

AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
October 19, 2015, at 9:00
State Capitol, Room 303
Helena, MT

ACTION ITEMS

**1015-1 Implementation of Montana Sage Grouse Conservation Strategy:
Executive Order 12-2015**

Benefits: N/A

Location: State of Montana Sage Grouse Core Lands

Approved 5-0 – The motion was to: (1) authorize DNRC to seek grant and credits for the benefit of affected trust beneficiaries for the implementation of protective measures; and (2) postpone adoption of the sage grouse management strategy until the November 2015 Land Board meeting.

1015-2 Communitization Agreements

A. Audrey Federal HSL Well

Benefits: Common Schools

Location: Richland County

Approved 5-0

B. Blackjack Hanna 1-36HSU Well

Benefits: Common Schools

Location: Richland County

Approved 5-0

C. Cara 1-21H Well

Benefits: Common Schools

Location: Richland County

Approved 5-0

D. Dodger 1-36H Well

Benefits: Common Schools

Location: Richland County

Approved 5-0

E. Mulholland Federal 1-32H Well

Benefits: Common Schools

Location: Richland County

Approved 5-0

F. Osborn 1-34H Well

Benefits: Common Schools

Location: Richland County

Approved 5-0

G. Weber 24-30-1H Well

Benefits: Common Schools

Location: Richland County

Approved 5-0

1015-3 Land Banking Parcels: Set Minimum Bid for Sale

A. Granite County

Benefits: Common Schools

Location: Granite County

Approved 5-0

B. Valley County

Benefits: Common Schools, Eastern College – MSU/Western College – UM

Location: Valley County

Approved 5-0

C. Yellowstone County

*Benefits: Common Schools
Location: Yellowstone County*
Approved 5-0

1015-4 Sale of Cabin and Home Sites: Set Minimum Bid for Sale – Sales 767, 768, 769

*Benefits: Montana State University
Location: Missoula County*
Approved 5-0

1015-5 Proposed Settlement Agreement: MONTRUST v. State of Montana et al., BDV-12-39, 1st Judicial District

*Benefits: Common Schools, Eastern College – MSU/Western College – UM, Montana Tech, MSU 2nd, MSU Morrill, Pine Hills School, Public Buildings, School for the Deaf and Blind, Veterans Home
Location: Beaverhead, Big Horn, Blaine, Broadwater, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Flathead, Gallatin, Golden Valley, Hill, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, McCone, Meagher, Mineral, Missoula, Musselshell, Phillips, Pondera, Powder River, Powell, Prairie, Richland, Rosebud, Sanders, Sheridan, Stillwater, Sweet Grass, Toole, Valley, Wheatland, Wibaux, Yellowstone Counties*

Approved 5-0

1015-6 Easements

A. Easements

*Benefits: Common Schools, Eastern College – MSU/Western College – UM, Public Buildings, Public Land Trust – Navigable Rivers
Location: Blaine, Chouteau, Flathead, Hill, Madison, Ravalli, Richland, Valley Counties*
Approved 5-0

B. Reciprocal Access Agreement: Cadenhead

*Benefits: Common Schools, Eastern College – MSU/Western College – UM, MSU Morrill
Location: Flathead, Sanders Counties*
Approved 5-0

C. Reciprocal Access Agreement: Wood Trust

*Benefits: Common Schools
Location: Park County*
Approved 5-0

PUBLIC COMMENT

1015-1

IMPLEMENTATION OF MONTANA SAGE GROUSE CONSERVATION STRATEGY:

Executive Order 12-2015

**Land Board Agenda Item
October 19, 2015**

**1015-1 Implementation of Montana Sage Grouse Conservation Strategy:
Executive Order 12-2015**

Location: State of Montana Sage Grouse Core Lands

Trust Benefits: N/A

Trust Revenue: N/A

Item Summary

For over a decade, management of sage grouse and their habitat has been a subject of much discussion and work in the western United States. In 2005, Montana developed the state's first management plan to address the challenges to sage grouse populations. Due to the efforts of landowners, wildlife managers, and other stakeholders, Montana has the second largest population of sage grouse among the western states.

In February 2013, Governor Bullock created the Sage Grouse Habitat Conservation Advisory Council to gather information in a public process in order to make recommendations for conservation measures to address threats to sage grouse. Those recommendations were presented to the Governor on January 29, 2014.

Drawing on the council's work, on September 9, 2014, the Governor issued [Executive Order 10-2014](#), which created the Montana Sage Grouse Habitat Conservation Strategy. This document outlined the state's strategy for conservation, regulatory protection and management of sage grouse in Montana.

At the request of the Governor, the 2015 Legislature passed the Montana Sage Grouse Stewardship Act (Senate Bill 261). The act created Montana Sage Grouse Oversight Team and established a stewardship fund. On September 8, 2015, Governor Bullock issued [Executive Order 12-2015](#) to amend and clarify the original order and provide for implementation of the conservation strategy.

Trust Land acreages: Currently there are 915,603 surface acres contained in sage grouse core and connectivity areas with an additional 1.6 million acres in general habitat. Subsurface ownership includes 858,308 acres of core and connectivity, and 1.72 million acres in general habitat.

The Governor's executive orders include recommended guidance on how programs within the DNRC Trust Land Management Division manage activities in sage grouse core, connectivity, and general habitats. It also directs DNRC to bring the conservation strategy to the Land Board for its consideration, with a request to adopt the strategy or otherwise determine the appropriate application of the strategy to state trust lands within the habitat areas. A copy of [Executive Order 12-2015](#) is attached.

Major Points of the Executive Order

The Montana Sage Grouse Oversight Team (MSGOT) will oversee administration of the Montana Sage Grouse Habitat Conservation Program. The roles of MSGOT and the program include:

- provide guidance to state agencies during permitting processes;
- review core area boundaries;
- oversee and approve development of a mitigation program;
- recommend practices for minimizing the effects of predators on sage grouse; and
- develop incentives to accelerate or enhance required reclamation.

Core area requirements:

- surface disturbance will be limited to 5% of suitable sage grouse habitat;
- for new activities, no surface occupancy will be allowed within 0.6 miles of the perimeter of a lek;
- seasonal use may be restricted to outside of breeding, nesting, brood rearing and winter use times.
- establishes allowable noise levels for new projects; and
- establishes industry specific disturbance standards for oil and gas, mining, coal mining, overhead power lines, pipelines, communication towers, and wind energy development.

General habitat requirements:

- no surface occupancy within 0.25 miles of an active lek;
- provides for seasonal use and timing restrictions during breeding, nesting, and brood rearing; and
- establishes reclamation guidelines.

The order also does the following:

- states that valid, existing rights shall be respected;
- recommends the Land Board establish a prohibition for breaking native range and sagebrush eradication on school trust lands within Core, General, and Connectivity areas, with criteria for limited exceptions.
- recommends DNRC establishes additional lease evaluation criteria to ensure proper grazing management and a corrective action program for leases that fail to meet the criteria. The criteria and plan are to be approved by the Land Board.

DNRC Recommendation

The director recommends the Land Board adopt the strategy outlined in the Governor's Executive Order 12-2015 to be applied to management of trust lands within sage grouse habitat. The director also requests the board authorize DNRC to seek grants and credits for the benefit of affected trust beneficiaries for the implementation of protective measures.

Note: Specific recommendations on land breaking, sage brush eradication, grazing criteria and corrective action plan will be brought to the Land Board at the November 2015 meeting.

STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NO. 12-2015

EXECUTIVE ORDER AMENDING AND PROVIDING FOR IMPLEMENTATION OF
THE MONTANA SAGE GROUSE CONSERVATION STRATEGY.

WHEREAS, the Greater Sage-grouse (*Centrocercus urophasianus*) (hereafter sage grouse) is an iconic species that inhabits much of the sagebrush-grassland habitats in Montana;

WHEREAS, as a result of concerted efforts of wildlife managers, private landowners, and other stakeholders, the State of Montana currently enjoys viable and widespread populations of the species, the second largest abundance of sage grouse among western states;

WHEREAS, the United States Fish and Wildlife Service (USFWS) has determined that the sage grouse species is warranted for listing as a threatened or endangered species under the Endangered Species Act of 1973 (ESA), and by September 30, 2015, the USFWS must make a final determination of the status of the sage grouse;

WHEREAS, the State of Montana has management authority over sage grouse populations in Montana, and in 2005, developed the state's first management plan to address the challenges to sage grouse populations in the state;

WHEREAS, the development of a comprehensive state regulatory strategy in Montana is critical to demonstrate to the USFWS that the sage grouse does not warrant federal protection under the ESA;

WHEREAS, the listing of the sage grouse could have significant adverse effects on the economy of the State of Montana, including private and state lands, which together comprise over 70 percent of all sage grouse habitat;

WHEREAS, in February 2013 Governor Bullock created the Greater Sage Grouse Habitat Conservation Advisory Council (Council), to gather information, and bring stakeholders and experts together in a public process to recommend conservation measures to address the threats to the sage grouse in Montana;

WHEREAS, the Council held ten multi-day public meetings, reviewed and considered relevant scientific information and existing strategies and reports, accepted broad and diverse public comment on draft recommendations, conducted seven public hearings around the state, and formally presented its recommendations and advice to the Governor on January 29, 2014;

WHEREAS, on September 9, 2014, The Governor issued Executive Order No. 10-2014, creating the Montana Sage Grouse Habitat Conservation Program and setting forth the state's

Conservation Strategy for conservation, regulatory protection, and management of sage grouse in Montana.

WHEREAS, recognizing that maintaining the species will require effective conservation strategies across property ownerships, the Montana Program is premised on an “all-threats, all-lands” strategy, and closely follows Wyoming’s Greater Sage-Grouse Core Area Protection Strategy, which has been repeatedly recognized by the USFWS as a sound framework by which to conserve sage grouse;

WHEREAS, the Montana Program is science-based and will adjust appropriately as new science, information and data becomes available regarding the habitats and behaviors of the sage grouse;

WHEREAS, at the request of the Governor, the 2015 Montana Legislature passed the Montana Sage Grouse Stewardship Act, creating the Montana Sage Grouse Oversight Team (MSGTO) and the Montana Sage Grouse Stewardship Fund;

WHEREAS, at the request of the Governor, the 2015 Legislature appropriated \$10 million to the Stewardship Fund for conservation and mitigation projects that benefit sage grouse habitat, and over \$1 million for resources to administer Montana’s Sage Grouse Habitat Conservation Program;

WHEREAS, the investment and commitment to date of the State of Montana to sage grouse conservation has been substantial, and with the recent Executive and Legislative actions described above, Montana’s commitment to sage grouse conservation is anticipated to grow significantly;

WHEREAS, given the aforementioned legislative approvals, ongoing discussions with stakeholders, and the approaching deadline for a decision by the USFWS on the status of sage grouse, additional adjustments and clarifications to Executive Order No. 10-2014 are appropriate; and

WHEREAS, this Executive Order is a supplement to Executive Order 10-2014, and, unless expressly stated herein, is to be read in concert with that previous Executive Order.

NOW, THEREFORE, I, STEVE BULLOCK, Governor of the State of Montana, pursuant to the authority vested in me under the Constitution and the laws of the State of Montana, do hereby amend Executive Order No. 10-2014 and provide for implementation of the Montana Sage Grouse Conservation Strategy as follows:

1. In issuing this Executive Order and Executive Order No. 10-2014, it is my intent that the Montana Sage Grouse Habitat Conservation Program (Program) operate in a manner that is generally consistent, as allowed by law and peer-reviewed science, with the efforts of the State of Wyoming in implementing its Greater Sage Grouse Core Area Strategy. Unless clearly stated otherwise, either in this Executive Order or in Executive Order No. 10-2014, or unless precluded by law or peer-reviewed science, ambiguities regarding interpretation of

this Executive Order or Executive Order No. 10-2014 should be resolved in a manner that is consistent with this intent.

2. Executive Order No. 10-2014 and this Executive Order shall be generally construed in a manner that is consistent with the provisions of Senate Bill 261, passed during the 2015 Montana Legislative Session.
3. The Montana Greater Sage Grouse Habitat Conservation Advisory Council found that the currently delineated Core Areas captured approximately 76 percent of the displaying males in Montana (using 2013 numbers) (Greater Sage-Grouse Habitat Conservation Strategy, p. 8). The Program and MSGOT are directed to conduct a review of the existing Core Areas and recommend changes that may be necessary to ensure that 80 percent of the displaying males in Montana are either in delineated Core Areas or otherwise subject to the Core Area Stipulations contained in Exhibit D to Executive Order No. 10-2014 (as amended herein). Paragraph No. 9 of Executive Order No. 10-2014 is amended accordingly.
4. The State of Montana expects the full cooperation, assistance, and compliance with the Montana Conservation Strategy by all federal agencies operating in Montana, consistent with federal and state laws. To ensure that there is robust communication between the Montana Sage Grouse Habitat Conservation Program and the federal agencies, the Program shall ensure that those agencies are notified of all MSGOT meetings, and afforded the opportunity to participate in those meetings. This is in addition to the Program's duty to ensure that all MSGOT meetings are open to the public, with public notice and participation, consistent with Montana law.
5. Executive Order No. 10-2014 is amended as follows:
 - A. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph Nos. 1 and 33 of Executive Order No. 10-2014 are stricken.
 - B. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph No. 2 of Executive Order No. 10-2014 is amended to read as follows:
 2. The function of the Montana Sage Grouse Oversight Team (MSGOT) will be to oversee the administration of the Program, located at the Department of Natural Resources and Conservation (DNRC). This will include: staying abreast of emerging science and developing appropriate guidance, reviewing and troubleshooting the consultation process, addressing issues delineated in applicable Executive Orders and attachments for further consideration, providing input to funding requests for research and land management projects, recommending to the Governor further improvements to the Program, and fulfilling the duties assigned by Senate Bill 261 (2015 Montana Legislative Session). The DNRC shall provide necessary staff assistance for MSGOT until such time as key Program resources are obtained by DNRC.
 - C. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph No. 3 of Executive Order No. 10-2014 is amended to read as follows:

3. The role of the Program is to: provide guidance to, exchange information with, seek input from, and consult with state agencies and other instruments of state government during permitting and other authorizations, or during consultation, or technical, financial, or other assistance for non-regulated activities; administration of applicable Executive Orders and attachments (including application of the Density Disturbance Calculation Model) and Senate Bill 261, passed during the 2015 Montana Legislative Session (Conservation Strategy); provide assistance, input, and guidance to MSGOT on all matters before it; serve as the principal point of contact for the interested public and stakeholders regarding the Conservation Strategy. Nothing in this Order in any way creates, adds to, or expands the regulatory authority of any state agency.
- D. In light of the transition to full compliance with the Program, as provided below in this Executive Order, Paragraph Nos. 4, 6, and 7 of Executive Order No. 10-2014 are stricken.
 - E. Paragraph No. 8 of Executive Order No. 10-2014 is amended to read as follows:
 8. The Program shall consist of the Program Manager and other resources determined by DNRC to be necessary to achieve the purposes and objectives of the Sage Grouse Habitat Conservation Program, applicable Executive Orders, and Senate Bill 261 (2015 Montana Legislative Session). The Montana Departments of Fish, Wildlife and Parks, Environmental Quality, and Natural Resources and Conservation shall provide such additional staff resources as necessary to aid in the development of the Program and implement this Conservation Strategy. The Program may contract for services with outside parties or other state agencies to implement the Program.
 - F. Paragraph No. 12 of Executive Order No. 10-2014 is amended to read as follows:
 12. Where appropriate, and to minimize or streamline the process associated with implementation of this Conservation Strategy, MSGOT should recommend to the Governor the adoption of best management practices.
 - G. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph No. 13 of Executive Order No. 10-2014 is amended to read as follows:
 13. MSGOT shall oversee and approve development of a program that provides for appropriate mitigation, including compensatory mitigations (financial, off-set, or off-site). All new land uses or activities that are subject to state agency review, approval, or authorization shall follow the sequencing provisions required herein (avoid, minimize, reclaim, compensate as appropriate). Mitigation shall be required even if the adverse impacts to sage grouse are indirect or temporary. A variety of mitigation tools may be used, including conservation banks, habitat exchanges, and approved conservation plans. All mitigation must be consistent with the United States Fish and Wildlife Service's Greater Sage-Grouse Rangeland Mitigation Framework.

- H. The extent of existing land uses and activities has caused some confusion relating to activities that are authorized under existing permits but which have not yet occurred. Paragraph No. 23 of Executive Order No. 10-2014 is amended to read as follows for the purpose of clarification:
23. Existing land uses and activities (including those authorized by existing permit but not yet conducted) shall be recognized and respected by state agencies, and those uses and activities that exist at the time the Program becomes effective will not be managed under the stipulations of this Conservation Strategy. Examples of existing activities include oil and gas, mining, agriculture, processing facilities, power lines, housing, operations and maintenance activities of existing energy systems within a defined project boundary, (i.e., ROW). Provided these uses and activities are within a defined project boundary (such as a recognized federal oil and gas unit, drilling and spacing unit, mine plan, subdivision plat, etc.) they may continue within the existing boundary, even if they exceed the stipulations of this Conservation Strategy.
- I. In light of the transition to full compliance with the Program, as provided below in this Executive Order, Paragraph No. 30 of Executive Order No. 10-2014 is amended to read as follows:
30. Montana's private landowners are currently managing their lands in a responsible manner, and it is not coincidence that such a high percentage of productive sage grouse habitat is found on private land. It is critical that existing land uses and landowner activities continue to occur in Core Areas and General Habitat, particularly agricultural activities on private lands. Many uses or activities on private lands are not subject to state agency review, approval, or authorization. Only those projects occurring after the date the Program becomes effective which state agencies are vested with discretion by state or federal statute to review, approve, or authorize are subject to consistency review. This Conservation Strategy in no way creates, adds to, or expands the regulatory authority of any state agency.
- J. Consistent with seasonal use limits utilized by the State of Wyoming for Core Areas, and as originally recommended by the Montana Greater Sage-grouse Habitat Conservation Advisory Council, Paragraph No. 3 in the Core Area Stipulations (Executive Order No. 10-2014, p. 14, Attachment D, Core Area Stipulations), is amended to read as follows:
3. **Seasonal Use:** As authorized by permitting agency or agencies, activities (production, maintenance, and emergency activity exempted) will be prohibited from March 15 – July 15 outside of the NSO perimeter of an active lek in Core Areas where breeding, nesting, and early brood-rearing habitat is present. Discretionary maintenance and production activity will not occur between the hours of 4:00 - 8:00 am and 7:00 - 10:00 pm between March 15 – July 15. In areas used as winter concentration areas, exploration and development activity will be prohibited December 1 – March 15. Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. Activities in unsuitable habitat also may be approved year round on a case-by-case basis.

- K. Finding and siting appropriate corridors for power lines is critical if Montana is to pursue future opportunities associated with diversifying energy production. There has been confusion over the original language addressing overhead power lines and communication towers, contained in Executive Order No. 10-2014. After further discussion with stakeholders and for purposes of clarification, Paragraph No. 6 in the Core Area Stipulations (Executive Order No. 10-2014, p. 15, Attachment D, Core Area Stipulations) is amended to read as follows:

- 6. Overhead Power Lines and Communication Towers:** Power lines and communication towers should be sited to minimize negative impacts on sage grouse or their habitats. When placement is demonstrated to be unavoidable:
- a. If economically feasible, power lines within 4 miles of active leks should be buried and communication towers should be located a minimum of 4 miles from active leks;
 - b. If not economically feasible, then power lines and communication towers should be consolidated or co-located with existing above ground rights of way, such as roads or power lines, at least 0.6 miles from the perimeter of active leks;
 - c. If co-location is not possible, the power lines and communication towers should be located as far as economically feasible from active leks and outside of the 0.6 mile active lek buffer.

If siting of overhead power lines is necessary within 2.0 miles of important breeding, brood-rearing, and winter habitat, follow the measures recommended by the Avian Power Line Interaction Committee (which includes federal agencies and state wildlife agencies) to minimize collision potential and raptor perch sites or bury a portion of the line.

Anti-collision measures should be installed within 0.6 mile of the perimeter of known sage grouse concentration areas such as leks and winter ranges, where icing conditions are unlikely to occur. If effective perch preventers are identified, they should be installed within 0.6 mile of known concentration areas.

Follow USFWS Best Management Practices for tall structures when erecting new communication towers. Communication towers should be constructed to preclude the need for guy wires; where guy wires are necessary, they should be fitted with anti-collision devices.

Burying existing overhead lines that have been identified as contributing to a decline in sage grouse populations will be considered as a mitigation option.

Electric utilities (including electric cooperatives) and the Avian Power Line Interaction Committee, have developed a set of Best Management Practices (BMPs) to guide construction, operation, and maintenance activities by electric utilities in sage grouse habitats. These BMPs should be applied to electric utility projects as appropriate.

The Program should conduct additional research into the challenges posed to sage grouse by overhead lines and communication towers, and should bring that research to MSGOT for further consideration.

- L. Noise levels from activities around leks during breeding season continues to be an area of concern and of additional and evolving research. The intent of the language in Executive Order No. 10-2014 addressing noise was to capture the ongoing work in Wyoming and still allow interim flexibility on a case-by-case basis (Executive Order No. 10-2014, pp. 15 and 19, Attachment D). Some ambiguity has been identified in the existing language and Wyoming has recently further clarified its language on this issue. Accordingly, Paragraph No. 7 in the Core Area Stipulations and Paragraph No. 5 in the General Habitat Stipulations (Executive Order No. 10-2014, pp. 15 and 19, Attachment D, respectively) are amended to read as follows:

Noise: New project noise levels, either individual or cumulative, should not exceed 10 dBA (as measured by L_{50}) above baseline noise at the perimeter of an active lek from 6:00 p.m. to 8:00 a.m. during the breeding season (March 1 – July 15). The Program shall review the emerging science on this issue, including the work being conducted regarding this issue in the State of Wyoming, and bring that research to MSGOT to recommend any further adjustments in this stipulation that may be appropriate.

- M. The understanding of prescribed burning in sagebrush habitat continues to evolve. The intent of the language in Executive Order No. 10-2014 addressing prescribed burning was to strike a balance that allowed prescribed burns, but only in limited instances. (Executive Order No. 10-2014, p. 16, Attachment D, Core Area Stipulations). Some confusion has resulted from the existing language and Paragraph No. 10 in the Core Area Stipulations (Executive Order No. 10-2014, p. 16, Attachment D, Core Area Stipulations) is amended to read as follows:

- 10. Wildfire and Prescribed Burns:** Following wildfire, it is recommended that landowners implement a management plan consistent with the rehabilitation practices in Attachment C, with a goal of returning the area to functional sage-grouse habitat. Burnouts, backfires, and all other public safety measures are appropriate for fighting wildfires. The Program and MSGOT should stay abreast of evolving science regarding post-fire rehabilitation in order to advise landowners. This is specific to wildfire and not intended for other incentive or mitigation situations.

The Program should be consulted in advance for any proposal to conduct prescribed broadcast burns in sagebrush habitat. Prescribed broadcast burns should be prohibited unless it can be demonstrated that they will either result in no loss of habitat or be beneficial to sage-grouse habitat. In reviewing a proposal, the Program should consider why alternative techniques were not selected, how sage grouse goals and objectives would be met by its use, including a review of the COT Report objectives, and a risk assessment to address how potential threats to sage grouse habitat would be minimized. Prescribed fire could be used to meet specific fuels objectives that would protect sage grouse habitat in Core Areas (e.g., creation of fuel breaks that would disrupt the fuel continuity across the landscape in stands where

annual invasive grasses are a minor component in the understory or used as a component with other treatment methods to combat annual grasses and restore native plant communities). Any prescribed broadcast burning in known winter habitat would need to be designed to strategically reduce wildfire risk around and/or in the winter range and designed to protect winter range habitat quality.

- N. In light of the transition to full compliance with the Program, as provided below in this Executive Order, Paragraph No. 15 in the Core Area Stipulations (Executive Order No. 10-2014, p. 17, Attachment D, Core Area Stipulations) is amended to read as follows:

15. Existing Activities: While existing land uses and activities are typically not subject to the Conservation Strategy (Executive Order No. 10-2014, Paragraph No. 23), existing operations may not initiate activities resulting in new surface occupancy within 0.6 miles of an active sage grouse lek. Any existing disturbance will be counted toward the calculated disturbance cap for a new proposed activity. The level of disturbance for existing activity may exceed 5 percent.

- O. The development of new wind power generation in Montana is an important part of the state's ongoing efforts to pursue future opportunities associated with diversifying energy production. The intent of the language in Executive Order No. 10-2014 was to recognize that wind generation should generally be avoided in Core Areas (Executive Order No. 10-2014, p. 18, Attachment D, Industry-Specific Stipulations within Core Areas). The Montana Greater Sage-grouse Habitat Conservation Advisory Council recommended language that excluded wind generation from Core Areas. In both cases, it was recognized that as research and best science evolves, it might be possible to eventually allow wind generation in such areas if it could be demonstrated that it would not cause a decline in sage grouse populations. The use of the term "avoided" in Executive Order No. 10-2014 has caused some confusion, and Paragraph No. 4 in the Industry-Specific Stipulations within Core Areas (Executive Order No. 10-2014, p. 18, Attachment D, Industry-Specific Stipulations within Core Areas) is amended to read as follows:

4. Wind Energy: Wind energy development is excluded from sage grouse core areas. An exception may be made if it can be demonstrated by the project proponent using the best available science that the development will not cause a decline in sage grouse populations.

6. The previous Executive Order created the Montana Sage Grouse Habitat Conservation Program and the Conservation Strategy, but did not expressly include any metric by which to measure success of these efforts. After extensive literature review and public discussion, the Montana Greater Sage Grouse Habitat Conservation Advisory Council recommended a performance standard (6.9-18.78 males/lek) based on the number of displaying males as determined by a statistically-valid analysis over a 10-year period, recognizing that populations vary naturally over time and across regions, and may change based on ongoing evaluation (Greater Sage-Grouse Habitat Conservation Strategy, p. 5). Executive Order No. 10-2014 is further clarified as follows:

Until such time as a different performance standard is determined to be appropriate, this performance standard should guide the Program in its actions and recommendations.

- 7. This Executive Order and Executive Order 10-2014, unless expressly stated herein, are to be read in concert with each other. For clarity, Executive Order 10-2014, as amended and clarified by this Executive Order, is attached as Exhibit A. This document provides a single reference for the Montana Sage Grouse Habitat Conservation Program, combining both Executive Orders into one document.
- 8. State agencies shall comply with the Montana Sage Grouse Habitat Conservation Program, as amended and clarified by this Executive Order. Because certain aspects of the Program are still in development, agencies shall comply with the Program to the extent possible until January 1, 2016, at which time compliance with the Program in all respects is required.
- 9. The Montana Sage Grouse Habitat Conservation Program shall be completed and operational in all respects no later than January 1, 2016.

