AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
November 17, 2014, at 9:00 a.m.
Justice Building, 215 N. Sanders, Supreme Court Chambers
Helena, MT

ACTION ITEMS

1114-1 **FWP: Land Acquisition – Big Lake Wildlife Management Area Addition**
Benefits: N/A (non-trust land)
Location: Stillwater County
Approved 5-0

1114-2 **FWP: Conservation Easement – Pheasant Bend**
Benefits: N/A (non-trust land)
Location: Cascade County
Approved 5-0

1114-3 **Communitization Agreement: Scavenger 1-28H Well – Slawson Exploration**
Benefits: Common Schools
Location: Unknown
Approved 5-0

1114-4 **Settlement Agreement and Oil and Gas Lease Ratification: Oasis Petroleum**
Benefits: Common Schools
Location: Roosevelt County
Approved 5-0

1114-5 **Commercial Ground Lease: 1539 11th Avenue, Helena**
Benefits: Montana State University, University of Montana
Location: Lewis and Clark County
Approved 5-0

1114-6 **Easements**

A. Rights-of-Way
Benefits: Common Schools, Public Buildings, Public Lands
Location: Gallatin, Hill, Liberty, Richland, Roosevelt, Stillwater, Teton Counties
Approved 5-0

B. Department of Military Affairs: Easement Relocation
Benefits: N/A (non-trust land)
Location: Missoula County
Approved 5-0

INFORMATION ITEM

1114-7 **Fiscal Year 2014 Highlights**
Benefits: All Trusts
Location: State of Montana

PUBLIC COMMENT

LAND BOARD MEETING SIGN-IN SHEET
November 17, 2014

NAME	AFFILIATION	E-MAIL	*Check to be added to the interested parties list.*
Randy Knowles			

Contact Lucy Richards at lrichards@mt.gov or indicate on this sign-in sheet if you would like to be placed on the Land Board interested parties list.

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1114-1

FWP: Land Acquisition –

Big Lake Wildlife Management Area Addition

Land Board Agenda Item
November 17, 2014

1114-1 FWP: Land Acquisition – Big Lake Wildlife Management Area Addition

Location: Stillwater County

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

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

Item Summary
The Montana Department of Fish, Wildlife and Parks (FWP) proposes to purchase in fee title approximately 160 acres of waterfowl and upland game bird habitat immediately adjacent to the existing 3,170-acre Big Lake Wildlife Management Area (WMA) located 23 miles northwest of Billings (Parcel 2, Figure 1). The parcel would be purchased for the appraised value of $24,000. Funds would be provided by the Migratory Bird Wetland Program (Migratory Bird Stamp Program).

A final Environmental Assessment (EA) has been completed and published, and the Decision Notice (DN) favoring acquisition was published September 21, 2012. Strong public support was voiced for the project.

The Fish and Wildlife Commission will give final consideration to the project on November 13, 2014.

Rationale for Land Board Action
Big Lake WMA consists of 3,170 acres and is managed for waterfowl and upland game bird production. Recreational opportunities on Big Lake WMA include hunting for upland birds, waterfowl, mule deer, and antelope, as well as bird watching, wildlife viewing and photography. Currently the west shore and most of the east shore of Big Lake is owned by FWP. Before the acquisition of most of the east shore by FWP in 2012 (Parcels 1a, 1b, and 3, Figure 1), a portion of the legal boundary ran through the lake bed making it unfeasible to fence livestock out of the WMA. Land management activities, particularly livestock use on the east shore posed a threat to the habitat quality and recreational opportunities present on the WMA. The previous acquisitions allowed FWP to fence the eastern boundary of the WMA and control livestock use. This addition will block up FWP ownership on the east side of Big Lake and complete the project as envisioned in the Montana Environmental Policy Act (MEPA) EA and DN published in 2012.

FWP Recommendation
FWP recommends the Land Board approves the fee title acquisition of Parcel 2 as an addition to the Big Lake Wildlife Management Area, which will block FWP ownership on the east side of the WMA and provide additional hunting and recreational opportunities for the public.

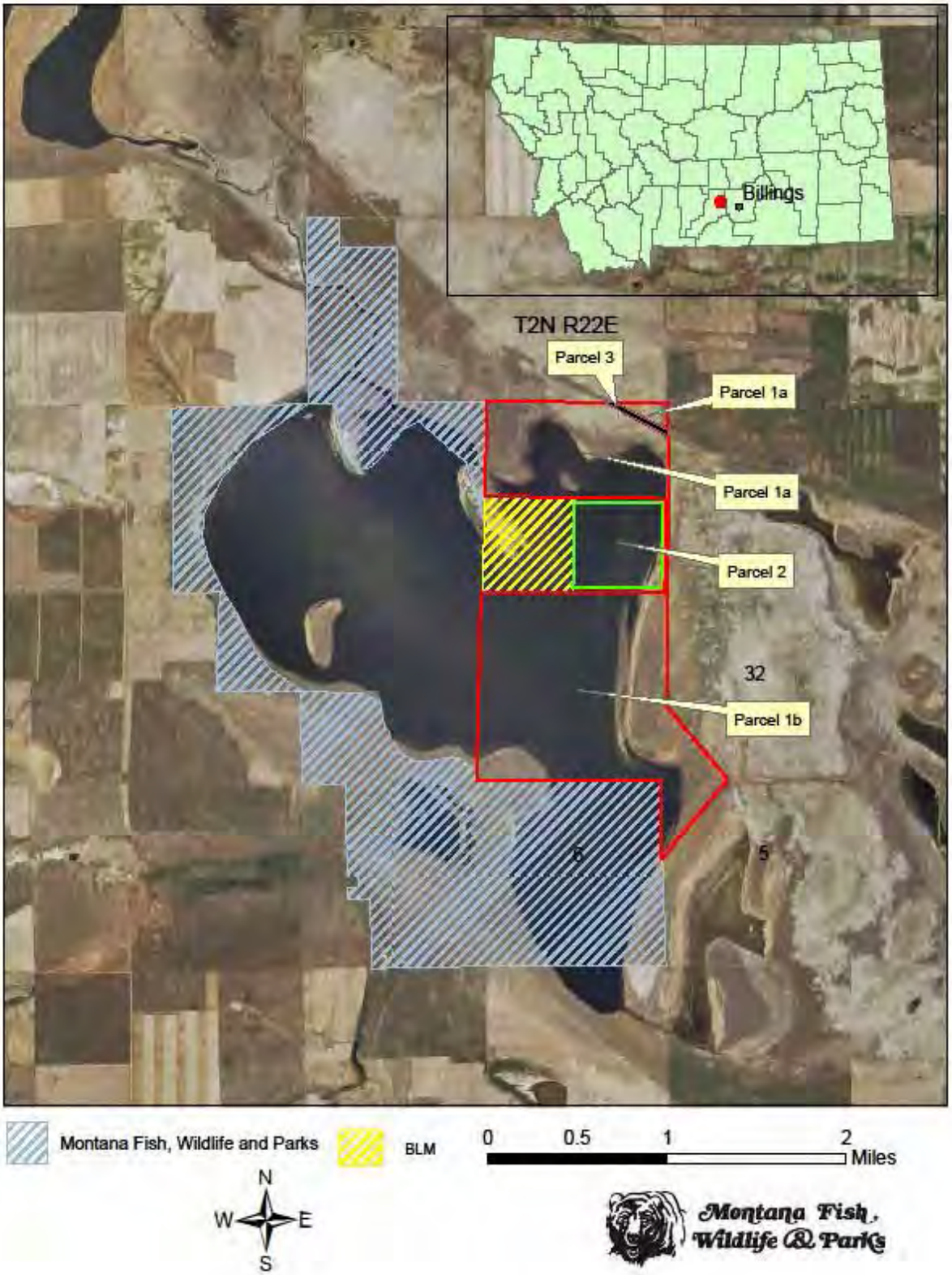


Figure 1. Big Lake Wildlife Management Area showing 2012 additions (Parcels 1a, 1b, and 3) and the proposed addition (Parcel 2)

2300 Lake Elmo Drive
Billings MT 59105

September 21, 2012

DECISION NOTICE

TO: Environmental Quality Council
Director's Office, Dept. of Environmental Quality
Montana Fish, Wildlife & Parks (FWP)*

Director's Office	Lands Section
Parks Division	Design & Construction
Fisheries Division	Legal Unit
Wildlife Division	Regional Supervisors

Sarah Elliott, Press Agent, Governor's Office*
Maureen Theisen, Governor's Office*
Montana Historical Society, State Preservation Office
Janet Ellis, Montana Audubon Council
Montana Wildlife Federation
Montana State Library
George Ochenski
Montana Environmental Information Center
Wayne Hirst, Montana State Parks Foundation
FWP Commissioner Shane Colton*
Montana Parks Association/Our Montana (land acquisition projects)
Matt Wolcott, DNRC Area Manager, Southern Land Office
Stillwater County Commissioners
Adjacent Landowners
Other Local Interested People or Groups
* (Sent electronically)

Big Lake WMA East Side Addition Land Acquisition
Region 5 Migratory Bird Stamp Proposed Land Project

BACKGROUND, DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES

Montana Fish, Wildlife & Parks (FWP) proposes to acquire in fee title approximately 1,282 acres of land adjacent to the east boundary of Big Lake Wildlife Management Area (WMA), as seen in Figure 1. The draft EA proposed to acquire approximately 1,105 acres, but based on fence realignment and a recently completed land survey the actual acreage is nearer to 1,282 acres. Big Lake WMA consists of 2,060 acres located in Stillwater County approximately 23 miles northwest of Billings. The WMA is managed for waterfowl and upland game bird production. Recreational opportunities on Big Lake

WMA include hunting for upland birds, waterfowl in wet years, mule deer, antelope, as well as bird watching, wildlife viewing and photography. Most of the west shore of Big Lake is currently owned by FWP, while the east shore is mostly in private ownership. The legal boundary on the east runs through the lake bed making it unfeasible to fence neighboring cattle out of the WMA. Land management activities on the east shore may pose a threat to the habitat quality and recreational opportunities present on Big Lake WMA.

The purchase would provide public recreation opportunities and habitat benefits for these parcels, as well as significantly improve the overall habitat management effectiveness of Big Lake WMA. The property consists primarily of plains grassland habitat bordering the Big Lake Basin, as well as the lake basin itself. Grasses dominate upland habitats, while the lakebed is primarily alkaline flats during low water periods. Large expanses of greasewood are present along the shoreline.

The scope of this Environmental Assessment (EA) is the acquisition of the property. No facilities or site development are planned for the proposed parcels other than fence improvements and maintenance.

In proposing to acquire the two land parcels, FWP seeks to meet the following needs:

- To protect and enhance riparian and upland habitats.
- To improve habitat management effectiveness on Big Lake WMA through the ability to exclude trespass livestock from sensitive riparian habitats.
- To secure the future wildlife and recreation benefits of Big Lake WMA by ensuring no development occurs along the shoreline and habitat quality is improved.
- To provide public recreational access to over 3,300 acres of contiguous habitat in the expanded Big Lake WMA.

Alternative A – Proposed Action:

FWP will use State Migratory Bird Stamp Program funding to acquire the East Side Addition parcels of land adjacent to Big Lake WMA. This land will be incorporated into the existing WMA and managed under the current Big Lake WMA Management Plan. The EA originally proposed to acquire approximately 1,105 acres, but based on fence realignment and a recently completed land survey the actual acreage is nearer to 1,282 acres (Figure 1). Through the Proposed Action, FWP would enhance waterfowl and upland habitat on the acquired parcels. A second critically important benefit would be a resulting improvement in management effectiveness on the existing Big Lake WMA. This project would conserve animal and plant species biodiversity and important wildlife habitat that exists on these lands, including riparian, sagebrush-greasewood, and mixed shrub grasslands.

Alternative B – No Action:

Under the No Action alternative, FWP would forgo the opportunity to purchase the East Side Addition parcels. Waterfowl and upland bird nesting habitat would continue to be compromised on Big Lake WMA due to the inability to adequately manage trespass livestock on the WMA from adjacent private lands. It is possible that under the No Action alternative a portion of this property could be developed for rural home sites, with

significant adverse impacts to natural habitats and recreation opportunities on the adjacent Big Lake WMA.

PUBLIC COMMENT

In compliance with Montana Environmental Policy Act (MEPA), FWP completed an EA with a subsequent public involvement process. Public participation is not a plebiscite to measure those in favor of or opposed to a proposal, but is a mechanism for agencies to consider substantive comments.

An EA was prepared and released on August 6, 2012, with the public comment period running through August 31, 2012. Two public notices were placed in each of the following newspapers, Billings Gazette and Helena Independent Record. A public meeting was held on August 16, 2012 at the Region 5 Headquarters in Billings to answer questions and collect oral and written comments. Hard copies of the EA were available to all who attended the meeting. The draft EA was available on the FWP website under Public Notices (www.fwp.mt.gov <http://www.fwp.mt.gov>), or by calling (406) 247-2940, and a hard copy of the EA was available at the Region 5 Headquarters (2300 Lake Elmo Drive, Billings, MT). The draft EA was mailed to the usual government agencies, non-government organizations, local legislators, county commissioners, and neighboring landowners.

Face-to-face discussions were held with two neighboring landowners. Written comments were received from three individuals or parties. Oral comments were recorded from four individuals at the public hearing. No comments were received via telephone calls. Of the seven formal comments received, five supported the acquisition, one reminded FWP to consider any cultural/historic features that may be on the property, and one requested information regarding the purchase price while supporting the acquisition. No comments were received in opposition to the proposed land acquisition.

This Decision Notice addresses concerns and issues raised during the public input process. It is important to note that this EA covers only the acquisition of the property and initial management actions. Any substantial changes in future management will be subject to additional environmental analysis and public comment.

FWP's responses to public inquiries or concerns are summarized below. All public comments in full can be found in the Appendix found on the FWP website (www.fwp.mt.gov) under public notices. The Appendix also includes a copy of news releases. The EA in its entirety can be found on the FWP website.

DECISION

The trend toward the sale of traditional ranching/farming to recreational buyers or interests focused on subdivision of key wildlife habitats has accelerated recently. Purchase of the Big Lake WMA East Side Addition will maintain this property in open space while providing for public enjoyment of this landscape. In addition, this acquisition will enhance the management effectiveness of Big Lake WMA overall. If this property is not purchased by FWP, it is possible that either subdivision or exclusive access interests could acquire the parcels, and opportunities for habitat protection and public enjoyment of this landscape could be lost.

After review of this proposal and considering the significant public support for this project, it is my recommendation to acquire the parcels known as the Big Lake WMA East Side Addition, subject to approval by the FWP Commission and the State Land Board. As such, I accept Alternative A - Proposed Action, as identified in the EA. Through the Proposed Action, FWP would acquire in fee title approximately 1,282 acres that would be added to the existing 2,060 acre Big Lake WMA. The acquisition will conserve animal and plant species biodiversity and important wildlife habitat that exists on these lands, including riparian, sagebrush grasslands and grease wood.

FWP and the owners of parcels 1a and 1b have entered into a Purchase Agreement on roughly 1,110 acres in the amount of approximately $277,612. Funding will come from the Migratory Bird Stamp Program. FWP will continue to pursue the acquisition of approximately 172 acres in the remaining parcels.

The draft version of the EA, this Decision Notice, and the existing Big Lake WMA Management Plan serve as the final documents for this proposal.

September 21, 2012

Gary Hammond
Regional Supervisor
Billings, MT

DATE

RESPONSE TO PUBLIC COMMENTS

Public comments have been summarized into various issues that reflect the public comments received, and are presented along with FWP responses. All public comments in full can be found in the Appendix found on the FWP website (www.fwp.mt.gov) under public notices. The EA in its entirety can also be found on FWP's website.

Face-to-face discussions were held with two neighboring landowners. Written comments were received from three individuals or parties. Oral comments were recorded from four individuals at the public hearing. No comments were received via telephone calls.

IN SUPPORT OF PREFERRED ALTERNATIVE

We are supportive of FWP following the Preferred Alternative, and continuing negotiations to acquire the Big Lake WMA East Side Addition parcels.

FWP agrees that the Big Lake WMA East Side Addition, located 23 miles northwest of Billings adjacent to Big Lake WMA, represents a significant land acquisition opportunity for wildlife habitat and public recreation. The proposed purchase is intended to protect and enhance important wildlife habitat, and to enhance recreational opportunities.

PUBLIC ACCESS WITHIN THE WMA

Some parts of the existing WMA and the parcels proposed for acquisition require extensive hiking/wading to access. These areas are difficult for waterfowl hunters to access while carrying decoys and gear.

An administrative road access will be created for the East Side Addition parcels. FWP will actively pursue all available alternatives to establish a public access route to the East Side Addition parcels in the future. Within the existing WMA a new parking area farther to the south has been established to provide more reasonable hunter access to the southern portion of the WMA. FWP will also consider additional parking and a footbridge across the channel to facilitate access on the north side of the WMA.

CULTURAL AND HISTORIC RESOURCES

It is the State Historic Preservation Office's (SHPO) position that any structure over fifty years of age is considered historic and is potentially eligible for listing on the National Register of Historic Places.

No structures exist on the proposed parcels. No major ground disturbance or alteration is planned with the exception of fence construction and maintenance. Based on these points SHPO recommends that a cultural resource inventory is unwarranted at this time. However, should structures need to be altered or if cultural materials be inadvertently discovered during this project SHPO will be contacted.

FISH and WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: November 13, 2014

Agenda Item: Addition to Big Lake WMA

Division: Wildlife

Action Needed: Final Approval

Time Needed on Agenda for this Presentation: 10 Minutes

Background: The proposed acquisition is a continuation of the Big Lake WMA Eastside Addition project approved by previous Commission action during the October 11, 2012 meeting. In November 2012, FWP acquired approximately 1,110 acres of land adjacent to the east side of Big Lake WMA in Stillwater County through fee title (Figure 1, parcels 1a and 1b). This brought the total area of the WMA to ~3,170 acres. In July 2013, approximately 4 acres in parcel 3, the old railroad right-of-way, was also acquired. Funding for these purchases came from the Migratory Bird Wetland Habitat Program. In addition, a road easement providing public vehicular access to the NE corner of the WMA was acquired from two landowners in February 2014, funded by the Access Public Lands program. The purchase of parcel 2, of approximately 160 acres for $24,000, is nearing completion, and is being brought to the F&W Commission for final approval. This project would also be funded through the Migratory Bird Wetland Program.

Public Involvement Process & Results: An Environmental Assessment (EA) on the entire project was prepared and released on August 6, 2012, with the public comment period running through August 31, 2012. A public meeting was held in Billings on Aug. 16, 2012. Of the three written comments received, two supported the Proposed Action. One comment from the State Historic Preservation Board reminded FWP to consider any cultural/historic features that may be on the property. At the public meeting, four people offered comments, all of which were in favor of the Proposed Action. A Decision Notice accepting the Proposed Action was issued on September 21, 2012.

Alternatives and Analysis:

Proposed Action: Purchase in fee-title approximately 160 acres of private land in parcel 2 within Big Lake WMA. This acquisition will complete the Big Lake WMA Eastside Addition project.

Alternative A-No Action: The 160 acres of private land in parcel 2 will not be acquired. A private in-holding within Big Lake WMA will complicate management and public access on the WMA.

Agency Recommendation & Rationale: The Department recommends approval by the F&W Commission to purchase parcel 2 within Big Lake WMA. This purchase will improve management and public access on the WMA resulting in enhanced public hunting and wildlife viewing opportunities in perpetuity.

Proposed Motion: I move that the Commission approve the Department's recommendation to purchase in fee-title the approximately 160 acres of private land within the boundary of Big Lake WMA.

1114-2

FWP: Conservation Easement – Pheasant Bend

Land Board Agenda Item
November 17, 2014

1114-2 FWP: Conservation Easement – Pheasant Bend

Location: Cascade County

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

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

Item Summary

The Montana Department of Fish, Wildlife and Parks (FWP) proposes purchase a perpetual conservation easement on 298 acres **near the confluence of the Missouri and Smith Rivers near Ulm, Montana.** The purpose of the FWP/Pheasant Bend Conservation Easement is to preserve and protect the conservation, wildlife habitat, and agricultural values of the land.

The appraised value and cost of the Pheasant Bend Conservation Easement is $280,000. **This project represents a cooperative effort between private and public funding sources** including PPL ($25,000), Safari Club International ($10,000), Pheasants Forever ($5,000), Montana Conservation Trust ($25,000), FWP Upland game bird funds (100,000) and FWP Habitat Montana ($115,000).

A final **Environmental Assessment** has been completed and published, and the **Decision Notice favoring acquisition was published October 24, 2014.** Strong public support was voiced for the project.

The Fish and Wildlife Commission will give final consideration to the project on November 13, 2014.

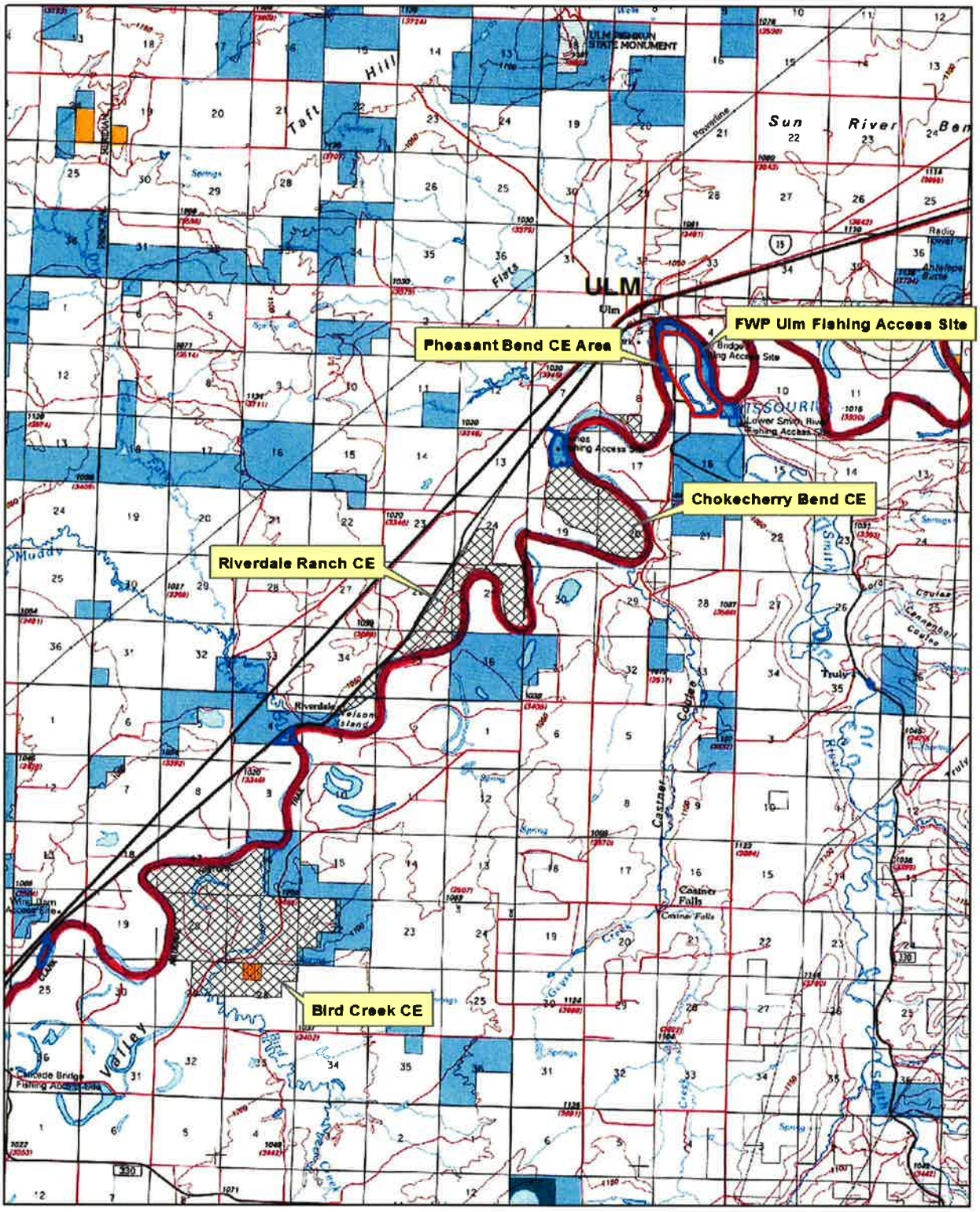
Rationale for Land Board Action

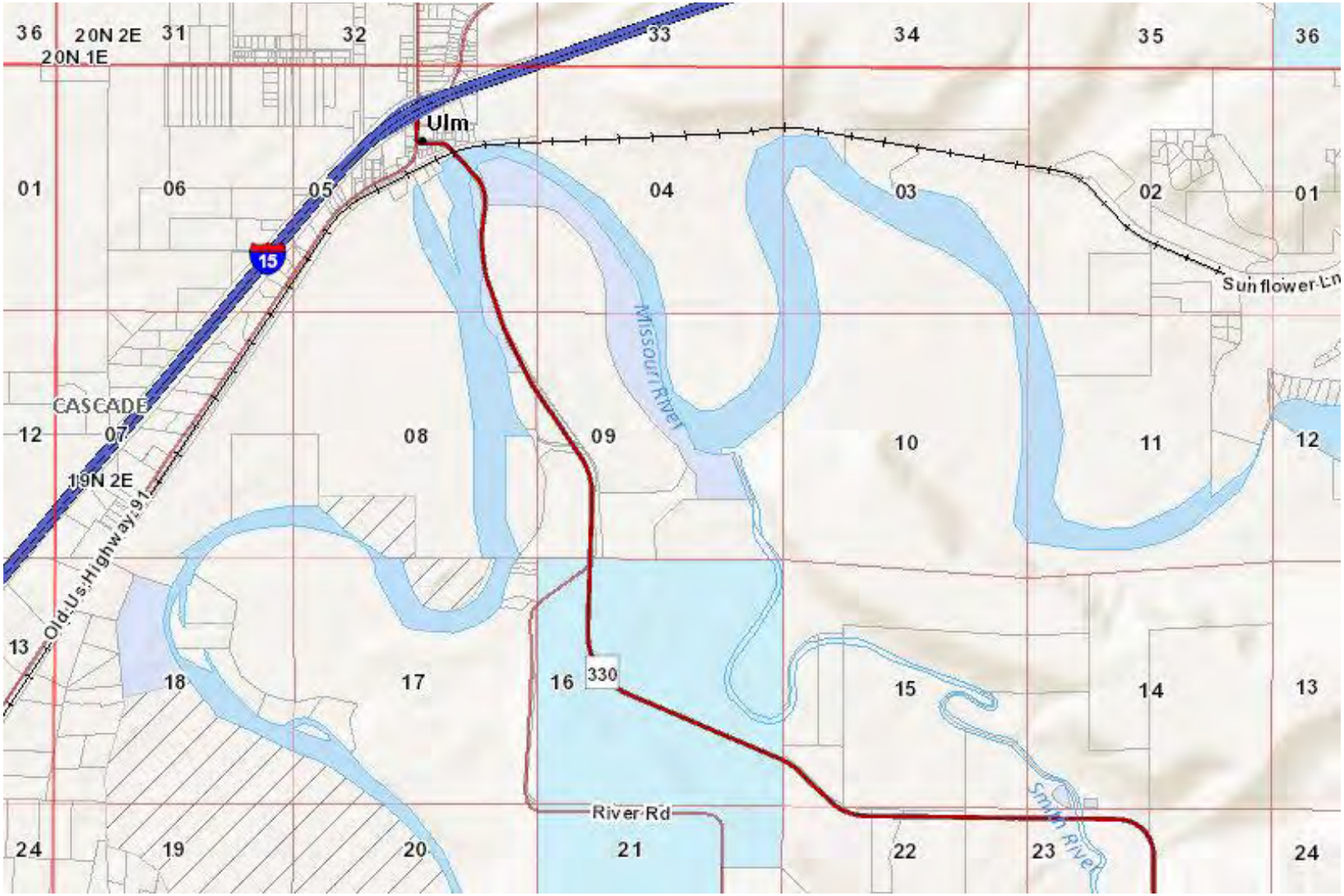
Protection of the property near the confluence of the Missouri and Smith Rivers insures that riparian, emergent and forested wetlands, shrub and native riparian communities important to many game and nongame wildlife species (white-tailed deer, pheasant, Hungarian partridge, sharp-tailed grouse, Merriam's turkeys, along with numerous waterfowl, furbearer and non-game wildlife species) will be protected in perpetuity. Several species are identified in Montana's Comprehensive Fish & Wildlife Conservation Strategy as in greatest need of conservation. Additionally, acquisition of the conservation easement will enable the property to remain as a working farm, while maintaining and/or enhancing wildlife habitats throughout.

FWP Commission Recommendation

FWP recommends that the Board of Land Commissioners approve the purchase of the Pheasant Bend Conservation Easement from Olson Farms, using FWP and partner funds.

Figure 3. FWP Conservation Easements along the Missouri River near Ulm and Cascade.

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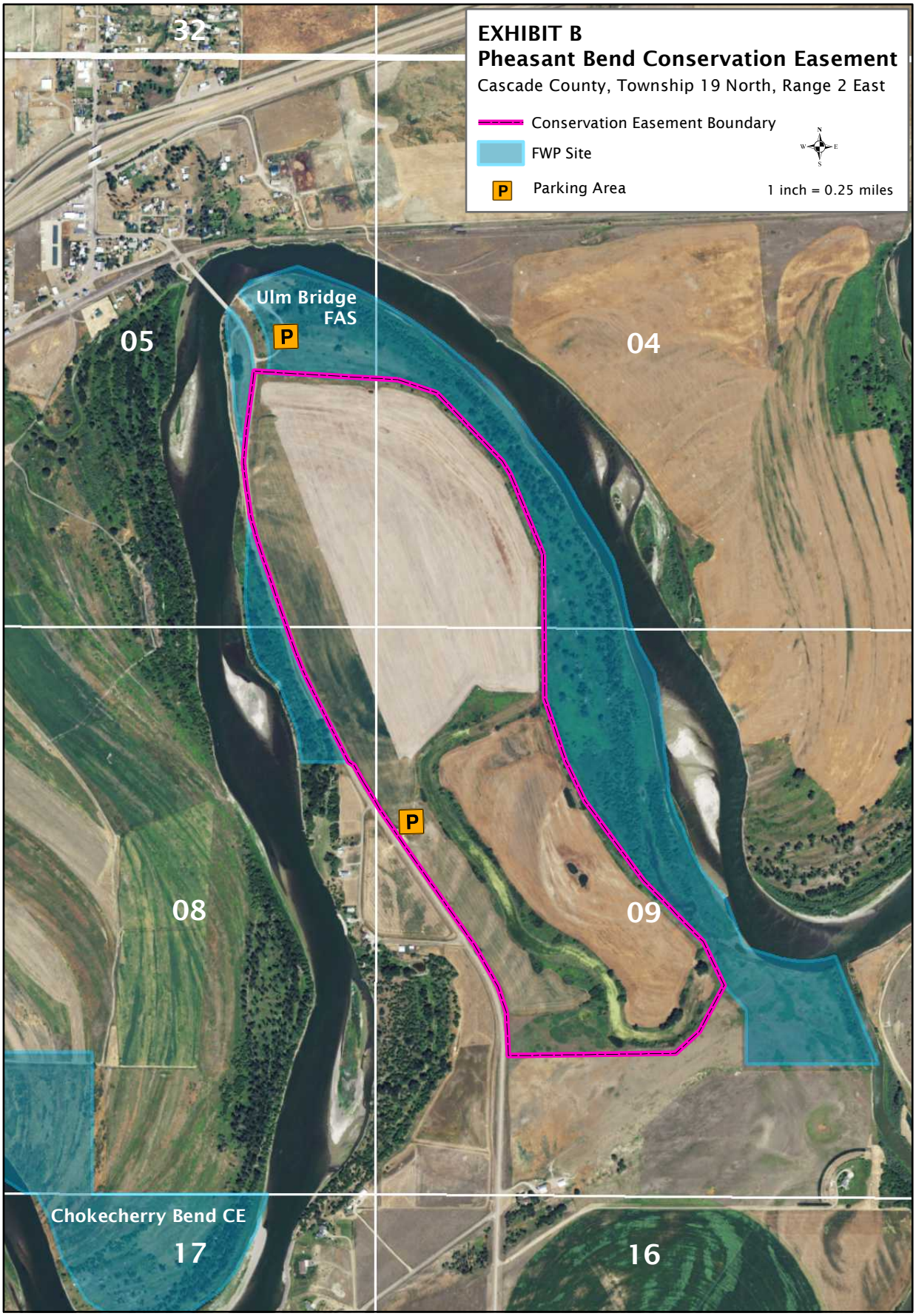


EXHIBIT B
Pheasant Bend Conservation Easement
Cascade County, Township 19 North, Range 2 East
Conservation Easement Boundary
FWP Site
Parking Area
1 inch = 0.25 miles
32
05
04
08
09
17
16
Ulm Bridge
FAS
P
P
Chokecherry Bend CE

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: November 13, 2014
Agenda Item: Pheasant Bend Conservation Easement– Region 4
Division: Wildlife
Action Needed: Approval of final rule/action
Time Needed on Agenda for this Presentation: 10 minutes

Background: FWP's Habitat MT and Upland Game Bird Programs are intending to partner with PPL Montana, MT Fish & Wildlife Conservation Trust, SCI, DU and PF to purchase a conservation easement from Olson Farms on 298 acres (aka Pheasant Bend CE) for $280,000. The F&W Commission endorsed the course of action at the November 14, 2013 Commission meeting. The 298-acre property is located 0.5 miles south of Ulm, Cascade County (see maps). Pheasant Bend includes riparian, emergent and forested wetlands, native shrub grassland communities important to many wildlife species, including white-tailed deer, Merriam's turkeys, pheasant, waterfowl and numerous non-game wildlife species. The remainder of the property is managed as a working farm primarily for cereal grain production. Pheasant Bend adjoins the Ulm Fishing Access Site, administered by FWP, which incorporates 2 miles of Missouri River and Smith River frontage. The Pheasant Bend CE would compliment 3 existing nearby FWP Conservation Easements that protect habitats and provide public recreational opportunities on about 4,000 acres, including 14 miles of Missouri River bottomlands.

