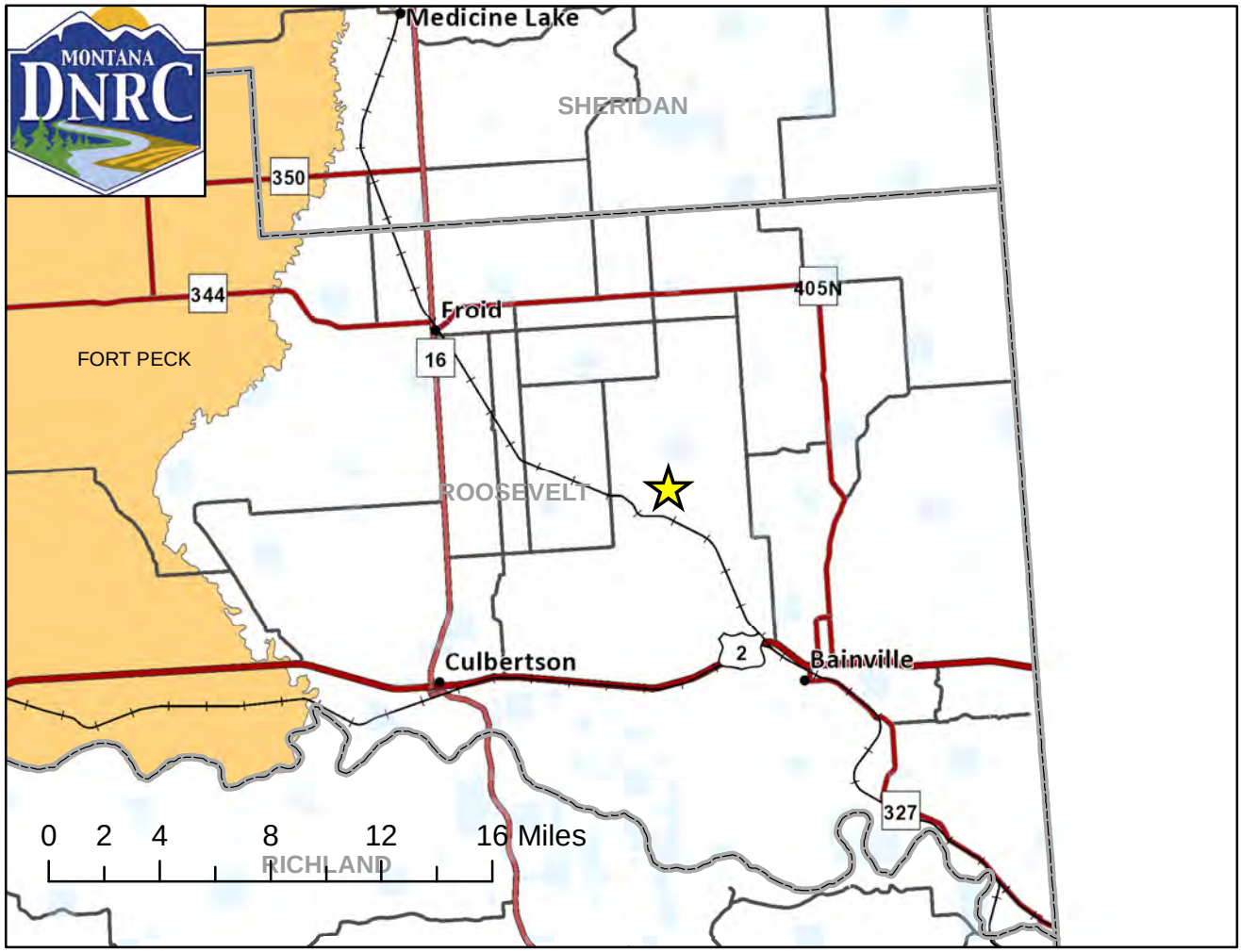
The Olson 1-21-16H well is a horizontal Bakken/Three Forks formation oil well located approximately 10 miles northeast of Culbertson, and was drilled on private land in the SW4SW4 of Section 21. The Department owns 640 acres of the 1280 mineral acres in the permanent spacing unit that will be communitized. The Agreement encompasses the Bakken/Three Forks Formation in Sections 16 and 21.

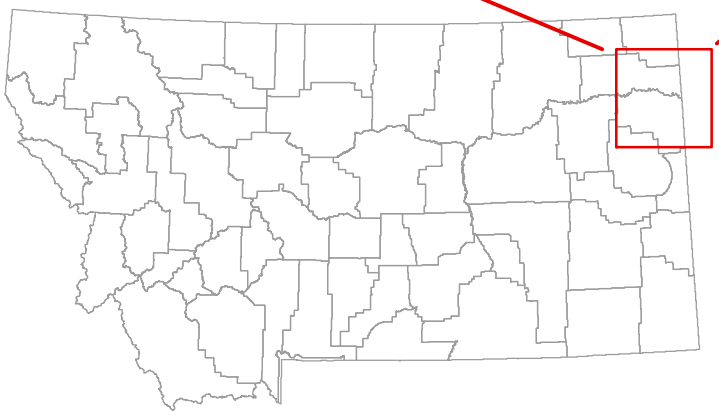
The Department's tract comprises 50% of the communitized area. The Department will consequently receive 8.3% of all oil and gas production (16.67% royalty rate x 50% tract participation).

DNRC Recommendation

The Director recommends the Land Board approve this Communitization Agreement.

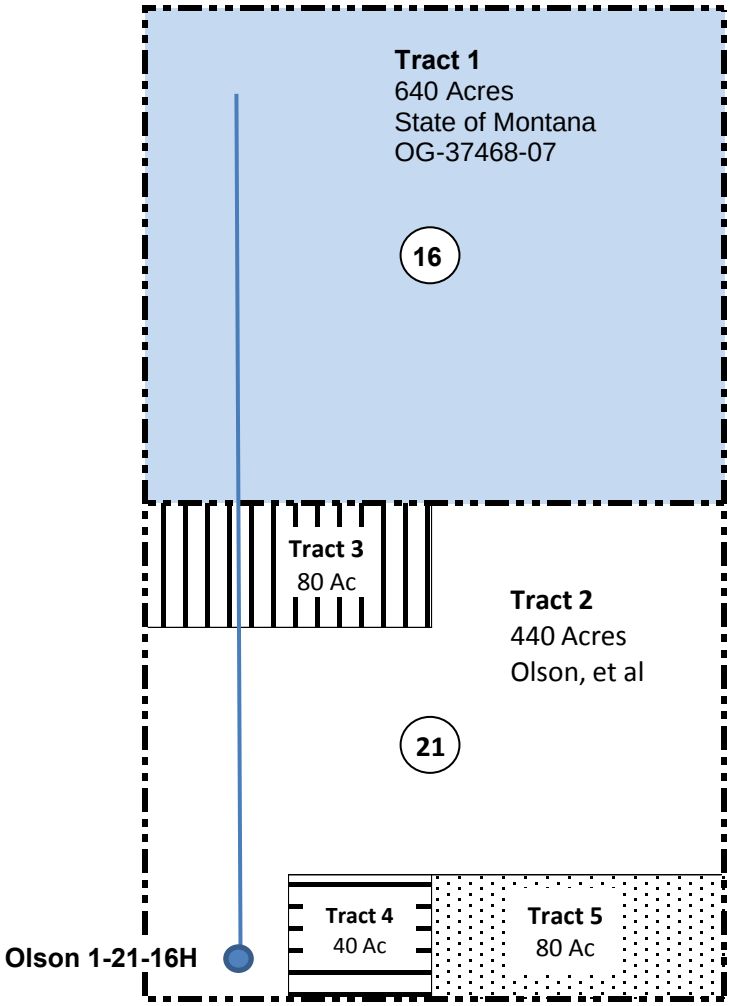
Vicinity Map
Olson 1-21-16H Well





Township 29 North Range 57 East

Sections 16 & 21



Recapitulation

Tract No.	*Type*	*Acres*	*Tract Participation*	*Royalty %*	*Owners Interest Decimal*
1	State of Montana	640.00	50.000%	16.67%	0.083350
2	Olson, et al	440.00	34.375%	various	
3	Bentsen	80.00	6.250%	17.00%	0.010625
4	Knudsen Trust	40.00	3.125%	16.67%	0.005208
5	Farm Credit, et al	80.00	6.250%	various	
Total		1280.00	100.00%		

** The Operator of the Communitized Area is G3 Operating LLC*

Land Board Agenda Item
October 21, 2013

1013-4B Communitization Agreement: Whiting Oil and Gas – State 21-28H Well

Location: Richland County
T25N R57E Section 28: NE4NW4

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

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

A communitization agreement brings together small tracts sufficient for the granting of a well permit under applicable spacing rules. The Agreement allows the State to receive its proper share of production from the spacing unit and must be approved by the Department for state lands.