DURATION

This Order is effective immediately and remains in effect until it is rescinded or superseded by subsequent Executive Order.

GIVEN under my hand and the GREAT SEAL of the State of Montana this 8TH day of SEPTEMBER, 2015.



[Handwritten Signature]

 STEVE BULLOCK, Governor

ATTEST:
[Handwritten Signature]

 LINDA MCCULLOCH, Secretary of State

For:

Attachment A

STATE OF MONTANA
OFFICE OF THE GOVERNOR

THE MONTANA SAGE GROUSE OVERSIGHT TEAM AND THE MONTANA SAGE GROUSE HABITAT CONSERVATION PROGRAM

The Montana Sage Grouse Habitat Program was created by Executive Order No. 10-2014, dated September 9, 2014. By subsequent Executive Order No. 12-2015, dated September 8, 2015, Executive Order No. 10-2014 was amended and clarified. This document provides a single reference for the Montana Sage Grouse Habitat Conservation Program, combining both Executive Orders into one document.

The Montana Sage Grouse Habitat Conservation Program should operate in a manner that is generally consistent, as allowed by law and peer-reviewed science, with the efforts of the State of Wyoming in implementing its Greater Sage Grouse Core Area Strategy. Interpretation of the applicable Executive Orders should be resolved in a manner that is consistent with this intent, as well as with the provisions of Senate Bill 261 (2015 Montana Legislative Session).

The Montana Sage Grouse Oversight Team and the Montana Sage Grouse Habitat Conservation Program

1. The function of the Montana Sage Grouse Oversight Team (MSGOT) will be to oversee the administration of the Montana Sage Grouse Habitat Conservation Program, located at the Department of Natural Resources and Conservation (Program). This will include: staying abreast of emerging science and developing appropriate guidance, reviewing and troubleshooting the consultation process, addressing issues delineated in applicable Executive Orders and attachments for further consideration, providing input to funding requests for research and land management projects, recommending to the Governor further improvements to the Program, and fulfilling the duties assigned by Senate Bill 261 (2015 Montana Legislative Session). The Department of Natural Resources and Conservation (DNRC) shall provide necessary staff assistance for MSGOT (until such time as key Program resources are obtained by DNRC).
2. The role of the Program is to: provide guidance to, exchange information with, seek input from, and consult with state agencies and other instruments of state government during permitting and other authorizations, or during consultation, or technical, financial, or other assistance for non-regulated activities; administration of applicable Executive Orders and

attachments (including application of the Density Disturbance Calculation Model) and Senate Bill 261, passed during the 2015 Montana Legislative Session (Conservation Strategy); provide assistance, input, and guidance to MSGOT on all matters before it; serve as the principal point of contact for the interested public and stakeholders regarding the Conservation Strategy. Nothing in this Order in any way creates, adds to, or expands the regulatory authority of any state agency.

3. All meetings of the MSGOT shall be open to the public, with public notice and participation, consistent with Montana law. The State of Montana expects the full cooperation, assistance, and compliance with the Conservation Strategy by all federal agencies operating in Montana, consistent with law. To ensure that there is robust communication between the Program and the federal agencies, the Program shall ensure that those agencies are notified of all MSGOT meetings, and afforded the opportunity to participate in those meetings.
4. The Program shall consist of the Program Manager and other resources determined by DNRC to be necessary to achieve the purposes and objectives of the Sage Grouse Habitat Conservation Program, applicable Executive Orders, and Senate Bill 261 (2015 Montana Legislative Session). The Departments of Fish, Wildlife and Parks, Environmental Quality, and Natural Resources and Conservation shall provide such additional staff resources as necessary to aid in the development of the Program and implement this Conservation Strategy. The Program may contract for services with outside parties or other state agencies to implement the Program.
5. Management by state agencies shall give priority to the maintenance and enhancement of sage grouse habitats in Core Population and Connectivity Areas identified in Attachment A. The Montana Greater Sage-grouse Habitat Conservation Advisory Council found that the currently delineated Core Areas captured approximately 76% of the displaying males in Montana (using 2013 numbers) (Greater Sage-Grouse Habitat Conservation Strategy, p. 8). The Program and MSGOT are directed to conduct a review of the existing Core Areas and recommend to the Governor changes that may be necessary to ensure that 80% of the displaying males in Montana are either in delineated Core Areas or otherwise subject to the Core Area Stipulations contained in Exhibit D. Except as provided above, and absent substantial and compelling information, the Core Population Areas in Attachment A should not be altered for at least 5 years.
6. In evaluating progress and as a guide for future actions and recommendations, the Program and MSGOT shall utilize a performance standard (6.9-18.78 males/lek) based on the number of displaying males as determined by a statistically-valid analysis over a 10-year period. This standard recognizes that populations vary naturally over time and across regions, and may change based on ongoing analysis.
7. MSGOT shall develop incentives to accelerate or enhance required reclamation in habitats in and adjacent to Core Areas, including but not limited to stipulation waivers, funding for enhanced reclamation, and other strategies. Incentives shall result in net benefit to, and not cause declines in, sage grouse populations.

8. Where possible, MSGOT shall develop incentives to encourage new land uses and activities in General Habitat to occur in a manner that minimizes impacts to sage grouse populations and habitats.
9. Where appropriate, and to minimize or streamline the process associated with implementation of this Conservation Strategy, MSGOT should recommend to the Governor the adoption of best management practices.
10. MSGOT shall oversee and approve development of a program that provides for appropriate mitigation, including compensatory mitigations (financial, off-set, or off-site). All new land uses or activities that are subject to state agency review, approval, or authorization shall follow the sequencing provisions required herein (avoid, minimize, reclaim, compensate as appropriate). Mitigation shall be required even if the adverse impacts to sage grouse are indirect or temporary. A variety of mitigation tools may be used, including conservation banks, habitat exchanges, and approved conservation plans. All mitigation must be consistent with the United States Fish and Wildlife Service's Greater Sage-Grouse Rangewide Mitigation Framework.
11. Predators can be a threat to localized sage grouse populations and an impediment to efforts to protect sage grouse. Predators have always preyed upon sage grouse, and the best way to minimize this impact is to provide good quality habitat in sufficient quantity. In addition to generally implementing this Conservation Strategy, Attachment B contains specific recommended practices for minimizing the effects of predators on sage grouse.
12. While it is unlikely that predator control is a long-term solution to a general range-wide decline in populations of sage grouse, it may provide beneficial short-term relief to localized decreases in sage grouse populations. For example, the U.S. Fish and Wildlife Service (USFWS) recently granted a permit to the State of Idaho for the lethal removal of ravens in three specific locations to evaluate the impacts of predation on sage grouse. If such localized circumstances are found to exist, MSGOT should involve diverse stakeholders to explore public-private opportunities for field research to examine the predator-prey relationship, the effects of habitat disturbance, and the feasibility and efficacy of a predator management plan.

General Principles

13. Valid rights are legal rights or interests that are associated with a land or mineral estate and cannot be divested from that estate until that interest expires, is relinquished, or acquired. Existing rights shall be recognized and respected, including those associated with state trust lands.
14. Approximately 64% of sage grouse habitat in Montana is in private ownership. Montana's private landowners care about the future of sage grouse and manage their lands productively in this regard. State agencies are directed to work collaboratively with private landowners (and local governments) to maintain and enhance sage grouse habitats and populations, and to the greatest extent possible shall use non-regulatory measures that reflect unique localized

conditions, including soils, vegetation, development type, predation, climate and other local realities. Voluntary incentives designed to conserve sagebrush habitat and grazing lands within identified sage grouse Core Areas and General Habitat areas on private and state lands will be created and encouraged.

15. The success of this Conservation Strategy depends on state and federal agencies, including the U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, Natural Resource Conservation Service, and other federal agencies, working collaboratively to maintain and enhance sage grouse habitats and populations.
16. Funding, assurances (including efforts to develop Candidate Conservation Agreements and Candidate Conservation Agreements with Assurances, etc.), habitat enhancement, reclamation efforts, mapping and other associated proactive efforts to assure viability of sage grouse in Montana shall be focused and prioritized to occur in Core Areas. Formal voluntary agreements between private and federal regulatory entities to address the conservation needs of sage grouse shall be entitled to deference.
17. Fire suppression efforts in Core Areas shall be prioritized, recognizing that other local, regional, and national suppression priorities may take precedent. Coordination among all fire-fighting units is required to implement fire prevention, suppression, and rehabilitation management as detailed in Attachment C. The Department of Natural Resources and Conservation shall follow these recommendations as resources and circumstances allow, and will request cooperation and collaboration from federal agencies on rehabilitation projects after wildfire. Public and firefighter safety remains the number one priority for all fire management activities.
18. MSGOT, Program staff, and all state and federal agencies shall strive to maintain consistency with this Conservation Strategy, recognizing that adjustments may be necessary based upon local conditions and limitations.
19. MSGOT shall regularly reevaluate the effectiveness of this Conservation Strategy, at a minimum annually, as new science, information and data emerge regarding the habitats and behaviors of sage grouse, and shall recommend such changes as are appropriate.

Application of the Conservation Strategy to Land Uses and Activities

20. Existing land uses and activities (including those authorized by existing permit but not yet conducted) shall be recognized and respected by state agencies, and those uses and activities that exist at the time the Program becomes effective will not be managed under the stipulations of this Conservation Strategy. Examples of existing activities include oil and gas, mining, agriculture, processing facilities, power lines, housing, operations and maintenance activities of existing energy systems within a defined project boundary, (i.e., ROW). Provided these uses and activities are within a defined project boundary (such as a recognized federal oil and gas unit, drilling and spacing unit, mine plan, subdivision plat, etc.) they may continue within the existing boundary, even if they exceed the stipulations of this Conservation Strategy.

21. New land uses or activities in Core Areas shall be avoided when possible. New developments or land uses permitted or authorized within Core Areas shall minimize impacts on suitable habitat, and reclaim and restore any disturbance (and mitigation as appropriate). This analysis shall be documented by Program staff for each new activity or use. A similar sequence (avoid, minimize, reclaim/restore) shall also be applicable in General Habitat, under less rigorous standards to be developed by MSGOT.
22. It is recognized that in some locations new uses or activities associated with valid rights, such as some mineral rights, may be in substantial conflict with the stipulations of this Conservation Strategy, and that reasonable exceptions to the Strategy may be necessary. Similarly, the expansion of existing uses and activities not otherwise subject to this Conservation Strategy may necessitate reasonable exception. In all cases the sequencing, stipulation, and mitigation provisions of this Conservation Strategy shall be the benchmark for evaluating such uses or activities and developing alternative operating scenarios.
23. New land uses or activities within Core Areas shall be authorized, approved, or conducted only when it can be demonstrated that the project will not cause declines in sage grouse populations.
24. Land uses or activities that follow the sequencing requirements of this Conservation Strategy (including mitigation as appropriate) and that are consistent with the stipulations set forth in Attachment D shall be deemed sufficient to demonstrate that the project will not cause declines in sage grouse populations.
25. Proposals to deviate from standard stipulations or utilize exceptions from standard stipulations will be considered by the Program (with review by MSGOT) and the appropriate land management and permitting agencies, with input from the Department of Fish, Wildlife and Parks, and the United States Fish and Wildlife Service.
26. A petition may be filed with MSGOT to create a Special Management Area, where planned land uses or activities associated with valid rights cannot be implemented after evaluation against the sequencing, stipulation, and mitigation provisions of this Conservation Strategy. The requirements and objectives for this process are contained in Attachment E, and MSGOT shall recommend such additional requirements and objectives as necessary.
27. Montana's private landowners are currently managing their lands in a responsible manner, and it is not coincidence that such a high percentage of productive sage grouse habitat is found on private land. It is critical that existing land uses and landowner activities continue to occur in Core Areas and General Habitat, particularly agricultural activities on private lands. Many uses or activities on private lands are not subject to state agency review, approval, or authorization. Only those projects occurring after the date the Program becomes effective which state agencies are vested with discretion by state or federal statute to review, approve, or authorize are subject to consistency review. This Conservation Strategy in no way creates, adds to, or expands the regulatory authority of any state agency.

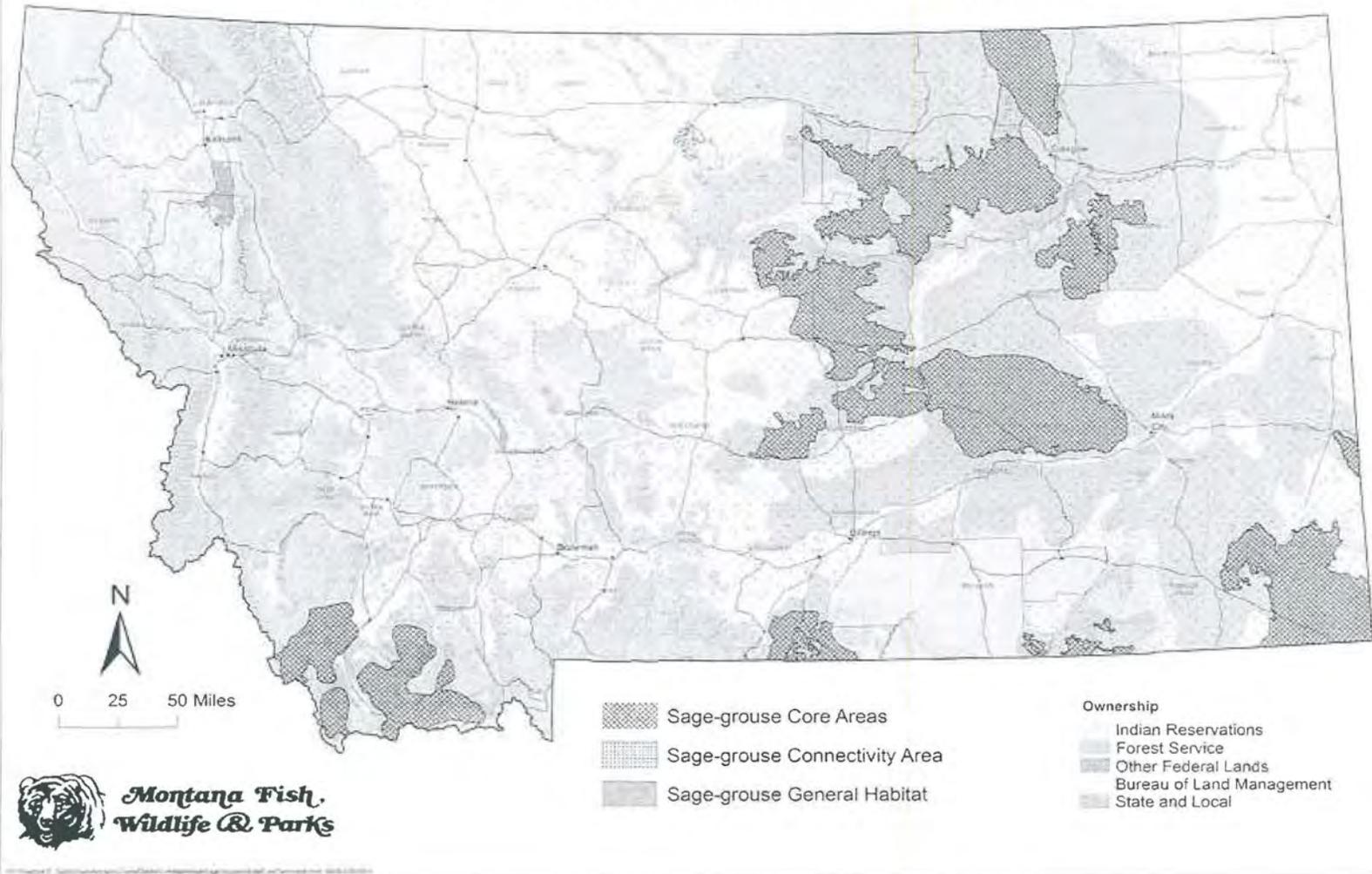
28. Attachment F contains a list of existing land uses and landowner activities that are exempt from this Conservation Strategy.
29. Livestock grazing is the most widespread type of land use across sagebrush country. Proper livestock management is a critical tool for providing and maintaining high quality sage grouse habitat, and recommended best practices are contained in Attachment G.
30. Program staff and state agencies shall adhere to the stipulations contained in this Conservation Strategy when reviewing or providing consultation, or technical, financial, or other assistance for non-regulated activities.
31. The Program staff, before submitting its final recommendation to a state agency for any use or activity it has reviewed, shall comply with the provisions of the Private Property Assessment Act, Title 2, Chapter 10, Part 1, MCA.
32. State Trust Lands are held in trust as provided in The Enabling Act, and the management of those lands is vested in the State Land Board. The Department of Natural Resources and Conservation (DNRC) is directed to bring this Conservation Strategy before the Board for its consideration, with a request that the Board adopt this Strategy or otherwise determine the appropriate application of this Strategy to the management of State Trust Lands in Core or Connectivity Areas, or General Habitat.
33. Cropland conversion and sagebrush eradication on native range are particular threats to sage grouse. The DNRC is directed to bring before the State Land Board for its consideration a prohibition of these two activities on State Trust Lands in Core and Connectivity Areas and General Habitat, with criteria for waivers. The requested prohibitions should be contingent on similar action by federal agencies for lands on which they control the surface rights. The requested prohibition on cropland conversion should also be contingent on commitments by state and federal agencies to work cooperatively with the Bureau of Indian Affairs and tribal governments to address cropland conversion of sage grouse habitat on tribal lands.
34. On State Trust Lands the DNRC will work cooperatively with lessees to maintain healthy sagebrush shrub, native grass, and forb communities on State Trust grazing lands in Core and Connectivity Areas. DNRC shall develop additional lease evaluation criteria to be used for these lands, consistent with the recommendations in Attachment G. The criteria should establish rangeland characteristics that will ensure responsible grazing management practices, consistent with maintaining and improving habitat for sage grouse, while providing for working rangelands. DNRC should also develop a corrective action program for leases that fail to meet the criteria. The criteria and corrective action program shall be brought before the State Land Board for approval.
35. Exotic annual grasses and other invasive plants, and shrubs and trees, alter habitat suitability for sage grouse by reducing or eliminating native forbs and grasses essential for food and cover. Non-native annual grasses also facilitate an increase in mean fire frequency. As resources allow, state agencies should prioritize the eradication of cheatgrass and Japanese brome in Core Areas, through improved management practices, appropriate herbicide

treatments, and biological controls. The Montana Department of Agriculture should review the appropriateness of listing Japanese brome (*Bromus japonicus*) as a regulated species (priority #3) in Montana, and report to MSGOT the results of its evaluation.

36. The hunting of sage grouse is managed by the Department of Fish, Wildlife and Parks (FWP) through the Montana Fish and Wildlife Commission. A framework for conservation action to manage hunting and the viability of sage grouse populations is outlined in the Management Plan and Conservation Strategies for Sage Grouse in Montana – Final (Rev. 2-1-2005, pp. 54-55). That framework shall continue in effect and guide Department and Commission action until such time as the Department or Commission finds that a different approach is warranted. The Program shall consult with FWP when reviewing sage grouse issues in a permit application or other authorization for a use or activity in a Core or Connectivity Area, or General Habitat.
37. State agencies shall report to the Office of the Governor by no later than January 31, 2015, and annually thereafter detailing their actions to comply with this conservation strategy.

Attachment A

Sage-grouse Conservation Areas in Montana



Attachment B**RECOMMENDED PRACTICES TO MINIMIZE EFFECTS OF PREDATORS**

- a. Eliminate or minimize external food sources for ravens and small mammals, particularly dumps, landfills, waste transfer facilities, and road kill.
- b. Remove abandoned farmhouses, barns, building debris piles, and other structures that harbor mammalian predators.
- c. Provide adequate buffers (up to 4.0 miles from leks) between placement of new tall structures and nesting and brood-rearing habitat to minimize or eliminate the subsidy of predators. Bury power lines, when economically feasible.
- d. Remove abandoned tall structures, such as fence posts, power line poles, and cell towers that can serve as perching structures for aerial predators.
- e. Apply habitat management practices (e.g., grazing management and vegetation treatments) that improve sage grouse nesting habitat thus decreasing the effectiveness of predators.
- f. Develop strategies for specific, selective, and if needed, assertive short-term predator control based on biological assessments appropriate to local conditions, especially in instances where a sage grouse population has declined from exotic conditions, such as West Nile Virus.
- g. Request the State use localized predator control when permanent anthropogenic features are documented to contribute to unnatural numbers of predators that are reducing local sage grouse populations, and where the impacts from these permanent features will not be eliminated or minimized enough to stabilize the local sage grouse population.
- h. Research and monitor the effects of predator control to determine causal connections with sage grouse survival; modify control strategies accordingly.
- i. Encourage local government to help with small mammal predator control during sage grouse breeding, nesting, and brood-rearing season.

Attachment C

RECOMMENDATIONS FOR WILDFIRE PREVENTION, RESPONSE, AND REHABILITATION

Wildfire temporarily or permanently eradicates sagebrush habitat. Fire, both lightning-caused and human-caused, is a primary risk to sage grouse, not only by deteriorating and often eliminating habitat, but also by increasing future fire frequencies through the promotion of fire-prone vegetation, especially invasive grasses. The replacement of native perennial bunchgrass communities by invasive annuals is a primary contributing factor to increasing fire frequencies in the sagebrush ecosystem. The following recommendations are designed to reduce the potential for fire in sagebrush systems, suppress fires that do ignite, and (re)establish sagebrush and native species in areas that do burn.

- a. Prevention (Pre-fire):
 1. Broaden DNRC, Volunteer Fire Departments, and all fire-fighting unit awareness by providing maps of sage grouse habitat and copies of these recommendations, including every county fire-fighting office.
 2. Prioritize eradication of cheatgrass and Japanese brome and/or address management practices, acquire funding for appropriate herbicide treatments, and explore biological controls.
 3. During high-risk fire seasons, reduce risk of human caused fires as authorized by statute.
- b. Suppression (Fire -Public and firefighter safety remains the number one priority for all fire management activities):
 1. Prioritize initial attack with the goal of immediate suppression in Core Areas, and secondarily in Connectivity Areas and General Habitat, including use of fire retardants and other appropriate tools.
 2. Improve coordination between state agencies (e.g., DNRC) and Montana Association of Counties on all fire suppression activities.
 3. Request federal partners mirror the initial attack program of DNRC.
 4. Prioritize outreach from DNRC to private operators regarding initial attack in sagebrush areas.
 5. Carefully consider the use of backfires within Core and Connectivity Areas and General Habitat to minimize the potential for escape and further damage to sage grouse and sagebrush habitats (a tactical decision made in the field).

6. Identify and establish defensible fire lines in areas where: effectiveness is high; fire risk is likely; and, negative impacts from these efforts (e.g., fragmentation) are minimized. Avoid use of any vegetative stripping in healthy, unfragmented habitats, unless fire conditions and local ecological conditions so warrant.
- c. Rehabilitation (Post-fire):
 1. Use available tools to prevent (re)establishment of cheatgrass and Japanese brome, as necessary.
 2. Ensure most successful restoration strategies are being implemented that (re)establish native sage grouse habitat; develop handbook of methods for most appropriate restoration strategies.
 3. Identify funding options for restoration implementation.
 4. Use locally available seeds where it is most likely to be effective and in areas of high need.
 5. Prioritize Core Areas over sagebrush areas outside of Core Areas for restoration efforts.
 6. Verify that all seeding in Core Areas is certified by an independent contractor as weed-free and free of cheatgrass and Japanese brome.
 7. Explore establishing a state seed bank, if viability of seeds can be maintained; evaluate use of local seed sources (i.e., seed orchards). Report to MSGOT.
 8. Ensure post-fire monitoring for successful reestablishment of sagebrush communities.

Attachment D

STIPULATIONS FOR USES AND ACTIVITIES

REVIEW PROCESS

Point of Contact: The first point of contact for addressing sage grouse issues in a permit application or other authorization for a use or activity in a Core or Connectivity Area, or General Habitat, should be the Montana Sage Grouse Habitat Conservation Program (Program). Project proponents need to have a thorough description of their project and identify the potential effects on sage grouse prior to submitting an application to the permitting agency (details such as draft project area, habitat maps and any other information will help to expedite the project). Project proponents should contact the Program at least 45-60 days prior to submitting their application. More complex projects will require more time. The Program has a role of consultation, recommendation, and facilitation, and has no authority to either approve or deny the project. The purpose of the initial consultation with the Program is to become familiar with the project proposal and ensure the project proponent understands the sequencing, stipulation, and mitigation provisions, and implementation process.

Maximum Disturbance Process: Uses and activities in Core Areas will be evaluated within the context of maximum allowable disturbance (disturbance percentages, location and number of disturbances) of suitable sage grouse habitat within the area affected by the project. The maximum disturbance allowed will be analyzed via a Density/Disturbance Calculation Tool (DDCT) process, similar to that currently utilized by the State of Wyoming. Unsuitable habitat occurring within the project area will not be included in the disturbance cap calculations. Existing disturbances shall be included.

Process Deviations and Exceptions: Any proposals for deviations from these stipulations, undefined activities, or exceptions must demonstrate that the proposed activities will not cause declines in sage grouse populations in core areas. Proposals to deviate from standard stipulations or utilize exceptions from standard stipulations will be considered by the Program (with review by MSGOT) and the appropriate land management and permitting agencies, with input from the Department of Fish, Wildlife and Parks, and the United States Fish and Wildlife Service.

Permitting/Authorization: The complete analysis package developed by consultation and review outlined herein will be forwarded to the appropriate reviewing or permitting agency. The Program recommendations will be included, as will other recommendations from project proponents and other appropriate agencies.

Requirements for Gravel Pits: MSGOT shall review the procedural and substantive permitting requirements contained in state law relating to gravel pits, and shall consider the need for further adjustments to these stipulations to accommodate those requirements while still protecting sage grouse, and shall recommend any further adjustments to these stipulations that may be appropriate.

Excepted Activities: A list of existing land uses and landowner activities that are not subject to these stipulations is provided in Attachment F.