Public Involvement Process & Results: A public comment period for the EA and Management Plan ran from September 24 through October 23, 2014. A public meeting was held at the Ulm School on October 9, 2014 having zero (0) public in attendance. Twelve (12) written public comments were received to date (12 supportive of Proposed Action, 0 opposed to Proposed Action). Consideration and evaluation of public comment are distilled in the Decision Notice to the EA. All comments received remain on file at the Great Falls FWP office and are available for public review.

Alternatives and Analysis:
Alternative A (Preferred): This alternative is to purchase a conservation easement utilizing funding and habitat partnerships as mentioned above. FWP would hold and monitor the conservation easement.
Alternative B: This alternative addresses the option of not purchasing a conservation easement and purchasing the property fee title. The property is not offered for sale to FWP, therefore this alternative is not an option.
Alternative C: This alternative is that only FWP would purchase the conservation easement. This would result in loss of potential funding partnerships from PPL Montana, PF, DU, SCI and MFWCT. This would also result in loss of partnerships among these entities on a very important wildlife habitat conservation project.
Alternative D: This is a "no action" alternative and would not result in critical riparian and wetland habitat conservation. With no action, the land would most likely become subdivided or sold in the near future.

Agency Recommendation & Rationale: FWP recommends approval from the F&W Commission to proceed with purchasing the Pheasant Bend Conservation Easement from Olson Farms, using FWP and partner funds. This project will conserve and protect important riparian/wetland habitats along the Missouri and Smith Rivers while providing public hunting, trapping, hiking and wildlife viewing access on the property.

Proposed Motion: I move that the Commission approve the Department's recommendation to purchase the conservation easement from Olson Farms as described.

Montana Fish, Wildlife & Parks

Ladies and Gentlemen:

Recently you received documents regarding the Montana Fish, Wildlife & Parks (FWP) proposal to purchase a conservation easement (aka Pheasant Bend Conservation Easement) from Olson Farms. This conservation easement constitutes 298 acres in Cascade County, Montana. The land is located approximately 0.5 mile south of Ulm along the Missouri and Smith Rivers and adjoins the 163 acre FWP Ulm Fishing Access Site.

Comments received regarding the Pheasant Bend Conservation Easement Proposal are summarized in the enclosed Decision Notice. No modifications were made to the documents you received as a result of the public review period. Please consider your previous copies of the draft Environmental Assessment and Management Plan as final.

It is my recommendation to purchase a conservation easement from Olson Farms utilizing FWP Habitat Montana and Upland Game Bird Program dollars, along with additional Partner dollars, subject to approval by the Fish and Wildlife Commission. The Commission will be asked to approve the purchase of this easement at their November 13, 2014 meeting. The Montana Board of Land Commissioners will ultimately have final vote at their regularly scheduled meeting in November or December 2014, should the Fish and Wildlife Commission approve the Department's recommendation to purchase the conservation easement.

Thank you for your interest and involvement.

Sincerely,

Gary Bertellotti
Region 4 Supervisor
Montana Fish, Wildlife & Parks
Great Falls, MT 59405
(406) 454-5840
gbertellotti@mt.gov

Decision Notice
Pheasant Bend Conservation Easement
Environmental Assessment

Prepared By:
Montana Fish, Wildlife & Parks
Region 4 Wildlife Division
4600 Giant Springs Rd.
Great Falls MT 59405

October 24, 2014

INTRODUCTION

Montana Fish, Wildlife & Parks (FWP) has the authority under law (MCA 87-1-201) to protect, enhance and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. In 1987, the Montana Legislature passed House Bill (HB) 526, which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement or fee title acquisition (MCA 87-1-241 and 242). This is now referred to as FWP's Habitat Montana Program. Habitat Montana recognizes that certain native plant communities constituting wildlife habitat are worthy of perpetual conservation. Those communities include intermountain grasslands, sagebrush grasslands and riparian corridors. Pheasant Bend includes such habitats and warrants conservation considerations. A conservation easement was offered to FWP by Jeff Olson, owner of Olson Farms. This offer reflects the landowner's desire to maintain and protect the family's agricultural lifestyle, while maintaining and/or enhancing wildlife habitats. This easement would ensure the property remains in private ownership and operation, while preserving important agricultural lands, wildlife habitats and open space. The easement would also guarantee public recreational access for hunting, trapping, hiking and wildlife viewing on the project area. As with other FWP property interest proposals, the Montana Fish and Wildlife Commission must approve any easement or acquisition proposed by the Department. In addition, the Montana Board of Land Commissioners is also required to review and approve the Department's proposal for this conservation easement purchase as this action has a value greater than $100,000 and is larger than 100 acres. This Decision Notice is part of that evaluation process.

Pheasant Bend meets and/or exceeds all qualifications of FWP's Habitat Montana and Upland Game Bird programs. After reviewing public comment on the proposed easement, the FWP Region 4 Supervisor recommends that the Fish and Wildlife Commission approve the purchase of the proposed conservation easement from Olson Farms.

MONTANA ENVIRONMENTAL POLICY ACT PROCESS

FWP is required to assess impacts to the human and physical environment under the Montana Environmental Policy Act (MEPA). The Pheasant Bend Conservation Easement proposal and its effects were documented by FWP in an Environmental Assessment.

PUBLIC COMMENT
A public comment period for the Environmental Assessment (EA) was established and available from September 24 through October 23, 2014. A public notice of the proposed action was offered to about 50 newspapers and news outlets in the state, and was also placed on the FWP website under "Public Notices". A public meeting was held at the Ulm School on October 9, 2014. Approximately 75 copies of the Environmental Assessment were electronically distributed to adjacent landowners, sportsmen groups, MT Stockgrowers, County Commissioners and other interested parties. Copies were available at the FWP Region 4 Headquarters during indicated comment period. Alternatives available in the draft EA for comment as follows:

Alternative A (Preferred): This alternative is to purchase a conservation easement utilizing funding and habitat partnerships as mentioned above. FWP would hold and monitor the conservation easement.
Alternative B: This alternative addresses the option of not purchasing a conservation easement and purchasing the property fee title. The property is not offered for sale to FWP, therefore this alternative is not an option.
Alternative C: This alternative is that only FWP would purchase the conservation easement. This would result in loss of potential funding partnerships from PPL Montana, PF, DU, SCI and MFWCT. This would also result in loss of partnerships among these entities on a very important wildlife habitat conservation project.
Alternative D: This is a "no action" alternative and would not result in critical riparian and wetland habitat conservation. With no action, the land would most likely become subdivided or sold in the near future.

All public comments received remain on file at the Great Falls FWP office and are available for public review. Consideration and evaluation of public comment is distilled in the attached Public Comment and Issues Addendum to the EA.

Public Meeting: A public meeting was held at the Ulm School on October 9, 2014 having zero (0) public attendance. FWP representation included: Cory Loecker - Region 4 Great Falls Area Wildlife Biologist. Copies of the EA and Management Plan were made available to all attendees, as was a comment sheet.

Written Comments: Written comment totaled **24** responses. Twenty four **(24)** responses endorsed Alternative A - "Proposed Action" of FWP purchasing a Conservation Easement from Olson Farms, with zero **(0)** respondents opposing the "Proposed Action". Comments were received from 20 individuals and 4 organized groups. Further analysis of comment follows:

Comment supporting purchase of conservation easement (Alt A "Proposed Action")	**24**
Comment opposed purchasing conservation easement (Alt D "No Action")	**0**
Total comments received (all MT residents)	**24**

The comments/responses are included in a Public Comment and Issues Addendum attached to this Decision Notice.

FINDING OF NO SIGNIFICANT IMPACT
Based on the analysis in the EA and in consideration of public comment addressed in the Addendum, FWP has selected the preferred "Proposed Action" alternative. This decision is in the best interest of the public, wildlife and wildlife habitat resources and is consistent with current Habitat Montana program guidelines, goals and objectives. FWP has reviewed the EA and applicable laws, regulations and policies and has determined that this action will not have a significant effect on the human environment. Therefore, an Environmental Impact Statement is not necessary.

MODIFICATIONS TO ENVIRONMENTAL ANALYSIS AND MANAGEMENT PLAN
No modifications to the Environmental Analysis, Management Plan or Socio Economic Analysis were made as a result of the public review period.

DECISION
Utilizing the Environmental Analysis, Management Plan and public comment, a decision must be rendered by FWP that addresses the interests and issues identified for this proposed project. Given results of FWP's analysis coupled with public comment, FWP's purchase of the Pheasant Bend conservation easement from Olson Farms utilizing FWP Habitat Montana and Upland Game Bird Program funds, and Partner dollars, is warranted. After review of this proposal and the corresponding public support and comment, it is my recommendation that FWP purchase the Pheasant Bend conservation easement from Olson Farms subject to approval by the Fish and Wildlife Commission.

CONCLUSION
By notification of this Decision Notice, the draft EA is hereby made the final EA. The finding of selection of the preferred Alternative A - "Proposed Action" is the product of this Decision Notice.

Gary Bertellotti
Region 4 Supervisor
Montana Fish, Wildlife & Parks
4600 Giant Springs Rd.
Great Falls, MT 59405

10/28/2014
Date

1114-3

Communitization Agreement:

Scavenger 1-28H Well – Slawson Exploration

Land Board Agenda Item
November 17, 2014

1114-3 Communitization Agreement: Scavenger 1-28H Well – Slawson Exploration

Location: Richland County
T24N R52E Section 28

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary
Slawson Exploration Company has filed a request with the Department of Natural Resources and Conservation (DNRC) 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.

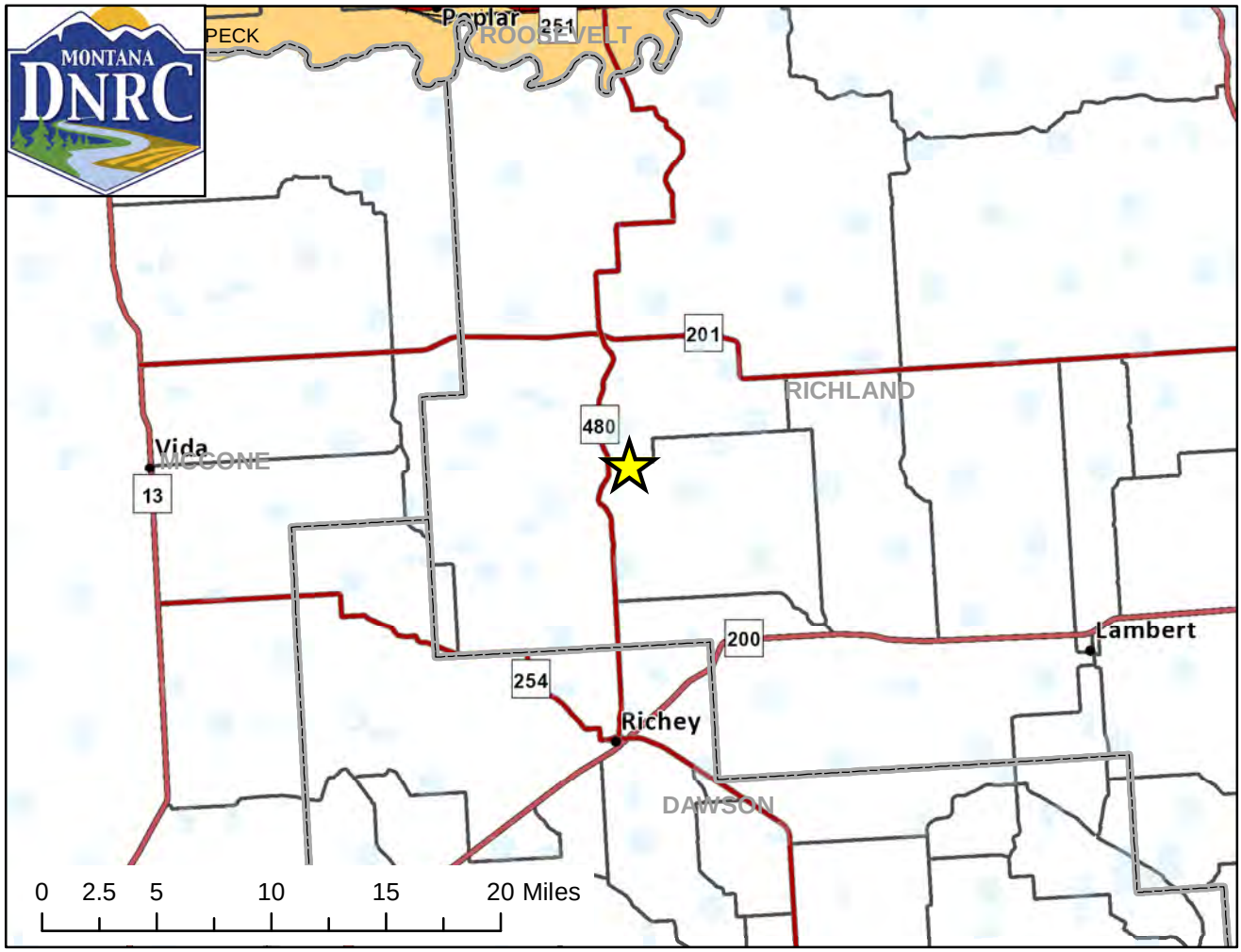
A communitization agreement brings together small tracts sufficient for the granting of a well permit under applicable spacing rules. The agreement allows the state to receive its proper share of production from the spacing unit and must be approved by the Land Board and DNRC for state lands.

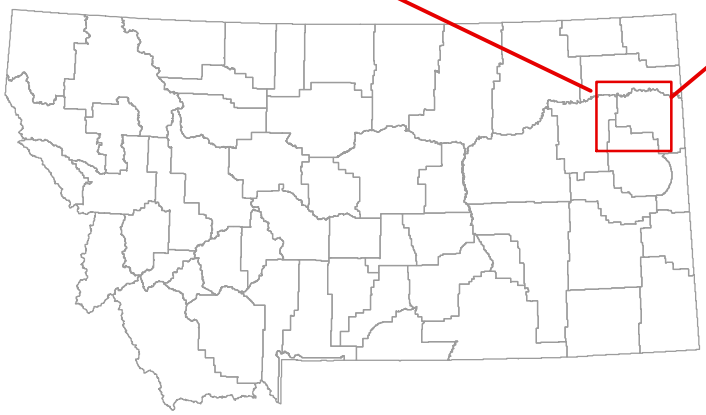
The Scavenger 1-28H well is a horizontal Bakken/Three Forks formation oil well located approximately 12 miles north of Richey, and was drilled on state land in the NE4NE4 of Section 28. DNRC owns 320 acres of the 640 mineral acres in the permanent spacing unit that will be communitized. The Agreement encompasses the Bakken/Three Forks Formation in Section 28 T24N R52E.

The DNRC tract comprises 50 percent of the communitized are. The surface estate was sold by the state in 1936. Sale deeds of that era also conveyed to the purchaser a 6.25 percent royalty on oil and gas. State oil and gas lease OG-35932-05 contains a 13 percent royalty rate. The surface owner receives 6.25 percent and the state receives 6.75 percent royalty interests attributable to this lease. Accordingly, DNRC will receive 3.375 percent of all oil production (6.75 percent royalty rate x 50 percent tract participation).

DNRC Recommendation
The director recommends the Land Board approve this communitization agreement.

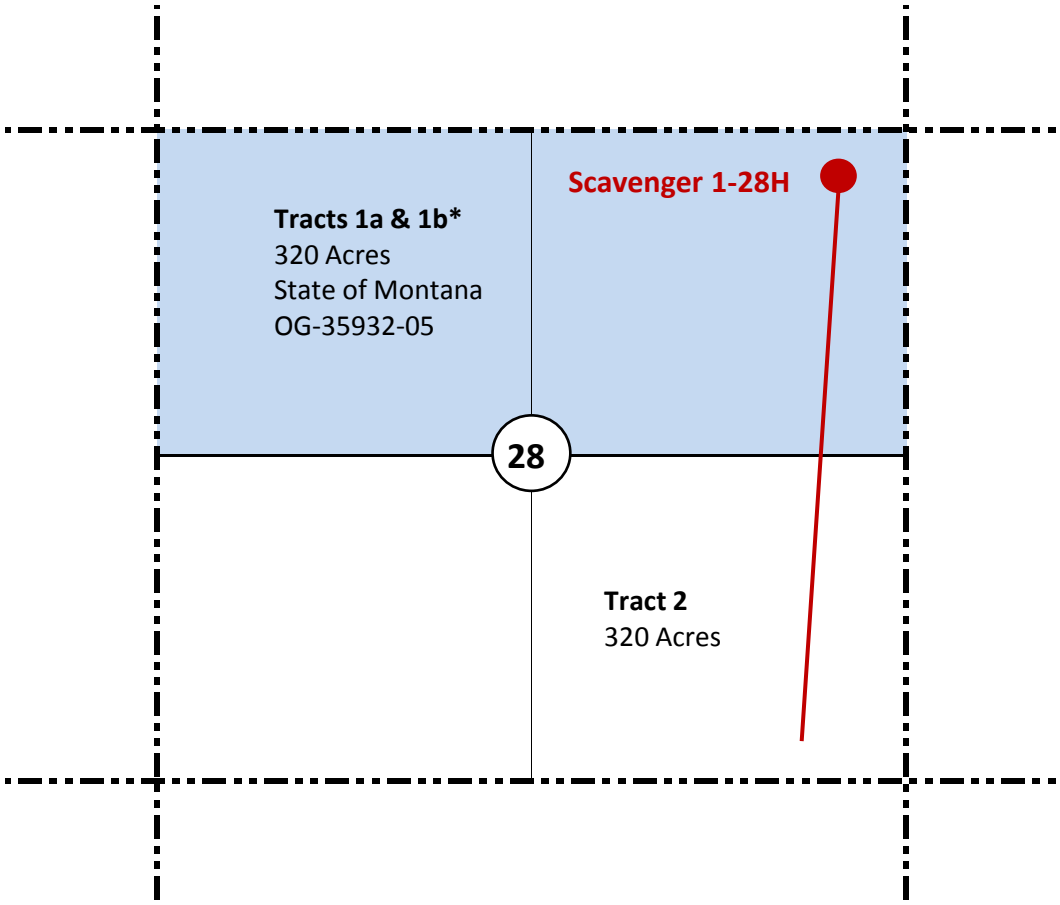
Vicinity Map
Scavenger 1-28H Well





Township 24 North Range 52 East

Section 28



Recapitulation

Tract No.	Type	Acres	Tract Participation	Royalty %	Owners Interest Decimal
1a	State of Montana	320.00	50.00%	6.75%	0.033750
1b*	Other Interest	same	same	6.25%	0.031250
2	Fee	320.00	50.00%	18.75%	0.093750
Total		640.00	100.00%		

**Surface Owner entitled to 6 1/4% of all oil and gas royalties collected by the Department*

*** The Operator of the Communitized Area is Slawson Exploration Company, Inc.*

1114-4

Settlement Agreement and Oil and Gas Lease Ratification: Oasis Petroleum

Land Board Agenda Item
November 17, 2014

1114-4 Settlement Agreement and Oil and Gas Lease Ratification: Oasis Petroleum

Location: Roosevelt County
T29N-R59E-16: All

Trust Benefits: Common Schools

Trust Revenue: $3.51 million

Item Summary

State of Montana Oil and Gas Lease No. OG-33826-00 was issued September 6, 2000. Oasis Petroleum North America, LLC is the lessee for this lease. Two wells were drilled and completed in the Charles formation during the ten year primary term of the lease. At the end of the primary term (September 6, 2010) the lease therefore held only those formations from the surface to the base of the Charles formation. Oasis subsequently drilled and completed the Stonewall Federal well in the Bakken/Three Forks formations in early 2013, which was after the end of the lease primary term. The Department of Natural Resources and Conservation (DNRC) began receiving and accepting royalty payments in April 2013.

A recent review by DNRC of leases in the area determined that the Stonewall Federal well had been drilled into formations not clearly retained by Oasis after the expiration of the primary term of the lease. Based on this assessment, Oasis and DNRC have sought to resolve this title dispute through a settlement agreement. The substance of that agreement is that the state of Montana would ratify and confirm that the lease includes those formations from the surface to the base of the Three Forks formation, in exchange for: 1) a bonus payment of $1.53 million; 2) a retroactive increase in the lease royalty rate from 13% to 19%; and 3) a commitment by Oasis to drill at least one additional well within the spacing unit within three years after approval of the settlement agreement.

The proposed settlement agreement avoids the risk and cost of litigation and ensures timely development of the state's mineral resources. The state receives an immediate bonus payment of $1.53 million. The 19% royalty rate increases projected royalties by $1.98 million (from $4.29 million to $6.27 million). The total additional revenue over current lease terms is $3.51 million. The result is a resolution of disputed legal liability, the receipt of a record high bonus payment, and generation of royalty revenues at a record high royalty rate.

Oasis agrees with the terms of the settlement agreement and associated ratification document, and has executed both.

A vicinity map and spacing unit diagram are attached as Figures 1 and 2. A legal memorandum, copies of the proposed Settlement Agreement (A1) and associated ratification document (A2), timeline of events (B), and financial assessment (C) are also attached.

DNRC Recommendation

The director recommends approval of the proposed settlement agreement and associated ratification document.

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Vicinity Map
Stonewall Federal 2959 43-21H Well

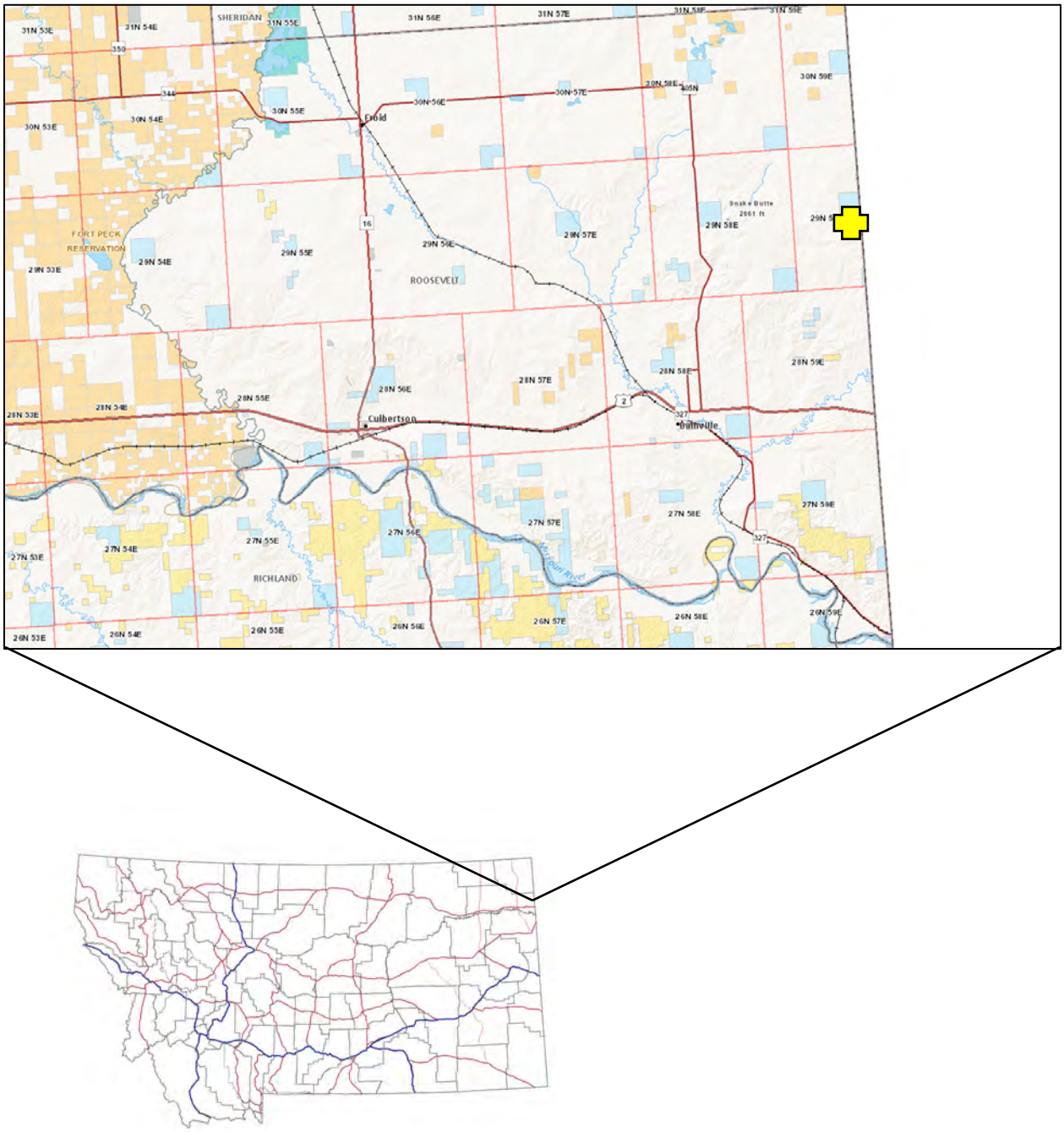
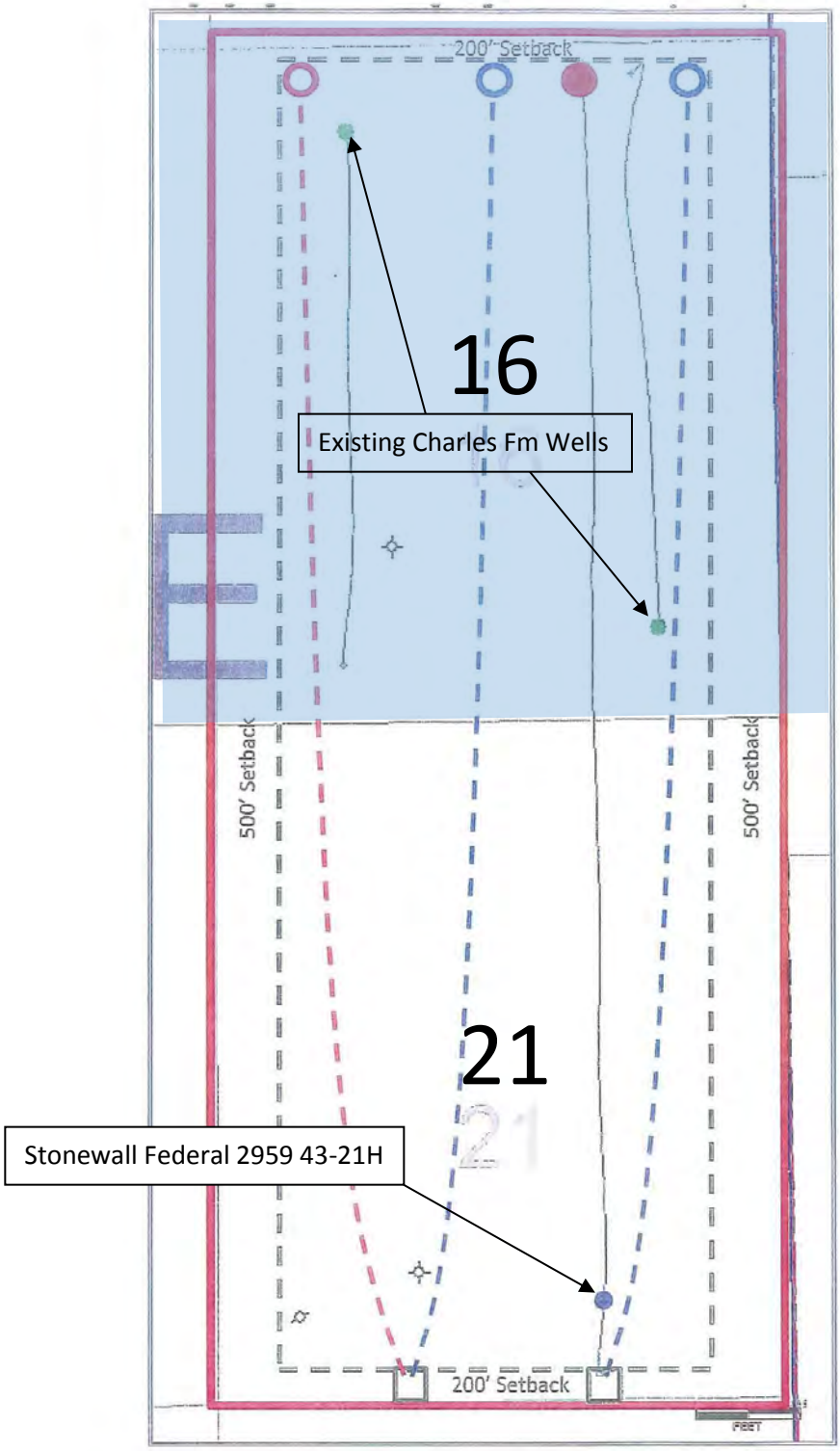


FIGURE 2



Red: Middle Bakken
Blue: Three Forks

Potential Development – 4 Well Plan
Stonewall Federal 2959 43-21H
T29N R59E Sections 16 & 21
Roosevelt County, Montana

Docket # 377-2013
8/8/2013
Exhibit #G-4

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
Trust Land Management Divison
STEVE BULLOCK, GOVERNOR
1625 ELEVENTH AVENUE
STATE OF MONTANA
DIRECTOR'S OFFICE: (406) 444-2074
FAX: (406) 444-2684
P.O. BOX 201601
HELENA, MONTANA 59620

LEGAL MEMORANDUM

November 7, 2014

TO: John Tubbs, Director
Anne Yates, Chief Legal Counsel
Shawn Thomas, Trust Lands Management Division Administrator
Monte Mason, Minerals Management Bureau Chief
FR: Tommy Butler, Trust Lands Attorney /s/
RE: Proposed Settlement & Ratification concerning State Oil & Gas Lease No. OG-33826-00
Township 29 North, Range 59 East, MPM, Roosevelt County, Montana
Section 16: Lots 1, 2, 3, 4, W½E½, W½
comprising 547.8 acres, more or less

FACTS: State of Montana Oil & Gas Lease No. OG-33826-00 (the "Lease") was issued on September 6, 2000 upon the above-described lands. The habendum or granting clause in paragraph 2 of the Lease entitled "Term and Horizontal Segregation" provided that:

> [t]his lease is granted for a primary term of ten years and so long thereafter as oil and gas in paying quantities shall be produced from the land, subject to all of the terms and conditions herein set forth; provided, however, that:
>
> (a) The extended term of this lease shall apply only to those formations discovered, developed or drilled during the primary term of ten years, and the interest of the lessee in the premises herein described shall thereafter be limited to such formations.