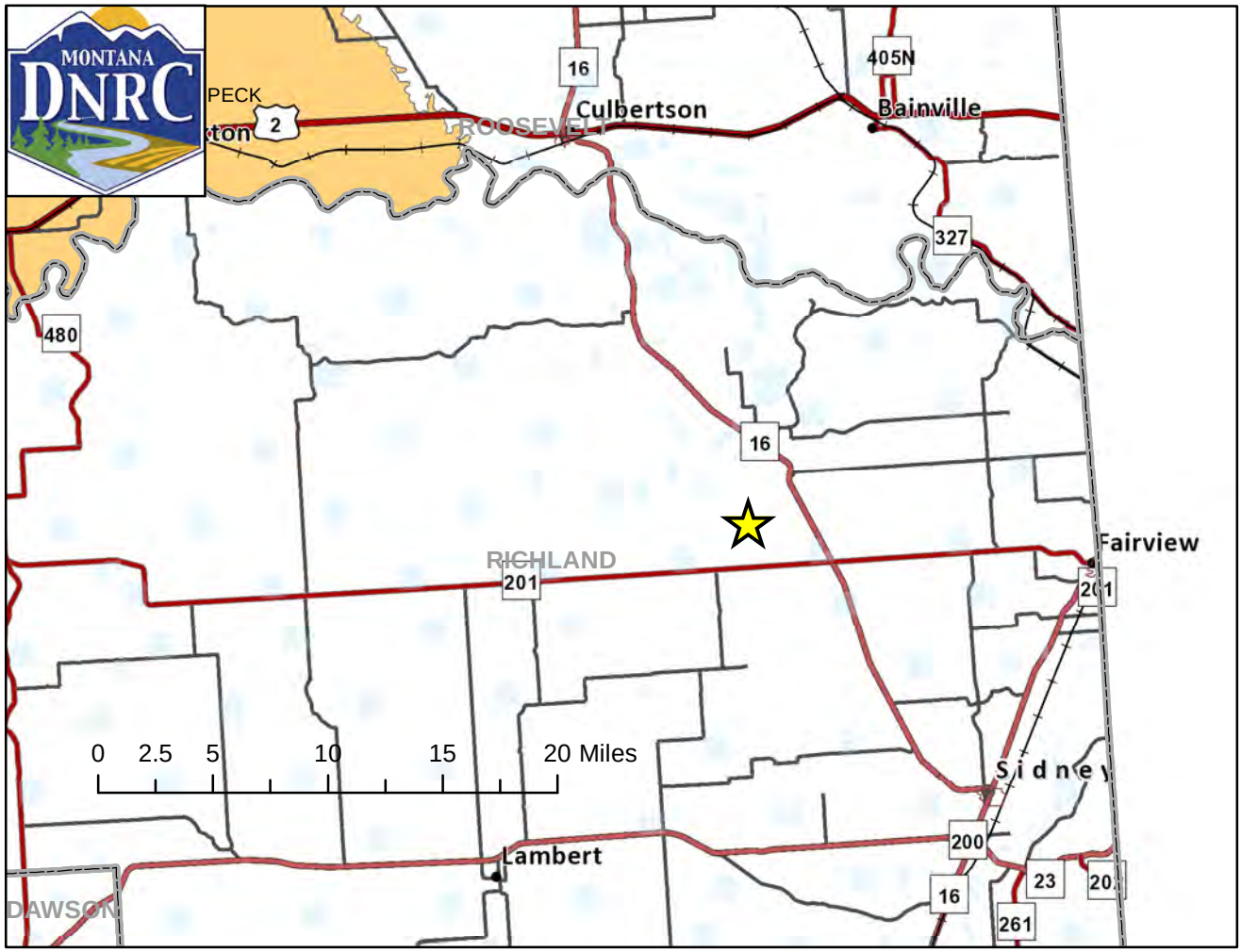
The State 21-2H well is a horizontal Bakken/Three Forks formation oil well was drilled on state land located approximately 15 miles northwest of the town of Sidney. The Department owns 40 acres of the 1280 mineral acres in the permanent spacing unit that will be communitized. The Agreement encompasses the Bakken/Three Forks formation in the NE4NW4 Section 28.

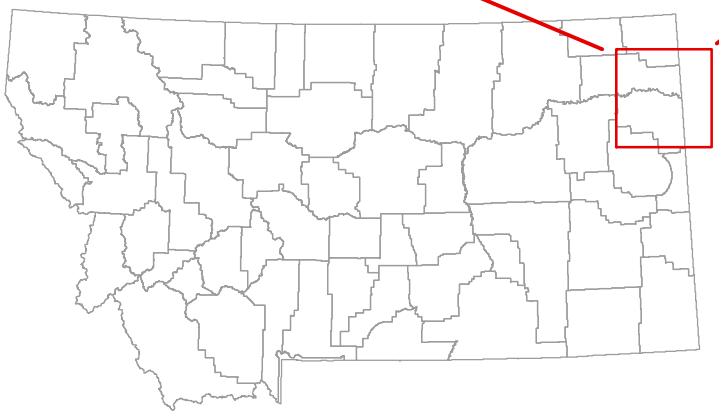
The Department's tract comprises 3.125% of the communitized area. The Department will consequently receive 0.41% of all oil production (13% royalty rate x 3.125% tract participation) and 0.39% of all gas production (12.5% royalty rate x 3.125 tract participation.)

DNRC Recommendation

The Director recommends the Land Board approve this Communitization Agreement.

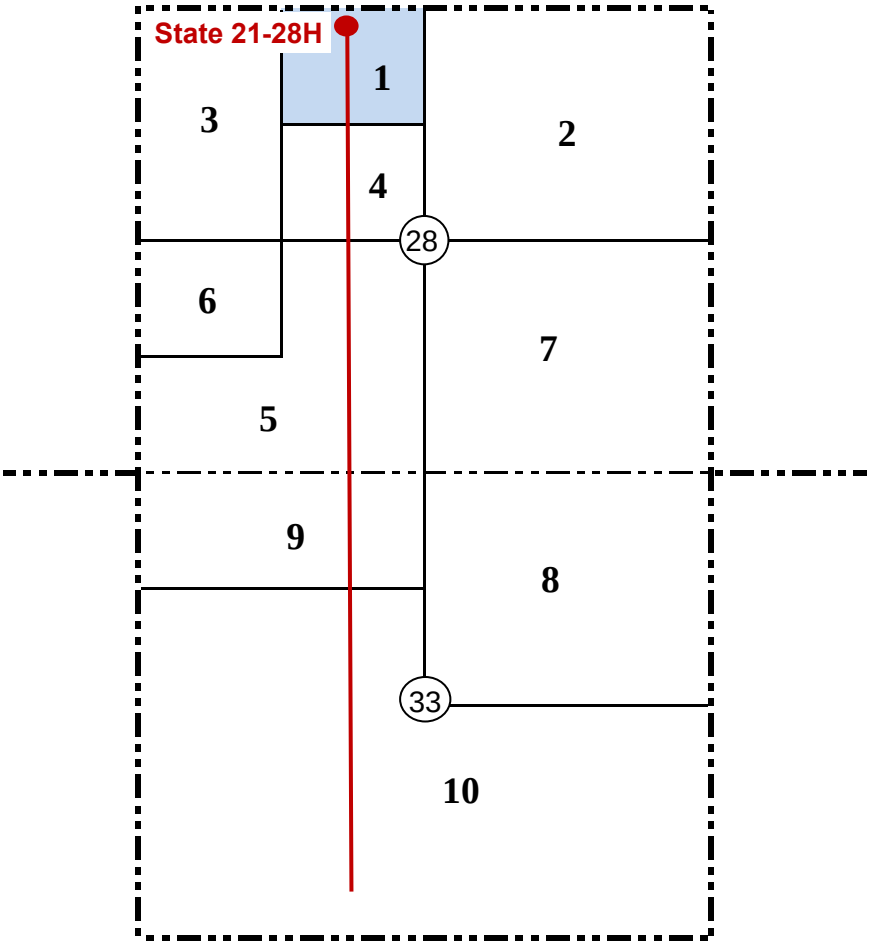
Vicinity Map
State 21-28H Well





Township 25 North Range 57 East

Sections 28 & 33



Recapitulation

Tract No.	*Type*	*Acres*	*Tract Participation*	*Royalty %*	*Owners Interest Decimal*
1	State of Montana OG-29474-89	40.00	3.125%	13.00%	0.0040625
2	Peterson, et al	160.00	12.500%	12.50%	0.0156250
3	Baue, et al	80.00	6.250%	15.00%	0.0093750
4	Baue, et al	40.00	3.125%	15.00%	0.0046875
5	Fee	120.00	9.375%	18.75%	0.0175781
6	Fee	40.00	3.125%	18.75%	0.0058594
7	Sorteberg	160.00	12.500%	18.75%	0.0234375
8	Lewis and Kopp	160.00	12.500%	18.75%	0.0234375
9	Fee	80.00	6.250%	18.75%	0.0117188
10	Lewis and Kopp	400.00	31.250%	18.75%	0.0585938
Total		1280.00	100%		

** The Operator of the Communitized Area is Whiting Oil & Gas Corporation*

1013-5

LAND BANKING PARCELS:

PRELIMINARY APPROVAL FOR SALE

A. Stillwater County

B. Yellowstone County

Land Board Agenda Item
October 21, 2013

1013-5A Land Banking Parcels: Preliminary Approval for Sale – Stillwater County

Location: Stillwater County

Trust Benefits: Common Schools

Trust Revenue: Appraisal to be completed after preliminary approval

Item Summary

Requesting preliminary approval of three parcels totaling 1,920 acres nominated for sale in Stillwater County. All of the sales were nominated by the respective lessees and the parcels are located approximately 10 miles east of Columbus.