CORE AREA STIPULATIONS

Sage grouse Core Areas were delineated as areas of highest conservation priority. These stipulations are designed to maintain existing levels of suitable sage grouse habitat by regulating uses and activities (hereafter activities) in Core Areas to ensure the maintenance of sage grouse abundance and distribution in Montana. The following stipulations apply to all new activities in Core Areas:

1. **Surface Disturbance:** Surface disturbance will be limited to 5% of suitable sage grouse habitat averaged across the area affected by the project. The DDCT process will be used to determine the level of disturbance (and the relevant area). Distribution of disturbance may be considered and approved on a case-by-case basis, with a goal of consolidating disturbance. Unsuitable habitat should be identified in a seasonal and landscape context, on a case-by-case basis, outside the NSO buffer around leks. This will incentivize proponents to locate projects, where technically feasible, in unsuitable habitat to avoid creating additional disturbance acres. Acres of development in unsuitable habitat are not considered disturbance acres. The primary focus should be on protection of suitable habitats and protection from habitat fragmentation. The calculation of total percent disturbance shall include all existing disturbance (including wildfire), authorized but yet to be implemented activities, and proposed activities that are under consideration by the appropriate reviewing or permitting agency.
2. **Surface Occupancy:** Within 0.6 miles of the perimeter of active sage grouse leks there will be no surface occupancy (NSO) for new activities. NSO, as used in these recommendations, means no surface facilities including roads shall be placed within the NSO area. Other activities may be authorized with the application of appropriate seasonal stipulations, provided the resources protected by the NSO are not adversely affected. For example, and absent such adverse effects, underground utilities and geophysical exploration are permissible if conducted in accordance with seasonal stipulations.
3. **Seasonal Use:** As authorized by permitting agency or agencies, activities (production, maintenance, and emergency activity exempted) will be prohibited from March 15 – July 15 outside of the NSO perimeter of an active lek in Core Areas where breeding, nesting, and early brood-rearing habitat is present. Discretionary maintenance and production activity will not occur between the hours of 4:00 - 8:00 am and 7:00 - 10:00 pm between March 15 – July 15. In areas used as winter concentration areas, exploration and development activity will be prohibited December 1 – March 15. Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. Activities in unsuitable habitat also may be approved year round on a case-by-case basis.
4. **Transportation:** Locate main roads used to transport production and/or waste products > 2 miles from the perimeter of active sage grouse leks. Locate other roads used to provide

facility site access and maintenance > 0.6 miles from the perimeter of active sage grouse leks. Construct roads to minimum design standards needed for production activities.

5. **Pipelines:** Bury pipelines and restore disturbed area with native grasses, forbs and shrubs to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage grouse and replace or enhance sage grouse habitat. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Landowners should be consulted on desired plant mix on private lands. The operator is required to control noxious and invasive weed species, including cheatgrass. Co-locate pipelines with roads, transmission lines, and other linear features, when possible.
6. **Overhead Power Lines and Communication Towers:** Power lines and communication towers should be sited to minimize negative impacts on sage grouse or their habitats. When placement is demonstrated to be unavoidable:
 - a. If economically feasible, power lines within 4 miles of active leks should be buried and communication towers should be located a minimum of 4 miles from active leks;
 - b. If not economically feasible, then power lines and communication towers should be consolidated or co-located with existing above ground rights of way, such as roads or power lines, at least 0.6 miles from the perimeter of active leks;
 - c. If co-location is not possible, the power lines and communication towers should be located as far as economically feasible from active leks and outside of the 0.6 mile active lek buffer.

If siting of overhead power lines is necessary within 2.0 miles of important breeding, brood-rearing, and winter habitat, follow the measures recommended by the Avian Power Line Interaction Committee to minimize collision potential and raptor perch sites or bury a portion of the line.

Anti-collision measures should be installed within 0.6 mile of the perimeter of known sage-grouse concentration areas such as leks and winter ranges, where icing conditions are unlikely to occur. If effective perch preventers are identified, they should be installed within 0.6 mile of known concentration areas.

Follow USFWS Best Management Practices for tall structures when erecting new communication towers. Communication towers should be constructed to preclude the need for guy wires; where guy wires are necessary, they should be fitted with anti-collision devices.

Burying existing overhead lines that have been identified as contributing to a decline in sage grouse populations will be considered as a mitigation option.

Electric utilities (including electric cooperatives) and the Avian Power Line Interaction Committee (which includes federal agencies and state wildlife agencies), have developed a set of Best Management Practices (BMPs) to guide construction, operation, and maintenance activities by electric utilities in sage grouse habitats. These BMPs should be applied to electric utility projects as appropriate.

The Program should conduct additional research into the challenges posed to sage grouse by overhead lines and communication towers, and should bring that research to MSGOT for further consideration.

7. **Noise:** New project noise levels, either individual or cumulative, should not exceed 10 dBA (as measured by L₅₀) above baseline noise at the perimeter of an active lek from 6:00 p.m. to 8:00 a.m. during the breeding season (March 1 – July 15). The Program shall review the emerging science on this issue, including the work being conducted regarding this issue in the State of Wyoming, and bring that research to MSGOT to recommend any further adjustments in this stipulation that may be appropriate.
8. **Vegetation Removal:** Vegetation removal will be limited to the minimum disturbance required by the project. All topsoil stripping and vegetation removal in suitable habitat will occur between July 16 and March 14 in areas that are within 4.0 miles of an active lek. Initial disturbance in suitable habitat between March 15 and July 15 may be approved on a case-by-case basis.
9. **Sagebrush Eradication and Treatments:** Sagebrush eradication is considered disturbance and will contribute to the 5% disturbance factor, unless approved by MSGOT. Sagebrush treatments that maintain sagebrush canopy cover at or above 30% total canopy cover within the treated acres will not be considered disturbance. In stands with less than 30% cover, treatment should be designed to maintain or improve sagebrush habitat. Treatments to enhance sagebrush-grassland will be evaluated based upon the existing habitat quality and the functional level post-treatment. Restored sagebrush grassland habitats that provide effective cover and food for sage grouse should be recognized as part of the habitat base. This serves as an incentive for restoring and protecting converted habitats.
10. **Wildfire and Prescribed Burns:** Following wildfire, it is recommended that landowners implement a management plan consistent with the rehabilitation practices in Attachment C, with a goal of returning the area to functional sage-grouse habitat. Burnouts, backfires, and all other public safety measures are appropriate for fighting wildfires. The Program and MSGOT should stay abreast of evolving science regarding post-fire rehabilitation in order to advise landowners. This is specific to wildfire and not intended for other incentive or mitigation situations.

The Program should be consulted in advance for any proposal to conduct prescribed broadcast burns in sagebrush habitat. Prescribed broadcast burns should be prohibited unless it can be demonstrated that they will either result in no loss of habitat or be beneficial to sage-grouse habitat. In reviewing a proposal, the Program should consider

why alternative techniques were not selected, how sage grouse goals and objectives would be met by its use, including a review of the COT Report objectives, and a risk assessment to address how potential threats to sage grouse habitat would be minimized. Prescribed fire could be used to meet specific fuels objectives that would protect sage grouse habitat in Core Areas (e.g., creation of fuel breaks that would disrupt the fuel continuity across the landscape in stands where annual invasive grasses are a minor component in the understory or used as a component with other treatment methods to combat annual grasses and restore native plant communities). Any prescribed broadcast burning in known winter habitat would need to be designed to strategically reduce wildfire risk around and/or in the winter range and designed to protect winter range habitat quality.

11. **Monitoring/Adaptive Response:** Proponents of new projects are expected to coordinate with the Program and the permitting agency to determine which leks need to be monitored and what data should be collected and reported. Generally, monitoring plans should include an evaluation of affected leks as well as reference leks for control purposes. If declines in affected leks (using a three-year running average during any five-year period relative to trends on reference leks) are determined to be caused by the project, the operator will propose adaptive management responses to increase the number of birds. If the operator cannot demonstrate a restoration of bird numbers to baseline levels (established by pre-disturbance surveys, reference surveys and taking into account regional and statewide trends) within three years, operations will cease until such numbers are achieved. In the interim, the operator, permitting agency, and the Program will create additional adaptive management efforts to restore sage grouse population numbers and baseline numbers, as well as restore project operations. Natural occurrences and their effects on sage grouse and sagebrush habitat will be considered in all cases. The MSGOT shall review the work being conducted around this issue by the State of Wyoming and the U.S. Fish and Wildlife Service, and shall recommend any further adjustments to this stipulation that may be appropriate.
12. **Reclamation:** Except for reclamation prescribed for coal mines under MSUMRA/SMCRA and their implementing regulations and permits, reclamation should re-establish native grasses, forbs and shrubs during interim and final reclamation to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage grouse and replace or enhance sage grouse habitat. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Where sagebrush establishment is prescribed, establishment is defined as meeting the standard prescribed in the individual reclamation plan. Landowners should be consulted on desired plant mix on private lands. The operator is required to control noxious and invasive weed species, including cheatgrass.
13. **Conifer Expansion:** For government agencies managing sagebrush in Core Areas, there should be a “no net conifer expansion” policy adopted, with criteria for approve waivers. This policy can be enacted through management plans and their implementation; stipulations in permits, leases, and licenses; and similar mechanisms. Conifer removal

should be done manually, unless other methods can be shown to remove conifers without significantly impacting sagebrush. Where conifer encroachment is an issue near leks, land managers should ensure that all conifers are removed within at least 0.6 miles of leks.

14. **Rangelands:** Rangelands on State Trust Lands will be managed in accordance with criteria to be developed by the Department of Natural Resources and Conservation, consistent with the recommendations in Attachment G, and taking into consideration the existing management practices of the lessee on surrounding non-state lands.
15. **Existing Activities:** While existing land uses and activities are typically not subject to the Conservation Strategy (Page 4, Paragraph No. 20), existing operations may not initiate activities resulting in new surface occupancy within 0.6 miles of an active sage grouse lek. Any existing disturbance will be counted toward the calculated disturbance cap for a new proposed activity. The level of disturbance for existing activity may exceed 5%.

INDUSTRY-SPECIFIC STIPULATIONS within Core Areas

The following industry-specific stipulations are applicable in addition to the general stipulations, and in the event of conflict, these specific stipulations control.

1. **Oil and Gas:** Well pad densities are not to exceed an average of 1 per square mile (640 acres), and suitable habitat disturbed not to exceed 5% of suitable habitat within the DDCT. As an example, the number of well pads within a 2.0 mile radius of the perimeter of an active sage grouse lek should not exceed 11, distributed preferably in a clumped pattern in one general direction from the active lek.
2. **Mining:**
 - a. For development drilling or ore body delineation drilling on tight centers, (approximately 50'x50') the disturbance area will be delineated by the external limits of the development area. For a widely-spaced disturbance pattern (greater than 50' x 50'), the actual disturbance footprint will be considered the disturbance areas.
 - b. Sage grouse monitoring results will be reported in the mine permit annual report, and to the Program. Pre-disturbance surveys will be conducted as required by the appropriate regulatory agency.
 - c. The number of active mining development areas (e.g., operating equipment and significant human activity) are not to exceed an average of one area per square mile (640 acres) within the DDCT. An active mining development area is any single mine site or series of contiguous mine sites that will be mined in a continuous, cast-back fashion.

- d. Surface disturbance and surface occupancy stipulations will be waived when implementing underground mining practices that are necessary to protect the health, welfare, and safety of miners, mine employees, contractors and the general public. The mining practices include but are not limited to bore holes or shafts necessary to: 1) provide adequate oxygen to an underground mine; 2) supply inert gases or other substances to prevent, treat, or suppress combustion or mine fires; 3) inject mine roof stabilizing substances; and 4) remove methane from mining areas. Any surface disturbance or surface occupancy necessary to access the sites to implement these mining practices will also be exempt from any stipulation.
- e. Mining permits will include requirements for mitigation, including, where appropriate, off-site mitigation that enhances or promotes sage grouse genetic diversity, critical habitat, connectivity, and population viability.

3. Coal Mining:

- a. Coal mining operations will be allowed to continue under the terms and conditions included in permits issued by the Montana Department of Environmental Quality under the authority of the Montana Strip and Underground Mine Reclamation Act (MSUMRA) and the federal Surface Mining Control and Reclamation Act (SMCRA) and imposed by those statutes' implementing state and federal regulations.
- b. Coal mining operations are generally governed by MSUMRA and SMCRA under this Conservation Strategy, and those laws are the mechanisms by which this Conservation Strategy is applied to coal mining operations. This Strategy shall not preclude federal leasing.
- e. New coal mining operations, including expansions into or within Core Areas, requires permitting under MSUMRA/SMCRA.

- 4. **Wind Energy:** Wind energy development is excluded from sage-grouse core areas. An exception may be made if it can be demonstrated by the project proponent using the best available science that the development will not cause a decline in sage grouse populations.

GENERAL HABITAT STIPULATIONS

The health of General Habitat areas is a critical element in the effort to maintain the abundance and distribution of sage grouse in Montana. Development scenarios in General Habitat are more flexible than in Core Areas, but should still be designed and managed to maintain populations, habitats, and essential migration routes, since this Conservation Strategy requires habitat connectivity and movement between populations in Core Areas. In all General Habitat areas, the following stipulations apply:

1. **Surface Occupancy:** Within 0.25 miles of the perimeter of an active sage grouse lek there will be no surface occupancy (NSO).
2. **Surface Disturbance:** There are no specific surface disturbance limits in General Habitat. However, as a standard management practice surface disturbance should be minimized, through measures such as co-locating new and existing structures. Structures and associated infrastructure will be removed and areas reclaimed.
3. **Seasonal Use:** Activities (production and maintenance activity exempted) will be prohibited from March 15 – July 15 within 2.0 miles of an active lek where breeding, nesting, and early brood-rearing habitat is present. Discretionary maintenance and production activity will not occur between the hours of 4:00 - 8:00 am and 7:00 - 10:00 pm between March 15 – July 15. In areas used as winter concentration areas, exploration and development activity will be prohibited December 1 – March 15. Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. This stipulation may be modified or waived for areas of unsuitable habitat. Any deviations from this stipulation for unsuitable habitat will be determined by the applicable permitting agency in coordination with the Program.
4. **Overhead Power Lines and Communication Towers:** New overhead power lines and communication towers will be located outside of General Habitat when possible. Where avoidance is not possible, develop a route or siting location that uses topography, vegetative cover, site distance, etc., to effectively protect identified sage grouse habitat in a cost-efficient manner. If siting of overhead power lines is necessary within 2.0 miles of important breeding, brood-rearing, and winter habitat, follow the most current version of the Avian Power Line Interaction Committee guidelines to minimize collision potential and raptor perch sites or bury a portion of the line. Site new lines in existing corridors wherever practicable.
5. **Noise:** New project noise levels, either individual or cumulative, should not exceed 10 dBA (as measured by L₅₀) above baseline noise at the perimeter of an active lek from 6:00 p.m. to 8:00 a.m. during the breeding season (March 1 – July 15). The Program shall review the emerging science on this issue, including the work being conducted regarding this issue in the State of Wyoming, and bring that research to MSGOT to recommend any further adjustments in this stipulation that may be appropriate.
6. **Vegetation Removal:** Vegetation removal as part of permitted activities will be limited to the minimum disturbance required by the project.
7. **Sagebrush Treatments:** Treatments to enhance sagebrush-grassland will be evaluated based upon the existing habitat quality and the functional level post-treatment. Restored sagebrush grassland habitats that provide effective cover and food for sage grouse should be recognized as part of the habitat base. This serves as an incentive for restoring and protecting converted habitats.

8. **Wildfire and Prescribed Burns:** Suppression of wildfire in General Habitat will be emphasized, recognizing that other local, regional, and national suppression priorities may take precedent. Public and firefighter safety remains the number one priority for all fire management activities. The Program should be consulted in advance for any proposal to conduct prescribed burns in sagebrush habitat. Prescribed burns should be prohibited unless it can be demonstrated that they will either result in no loss of habitat or be beneficial to sage grouse habitat. Burnouts, backfires, and all other public safety measures are appropriate for fighting wildfires.
9. **Reclamation:** Reclamation should re-establish native grasses, forbs, and shrubs during interim and final reclamation. The goal of reclamation is to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage grouse and replace or enhance sage grouse habitat to the degree that environmental conditions allow. Landowners should be consulted on the desired plant mix on private lands. The operator is required to control noxious and invasive plant species, including cheatgrass (*Bromus tectorum*) and Japanese brome (*Bromus japonicus*).
10. **Rangelands:** When possible, rangelands on State Trust Lands should be managed consistent with the recommendations in Attachment G, taking into consideration the existing management practices of the lessee on surrounding non-state lands.
11. **Oil and Gas, Mining:** Encourage development in incremental stages to stagger disturbance and design schedules that include long-term strategies to localize disturbance and recovery within established zones over a staggered time frame. Remove facilities and infrastructure and reclaim when use is completed, including for exploration activities.
12. **Other Mining:**
- a. Sage grouse monitoring results will be reported in the mine permit annual report, and to the Program. Pre-disturbance surveys will be conducted as required by the appropriate regulatory agency.
 - b. Surface occupancy stipulations will be waived when implementing underground mining practices that are necessary to protect the health, welfare, and safety of miners, mine employees, contractors and the general public. The mining practices include but are not limited to bore holes or shafts necessary to: 1) provide adequate oxygen to an underground mine; 2) supply inert gases or other substances to prevent, treat, or suppress combustion or mine fires; 3) inject mine roof stabilizing substances; and 4) remove methane from mining areas. Any surface disturbance or surface occupancy necessary to access the sites to implement these mining practices will also be exempt from any stipulation.
 - c. Mining permits will include requirements for mitigation, including, where appropriate, off-site mitigation that enhances or promotes genetic diversity, critical habitat, connectivity, and population viability.

13. Coal Mining:

- a. Coal mining operations are generally governed by MSUMRA and SMCRA under this Conservation Strategy, and those laws are the mechanisms by which this Conservation Strategy is applied to coal mining operations. This Strategy should not preclude federal leasing.
- b. Conservation measures will be developed for coal mining operations on a case-by-case basis via the terms and conditions included in permits issued by MDEQ under the authority of the Montana Strip and Underground Mine Reclamation Act (MSUMRA) and in compliance with the federal Surface Mining Control and Reclamation Act (SMCRA).

- 14. Wind Energy:** New wind energy developments are not recommended within 4.0 miles of the perimeter of active sage grouse leks, unless it can be demonstrated that the development cannot reasonably meet this setback and will not cause a decline in sage grouse populations. Any development must adhere to the *U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines*, and project developers should work cooperatively with agencies, utilities, and landowners to use topography, vegetative cover, site distance, etc. to effectively protect identified sage grouse habitat.

CONNECTIVITY HABITAT STIPULATIONS

Connectivity habitat includes those areas that provide important linkages among populations of sage grouse, particularly between Core Areas or priority populations in adjacent states and across international borders. Only one sage grouse connectivity area has been identified (Montana-Saskatchewan Connectivity Area in Valley County). Research continues, based on genetics work, to better define the composition of other possible priority Connectivity Areas. MSGOT shall study and recommend the stipulations that are necessary in Connectivity areas to prevent a decline in sage grouse populations. In the interim, the Valley County Connectivity area shall be subject to the stipulations for General Habitat.

Attachment E

Special Management Areas

A petition may be filed with the Program to create a Special Management Area (SMA), where planned land uses or activities associated with valid rights cannot be implemented after evaluation against this Conservation Strategy.

1. Petitions may be submitted to the Program to create a new SMA. The Petition shall be submitted by the project developer (holder of valid rights).
2. The Petition shall contain: a geographic description of the area proposed to be created and a detailed description of the number and location of the sage grouse lek(s) within the area; an evaluation of how the creation of the proposed SMA would impact the Core Area function relative to the sage grouse; and, an explanation of the rationale for the creation of the SMA.
3. The Petitioner shall submit a proposed conservation plan (including plans for off-set mitigation) and shall work in cooperation with both the Program and reviewing/permitting agency to develop an acceptable plan to be submitted to the MSGOT for review. The conservation goal of the plan is to maintain and restore seasonal sage grouse habitats that support viable sage grouse populations. As industrial activities subside, these populations are expected to expand into vacant functional habitats.
4. All applicable Core Area stipulations will apply to the SMA until the conservation plan has been recommended for approval by MSGOT and subsequently approved by the appropriate agency. The conservation plan will follow the mitigation framework developed by MSGOT and shall include a noise abatement stipulation, a strategy for restoration/reclamation within the Core Area (which results in a long-term reduction in surface disturbance), a proposal for off-set mitigation, and a monitoring component using peer-reviewed scientific methods that is designed to monitor sage grouse populations, the impact of development, and restoration efforts on sage grouse populations, and provide feedback if adjustments are needed in the conservation plan to reduce impacts on sage grouse populations.
5. In evaluating whether to recommend approval of the creation of the new SMA, the MSGOT shall consider how the creation of an SMA will impact the habitat and population of sage grouse both within the Core Area and on a statewide basis.
6. MSGOT shall evaluate the need for a cap on the number of sage grouse impacted by SMAs (i.e., the population of sage grouse impacted by all SMAs may not exceed a specific population, measured by the number and size of leks impacted or a similar population metric), and shall make a recommendation in this regard.
7. The MSGOT must develop a process where designated SMAs can be reclassified. This process should be based on metrics measuring the quantity and quality of sage grouse

habitat restored and/or reclaimed, as well as the documented use of that habitat by sage grouse.

MSGOT should recommend such additional requirements and objectives as necessary.

Attachment F

EXEMPT ACTIVITIES

The following existing land uses and landowner activities are exempt from compliance with this strategy:

- a. Existing animal husbandry practices (including branding, docking, herding, trailing, etc.).
- b. Existing farming practices (excluding conversion of sagebrush/native range to cropland agriculture).
- c. Existing grazing operations that meet rangeland health standards or utilize recognized rangeland management practices (for example, allotment management plans, Natural Resource and Conservation Service grazing plans, prescribed grazing plans, etc.).
- d. Construction of agricultural reservoirs and aquatic habitat improvements less than 10 surface acres and drilling of agriculture and residential water wells (including installation of tanks, water windmills, and solar water pumps) more than 0.6 miles from the perimeter of a lek in Core Areas and more than 0.25 miles from a lek in General Habitat or Connectivity Areas. Within 0.6 miles of a lek in Core Areas and within 0.25 miles of a lek in General Habitat or Connectivity Areas, no review is required if construction does not occur March 15 – July 15 and construction does not occur on the lek. All water tanks shall have bird escape ramps.
- e. Agricultural and residential electrical distribution lines more than 0.6 miles from a lek in Core Areas and 0.25 miles from a lek in General Habitat or Connectivity Areas. Within 0.6 miles of a lek in Core Areas and within 0.25 miles of a lek in General Habitat or Connectivity Areas, no review is required if construction does not occur between March 15 – July 15 and construction does not occur on the lek. Raptor perching deterrents shall be installed on all poles within 0.6 or 0.25 miles, respectively, from leks, if they are proven to be effective according to Avian Power Line Interaction Committee guidance. Other management practices, such as vegetation screening and anti-collision measures, should be applied to the extent possible. Routine maintenance of existing power lines conducted between July 16 – March 14 is also an exempt activity.
- f. Pole fences. Wire fences if fitted with visibility markers where high potential for sage grouse collisions has been documented.
- g. Irrigation (excluding the conversion of sagebrush/grassland to new irrigated lands). Tribal lands under existing and future state water compacts.
- h. Spring development if the spring is protected with fencing and enough water remains at the site to provide mesic (wet) vegetation.

- i. Herbicide and pesticide use except for in the control of sagebrush and associated native forbs. Grasshopper/Mormon cricket control following Reduced Agent-Area Treatments (RAATS) protocol.
- j. County road maintenance.
- k. Production and maintenance activities associated with existing oil, gas, communication tower, and power line facilities in compliance with approved authorizations.
- l. Low impact cultural resource surveys.
- m. Emergency response.

Attachment G

RECOMMENDATIONS FOR RANGE AND DISEASE (West Nile) MANAGEMENT

The following recommendations outline voluntary management practices for private lands to maintain or enhance sage grouse populations and habitats. Whenever possible, adherence to these recommendations is encouraged.

Range Management

Livestock grazing is the most widespread type of land use across the sagebrush biome. Although improper livestock management, as determined by local ecological conditions, may have negative impacts on sage grouse seasonal habitats, proper livestock management is a critical tool for providing and maintaining high quality sage grouse habitat. Range management structures and fences necessary for proper grazing management can also be placed or designed to be neutral or beneficial to sage grouse. The following recommendations are intended to support grazing management as a tool for providing quality sage grouse habitat.

- a. Landowners in sage grouse Core and Connectivity Areas and General Habitat are encouraged to adopt the Sage grouse Initiative grazing practices and range management recommendations, including:
 1. Rotating livestock to different pastures, while resting others to establish a diversity of habitat types.
 2. Changing seasons of use within pastures to ensure all plants have the ability to reproduce.
 3. Leaving residual cover (grass from the past season) to increase hiding and nesting cover for sage grouse.
 4. Managing the frequency and intensity of grazing to sustain native grasses, wildflowers, and shrubs.
 5. Managing livestock access to water to ensure healthy livestock and healthy watersheds.
- b. Range management structures should be designed and placed to be neutral or beneficial to sage grouse.
- c. Structures that are currently contributing to negative impacts to either sage grouse or their habitats should be removed or modified to remove the threat.
- d. Mark fences that are in high risk areas for collision with permanent flagging or other suitable device to reduce sage grouse collisions.
- e. Identify and remove unnecessary fences.

- f. Placement of new fences and livestock management facilities (including corrals, loading facilities, water tanks, and windmills) should consider their impact on sage grouse and, to the extent practicable, be placed at least 0.6 miles from active leks.

Disease Management (West Nile virus)

West Nile virus was a new source of mortality for sage grouse, particularly in low and mid-elevation populations, from 2003 – 2007. If there is a West Nile virus outbreak that significantly reduces sage grouse populations, the MSGOT should look at a local site-specific strategy for enhancing the sage grouse population. Elimination of anthropogenic-created habitat for the mosquito vectors of West Nile virus is an important conservation measure for sage grouse, and the following recommendations are intended to further this objective.

- a. Construct ponds to reduce prevalence of mosquitoes that transmit West Nile virus consistent with current BLM guidance (see, A Report on National Sage grouse Conservation Measures, Appendix C: BMPs for how to make a pond that won't produce mosquitoes that transmit West Nile virus).
- b. Manage ponds to reduce prevalence of mosquitoes that transmit West Nile virus.
- c. Other management actions to reduce prevalence of mosquitoes that transmit West Nile virus include erection of bat houses, and managing containers, wood piles, and tire storage facilities that harbor breeding or overwintering mosquitoes and/or larvae.

Attachment H

DEFINITIONS

Suitable Habitat – is within the mapped occupied range of sage grouse, and:

1. Generally has 5% or greater canopy cover of sagebrush, where “sagebrush” includes all species and sub-species of the genus *Artemisia*. This excludes mat-forming sub-shrub species such as *A. frigida* (fringed sagewort) and *A. pedatifida* (birdfoot sage). Sagebrush canopy cover may be less than 5% when complimented by other shrubs suitable for sage grouse cover requirements; or
2. Is moist meadow containing forbs suitable for brood-rearing within 300 yards of suitable sagebrush cover (as defined above). Introduced species such as alfalfa may be very important on these sites where native forbs are not available.

Vegetation monitoring to determine habitat suitability will follow the Habitat Assessment Framework, available at

http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/sage_grouse_planning/documents.Par.23916.File.dat/SG_HABITATASESSMENT0000669.pdf

Unsuitable Habitat – is land within the historic range of sage grouse that did not, does not, nor will not provide sage grouse habitat due to natural ecological conditions such as badlands or canyons.