During the primary term of the Lease, State 14-16H and State 31-16H wells were drilled on the Lease premises and were completed as producers of oil and gas from the Charles formation on November 25, 2003, and August 11, 2004, respectively.

On September 6, 2010, the primary term of ten years for the Lease expired and the extended secondary term of the Lease began for those "formations discovered, developed or drilled during the primary term". Due to the continuing production from the State 14-16H and State 31-16H wells, the Lease premises included all formations from the surface down to the base of the Charles formation.

After the expiration of the primary term, on January 8, 2013, the Lessee, Oasis Petroleum North America LLC ("Oasis") commenced drilling the Stonewall Federal 2959 43-21H horizontal Bakken/Three Forks formations well from a surface location in the SW¼SE¼ of Section 21 in Township 29 North, Range 59 East ("Section 21"), to a bottom hole location in the NW¼NE¼ of Section 16 in Township 29 North, Range 59 East, MPM.and the well was completed as a producer of oil and gas from the Bakken/Three Forks formations, which are below the base of the Charles formation. The cost of drilling and equipping this well was approximately $8.0 million dollars.

In preparation for the drilling of this well, Oasis relied upon a March 20, 2013 drill site title opinion that assumed that the Lease held all depths based on production from the Charles formation, but recommended: "[y]ou should confirm to your satisfaction that [the State lease] is in fact held by production and submit any information to the contrary to the undersigned for further review and comment". This Bakken/Three Forks well has continued to produce oil and gas in paying quantities since April 12, 2013. Oasis has submitted royalties to the Montana DNRC for production from this well, which the Department has accepted.

Oasis made an application for the drilling of additional Bakken/Three Forks wells in this same spacing unit, which was approved by the Montana Board of Oil and Gas Conservation on August 8, 2013, by Board Order No. 347-2013. The Department did not object to this application.

However, a subsequent comprehensive review by the Minerals Management Bureau of State oil and gas leases in the area determined that the Stonewall Federal 2959 43-21H well had been drilled into formations not clearly retained by the Lessee after expiration of the primary term of the Lease.

Based on this assessment, Oasis and the Department have sought to resolve this title dispute by a Settlement Agreement, which includes Lease Amendment and Ratification of Oil and Gas Lease. The substance of that agreement is that the State of Montana would ratify and confirm that the Lease includes those formations from the surface down to the base of the Three Forks Formation, in exchange for:

- A one-time bonus payment of $1,533,840.00; and
- An increase in the royalties payable after the date of first production for all wells producing from below the base of the Charles Formation from 13% to 19%; and,
- A commitment from Oasis to drill at least one additional well in the Bakken/Three Forks formations in this drilling and spacing unit within three years.

A copy of the Settlement Agreement and Amendment and Ratification of Oil and Gas Lease is attached to this Memorandum as Exhibit "A". A time line of events is attached as Exhibit "B" and a Financial Impact Assessment of the Proposed Settlement Agreement is attached as Exhibit "C".

ISSUE: Whether the State Board of Land Commissioners possesses the discretion to resolve the disputed dimensions of State oil and gas leases by Settlement Agreement and Ratification?

QUICK ANSWER: The State Board of Land Commissioners possesses the inherent constitutional authority and broad discretion to enter into settlement agreements to resolve legal uncertainty concerning the administration of State oil and gas lease contracts, provided that such actions comply with its fiduciary duties and are in the best financial interest of the affected trust beneficiary.

DISCUSSION:

How do Montana mineral ownership principles affect the leasing of oil and gas?

In Montana, the owners of oil & gas mineral estates are recognized as owning the oil & gas "in place", rather than merely possessing the exclusive right to capture those minerals. See, Voyta v. Clonts, 134 Mont. 156, 162, 328 P.2d 655, 659 (1958). Under this legal principle, an oil and gas lease in Montana is recognized as transferring to the Lessee a fee simple determinable estate with the Lessor retaining a possibility of reverter. See, Krutzfeld v. Stevenson, 86 Mont. 463, 476-77, 284 P. 553, 556 (1930). Therefore, upon the occurrence of a stated event in the granting or habendum clause of the lease, the Lessee's interest automatically terminates and reverts back to the Lessor. See, Berthelote v. Loy Oil Co.,95 Mont. 434,447,28 P.2d 187, 191 (1933).[1]

What is a Pugh Clause in an Oil & Gas Lease, and how does its operate?

State oil & gas leases are issued for a primary term and a secondary term. The purpose of a limited primary term of 10 years, as is found in this Lease, is to encourage the Lessee to diligently search for, develop, and produce oil and gas so as to produce royalties for the Lessor. The secondary term of the lease allows the Lessee to hold the lease by continued production.

[1] In Montana oil and gas leases are to be construed liberally in favor of the lessor and strictly against the lessee. Schumacher v. Cole, 131 Mont. 166, 309 P.2d 311; Thomas v. Standard Development Co., 70 Mont. 156, 224 P. 870. Moreover, while forfeitures are usually not favored in the law, due to the nature of oil & gas leases, forfeitures of oil & gas leases are favored. Solberg v. Sunburst Oil & Gas Co., 76 Mont. 254, 246 P. 168; Christian v. A. A. Oil Corp., 161 Mont. 420, 425, 506 P.2d 1369, 1372 (1973).

The Lessee's diligence to comprehensively develop all portions of the lease is further encouraged by the State's incorporation of a "Pugh Clause" in the lease. [2]

A Pugh clause works to prevent undue speculation and encourage diligent exploration and production by preventing the Lessee from holding the entire lease in the secondary term when only a small portion of the lease is productive. Pugh clauses typically modify the granting clause to only allow those portions of the lease within a productive drilling and spacing unit to be held by the lessee during the secondary term of the lease. See, Sandefer Oil & Gas, Inc. v. Duhon, 961 F.2d 1207, 1209 (5th Cir.1992)("The main purpose of any Pugh clause is to protect the lessor from the anomaly of having the entire property held under a lease by production from a very small portion."); Sandtana, Inc. v. Wallin Ranch Co., 2003 MT 329, 318 Mont. 369, 80 P.3d 1224 (A "Pugh clause" modifies an oil and gas lease by segregating the leased lands into developed lands that may be held pursuant to the habendum clause and undeveloped lands that may only be held as provided in the Pugh clause itself.); Fed. Land Bank of Spokane v. Texaco, Inc., 250 Mont. 471, 475, 820 P.2d 1269, 1272 (1991)(The Pugh clause . . . terminates the lease as to lands not embraced in a producing oil and gas unit.)

A Pugh clause can limit what mineral acreage is held in the secondary term of an oil and gas lease either "vertically" or "horizontally" or both. See Rogers v. Westhoma Oil Company, 291 F.2d 726, 731–32 (10th Cir.1961). For example, a vertical Pugh clause typically provides that if a portion of an oil and gas lease is included in a drilling and spacing unit, only that portion within the drilling and spacing unit will be held by any unit production. See, Kysar v. Amoco Production Co., 135 N.M. 767, 774, 93 P.3d 1272 (2004) (describing operation of vertical Pugh clause).

A horizontal Pugh clause, as is contained in this State lease, limits the dimensions of the lease only to the stratum or level from which production has been secured in the unit, or has been discovered or drilled, during the primary term of the lease and, thus, operates to free the mineral interests below that depth absent additional development. See, Sandefer Oil & Gas, 961 F.2d at 1210–11; Rogers v. Westhoma Oil Company, 291 F.2d at 733–34.

What does this proposed Settlement and Ratification resolve?

This proposed settlement would resolve the disputed ownership of oil & gas in the Bakken/Three Forks formations on the State trust lands on the Lease premises in Section 16, Twp. 29 North, Range 59 East, MPM in Roosevelt County, Montana.

Given that the Bakken/Three Forks well was drilled after the expiration of the primary term of the Lease, the State Board of Land Commissioners (the "Board") could assert that the horizontal Pugh clause in the Lease worked to contract the dimensions of the Lease upon the expiration of the primary term to those formations "discovered, developed or drilled" during the

[2] The "Pugh Clause" derives its name from Louisiana lawyer Lawrence G. Pugh, Sr., who created this oil & gas lease concept some 60 years ago. See, 961 F.2d at 1208 n. 1.

primary term of the Lease (which ended on September 6, 2010), which would exclude the Bakken/Three Forks formations (which was first drilled on April 12, 2013).

Conversely, Oasis could assert that no lease contraction had occurred based on the State's execution of a division order and acceptance of production royalties. There is authority from other jurisdictions that holds that the execution of a division order and the acceptance of royalty payments operates as a ratification of an oil & gas lease. See, Rain, "A Further Look at Division Orders and Problems in Accounting and Payment of Proceeds from Oil and Gas," 8 ROCKY MT. MIN. L. INST. 69, 78 (1963); Bounds, "Division Orders" 5 INST. ON OIL & GAS LAW & TAXATION 91, 102 (1954); Texas and Pacific Coal and Oil Company v. Kirtley, 288 S.W. 619 (Tex. Civ. App. 1926, error ref'd); Gulf Oil Corporation v. Marathon Oil Company, 137 Tex. 59, 152 S.W.2d 711 (1941)(Execution of a division order and the acceptance of payments under it operates as ratification of the lease referred to in the order.) Section 82-10-110(2), MCA, provides that a Division Order in Montana may not alter or amend the terms of the underlying oil or gas lease, nor relieve the lessee of any liabilities or obligations. The Department believes this statute establishes a clear and controlling limitation on the effect of Division Orders in Montana; however, no direct authority could be found which applies Section 82-10-110(2), MCA, to a State lease under these circumstances.

Even if a mineral lease has expired, it may be ratified and revived by the lessor. Geodyne Energy Income Production Partnership I-E v. Newton Corp., 161 S.W.3d 482 (Tex. 2005).

If a lease contraction is successfully asserted by the Board, Oasis would have a potential claim for reimbursement from the State of the State's share of drilling, equipment, and production costs if Oasis's actions were deemed to be in good faith. A good faith mineral trespasser is only obligated to account to a property owner for the value of minerals obtained after deducting the costs of development and production. Fitzgerald v. Clark, 17 Mont. 100, 42 P. 273, 284 (1895)("[T]he basis of computation shall be the market value of the ore on the dump after deducting the cost of mining and hoisting the same".)

By contrast, a bad faith trespasser must account to the property owner for the value of minerals removed without any deductions for the costs of development and production. In Rieckhoff v. Consol. Gas Co., 123 Mont. 555, 217 P.2d 1076, (1950), the Montana Supreme Court held that a mineral operator had trespassed in bad faith where the operator proceeded to drill a well on the lease premises, after quieting title to the land, but prior to an appeal of that judgment by the prior lessee, and such judgment was reversed on appeal. Because the operator was deemed to be a willful trespasser, it had to account for all the production removed from the lease without any deduction for the costs of drilling, equipment, and production. See also, 1 Summers Oil and Gas § 2:4 (3d ed.)

Likewise, in Edington v. Creek Oil Co., 690 P.2d 970, 213 Mont. 112 (1984), a former lessee whose lease had terminated for failure to comply with a 90-day clause to resume operations or production after production ceased, who then reentered and resumed production,

was deemed to have trespassed in bad faith. The Court held that the trespass was in bad faith because the former lessee had the duty to take constructive notice of a recorded lease which had been made to another after his lease terminated. Accordingly, the Court held that no deductions from the value of minerals removed could be taken by the bad faith trespasser, citing Sullivan "Handbook of Oil & Gas Law".[3]

In this instance, Oasis could assert its actions were in good faith because it had no actual or constructive notice that lease contraction had occurred. Its drill site title opinion did not advise of this possibility and the State had not objected to either the drilling of the initial well or the subsequent proposal to drill up to three additional wells The Board could assert that Oasis had actual notice because the Pugh clause is an express provision of the Lease, and that a knowledgeable lessee would be familiar with the terms of their Lease contract. The Board would assert that the actions of Oasis were in bad faith, and therefore Oasis would not be entitled to recoupment of the share of development and production costs attributable to the Lease premises.

Absent a settlement agreement, protracted litigation would likely ensue to resolve the ownership of the Bakken/Three Forks formations within the Lease premises, as well as to determine the rights of the Lessee to recover the State's share of its drilling and equipment costs, which could exceed $4.0 million dollars. Litigation, even if a successful outcome is obtained, would delay the drilling of additional wells for an extended time period and adversely impact the State's revenue stream for the trust beneficiary.

Settlement Authority concerning disputed legal rights.

This proposed Settlement is analogous to other boundary disputes that the Board has resolved by Settlement or Disclaimer (e.g., boundary agreements whereby adjacent private landowners and the State resolve the location of a coterminous boundary between State and private ownership.).

The Board possesses the inherent constitutional authority to enter into settlement agreements to resolve legal uncertainty concerning the administration of State oil and gas lease contracts, provided that such actions comply with its fiduciary duties and are in the best financial interests of the affected trust beneficiary. Article X, Section 4 of the 1972 Montana Constitution provides that the State Land Board has the authority to : ". . . direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the

[3] Sullivan, *Handbook of Oil and Gas Law,* at 58 and 59: "In the case of good faith trespassers the measure of damages that must be paid is the value of the oil and gas in ***124** place. Because of the difficulty in proving such value in place, courts have adopted the measure as being the value of the petroleum at the surface, whether in tank or pipeline, less the reasonable cost of production. The costs of production include the cost of drilling and equipping the well in addition to the expense of bringing it to the surface ... "[w]here the trespass has been made in bad faith, no deduction is allowed for the cost of production. The proper measure of damages in such a case is the value of the petroleum at the surface ..."

various state educational institutions, under such regulations and restrictions as may be provided by law". Accord, 23 Or. Op. Att'y Gen. 251 (1947)(Contract compromise authorized); 2007 Idaho Op. Att'y Gen. 5 (2007)(boundary location agreement to forego litigation authorized.)

This authority is reflected in Sections 77-1-202 and 77-2-402, MCA:

> **77-1-202. Powers and duties of board.** (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act.

> **77-3-402. Rules.** (1) The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development.

Because the Board has constitutional status, it does not depend upon a legislative grant of delegated authority for its powers. Instead, its trust authority is only constrained by procedures mandated by the Legislature which are consistent with the State fiduciary duties. The Montana Supreme Court has recognized that the Board exercises considerable discretionary authority:

> To that end, and of necessity, the board must have a *large discretionary power over the subject of the trust;* and therefore it has been expressly given 'the direction, control, leasing and sale' of these lands, under such regulations and restrictions as may be prescribed by law. Constitution, art. 11, § 4.' (Emphasis added.) See also Leuthold v. Brandjord, 100 Mont. 96, 106, 47 P.2d 41 (1935).

State ex rel. Thompson v. Babcock, 147 Mont. 46, 52, 409 P.2d 808, 811 (1966)

The Supreme Court has stated that it will not substitute its opinion for State Board of Land Commissioners' opinion as to proper method of ensuring that school trust receives full market value from the sale or disposal of any interest or estate in school trust land, and it will not control the discretion of the Board unless it appears that the action of the Board is arbitrary and, in effect, fraudulent. Montanans for Responsible Use of School Trust v. Darkenwald (Montrust II), 119 P.3d 27, 328 Mont. 105 (2005), rehearing denied.

CONCLUSION:

The proposed Settlement Agreement and Lease Amendment and Ratification would resolve and settle competing claims to the title to those mineral formations below the Charles formation on the above-described lands. By this compromise of claims, Oasis gains clear title to the working interest in the Lease from the surface to the base of the Three Forks formation; and the State satisfies its fiduciary responsibility to act prudently in the best financial interests of the trust beneficiary by obtaining: a higher royalty share of 19% of the oil and gas produced in the lower formation of the drilling and spacing unit; an additional bonus of $1.5 million, and a commitment for the drilling of at least one additional well in the spacing unit.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as the "Agreement") is made and entered into effective as of _____, 2014, by and between THE STATE OF MONTANA, the MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, whose address is P.O. Box 201601, Helena, Montana 59620-1601 (hereinafter referred to as the "Department") and, OASIS PETROLEUM NORTH AMERICA LLC, 1001 Fannin, Suite 1500, Houston, Texas 77002 (hereinafter referred to as "Oasis" or the "Lessee").

RECITALS

WHEREAS, the State of Montana has held in trust for common public schools 100% of the oil and gas estate within the following described lands:

> Township 29 North, Range 59 East, MPM, in Roosevelt County, Montana
> Section 16: Lots 1, 2, 3, 4, W2E2, W2

containing 547.8 acres, more or less, (the "State Lands"); and

WHEREAS, on September 6, 2000, the State issued State of Montana Oil & Gas Lease No. OG-33826-00 (the "State Lease") covering the above-described State Lands; and

WHEREAS, Oasis currently owns 100% of the working interest in State of Montana Oil & Gas Lease No. OG-33826-00 dated September 6, 2000, recorded in the office of the Richland County, Montana Clerk and Recorder on October 20, 2000 as Document No. 356597, covering the above-described State Lands; and

WHEREAS, the habendum or granting clause in paragraph 2 of the State Lease entitled "Term and Horizontal Segregation" provided that: "[t]his lease is granted for a primary term of ten years and so long thereafter as oil and gas in paying quantities shall be produced from the land, subject to all of the terms and conditions herein set forth; provided, however, that: (a) The extended term of this lease shall apply only to those formations discovered, developed or drilled during the primary term of ten years, and the interest of the lessee in the premises herein described shall thereafter be limited to such formations"; and

WHEREAS, the State 14-16H and State 31-16H wells were drilled on the State Lands during the primary term of the State Lease and completed as producers of oil and gas from the Ratcliffe member of the Charles formation on November 25, 2003, and August 11, 2004, respectively; and

WHEREAS, on September 6, 2010, the primary term of the State Lease expired and the extended secondary term of the State Lease began for those "formations discovered, developed or drilled during the primary term" due to the continuing production from the State 14-16H and State 31-16H wells; and

WHEREAS, the deepest formation "drilled, developed or drilled during the primary term" was the Charles formation, and the State Lease thereafter held only those formations from the surface of the earth to the base of the Charles formation; and

WHEREAS, on January 8, 2013, the Lessee commenced drilling the Stonewall Federal 2959 43-21H horizontal Bakken/Three Forks well from a surface location in the SW¼SE¼ of Section 21 in Township 29 North, Range 59 East ("Section 21"), to a bottom hole location in the NW¼NE¼ of Section 16 in Township 29 North, Range 59 East, MPM, and completed on April 12, 2013 as a producer of oil and gas from the Bakken/Three Forks formations, which are below the base of the Charles formation; and

WHEREAS, on August 8, 2013, by Order Nos. 345-2013, 346-2013 and 347-2013, the Montana Board of Oil and Gas established a 1099.64 acre permanent spacing unit comprised of the State Lands and Section 21, pooled all interests in the 1099.64 acre spacing unit for production of Bakken/Three Forks oil and associated gas from the Stonewall Federal 2959 43-21H well, and authorized Oasis to drill up to three additional Bakken/Three Forks wells within the spacing unit; and

WHEREAS, the Stonewall Federal 2959 43-21H well has continued to produce oil and gas from the Bakken/Three Forks formations in paying quantities since April 12, 2013; and

WHEREAS, both parties have subsequently determined that the title of the Lessee to the working interest in the minerals and formations below the base of the Charles formation may be subject to question since the extended term of the State Lease only applied to "those formations discovered, developed or drilled during the primary term of ten years, and the interest of the Lessee in the premises herein described shall thereafter be limited to such formations", and the deeper Bakken/Three Forks formations were first drilled into the State Lands after the expiration of the primary term of the State Lease; and

WHEREAS, in order to settle and resolve any controversy regarding the continued effectiveness of the State Lease, confirm the title of the Lessee to the formations below the base of the Charles formation to the base of the Three Forks formation, to avoid any litigation, and to provide a commitment for the drilling of at least one additional well, the State of Montana is willing to ratify and confirm the State Lease to include those formations between the base of the Charles formation and the base of the Three Forks formation ("Ratified Formations") on the condition that the Lessee agrees to amend the provisions of the State Lease so as to increase the royalty reserved to the State for the Ratified Formations from thirteen percent (13%) for oil and twelve and one-half percent (12.5%) for gas, to nineteen percent (19%) for both oil and gas, effective as of the date of first production from the Stonewall Federal 2959 43-21H well , make an additional bonus payment of $1,533,840.00, and commit to the drilling of at least one additional well in the Bakken/Three Forks formations; and

WHEREAS, the parties agree that the State's amended nineteen percent (19%) royalty is effective as of the date of first production from the Stonewall Federal 2959 43-21H well and is

applicable to production from the Stonewall Federal 2959 43-21H well and any subsequent wells which may hereafter be drilled and completed in the Ratified Formations; and

WHEREAS, the State's royalty shall remain thirteen percent (13%) for oil and twelve and one-half percent (12.5%) for gas as to production from the State 14-16H and State 31-16H wells and any subsequent wells which may hereafter be drilled and completed in formations from the surface of the earth to the base of the Charles formation.

NOW, THEREFORE, THE STATE OF MONTANA AND OASIS AGREE AS FOLLOWS:

1. No Lease Termination: The above-described State of Montana Oil & Gas lease shall not be subject to any administrative or civil action or proceeding for termination or physical constriction based upon any act or omission of Oasis relating to the operation of the State Lease or drilling of the State 14-16H, State 31-16H, and Stonewall Federal 2959 43-21H wells.

2. Payment Sum: On or before December 31, 2014, Oasis shall pay the sum of One Million Five Hundred Thirty Three Thousand Eight Hundred Forty and No/100 Dollars ($1,533,840.00) to the State of Montana, Department of Natural Resources and Conservation, as additional bonus and consideration for the State's ratification of the State Lease for the period from September 6, 2010 to and including the effective date of this Agreement. Such payment may be by check or wire transfer and delivered to the Department or the bank account designated by the Department.

3. Amendment and Ratification of State Lease: Concurrent with the execution of this Agreement, the State of Montana and Oasis shall execute and deliver to one another the AMENDMENT AND RATIFICATION OF OIL AND GAS LEASE, attached hereto as Exhibit "A" and incorporated herein by reference.

4. No Admission of Liability: Neither the execution of this Agreement by Oasis nor the payment described herein shall be understood as an acknowledgment of responsibility, or an admission of liability or wrongdoing by Oasis, its parents, subsidiaries, divisions, departments, or affiliates of Oasis, and the predecessors, successors, assigns, directors, officers, employees, agents, or representatives of each and all of them. It is understood and agreed that, anything herein to the contrary notwithstanding, neither this Agreement, nor any of the terms hereof, nor the facts or amount of Oasis's payment can or ever will be offered into evidence by the Department or Oasis in any proceeding, hearing or trial; except that either party may use the Agreement as evidence in any proceeding to enforce the terms of this Agreement. This obligation shall survive any termination of this Agreement. Further, by executing this Agreement, neither Oasis nor the Department shall be deemed to have approved, accepted, or consented to any concept, method, theory, principle, or statutory or regulatory or contractual interpretation underlying any of the matters resolved or concluded by this Agreement, and this Agreement shall have no precedential value other than with respect to enforcement of its terms.

5. Mutual Releases:

A. The State of Montana, Department of Natural Resources and Conservation, hereby releases, acquits, and forever discharges Oasis, its parents, subsidiaries, divisions, departments, or affiliates of Oasis, and the predecessors, successors, assigns, directors, officers, employees, agents, or representatives of each and all of them, finally and completely, from any and all actions, causes of actions, and claims arising out of or in any way related to the drilling of the Stonewall Federal 2959 43-21H well and the operation of Paragraph Two "Term and Horizontal Segregation" on the above-described State of Montana Oil & Gas Lease.

B. The parties hereto forever, fully, and completely settle and compromise their claims against the other, as described herein above, regarding the drilling of the Stonewall Federal 2959 43-21H well and the operation of Paragraph Two "Term and Horizontal Segregation" of the above-described State of Montana Oil & Gas Lease, and Oasis does hereby release the State, its employees, agents, and representatives from any and all claims or causes of action that Oasis has or may have against the State, its employees, agents, and representatives relating to the drilling of the Stonewall Federal 2959 43-21H and the operation of Paragraph Two "Term and Horizontal Segregation", and for damages, interest, penalties, refund thereof and any other relief related to those claims.

C. This compromise and release includes, without limitation, all claims, causes of action and liability, whether asserted or unasserted by the State or Oasis, relating to the drilling of the Stonewall Federal 2959 43-21H and the operation of Paragraph Two "Term and Horizontal Segregation".

6. Contractual Agreement: This Agreement and the attached Amendment and Ratification of Oil and Gas Lease constitute the entire agreement between the Department and Oasis and their provisions are contractual in nature and not merely recitals.

7. Multiple Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

8. Choice of Law: The provisions of this Agreement shall be interpreted to be valid and enforceable under the laws of the State of Montana; provided that, if any such provision is or shall become invalid or unenforceable under applicable law, such provision shall be stricken to the extent necessary and the remainder of such provisions and the remainder of this Agreement shall continue in full force and effect to the extent that such interpretation does not materially alter the intent and purpose of this Agreement. The paragraph headings utilized herein merely are descriptive and are not intended to modify or alter the substance or terms of this Agreement.

9. Merger Clause: This Agreement and the attached Amendment and Ratification of Oil and Gas Lease constitute the entire agreement between the parties and shall not be modified, amended, or terminated or any term hereof waived, except in writing, signed by the party against whom such modification, amendment, or waiver is sought to be enforced.

10. Warranty of Authority: The Department and Oasis individually warrant that their signatory executing this Agreement has all necessary power to execute and deliver such a document; and that this Agreement constitutes a valid, binding agreement, enforceable in accordance with its terms.

11. Assignment: This Agreement shall be binding upon the parties hereto, their principals, agents, successors, and assigns, and this Agreement, together with all of the obligations and terms hereof, shall inure to the benefit of assigns, predecessors-in-interest, successors-in-interest, and transferees of Oasis and the Department.

Date:_____

STATE OF MONTANA, MONTANA
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By:_____
John E. Tubbs, Director

ACKNOWLEDGMENT

STATE OF MONTANA)
) ss:
County of Lewis and Clark)

This instrument was acknowledged before me on _____, 2014, by _____, as _____ of the Montana Department of Natural Resources and Conservation.

_____
Print Name: _____
Notary Public for the State of _____
[SEAL] Residing at _____, _____

My Commission expires _____, 20___

Date:_____ OASIS PETROLEUM NORTH AMERICA LLC

By:_____

Its:_____

ACKNOWLEDGMENT

STATE OF _____)
) ss:
County of _____)

This instrument was acknowledged before me on _____, 2014, by _____, as _____ of Oasis Petroleum North America LLC.

_____
Print Name: _____
Notary Public for the State of _____
[SEAL] Residing at _____, _____

My Commission expires _____, 20___

AMENDMENT AND RATIFICATION OF OIL AND GAS LEASE

This Amendment and Ratification of Oil and Gas Lease is entered into this _____ day of _____, 2014, to be effective as of September 6, 2010 (the "Effective Date"), by and between the State of Montana, through its Board of Land Commissioners (the "Lessor"), and Oasis Petroleum North America, LLC, 1001 Fannin, Suite 1500, Houston, Texas 77002 (the "Lessee").

IT IS AGREED THAT STATE OF MONTANA OIL & GAS LEASE NO. OG-33826-00 IS HEREBY AMENDED AS FOLLOWS:

1. AMENDMENT OF LEASE TO INCREASE OIL AND GAS ROYALTY RATE. The Lessor and Lessee agree that, effective as of the date of first production from the Stonewall Federal 2959 43-21H well, State of Montana Oil and Gas Lease No. OG-33826-00 (the "State Lease") shall be and is hereby amended by: a) striking paragraphs six and seven of the State Lease; and b) inserting the following language:

   "6. ROYALTY ON OIL – The lessee shall pay in money or in kind to the lessor at its option as hereinafter provided during the full term of this lease a royalty of 13%, free of all costs and deductions, on the production of the oil from any well producing from any formation situated between the surface of the earth and the base of the Charles formation under this lease for each calendar month. The lessee shall pay in money or in kind to the lessor at its option as hereinafter provided during the full term of this lease a royalty of 19%, free of all costs and deductions, on the production of the oil from any well producing from any formation situated between the base of the Charles formation and the base of the Three Forks formation under this lease for each calendar month".

   "7. ROYALTY ON GAS – The lessee shall pay in money or in kind to the lessor at its option as hereinafter provided during the full term of this lease a royalty of 12.5%, free of all costs and deductions, on the production of the gas from any well producing from any formation situated between the surface of the earth and the base of the Charles formation under this lease for each calendar month. The lessee shall pay in money or in kind to the lessor at its option as hereinafter provided during the full term of this lease a royalty of 19%, free of all costs and deductions, on the production of the gas from any well producing from any formation situated between the base of the Charles formation and the base of the Three Forks formation under this lease for each calendar month".

2. COMMITMENT TO DRILL ADDITIONAL WELLS. Paragraph 36, SPECIAL PROVISIONS, is hereby amended to add the following language: "Beginning upon the execution of this AMENDMENT AND RATIFICATION OF OIL AND GAS LEASE, the Lessee hereby commits to the drilling of at least one additional horizontal Bakken/Three Forks well within 3 years from the last date written below, within the drilling and spacing unit comprised of Sections 16 and 21 in Township 29 North, Range 59 East, MPM in Richland County, Montana.
3. NO CHANGE TO REMAINING LEASE TERMS. Nothing in this AMENDMENT AND RATIFICATION OF OIL AND GAS LEASE revises any other term, condition, or provision of the State Lease, and the remainder of the State Lease remains unchanged.
4. RATIFICATION OF LEASE. The Lessor hereby ratifies, approves, and confirms the State Lease as amended and hereby leases to the Lessee, the exclusive right to search for, develop, and produce oil, gas, and associated liquid and gaseous hydrocarbons from the lands hereby leased in and to all formations from the surface of the earth to the base of the Three Forks formation for the term and upon the conditions and covenants set forth in State of Montana Oil & Gas Lease No. OG-33826-00 as hereby amended. The Lessor further agrees that as of the Effective Date of this AMENDMENT AND RATIFICATION OF OIL AND GAS LEASE, the Lease shall be deemed to be held in full force and effect by production from the Stonewall Federal 2959 43-21H well.
5. COUNTERPART EXECUTION. This agreement may be executed in any number of counterparts.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SET FORTH OPPOSITE THEIR NAMES BELOW BUT EFFECTIVE AS OF THE EFFECTIVE DATE.

Date:_____

STATE OF MONTANA, BOARD OF LAND COMMISSIONERS

By:_____
John E. Tubbs, Director
Montana Department of Natural Resources and Conservation

ACKNOWLEDGMENT

STATE OF MONTANA)
) ss:
County of Lewis and Clark)

This instrument was acknowledged before me on _____, 2014, by _____, as _____ of the Montana Board of Land Commissioners.