Sale #	# of Acres	Legal	Nominator	Trust
706	640	ALL, Section 16, T2S-R22E	Energy Equity Company	Common Schools
707	640	ALL, Section 36, T1S-R21E	Energy Equity Company	Common Schools
708	640	ALL, Section 16, T2S-R21E	Energy Equity Company	Common Schools

The parcels are gently rolling to steep topography and used primarily for livestock grazing purposes. The parcels have below average productivity for grazing lands.

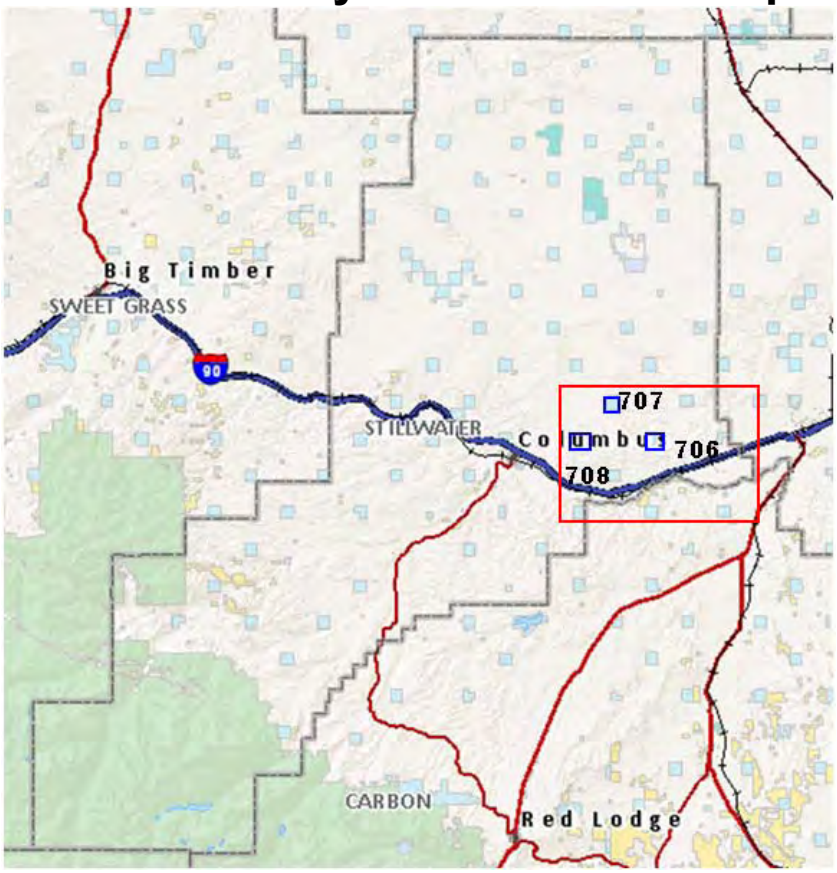
The parcels are not legally accessible by the public and are surrounded by private land.

No potentially negative issues were identified through the MEPA process regarding the sale of these parcels.

DNRC Recommendation

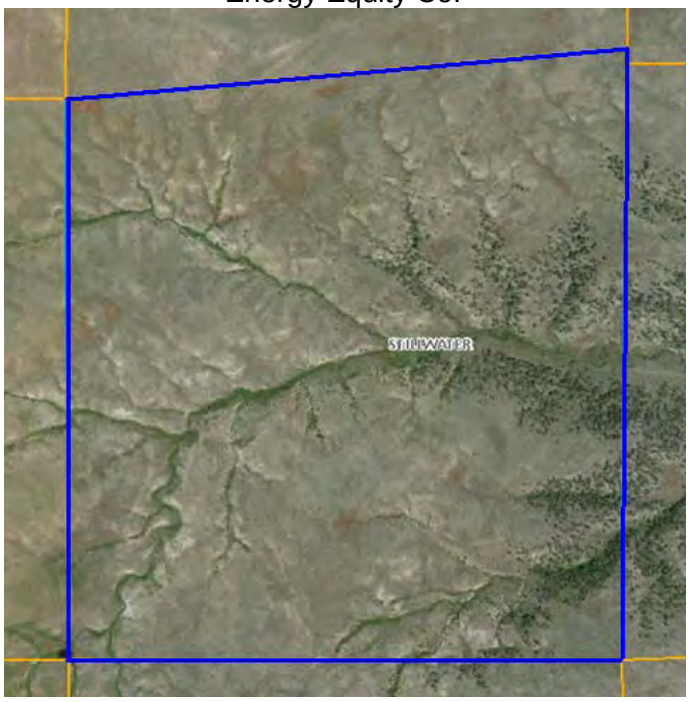
The Director recommends that the Board give preliminary approval to sell these parcels.

Stillwater County Sale Location Map



Sale #706
ALL, Section 16, T2S-R22E
Energy Equity Co.

Sale #707
ALL, Section 36, T1S-R21E
Energy Equity Co.



Sale #708
ALL, Section 16, T2S-R21E
Energy Equity Co.

Land Board Agenda Item
October 21, 2013

1013-5B Land Banking Parcels: Preliminary Approval for Sale – Yellowstone County

Location: Yellowstone County

Trust Benefits: Common Schools

Trust Revenue: Appraisal to be completed after preliminary approval

Item Summary

Requesting preliminary approval of one parcel totaling 640 acres nominated for sale in Yellowstone County. The sale was nominated by the lessee and the parcel is located approximately 10 miles east of Billings.

Sale #	# of Acres	Legal	Nominator	Trust
705	640	ALL, Section 16, T1N-R28E	Patterson Report Services Inc.,	Common Schools

The parcel has gently rolling to steep topography and used primarily for livestock grazing purposes. The parcel has below average productivity for grazing lands.

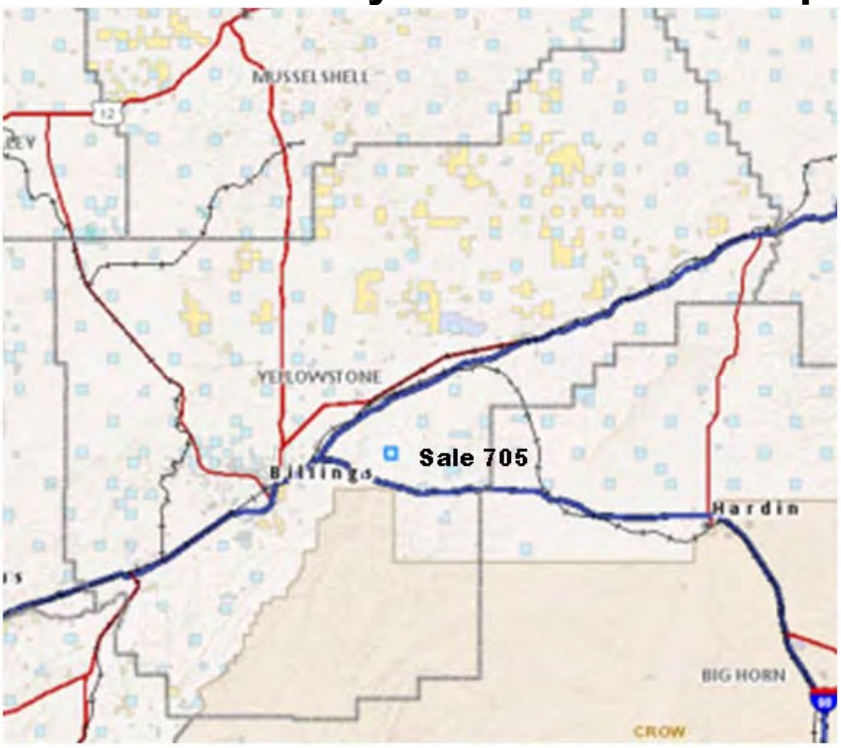
The parcel is not legally accessible by the public and is surrounded by private land.

No potentially negative issues were identified through the MEPA process regarding the sale of this parcel.

DNRC Recommendation

The Director recommends that the Board give preliminary approval to sell this parcel.

Yellowstone County Sale Location Map



Sale #705
ALL, Section 16, T1N-R28E
Patterson Report Services Inc.

1013-6

LAND BANKING PARCELS:

FINAL APPROVAL FOR SALE

1013-6 Land Banking Parcels: Final Approval for Sale

Location: Phillips County

Trust Benefits: Common Schools

Trust Revenue: $47,500

Item Summary

DNRC is requesting final approval on three parcels totaling 10 acres nominated for sale in Phillips County. The sales were nominated by the lessees and are located within the Town of Zortman.

Sale #	# of Acres	Legal	Nominator	Trust
688	3.66	Sale No. 688, a tract on an unrecorded plat in SW¼NW¼SW¼, Section 16, T25N-T25E	Nick Cebulski	Common Schools
689	5.9	Sale No. 689, a tract on an unrecorded plat in SW¼NW¼SW¼, Section 16, T25N-T25E	John & Kandy Kalal	Common Schools
690	0.5	Sale No. 690, a tract on an unrecorded plat in SW¼NW¼SW¼, Section 16, T25N-T25E	Barbara Schmidt	Common Schools

These parcels are currently leased as home sites and produce lower than average income for residential lands statewide.