Surface Disturbance – includes any conversion of formerly suitable habitat to grasslands, croplands, mining, well pads, roads, or other physical disturbance that renders the habitat unusable for sage grouse.

Lek Status -

- Active - Data supports existence of lek. Supporting data defined as 1 year with 2 or more males lekking on site followed by evidence of lekking within 10 years of that observation.
- Inactive - A confirmed active lek with no evidence of lekking for the last 10 years. Requires a minimum of 3 survey years with no evidence of lekking during a 10 year period.
- Extirpated - Habitat changes have caused birds to permanently abandon a lek as determined by the biologists monitoring the lek.
- Unconfirmed - Possible lek. Sage grouse activity documented. Data insufficient to classify as active status.

Valid Right(s) – legal “rights” or interest that are associated with land or mineral estate and that cannot be divested from the estate until that interest expires, is relinquished, or acquired.

Habitat Exchange - an efficient, effective approach to wildlife conservation in America, developed in partnership by private landowners, industry, environmental groups, academics and

government. In a Habitat Exchange, landowners and industry are given financial incentives to conserve wildlife habitat. Landowners benefit by earning revenue from credit sales and developers benefit by meeting conservation objectives or regulatory requirements with less red tape.

1015-2

COMMUNITIZATION AGREEMENTS:

- A. Audrey Federal HSL
- B. Blackjack Hanna 1-36HSU
- C. Cara 1-21H
- D. Dodger 1-36H
- E. Mulholland Federal 1-32H
- F. Osborn 1-34H
- G. Weber 24-30-1H

Land Board Agenda Item
October 19, 2015

1015-2A Communitization Agreement: Audrey Federal HSL Well

Location: Richland County
T24N R55E Section 36
T23N R55E Section 1
T24N R56E Section 31
T23N R56E Section 6

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Continental Resources, Inc. 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 of land within a spacing unit for the distribution of production revenues. The agreement allows the state to receive its proper royalty share of production revenues from the spacing unit and must be approved by DNRC for state lands.

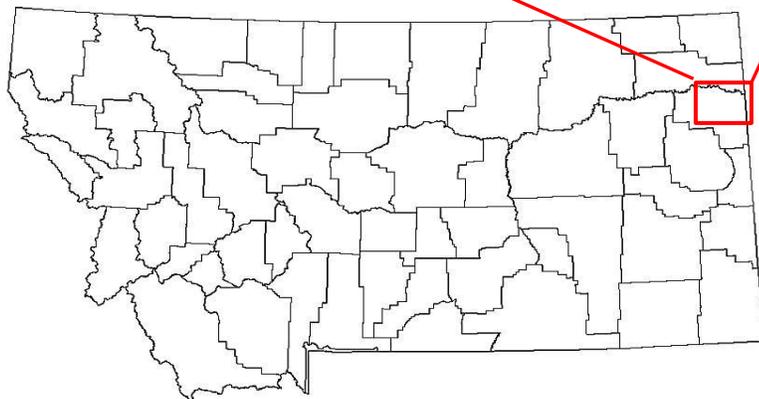
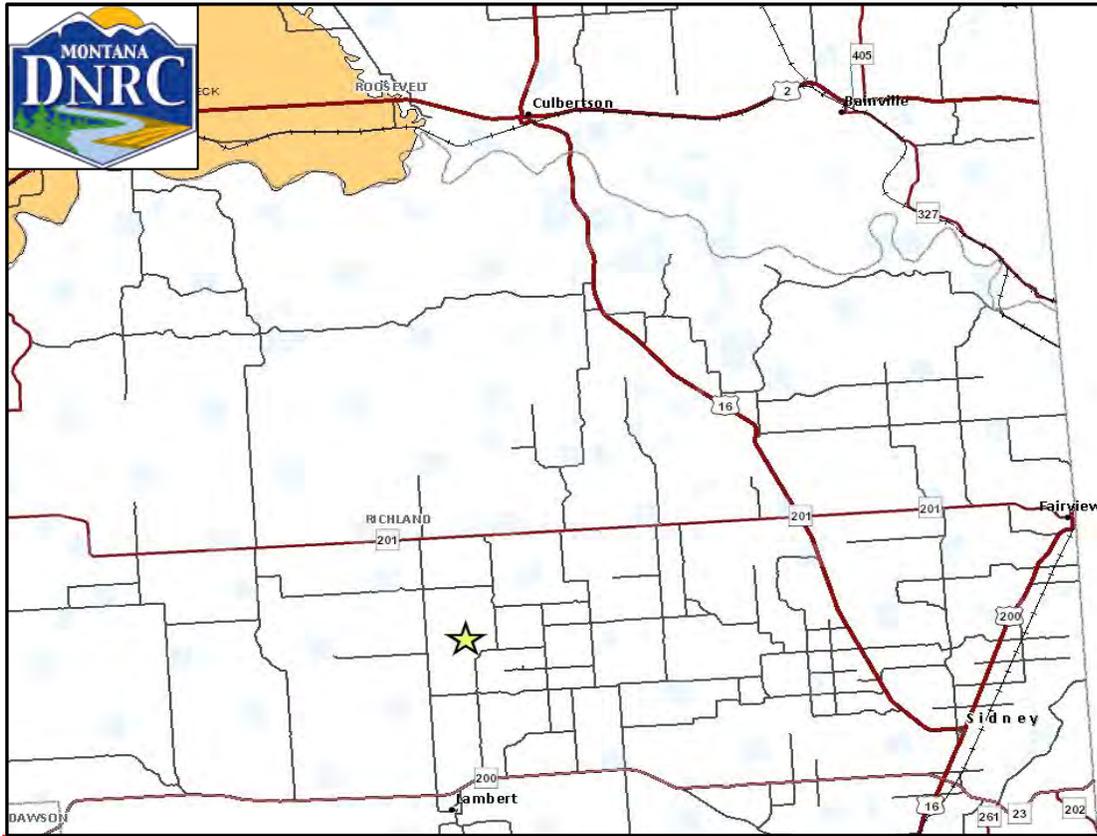
The Audrey Federal HSL well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately 21 miles east of Sidney, and was drilled on fee land in T23N R56E, Section 6. DNRC owns 640 acres of the 2,509.52 mineral acres in the permanent spacing unit that will be communitized. The agreement only encompasses the Audrey Federal HSL well producing from the Bakken/Three Forks Formation in Section 36-T24N R55E, Section 1-T23N R55E, Section 31-T24N R56E, Section 6-T23N R56E.

The DNRC tract comprises 25.5029% of the communitized area. DNRC will consequently receive 3.3154% of all oil production (13% royalty rate x 25.5029% tract participation).

DNRC Recommendation

The director recommends the Land Board approve this communitization agreement.

Vicinity Map Audrey Federal HSL Well

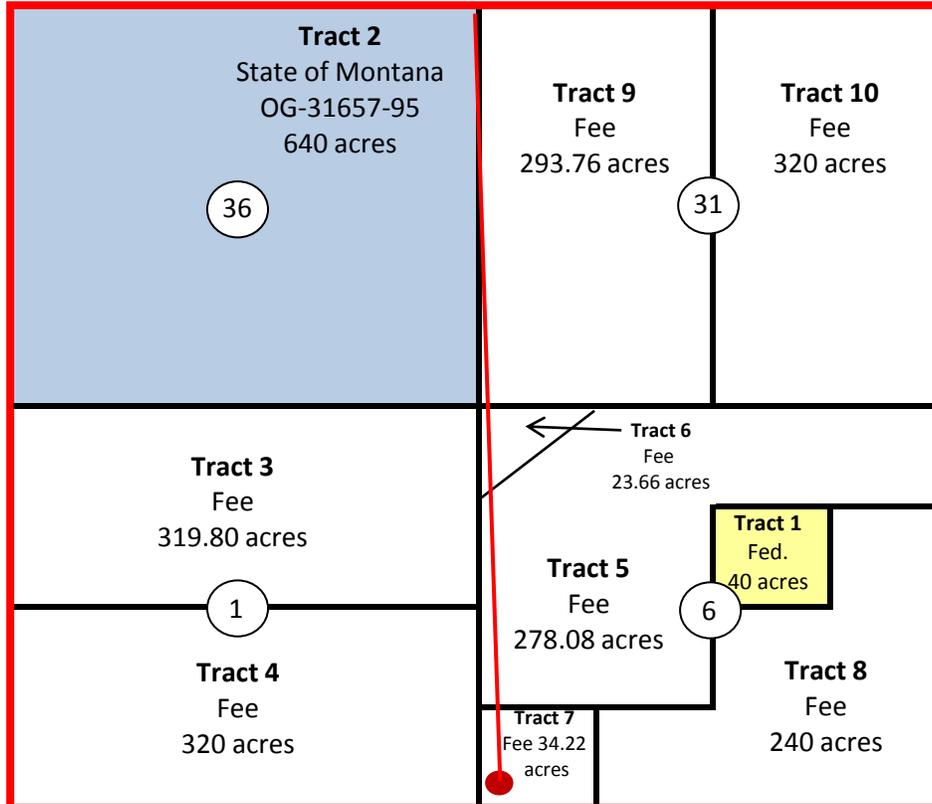


Township 24 North Range 55 East
Section 36

Township 24 North Range 56 East
Section 31

Township 23 North Range 55 East
Section 1

Township 23 North Range 56 East
Section 6



Audrey Federal HSL Well

Tract No.	Type	Acres	Tract Participation	Royalty %	Owner's Interest Decimal
1	Federal	40.00	1.5939%	12.50%	0.001992
2	State of Montana OG-31657-95	640.00	25.5029%	13.00%	0.033154
3	Fee	319.80	12.7435%	17.50%	0.022301
4	Fee	320.00	12.7514%	16.67%	0.021257
5	Fee	278.08	11.0810%	various	
6	Fee	23.66	0.9428%	various	
7	Fee	34.22	1.3636%	15.50%	0.002114
8	Fee	240.00	9.5636%	various	
9	Fee	293.76	11.7058%	15.50%	0.018144
10	Fee	320.00	12.7514%	15.50%	0.019765
Total		2,509.52	100.0000%		

* The Operator of the Communitized Area is Continental Resources, Inc.

Land Board Agenda Item
October 19, 2015

1015-2B Communitization Agreement: Blackjack Hanna 1-36HSU Well

Location: Richland County
T25N R52E Sections 25 & 36
T25N R53E Sections 30 & 31

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Continental Resources, Inc. 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 of land within a spacing unit for the distribution of production revenues. The agreement allows the state to receive its proper royalty share of production revenues from the spacing unit and must be approved by DNRC for state lands.

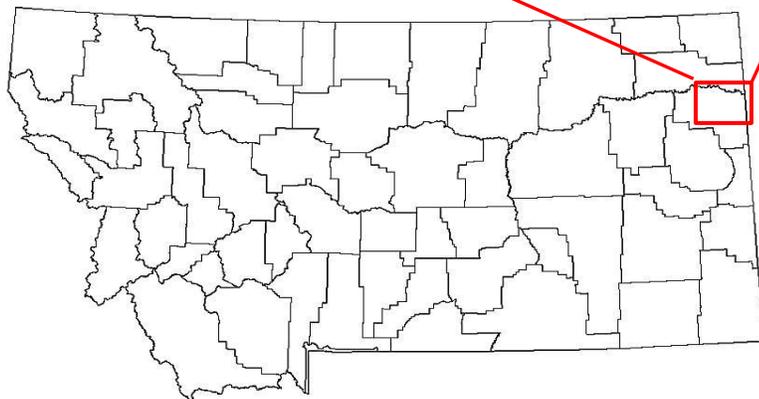
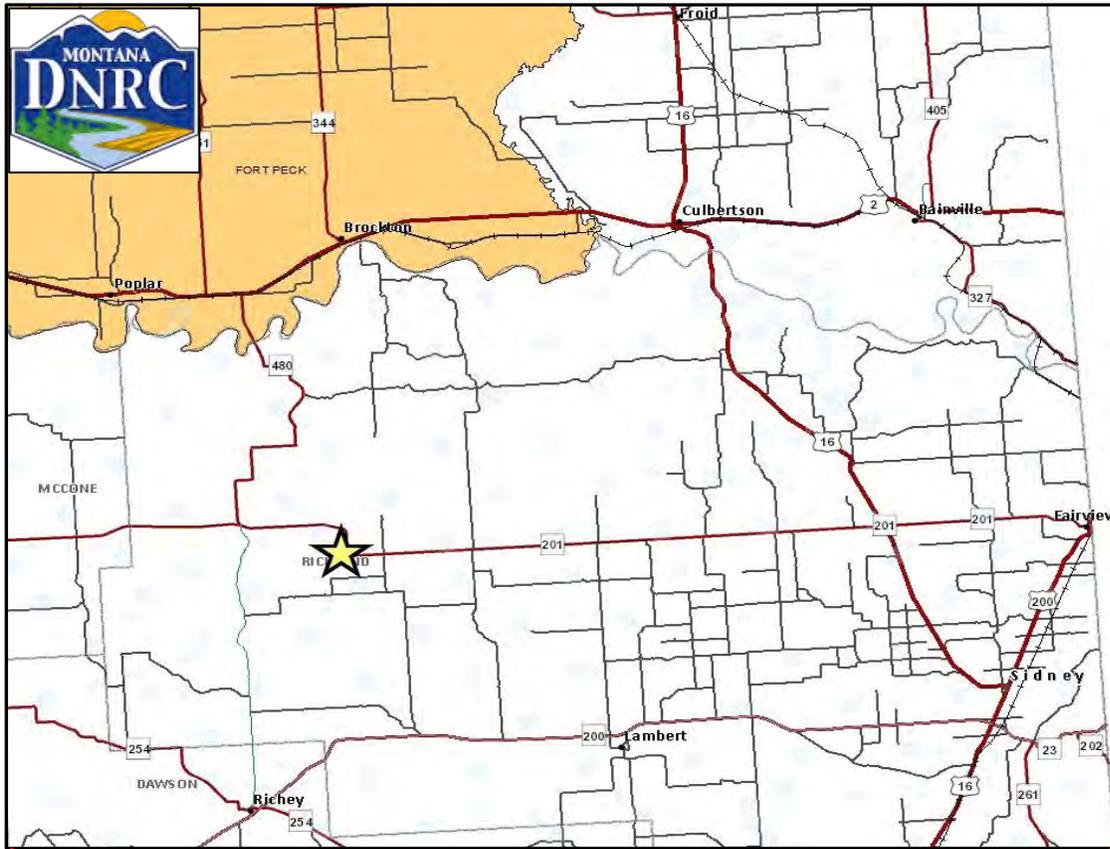
The Blackjack Hanna 1-36HSU well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately 16 miles northeast of Richey, and was drilled into state land in Section 36. DNRC owns 640 acres of the 2,562.60 mineral acres in the permanent spacing unit that will be communitized. The agreement only encompasses the Blackjack Hanna 1-36HSU production from the Bakken/Three Forks Formation in Sections 25 & 36 of T25N R52E and Sections 30 and 31 of T25N R53E and no other wells in this unit.

The DNRC tract comprises 24.974635% of the communitized area. DNRC will consequently receive 3.246703% of all oil production (13% royalty rate x 24.974635% tract participation).

DNRC Recommendation

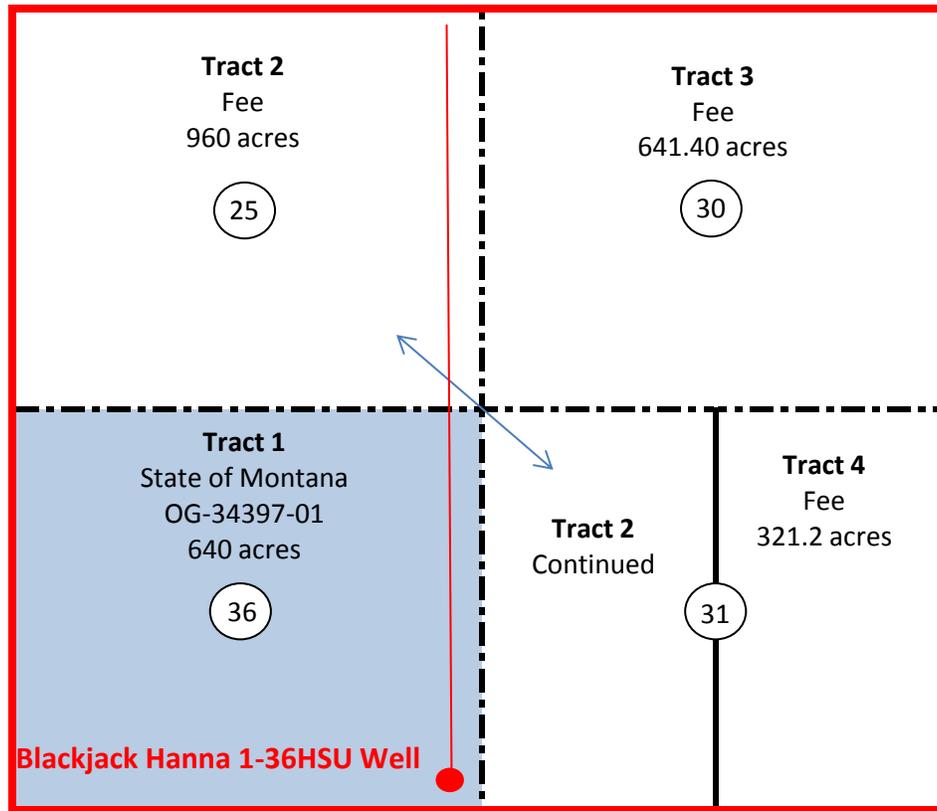
The director recommends the Land Board approve this communitization agreement.

Vicinity Map Blackjack Hanna 1-36HSU Well



Township 25 North Range 52 East
Sections 25 & 36

Township 25 North Range 53 East
Sections 30 & 31



Tract No.	Type	Acres	Tract Participation	Royalty %	Owner's Interest Decimal
1	State of Montana OG-34397-01	640.00	24.974635%	13.00%	0.03246703
2	Fee	960.00	37.461953%	20.00%	0.07492391
3	Fee	641.40	25.029267%	various	
4	Fee	321.20	12.534145%	various	
Total		2,562.60	100.000000%		

* The Operator of the Communitized Area is Continental Resources, Inc.

Land Board Agenda Item
October 19, 2015

1015-2C Communitization Agreement: Cara 1-21H Well

**Location: Richland County
T26N R55E Sections 16 & 21**

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Continental Resources, Inc. 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 of land within a spacing unit for the distribution of production revenues. The agreement allows the state to receive its proper royalty share of production revenues from the spacing unit and must be approved by the DNRC for state lands.

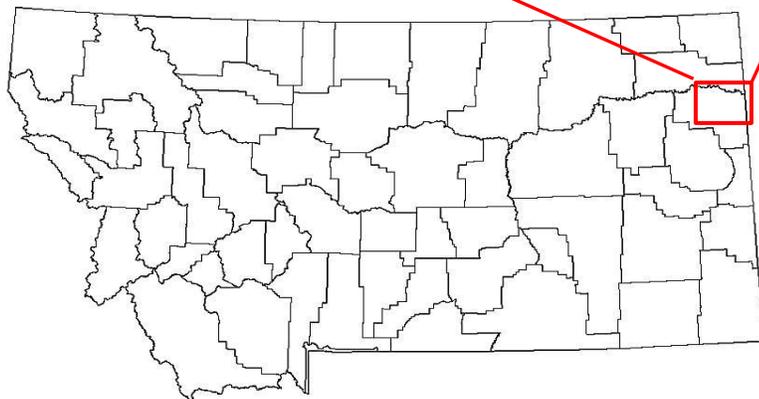
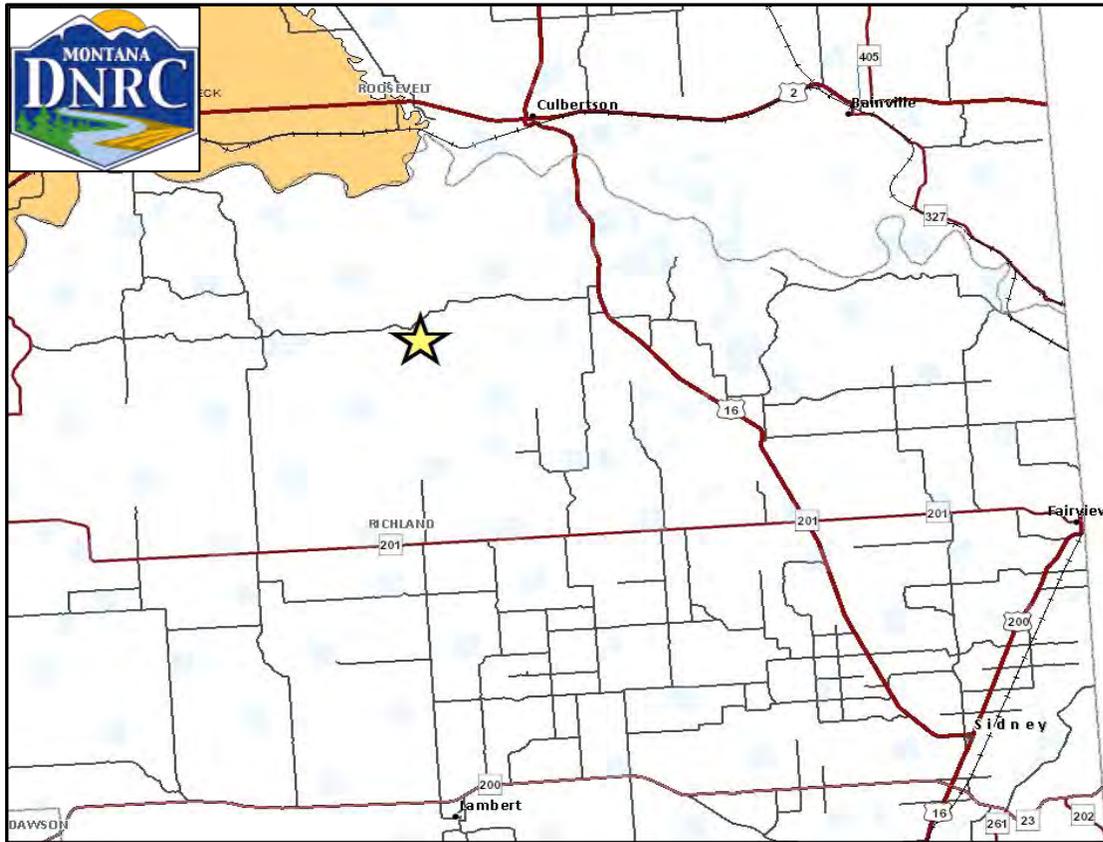
The Cara 1-21H well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately 30 miles northwest of Sidney, and was drilled into private land on Section 21. DNRC owns 640 acres of the 1,280.00 mineral acres in the permanent spacing unit that will be communitized. The agreement encompasses any wells producing from the Bakken/Three Forks Formation in Sections 16 and 21 of T26N R55E.

The DNRC tract comprises 50% of the communitized area. DNRC will consequently receive 8.335% of all oil production (16.67% royalty rate x 50% tract participation).

DNRC Recommendation

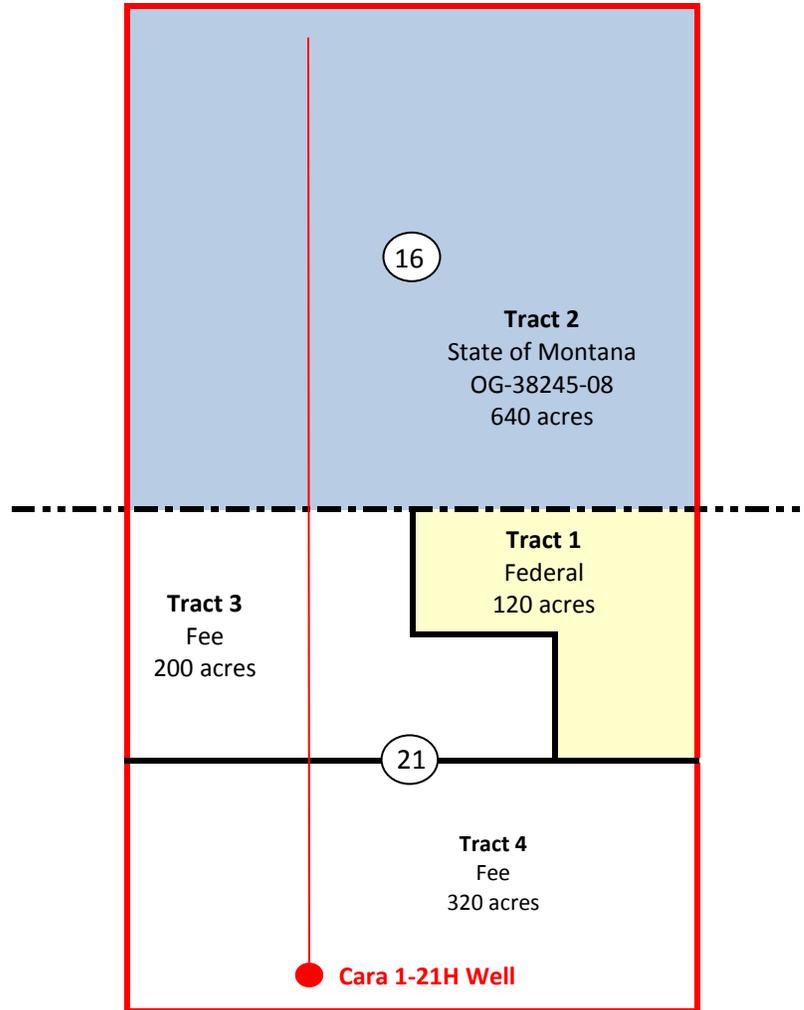
The Director recommends the Land Board approve this communitization agreement.

Vicinity Map Cara 1-21H Well



Township 26 North Range 55 East

Sections 16 & 21



Tract No.	Type	Acres	Tract Participation	Royalty %	Owner's Interest Decimal
1	Federal	120.00	9.375%	12.50%	0.011719
2	State of Montana OG-38245-08	640.00	50.000%	16.67%	0.083350
3	Fee	200.00	15.625%	18.75%	0.029297
4	Fee	320.00	25.000%	18.75%	0.046875
Total		1,280.00	100.000%		

* The Operator of the Communitized Area is Continental Resources, Inc.

Land Board Agenda Item
October 19, 2015

1015-2D Communitization Agreement: Dodger 1-36H Well

**Location: Richland County
T27N R52E Sections 25 & 36**

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Continental Resources, Inc. 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 of land within a spacing unit for the distribution of production revenues. The agreement allows the state to receive its proper royalty share of production revenues from the spacing unit and must be approved by DNRC for state lands.