_____
Print Name: _____
Notary Public for the State of _____
[SEAL] Residing at _____, _____
My Commission expires _____, 20____

Date:_____ OASIS PETROLEUM NORTH AMERICA LLC

By:_____

Its:_____

ACKNOWLEDGMENT

STATE OF _____)
) ss:
County of _____)

This instrument was acknowledged before me on _____, 2014, by _____, as _____ of Oasis Petroleum North America LLC

_____
Print Name: _____
Notary Public for the State of _____
[SEAL] Residing at _____, _____
My Commission expires _____, 20____

TIME LINE OF EVENTS

May 29, 2007	Affidavits of Production asserting production from the Charles formation
Jul 15, 2008	DNRC Approval Letter for assignment from Headington to Oasis
Sep 28, 2012	PetroCounsel Original Drilling and Division Order Title Opinion effective date
Dec 4, 2012	Board of Oil & Gas Conservation (BOGC) issues Permit to Drill Bakken well
Dec17, 2012	PetroCounsel issues Original Drilling and Division Order Title Opinion
Jan 1, 2013	Oasis commences operations for the Stonewall Federal 2959 43-21H well (per Oasis July 22, 2014 letter)
Mar 20, 2013	PetroCounsel issues Supplemental Drilling and Division Order Title Opinion
Apr 12, 2013	Stonewall Federal 2959 43-21H well completed
Aug 1, 2013	State receives first royalty payments for April, 2013 production
Aug 8, 2013	BOGC approves Oasis application for increased well density
± Jul 2, 2014	First notification to Oasis of lease issue (phone)
Jul 22, 2014	Oasis response letter with settlement offer
Aug 8, 2014	Conference call with Oasis
Aug 18, 2014	Oasis letter with revised settlement offer
Oct 31, 2014	Oasis letter re drilling commitment

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Financial Impact Assessment of Proposed Settlement Agreement

State of Montana Oil and Gas Lease No. OG-33826-00 was issued on September 6, 2000 covering the following described State oil & gas estate:

Township 29 North, Range 59 East
Section 16: Lots 1, 2, 3, 4, W2E2, W2
547.80 acres, more or less
Roosevelt County, Montana

Two Charles formation (Ratcliffe member) wells were drilled during the lease primary term. The ten year primary term expired on September 6, 2010, at which time the secondary term commenced.

On January 1, 2013, after the end of the primary term, Oasis Petroleum commenced operations to drill the Stonewall Federal 2959 43-21H well. This horizontal well was completed in the Bakken/Three Forks formations. At the time, Oasis believed the State lease held the Bakken/Three Forks formations. On April 12, 2013, the well began producing Bakken/Three Forks oil and gas from a two-section spacing unit comprised of Sections 16 and 21, Township 29 North, Range 59 East. The DNRC began accepting, and continues to accept, production royalties from the Stonewall Federal well. Royalties have been paid at the 13% royalty rate contained in the State lease. Oasis has obtained approval from the BOGC to drill up to three additional Bakken/Three Forks horizontal wells within the spacing unit.

Whether or not OG-33826-00 includes the Bakken/Three Forks formations is in dispute. Resolution can be obtained through litigation or by settlement between Oasis and the State. Litigation is typically lengthy and time-consuming, and introduces unknown financial and legal risk to both parties. Avoiding litigation through settlement of claims can serve both parties' best interest if the objectives of both parties can be met. The Land Board and DNRC have a fiduciary duty to the trust beneficiary, which in this case is Common Schools. The legal risk and implications are presented in the body of the Legal Memorandum. This document examines the financial risks and implications between litigation and settlement.

Royalty Rate

OG-33826-00 has a royalty rate of 13% on oil and 12.5% on gas. Oil production is the dominant revenue generator and for simplicity, 13% is utilized in the calculations and discussion below relative to the existing lease. Oasis has been paying the State royalties based on these royalty rates. If the lease status is litigated and Oasis prevails, royalties would continue to be paid at a 13% royalty rate.

If the lease status is litigated and the State prevails, the formations below the base of the Charles formation would be unleased. The State could offer the tract for lease through its quarterly lease auctions. The current royalty rate for new leases is 16.67%, although the Land Board has the discretion to establish a higher rate. The royalty rate for a new lease would only apply to production occurring after the effective date of the new lease. A new lease could not be issued

until a final court ruling is obtained. Litigation is estimated to take between three and four years. Prevailing in litigation places the Bakken/Three Forks in an unleased status from September 6, 2010 to the end of the litigation and subsequent leasing. During that time, the statutory royalty rate applicable to unleased interests is 12.5% for both oil and gas. [(82-11-202(2)(c) MCA] A new lease issued at the end of litigation would not be retroactive. In other words, prevailing in litigation would legally entitle the State to a 12.5% royalty for production during the time the section was determined to be unleased. This would include all production from the Stonewall Federal well from its date of first production in April 2013 to the end of litigation and subsequent leasing.

If the Settlement is adopted, Oasis would pay a 19% royalty on all royalties. The Settlement would retroactively apply the 19% royalty rate to all production from the date of first production from the Stonewall Federal 2959 43-21H well.

Oil wells under primary recovery produce at higher rates in their initial years of production, with the production rate declining in later years. Assuming litigation was initiated in December 2014 and took four years to reach a final ruling and the DNRC was successful in immediately issuing a new lease, the well will have produced approximately 170,000 barrels of oil out of the estimated total reserves of 400,000 barrels (43% of its total recovery). Since the Settlement would be retroactive, adopting the Settlement would generate $456,000 in additional royalty revenue from the Stonewall Federal well that the State would not receive if the dispute was successfully litigated in the State's favor.

Additional Wells

Until the Lease issue arose, Oasis had plans to drill up to three additional Bakken/Three Forks wells within the spacing unit. As with the Stonewall Federal well, the surface location of an additional well(s) would be located on Federal land, with the horizontal leg extending across section 21 into State section 16. The BOGC has approved the Oasis request to drill up to three additional wells. Under this order, Oasis currently possesses sole rights to drill and operate wells within the spacing unit. If the lease status is litigated and the State prevails, and if the new lease is not issued to Oasis, they may decide not to drill an additional well(s), or may not drill them as quickly, because their effective working interest in the spacing unit would be significantly reduced. Oasis could seek to sell their ownership and operating position to another company. The level of commitment to drill an additional well(s) by a new company is unknown. The calculations below assume Oasis would drill an additional well regardless of the outcome of litigation or any subsequent leasing action by the State.

Timing of Additional Development

If the Settlement is accepted, Oasis would be committed to drilling an additional well within three years. If litigation is pursued, the drilling of an additional well(s) would not even commence until litigation was concluded, and potentially longer if Oasis were unwilling to drill additional wells and instead sought to sell its interest in the spacing unit to another party. It is possible the well(s) would eventually be drilled, but litigation and subsequent leasing introduces risk that is not present if the State and Oasis enter into the Settlement Agreement.

Liability for Drilling Costs

An additional issue that may require litigation is the status of liability for drilling costs incurred by Oasis in the drilling of the Stonewall Federal well. If lease status is litigated and the State prevails, and if Oasis is found to be a good faith trespasser, the State could be liable for a proportionate share of drilling and completion costs. Total costs to date exceed $8 million and the original amount attributable to the State tract is approximately $4 million. The State is not required to separately pay this to Oasis. The amount owed is taken out of State tract production revenues until the total amount is paid. The DNRC would seek to have this amount proportionately reduced by the amount of production that took place between the date of first production and the completion of litigation. If the lease status is litigated and the State prevails, DNRC could seek to transfer this liability to a new lessee (if other than Oasis). However, this imposes a significant adverse impact to the attractiveness of another party bidding on the lease because they would not receive any return on their lease investment (i.e. bonus payment) until the amount owed for development costs was recovered from their working interest revenue. In this situation, Oasis could seek to be entitled to a statutory "non-consent" penalty against the State. [(82-11-202(2)(b) MCA] DNRC believes a non-consent penalty would not be authorized by the BOGC or upheld by the court because the required written notice was not delivered to DNRC prior to the drilling of the well. However, the statute has not been interpreted by the courts for a situation where the mineral owner and lessee are known but the lease status is subsequently called into dispute. If the courts ruled that the non-consent penalty applied, the State or its new lessee would also be liable for an additional 200% of their proportionate share of drilling and completion costs, and an additional 100% of their proportionate share of surface equipment costs. The calculations below assume that Oasis is not determined to be a good faith trespasser or alternatively, if the State prevails in litigation it will be able to successfully transfer its proportionate liability to a new lessee.

Bonus Payment

As discussed above, if the lease status is litigated and the State prevails, the State could offer the unleased formations out for competitive bid after litigation was concluded.

Under the terms of the Settlement, Oasis would pay an upfront bonus to the State of $1,533,840. This is based on a bonus of $2,800 per acre for the State's 547.8 acre tract. This bonus amount equals the highest bonus bid received by the State for any tract in the Bakken/Three Forks area in Richland and Roosevelt counties.[1] The Settlement bonus amount actually represents a premium over the $2,800 per acre reference bid, as the Settlement amount is coupled with a higher 19% royalty rate. The Settlement terms are equivalent to a bonus bid of $4,200 per acre for a lease with a 16.67% royalty rate. The $2,800 per acre bid was received in 2011. More recent bidding has been lower. For example, the State received a high bid of $1,500 per acre earlier this year for a tract in this area.

The exposure of a new lessee to drilling and completion costs and potential non-consent penalties for the Stonewall Federal well would be expected to reduce the amount another

[1] Except for small acreage tracts, this is also the highest per acre bid for any tract ever offered by the State.

company would be willing to offer for a bonus bid. The calculation of revenues below for a potential new lease assumes a bonus bid of $1,500 per acre and a 16.67% royalty.

Financial Impact Analysis

This section estimates the potential revenue to the State based on potential outcomes between litigation and the Settlement Agreement:

Outcome	Royalty Rate	Bonus
State litigates and prevails:	16.67%	$1,500
State litigates and Oasis prevails:	13%	None
State accepts Settlement:	19%	$2,800

Engineering Assumptions

Spacing Unit Information
Spacing Unit: 1,099.64 acres
State Section 16: 547.80 acres
Tract Participation Factor: 0.498163

Well Data (from Oasis/BOGC docket #377-2013)
Stonewall Federal 2959 43-21H Well
Ultimate Recovery: 400,000 bbl oil (DNRC Petroleum Engineer concurs)
Gas/Oil Ratio: 700 scf/bbl
Oil Price: $80.00 per bbl
Gas Price: $ 4.00 per mcf
Product Price per BOE: $82.80
Production schedule per decline curve analysis: (DNRC Petroleum Engineer)

One additional well is drilled in the spacing unit.

Net Present Value

Royalty revenues are generated over time as the well produces. The estimates below are undiscounted. However, no escalation factor has been applied to future oil and gas prices. The figures below therefore represent discounted net present value if oil and gas prices generally increase over time at the present value discount rate. If oil and gas prices rise faster than the discount rate, the net present values will be higher than the amounts below. Conversely, if oil and gas prices rise slower than the discount rate, the net present values will be lower than the amounts below.

POTENTIAL REVENUES BY OUTCOME

Revenue Source	Litigation State Wins Issues Lease	Litigation Oasis Wins	Settlement Terms	Incremental Revenue vs State Lease	Incremental Revenue vs Oasis Win
Bonus - per acre	$1,500	n/a	$2,800		
Total Bonus	$821,700	$0	$1,533,840	$712,140	$1,533,840
Royalty Rate	12.5%/16.67%	13.00%	19.00%		
Total Royalty	$5,208,413	$4,289,782	$6,269,681	$1,061,267	$1,979,899
Total Revenue	$6,030,113	$4,289,782	$7,803,521	$1,773,407	$3,513,739
Additional Wells	Unknown	Possible after 3-4 years	Certain within next 2 years		
Uncertainty	Significant	Moderate	None		

Summary of Alternatives

<u>The State litigates, prevails and successfully offers for competitive lease</u>

Bonus Revenue: unknown

Competitive bonus bid value will be reduced if Oasis is found to be a good faith trespasser, entitled to recoupment of drilling and completion costs and potential non-consent penalties from the State or its new lessee.

Royalty Revenue: 12.5% royalty rate from date of first production until conclusion of litigation (4.5 – 5.5 years); new royalty rate ≥ 16.67% thereafter. Lower royalty rate would apply to approximately 43% of the estimated 400,000 barrels total reserves. The total royalty calculated for this outcome assumes Oasis would drill one additional well regardless of whether they obtained the new State lease.

Drilling of Additional Wells: Delayed by at least 4 years. Potential exists that Oasis may not drill an additional well(s) (or may not drill them as quickly) if they do not obtain the new lease because of their reduced working interest in the spacing unit. Oasis currently possesses sole rights to drilling and operating wells within the spacing unit.

The estimate above assumes Oasis would drill one additional well even if they do not obtain the new lease. The actual revenue realized could be higher or lower than the estimated $6.03 million. The uncertainties involved with this outcome would act to decrease the competitive interest, while the prospect of a 49.8% interest in a spacing unit with potential for an additional well(s) would act to increase competitive interest. Whether or not Oasis is found to be a good faith trespasser and whether Oasis is entitled to non-consent penalties has a significant impact on this outcome.

<u>The State litigates; Oasis prevails and drills one additional well</u>

Bonus Revenue: none
If Oasis prevails, the lease contraction to the base of the Charles formation would have been rejected by the court. Since the contraction did not occur, no new lease would be issued, and no bonus payment to the State would be received.

Royalty Revenue: 13% royalty rate generates $4.29 million over life of wells. Additional well(s) not drilled until after completion of litigation (3-4 years)

<u>The State and Oasis enter into proposed Settlement Agreement</u>

Bonus Revenue: $1.53 million

Royalty Revenue: 19% royalty rate generates $6.27 million over life of wells. Oasis is committed to drill at least one additional well within three years of Settlement Agreement approval.

Total estimated revenue: $7.80 million.

Conclusion

Entering into the proposed Settlement Agreement avoids the risk, uncertainty, cost, and development time delay associated with litigation.

The proposed Settlement Agreement generates a record high $/acre bonus bid of $1.53 million. If litigated and Oasis prevails, no bonus bid would be received. If litigated and the State prevails, the level of competitive interest would be adversely affected by the potential liability to the State and new lessee for the proportionate share of drilling and completion costs, which may also include large non-consent penalties.

The proposed Settlement Agreement establishes a royalty rate of 19%, retroactive to the date of first production from the Stonewall Federal well. If litigated and Oasis prevails, the royalty rate would remain at 13% for oil and 12.5% for gas. The State is therefore risking the loss of $1.98 million in royalties if litigated and Oasis prevails. If litigated and the State prevails, the royalty rate for a new lease would be established by the Land Board. Even if the Land Board were to successfully issue a new lease with a 19% royalty rate, it would not be retroactive and therefore not apply to approximately 43% of the Stonewall Federal well's production.

The proposed Settlement Agreement eliminates the issue of State liability for its share of drilling and completion costs. The Agreement also includes a commitment from Oasis to drill at least one additional well within the spacing unit within three years.

1114-5

Commercial Ground Lease:

1539 11th Avenue, Helena

1114-5 Commercial Ground Lease - 1539 11th Avenue, Helena

Location: Lewis and Clark County

Trust Benefits: Montana State University, University of Montana

Trust Revenue: $45,000 annually

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting approval to issue a long-term lease of the one-acre, Lot D of the Cannon CW addition in the city of Helena, Montana. The lease area is located at 1539 11th Avenue, and is the current location of the unoccupied, former Department of Corrections Building, also known as Mills Hall.

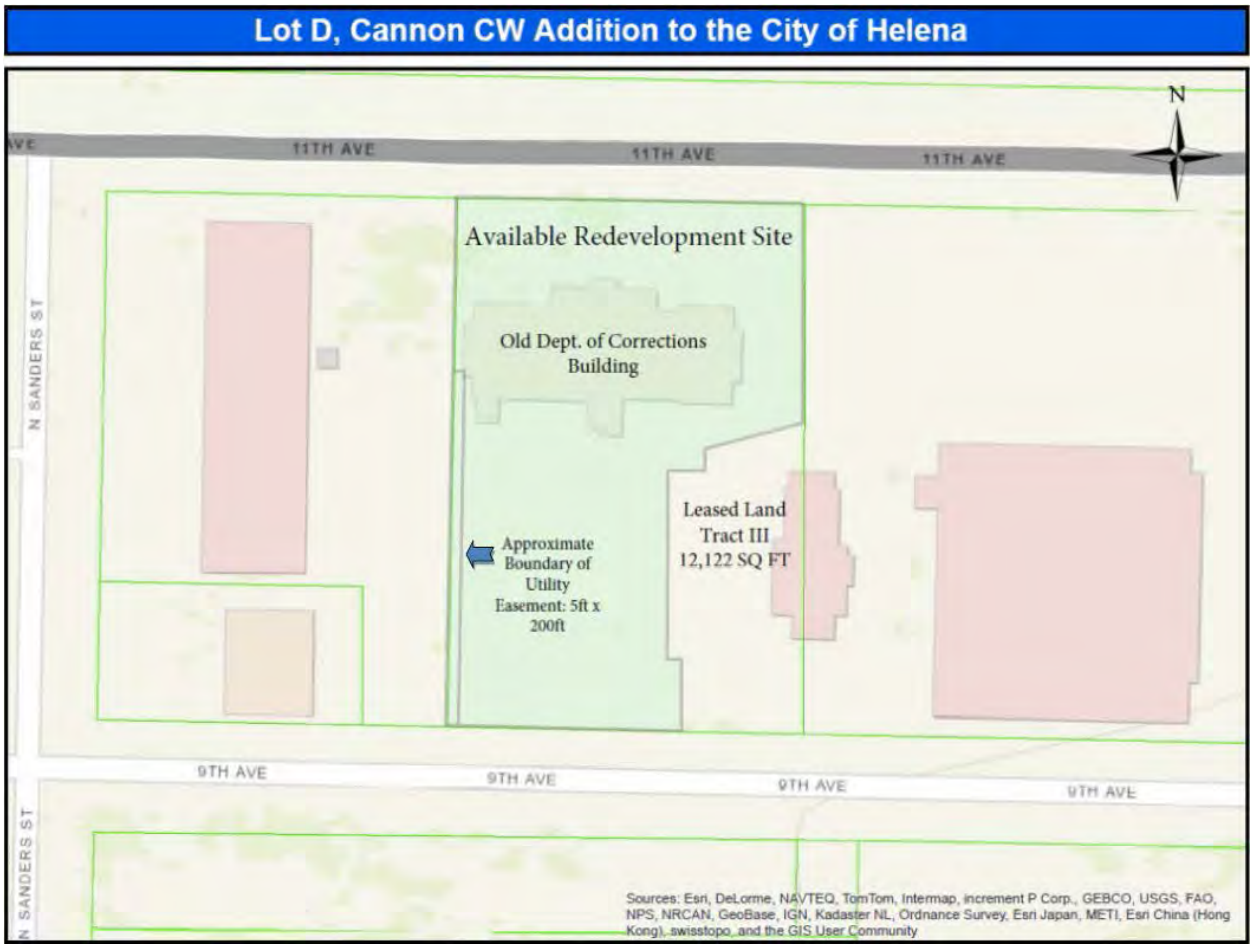
Dick Anderson Construction, whose address is 3424 US Hwy 12E, Helena, Montana, plans to lease and develop the site. Development includes: demolition of the current building; and, construction of an office space structure (that is approximately 39,000 square feet), and an associated parking structure. The proposed office space is planned to be leased-back to DNRC.

Lease Area:	1 ± acres
Term:	20 years with options to renew for three additional 20-year term, and subsequently one additional 19-year term, for a maximum lease term of 99 years.
Rent:	Base rent for year 1 will be $45,000, which is 6.7% of the market value of the land. The rental amount will increase annually at a rate of $900 for the first 20 years. Market adjustments will occur every 20 years; the land will be reappraised and the rent for that year will be the new land value multiplied by the higher of the bid rate (6.7%) or the minimum statutory lease rate at the time.
Improvements:	Lessee will be responsible for construction of all improvements. All improvements will revert to the state at termination.
Utilities:	Lessee will install all utility lines, roads, and sidewalks necessary to serve the planned development. Lessee is responsible for payment of all applicable utilities.
Taxes:	Lessee will pay taxes and specials assessments assessed by the city of Helena, and/or Lewis and Clark County.
Insurance:	Lessee is required to obtain and maintain liability, property and worker's compensation insurance.
Security Deposit:	Lessee agrees to pay the lessor a security deposit of $15,000.

DNRC Recommendation

The director recommends the board approve the issuance of a commercial lease agreement to Dick Anderson Construction for the development of office space at 1539 11th Avenue.

Plat


Lot D, Cannon CW Addition to the City of Helena
N
11TH AVE
11TH AVE
11TH AVE
N SANDERS ST
Available Redevelopment Site
Old Dept. of Corrections Building
Leased Land Tract III 12,122 SQ FT
Approximate Boundary of Utility Easement: 5ft x 200ft
9TH AVE
9TH AVE
9TH AVE
9TH AVE
N SANDERS ST
Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community

Dick Anderson Construction

COMMERCIAL LEASE
HELENA, MONTANA

LEASE NO. 3070968

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EXHIBITS

Exhibit A Plat

Exhibit B - Rental Schedule.

COMMERCIAL LEASE

HELENA, MONTANA

THIS COMMERCIAL LEASE (this "Lease") is entered into as of the _____ day of ____ _____, (the "Commencement Date"), by and between the **Montana State Board of Land Commissioners**, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as "Lessor"), and **Dick Anderson Construction ("DAC")**, a Montana corporation whose address is 3424 US Hwy 12 E, Helena, MT 59601 (hereinafter referred to as the "Lessee").

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. In this Lease, the following defined terms have the meanings set forth for them below:

"Adjusted Base Rent" is the previous year's Base Rent multiplied by the Adjustment Period Escalator.

"Adjustment Period" is a multi-year Lease period as specified in Exhibit B, Rent Schedule during which a calculated Adjustment Period Escalator is applied annually to the prior year's Base Rent.

"Adjustment Period Escalator" is the annual increase to be applied to the previous year's rent amount. For the first twenty years of this lease, the Adjustment Period Escalator is $900, which is 2% of the Base Rent for the First Lease Year. Thereafter, the Adjustment Period Escalator will be compounded annually at 2% of the prior year's rent.

"Affiliates" means, with respect to any party, any entities or individuals that control, are controlled by, or are under common control with such party, together with its and their respective partners, members, venturers, directors, officers, shareholders, trustees, trustors, beneficiaries, agents, employees and spouses.

"Base Rent" means the amount obtained by (a) multiplying the Land Value by the Lease Area, and (b) multiplying the resulting product by the Lease Rate Percentage, and as periodically adjusted by the Adjustment Period Escalator.

"Building" means any enclosed building constructed or installed upon the Land.

"Commencement Date" means the effective first date of this lease, as written herein above.

"Commercial Purpose" per MCA 77-1-902(3)(a) means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

"Default Rate" shall mean 1% per month.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law (hereafter, "Claims") or any permit issued under any such Environmental Law, including, without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Laws" means any existing and future Laws relating to, or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, Releases or threatened Releases of Hazardous Substances, including, without limitation, The Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, et seq., MCA; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300(f), et seq.

"Expiration Date" means the date the Term ends.

"First Lease Year" means the one-year period starting on the Commencement Date and ending on the first occurrence of February 28.

"Foreclosure Transferee" means any foreclosure purchaser or other transferee of Lessee's interest under this Lease who acquires such interest at the sale conducted by virtue of, or otherwise in connection with, a foreclosure of any Leasehold Mortgage or any conveyance in lieu of such foreclosure.

"Hazardous Substances" means any and all substances, materials or wastes that are declared to be, or defined or regulated as, hazardous or toxic in CECRA, Section 75-10-701, et seq., MCA, or under any Environmental Law.

"Improvements" mean any Buildings, structures, pavement, landscaping, lighting fixtures or other improvements now or later installed or constructed upon the Land.

"Land" means the real property within the lease area consisting of approximately __1__acres located within Section 29 in Township _10_North, Range _3_West, PMM, City of Helena, Lewis and Clark County, Montana, as generally depicted on **Exhibit A.**

"Land Value" means the full market value of the Lease Area as determined by the applicable appraisal.

"Laws" means, subject to Section 5.2, any and all present or future federal, state or local laws (including common law), statutes, ordinances, rules, regulations, orders, decrees or requirements of any and all governmental or quasi-governmental authorities having jurisdiction over the Land described in this Lease.

"Lease Area" means the Land as shown and described on **Exhibit A.**

"Lease Rate Percentage" means the percent of appraised value used to determine the annual rent amount. The initial Base Rent of $45,000 was set by applying a Lease Rate Percentage of 6.7% to the current appraised value of the parcel. Lease Rate Percentage at renewal and market adjustment periods must not be below the minimum rate set in accordance with MCA 77-1-905.

"Lease Year" means, after the First Lease Year, each successive Lease Year is the one-year period during the Term from March 1 to the last day of February.

"Leasehold Mortgage" means any mortgage, deed of trust, assignment of rents, assignment of leases, security agreement or other hypothecating instrument encumbering Lessee's interest under this Lease or the leasehold estate in the Premises hereby created, Lessee's rents and other sums due from any Sublessees, Lessee's rights under Subleases and any other agreements executed in connection with Lessee's use or operation of the Premises, or Lessee's interest in any fixtures, machinery, equipment, Land, Buildings, Improvements or other property constituting a part of the Premises.

"Leasehold Mortgagee" means the holder(s) of any promissory note or the obligee(s) of any other obligation secured by a Leasehold Mortgage.

"Lessee's Address" means:

Dick Anderson Construction
3424 US Hwy 12 E
Helena, MT 59601

"Lessor's Address" means:

Montana Department of Natural
Resources and Conservation
Attn: Real Estate Management Bureau Property Mgmt Section
1625 Eleventh Avenue
PO BOX 201601
Helena, MT 59620-1601

"Market Adjustment" shall have the meaning and will occur as set forth in **Exhibit B, Schedule 1**.

"Premises" means the Land and all Improvements.

"Qualified Mortgagee" means any Leasehold Mortgagee who notifies Lessor in writing of its name, its address for notices and the fact that it is a Leasehold Mortgagee and includes with such notice a copy of any Leasehold Mortgage by virtue of which it became a Leasehold Mortgagee.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing or the like, into or upon any land, surface water, groundwater or air, or otherwise entering into the environment.

"Rent" means Initial Rent, Base Rent, Reduced Rent and all other amounts required to be paid by Lessee under this Lease.

"Security Deposit" means $15,000 and is further defined in section 18.1.

"Sublease" means a sublease, license, concession or other agreement (whether written or oral) according to which Lessee grants any party the right to use or possess all or any portion of the Premises.

"Sublessee" means any party to whom Lessee grants the right to possess all or any portion of the Premises according to a Sublease.

"Substantial Damage" means harm to Improvements that renders the Premises inoperable for its intended use for more than 180 days.

"Substantial Taking" means a Taking of at least 15% of the Land or Improvements which, in Lessee's and Lessor's reasonable judgment, will materially and adversely interfere with any development or use of the Premises that Lessee is then conducting or intends in good faith to conduct in the future.

"Taking" means the taking of all or any portion of the Premises as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale or conveyance of all or part of the Premises under the threat of condemnation.

"Taking Date" means, with respect to any Taking, the date on which physical possession of the portion of the Premises that is the subject of such Taking is transferred to the condemning authority.

"Taxes" means all general ad valorem real and personal property taxes and assessments levied upon or with respect to the Premises or the personal property used in operating the Premises, and all taxes, levies and charges which may be assessed, levied or imposed in addition to, or in replacement of, all or any part of ad valorem real or personal property taxes or assessments as revenue sources, and which in whole or in part are measured or

calculated by or based upon the Premises, the leasehold estate of Lessor, Lessee or the Sublessees, or the rents and other charges payable by Lessee or the Sublessees. Taxes will not include any income taxes of Lessor. Taxes shall also include any so-called "beneficial" use taxes imposed by Laws.

"Tax Year" means a 12-month period for which Taxes are assessed by the applicable taxing authority.

"Term" means the duration of this Lease, beginning on the Commencement Date and ending on the Expiration Date, unless terminated earlier or extended further as provided in this Lease.

"Title Company" means a national title company having offices in the state of Montana.

1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Lease. In the event of any inconsistency between such Exhibits and the terms and provisions of this Lease, the terms and provisions of the Lease will control. The Exhibits to this Lease are:

Exhibit A - Plat

Exhibit B - Rental Schedule.

2. LEASE TERM.

2.1 Lease. Subject to the terms, covenants, conditions and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor the Land for the Term of **20** years starting on the Commencement Date.

2.2 Lessee's Renewal Option. Subject to the terms and provisions of this Section 2.2, Lessee, at its option, may renew the Term of this Lease for an additional **20** year term and subsequently additional 20 year terms, (collectively, the "Renewal Terms") provided, however, that the last of any such Renewal Terms must terminate no later than a date that is 99 years after the Commencement Date, per MCA 77-1-904(1). The Base Rent will be adjusted at renewal according to the process outlined in Schedule 1 of Exhibit B. To exercise each such option, Lessee must deliver notice of the exercise thereof to Lessor no later than 120 days prior to the expiration of (a) the initial Term as described in section 2.1, in the case of Lessee's option with respect to the first Renewal Term, or (b) the Term as extended by the previously exercised Renewal Term. Should Lessee fail to give said timely notice, Lessor shall give notice to Lessee that the Lease will terminate at the expiration of such Term. Lessee shall have sixty days from the date of such notice to cure and exercise its renewal option.

2.3 Lessor and Lessee Covenants. Lessor covenants to observe and perform all of the terms, covenants and conditions applicable to Lessor in this Lease. Lessee covenants to pay the Rent when due, and to observe and perform all of the terms, covenants and conditions applicable to Lessee in this Lease.

2.4 Quiet Enjoyment. Lessor covenants that during the Term, Lessee will have quiet and peaceful possession of the Premises, subject only to the terms and conditions of this Lease.

2.5 Condition of Premises. Except as expressly set forth in this Lease, Lessee accepts possession of the Premises on the Commencement Date in their then-current condition on an "AS IS, WHERE IS AND WITH ALL FAULTS" basis.

3. RENT.

3.1 Base Rent. Commencing on the Commencement Date, then throughout the Term, Lessee agrees to pay Lessor, without deduction or offset of any kind or prior notice or demand, according to the following provisions. Base Rent during each Lease Year will be payable annually in the amount specified, for such Lease Year, in advance, on or before the first day of March. However, if the Commencement Date is not the first day of a Lease Year or the Term ends on other than the last day of a Lease Year, Base Rent for such Lease Year will be appropriately prorated.

3.2 Terms of Payment. Per MCA 77-1-905 (1) The First Lease Year rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. Failure to pay the First Lease Year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. The first year rent will be prorated to cover the time between the Commencement Date through the end of February. The lease Year will be March 1st – February 28th. All Rent will be paid to Lessor in lawful money of the United States of America, at Lessor's Address, without notice or demand and without right of deduction, abatement or setoff, or to such other person or at such other place as Lessor may from time to time designate by written notice to Lessee. Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, **if any installment of Rent is not e received by the due date, then, without further notice, Lessee shall pay to Lessor an additional late charge equal to an annual interest rate of 10%on the unpaid and overdue amount.** The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost that Lessor will incur by reason of the late payment by Lessee.

3.3 Net Lease; Additional Rent. It is the intent of the parties that the Base Rent provided in this Lease will be a net payment to Lessor and that Lessor will not be required to pay any costs or expenses or provide any services in connection with the Premises and Lessee will bear all costs and expenses relating to the Premises. Accordingly, Lessee covenants and agrees to pay, in addition to Base Rent, all costs and expenses relating to the Premises which accrue during or are allocable to the Term, including, without limitation: (a) the entire cost of designing, constructing or altering the Improvements; (b) insurance costs; (c) taxes and special assessments; (d) utility charges; and (e) maintenance and repair expenses of the lease land or lessee owned improvements. This provision shall not be deemed to require Lessee to pay any overhead, supervisory or management costs incurred by Lessor concerning this Lease.

4. IMPROVEMENTS AND ALTERATIONS.

4.1 Lessor's Approvals Under Lease. Lessor has the right to review or approve matters relating to the development, placement, replacement or modification of the Premises by Lessee or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises, for any of which a Major Amendment is required to effectuate the change. For purposes of this Section 4.1, "Major Amendment" means an amendment of land use regulations that requires (by applicable Laws in effect as of the Commencement Date) an official vote by the City Council or, if the City Council delegates or is required to delegate by Laws its authority to a commission or other governmental or quasi-governmental authority, an amendment that would have required an official vote by the City Council as of the Commencement Date. Any approval of Lessor hereunder will not be unreasonably withheld.