The parcels are legally accessible by a county road.

No potentially negative issues were identified through the MEPA process regarding the sale of these parcels.

Economic Analysis:
Short term – The average rate of return on these sale parcels is 0.6%. The beneficiaries would continue to receive this return if the parcels remain in state ownership.
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 2.06% on acquisitions with income generated from annual lease payments.

Background:
In September 2012, the Board granted preliminary approval for these parcels to continue through the Land Banking sale evaluation process. In August 2013 the Board set the minimum bid at the appraised values with access as follows:

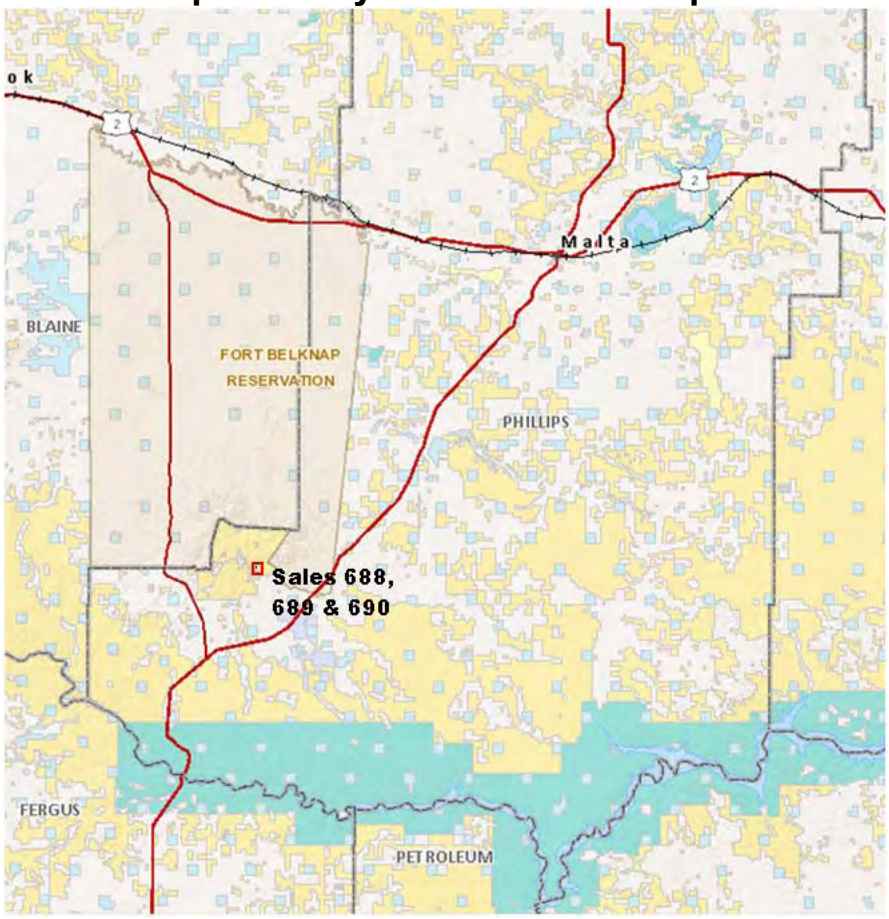
Appraised Values of sale parcels:

Sale #	Minimum Bid
688	$15,000
689	$25,000
690	$7,500
Total	**$47,500**

Sale Price
The parcels were sold at a public auction on October 9, 2013. Each parcel had only one bidder and was sold for the minimum bid amount listed above.

DNRC Recommendation
The Director recommends final approval of Land Banking Sales 688, 689 & 690. The sales will be closed within 30 days of final approval by the board.

Phillips County Sale Location Map



#688, 689, 690

Parcels in the SW¼NW¼SW¼, Section 16, T25N-T25E

1013-7

QUIET TITLE: SALMOND RANCH ROAD STIPULATION OF EASEMENT AND DISCLAIMER OF INTEREST –

DEEP CREEK RANCH MANAGEMENT CO. LLC

Land Board Agenda Item
October 21, 2013

1013-7 Quiet Title: Salmond Ranch Road Stipulation of Easement and Disclaimer of Interest – Deep Creek Ranch and Management Co. LLC

Location: Teton County

Trust Benefits: Common Schools, Public Buildings

Trust Revenue: Unknown

Item Summary

The Department, the Land Board, Teton County, and Randall Knowles, are Defendants in a quiet title action brought by the Salmond Ranch Company in Salmond Ranch Company v. All Known Persons, et al., Cause No. DV-12-45, Mont. 9th Judic. Distr. Ct., Teton County. In this quiet title action, the Plaintiff, Salmond Ranch Company, seeks a judicial declaration that no public right-of-way exists by which the public can access State lands within Sections 4, 9, 10, 16, 17, 20, 21, 22, and 28 in Township 23 North, Range 8 West, MPM, in Teton County, Montana.

The Defendants, the State, Teton County, and Randall Knowles assert that a public road runs across Section 2, 3, 10, and 11 in Township 23 North, Range 8 West, MPM, as described in the Grant of Frank Salmond dated June 2, 1930 and recorded June 3, 1930 in Book 11, Deeds, Page 266 of the real property records of Teton County, Montana Clerk and Recorder's office.

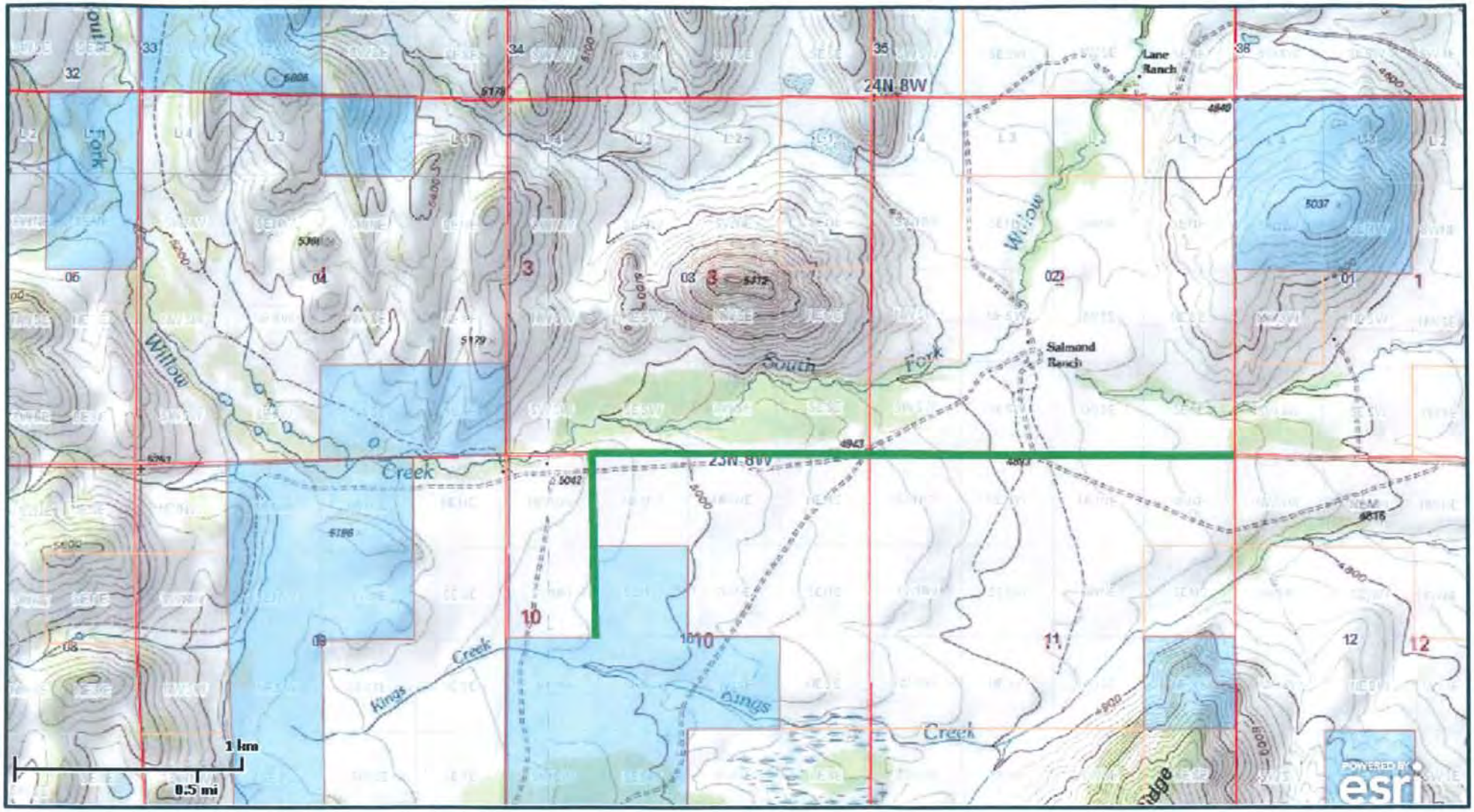
A recent review of the local real property records revealed that Deep Creek Ranch & Management Co., LLC, owns road and ditch easements crossing the disputed road route, which is the subject of this quiet title action. Consequently, Deep Creek, the State, and Teton County now propose to resolve any title dispute between them over this road route by entering into a Stipulation of Easement and Disclaimer of Interest.