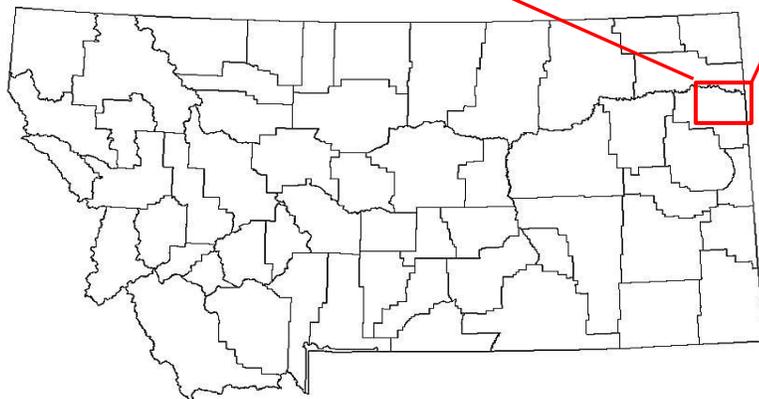
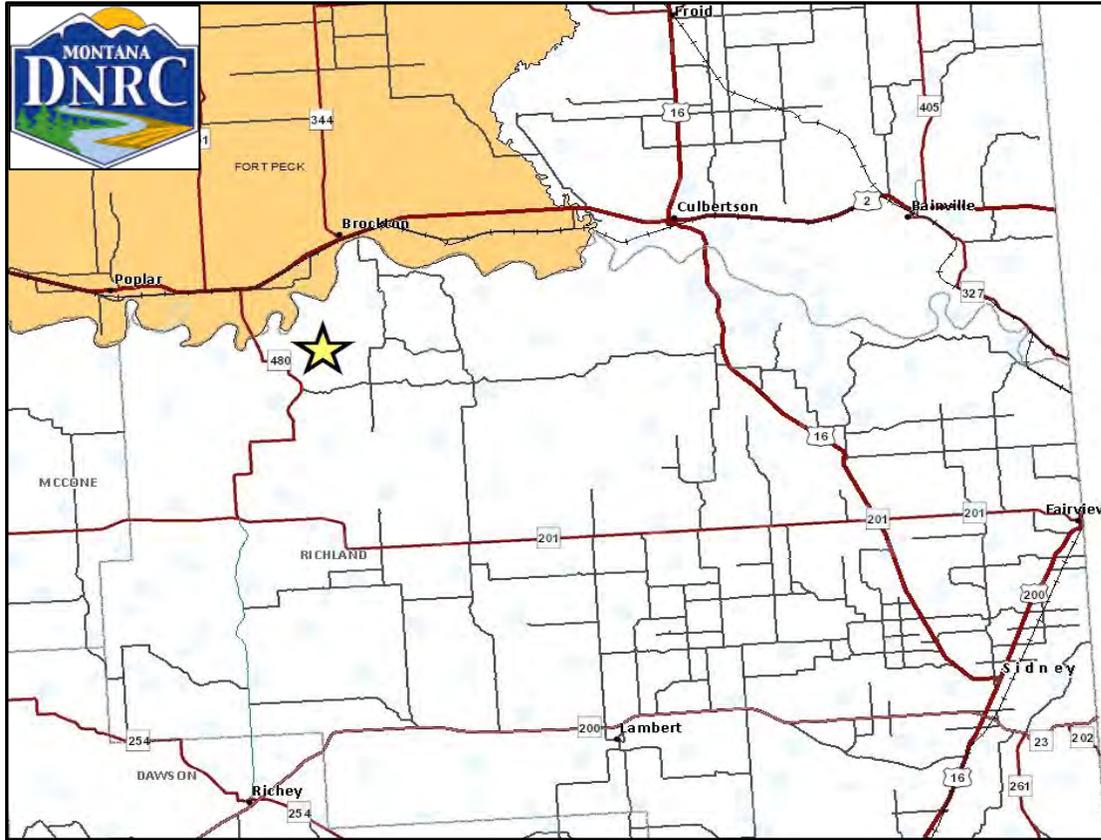
The Dodger 1-36H well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately eight miles south of Brockton, and was drilled into state land in SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36. DNRC owns 640 acres of the 1,280 mineral acres in the permanent spacing unit that will be communitized. The agreement only encompasses the Dodger 1-36H and future wells producing from the Bakken/Three Forks Formation in Sections 25 and 36 of T27N R52E.

The DNRC tract comprises 50% of the communitized area. DNRC will consequently receive 6.5% of all oil production (13% royalty rate x 50% tract participation).

DNRC Recommendation

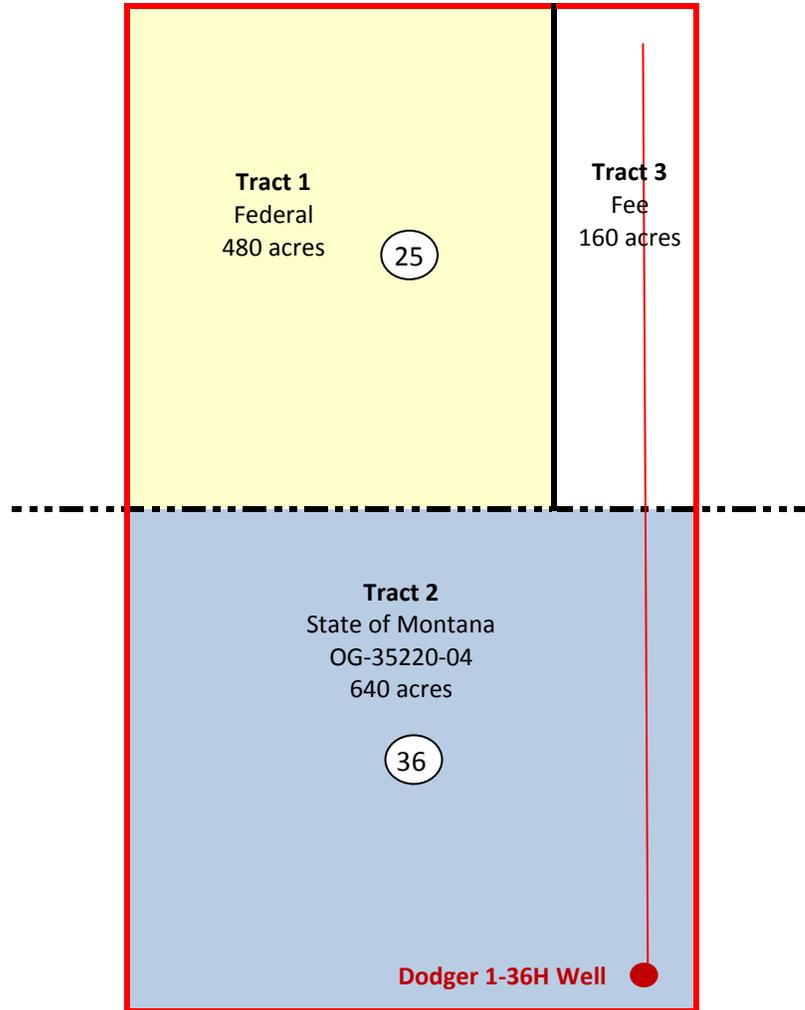
The director recommends the Land Board approve this communitization agreement.

Vicinity Map Dodger 1-36H Well



Township 27 North Range 52 East

Sections 25 & 36



Tract No.	Type	Acres	Tract Participation	Royalty %	Owner's Interest Decimal
1	BLM	480.00	37.500%	12.50%	0.046875
2	State of Montana OG-35220-04	640.00	50.000%	13.00%	0.065000
3	Fee	160.00	12.500%	various	
Total		1,280.00	100.000%		

* The Operator of the Communitized Area is Continental Resources, Inc.

Land Board Agenda Item
October 19, 2015

1015-2E Communitization Agreement: Mulholland Federal 1-32H Well

**Location: Richland County
T27N R56E Sections 29 & 32**

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Continental Resources, Inc. 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 of land within a spacing unit for the distribution of production revenues. The agreement allows the state to receive its proper royalty share of production revenues from the spacing unit and must be approved by DNRC for state lands.

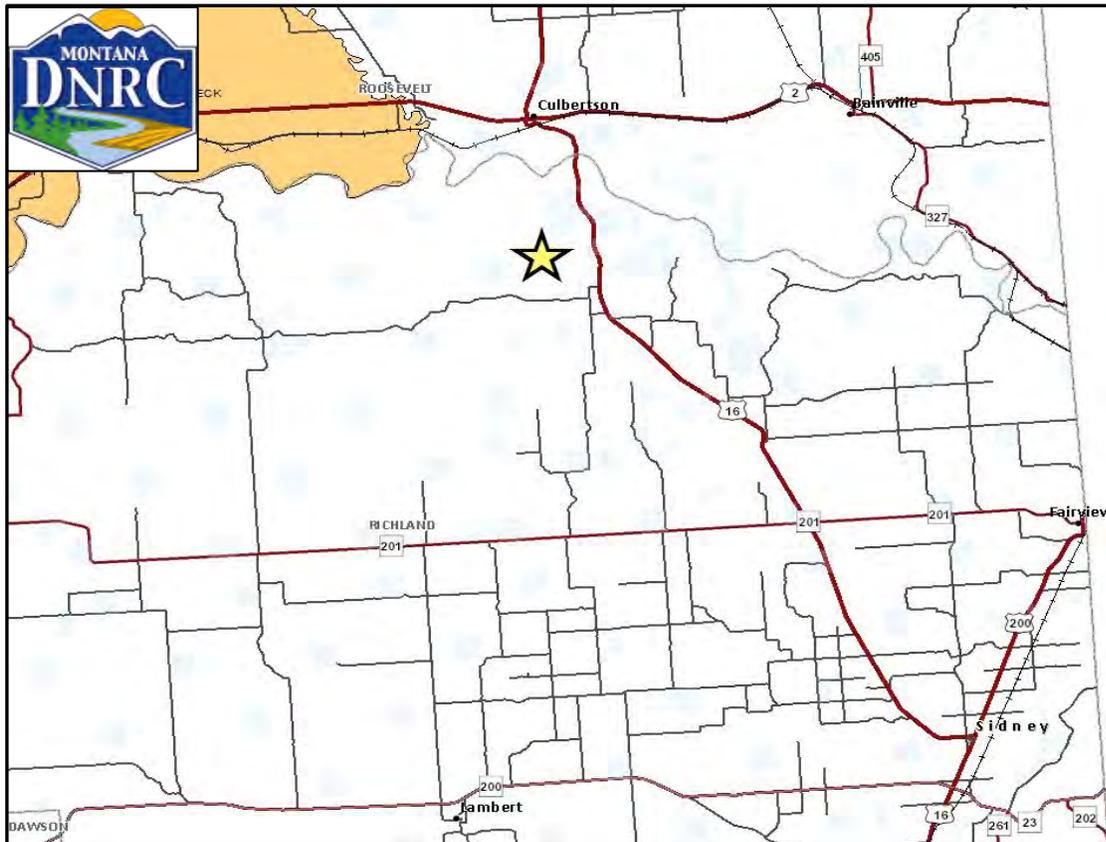
The Mulholland Federal 1-32H well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately six miles south of Culbertson, and was drilled into private land in Section 32. DNRC owns 40 acres of the 1,280 mineral acres in the permanent spacing unit that will be communitized. The agreement encompasses any wells producing from the Bakken/Three Forks Formation in Sections 29 and 32 of T27N R56E.

The DNRC tract comprises 3.125% of the communitized area. DNRC will consequently receive 0.520937% of all oil production (16.67% royalty rate x 3.125% tract participation).

DNRC Recommendation

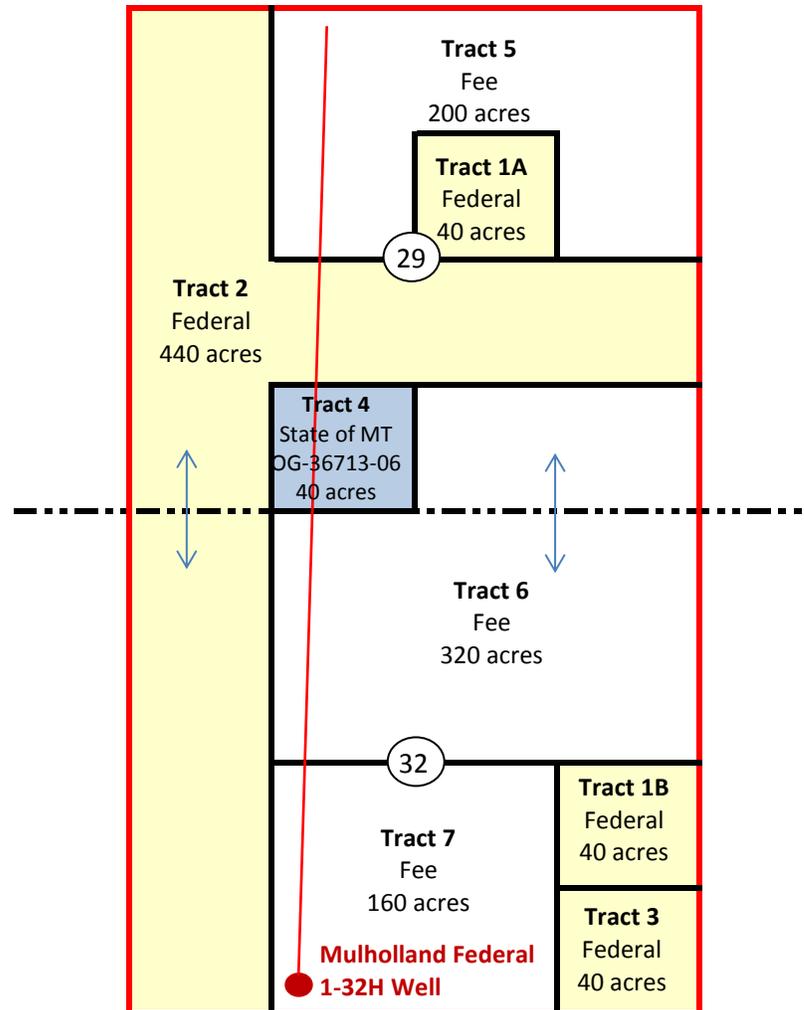
The director recommends the Land Board approve this communitization agreement.

Vicinity Map Mulholland Federal 1-32H Well



Township 27 North Range 56 East

Sections 29 & 32



Tract No.	Type	Acres	Tract Participation	Royalty %	Owner's Interest Decimal
1	BLM	80.00	6.250%	12.50%	0.007813
2	BLM	440.00	34.375%	12.50%	0.042969
3	BLM	40.00	3.125%	12.50%	0.003906
4	State of Montana OG-36713-06	40.00	3.125%	16.67%	0.005209
5	Fee	200.00	15.625%	17.50%	0.027344
6	Fee	320.00	25.000%	various	
7	Fee	160.00	12.500%	20.00%	0.025000
Total		1,280.00	100.000%		

* The Operator of the Communitized Area is Continental Resources, Inc.

Land Board Agenda Item
October 19, 2015

1015-2F Communitization Agreement: Osborn 1-34H Well

**Location: Richland County
T27N R56E Sections 27 & 34**

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Continental Resources, Inc. 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 of land within a spacing unit for the distribution of production revenues. The agreement allows the state to receive its proper royalty share of production revenues from the spacing unit and must be approved by DNRC for state lands.

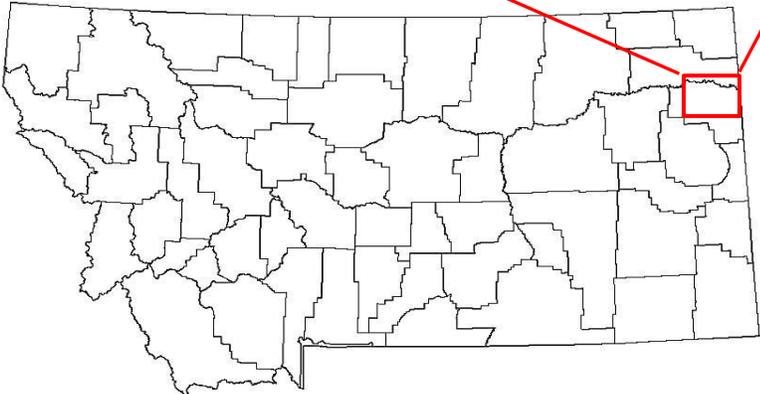
The Osborn 1-34H well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately seven miles south of Culbertson, and was drilled into private land on Tract 4 of Section 34. DNRC owns 200 acres of the 1,280 mineral acres in the permanent spacing unit that will be communitized. The agreement encompasses any wells producing from the Bakken/Three Forks Formation in Sections 27 and 34 of T27N R56E.

The DNRC tract comprises 15.625% of the communitized area. DNRC will consequently receive 2.604688% of all oil production (16.67% royalty rate x 15.625% participation).

DNRC Recommendation

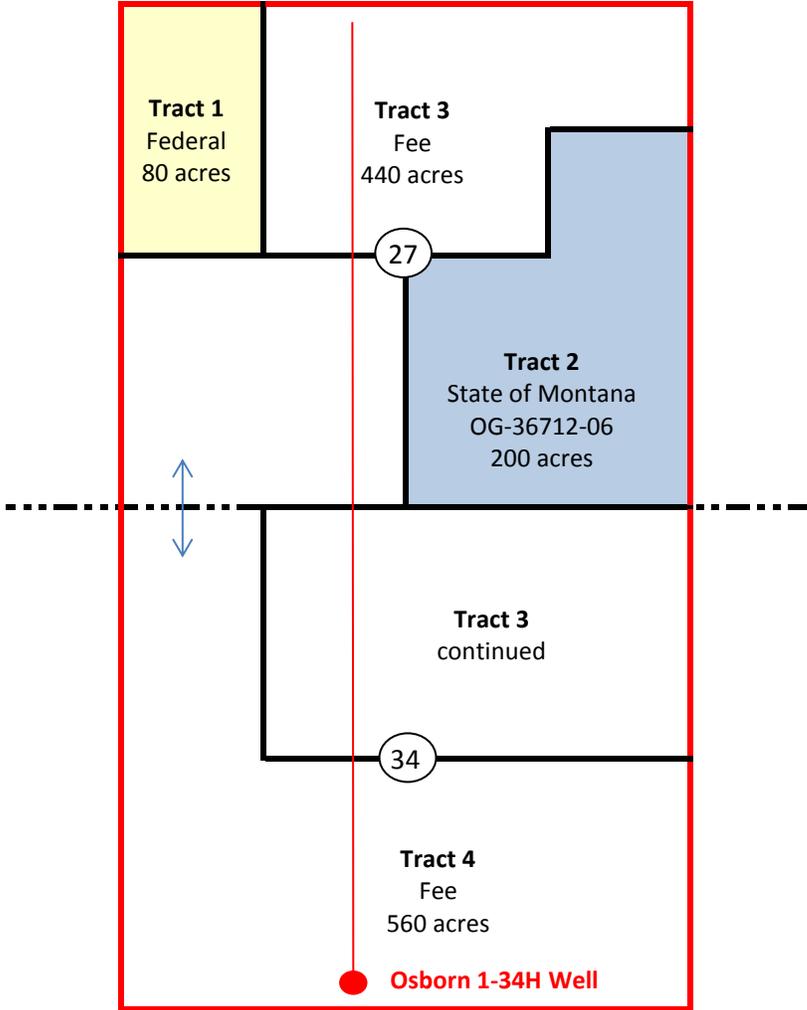
The director recommends the Land Board approve this communitization agreement.

Vicinity Map Osborn 1-34H Well



Township 27 North Range 56 East

Sections 27 & 34



Tract No.	Type	Acres	Tract Participation	Royalty %	Owner's Interest Decimal
1	Federal - BLM	80.00	6.250%	12.50%	0.00781250
2	State of Montana OG-36712-06	200.00	15.625%	16.67%	0.02604688
3	Fee	440.00	34.375%	various	
4	Fee	560.00	43.750%	17.50%	0.07656250
Total		1280.00	100.000%		

* The Operator of the Communitized Area is Continental Resources, Inc.

Land Board Agenda Item
October 19, 2015

1015-2G Communitization Agreement: Weber 24-30-1H Well

**Location: Richland County
T24N R60E Sections 19 & 30**

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Whiting Oil and Gas 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 of land within a spacing unit for the distribution of production revenues. The agreement allows the state to receive its proper royalty share of production revenues from the spacing unit and must be approved by DNRC for state lands.

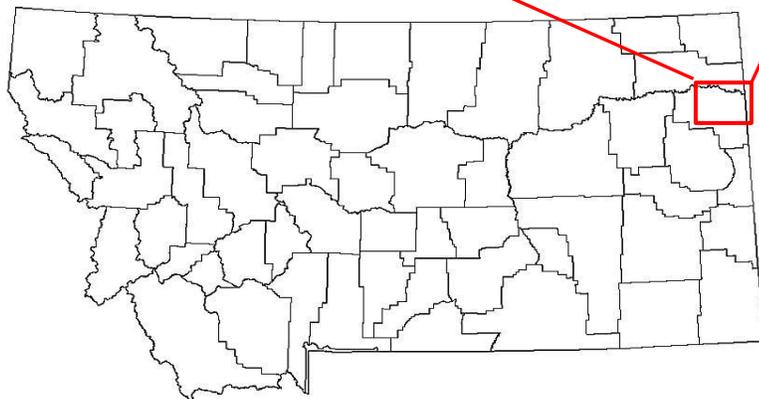
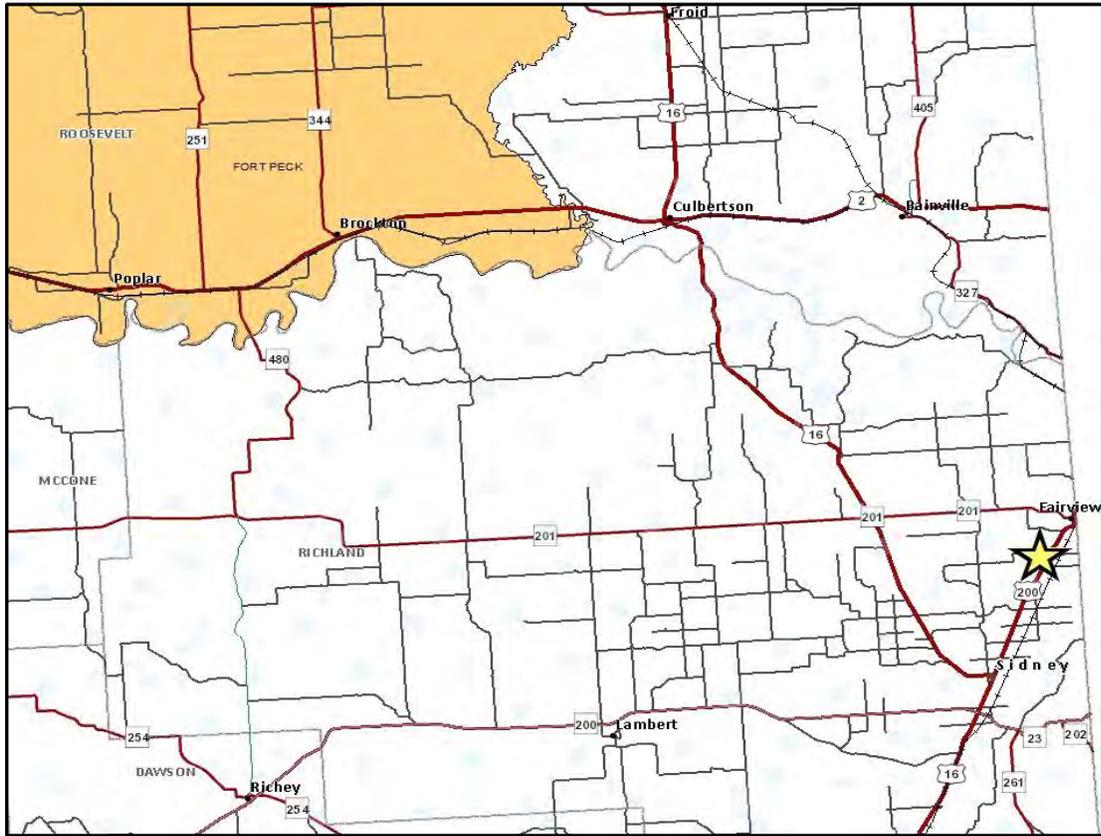
The Weber 24-30-1H well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately three miles south of Fairview, and was drilled into Bureau of Land Management (BLM) land in the SW¼SE¼ of Section 30. DNRC owns an eight-acre island between the low water marks of the Yellowstone River that is within the 1,280 mineral acres of the permanent spacing unit that will be communitized. The agreement encompasses any wells producing from the Bakken/three Forks Formation in Sections 19 and 30 T24N R60E.

The DNRC tract comprises 0.625% of the communitized area. DNRC will consequently receive 0.1042% of all oil production (16.67% royalty rate x 0.625% tract participation).

DNRC Recommendation

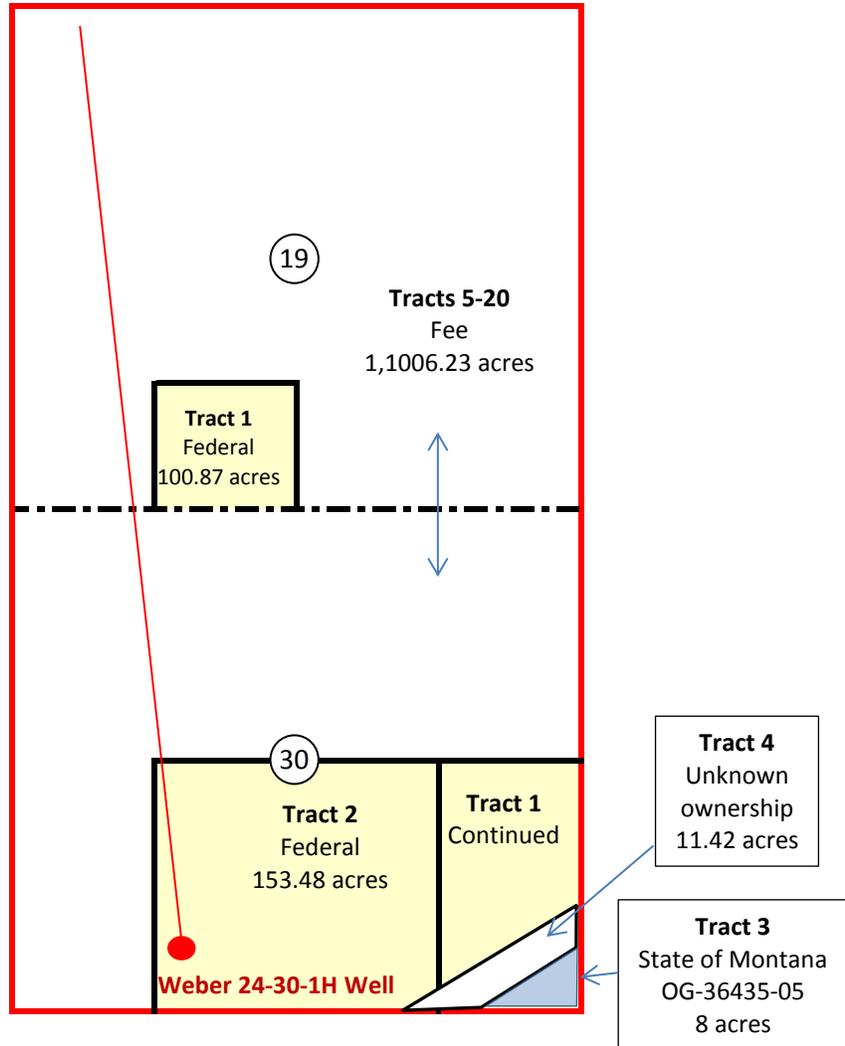
The director recommends the Land Board approve this communitization agreement.