4.2 Improvements and Alterations. Per MCA 77-1-906 (1) the Lessee shall be solely responsible for the expense of maintenance and operation of the enterprise, business, or venture and all improvements made and constructed in support of any commercial purpose during the term of the Lease. The foregoing sentence shall in no way impose on Lessee any obligation to maintain or operate any public utilities, roads or other infrastructure placed, installed or constructed on the Premises that are owned by a utility company or the public or that have otherwise been dedicated for public use unless the City requires otherwise. Subject to the terms and conditions of Section 4.1, Lessee, may at any time and from time to time during the Term, with the prior consent or approval from Lessor, which consent or approval shall not be unreasonably withheld (except as provided in Section 4.1), cause or permit any Buildings, structures, utilities, roadways or other Improvements to be installed or constructed on, over, under or across the Land or any part thereof and may cause or permit any Improvements now or later installed or constructed on the Land to be changed, altered, added to or removed or demolished in whole or in part. After approval from Lessor has been obtained, Lessee will provide Lessor notice of the commencement of any of the work set forth in the preceding sentence at least 10 business days before the commencement of the same. Such requirement for Lessor approval and of giving notice of commencement of work shall not be required for work conducted solely within any Building or for routine exterior maintenance or repair of any Improvement. Lessee will pay all costs and expenses arising out of the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements by Lessee and will cause all Improvements to be installed, constructed, changed, altered, added to, removed or demolished in accordance with applicable Laws. Lessor will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Premises against any liens resulting from such work. Upon completion of the initial Improvements for the Premises or thereafter at the same time as the City may require the same, Lessee shall deliver to Lessor an engineer's certificate for the Premises and an electronic "as-built" survey of the Premises in both AutoCAD and .pdf format as soon as reasonably practicable.

4.3 Governmental Approvals and Permits. Subject to the terms and conditions of Section 4.1, Lessee will have the right to apply for and secure, in Lessor's name if necessary, such governmental approvals, permits or other authorizations (including, without limitation, rezonings, master or final site plans, subdivision or P.U.D. plats and agreements, building permits, grading permits, sign permits and certificates of occupancy) as may be necessary or appropriate in

connection with the development of the Premises or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises. Lessor will fully cooperate with Lessee's efforts to obtain such approvals, permits and other authorizations, including, without limitation, the execution by Lessor of any and all required submissions or applications within 10 days after Lessee submits the same to Lessor. Without limitation on Lessor's obligations set forth above, Lessor may agree to execute a revocable power of attorney appointing Lessee as its true and lawful attorney-in-fact to execute and deliver any such instruments and documents in Lessor's name or Lessee's name or otherwise, consistent with the terms, conditions, and restrictions set out in this Lease. The Lessor, in its sole discretion, shall decide whether such a Power of Attorney shall be issued and shall decide its term. In any event, any such Power of Attorney shall terminate upon the expiration or termination of the Term of this Lease. .

4.4 Title to Improvements. During the Term, Lessee or its designated Sublessees will be deemed to own, and will hold title to, all Improvements and will be entitled to all depreciation deductions, investment tax credits, deductions for taxes and any other tax advantages resulting from the ownership of the Improvements, subject to the Lessor's reversionary interest in the Improvements upon the expiration or termination of the Lease. Lessee, with the consent of Lessor which shall not be unreasonably withheld, shall have the right to grant liens or other security interests in the Improvements. On the expiration or earlier termination of the Term: (a) title to all Improvements then held by Lessee, except moveable personal property not constituting fixtures, will automatically vest in Lessor without representation or warranty per Montana Code Annotated 77-1-906 (2).

4.5 Utility and Road Infrastructure. Lessee will install water, sewer, stormwater, electric, communication lines, natural gas lines (the "Utility Lines"), and roads (including sidewalks) as required by the City for the development of the Land.

5. USE AND OCCUPANCY.

5.1 Use. Subject to the requirements of Section 4.1, Lessee may make use of the Premises for any and all lawful uses and purposes that are consistent with applicable Laws. Lessee shall maintain the Premises in a clean, orderly and neat fashion, ordinary wear and tear and damage by casualty and condemnation excepted. Lessee shall keep the Premises in good repair and shall not commit waste or permit impairment or deterioration of the Premises, ordinary wear and tear and damage by casualty and condemnation excepted.

5.2 Compliance. Lessee will comply with all Laws applicable to Lessee's use and occupancy of the Premises and will keep and maintain the Premises in compliance with all applicable Laws. Lessee covenants and agrees that Lessee will not modify any document encumbering the Land that will (a) cause Lessee to be in violation of the terms of this Lease, and/or (b) materially increase the financial obligations of Lessor that exist in the documents encumbering the Land as of the date of execution of this Lease. Lessee will have the right, however, to contest or challenge by appropriate proceedings the enforceability of any Law or their applicability to the Premises or Lessee's use or occupancy thereof provided that Lessee complies with such Law during the pendency of Lessee's contest or challenge of it, so long as Lessee diligently prosecutes the contest or challenge to completion and, in the event Lessee loses the

contest or challenge, thereafter continues to abide by and conform to such Law. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its employees, agents, and representatives from and against any and all liabilities, obligations, losses, damages (excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly based on, or arising or resulting from Lessor joining in any contest permitted under this Section 5.2. Notwithstanding anything contained in this Lease to the contrary, Lessor and Lessee specifically acknowledge and agree that this Lease is specifically subject to the provisions of Title 77 of the Montana Code Annotated. The Lessee agrees to comply with all applicable laws, rules, and regulations in effect upon the Commencement Date of this Lease and those laws, rules, and regulations which may be enacted or adopted thereafter from time to time and which do not impair or impede the obligations of this Lease and which do not deprive the Lessee of an existing property right recognized by law.

5.3 Environmental Matters.

(a) Compliance with Environmental Laws. Lessor has made no representations to Lessee concerning the presence of Toxic or Hazardous Substances within the definition of MT Comprehensive Environmental Cleanup and Responsibility Act (CECRA) on the Land. Based upon Lessor's lack of representations, the Lessee agrees as follows:

(i) Lessee will (A) comply with all Environmental Laws applicable to the operation or use of the Premises by Lessee or the construction, installation, alteration or demolition of any Improvements by Lessee; (B) use reasonable efforts to cause all Sublessees and other persons occupying the Premises to comply with all Environmental Laws; (C) immediately pay or cause to be paid all costs and expenses incurred by Lessee in such compliance; and (D) keep or cause the Premises to be kept free and clear of any liens arising from Lessee's use and occupancy of the Premises imposed thereon pursuant to any Environmental Laws.

(ii) Lessee will not generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, any Hazardous Substances on the Premises, or transport or permit the transportation of any Hazardous Substances to or from the Premises, in each case in any quantity or manner which violates any Environmental Law.

(iii) If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Premises or has good reason to believe that Lessee or the Premises are in violation of any Environmental Law, at Lessor's written request (such request shall describe the basis for such request in reasonable detail), at any time and from time to time, Lessee will provide to Lessor an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm reasonably approved by Lessor, indicating the presence or absence of Hazardous Substances and the potential cost of any

removal or remedial action in connection with any Hazardous Substances on the Premises. Any such environmental site assessment report will be conducted at Lessee's sole cost and expense. If Lessee fails to deliver to Lessor any such environmental site assessment report within 90 days after being requested to do so by Lessor, Lessor may obtain the same. Lessee hereby grants to Lessor and its agents access to the Premises to undertake such assessment and Lessee shall pay Lessor the cost of such assessment, together with interest thereon at the Default Rate, due on Lessor's demand. Lessor may, at its option, at any time and from time to time, obtain at its sole cost and expense an environmental site assessment report for the Premises, and, Lessee hereby grants to Lessor and its agents access to the Premises to undertake such an assessment.

(iv) At its sole expense, Lessee will conduct any investigation, study, sampling or testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Substances from the Premises, which are on the Premises as a result of Lessee's activities under the Lease, which must be so removed or cleaned up in accordance with the requirements of any applicable Environmental Laws, to the reasonable satisfaction of a professional environmental consultant selected by Lessor, and in accordance with all such requirements and with orders and directives of all governmental authorities.

(b) Lessee Indemnity. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor from and against any and all liabilities, obligations (including removal and remedial actions), losses, damages (excluding punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against Lessor directly or indirectly based on, or arising or resulting, in whole or in part, from: (i) the actual or alleged presence of Hazardous Substances on the Premises Released by Lessee or anyone acting by, through or under Lessee in any quantity or manner which violates Environmental Law, or the removal, handling, transportation, disposal or storage of such Hazardous Substances by Lessee or anyone acting by, through or under Lessee; or (ii) any Environmental Claim with respect to Lessee or the Premises resulting from a Release by Lessee or anyone acting by, through or under Lessee (collectively, the "Lessee Indemnified Matters"), regardless of when such Indemnified Matters arise.

(c) Survival. The remedial indemnification and reimbursement obligations under this Section 5.3 will survive the expiration or earlier termination of this Lease.

6. UTILITIES AND REPAIRS.

6.1 Utilities. Lessee will pay before delinquency all water, sewer, natural gas, electricity, telephone and any other utility charges related to the Premises including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Premises under applicable Laws.

6.2 Repairs. Lessee will maintain, repair, replace and keep any Improvements or landscaping on the Land in reasonably good condition and repair in accordance with all applicable Laws, including necessary repairs to the interior, exterior and structure of any Buildings, mowing of grass and care of shrubs and general landscaping; pay all costs and expenses in connection therewith; and contract for the same in Lessee's own name.

7. TAXES.

7.1 Payment of Taxes. Subject to Section 7.4, Lessee will pay before delinquency, directly to the taxing authority, all Taxes that accrue during or are attributable to any part of the Term, including privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203.

7.2 Proration at Beginning and End of Term. If the Term begins on other than the first day of a Tax Year or if the Term expires or otherwise terminates on other than the last day of a Tax Year, Taxes for the Tax Year in which the Term begins or ends, as the case may be, will be prorated between Lessor and Lessee, based on the most recent levy and most recent assessment. Such proration will be subsequently adjusted when the actual bills become available for Taxes for the Tax Year for which Taxes were prorated. Any taxes or assessments payable in the first Lease Year prior to the Commencement Date shall be the sole responsibility of Lessor.

7.3 Special Assessments. Lessee will pay all special assessments and other like impositions levied, assessed, or attributable to the Land during the Term; provided, however, that Lessee may pay in installments any such special assessments or like impositions that may be so paid according to applicable Law and, in such event, Lessee will only be required to pay those installments of any such assessments or impositions that become due and payable during the Term.

7.4 Tax Contests. Lessee will have the right to contest any Taxes or special assessments payable by Lessee, provided Lessee (a) provides Lessor with written notice of such contest, and (b) makes timely payment of the contested Taxes or special assessments if the Lessee loses the contest. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor from and against any and all liabilities, obligations, losses, damages (excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against Lessor directly or indirectly based on, or arising or resulting from Lessee's Tax contest.

8. WAIVERS AND INDEMNITIES; LIABILITY AND CASUALTY INSURANCE.

8.1 Acquisition of Insurance Policies. Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8, issued by an insurance company or companies licensed to do business in the State of Montana that are reasonably satisfactory to Lessor.

8.2 Types of Required Insurance. Lessee shall procure and maintain, and keep in force and name Lessor as an additional insured, the following during the Term:

(a) Liability Insurance. Comprehensive or commercial general liability insurance covering claims arising out of the ownership, operation, maintenance, condition or use of the Premises, for personal and bodily injury and death, and damage to others' property, with limits of not less than **$5,000,000.00** for any one accident or occurrence. Lessee may obtain some portion of this required coverage in the form of an excess liability policy. Lessor will be named as an additional insured in the policy(ies) providing such liability insurance, which will include cross liability and severability of interests clauses.

(b) Property Insurance. All-risk fire and extended coverage insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering loss or damage to the Improvements on a full replacement cost basis, excluding existing architectural and engineering fees, undamaged excavation, footings and foundations. .

(c) Workers' Compensation Insurance. Workers' compensation (with limits satisfying applicable Laws) covering Lessee's employees, officers, agents and representatives employed at the Premises.

8.3 Terms of Insurance. The policies required under Section 8.2 above, shall name Lessor as additional insured and Lessee shall provide promptly to Lessor certificates of insurance evidencing the policies obtained by Lessee hereunder as hereinafter described. Proof of insurance ("Proof") shall consist of either (a) an insurance binder or premium payment receipt, (b) a copy of the policy, or (c) an "ACORD 27 Evidence of Property Insurance" or "ACORD 25 Certificate of Liability Insurance," whichever is appropriate (or such other similar certificates), issued by Lessee's insurer with respect to each required policy. If Lessee does not deliver the evidence required by the preceding sentence before taking possession of the Premises, then Lessee will deliver the same within 30 days after taking possession of the Premises. Thereafter, during the Term, within 30 days after the renewal date of each policy, the issuance of a new policy or on such other date as Lessor reasonably requires, Lessee will deliver a copy of the latest Proof to Lessor. Each policy of insurance will require the issuer of the insurance policy to give Lessor 30 days' advance written notice of the termination or modification of the policy. Further, all policies of insurance described in Section 8.2 above, shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Lessor may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled except after 30 days' prior written notice from insurance company to Lessor.

(c) Expressly provide that Lessor shall not be required to give notice of accidents or claims and that Lessor shall have no liability for premiums.

(d) Any deductibles in excess of $20,000.00 must be approved to in writing by Lessor.

9. DAMAGE OR DESTRUCTION.

(a) In the event of any Substantial Damage to or destruction of the Property or any Improvements thereon from any causes whatever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless Lessor and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate. All such repair and restoration shall be performed in accordance with the requirements of Section 4 above. Lessee's duty to repair any damage or destruction of the Property or any Improvements shall not be conditioned upon the availability of insurance proceeds. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such repair and restoration. If a Default by Lessee shall have occurred and be continuing at the time such damage or destruction occurs, Lessor may elect to terminate this Lease by providing written notice of such election to Lessee.

(b) In the event such damage or destruction occurs within the last ten (10) years of the term of this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, either Lessor or Lessee may elect by written notice to the other, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. If neither Lessor nor Lessee elects to terminate this Lease, Lessee shall repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by Lessor subject to the provisions of Section 9(a) above. In the event Lessor or Lessee elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction.

10. CONDEMNATION.

10.1 Notice. If either Lessor or Lessee learns that all or any portion of the Premises has been or is proposed to be subjected to a Taking, such party will immediately notify the other of such Taking.

10.2 Termination Option on Substantial Taking. If a Substantial Taking occurs during the Term, Lessee may, at its option, terminate this Lease by giving notice to Lessor on or before 60 days after the Taking Date. In such event this Lease will terminate effective as of the Taking Date, Lessee will surrender the Premises according to Section 13 on or before 30 days after the date of Lessee's notice of termination and all Base Rent and other Rent will be apportioned to the Taking Date, except that Lessee will also pay Lessor for the reasonable value Lessee's occupancy of the Premises, if any, from the Taking Date until the date Lessee so surrenders possession.

10.3 Continuation of Lease. If a Taking occurs during the Term that is not a Substantial Taking, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the

portion of the Premises that is the subject of such Taking and Base Rent will be adjusted to reflect the reduced Lease Area remaining after the Taking. If a Substantial Taking occurs but Lessee does not exercise its termination option according to Section 10.2, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date: (a) this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking; and (b) each payment of Base Rent due for any portion of the Term after the Taking Date will be will be adjusted to reflect the reduced Lease Area remaining after the Taking.

10.4 Awards for Permanent Taking. If there is an award, compensation, damages or consideration paid or payable as a result of or in connection with any permanent Taking or condemnation of the Premises, the award will be allocated as follows: First, Lessee will be entitled to the then current value of the Improvements placed by the Lessee upon the Premises and the net present value of the Lessee's interest in the unexpired Term of the Lease (including any Renewal Terms), net of the current value of the reversionary interest in favor of Lessor. Second, Lessor will be entitled to the value of the Land comprising the Premises (giving due effect to the Rent income in favor of Lessor hereunder, as if this Lease had not been terminated) and the value of Lessor's reversionary interest in the Improvements. Third, Lessee will be entitled to loss of fixtures that Lessee is entitled to remove pursuant to the terms hereof, to the extent it is a separate measure of damages in the condemnation award. Fourth, Lessor will be entitled to any other portion of the award not allocated pursuant to the foregoing provisions.

10.5 Award for Temporary Taking. If all or any portion of the Premises shall be taken for temporary use or occupancy (a "Temporary Taking"), the foregoing provisions of paragraph 10.4 shall not apply and the Lessee shall continue to pay, the full amount of rent and, except only to the extent that Lessee may be prevented from so doing pursuant to the terms of any order of the condemning authority, the Lessee shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease as though the Temporary Taking had not occurred. In the event of a Temporary Taking, Lessee shall be entitled to receive the entire amount of the condemnation award made for such taking (the "Temporary Taking Award"), unless the period of temporary use or occupancy shall extend beyond the Expiration Date in which case the Temporary Taking Award shall be apportioned between the Lessor and the Lessee as of the Expiration Date.

11. ASSIGNMENT, SUBLETTING AND FINANCING.

11.1 Assignment. Throughout the Term, Lessee may from time to time, with Lessor's prior written consent, assign in whole or in part, to a qualified Lessee, its interest under this Lease, such consent not to be unreasonably withheld. Lessor's consent will not be required for any transfer of Lessee's interest under this Lease to a Foreclosure Transferee. Lessor will recognize any Foreclosure Transferee as a substitute Lessee under this Lease and will honor all rights and interest of such substitute Lessee as if the substitute Lessee was the initial Lessee under this Lease and such Foreclosure Transferee shall be bound by the terms and conditions of this Lease. Additionally, if the Foreclosure Transferee is a Qualified Mortgagee, such Qualified Mortgagee shall have the right to assign its interest under this Lease without the consent of Lessor and, upon such assignment, Lessor shall recognize the assignee as a substitute Lessee under this Lease and the Qualified Mortgagee shall be released of any further liability under the Lease. If Lessee assigns its rights in this Lease, as permitted pursuant to this Section 11.1, and

the assignee assumes, in writing, Lessee's obligations hereunder which arise on or after the date of such assignment, then Lessee shall be relieved of all liabilities hereunder accruing from and after the date of such assignment, but this Lease shall otherwise remain in full force and effect.

11.2 Subletting. Throughout the Term, Lessee may from time to time, with Lessor's prior written consent, sublet all or portions of the Premises. No sublease shall be legal until a copy thereof has been filed with the Lessor and approved by the Director of the Montana Department of Natural Resources and Conservation, such approval not to be unreasonably withheld

11.3 Financing.

(a) Lessee's Right to Encumber. Throughout the Term, Lessee may from time to time and without Lessor's consent execute and deliver one or more Leasehold Mortgages securing any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Leasehold Mortgages to secure promissory notes evidencing construction, interim or permanent financing for the Premises or to secure Lessee's obligations under development, reimbursement or other agreements with governmental or quasi-governmental entities, utility companies or other third parties concerning matters such as sales or property tax abatement or rebate programs, public improvements or utilities.

(b) Qualified Mortgagees' Cure Rights. Prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Mortgagee notice of such Default by Lessee and afford it a period of 30 days after such notice is given in which to cure such Default by Lessee; provided, however, that (i) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured within such 30-day period, then so long as any Qualified Mortgagee commences a cure within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to diligently pursue the cure to completion; (ii) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured until the Qualified Mortgagee obtains possession of the Premises, then so long as any Qualified Mortgagee commences to obtain possession of the Premises within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to obtain possession of the Premises and then promptly commence and thereafter diligently pursue the cure to completion.

(c) Prohibition Against Mutual Rescission. No mutual termination, cancellation, rescission or modification of a material provision of this Lease by Lessor and Lessee will be effective unless and until the same is approved in writing by each Qualified Mortgagee. All rights and remedies of the Qualified Mortgagee hereunder will be cumulative with, in addition to and non-exclusive of one another.

11.4 Assignment by Lessor. If Lessor sells or otherwise transfers the Land, or if Lessor assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be

deemed to have assumed Lessor's obligations hereunder which arise on or after the date of sale or transfer, and Lessor shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer or assignment, but this Lease shall otherwise remain in full force and effect.

12. DISPUTE RESOLUTION.

12.1 Issues Subject to Administrative Hearing. Any controversy which may arise between Lessor and Lessee regarding the provisions hereof, including any amount of insurance to be maintained by Lessee, the allocation of any condemnation award, the degree of damage or destruction suffered by the Premises, shall be resolved by an administrative contested case hearing before the Lessor under the Montana Administrative Procedures Act.

12.2 Expert valuation for real property value disputes. In the case of issues relating to the determination of values of real property, the Lessor and the Lessee each agree to submit testimony and evidence prepared by a real estate appraiser who has a professional designation as an "MAI" or "SREA," or a member of a similarly recognized professional organization with at least five (5) years experience with the type of real estate at issue, in the area in which the Property is located.

12.3 Administrative Hearing Procedure. All administrative hearings hereunder shall be conducted in the offices of the Lessor in Helena, Montana. The findings of fact, conclusions of law, and proposed decision of the hearing examiner shall be rendered within sixty (60) days of the completion of the hearing and submission of any briefs. Either party may file exceptions to the hearing examiner's findings, conclusions, and proposed decision with the Lessor's Director. The Lessee may, as permitted by the Lessor's administrative rules, petition for judicial review of the final administrative decision of the Lessor. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness.

13. LEASE EXPIRATION.

13.1 Condition at End of Lease. Upon vacating the Premises on the Expiration Date, Lessee shall leave the Premises in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to Lessor.

13.2 Lessee Shall Yield Premises. The Lessee shall upon the termination of this Lease peaceably yield up and surrender the possession of the Land to the Lessor or its agents or to subsequent Lessees or grantees for any cause.

13.3 Holding Over. Should the Lessee remain in possession of the Premises after the Expiration Date or termination without a written agreement providing for the same, Lessee will, at Lessor's option be deemed to be a Lessee from month to month, at a monthly Base Rent, payable in advance, equal to 150% of monthly Base Rent payable during the last full "Lease Year" prior to the Expiration Date or termination of this Lease, and Lessee will be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a month-to-month tenancy.

14. LIENS AND ESTOPPEL CERTIFICATES.

14.1 Liens. Lessee will not allow to be recorded, filed, claimed or asserted against the Premises any mechanic's lien for supplies, machinery, tools, equipment, labor or material contracted for, by, through or under such party and furnished or used in connection with any construction, development, alteration, improvement, addition to, demolition of or repair to or maintenance of any Building or other Improvement, or any lien for delinquent taxes, judgment lien or other involuntary lien of any nature arising by, through or under such party, and if the Lessee causes or permits any such lien to be so recorded, filed, claimed or asserted, the Lessee will cause the same to be released or discharged within 90 days thereafter. If the Lessee defaults under the foregoing covenant, then the Lessor may, upon written notice to Lessee, cause any such claimed lien to be released of record by bonding or payment or any other means available. All sums paid and costs and expenses, including reasonable attorneys' fees, incurred by the Lessor in connection therewith, together with interest on all such sums at the Default Rate from the date incurred until paid, will be due and owing from the Lessee to the Lessor upon demand therefore. The provisions of this Section 14.1 are subject in all respects to those set forth in Section 14.2 below.

14.2 Lien Contests. If Lessee has a good faith dispute as to any lien for which Lessee is responsible according to Section 14.1 Lessee may contest the same by appropriate proceedings so long as Lessee bonds over the lien or deposits with Lessor security in an amount acceptable to Lessor (but in no event more than the amount required by applicable Laws) which may be used by Lessor to release such lien and pay interest and costs if Lessee's contest is abandoned or is unsuccessful. Upon final determination of any permitted contest, Lessee will promptly pay any judgment rendered and cause the lien to be released. So long as Lessee is acting in conformity with this Section 14.2, Lessor will have no right to exercise its remedies under Section 14.1.

14.3 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time (but on not less than 10 business days' prior request by the other party), each party will execute, acknowledge and deliver to the other a certificate indicating any or all of the following: (a) the date on which the Term commenced and the date on which it is then scheduled to expire; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the date, if any, through which Rent had been paid; (d) that no Default by Lessor or Default by Lessee exists which has not been cured, except as to defaults stated in such certificate; (e) that the responding party has no existing defenses or set-offs to enforcement of this Lease, except as specifically stated in such certificate; and (f) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by the requesting party and, if Lessor is the requesting party, by any prospective purchaser of Lessor's reversionary interest in the Premises, or if Lessee is the requesting party, by any present or prospective Leasehold Mortgagee, Sublessee or assignee of Lessee's interest under this Lease.

15. DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.

15.1 Defaults by Lessee. Each of the following events, which continue beyond any applicable notice and cure period, will constitute a "Default by Lessee" under this Lease:

(a) Failure to Pay Rent. Lessee fails to pay any Base Rent or any other Rent payable by Lessee under the terms of this Lease when due, and such failure continues for 30 days after written notice from Lessor to Lessee of such failure.

(b) Failure to Perform Other Obligations. Lessee breaches or fails to comply with any provision of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of 30 days after written notice thereof from Lessor to Lessee; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessee does not commence to cure such breach or noncompliance within such 30-day period and thereafter pursue such cure in good faith to completion. Any non-payment or failure to pay debts and financial obligations can be grounds to cancel this Lease pursuant to this Section 15.1(b). Financial obligations include, taxes, insurance, environmental bonding, utilities and other expenses directly attributable to the Premises.

(c) Execution and Attachment Against Lessee. Lessee's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Lessee, or is subject to any attachment by any creditor or claimant against Lessee and such attachment is not discharged or disposed of within 90 days after levy; provided, however, that this provision shall not apply in the event of a foreclosure or transfer in lieu of foreclosure under a Leasehold Mortgage by a Qualified Mortgagee or to a transfer of Lessee's interest in this Lease and the Premises to a Foreclosure Transferee.

(d) Cancellation. Subject to the provisions of this Lease, the Lessor shall have the power and authority in its reasonable discretion to cancel a Lease for any of the following causes: (1) for fraud or misrepresentation, or for concealment of material facts relating to its issue, which if known would have prevented its issue in the form or to the party issued (as finally determined by a final judicial or administrative order); (2) for using the Land for other purposes than those authorized by this Lease and failing to remedy such unauthorized use within 30 days after written notice of such unauthorized use delivered to Lessee by Lessor. Such cancellation shall not entitle the Lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the State. If any part of the Land or Premises is used or allowed or permitted to be used for any purpose contrary to the laws of this State, and of the United States, such unlawful use shall in the discretion of the Lessor constitute sufficient reason for the cancellation of the Lease, but only after Lessor has given Lessee written notice of the alleged unlawful use and Lessee fails to remedy or cure the unlawful use within 30 days. Lease cancellation is subject to appeal as provided in Section 12.3 above.

15.2 Lessor's Remedies. Time is of the essence. If any Default by Lessee occurs, Lessor will have the right, at Lessor's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the

concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessor at law or in equity.

(a) Cure by Lessor. Where there is a Default by Lessee, Lessor may, at Lessor's option but without obligation to do so, and without releasing Lessee from any obligations under this Lease, make any payment or take any action as Lessor deems necessary or desirable to cure any Default by Lessee in such manner and to such extent as Lessor in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessor notifies Lessee in writing of Lessor's intention to do so and affords Lessee at least 10 days in which to make such payment or take such action. Lessee will pay Lessor, upon written demand, all advances, costs and expenses of Lessor in connection with making any such payment or taking any such action, including reasonable attorney's fees, together with interest at the annual rate of 10%, from the date of payment of any such advances, costs and expenses by Lessor.

(b) Termination of Lease. Where there is a Default by Lessee, Lessor may terminate this Lease, effective at such time as may be specified by written notice to Lessee, and demand (and, if such demand is refused, recover) possession of the Premises from Lessee. In such event, Lessor will be entitled to recover from Lessee such damages as are allowable by applicable Laws.

(c) Repossession and Reletting. Where there is a Default by Lessee, Lessor may reenter and take possession of all or any part of the Premises, without additional demand or notice, and repossess the same and expel Lessee and any party claiming by, through or under Lessee, and remove the effects of both, without being liable for prosecution for such action or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Lessor will be construed as an election by Lessor to terminate this Lease unless a notice of such intention is given to Lessee. No notice from Lessor or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Lessor to terminate this Lease unless such notice specifically so states. Lessor reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Lessee such notice, in which event the Lease will terminate as specified in such notice. After recovering possession of the Premises, Lessor will use reasonable efforts to relet the Premises on commercially reasonable terms and conditions. Lessor may make such repairs, alterations or improvements as Lessor considers appropriate to accomplish such reletting, and Lessee will reimburse Lessor upon demand for all reasonable costs and expenses, including reasonable attorneys' fees, which Lessor may incur in connection with such reletting. Lessor may collect and receive the rents for such reletting but Lessor will in no way be responsible or liable for any inability to relet the Premises or to collect any rent due upon such reletting. Regardless of Lessor's recovery of possession of the Premises, so long as this Lease is not terminated Lessee will continue to pay on the dates specified in this Lease, the Base Rent and other Rent which would be payable if such repossession had not occurred, less a credit for any payments actually received by Lessor through any reletting of the Premises. However, in no event shall Lessee be responsible

for the continuing payment of Base Rent or any other charges under this Lease for a period in excess of three years after Lessor's repossession of the Premises.

(d) Receiver. To properly effectuate the recovery of damages and other sums owing from Lessee to Lessor hereunder following a Default by Lessee, Lessor, in conjunction with any dispossession proceeding commenced pursuant to this Lease may seek an appointment of a receiver by a court of competent jurisdiction to the extent provided for in and compliance with the requirements of Title 25, Chapter 14, Part 2 of the Montana Code Annotated and Rule 66 of the Montana Rules of Civil Procedure, as they may be amended. In no event will Lessor be obligated to post a bond in connection with the appointment of a receiver.

(e) Bankruptcy Relief. Nothing contained in this Lease will limit or prejudice Lessor's right to obtain adequate assurances of the Lessee's future performance under 11 USC Section 365 or other applicable laws, or any other legal rights, in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding.

16. DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

16.1 Defaults by Lessor. The following event, which continues beyond the applicable notice and cure period, will constitute a "Default by Lessor" under this Lease: Lessor breaches or fails to comply with any provision of this Lease applicable to Lessor, and such breach or noncompliance continues for a period of 30 days after notice thereof from Lessee to Lessor; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessor does not commence to cure such breach or noncompliance within such 30-day period and does not thereafter pursue such cure in good faith to completion; provided, however, that any such cure period will terminate at such time, if ever, as the subject breach or failure to comply results in an actual or constructive eviction of Lessee.

16.2 Lessee's Remedies. Time is of the essence. If any Default by Lessor occurs, Lessee will have the right, at Lessee's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessee at law or in equity.

(a) Cure by Lessee. Lessee may, at Lessee's option but without obligation to do so, and without releasing Lessor from any obligations under this Lease, make any payment or take any action as Lessee deems necessary or desirable to cure any Default by Lessor in such manner and to such extent as Lessee in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessee notifies Lessor of Lessee's intention to do so and affords Lessor at least 10 days in which to make such payment or take such action. Lessor will pay Lessee, upon demand, all advances, costs and expenses of Lessee in connection with making any such payment or taking any such action, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessee.

(b) Damages. Without limiting remedies available to Lessee at law, in equity or pursuant to this Lease, and regardless of whether this Lease is terminated, Lessee may commence and pursue any lawful action in a contested case proceeding before the Lessor under 2-4-101 MCA, et. seq., the Montana Administrative Procedures Act, to recover such damages as may be allowable as a result of or in connection with the Default by Lessor.

17. LESSEE'S RIGHT TO TERMINATE LEASE ON SPECIFIED CONDITIONS.

17.1 Failure to Obtain Necessary Approvals. In the event that the City does not approve the subdivision of the Land or Lessee is unable to obtain any permits or approvals necessary for the construction of the contemplated Improvements or operation of the business to be conducted on the Premises, the Lessee shall have the right, in its sole discretion, to terminate this Lease upon 10 days written notice to Lessor.