By this proposed agreement, Deep Creek would disclaim any property right which would conflict with the public's right of access on the disputed road. The State and Teton County would recognize Deep Creek's non-exclusive right to use the same road and Deep Creek's existing ditch rights which do not conflict with public use of the road route. If the State or Teton County conducts any road work, they would be obligated to install culverts to preserve Deep Creek's existing ditch rights.

If this agreement is approved, the parties will file it with the Court and the State will not be obligated to join Deep Creek as a litigant in this quiet title action to obtain a comprehensive adjudication of title. This agreement will not resolve this quiet title action, but it will simplify it by reducing the number of parties. A copy of the Stipulation of Easement and Disclaimer of Interest is enclosed.

DNRC Recommendation

The director recommends the Land Board approve this quiet title agreement and direct DNRC to file it with the Montana 9th District Judicial Court.



Salmond Ranch Co. Inc. v. All Known

Disputed Access Route

Disputed Route depicted in Green

Printed: Oct 03, 2013

Created 10/9/13

Tommy H. Butler
Brian C. Bramblett
Special Assistant Attorneys General
Montana Department of Natural
Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-3776

MONTANA NINTH JUDICIAL DISTRICT COURT, TETON COUNTY

* * * * * *

SALMOND RANCH COMPANY, INC. Plaintiff, -vs- ALL KNOWN PERSONS WHO ASSERT OR WHO MIGHT ASSERT ANY CLAIM, AND ALL OTHER PERSONS, UNKNOWN, CLAIMING OR WHO MIGHT CLAIM ANY RIGHT, TITLE, ESTATE OR INTEREST IN OR LIEN OR ENCUMBRANCE UPON THE REAL PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S OWNERSHIP, OR ANY CLOUD UPON PLAINTIFF'S TITLE, WHETHER THE CLAIM OR POSSIBLE CLAIM IS PRESENT OR CONTINGENT, Defendants.	)	Cause No. DV-12-45 STIPULATION OF EASEMENT, AND DISCLAIMER OF INTEREST BY DEEP CREEK RANCH & MANAGEMENT COMPANY, LLC
RANDALL G. KNOWLES, Pro Se, Third Party Plaintiff -vs- TETON COUNTY, MONTANA and THE STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES (DNRC) and THE MONTANA STATE LAND BOARD Third Party Defendants.	)	

This Stipulation of Easement and Disclaimer of Interest is made and entered into effective as of September 20, 2013, by and between the **STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION and THE STATE BOARD OF LANDS COMMISSIONERS**, whose address is P.O. Box 201601, Helena, Montana 59620-1601 and **TETON COUNTY**, whose address is P.O. Box 610, County Courthouse, Choteau, MT 59422-0610, (hereinafter together referred to as "the Litigants") and **DEEP CREEK RANCH & MANAGEMENT COMPANY, LLC**, a Montana limited liability company (hereinafter referred to as "Deep Creek Ranch"), whose address is c/o Geller Family Office Services LLC, 909 Third Avenue – 16th Floor, New York, NY 10022.

RECITALS

WHEREAS, the Plaintiff, Salmond Ranch Company, Inc., filed the above-captioned quiet title action to quiet title to a disputed road described in the Complaint in the above-captioned action, running across the southern boundary of Section 2 and 3 and the northern boundaries of Section 10 and 11 in Township 23 North, Range 8 West, MPM, in Teton County, Montana "beginning at the southeast corner of Section 2, Township 23 North, Range 8 West, thence west one and three-quarters miles, thence south one-half mile to the S.W. corner of the S.E. of the N.W. corner of Section 10, Township 23 N., Range 8 W.", as further described by Exhibits "A" and "B" attached to the Complaint.

WHEREAS, Deep Creek Ranch currently holds easements which run across and intersect with the route of the disputed road which is the subject of the above-captioned quiet title action ("Road Route"). The Road Route is depicted by the highlighting on Exhibit "A" attached hereto and incorporated herein by reference. Deep Creek Ranch, pursuant to two July 30, 2003 Access and Utility Easements with Salmond Ranch Company (filed for record in Book 127 Deeds, Page 468, and Book 127 Deeds, Page 473, with the

Teton County Clerk & Recorder on July 31, 2003) holds access and utility rights which run across or along the Road Route.

WHEREAS, the Litigants and Deep Creek Ranch have both determined that it is in the best interests of all parties to recognize the easements held by Deep Creek Ranch, recognize that those easements will not conflict with the use of the disputed road whether that road is adjudicated to be private or public, without further actions or declaratory rulings concerning Deep Creek Ranch's interests and the need to join it as a party in this action.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Litigants and Deep Creek Ranch hereby agree as follows:

1. The purpose of this Stipulation of Easement and Disclaimer of Interest is to resolve title questions to the disputed property only as between the subscribing Litigants and Deep Creek Ranch. The intent being to recognize certain easements held by Deep Creek Ranch, do not conflict with the Road, whether that road is public or private, but not to resolve any claims or disputes by and between Salmond Ranch Co., Inc., the State of Montana, and Teton County.
2. The parties recognize that this Settlement Agreement and Release will not result in any adjudication of title as between the Litigants or the Litigants and Salmond Ranch Company. Instead, this Stipulation of Easement and Disclaimer of Interest is operative only as between each of the Litigants and Deep Creek Ranch. Nonetheless, the subscribing parties agree to take steps, or reasonably cooperate with the other party, so that both parties may enjoy the full benefits accruing to them under this Stipulation of Easement and Disclaimer of Interest.

3. The parties shall bear their own costs and attorney's fees in the resolution of this dispute and the exclusion of Deep Creek Ranch from the above-captioned cause of action;

4. The terms and conditions of this Stipulation of Easement and Disclaimer of Interest do not constitute an admission of liability by the State of Montana or Teton County, and shall not be used by any of the above-described parties in any present or future claim against any party, their officers, agents, employees, or representatives.

5. The validity, construction, interpretation, and administration of this agreement shall be governed by the substantive laws of the State of Montana.

6. This agreement shall not be modified or amended except by an instrument in writing signed by the Litigants and Deep Creek Ranch.

7. The Litigants and Deep Creek Ranch individually warrant that their signatory executing this Settlement Agreement and Release has all necessary power to execute and deliver such a document; and that this Settlement Agreement and Release constitutes a valid, binding agreement, enforceable in accordance with its terms.

8. Provided that the existing condition of the Road Route as of the date of this Settlement continues unabated, Deep Creek Ranch acknowledges that its ditch and access easements intersected by or along the Road Route would be un-affected by any declaration or adjudication by the Court that the disputed road which is the subject of the above-captioned quiet title action running along the southern boundaries of Sections 2 and 3 and the northern boundaries of Section 10 and 11, in Township 23 North, Range 8 West, MPM, in Teton County, Montana is either a public road or a private road.

9. Provided the existing condition of the ditches and access roads intersecting with the Road Route continues un-abated as presently utilized, the above-captioned subscribing parties

acknowledge that the use of such ditches and access routes by Deep Creek Ranch and its successors, and assigns, will not interfere with the Road Route which is the subject of the above-captioned quiet title action running along the southern boundaries of Sections 2 and 3 and the northern boundaries of Section 10 and 11, in Township 23 North, Range 8 West, MPM, in Teton County, Montana, whether that road is adjudicated to be a public road or a private road. However, if a road is physically constructed along the Road Route, whether public or private, the entity responsible for constructing the road shall install culverts where necessary at the entity's sole cost and expense and shall not block any access historically used by Deep Creek.

10. Deep Creek Ranch & Management Company also claims a non-exclusive right of ingress and egress to utilize portions of the Road Route to access its real property for all lawful purposes in Section 9, in Township 23 North, Range 8 West, MPM, in Teton County, Montana, whether that road is adjudicated to be a public road or a private road. With the exception of the herein-described access rights and any other access and ditch rights held by Deep Creek Ranch, Deep Creek Ranch hereby disclaims any interest in any the real property which is the subject of the Plaintiff's Complaint in the above-captioned action, or any interest in any road segments which may be declared to belong to the public, and recognizes that its use of such route with not conflict with any use by any party, whether the disputed road is ruled to be public or private.

11. This Agreement constitutes the entire agreement relating to the subject matter set forth herein between the above-captioned subscribing parties and Deep Creek Ranch, and its provisions are contractual in nature and not merely recitals.

12. This Stipulation of Easement and Disclaimer of Interest shall constitute the consideration for the dismissal of Deep Creek from the above-captioned quiet title action, and may be enforced by a court using any appropriate remedy allowed by law or equity.

DEEP CREEK RANCH & MANAGEMENT COMPANY, LLC

DATED: 9/23/13 By: _____
Andrew Bardwell, Ranch Manager

STATE OF MONTANA)
: ss.
County of Teton)

This instrument was acknowledged before me on the 23rd day of September, 2013, by ANDREW BARDWELL, Ranch Manager for Deep Creek Ranch & Management Company, LLC, a Montana limited liability company.