Vicinity Map Weber 24-30-1H Well



Township 24 North Range 60 East

Sections 19 & 30



Tract No.	Type	Acres	Tract Participation	Royalty %	Owner's Interest Decimal
1	BLM	100.87	7.8805%	12.50%	0.009850
2	BLM State of Montana	153.48	11.9906%	12.50%	0.014988
3	OG-36435-05	8.00	0.6250%	16.67%	0.001042
4	Unknown	11.42	0.8922%	unknown	
5-20	Fee	1,006.23	78.6117%	various	
Total		1,280.00	100.0000%		

* The Operator of the Communitized Area is Continental Resources, Inc.

1015-3

LAND BANKING PARCELS:

Set Minimum Bid for Sale

- A. Granite County
- B. Valley County
- C. Yellowstone County

**Land Board Agenda Item
October 19, 2015**

1015-3A Land Banking Parcels: Set Minimum Bid for Sale

Location: Granite County

Trust Benefits: Common Schools

Trust Revenue: \$176,000

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting to set the minimum bid to sell one parcel totaling approximately 160 acres nominated for sale in Granite County. The sale was nominated by the lessee and the parcel is located approximately two miles southwest of Drummond, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
758	160±	SW¼, Section 36, T11N-R13W	Washington Limestone LLC	Common Schools

Sale parcel 758 is used primarily for livestock grazing purposes. The parcel has average productivity for grazing lands statewide.

The parcel is not legally accessible by the public.

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

Economic Analysis:

Short-term –The rate of return on the sale parcel is 0.24%. The parcel would continue to receive this return if it remains in state ownership.

Long-term – The funds from the sale of this parcel would be combined with other sale funds to purchase replacement lands through the department’s Land Banking program. Lands purchased are required to have an equal or greater rate of return than the combined lands that generated the sale funds used for the purchase. To date, the average annual rate of return on acquisitions has been 2.35% on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

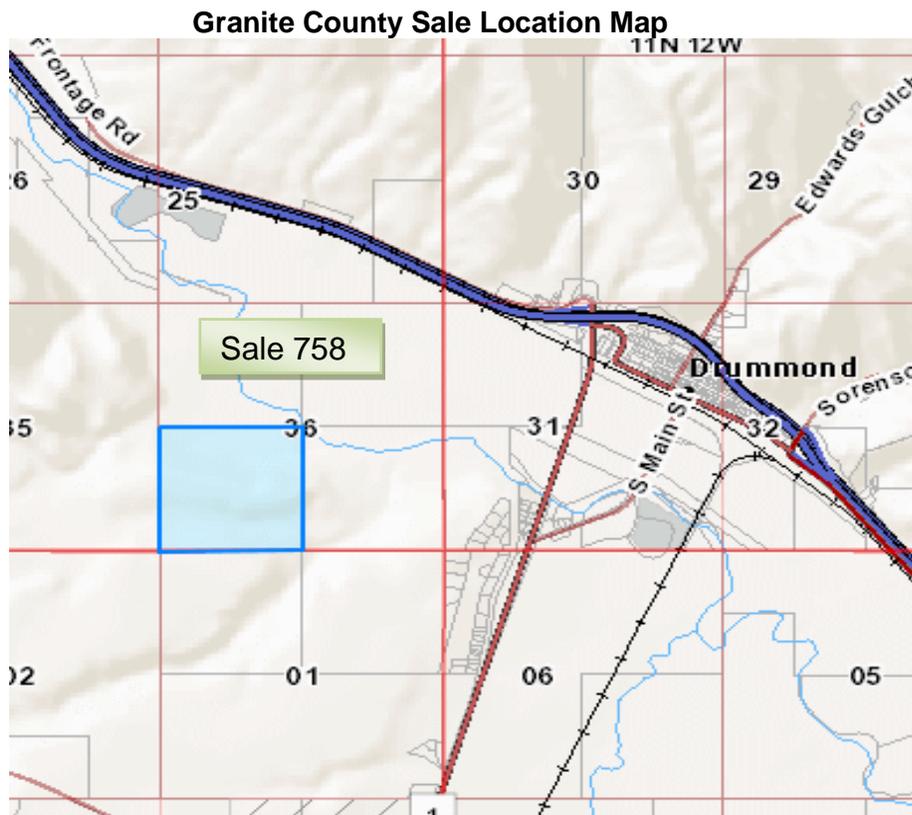
The state parcel proposed for sale was inventoried to Class III standards for cultural and paleontological resources. No *Antiquities*, as defined under the Montana State Historic Preservation Act, were identified. A formal report of findings has been prepared and filed with the Montana State Historic Preservation Office per the requirements of the Montana State Antiquities Act.

Appraised Value of sale parcel:

Sale #	Appraised Value With Access	Appraised Value per acre with access	Appraised Value Without Access	Appraised Value per acre without Access	Recommended Minimum Bid
758	\$176,000	\$1,100	\$105,600	\$660	\$176,000

DNRC Recommendation

The director recommends the Land Board set the minimum bid for the parcel at the appraised value with access shown above.



Sale #758
SW¼, Section 36, T11N-R13W
Washington Limestone LLC



Land Board Agenda Item
October 19, 2015

1015-3B Land Banking Parcels: Set Minimum Bid for Sale

Location: Valley County

Trust Benefits: Common Schools, Eastern College – MSU/Western College – UM

Trust Revenue: \$227,996

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting to set the minimum bid of four parcels totaling approximately 480 acres nominated for sale in Valley County. The sales were nominated by the lessee and the parcels are located approximately 43 miles northeast of Glasgow, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
720	40±	SW¼NW¼, Section 29, T35N-R42E	Kenneth Greenwood	Common Schools
721	120±	NE¼NW¼, S½NW¼, Section 25, T35N-R41E	Kenneth Greenwood	Western/Eastern
722	40±	SW¼SE¼, Section 25, T35N-R41E	Kenneth Greenwood	Western/Eastern
723	280±	S½NE¼, SE¼, NE¼SW¼, Section 30, T35N-R42E	Kenneth Greenwood	Common Schools

Sale parcels 720 - 722 are used primarily for livestock grazing purposes. The parcels have average productivity for grazing lands statewide.

Sale parcel 723 includes approximately 114 acres of agricultural land and 166 acres of grazing land. The parcel has average productivity for agricultural and grazing lands statewide.

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

Economic Analysis:

Short-term – The rate of return on sale parcel 720 is 1.78%; sale 721 is 1.5%; sale 722 is 0.43%; and sale 723 is 3.13%. The parcels would continue to receive these returns if they remain in state ownership.

Long-term – The funds from the sales of these parcels would be combined with other sale funds to purchase replacement lands through the department’s Land Banking program. Lands purchased are required to have an equal or greater rate of return than the combined lands that generated the sale funds used for the purchase. To date, the average annual rate of return on acquisitions has been 2.35% on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

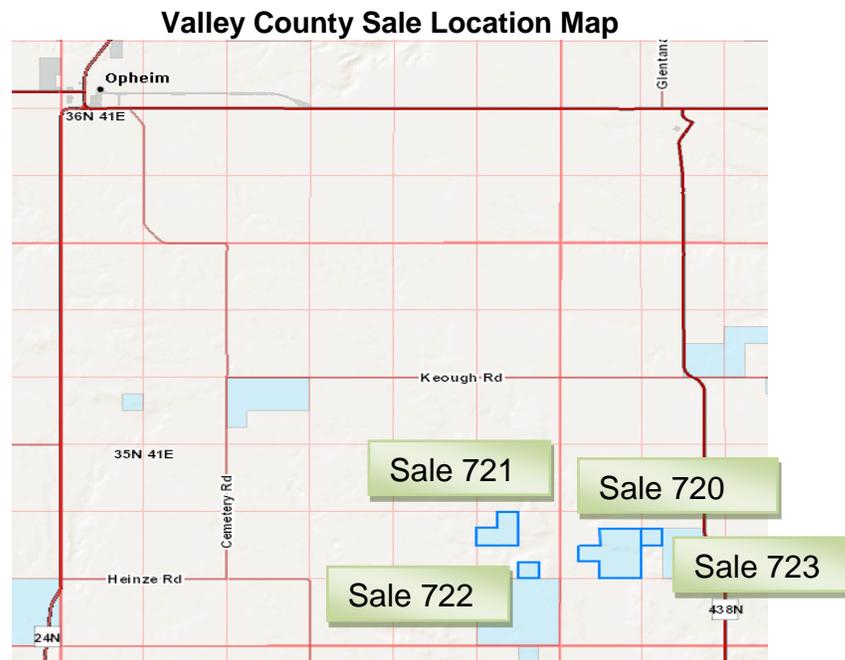
The state parcel proposed for sale was inventoried to Class III standards for cultural and paleontological resources. No *Antiquities*, as defined under the Montana State Historic Preservation Act, were identified. A formal report of findings has been prepared and filed with the Montana State Historic Preservation Office per the requirements of the Montana State Antiquities Act.

Appraised value of sale parcels:

Sale #	Appraised Value With Access	Appraised Value per acre	Recommended Minimum Bid
720	\$25,320	\$633	\$25,320
721	\$55,592	\$463	\$55,592
722	\$14,600	\$365	\$14,600
723	\$132,484	\$473	\$132,484

DNRC Recommendation

The director recommends the Land Board set the minimum bids for the parcels at the appraised values with access shown above.



Sale #720
SW $\frac{1}{4}$ NW $\frac{1}{4}$,
Section 29, T35N-R42E
Kenneth Greenwood



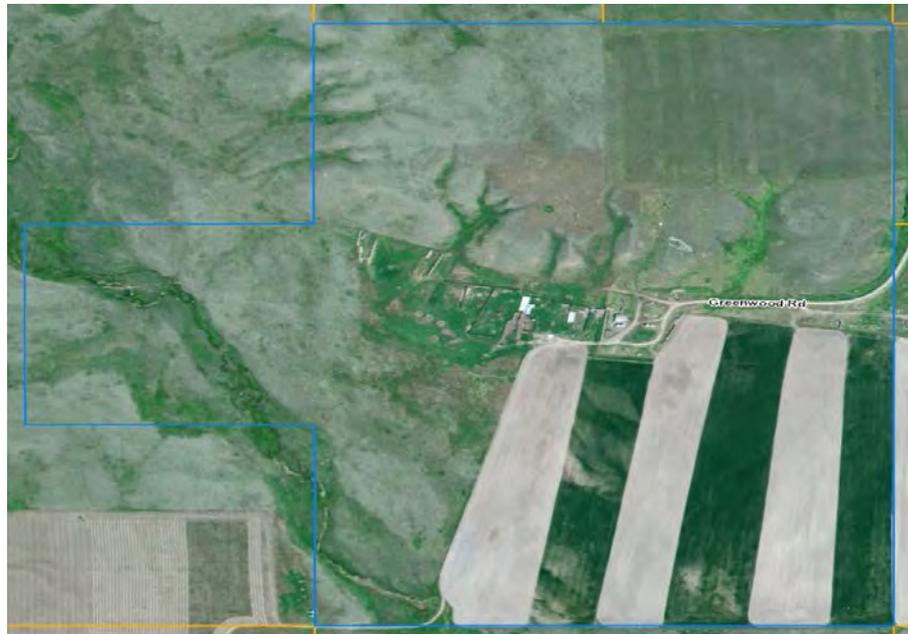
Sale #721
NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
Section 25, T35N-R41E
Kenneth Greenwood



Sale #722
SW $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 25, T35N-R41E
Kenneth Greenwood



Sale #723
S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
Section 30, T35N-R42E
Kenneth Greenwood



Land Board Agenda Item
October 19, 2015

1015-3C Land Banking Parcel: Set Minimum Bid for Sale

Location: Yellowstone County

Trust Benefits: Common Schools

Trust Revenue: N/A

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting to set the minimum bid on Skyview Ridge Subdivision First Filing, residential lots (38.48 acres) which were nominated for sale in Yellowstone County. The sale was nominated by the DNRC Southern Land Office and is located within the city of Billings.

Sale #	# of Acres	Legal	Nominator	Trust
387	38.48	Lots 5-9 Block 1, Blocks 3 through 8, in Skyview Ridge Subdivision, Section 20, T1N-R26E	DNRC – Southern Land Office	Common Schools

The parcel is currently used primarily for livestock grazing purposes. The parcel is surrounded by residential and commercial development and the highest and best use of the land is for residential development as subdivided.

The parcel is legally accessible from Wicks Lane and Governor’s Boulevard.

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

Economic Analysis:

Short term – The average rate of return on the sale parcel is 0.12%. The parcel would continue to receive this return if it remains in state ownership.

Long term – An in-kind payment for the construction of infrastructure for the commercial lots is anticipated and will allow the state to lease the commercial lots. Recent commercial leases on trust lands range from 4.0% to 6.0% annual return to the trust.

Cultural/Paleontological Resources:

The state parcel proposed for sale was inventoried to Class III standards for cultural and paleontological resources. No paleontological resources were identified, but one cultural resource consisting of three low-profile cairns (rock clusters) was tested, formally recorded, evaluated, and determined not to be a heritage property. A formal report of findings has been prepared and filed with the Montana State Historic Preservation Office per the requirements of the Montana State Antiquities Act.

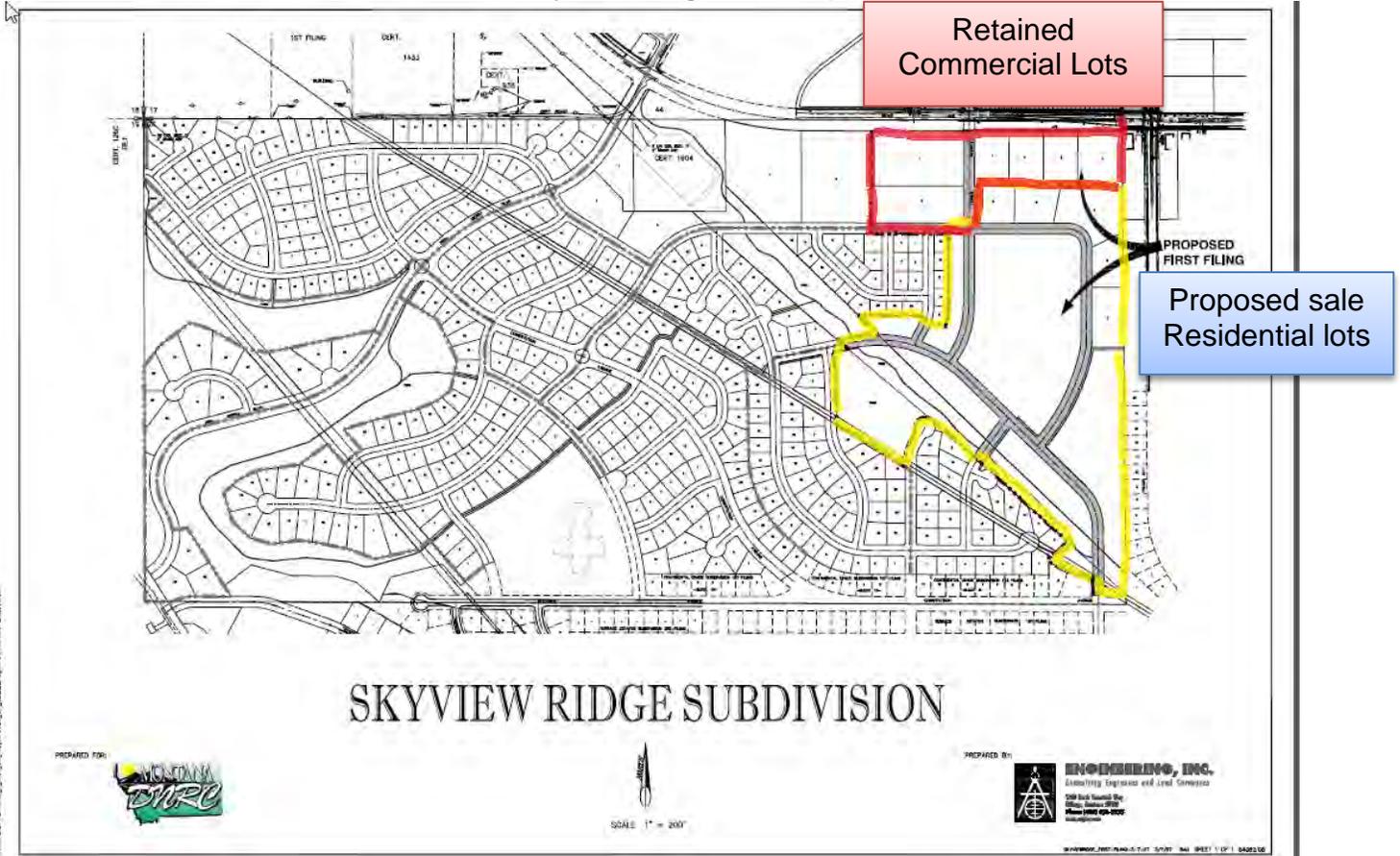
Appraised Value:

Sale #	Appraised Value of Land	Minimum Bid
387	\$1,100,000	\$1,136,254 in-kind payment

DNRC Recommendation

The director recommends the Land Board set the minimum bid for the parcel at the amount shown above as an in-kind payment for the construction of infrastructure for the commercial lots.

Skyview Ridge Sale Map



1015-4

SALE OF CABIN AND HOME SITES:

Set Minimum Bid for Sale – Missoula County

Sales 767, 768, 769

**Land Board Agenda Item
October 19, 2015**

1015-4 Sale of Cabin and Home Sites: Set Minimum Bid for Sale – Sales 767, 768, 797

Location: Missoula County

Trust Benefits: Montana State University

Trust Revenue: \$190,000

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting to set the minimum bid on five cabin sites nominated for sale in Missoula County. Sale 767 was nominated by the lessees. Sales 768 and 769 were nominated by DNRC. These lots are located just south of Seeley Lake.

Sale #	# of Acres	Legal	Nominator	Trust
767	1.67	Lot 11 Morrell Flats, Section 14, T16N-R15W Missoula County	Lila Davis & Guy Clatterbuck	MSU
768	2.73	Lot 9 Morrell Flats, Section 14, T16N-R15W Missoula County	DNRC	MSU
769	1.28	Lot 12 Morrell Flats, Section 14, T16N-R15W Missoula County	DNRC	MSU

Lot 11 is currently leased as cabin sites and produce an average income for residential leases statewide.

The parcels will be sold with the access that is currently provided under the lease agreement and can be conveyed by DNRC.

Economic Analysis:

Short term – The average rate of return on sale parcel 767 is 3.83%. The average rate of return on the sale parcels 768 and 769 are 0%. The sale parcels would continue to receive these returns if they remain in state ownership.

Long term – The funds from the sale of these parcels would be combined with other sale funds to purchase replacement lands through the department’s Land Banking program. Lands purchased are required to have an equal or greater rate of return than the combined lands that generated the sale funds used for the purchase. To date, the average annual rate of return on acquisitions has been 2.35% on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

A Class I level of cultural resource inventory was conducted for the proposed sales. Home sites typically contain numerous structures and the ground surfaces within most home sites have been variously disturbed over the course of many years of occupation and development. These sales will have no effect to state owned heritage properties.

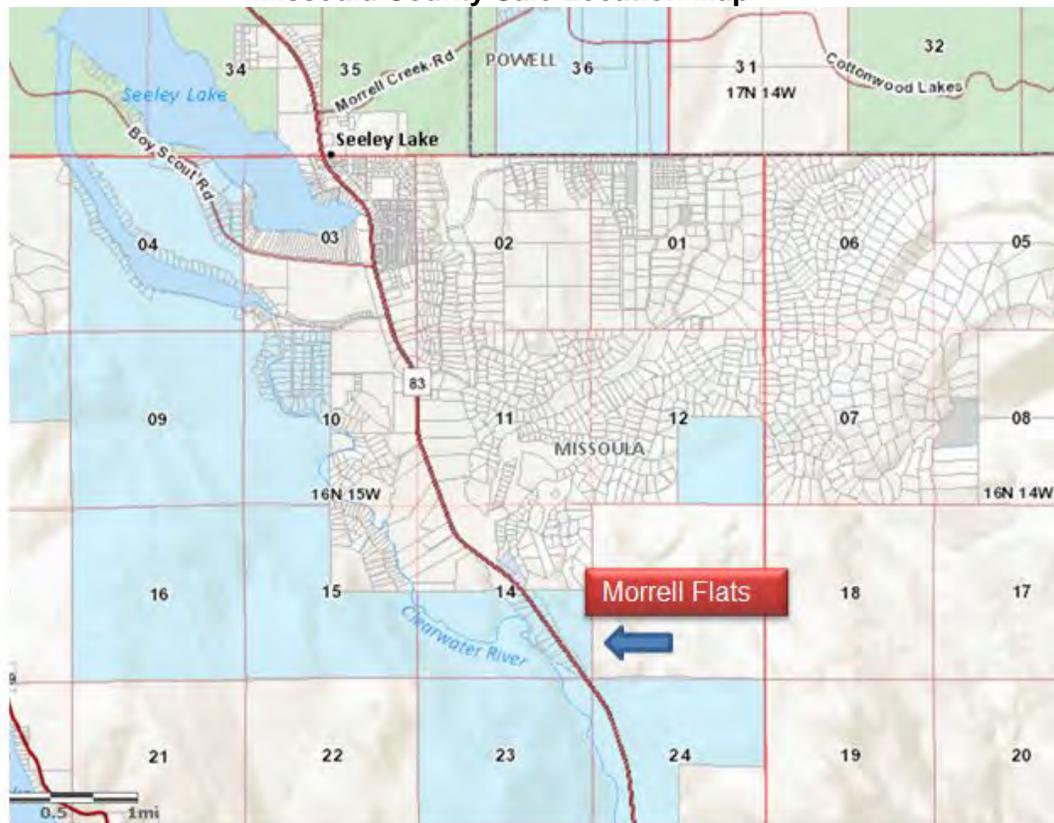
Appraised Values of Land and Improvements:

Sale #	Appraised Value of Land	Appraised Value of Improvements
767	\$50,000	\$103,000
768	\$25,000	n/a
769	\$15,000	n/a

DNRC Recommendation

The director recommends the Land Board set the minimum bid for the cabin site lots at the appraised values and the maximum values of compensation for the improvements shown above.

Missoula County Sale Location Map



Sale # 767, 768 & 769
Lots 9, 11 & 12, Morrell Flats, Section 14, T16N-R15W



1015-5

Proposed Settlement Agreement:

MONTRUST v. State of Montana et al.,

BDV-12-39, 1st Judicial District

Land Board Agenda Item
October 19, 2015

1015-5 Proposed Settlement Agreement: *MONTRUST v. State of Montana et al.*, Cause No. BDV-2012-39, Montana 1st Judicial District Court, Lewis and Clark County

Location: Beaverhead, Big Horn, Blaine, Broadwater, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Flathead, Gallatin, Golden Valley, Hill, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, McCone, Meagher, Mineral, Missoula, Musselshell, Phillips, Pondera, Powder River, Powell, Prairie, Richland, Rosebud, Sanders, Sheridan, Stillwater, Sweet Grass, Toole, Valley, Wheatland, Wibaux, Yellowstone Counties

Trusts Benefited: Common Schools, Eastern College – MSU/Western College – UM, Montana Tech, MSU 2nd, MSU Morrill, Pine Hills School, Public Buildings, School for the Deaf and Blind, Veterans Home

Trust Rights Gained: Resolution of legal claims concerning cabin site rental rates upon State school trust lands.

Item Summary

Historical Background

On April 1, 1998 the Montana First Judicial District Court issued its decision in Montanans for the Responsible Use of the School Trust v. State (Montrust I), Cause No. ADV 97-134 (April 1, 1998) reviewing the constitutionality of a number of statutes affecting the management of State trust lands. In its review of the constitutionality of cabin site rental rates on State lands, the Court held that “the practice of charging a rental rate of 3.5 percent of the appraised value violates [the State’s] duty as trustee of the school trust” and the “. . . practice of issuing lease renewals at a charge that is less than that which reflects the fair market rental rate is unconstitutional.” The District court further issued a permanent injunction in accordance with its decision and Order.

On appeal of Montrust I, the Montana Supreme Court affirmed the District Court on this issue, declaring that:

. . . the trust mandates that the State obtain full market value for cabin site rentals [and w]e hold that the [3.5%] rental policy violates the trust's requirement that full market value be obtained for school trust lands and interests therein”.

Montanans for Responsible Use of Sch. Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, ¶ 32, 296 Mont. 402, 413, 989 P.2d 800, 806.

The Montana Supreme Court in Montrust I also struck down a statutory provision which prohibited new lessees on State school trust lands from occupying a lease until the new lessee paid the former lessee for the value of the leasehold improvements. The Court held that:

In allowing trust lands to idle indefinitely while former and new lessees determine the value of improvements, § 77–6–305, MCA, is inconsistent with the trust's mandate that full market value be obtained for school trust lands. We hold that the specific

requirement in § 77-6-305, MCA, that a new lease will not issue until the new lessee shows that the old lessee has been paid the value of his improvements is unconstitutional on its face.

Id., 1999 MT 263, ¶ 58, 296 Mont. 402, 419, 989 P.2d 800, 810

The Montana Supreme Court in Montrust I also struck down as unconstitutional the provisions of Section 77-1-130, MCA, which directed the Board to issue certain easements on State school trust lands in 1989 at 1972 land values.

In 2000, after the Montrust I decision, the Land Board established a negotiated rulemaking committee to recommend rules to produce full market return from cabin site leases. As a result, amendments to ARM 36.25.102 and 36.25.110 were adopted in January 2001. The amendments increased the cabin site lease rate to 5% of the Department of Revenue appraised value of the lease lot, to be phased in over five years.

By administrative rule in 2010, the Land Board promulgated “Alternative 3B” (codified at ARM 36.25.1003) to address cabin site rental rates. Alternative 3B allowed cabin site lessees on State trust lands to seek adjustment of their cabin site lease rate, by agreeing to a rental computation based on 2003 appraisals as adjusted by a mathematical formula.

A September 16, 2011 Bioeconomics, Inc. report by Dr. John Duffield, PhD. entitled "Montana Trust Land Cabin Site Lease Rate Valuation Analysis", commissioned by the Department, concluded that cabin site lease values reflected “a market lease rate in the range of 5% to 7%”. Id. at p. 10.