17.2 Effect of Termination. If Lessee exercises its right to terminate this Lease pursuant to this Section 17, Lessee's obligation to pay future Base Rent and all other rents and charges under the Lease shall terminate. In the event that such termination occurs, any rent or charges which have previously been paid by Lessee to Lessor shall be forfeited.

18. MISCELLANEOUS.

18.1 Security Deposit. Upon execution of this Lease, Lessee shall deposit with Lessor the Security Deposit which:

(a) shall be held by Lessor as security for the performance of Lessee's obligations under this Lease; (b) not in any way be deemed an advance rental deposit or a measure of Lessor's damages upon an Event of Default; (c) Lessor may, from time to time after an Event of Default but without obligation to do so or prejudice to or waiver of any other remedy available to Lessor, use or apply in the manner and to the extent deemed appropriate or necessary by Lessor, in its sole discretion (an "Application") to remedy, cure, or otherwise address the Event of Default, which Application shall not, except to the extent provided by this Lease, cure or waive such Event of Default; and (d) shall, following any Application, be restored to its original amount upon request by Lessor. Unless otherwise required by Applicable Law, Lessor: (a) shall not be required to segregate the Deposit from other funds of Lessor; (b) may use the Deposit for such purposes as Lessor may determine; (c) shall not be required to pay interest on the Deposit; (d) shall return the Deposit to Lessee (or, at Lessor's sole election to the last approved assignee, if any, of Lessee's interest hereunder) within sixty (60) days following the expiration of the Term or earlier termination of this Lease (but in any event not earlier than the date of re-delivery by Lessee of possession of the Premises to Lessor) if, at such time, Lessee has performed and complied with all its obligations under this Lease; and (e) shall, in the event of an assignment or other transfer of Lessor's interest in this Lease, transfer the Deposit to Lessor's successor-in-interest, whereupon Lessor shall be automatically deemed released from all liability in connection with the Deposit.

18.2 Notices. All notices required or permitted under this Lease must be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) 10 business days after the date postmarked on the cover of any correspondence or notice when deposited in the United States mail, certified – return receipt requested, with postage prepaid. All such notices must be transmitted by one of the methods described above to the party to receive the notice at, in the case of notices to Lessor, Lessor's Addresses, in the case of notices to Lessee, Lessee's Address, and in the case of notices to a Qualified Mortgagee, the address set forth as its notice address in its most recent notice to Lessor, or, in any case, at such other address(es) as Lessor, Lessee or a Qualified Mortgagee may notify the others of according to this Section.

18.3 Binding Effect. Each of the provisions of this Lease will extend to bind or inure to the benefit of, as the case may be, Lessor and Lessee, and their respective heirs, successors and assigns.

18.4 Modifications. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party, or agents of either party, which are not contained in this Lease shall be valid or binding and this Lease may not be enlarged, modified or altered except as provided in this Lease or unless signed by the parties. If executed properly under this section, modifications of this Lease do not need independent consideration to be legally enforceable.

18.5 Enforcement Expenses. Regardless of any statutory rights, each party agrees to bear their own costs, charges and expenses, including the fees and out-of-pocket expenses of attorneys, agents and others retained, incurred in successfully enforcing the other party's obligations under this Lease.

18.6 No Waiver. No waiver of any provision of this Lease will be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver will affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

18.7 Captions. The captions of sections are for convenience of reference only and will not be deemed to limit, construe, affect or alter the meaning of such sections.

18.8 Severability. If any provision of this Lease is declared void or unenforceable by a final judicial or administrative order, this Lease will continue in full force and effect, except that the void or unenforceable provision will be deemed deleted and replaced with a provision as similar in terms to such void or unenforceable provision as may be possible and be valid and enforceable.

18.9 Waiver of Jury Trial. Lessor and Lessee waive trial by jury in any action, proceeding or counterclaim brought by Lessor or Lessee against the other with respect to any

matter arising out of or in connection with this Lease, Lessee's use and occupancy of the Premises, or the relationship of Lessor and Lessee.

18.10 Authority to Bind. The individuals signing this Lease on behalf of Lessor and Lessee represent and warrant that they are empowered and duly authorized to bind Lessor or Lessee, as the case may be, to this Lease according to its terms.

18.11 Only Lessor/Lessee Relationship. Lessor and Lessee agree that neither any provision of this Lease nor any act of the parties will be deemed to create any relationship between Lessor and Lessee other than the relationship of Lessor and Lessee.

18.12 Reservation of Oil, Gas, and Minerals. Lessor expressly excepts and reserves from this Lease all rights to all oil, gas and other minerals in, on or under the Land and that might be produced or mined from the Land; provided, however, that no drilling, mining or other surface disturbance will be undertaken on the surface of this Lease, nor shall the Lessor interfere with the Lessee's right to subjacent support, during the Term of this Lease.

18.13 Reasonableness. At any time during this Lease, if Lessee is to use reasonable judgment, it shall be deemed to mean ordinary business judgment.

18.14 Governing Law; Venue and Jurisdiction. This Lease will be governed by and construed according to the laws of the State of Montana. Venue and jurisdiction for any dispute arising under this Lease shall be before the Lessor as a contested case proceeding under the Montana Administrative Procedures Act in Lewis and Clark County.

18.15 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder.

18.16 Broker. Lessor and Lessee represent and warrant that no broker or agent negotiated, or was instrumental in negotiating or consummating this Lease (the "Brokers"). Neither party knows of any other real estate broker or agent who is or might be entitled to a commission or compensation in connection with this Lease. Lessee and Lessor will indemnify and hold each other harmless from all damages paid or incurred by the other resulting from any claims asserted against either party by brokers or agents claiming through the other party.

18.17 Lessor May Inspect Premises. Representatives of the Lessor shall, upon 48 hours notice to the Lessee, have the right to enter upon the Land (but not any Building thereon) for the purpose of inspecting and examining the Land and the exterior of Buildings and the exterior of other Improvements. Upon five (5) business days written notice to Lessee, Lessor and its Representatives may enter the Buildings and other Improvements for the purpose of inspecting and examining same, provided, that all Representatives of Lessor must, at all times, be escorted by a representative of Lessee. Any inspection or examination of the Buildings and Improvements shall not interfere with Lessee's use of the Premises or the business conducted therein.

Having read and intending to be bound by the terms and provisions of this Lease, Lessor and Lessee have signed it as of the Commencement Date.

LESSEE, Dick Anderson Construction:

By: _____

Dick Anderson, CEO

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ as authorized signatory of _____.

Witness my hand and official seal.

My commission expires: _____.

_____
Notary Public

LESSOR, STATE OF MONTANA, DNRC:

By: _____
Hoyt Richards, Area Manager
Central Land Office

STATE OF MONTANA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by Hoyt Richards, Area Manager Central Land Office, State of Montana, DNRC.

Witness my hand and official seal.

My commission expires: _____.

_____
Notary Public

EXHIBIT A, Page 1

Plat

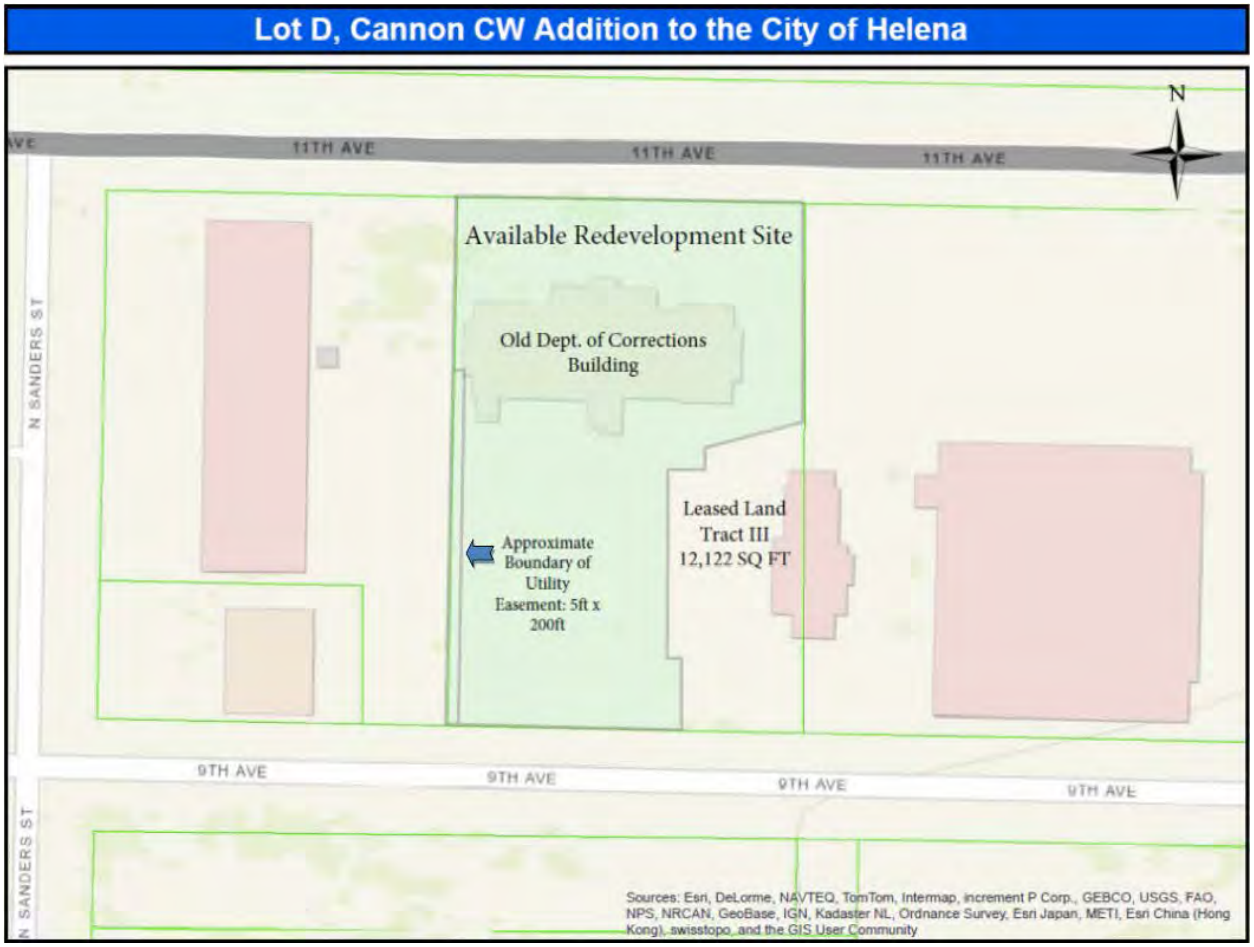


EXHIBIT B

BASE RENT EXHIBIT

The Base Rent for the first Lease Year is $45,000.00.

Payment Table for Lease Year 1 through 20

Lease Year	Adjustment Period Escalator	Adjusted Base Rent
1	0	$45,000
2	2% ($900)	$45,900
3	$900	$46,800
4	$900	$47,700
5	$900	$48,600
6	$900	$49,500
7	$900	$50,400
8	$900	$51,300
9	$900	$52,200
10	$900	$53,100
11	$900	$54,000
12	$900	$54,900
13	$900	$55,800
14	$900	$56,700
15	$900	$57.600
16	$900	$58,500
17	$900	$59,400
18	$900	$60,300
19	$900	$61,200
20	$900	$62,100

Lease Year 20: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 21 through 40 "Adjusted Rent" will be calculated by annually applying the Adjustment Period Escalator to the previous year's Base Rent to determine Adjusted Base Rent.

Lease Year 41: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 42 through 60 "Adjusted Rent" will be calculated by annually applying the Adjustment Period Escalator to the previous year's Base Rent to determine Adjusted Base Rent.

Lease Year 61: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 62 through 79 "Adjusted Rent" will be calculated by annually applying the Adjustment Period Escalator to the previous year's Base Rent to determine Adjusted Base Rent.

Lease Year 81: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 82 through 99 "Adjusted Rent" will be calculated by annually applying the Adjustment Period Escalator to the previous year's Base Rent to determine Adjusted Base Rent.

EXHIBIT B, SCHEDULE 1

MARKET ADJUSTMENT PROVISIONS

The Base Rent for the Premises shall be subject to Market Adjustments determined in accordance with the provisions of this **Schedule 1** ("Market Adjustment"). The Market Adjustments will occur for Lease Year 21, 41, 61, and 81. The process for the Market Adjustment will commence on the date that is 90 days after the first day of Lease Years 20, 40, 60, and 80 as applicable (the "Market Date").

The Market Adjustment will be determined by appraisal in accordance with the following provisions:

1. Selection of Appraisers. Within five days following the Market Date, Lessor and Lessee shall each hire an appraiser meeting the qualifications set forth in Section 3 below of this **Schedule 1** and shall instruct such appraiser to prepare an appraisal of the fair market value of the Land based upon the assumptions and meeting the requirements set forth in Section 4 of this **Schedule 1**. The appraiser so retained by Lessor is herein referred to as "Lessor's Appraiser," and the appraisal prepared by Lessor's Appraiser is herein referred to as "Lessor's Appraisal." The appraiser so retained by Lessee is herein referred to as "Lessee's Appraiser," and the appraisal prepared by Lessee's Appraiser is herein referred to as "Lessee's Appraisal." Each appraiser shall be subject to the approval of the other party, which approval will not be unreasonably withheld. Lessor's Appraisal and Lessee's Appraisal are collectively herein referred to as the "Party Appraisals." Lessor's Appraiser and Lessee's Appraiser shall each be instructed to complete their respective appraisals and deliver their results to both Lessor and Lessee simultaneously within 60 days following the Market Date.

2. Determination of Base Rent.

2.1 If the positive difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is equal to or less than 10% of the lower in dollar amount of the two Party Appraisals, then the Base Rent Factor (as hereinafter defined) shall be deemed to be the mathematical average of the two Party Appraisals. For example, in Lease Year 20, assume the following:

Lessor Appraisal = $6.50 per square foot

Lessee Appraisal = $6.10 per square foot

Average/Base Rent Factor = $6.30 per square foot

New Annual Base Rent = $6.30 x 170,240 (or applicable square footage) x 5% (or applicable Lease Rate Percentage) = $54,885

2.2 If the positive difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is greater than 10% of the lower in dollar amount of the two Party Appraisals, then:

(a) Lessor and Lessee shall have 30 days within which to agree upon the Base Rent Factor; and

(b) If Lessor and Lessee are unable, within such 30 day period, to agree upon the Base Rent Factor, then Lessor's Appraiser and Lessee's Appraiser shall jointly select a third appraiser meeting the qualifications set forth in Section 3 of this **Schedule 1** (the "Third Appraiser") and instruct such Third Appraiser to prepare an appraisal of the fair market value of the Premises based upon the assumptions and meeting the requirements set forth in Section 4 of this **Schedule 1** (the "Third Appraisal"). The Third Appraiser shall be provided copies of all data utilized by Lessor's Appraiser and Lessee's Appraiser in preparing the Party Appraisals, as well as copies of Lessor's Appraisal and Lessee's Appraisal. The Third Appraiser shall be given 30 days within which to prepare and deliver the Third Appraisal to both Lessor and Lessee simultaneously. Each of Lessor's Appraisal, Lessee's Appraisal and the Third Appraisal are sometimes herein referred to individually as an "Appraisal" and collectively (in any combination or two or more) as the "Appraisals."

(c) In the event a Third Appraisal is required as aforesaid, the Base Rent Factor shall be deemed to be the mathematical average of the two Appraisals that are closest in dollar amount. Should the dollar amount of any one of the Appraisals happen to be exactly equal to the mathematical average of the other two Appraisals, then such dollar amount shall constitute the Base Rent Factor hereunder.

The Base Rent Factor determined in accordance with the foregoing provisions shall be binding and conclusive on the parties. "Base Rent Factor" means the per square foot fair market value of the Premises. Base Rent for the Premises, as adjusted by the Market Adjustment, shall be amount obtained by (a) multiplying the Base Rent Factor by the number of square feet of area of the Land, and (b) multiplying the resulting product by a percentage determined in accordance with 77-1-905, MCA, or the rate bid in the lease proposal, whichever is higher.

3. Qualifications of Appraisers; Replacement. Each of Lessor's Appraiser, Lessee's Appraiser and the Third Appraiser must (a) have an MAI designation by the Appraisal Institute (or similar designation available on the Market Date); (b) be a Certified General Appraiser licensed in the State of Montana (or similar designation available on the Market Date); and (c) have appraised similar types of uses in the three years prior to such Market Date. If any appraiser designated to serve in accordance with this **Schedule 1** shall fail, refuse or become unable to act, a new appraiser meeting the foregoing requirements shall be appointed in his or her place by the party who appointed the appraiser being replaced.

4. Briefing Session. Lessor's Appraiser and Lessee's Appraiser, should either so elect, shall be entitled to require a briefing session, to be held at Lessor's offices on a day and at a time mutually acceptable to Lessor, Lessee, Lessor's Appraiser and Lessee's Appraiser but in all events not earlier than 10 nor later than 15 days following the Market Date. At such session, both such appraisers shall be present and each shall be entitled to ask such questions of Lessor and Lessee.

5. Payment. Lessor shall pay all costs, fees and expenses of Lessor's Appraiser, and Lessee shall pay all costs, fees and expenses of Lessee's Appraiser. If a Third Appraiser is required, Lessor and Lessee shall share equally all costs, fees and expenses of such Third Appraiser.

1114-6

EASEMENTS

A. Easements

B. Department of Military Affairs: Easement Relocation

Land Board Agenda Item
November 17, 2014

1114-6A Easements

Location: Gallatin, Hill, Liberty, Richland, Roosevelt, Stillwater, Teton

Trust Benefits: Common Schools, Public Buildings, Public Lands

Trust Revenue: Common Schools = $107,971
Public Buildings = $720
Public Lands = $238

Item Table of Contents

Applicant	Right-of-Way Purpose	Page(s)
Montana Department of Transportation	New Highway Construction	1-3
Sheridan Electric Cooperative, Inc.	New Electric Utility	4-6
Triangle Telephone Coop. Assoc., Inc.	New Telephone Utility	7-9
NorthWestern Corporation d/b/a NWE	New Electric Utility	10-11
City of Bozeman	New Public Use	12-15
Liberty County	Historic County Road	16-21
Lower Yellowstone Rural Electric Coop.	New Electric Utility	22-23

Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Montana Department of Transportation PO Box 201001 Helena MT 59620-1001
Application No.:	16678
R/W Purpose:	highway construction and maintenance including occupancy by public utilities
Lessee Agreement:	ok
Acreage:	2.28
Compensation:	$1778.00
Legal Description:	a tract of land in E2NW4, Sec. 35, Twp. 27N, Rge. 6W, Teton County
Trust Beneficiary:	Common Schools

Item Summary

Montana Department of Transportation has made application for highway construction and maintenance including occupancy by public utilities for a project known as Pendroy North and South. The scope of the project is to reconstruct an approximate 46.2 mile section of U.S. Highway 89 between the towns of Fairfield and Dupuyer. The project will include realignment of the highway, widening of roadway and shoulders, replacement of bridges, stock passes and culverts, new pavement and markings along the route. The fundamental purpose of this project is to bring the highway into current federal design standards and improve safety and drivability for the traveling public.

DNRC Recommendation

The director recommends approval of this highway construction project.

Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

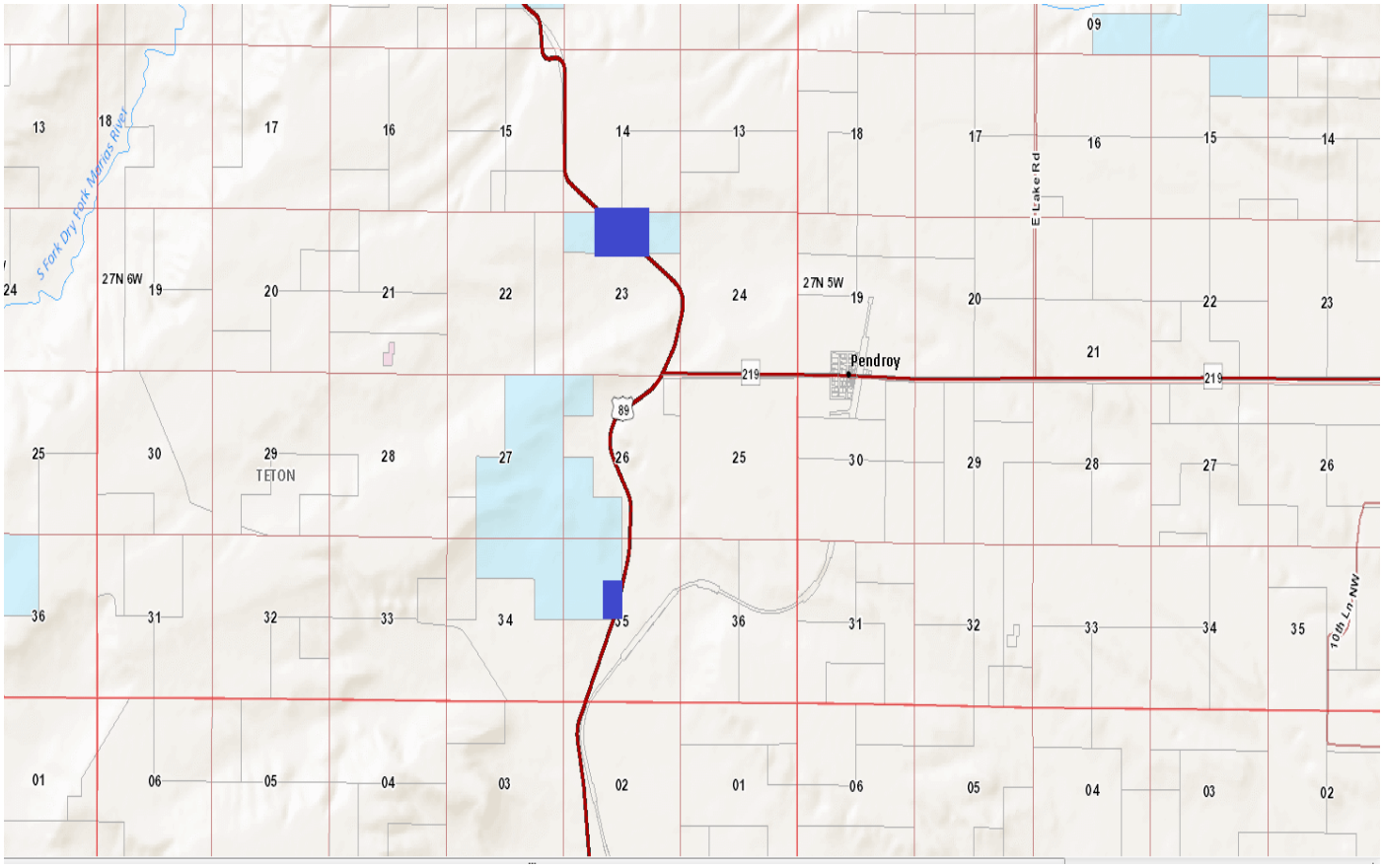
Applicant:	Montana Department of Transportation PO Box 201001 Helena MT 59620-1001
Application No.:	16679
R/W Purpose:	highway construction and maintenance including occupancy by public utilities
Lessee Agreement:	ok
Acreage:	6.04
Compensation:	$2416.00
Legal Description:	a tract of land in NW4NE4, NE4NW4, Sec. 23, Twp. 27N, Rge. 6W, Teton County
Trust Beneficiary:	Common Schools

Item Summary
See page 1

DNRC Recommendation
See page 1

Rights of Way Applications

November 17, 2014



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Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Sheridan Electric Cooperative, Inc. 6408 Hwy 16 South Medicine Lake MT 59247
Application No.:	16713
R/W Purpose:	a 24.9/14.4kV overhead power distribution line
Lessee Agreement:	needed
Acreage:	2.62
Compensation:	$1441.00
Legal Description:	20-foot strip through lots 1-4, SW4SW4, Sec. 16, Twp. 29N, Rge. 59E, Roosevelt County
Trust Beneficiary:	Common Schools

Item Summary

Sheridan Electric Cooperative, Inc. has made application for a 24.9/14.4kV overhead power distribution line. This right of way is needed to create a tie line between Sheridan's distribution facilities for better reliability to the local residents and oil fields. Due to the inaccessibility of the existing line during the winter months, this new tie line would greatly increase reliability to the local residents. The proposed route will provide accessibility for construction and maintenance.

DNRC Recommendation

The director recommends approval of this overhead power distribution line.

Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Sheridan Electric Cooperative, Inc. 6408 Hwy 16 South Medicine Lake MT 59247
Application No.:	16714
R/W Purpose:	a 24.9/14.4kV overhead power distribution line
Lessee Agreement:	needed
Acreage:	2.88
Compensation:	$720.00
Legal Description:	20-foot strip through lots 1-4, Sec. 21, Twp. 29N, Rge. 59E, Roosevelt County
Trust Beneficiary:	Public Buildings

Item Summary
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DNRC Recommendation
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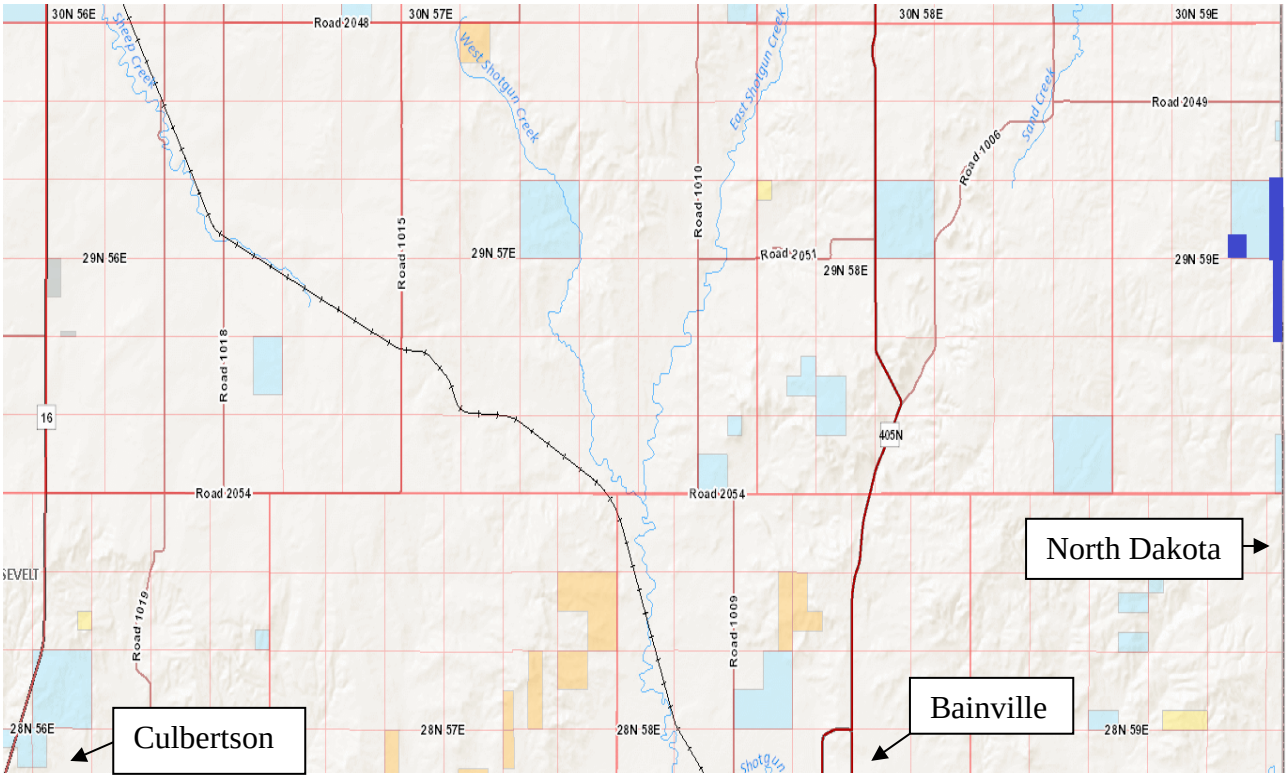
Rights of Way Applications

November 17, 2014



Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Triangle Telephone Cooperative Assoc., Inc. PO Box 1220 Havre MT 59501
Application No.:	16715
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	ok
Acreage:	2.44
Compensation:	$671.00
Legal Description:	20-foot strip through E2E2, Sec. 16, Twp. 32N, Rge. 11E, Hill County
Trust Beneficiary:	Common Schools

Item Summary

Triangle Telephone Cooperative Association, Inc. has made application for the installation of new underground telecommunications facilities to upgrade their current facilities and services to the Gildford Exchange serving area in and around Gildford. These improvements will offer state of the art telecommunications toll and distribution facilities as well as future growth capabilities. The proposed route was determined as the most direct route between terminus locations while also providing access to existing and future network considerations.

DNRC Recommendation

The director recommends approval of this buried telecommunications cable.

Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Triangle Telephone Cooperative Assoc., Inc. PO Box 1220 Havre MT 59501
Application No.:	16716
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	ok
Acreage:	1.21
Compensation:	$968.00
Legal Description:	20-foot strip through N2NW4, Sec. 4, Twp. 31N, Rge. 11E, Hill County
Trust Beneficiary:	Common Schools

Item Summary
See page 7

DNRC Recommendation
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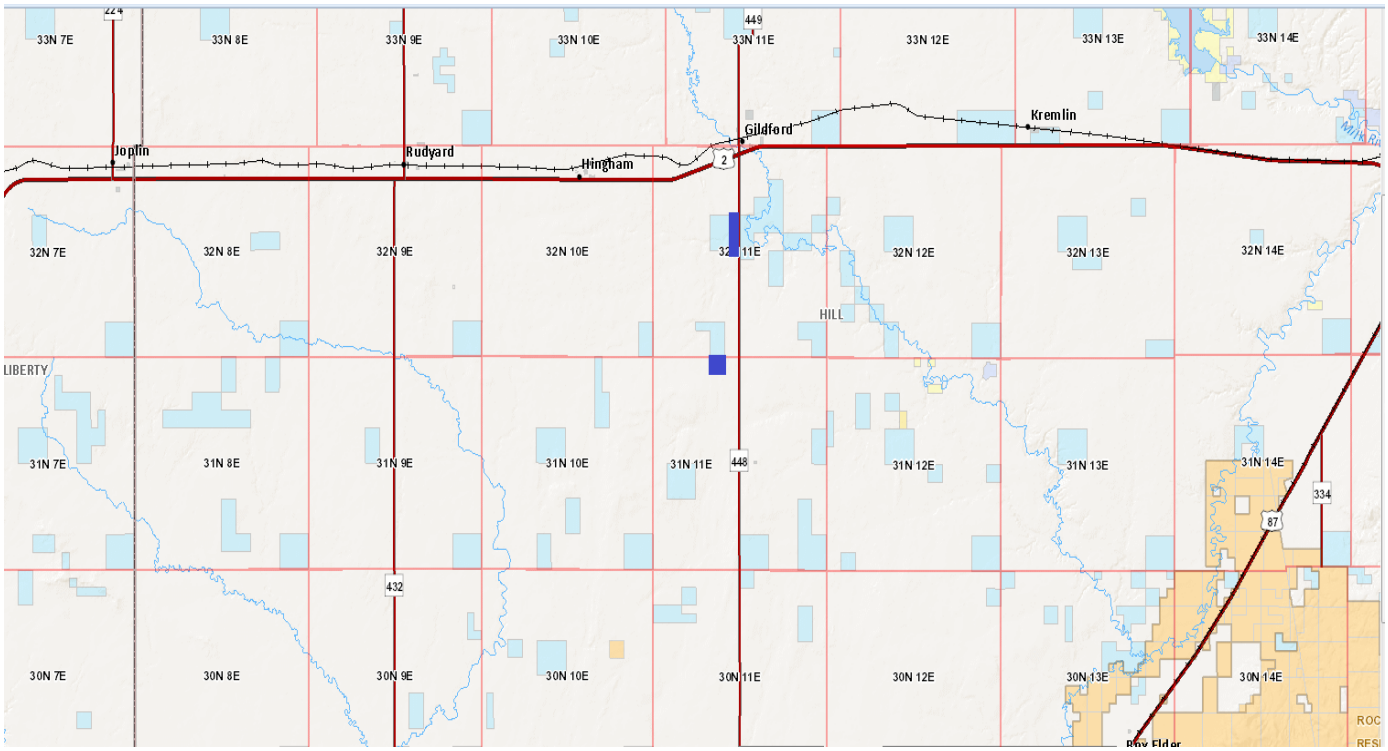
Rights of Way Applications

November 17, 2014



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Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	NorthWestern Corporation d/b/a/ NorthWestern Energy 40 East Broadway Street Butte MT 59701
Application No.:	16718
R/W Purpose:	a 100kv overhead power transmission line across the Yellowstone River
Lessee Agreement:	ok
Acreage:	0.49
Compensation:	$238.00
Legal Description:	25-foot strip across the Yellowstone River adjacent to Gov. Lots 3 & 10, Sec. 30, Twp. 1S, Rge. 18E, Stillwater County
Trust Beneficiary:	Public Lands

Item Summary

NorthWestern Corporation has made application for the construction of a new 100kV transmission line across the Yellowstone River. This line will start 15 miles north of Columbus at the Columbus-Rapelje substation and terminate at a new substation located approximately five miles south of Nye. It is the first phase of a multi-year five phase system upgrade in Carbon and Stillwater Counties. The route was decided upon to keep the same alignment as the existing Beartooth Electric power line in this section to reduce the impact to the Yellowstone River.