DIANE E. GRAF
NOTARY PUBLIC for the
State of Montana
Residing at Choteau, Montana
My Commission Expires
August 01, 2017

(Seal)

Diane E. Graf
Print Name Diane E. Graf
Notary Public for the State of MONTANA
Residing at Choteau MT
My commission expires August 1, 2017

DATED:_____

THE STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, AND THE STATE BOARD OF LAND COMMISSIONERS

BY:_____
Tommy H. Butler
Special Assistant Attorney General
DNRC

STATE OF MONTANA)
: ss.
County of _____)

This instrument was acknowledged before me on the _____ day of _____, 2013, by TOMMY H. BUTLER, Special Assistant Attorney General representing and on behalf of the State of Montana, Department of Natural Resources and Conservation and the State Board of Land Commissioners.

_____
Printed or typed name:
Notary Public for the State of Montana
(SEAL) Residing at _____, Montana
My commission expires: _____

DATED: 9/23/13 **TETON COUNTY**

BY: _____
Joe Coble
Teton County Attorney

STATE OF MONTANA)
: ss.
County of Teton)

This instrument was acknowledged before me on the 23rd day of September, 2013, by JOE COBLE, the Teton County Attorney representing and on behalf of Teton County, Montana.

Diane E. Graf
Printed or typed name: Diane E. Graf
Notary Public for the State of Montana
(SEAL) Residing at Choteau, Montana
My commission expires: 8/1/2017

DIANE E. GRAF NOTARIAL SEAL STATE OF MONTANA
DIANE E. GRAF
NOTARY PUBLIC for the
State of Montana
Residing at Choteau, Montana
My Commission Expires
August 01, 2017

Justin B. Lee, Esq.
William R. Bieler, Esq.
BURK, LEE & BIELER, PLLC
216 Main Avenue North
PO Box 1350
Choteau, Montana 59422
Telephone: (406) 466-5755
Facsimile: (406) 466-5754

Attorneys for Plaintiff Salmond Ranch

MONTANA NINTH JUDICIAL DISTRICT COURT, TETON COUNTY

* * * * * *

SALMOND RANCH COMPANY, INC. Plaintiff, -vs- ALL KNOWN PERSONS WHO ASSERT OR WHO MIGHT ASSERT ANY CLAIM, AND ALL OTHER PERSONS, UNKNOWN, CLAIMING OR WHO MIGHT CLAIM ANY RIGHT, TITLE, ESTATE OR INTEREST IN OR LIEN OR ENCUMBRANCE UPON THE REAL PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S OWNERSHIP, OR ANY CLOUD UPON PLAINTIFF'S TITLE, WHETHER THE CLAIM OR POSSIBLE CLAIM IS PRESENT OR CONTINGENT, Defendants.	)	Cause No. DV-12-45 STIPULATION OF EASEMENT, AND DISCLAIMER OF INTEREST BY DEEP CREEK RANCH & MANAGEMENT COMPANY, LLC
RANDALL G. KNOWLES, Pro Se, Third Party Plaintiff -vs-	)	

1

TETON COUNTY, MONTANA and THE STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES (DNRC) and THE MONTANA STATE LAND BOARD	)
Third Party Defendants.	)

This Stipulation of Easement and Disclaimer of Interest is made and entered into effective as of September 20, 2013, by and between **SALMOND RANCH COMPANY, INC.,** whose address is P.O. Box 1327 Choteau, MT 59422, and **DEEP CREEK RANCH & MANAGEMENT COMPANY, LLC**, a Montana limited liability company (hereinafter referred to as "Deep Creek Ranch"), whose address is c/o Geller Family Office Services LLC, 909 Third Avenue – 16th Floor, New York, NY 10022.

RECITALS

WHEREAS, the Plaintiff, Salmond Ranch Company, Inc., filed the above-captioned quiet title action to quiet title to a disputed road described in the Complaint in the above-captioned action, running across the southern boundary of Section 2 and 3 and the northern boundaries of Section 10 and 11 in Township 23 North, Range 8 West, MPM, in Teton County, Montana "beginning at the southeast corner of Section 2, Township 23 North, Range 8 West, thence west one and three-quarters miles, thence south one-half mile to the S.W. corner of the S.E. of the N.W. corner of Section 10, Township 23 N., Range 8 W.", as further described by Exhibits "A" and "B" attached to the Complaint;

WHEREAS, Deep Creek Ranch currently holds easements which runs with, across and intersect with the route of the disputed road which is the subject of the above-captioned quiet title action ("Road Route");

WHEREAS, Salmond Ranch and Deep Creek Ranch have both determined that it is in the best interests of all parties to recognize the easements held by Deep Creek Ranch, recognize that those

easements will not conflict with the use of the disputed road whether that road is adjudicated to be private or public, without further actions or declaratory rulings concerning Deep Creek Ranch's interests and the need to join it as a party in this action;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Salmond Ranch and Deep Creek Ranch hereby agree as follows:

1. In the event that Salmond Ranch prevails in the above captioned litigation all easements that Deep Creek Ranch currently holds as filed documents that involve the disputed road in this case will not be quieted in the name of Salmond Ranch and will continue in full force and effect.
2. By signing hereto Deep Creek acknowledges that it has been given proper notice of this action for quite title, that it is an affected party which could join the lawsuit and has knowingly elected to not be a named party as stated in the caption above.
3. The terms and conditions of this Stipulation of Easement and Disclaimer of Interest do not constitute an admission of liability by any party, and shall not be used by any of the above-described parties in any present or future claim against any party, their officers, agents, employees, representatives, or owners.
4. The validity, construction, interpretation, and administration of this agreement shall be governed by the substantive laws of the State of Montana.
5. This agreement shall not be modified or amended except by an instrument in writing signed by the parties.

6. The parties individually warrant that their signatory executing this Settlement Agreement and Release has all necessary power to execute and deliver such a document; and that this Settlement Agreement and Release constitutes a valid, binding agreement, enforceable in accordance with its terms.

7. This Agreement constitutes the entire agreement relating to the subject matter set forth herein between Salmond Ranch and Deep Creek Ranch, and its provisions are contractual in nature and not merely recitals.

8. This Stipulation of Easement and Disclaimer of Interest shall constitute the consideration for the dismissal of Deep Creek from the above-captioned quiet title action, and may be enforced by a court using any appropriate remedy allowed by law or equity.

DEEP CREEK RANCH & MANAGEMENT COMPANY, LLC

DATED: 9/23/13 By: _____
Andrew Bardwell, Ranch Manager

STATE OF MONTANA)
: ss.
County of Teton)

This instrument was acknowledged before me on the 23 day of September, 2013, by ANDREW BARDWELL, Ranch Manager for Deep Creek Ranch & Management Company, LLC, a Montana limited liability company.

DINA VANSETTEN
NOTARY PUBLIC for the
State of Montana
Residing at Choteau, Montana
My Commission Expires
July 20, 2014

(Seal)

Dina Van Setten
Print Name Dina Van Setten
Notary Public for the State of MONTANA
Residing at Choteau MT
My commission expires July 20, 2014

4

SALMOND RANCH COMPANY, INC.

DATED: 9/23/2013 By: Ross J. Salmond
Ross Salmond
Secretary/Treasurer Salmond Ranch Company, Inc.

STATE OF MONTANA)
: ss.
County of Teton)

This instrument was acknowledged before me on the 23 day of September, 2013, by Ross Salmond, as Secretary/Treasurer of Salmond Ranch Company, Inc., a Montana corporation.

Dina VanSetten
Printed or typed name: Dina VanSetten
Notary Public for the State of Montana
(SEAL) Residing at Choteau, Montana
My commission expires: July 20, 2014

DINA VANSETTEN
NOTARY PUBLIC for the
State of Montana
Residing at Choteau, Montana
My Commission Expires
July 20, 2014

1013-8

EASEMENTS

Land Board Agenda Item
October 21, 2013

1013-8 Easements

Location: Big Horn, Missoula, Sheridan, and Silver Bow Counties

Trust Benefits: Common Schools, Public Land Trust

Trust Revenue: Common Schools = $3,064
Public Land Trust = $4,697

Item Table of Contents

HISTORIC PRIVATE ACCESS – *John Yerger* (Pages 5-6)

NEW PIPELINE FACILITY – *Dry Prairie Rural Water Authority* (Pages 1-2)

NEW TELEPHONE UTILITY – *Southern Montana Telephone Coop.* (Pages 7-8)

STATE HIGHWAY/BRIDGE REPAIR – *Dept. of Transportation* (Pages 3-4)

Rights of Way Applications

October 21, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Dry Prairie Rural Water Authority PO Box 577 Culbertson, MT 59218
Application No.:	16394
R/W Purpose:	a 12-inch buried water pipeline and associated appurtenances
Lessee Agreement:	OK
Acreage:	1.21
Compensation:	$424.00
Legal Description:	30-foot strip through E2NE4, Sec. 28, Twp. 35N, Rge. 55E, Sheridan County
Trust Beneficiary:	Common Schools