Subsequently SB 409 (Chapter 401 of the 2011 Montana Session Laws) was enacted by the Montana Legislature to address cabin site rental rates. When seeking bids for leases of cabin sites on State school trust lands, Section 1 of SB 409 mandated that “the minimum bid must be initially set at 2% of the most recent cabin site appraisal value as determined by the department of revenue”. Sections 1 and 2 of SB 409 allowed existing lessees the option of surrendering their lease without penalty and place it for competitive bidding, and gave lessees the option to re-value their rental rates reflecting competitive bids received in their locality. In addition, Section 3 of SB 409 also prohibited a subsequent cabin site lessee from occupying the leasehold until the sale of improvements to the subsequent lessee was finalized. In response to SB 409, the State Lands Board adopted ARM 36.25.1016 through 36.25.1021 to implement its provisions.

The legal claims in Montrust III

On January 13, 2012, the Plaintiff, Montanans for The Responsible Use of the School Trust (Montrust), brought suit in Montrust v. State of Montana ex rel. Montana Legislature, Board of Land Commissioners, and Department of Natural Resources and Conservation, Cause No. BDV-2012-39, Mont. First Judic. Distr. Ct., in Lewis and Clark County (Montrust III), seeking a judicial declaration that: SB409 enacted by the 2011 Montana Legislature (Chapter 401 of the 2011 Montana Session Laws), Alternative 3B and their implementing administrative rules were unconstitutional because they violated the trust mandate to obtain full market value for the disposition of trust assets and violated various fiduciary duties owed to the trust beneficiaries.

The Montana Board of Regents subsequently intervened as a Plaintiff, seeking a declaratory ruling that both SB409, codified at §§ 77-1-208, 77-1-235, 77-1-236, and 77-2-318, MCA, and Alternative 3B and their implementing administrative rules violated the State’s fiduciary duties to the trust beneficiaries, and sought an accounting of funds alleged to be lost to the trust by the implementation of Alternative 3B.

The Montana State Leaseholders Association intervened in this action as a Defendant and filed a cross-claim against the State of Montana, asserting that the rules implementing SB 409, ARM 36.25.1016 – 1021, did not accurately reflect the scope of rulemaking authority granted by the legislature. The District Court denied the Leaseholders' motion for partial summary judgment on their claims.

On April 5, 2012, the First Judicial District Court in Montrust III issued a preliminary injunction, enjoining from implementing any of the provisions of, or any administrative rules adopted to implement, SB 409, citing a number of apparent constitutional infirmities, including:

- SB 409's requirement that the Land Board offer cabin site leases at 2% of appraised land value appeared to conflict with the trust duty to obtain full market value where the 2011 Duffield Report reported a current market value of 5% or greater, and Montrust I struck down a prior 3.5% cabin site rental as unconstitutional;
- SB 409's prohibition against occupation of the leasehold by a new cabin site lessee until payment to the former lessee for improvements had occurred was contrary to the holding in Montrust I that such delays were unconstitutional; and
- SB 409's option granted to existing cabin site lessees, without penalty, to either abandon their leases, or to modify their lease rates based upon competitive bids received in their locality, allowed those lessees to "time the market" and deprive the trust beneficiaries of the value of the existing lease contracts, which would appear to violate the fiduciary duties of prudence and undivided loyalty to the best financial interests of the trust beneficiaries.

The Proposed Resolution of Montrust III

The Department commissioned a March 3, 2015 Addendum to the Bioeconomics, Inc. report entitled "Montana Trust Land Cabin Site Lease Rate Valuation Analysis". The conclusion from this report was that the ". . . full-market lease rate for these [cabin site lease] properties is at least 4.9%, and no higher than 8.6%". Id. at p. 6.

Negotiations with the Office of the Commissioner of Higher Education, Montrust, and the Montana State Leaseholders Association, resulted in terms and conditions which would resolve their legal claims in Montrust III. Under those terms and conditions, the Board and the Department would:

- concede that SB 409 and its implementing administrative rules are void;
- likewise concede that the rental valuation rule for Alternative 3B (New Rules III and XII) contained in MAR Notice No. 36-22-143 at 1 Mont. Admin. Reg. 40 (Jan. 14, 2010) is void because it is based upon 2003 land values, not current land values.
- agree to a permanent injunction on the implementation of SB 409;
- pay attorney's fees to the Office of Higher Education and Montrust; and
- Upon the acceptance of this Settlement Agreement by a court of final jurisdiction, the State agrees to implement the following:
 - a. The State will offer all vacant cabin site leases that come up for competitive bid at the minimum rate of 6.5% of the appraised land value. Where the State has not received any bid to lease within 60 days in response to its initial offer, the State may then offer that lease at a minimum rate of 5% of the appraised land value.
 - b. If no bid is received after an additional 60 days and the property is in a "neighborhood" (as that term is used in current DNRC practice) where vacancies are

- higher than 30%, DNRC may offer said cabin site leases for competitive bidding at less than 5%. In no case shall the annual rental rate be less than 3.5% of the appraised land value or \$800.00 per year whichever is higher.
- c. These changes to the minimum rental rates and bids for future cabin site leases will take effect immediately upon the acceptance of this Settlement Agreement by a court of final jurisdiction and will not be phased in over time.
 - d. The State may implement these provisions and any judgment resulting therefrom with appropriate rule-making.
 - e. Two years from the acceptance of this Settlement Agreement by a court of final jurisdiction, and every two years thereafter, the State Board of Land Commissioners will review the data from: all competitively-bid Montana cabin site leases; and all non-competitively-bid Montana cabin site leases, complete a formal review by an appropriately qualified, professional economist and consider whether to revise the rental rates and/or procedures to be applied prospectively to rental of cabin site leases. The State Board of Land Commissioners commits to setting the rental rates for cabin site leases so as to capture for the trust beneficiaries the full market value of such leases and maximize the cumulative long-term revenue from cabin sites without creating vacancy rates that are detrimental to the best financial interests of the trust beneficiaries, as required by the State's duties under the Montana Constitution and Enabling Act.

A copy of the proposed Settlement Agreement is included with this item. Montrust, the Board of Regents, and the Montana State Leaseholders Association have previously approved and executed this proposed Settlement Agreement.

DNRC Recommendation

The Director recommends Land Board approval of the proposed Settlement Agreement to resolve the Montrust III litigation concerning cabin site rental rates upon State school trust lands.

“Land Board”) and the Department of Natural Resources and Conservation (“DNRC”).

II. BACKGROUND

B. The State, through the Land Board, administers approximately five million acres of land granted to Montana by the United States in trust for the support of public educational institutions under the Omnibus Enabling Act, 25 Stat. 676 (1889), as amended, 47 Stat. 150 (1932), and Article X, section 4 of the Montana Constitution.

C. The Montana Constitution and the Enabling Act require the State to exercise reasonable competence in administering the trust, to act with undivided loyalty in the interest of the beneficiaries as to matters involving trust property, to carry out the intentions of the grantor of the trust, to make the trust economically productive, and to be accountable to the beneficiary.

D. The State leases certain parcels of school trust lands to private parties for purposes of building and enjoying cabins and homes. For decades, the State leased these cabin sites for nominal rents, ranging from \$5 to \$150 per year. In 1981, recognizing that the nominal rents failed to maximize the return on the trust lands, the Land Board proposed administrative rules to require competitive bidding for the school trust cabin sites.

E. In response to opposition from cabin site lessees, the Montana Legislature enacted Section 77-1-208, MCA, in 1983, which prevented the use of competitive bidding for cabin site leasing and instead created a system of administratively

established rents set at 5% of the appraised value of the lot per year. This statute was later amended in 1989 to impose a rental ceiling of 3.5% of appraised value, as determined by the Department of Revenue during periodic reevaluations. Although this ceiling was removed in 1993, the Land Board continued to lease cabin sites at 3.5% by administrative rule.

F. In 1993, the State commissioned a study of the economic returns from school trust lands, commonly referred to as the Duffield Study. Based on the information available at the time, the study found that a reasonable return from the rental of cabin sites should be between 8% and 12% of appraised value.

G. MonTrust filed a complaint in 1997 challenging the constitutionality of certain statutes concerning the school trust lands, relying in part on the Duffield study. MonTrust is a nonprofit membership citizen's organization dedicated to protecting and advancing the appropriate use of Montana's school trust lands. The Montana Supreme Court concluded, based on the record, that the practice of charging 3.5% of the appraised value violated the State's duty as trustee of the school trust, and that issuing lease renewals at less than the fair market rental rate was unconstitutional, and affirmed the First Judicial District Court's permanent injunction to that effect.

H. After negotiated rulemaking, the Land Board adopted new regulations providing a general lease rate of 5% of the current Department of Revenue appraised property values, excluding improvements. Because of phase-in periods

implemented by the State, however, few lessees ever paid five percent of appraised value.

I. After appraisals of the cabin leases conducted in 2009 indicated a large increase in lease fees, the DNRC adopted Alternative 3B, which allowed appraised values to be phased in over a number of years. Alternative 3B uses 5% of an adjusted appraised value based on average appreciation of state leases and increases annually.

J. The 2011 Montana legislature passed SB409, codified at §§ 77-1-208, 77-2-235, 77-1-236, and 77-2-318, which directed the DNRC to conduct a bidding process for currently vacant lots with an initial minimum bid of 2% of the appraised value of the lot.

K. The State commissioned Bioeconomics, Inc. to prepare an update to the Duffield study in 2011.

L. On January 13, 2012, MonTrust initiated the civil suit underlying this Settlement Agreement, Cause No. BDV-2012-39, against the State of Montana ex rel. Montana Legislature, Land Board and DNRC. Land Board is established by Article X, § 4, of the Montana Constitution, wherein it is granted the authority to direct, control, lease, exchange, and sell school trust lands. DNRC is a state agency created by § 2-15-104, MCA. DNRC is currently enjoined from instituting the new leasing rules promulgated under SB409 pending the resolution of this litigation.

M. Regents moved to intervene and filed a complaint in intervention. Regents is the governing body of the Montana university system. The Court granted Regents' request to intervene on Jan. 24, 2012.

N. MonTrust filed its amended complaint on February 13, 2012.

O. MonTrust and Regents sought declaratory and injunctive relief, alleging that SB409, enacted into law in 2011, now codified at §§ 77-1-208, 77-1-235, 77-1-236, and 77-2-318, MCA, and the implementing administrative rules effective January 1, 2012 as ARM Title 36, Ch. 25, Subchapter 10, violated fiduciary, trust, and constitutional duties of the defendants.

P. MonTrust and Regents alleged that the implementing administrative rules—particularly Alternative 3B—fail to secure for the trust a full market value rate of return.

Q. The Montana Legislature moved to dismiss, asserting legislative immunity. Meanwhile, the Montana State Leaseholders Association (“MSLA”) successfully moved to intervene. MSLA is a non-profit association comprised of owners of cabin site leases. The parties then stipulated to amendment of the caption and clarified that the Montana Legislature was not a party or relator to the action, leaving only the State and MSLA as defendants.

R. The State filed its Answer to MonTrust's Amended Complaint on March 19, 2012, and its Answer to Regent's Complaint in Intervention on February 29, 2012.

S. MSLA filed its cross-complaint against the State on April 13, 2012, requesting declaratory relief from administrative rules ARM 36.25.1016–1021. The State answered MSLA’s cross-complaint on May 1, 2012.

T. MSLA filed a motion for partial summary judgment on the facial constitutionality of § 77-1-235(1), MCA, on January 24, 2013. The motion was opposed by all other parties. MSLA’s motion was denied on April 25, 2013.

U. Bioeconomics created an addendum to its own 2011 study in 2015.

V. By this Settlement Agreement, MonTrust, Regents, MSLA, and the State seek to resolve all of the claims between them.

III. COVENANTS

We, MonTrust, Regents, MSLA, and the State agree as follows:

1. JURISDICTION AND VENUE: The Montana First Judicial District Court has personal jurisdiction over the parties and jurisdiction over the subject matter pursuant to Montana law. Venue is proper in the First Judicial District Court, Lewis & Clark County. The parties will not challenge the terms or validity of this Settlement Agreement or contest this Court’s jurisdiction to enter or enforce this Settlement Agreement by Consent Decree in this or any subsequent proceeding arising from it.

2. PROVISIONS VOID: SB409 and the implementing regulations for SB409 are void and shall not be enforced or implemented. The following provisions of administrative Alternative 3B contained in MAR Notice No. 36-22-143, at 1

Mont. Admin. Reg. 40 (Jan 14, 2010) are void and shall no longer be enforced or implemented: New Rules III and XII.

3. PERMANENT INJUNCTION: Consistent with this Agreement, the parties agree to a permanent injunction of the implementation of SB409, its implementing regulations, and those portions of Alternative 3B described in paragraph 2, above.

4. SUMMARY JUDGMENT: Regents, joined by MonTrust, have moved for summary judgment declaring the provisions described in paragraph 2 unconstitutional. MSLA and the State will not oppose the motion. Applicability and implementation of this Settlement Agreement, based on the implementation provisions in paragraph 5 of this Agreement, is contingent upon receiving an order granting summary judgment and a decree implementing the summary judgment. The parties intend that this Settlement Agreement shall be incorporated into any final judgment in this case.

5. IMPLEMENTATION: Upon the acceptance of this Settlement Agreement by a court of final jurisdiction, the State agrees to implement the following:

- a. Subject to paragraph 5(e) below, the State will offer all vacant cabin site leases that come up for competitive bid at the minimum rate of 6.5% of the appraised land value. Where the State has not received any bid to lease within 60 days in response to its initial offer, the State may then offer that lease at a minimum rate of 5% of the appraised land value. If no bid

Settlement Agreement, Cause No. BDV-2012-39 - page 7

is received after an additional 60 days and the property is in a “neighborhood” (as that term is used in current DNRC practice) where vacancies are higher than 30%, DNRC may offer said cabin site leases for competitive bidding at less than 5%. In no case shall the annual rental rate be less than 3.5% of the appraised land value or \$800.00 per year whichever is higher.

- b. Subject to paragraph 5(e) below, all cabin site leases that are renewed without competitive bid shall be renewed at a rental rate no less than 5% of appraised land value or \$800.00 per year, whichever is greater.
- c. These changes to the minimum rental rates and bids will apply to all cabin site leases issued by DNRC after the acceptance of this Settlement Agreement by a court of final jurisdiction.
- d. The State may implement these provisions and any judgment resulting therefrom with appropriate rule-making.
- e. Two years from the acceptance of this Settlement Agreement by a court of final jurisdiction and every two years thereafter, the Land Board will review the data from all competitively-bid Montana cabin site leases and all non-competitively-bid Montana cabin site leases, complete a formal review by an appropriately qualified, professional economist, and consider whether to revise procedures and/or the rental rates described in paragraph 5(a) and (b) above. Based on the results of the review required in this paragraph, the Land Board commits to setting the rental rates for

Settlement Agreement, Cause No. BDV-2012-39 - page 8

cabin site leases so as capture for the trust beneficiaries the full market value of such leases in order to maximize the cumulative long-term revenue from cabin sites without creating vacancy rates that are detrimental to the best financial interests of the trust beneficiaries, as required by the Montana Constitution and Enabling Act.

6. ATTORNEYS' FEES AND COSTS: The State has placed in escrow, as accrued funds committed by the State, the following funds for the payment of the Parties' reasonable attorney's fees: for MonTrust in the amount of \$ 73,045.58 and for the Regents the amount of \$ 79,813.50. The State shall hold such funds in escrow as accrued funds, and such funds shall be released by the Department to the Plaintiffs upon the approval of this Consent Decree by both the State Board of Land Commissioners and the District Court. If this Consent Decree is disapproved by either the State Board of Land Commissioners or the District Court, the funds shall be returned to the Department and this agreement shall become void.

7. RELEASE AND COMPROMISE OF PAST CLAIMS: MonTrust hereby compromises, settles, and releases the State of Montana from those claims described in paragraphs 34a, 34b, 34c, 35, and 36 of MonTRUST's Amended Complaint in this action with prejudice. All other claims of the parties shall be dismissed without prejudice.

The Undersigned Parties HEREBY CONSENT to the Settlement Agreement set out here above contingent upon further approval by the State Board of Land Commissioners and acceptance by the District Court:

DATED: _____

**THE STATE OF MONTANA, DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION**

BY: _____

Tommy H. Butler
Special Assistant Attorney General
Representing the Defendant, Montana DNRC

DATED: Oct 8, 2015

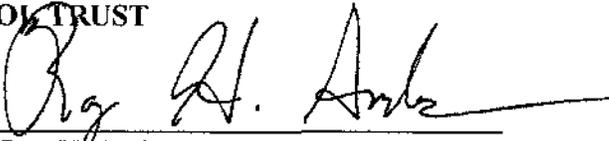
**THE MONTANA BOARD OF REGENTS OF HIGHER
EDUCATION**

BY: _____


James H. Goetz
Goetz, Baldwin, & Geddes, P.C.
Attorneys representing the Intervenor-Plaintiff, Montana
Board of Regents of Higher Education

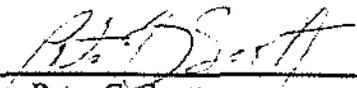
DATED: 10-9-2015

**MONTANANS FOR THE RESPONSIBLE USE OF THE
SCHOOL TRUST**

BY: 
Roy H Andes
Attorney representing the Plaintiff, Montrust

DATED: 10-8-15

MONTANA STATE LEASEHOLDERS ASSOCIATION

BY: 

Peter G. Scott

Attorney representing the Intervenor-Defendants MSLA

1015-6

EASEMENTS:

- A. Easements
- B. Reciprocal Access Agreement:
Cadenhead
- C. Reciprocal Access Agreement: Wood
Trust

**Land Board Agenda Item
October 19, 2015**

1015-6A Easements

Location: Blaine, Chouteau, Flathead, Hill, Madison, Ravalli, Richland, Valley Counties

Trust Benefits: Common Schools, Eastern College – MSU/Western College – UM, Public Buildings, Public Land – Navigable Rivers

**Trust Revenue: Common Schools = \$142,964
Eastern College – MSU/Western College – UM = \$437
Public Buildings = \$1319
Public Land – Navigable Rivers = \$2,280**

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Applicant	Right-of-Way Purpose	Term	Page(s)
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Charter Communications, Inc.	New Buried Telecommunications Utility	Permanent	30-31
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ONEOK Rockies Midstream, LLC	New Natural Gas Pipeline	30-Year	34-39
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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	ONEOK Rockies Midstream, LLC 2700 Lincoln Ave SE Sidney MT 59270
Application No.:	16992
R/W Purpose:	a buried 6" natural gas pipeline
Lessee Agreement:	ok
Acreage:	0.28
Compensation:	\$2569.00
Legal Description:	20-foot strip through SW4SW4, Sec. 36, Twp. 22N, Rge. 59E Richland County
Trust Beneficiary:	Common Schools

Item Summary

ONEOK Rockies Midstream, LLC has made application for one 4" and one 6" natural gas pipelines. The pipelines were previously authorized to be installed through two land use licenses in 2004 and 2006. This application is to convert the licenses to 30-year term easements. ONEOK Rockies Midstream, LLC has agreed to compensation in the amount of \$70/rod which is consistent with other installations in the area.

DNRC Recommendation

The director recommends approval of these 30-year term easements for these natural gas pipelines.

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: ONEOK Rockies Midstream, LLC
2700 Lincoln Ave SE
Sidney MT 59270

Application No.: 16993
R/W Purpose: a buried 4" natural gas pipeline
Lessee Agreement: ok
Acreage: 0.15
Compensation: \$1407.00
Legal Description: 20-foot strip through NE4NW4, Sec. 36, Twp. 23N, Rge. 57E
Richland County
Trust Beneficiary: Common Schools

Item Summary

See page 1

DNRC Recommendation

See page 1

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: ONEOK Rockies Midstream, LLC
2700 Lincoln Ave SE
Sidney MT 59270

Application No.: 16996
R/W Purpose: a buried 4" natural gas pipeline
Lessee Agreement: ok
Acreage: 0.15
Compensation: \$1380.00
Legal Description: 20-foot strip through NW4NE4, Sec. 16, Twp. 24N, Rge. 56E
Richland County
Trust Beneficiary: Common Schools

Item Summary

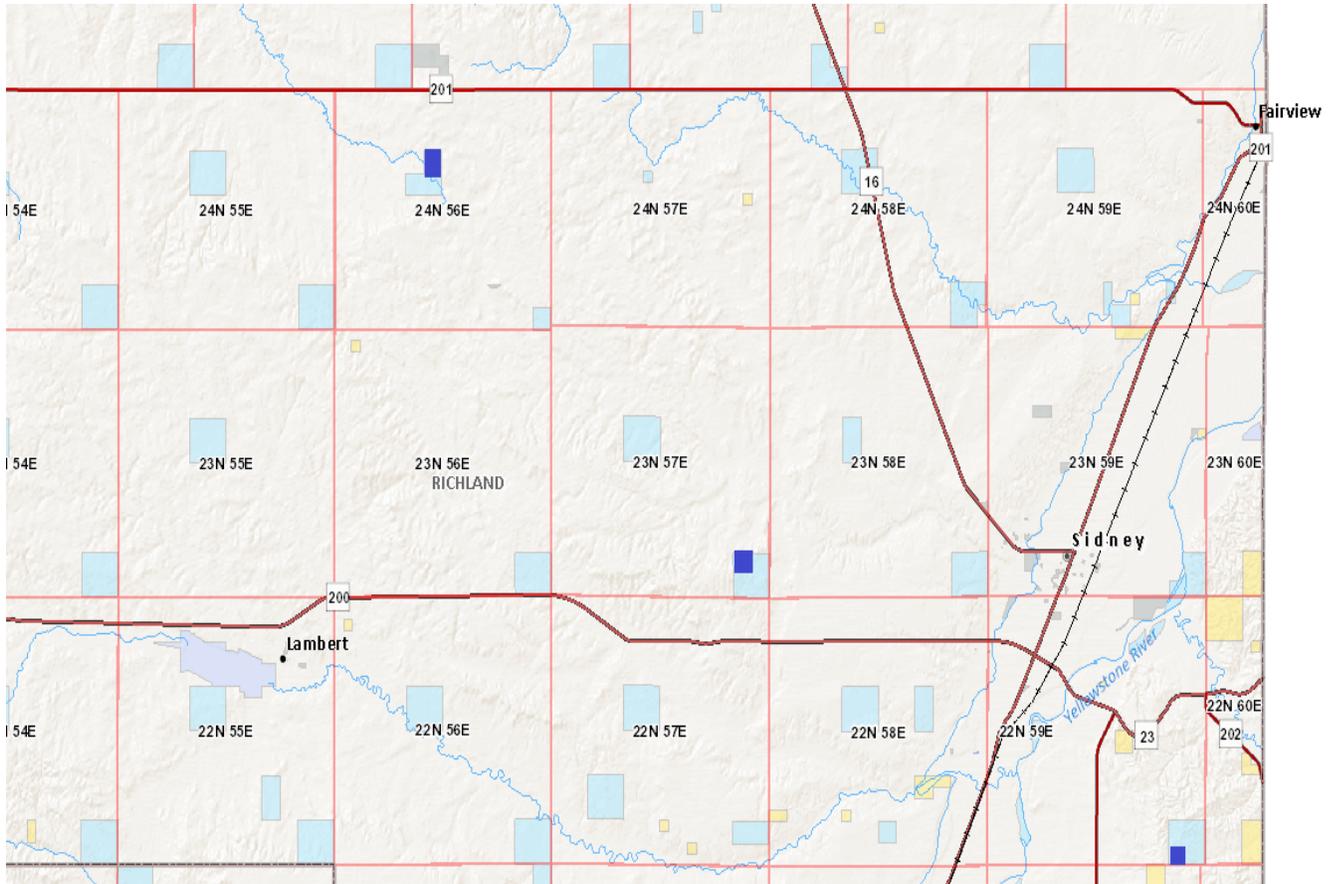
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DNRC Recommendation

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Rights of Way Applications

October 19, 2015



App #s 16992, 16993 & 16996
ONEOK Rockies

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Triangle Telephone Cooperative Assoc., Inc. PO Box 1220 Havre MT 59501
Application No.:	17037
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	ok
Acreage:	1.82
Compensation:	\$1638.00
Legal Description:	20-foot strip through S2SW4, SW4SE4, Sec. 8, Twp. 24N, Rge. 11E Chouteau County
Trust Beneficiary:	Common Schools

Item Summary

Triangle Telephone Cooperative Association, Inc. has made application for a buried telecommunications cable. The company is proposing to install new underground telecommunications facilities to upgrade their current facilities and services to the Loma Exchange serving area in and around Loma. These improvements will offer state-of-the-art telecommunications toll and distribution facilities as well as future growth capabilities.

DNRC Recommendation

The director recommends approval of this underground telecommunications cable.

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17038
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 1.17
Compensation: \$1053.00
Legal Description: 20-foot strip through Government Lot 2, SE4NW4,
Sec. 7, Twp. 24N, Rge. 11E
Chouteau County

Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17039
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 1.12
Compensation: \$1008.00
Legal Description: 20-foot strip through S2SW4, Sec. 9, Twp. 24N, Rge. 11E,
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17040
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 1.21
Compensation: \$1089.00
Legal Description: 20-foot strip through S2SE4, Sec. 11, Twp. 24N, Rge. 11E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17041
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 3.94
Compensation: \$3546.00
Legal Description: 20-foot strip through S2S2, NW4SE4, SW4NE4,
Sec. 12, Twp. 24N, Rge. 11E
Chouteau County

Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17042
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 0.14
Compensation: \$100.00
Legal Description: 20-foot strip through NW4NW4, Sec. 16, Twp. 24N, Rge. 11E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17043
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 1.79
Compensation: \$1611.00
Legal Description: 20-foot strip through N2NW4, SE4NW4,
Sec. 20, Twp. 24N, Rge. 11E
Chouteau County

Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17044
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 0.42
Compensation: \$126.00
Legal Description: 20-foot strip through SE4SE4, Sec. 17, Twp. 24N, Rge. 11E,
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Triangle Telephone Cooperative Assoc., Inc. PO Box 1220 Havre MT 59501
Application No.:	17045
R/W Purpose:	a buried telecommunications cable under the Marias River
Lessee Agreement:	ok
Acreage:	0.14
Compensation:	\$100.00
Legal Description:	20-foot strip through Government Lots 9 & 10, Sec. 12, Twp. 25N, Rge. 9E Chouteau County
Trust Beneficiary:	Public Land – Navigable Rivers

Item Summary

See page 5. In addition, this line crosses through sage grouse general habitat area. Pursuant to [Sage Grouse Executive Order No. 12-2015](#), special stipulations will be placed in the easement document to address mitigation measures such as restrictions related to construction time periods.