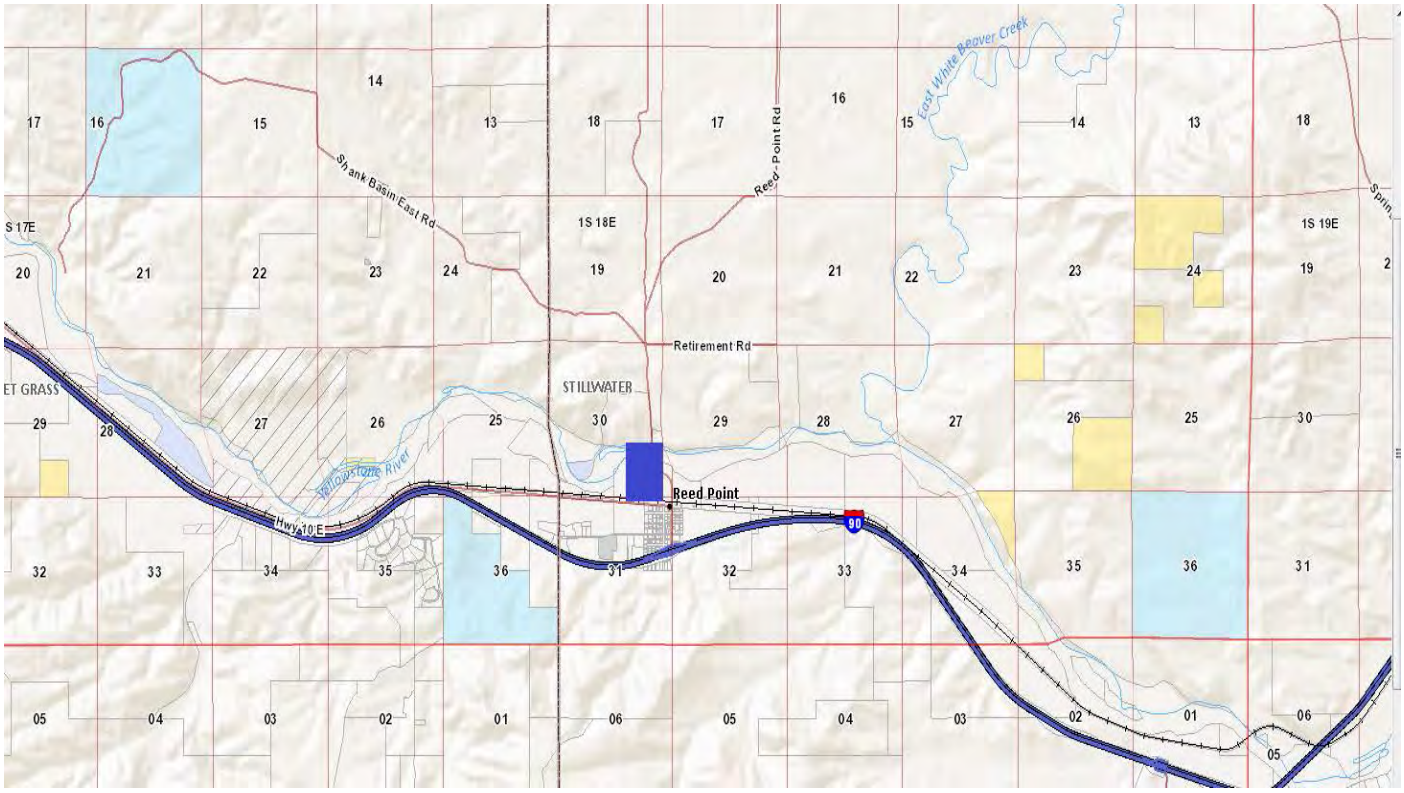
The Beartooth line will be underhung on the proposed NorthWestern Energy crossing.

DNRC Recommendation

The department recommends approval of this overhead transmission line.

Rights of Way Applications

November 17, 2014



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Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	City of Bozeman 121 N. Rouse Bozeman MT 59715
Application No.:	16719
R/W Purpose:	a public access road and utilities (Flora Lane)
Lessee Agreement:	ok
Acreage:	1.5
Compensation:	$27,020.00
Legal Description:	60-foot strip through NE4SE4, Sec. 36, Twp. 1S, Rge. 5E, Gallatin County
Trust Beneficiary:	Common Schools

Item Summary

The City of Bozeman has made application for two public access roads, including utilities, upon the same state section. These roads are known as Flora Lane and Wheat Drive. Currently, the city owns a parcel of land north of state ownership within the city of Bozeman which is landlocked by I-90 to the west and Montana Rail Link to the north and east. To provide access to the city parcel by along I-90 would require substantial expense through construction of either an overpass or underpass. Access across the existing rail line would pose safety hazards and is not considered feasible. Conversely, the state parcel, known as North Park, is currently being developed for commercial purposes. Having the city construct public roads within the parcel would provide a benefit to the proposed commercial development and location of the roads have been coordinated with DNRC staff. Compensation was set pursuant to a recent appraisal of the North Park development.

DNRC Recommendation

The director recommends approval of these public access roads, including utilities.

Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	City of Bozeman 121 N. Rouse Bozeman MT 59715
Application No.:	16720
R/W Purpose:	a public access road and utilities (Wheat Drive)
Lessee Agreement:	ok
Acreage:	3.76
Compensation:	$67,729.00
Legal Description:	60-foot strip through E2SW4, W2SE4, Sec. 36, Twp. 1S. Rge. 5E, Gallatin County
Trust Beneficiary:	Common Schools

Item Summary
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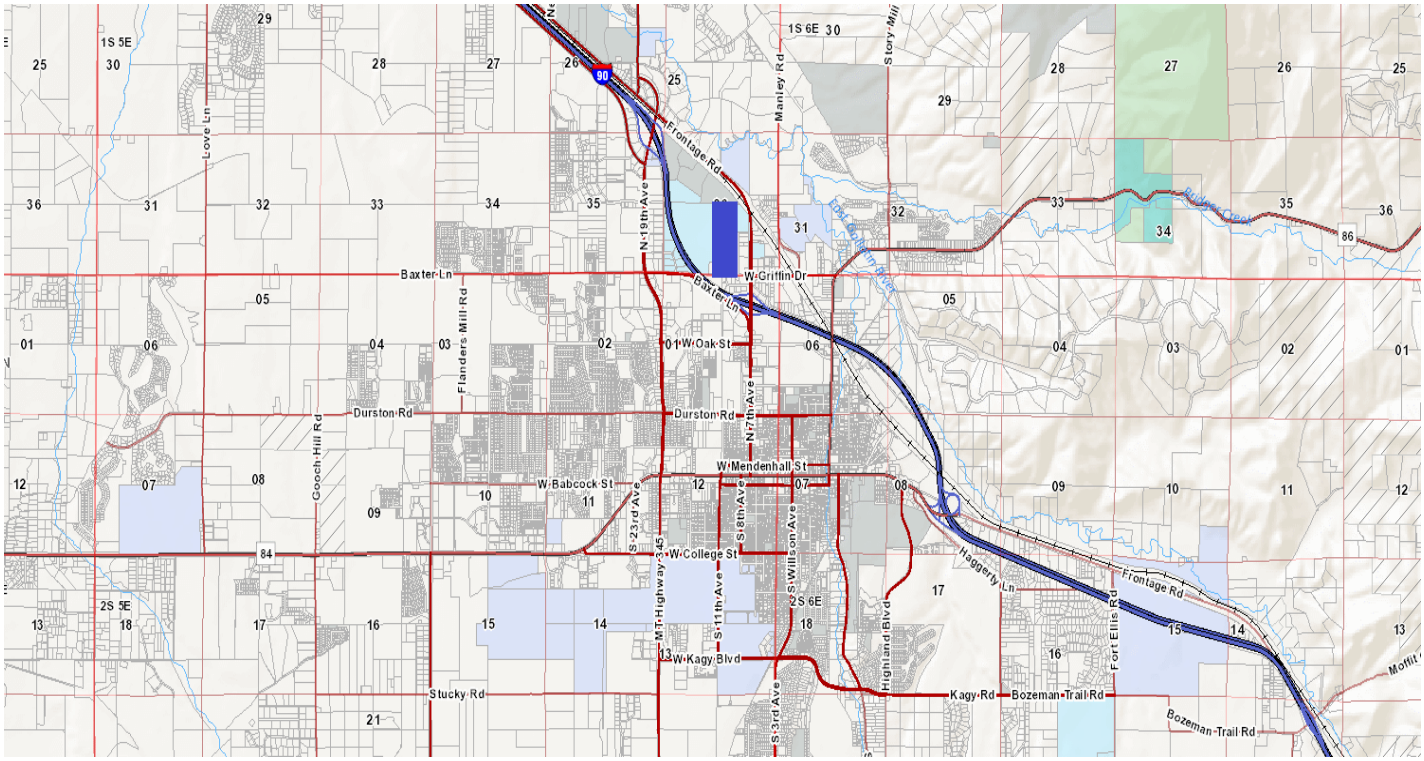
Rights of Way Applications

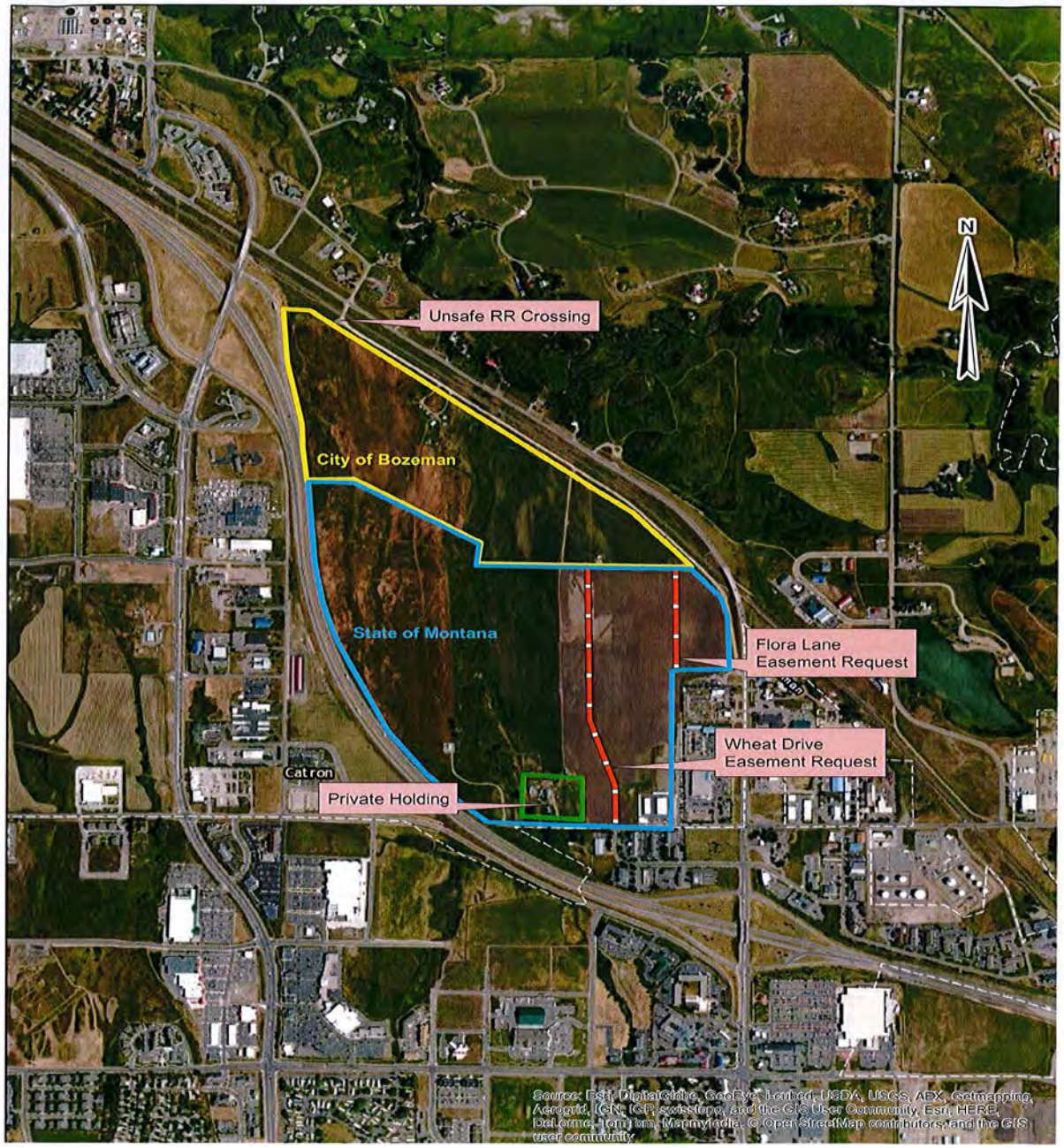
November 17, 2014



City of Bozeman

Rights of Way Applications

November 17, 2014



Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Liberty County PO Box 459 Chester MT 59522
Application No.:	16721
R/W Purpose:	a public county road known as Little Sage Road
Lessee Agreement:	N/A (Historic)
Acreage:	7.54
Compensation:	$1885.00
Legal Description:	28-foot strip through N2SW4, SW4SE4 Sec. 19, W2NW4, SE4NW4, NW4SE4 Sec. 29, NE4NE4 Sec. 30, Twp. 36N, Rge. 6E; NE4SE4 Sec. 24, Twp. 36N, Rge. 5E, Liberty County
Trust Beneficiary:	Common Schools

Item Summary

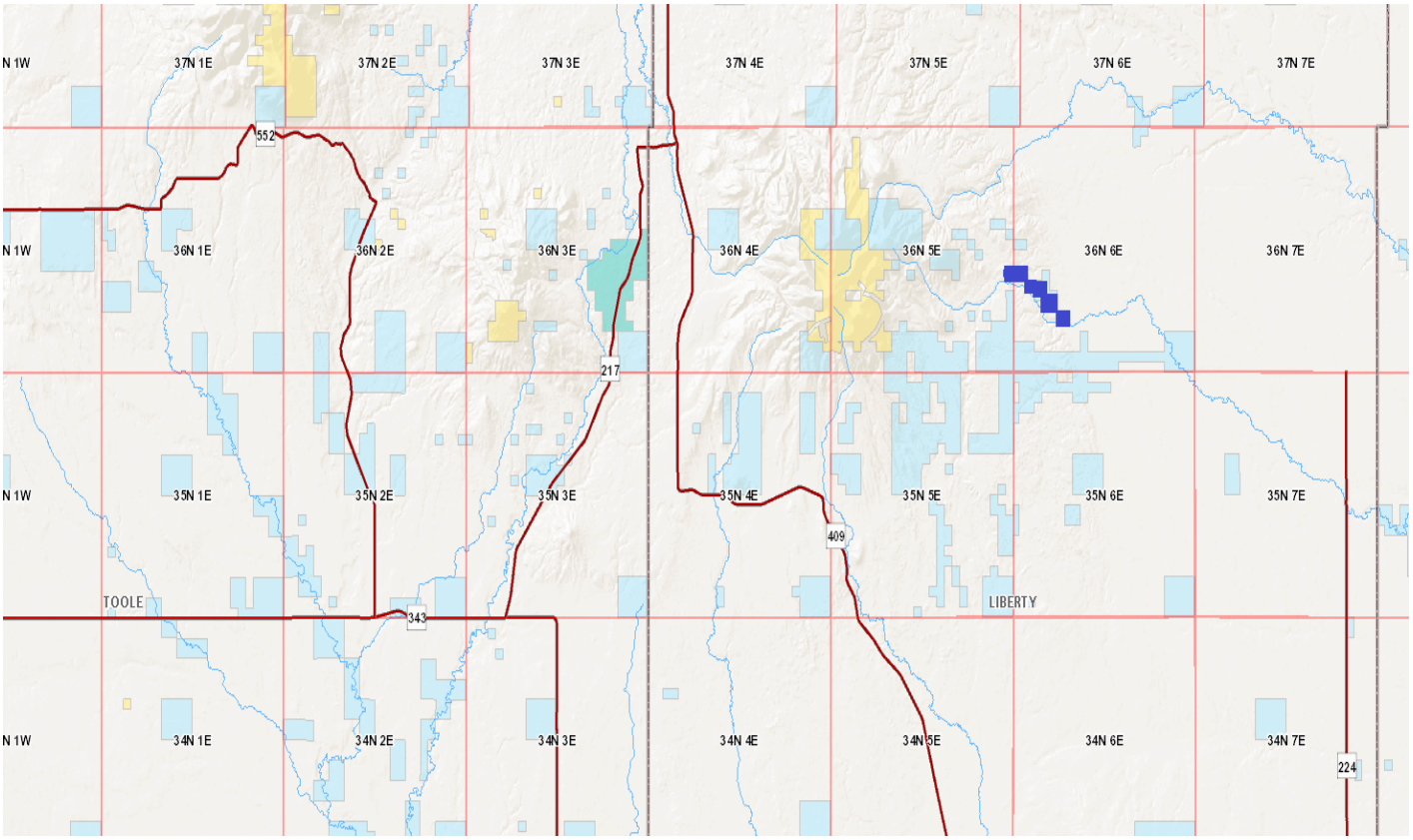
Liberty County has made application for this county road that was constructed on state lands many years ago without proper authorization from the Land Board. Pursuant to 77-1-130, MCA, the county is requesting recognition of this road as an historic right of way.

DNRC Recommendation

The director recommends approval of this historic right of way for Liberty County.

Rights of Way Applications

November 17, 2014



Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Liberty County PO Box 459 Chester MT 59522
Application No.:	16722
R/W Purpose:	a public county road known as Flat Coulee Road
Lessee Agreement:	N/A (Historic)
Acreage:	14.0
Compensation:	$3500.00
Legal Description:	28-foot strip through S2SE4 Sec. 11, SW4NE4, N2SW4, SW4SW4 Sec. 12, Twp. 37N, Rge. 4E; NE4SW4, N2SE4 Sec. 8, SE4NE4, N2SW4, NW4SE4 Sec. 9, SW4NW4, N2SW4, SE4SW4, SW4SE4 Sec. 14, NW4NE4 Sec. 23, Twp. 37N, Rge. 5E, Liberty County
Trust Beneficiary:	Common Schools

Item Summary
See page 16

DNRC Recommendation
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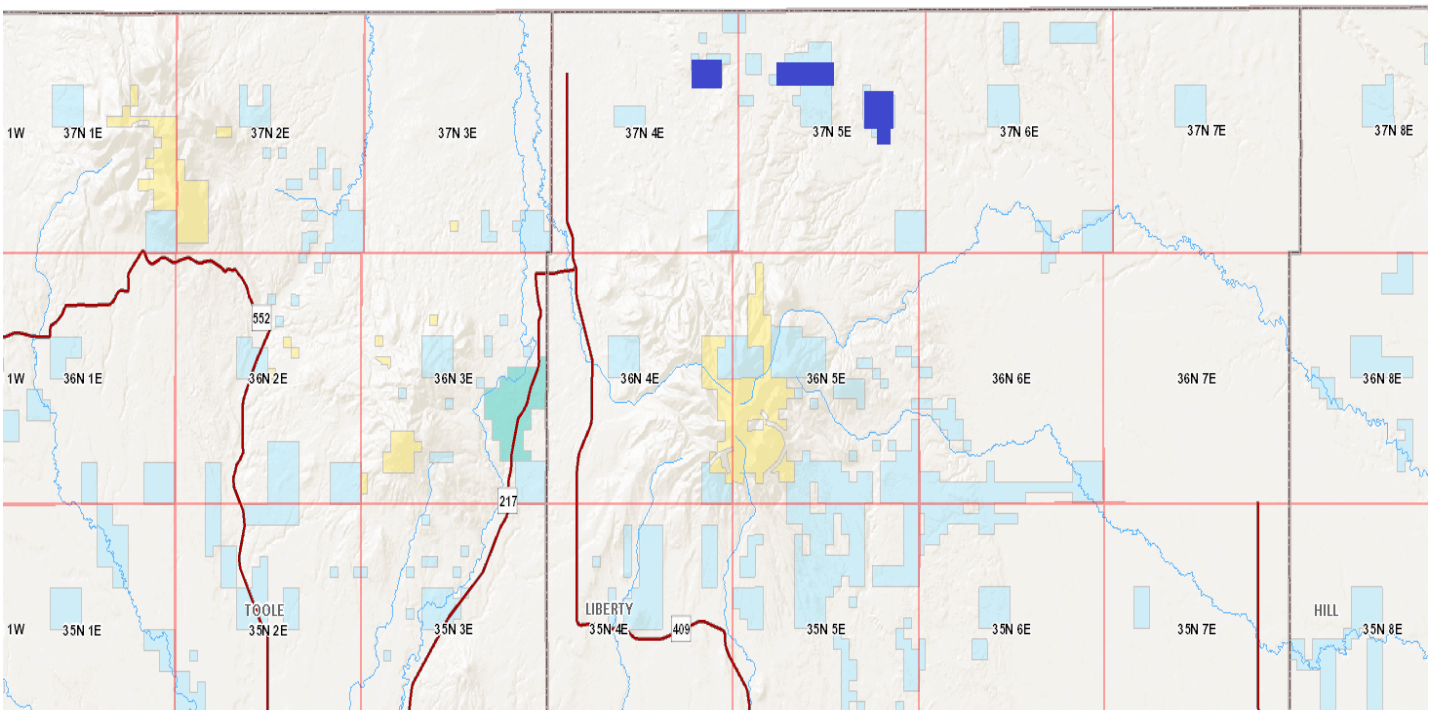
Rights of Way Applications

November 17, 2014



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Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Liberty County PO Box 459 Chester MT 59522
Application No.:	16723
R/W Purpose:	a public county road known as 230 Road East
Lessee Agreement:	N/A (Historic)
Acreage:	1.02
Compensation:	$255.00
Legal Description:	28-foot strip through NE4NE4, SW4NE4, Sec. 16, Twp. 35N, Rge. 4E, Liberty County
Trust Beneficiary:	Common Schools

Item Summary
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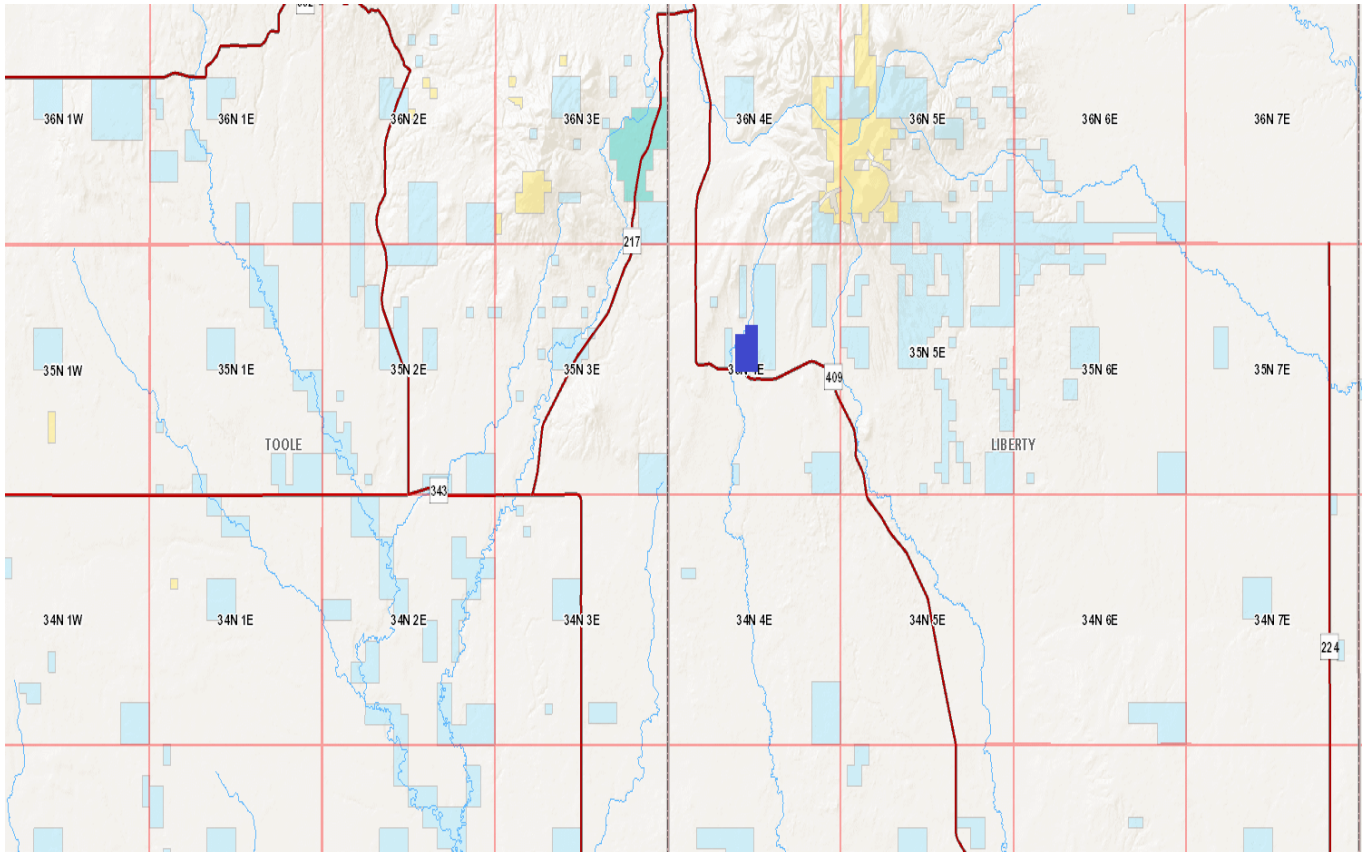
DNRC Recommendation
See page 16

Rights of Way Applications

November 17, 2014



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Rights of Way Applications

November 17, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Lower Yellowstone Rural Electric Cooperative PO Box 1047 Sidney MT 59270
Application No.:	16724
R/W Purpose:	a 7.2kV overhead power distribution line
Lessee Agreement:	ok
Acreage:	1.23
Compensation:	$308.00
Legal Description:	20-foot strip through SW4SE4, SE4SW4, Government Lot 6, Sec. 16, Twp. 26N, Rge. 59E, Richland County
Trust Beneficiary:	Common Schools

Item Summary

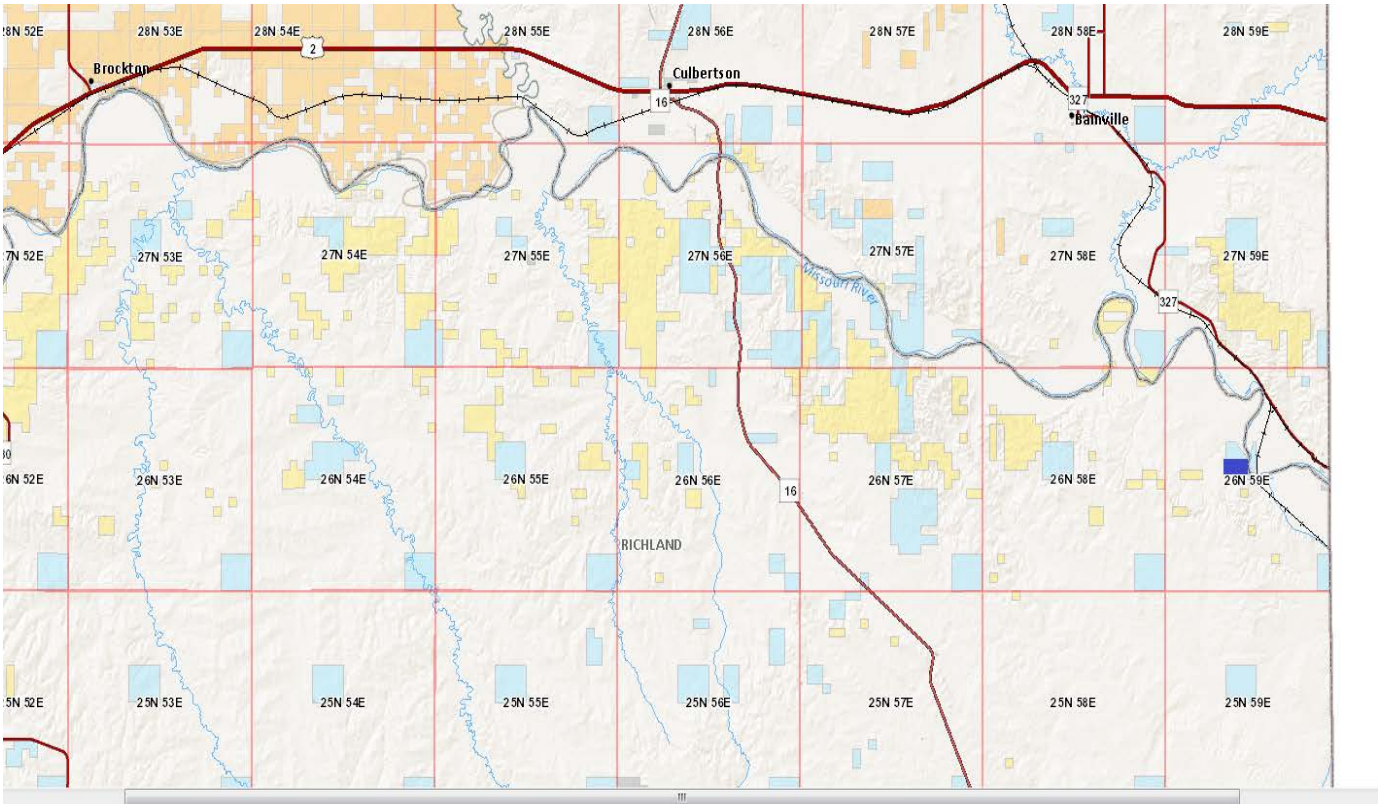
Lower Yellowstone Rural Electric Cooperative has made application for a 7.2kV overhead power distribution line. The route chosen is the most direct route for service where it will tie into an existing line, D-12065 issued November 27, 2006. The purpose of the line is to provide power to a cellular communications tower site in Section 15, Township 26N, Range 59E on private property.

DNRC Recommendation

The director recommends approval of this overhead distribution line.