Item Summary

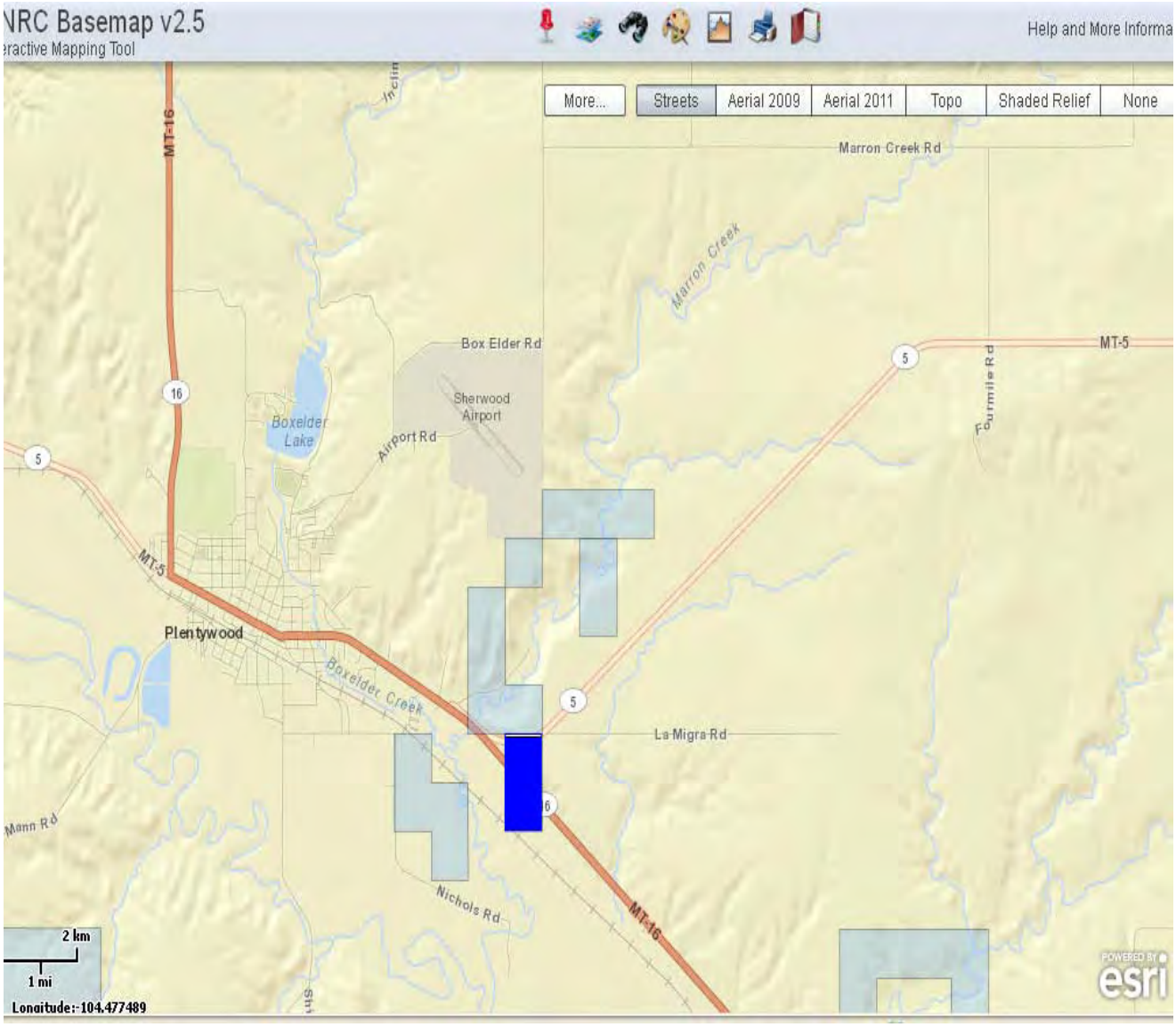
This water project consists of constructing water transmission main and appurtenant items throughout Sheridan County. The selected pipeline route across state lands is the most cost effective route for this project.

Department Recommendation

The Department recommends approval of this easement request for a 12 inch buried water pipeline.

Rights of Way Applications

October 21, 2013



Rights of Way Applications

October 21, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Montana Department of Transportation PO Box 201001 Helena MT 59620-1001
Application No.:	16396
R/W Purpose:	highway construction and maintenance including occupancy by public utilities as defined in §69-4-101, MCA
Lessee Agreement:	N/A (Riverbed)
Acreage:	0.89
Compensation:	$4,697.00
Legal Description:	a tract of land in the Blackfoot River in NE4SW4 and SE4NW4 , Sec. 14, Twp. 13N, Rge. 18W, Missoula County
Trust Beneficiary:	Public Land Trust

Item Summary

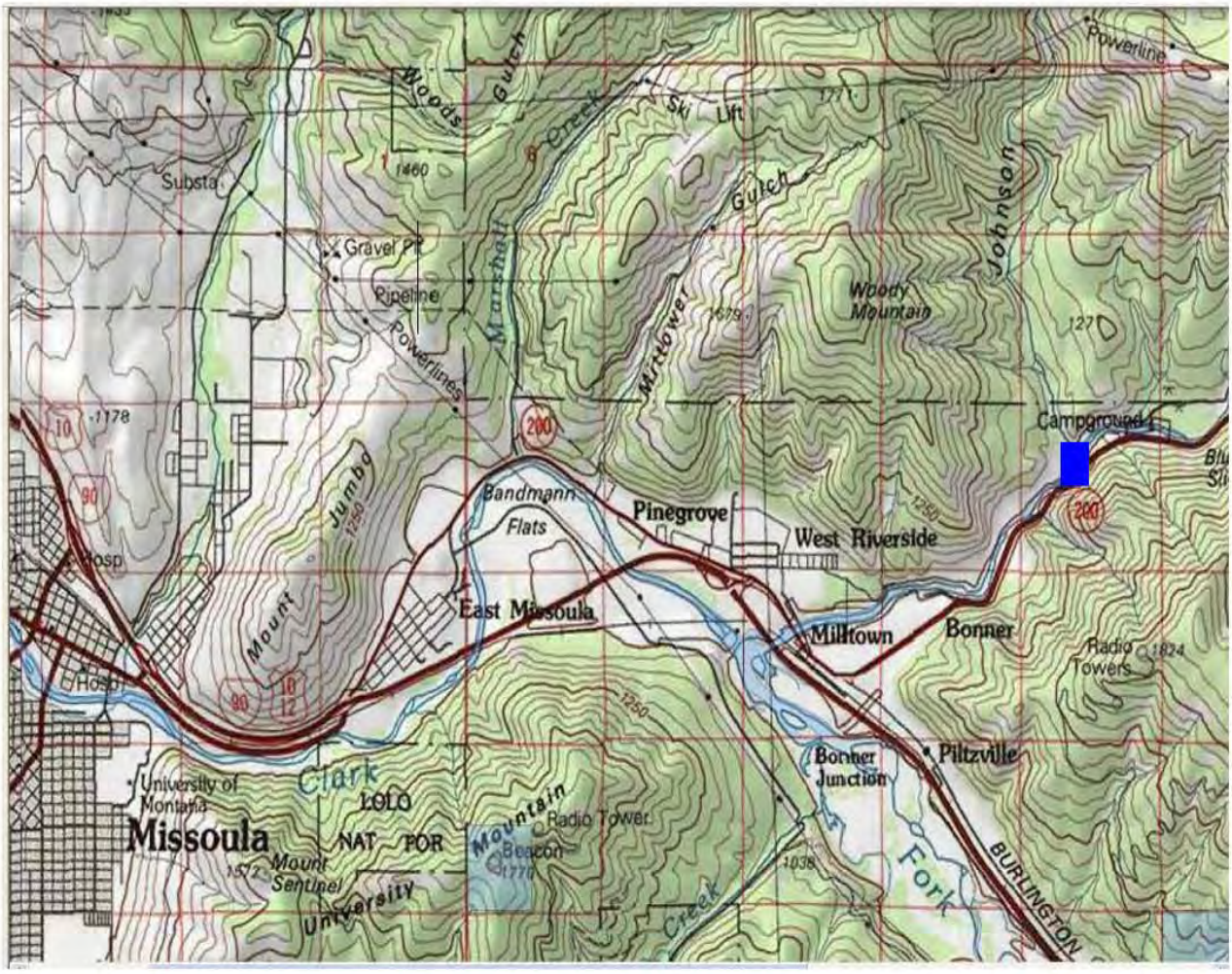
MDT previously applied for a land use license to replace the foundation for a section of gabion retaining wall along Montana 200 (N-24) east of Bonner. The foundation material was scoured during high runoff of the Blackfoot River last year. The work included placement of special backfill and/or concrete, geotextile, and riprap. The Gabion retaining wall and riprap are specifically installed to support the remaining highway right-of-way slope, and future work in this area will be necessary in order to maintain the integrity of the existing highway right-of-way for the traveling public.

Department Recommendation

The Department recommends approval of this retaining wall.

Rights of Way Applications

October 21, 2013



Rights of Way Applications

October 21, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	John Yerger Box 1108, Route 1 Hardin MT 59034
Application No.:	16397
R/W Purpose:	a private access road for the purpose of conducting normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	4.93
Compensation:	$2,220.00
Legal Description:	30-foot strip through N2NW4, NW4NE4 and S2NE4, Sec. 36, Twp. 2N, Rge. 32E, Bighorn County
Trust Beneficiary:	Common Schools

Item Summary

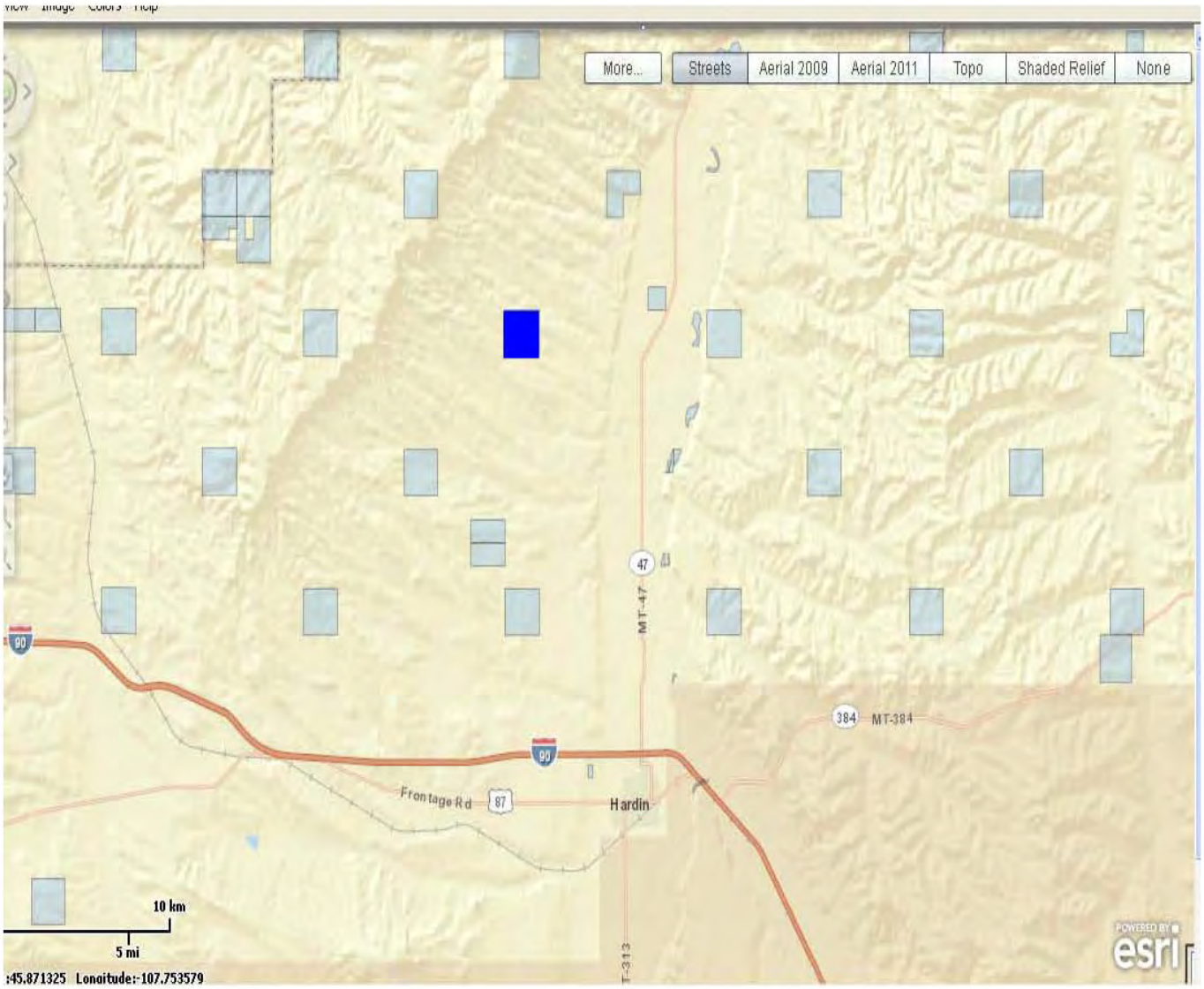
Applicant is requesting approval for the use of an existing road to access his private lands for farming and ranching purposes. The road has been in place for years and authorization for continued use is being requested pursuant to 77-1-130, MCA, which allows for recognition of such historic access.

Department Recommendation

The Department recommends approval of this historic application.

Rights of Way Applications

October 21, 2013



Rights of Way Applications

October 21, 2013

APPLICANTS AND RIGHTS OF WAY INFORMATION

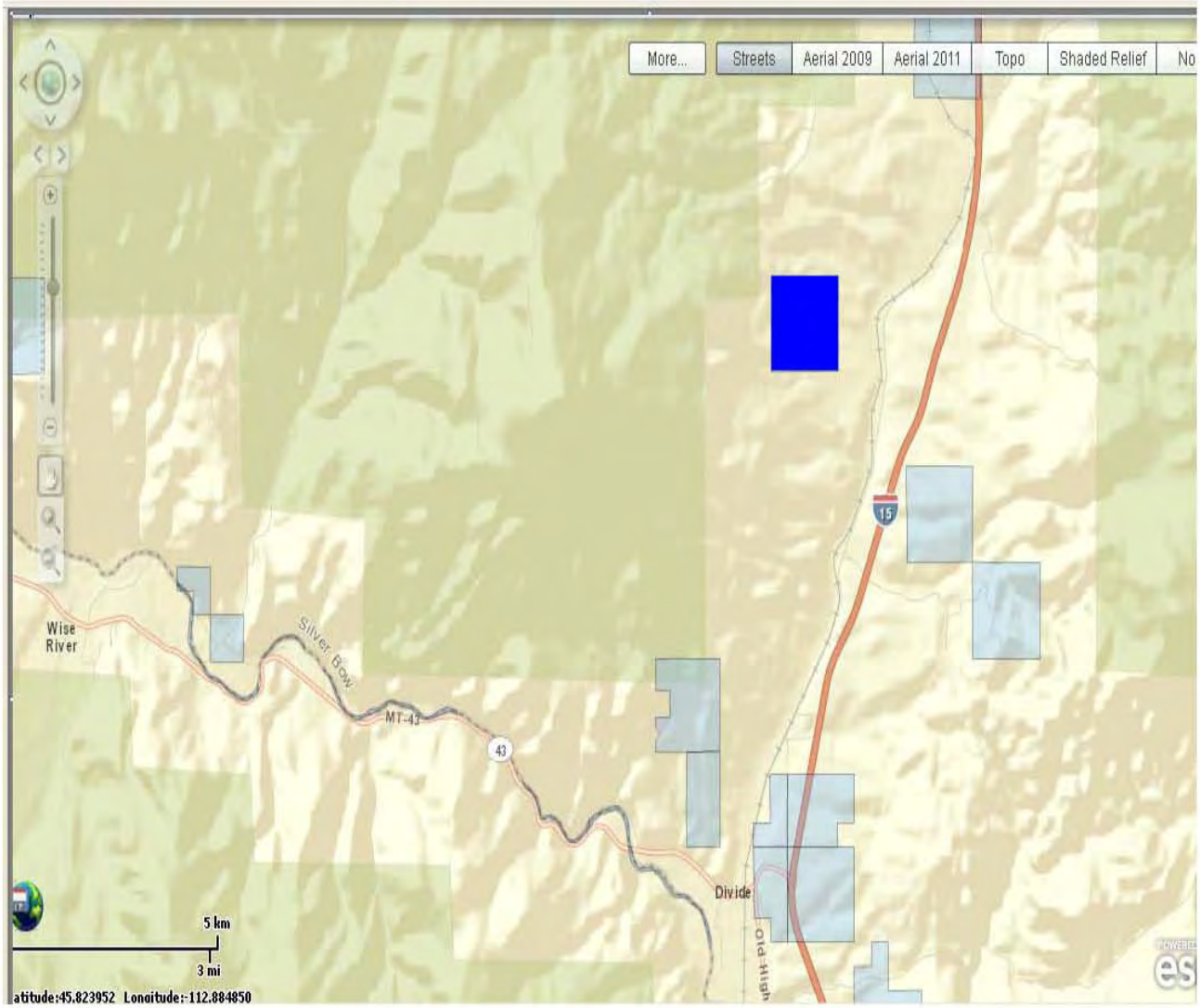
Applicant:	Southern Montana Telephone Company PO Box 205 Wisdom MT 59761-0205
Application No.:	16398
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	OK
Acreage:	0.35
Compensation:	$420.00
Legal Description:	20-foot strip through NW4NW4, Sec. 16, Twp. 1N, Rge. 9W, Silver Bow County
Trust Beneficiary:	Common Schools

Item Summary

Southern Montana Telephone Company was asked to provide service to a Verizon cellular tower in a remote area near Divide. Verizon had lost its previous carrier service and cell phone coverage was lost to multiple customers which posed a safety risk. The Department permitted installation of the telephone facility under an emergency construction license as a result. The installation of this line will also allow upgrade of current facilities and services to the general public in the Divide and Wise River Exchange area. The route was determined as the most direct between terminus locations while also providing access to existing and future network considerations.

Department Recommendation

The Department recommends approval of this easement request for a buried telecommunications cable.

Rights of Way Applications

October 21, 2013