Rights of Way Applications

November 17, 2014



Land Board Agenda Item
November 17, 2014

1114-6B Department of Military Affairs: Easement Relocation

Location: Missoula County
Tract A-2, COS 2593 in the NE4, Sec. 21, Twp. 14N, Rge. 20W

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

Revenue Consideration: N/A (relocation of existing easement)

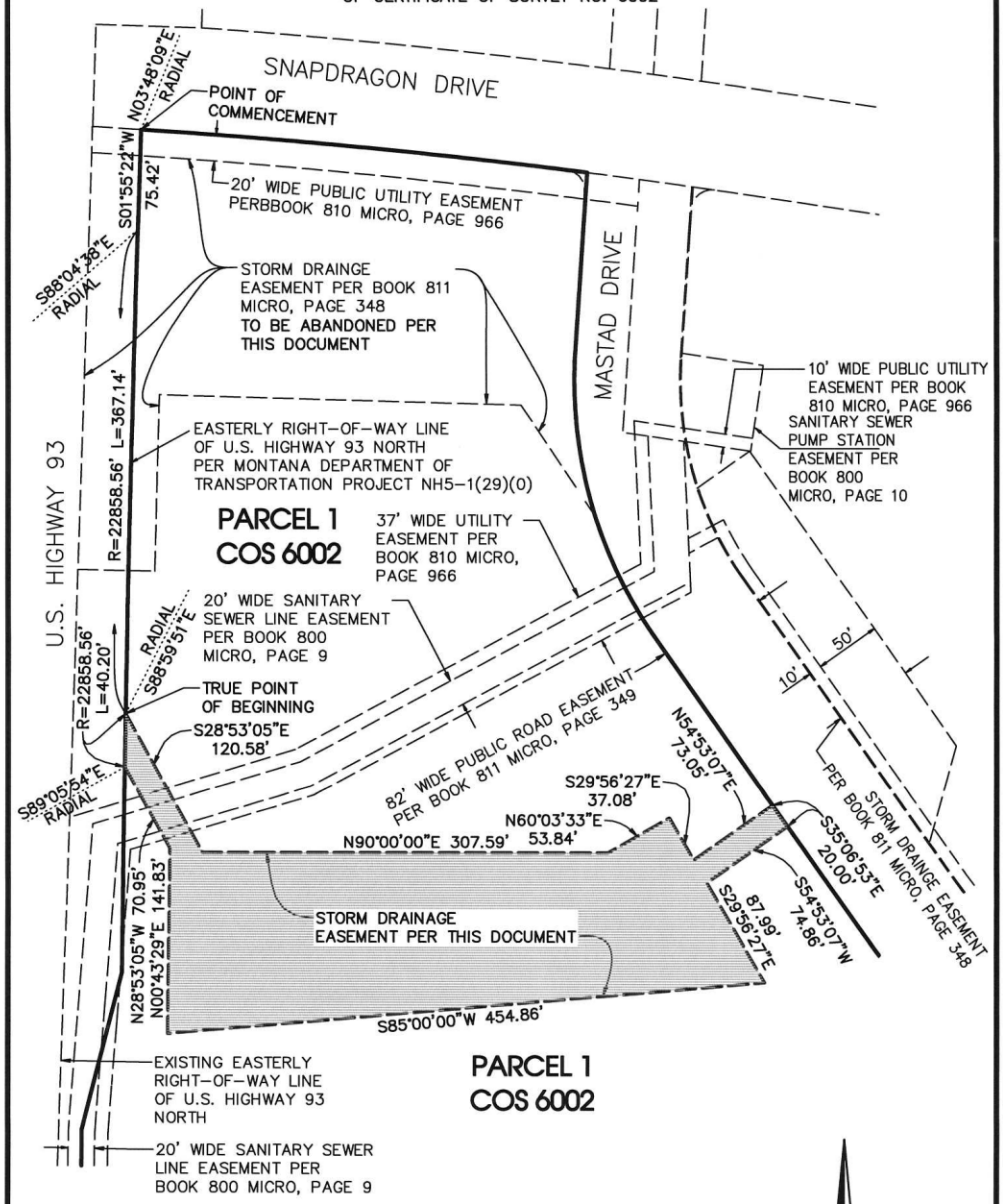
Item Summary:
The existing parcel of land owned by the Department of Military Affairs (DMA) and associated with the Missoula Armory was acquired subject to a drainage easement located near the northerly boundary of the parcel. The drainage easement is held by Waldo Williams Development LLP (WWD) and is to serve the Running W Subdivision located to the east of the armory. The location of the existing drainage easement interferes with the operations of the armory and through negotiations with WWD it is desired to relocate the easement to the southerly boundary of the Military Affairs property. A survey of the property depicting the new location of the easement is complete (attached) and if approved by the Land Board an easement will be executed granting WWD the drainage easement in the new, approved location.

DNRC Recommendation:
On behalf of the Department of Military Affairs, the Department of Natural Resources and Conservation (DNRC) recommends approval of this easement relocation agreement.

EXHIBIT A

SHEET 1 OF 2

TO DEPICT AN EASEMENT ACROSS PARCEL 1
OF CERTIFICATE OF SURVEY NO. 6002



LEGEND

INDICATES EASEMENT AREA PER THIS DOCUMENT

SCALE IN FEET

0 100

SEPTEMBER 17, 2008

SURVEYOR'S CERTIFICATION

THIS EASEMENT EXHIBIT WAS PREPARED UNDER MY SUPERVISION.

TOBY DUMONT, 12671S
PROFESSIONAL LAND SURVEYOR

PREPARED AT THE REQUEST OF: OZ ARCHITECTS
PCI PROJECT: 7835-07

1/4	SEC.	T.	R.
	21	14N	20W

PCI
Professional Consultants Inc.
Engineers. Surveyors. Planners. Mappers.
3115 RUSSELL ST. PO BOX 1750
MISSOULA, MONTANA
PHONE 406-728-1990
FAX 406-728-0276

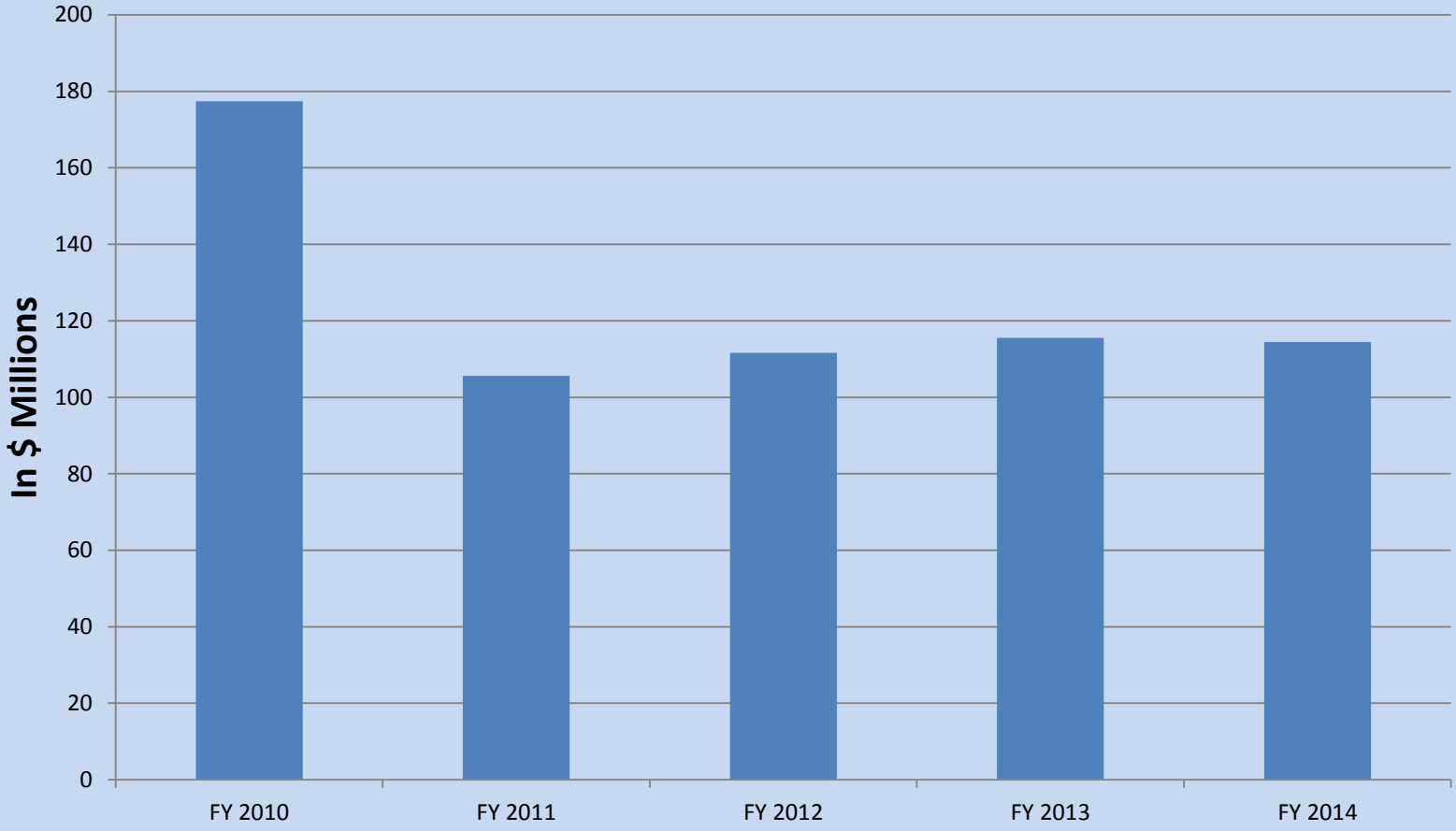
1114-7

Fiscal Year 2014 Highlights

FY 2014 Highlights
Trust Lands Management

Created 11/14/14

Gross Revenues FY 2010 - FY 2014



Financial Highlights Fiscal Year 2014

Trust Land Management Division Gross Revenue $114.4 million

Land Management Gross Revenue $90.9 million

Division Expenditures $12.2 million

Common Schools distributed net revenues - $54.7 million
School Facility Account $3.1 million
Other Beneficiaries distributable net revenues $6.6 million

Interest Income and Other Gross Revenue $23.5 million

Common School Permanent Fund Revenues $31.6 million
Other beneficiaries Permanent Fund $4.5 million

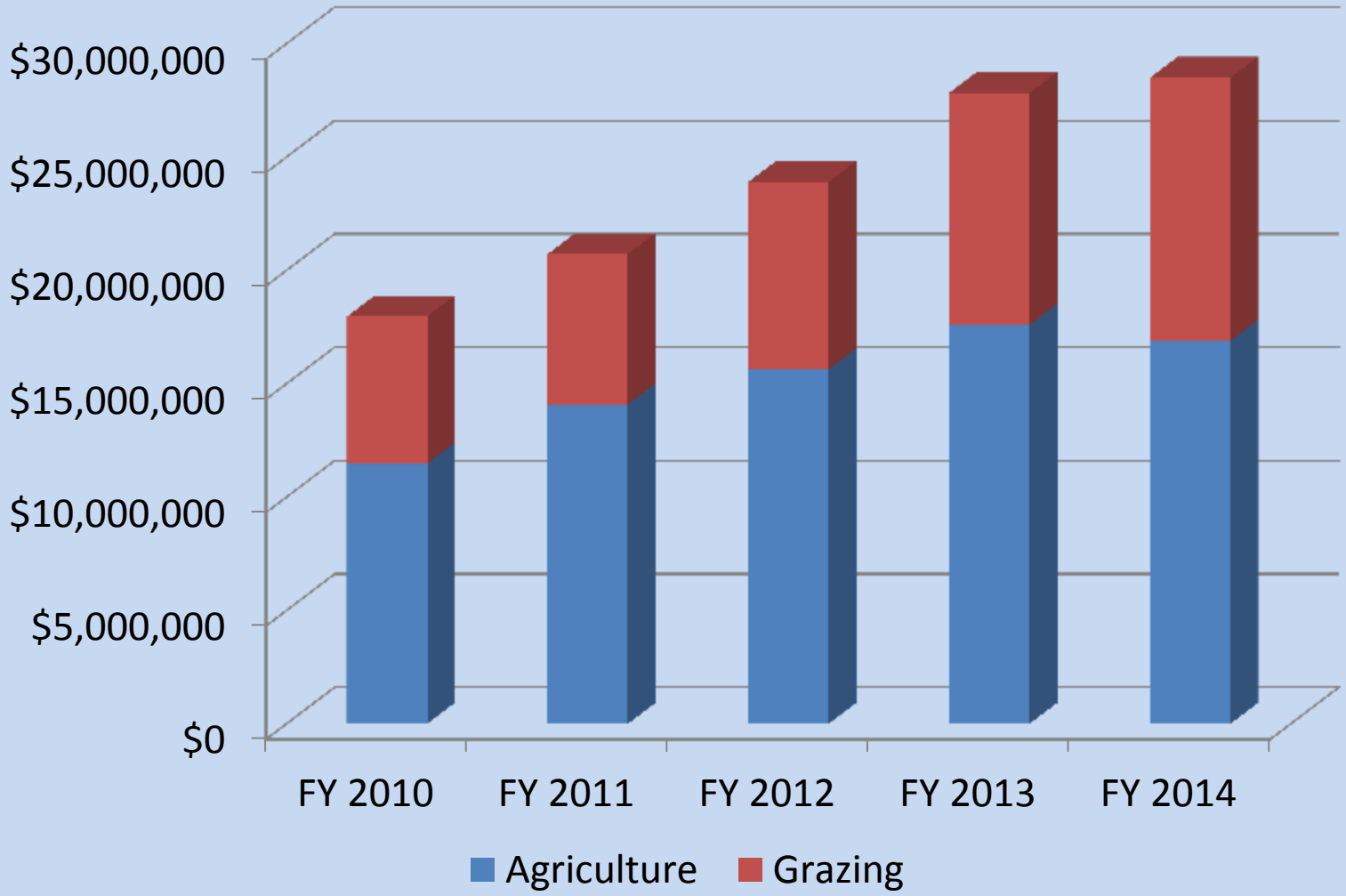
Permanent Fund Balance $582.4 million
Common Schools Permanent Fund Balance $537.9 million
Other Beneficiaries Permanent Fund $44.5 million

- K-12 2014 School Year Enrollment: 144,129 Public School Children.
- OPI Budget: $788 million.
- Pupil Budget: Average state share per student $5,467.
- Common School Distribution: $54.7 million.
- Pupil Distribution: $380 per student.
- Common Schools Contribution: 6.9%
- School Facility and Technology Fund $3.1 million composed mainly of timber revenues.

AGRICULTURE & GRAZING MANAGEMENT

- During FY2014, 7.5 million bushels of wheat, 950,000 bushels of barley, and 98,500 tons of hay were harvested from state lands.
  - Revenues of $16.9 million.
- New grazing multiplier coupled with strong beef cattle prices, led to an increase from $9.94/AUM to $11.41/AUM.
  - Revenues of $11.6 million
- 444,647 conservation licenses were sold in Montana, generating nearly $900,000 for the trust beneficiaries.

Ag & Grazing Revenues FY 2010 – FY 2014



AGRICULTURE & GRAZING MANAGEMENT

- Under this Land Board since January of 2013:
  - 575,380 acres under lease for Agriculture
    - Generated $19 million
  - 4,182,600 acres under lease for Grazing
    - Generated $21.9 million
  - Recreational use generated $1.8 million

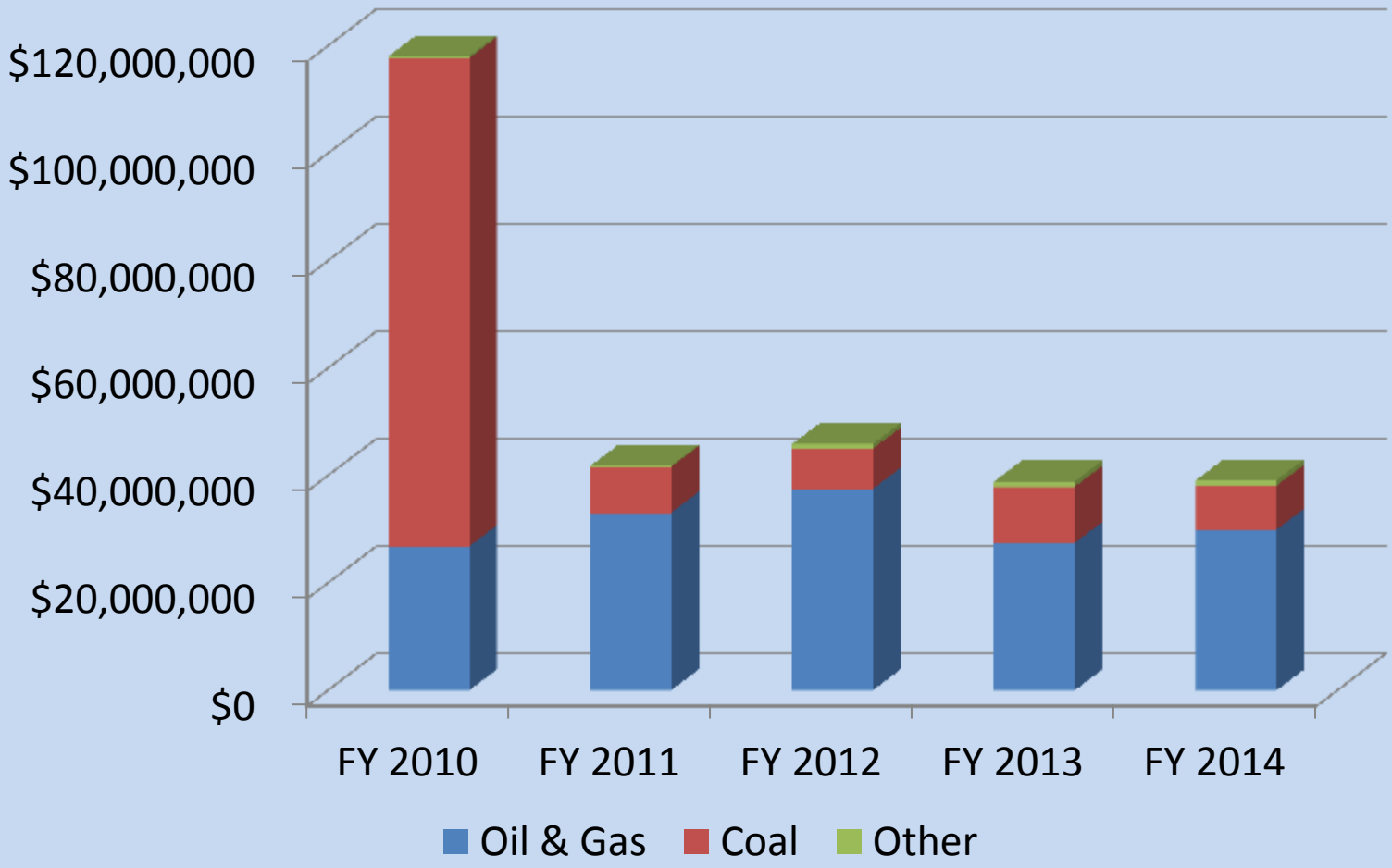
High Hazard Dams

Breaching Missile Pond High Hazard Dam located just North of Judith Gap.

MINERALS MANAGEMENT

- Revenue from mineral activities totaled $39.1 million, up slightly from 2013.
- 5,160 individual leases are in place.
- Oil and Gas bonus revenue totaled $3.7 million, compared to $2.2 million in FY 2013.
- 4.4 million tons of coal produced on 6 active leases generating $8.1 million in royalties

Mineral Revenues FY 2010 - FY 2014



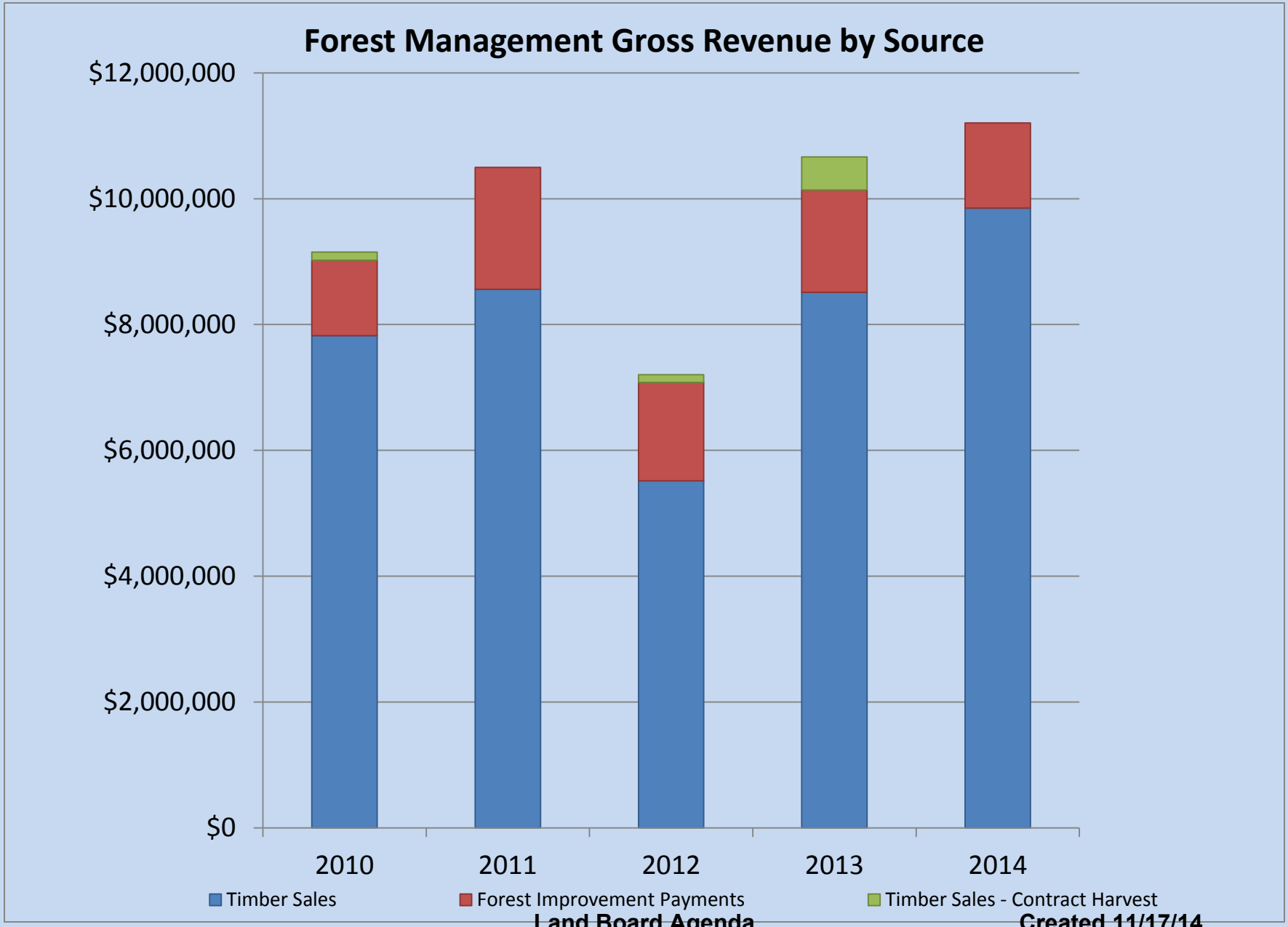
- FY10 includes $85.8 million bonus payment from issuance of Otter Creek coal leases.
- FY13 includes $3.6 million bonus payment from issuance of Bull Mountain coal lease.

MINERALS MANAGEMENT

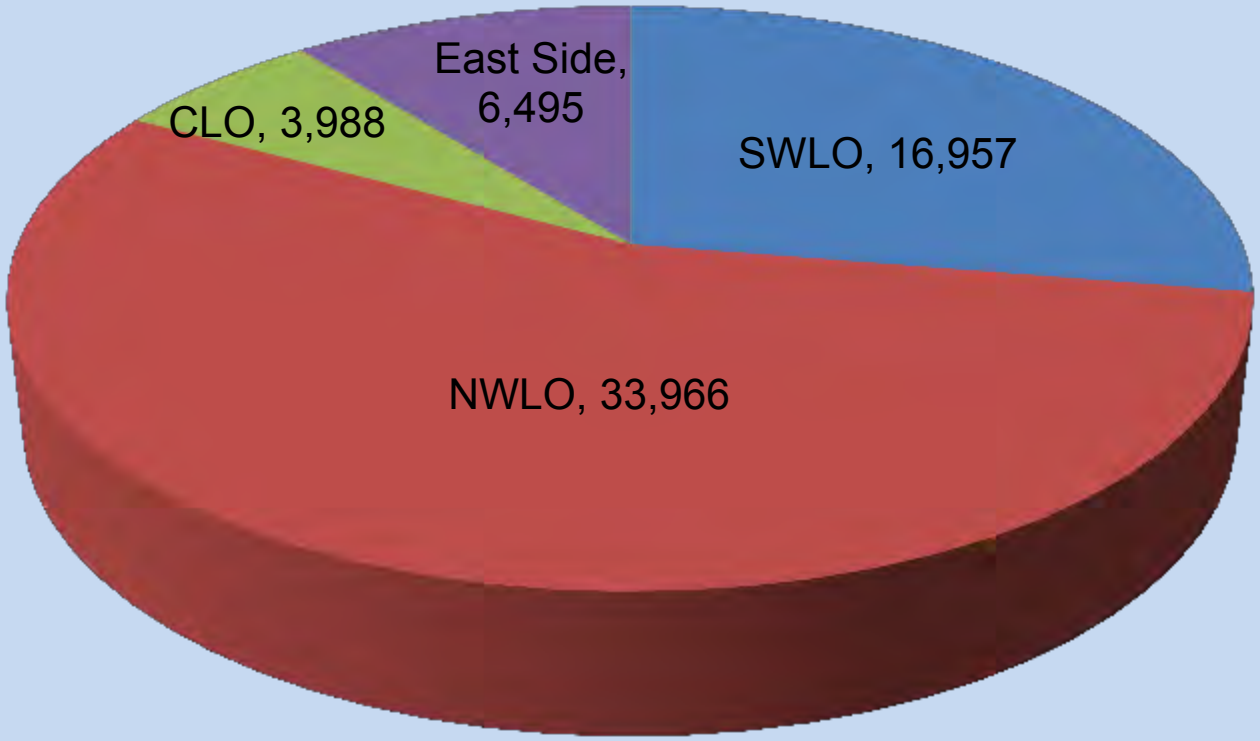
- Under this Land Board since January of 2013:
  - 1,978,773 acres under 5,018 lease agreements for oil and gas
    - 680 leases are producing from 253,687 acres
    - Generated $50 million
  - 17,145 acres under 35 lease agreements for Coal
    - Producing leases generated $13.1 million

FOREST MANAGEMENT

- FY 2014, sold 61.4 MMBF (timber sales & permits).
- Average stumpage price increased by 28% compared to FY 2013 to $243 per thousand board feet.
- Volume sold – estimated stumpage value of $14.9 million and additional forest improvement fees of $1.3 million.
- 56.1 MMBF of timber was harvested, generating $9.8 million.
- 171,666 seedlings were planted.


Forest Management Gross Revenue by Source
$12,000,000
$10,000,000
$8,000,000
$6,000,000
$4,000,000
$2,000,000
$0
2010
2011
2012
2013
2014
Timber Sales
Forest Improvement Payments
Timber Sales - Contract Harvest

FY 2014 Timber Sale Volume Sold by Area - Total 61,406 Mbf



FOREST MANAGEMENT

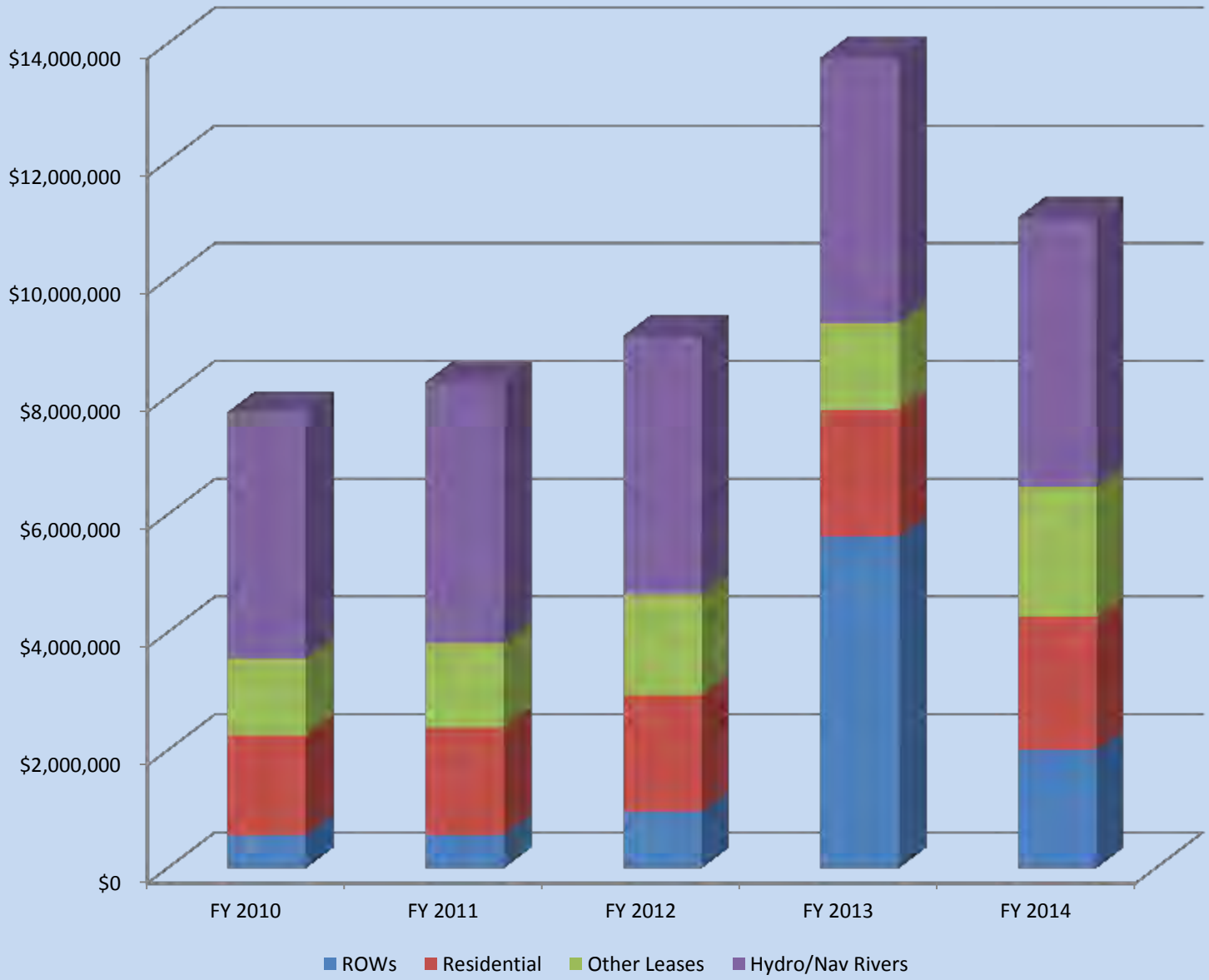
- Under this Land Board since January of 2013:
  - 108 million board feet sold
    - Value of $25.9 million
  - 106 million board feet harvested
    - Value of $20.5 million
    - Harvest activity on almost 20,000 acres

REAL ESTATE MANAGEMENT

- Land Sales – sold 4,093 acres of Common Schools land for $1.6 million.
- Cabin site revenue at a high of $2.2 million.
- Commercial Leasing:
  - Miles City – National Guard Amory began construction.
  - Section 36 – Kalispell. Ground breakings on MacKenzie River Grill, PetSmart, etc. Glacier Eye Clinic opened.
  - 136 active commercial leases, generated $5.7 million in FY 2014.
- 250 ROW applications processed, including a waste water treatment facility in Seeley Lake, new fishing access in Treasure County and a public trail easement in Gallatin County.
- Three reciprocal/easement exchange agreements were completed with access received on 4,310 acres of trust land via 11.77 miles of road.

FY 2014 Development of Section 36

Real Estate Revenue FY 2010 - 2014



REAL ESTATE MANAGEMENT

- Under this Land Board since January of 2013:
  - Issued 357 easements
    - Value of $7.25 million
  - 138 commercial lease agreements in place, including 4 new leases
    - Value of $11.4 million
  - 673 Residential leases
    - Value of $4.5 million
  - 765 licenses for real estate activities