DNRC Recommendation

See page 5

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Triangle Telephone Cooperative Assoc., Inc. PO Box 1220 Havre MT 59501
Application No.:	17046
R/W Purpose:	a buried telecommunications cable under the Missouri River
Lessee Agreement:	ok
Acreage:	0.16
Compensation:	\$100.00
Legal Description:	20-foot strip through Government Lots 8 & 9, Sec. 18, Twp. 25N, Rge. 10E Chouteau County
Trust Beneficiary:	Public Land – Navigable Rivers

Item Summary

See page 5. In addition, this line crosses through sage grouse general habitat area. Pursuant to [Sage Grouse Executive Order No. 12-2015](#), special stipulations will be placed in the easement document to address mitigation measures, such as restrictions related to construction time periods.

DNRC Recommendation

See page 5

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17047
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 2.47
Compensation: \$2223.00
Legal Description: 20-foot strip through W2W2, Sec. 3, Twp. 25N, Rge. 11E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

See page 5

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17048
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 2.61
Compensation: \$2349.00
Legal Description: 20-foot strip through S2S2, Sec. 4, Twp. 25N, Rge. 11E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17049
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 2.53
Compensation: \$2277.00
Legal Description: 20-foot strip through W2W2, Sec. 8, Twp. 25N, Rge. 11E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Triangle Telephone Cooperative Assoc., Inc. PO Box 1220 Havre MT 59501
Application No.:	17050
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	ok
Acreage:	3.53
Compensation:	\$3177.00
Legal Description:	20-foot strip through W2W2, SE4SW4, Sec. 17, Twp. 25N, Rge. 11E Chouteau County
Trust Beneficiary:	Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17051
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 1.2
Compensation: \$360.00
Legal Description: 20-foot strip through N2NW4, Sec. 19, Twp. 25N, Rge. 11E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17052
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 0.97
Compensation: \$291.00
Legal Description: 20-foot strip through W2SW4, Sec. 21, Twp. 25N, Rge. 11E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Triangle Telephone Cooperative Assoc., Inc.
PO Box 1220
Havre MT 59501

Application No.: 17053
R/W Purpose: a buried telecommunications cable
Lessee Agreement: ok
Acreage: 4.99
Compensation: \$4491.00
Legal Description: 20-foot strip through N2N2, E2E2, Sec. 16, Twp. 26N, Rge. 9E
Chouteau County
Trust Beneficiary: Common Schools

Item Summary

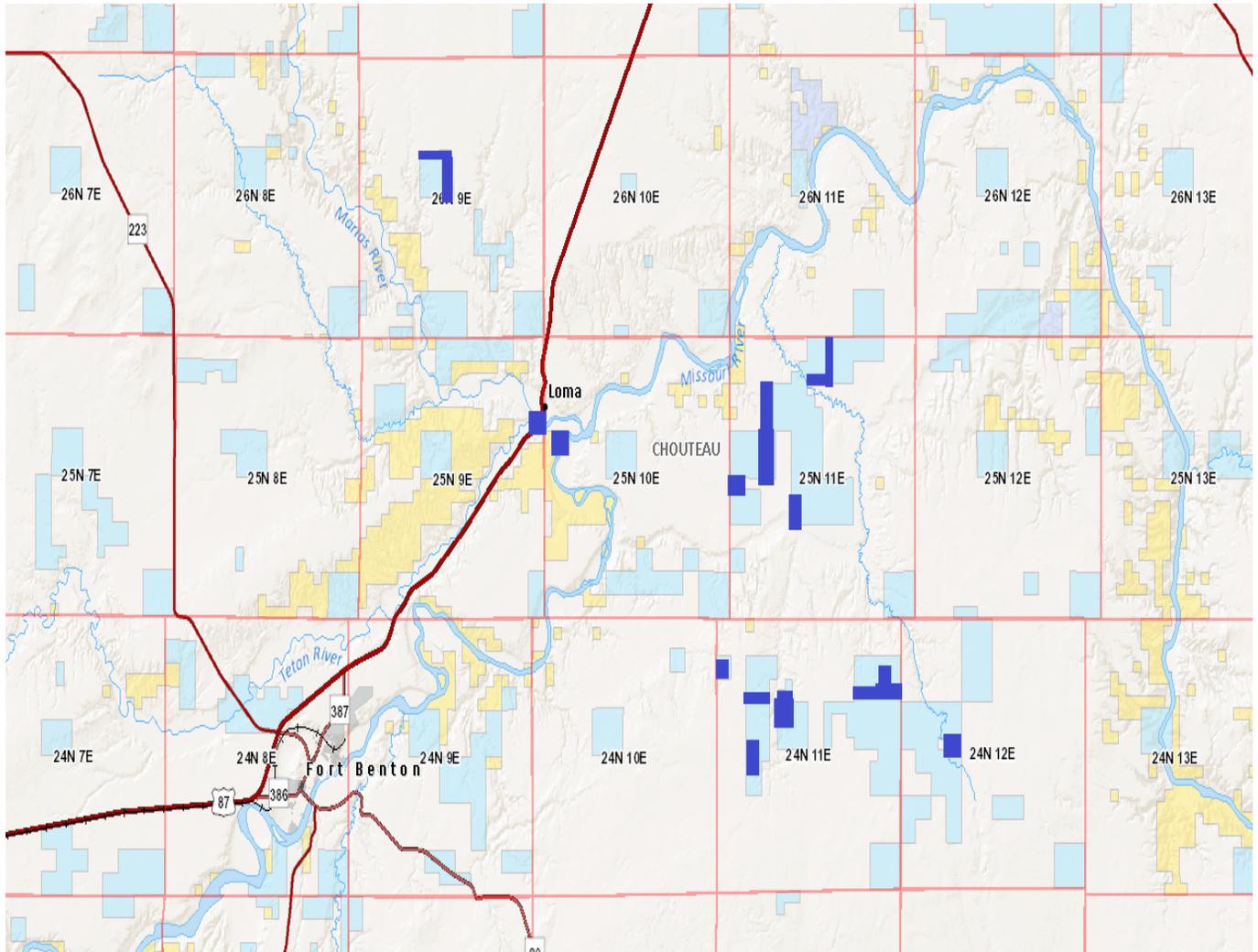
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DNRC Recommendation

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Rights of Way Applications

October 19, 2015



Triangle Telephone

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: _____ Dry Prairie Rural Water Authority
 _____ PO Box 577
 _____ Culbertson MT 59218

Application No.: _____ 17057
 R/W Purpose: _____ a buried 2" transmission water pipeline and associated
 _____ appurtenances

Lessee Agreement: _____ ok
 Acreage: _____ 0.18
 Compensation: _____ \$100.00
 Legal Description: _____ 30-foot strip through SW4SW4, Sec. 2, Twp. 28N, Rge. 39E
 _____ Valley County
 Trust Beneficiary: _____ Common Schools

Item Summary

Dry Prairie Rural Water Authority has made application for two 2" and one 3" transmission water pipelines and associated appurtenances. The proposed pipelines are part of the water system currently under construction to bring quality drinking water to the Fort Peck area. Based on engineering design requirements and topographical features, the crossing of state land was necessary. Additionally, the route chosen will help reduce costs associated with this federally funded system.

Department Recommendation

The director recommends approval of these 2" and 3" water transmission pipelines.

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: _____ Dry Prairie Rural Water Authority
_____ PO Box 577
_____ Culbertson MT 59218

Application No.: _____ 17058
R/W Purpose: _____ a buried 2" transmission water pipeline and associated
_____ appurtenances
Lessee Agreement: _____ ok
Acreage: _____ 0.25
Compensation: _____ \$100.00
Legal Description: _____ 30-foot strip through NE4SE4, Sec. 3, Twp. 28N, Rge. 39E
_____ Valley County
Trust Beneficiary: _____ Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Dry Prairie Rural Water Authority PO Box 577 Culbertson MT 59218
Application No.:	17059
R/W Purpose:	a buried 3" transmission water pipeline and associated appurtenances
Lessee Agreement:	ok
Acreage:	3.8
Compensation:	\$1045.00
Legal Description:	30-foot strip through N2N2, Sec. 16, Twp. 29N, Rge. 39E Valley County
Trust Beneficiary:	Common Shools

Item Summary

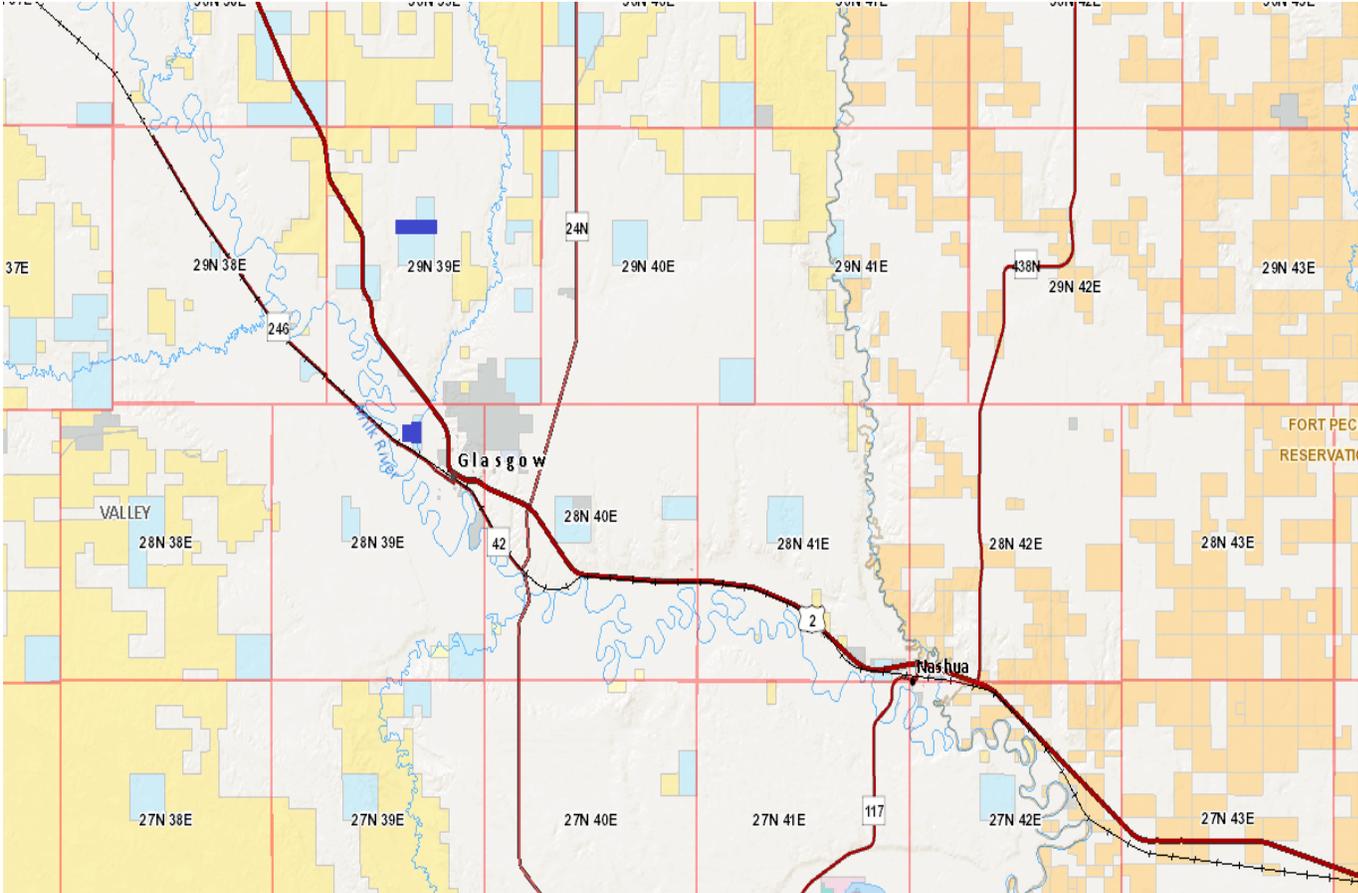
Dry Prairie Rural Water Authority has made application for one 3" transmission water pipelines and associated appurtenances. The proposed pipelines are part of the water system currently under construction to bring quality drinking water to the Fort Peck area. Based on engineering design requirements and topographical features, the crossing of state land was necessary. Additionally, the route chosen will help reduce costs associated with this federally funded system.

DNRC Recommendation

The director recommends approval of this 3" water transmission pipeline. In addition, this line crosses through sage grouse general habitat area. Pursuant to [Sage Grouse Executive Order No. 12-2015](#), special stipulations will be placed in the easement document to address mitigation measures, such as restrictions related to construction time periods.

Rights of Way Applications

October 19, 2015



Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	ONEOK Rockies Midstream, LLC 2700 Lincoln Ave SE Sidney MT 59270
Application No.:	17085
R/W Purpose:	a 4" buried natural gas pipeline
Lessee Agreement:	ok
Acreage:	1.55
Compensation:	\$14,308.00
Legal Description:	20-foot strip through SE4SW4, S2SE4, Sec. 36, Twp. 24N, Rge. 54E Richland County
Trust Beneficiary:	Common Schools

Item Summary

ONEOK Rockies Midstream, LLC has made application for one 4" and one 8" natural gas pipeline. The pipelines were previously authorized to be installed through two land use licenses in 2004 and 2006. This application is to convert the licenses to 30-year term easements. ONEOK Rockies Midstream, LLC has agreed to compensation in the amount of \$70/rod which is consistent with other installations in the area.

DNRC Recommendation

The director recommends approval of these 30-year term easements for these natural gas pipelines.

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: ONEOK Rockies Midstream, LLC
2700 Lincoln Ave SE
Sidney MT 59270

Application No.: 17086
R/W Purpose: a 8" buried natural gas pipeline
Lessee Agreement: ok
Acreage: 0.39
Compensation: \$2882.00
Legal Description: 25-foot strip through SE4SW4, Sec. 16, Twp. 24N, Rge. 55E
Richland County
Trust Beneficiary: Common Schools

Item Summary

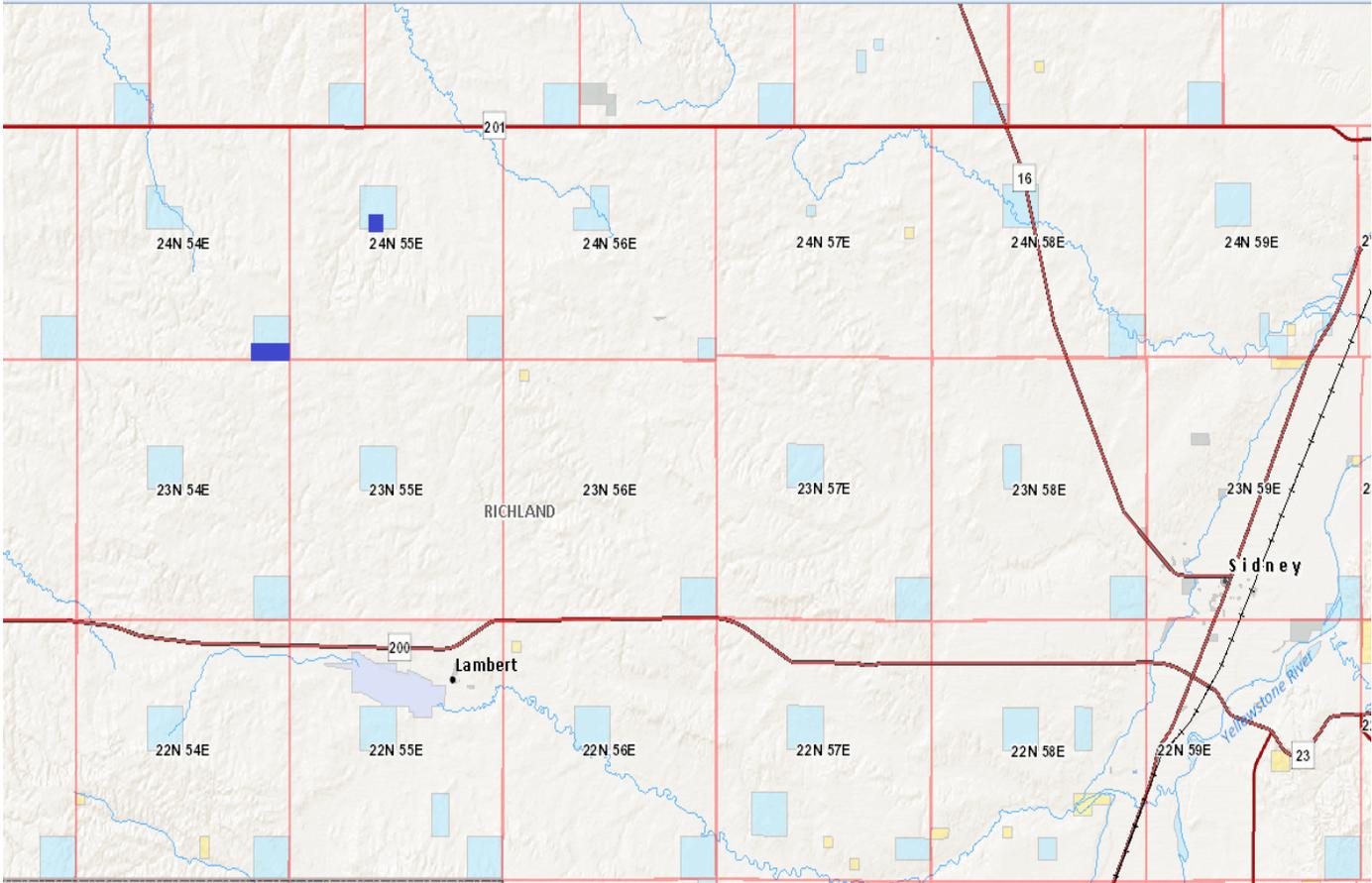
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DNRC Recommendation

See page 27

Rights of Way Applications

October 19, 2015



Application #s 17085 & 17086
ONEOK Rockies

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Charter Communications, Inc. 333 1ST Ave E Kalispell MT 59901
Application No.:	17087
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	ok
Acreage:	0.11
Compensation:	\$2080.00
Legal Description:	20-foot strip under the Bitterroot River in NW4SW4, Sec. 22, Twp. 9N, Rge. 20W Ravalli County
Trust Beneficiary:	Public Land Trust – Navigable Rivers

Item Summary

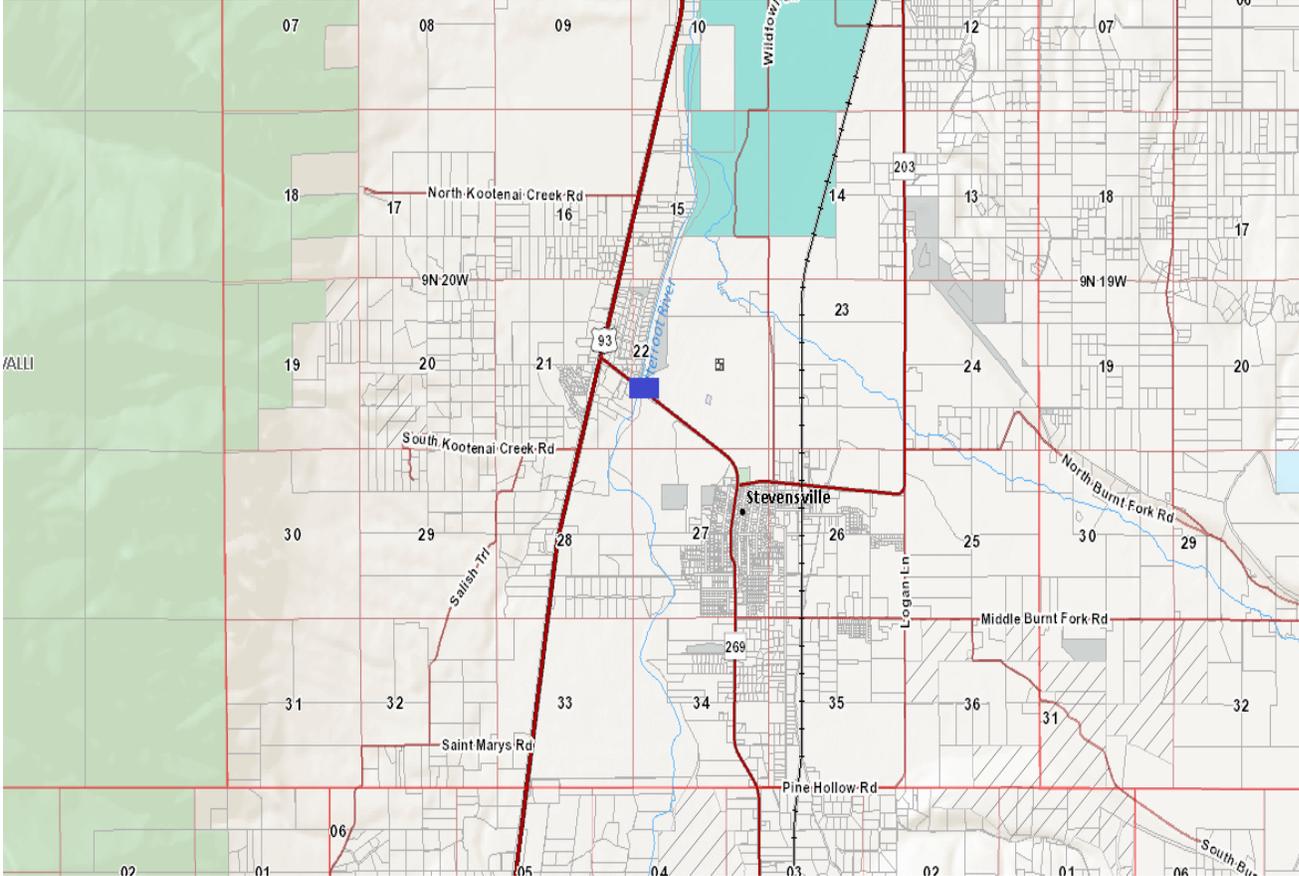
Charter Communications, Inc. has made application for an easement to bore under the Bitterroot River as part of the Stevensville Fiber Optic Rebuild Project. The purpose of the project is to provide fast and reliable broadband communication to residents and businesses in the town of Stevensville. The bore hole will be approximately 2" in diameter and located at least 6' below the deepest channel.

DNRC Recommendation

The director recommends approval of this buried telecommunications cable.

Rights of Way Applications

October 19, 2015



Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	US Fish and Wildlife Service Box 25486, DFC Denver CO 80225
Application No.:	17088
R/W Purpose:	a public road
Lessee Agreement:	ok
Acreage:	9.18
Compensation:	\$13,770.00
Legal Description:	tract of land in the SW4NW4, W2SE4, SE4SE4, Sec. 16, Twp. 28N, Rge. 26W Flathead County
Trust Beneficiary:	Common Schools

Item Summary

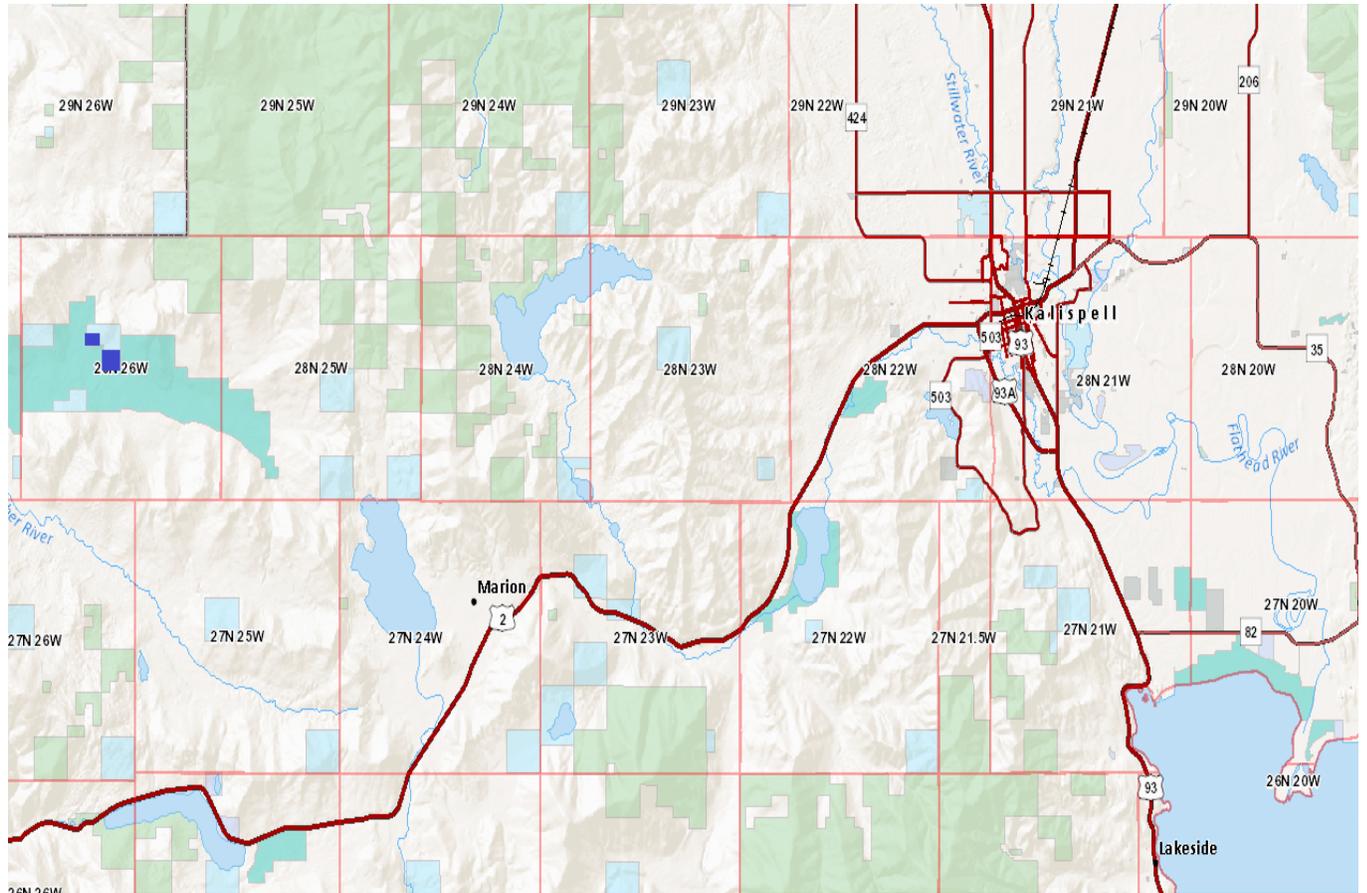
The US Fish and Wildlife Service (USFWS) has made application for the relocation of an existing (non-compliant) public county road—also known as Pleasant Valley Road—in Flathead County. The request for the relocation of the road is part of the Lost Trail National Wildlife Refuge Pleasant Valley Road Relocation and Stream and Wetland Restoration Project. The USFWS in cooperation with Flathead County and Natural Resources Conservation Service (NRCS) was awarded a grant through the US Department of Transportation Federal Lands Access Program to improve public access and safety on a portion of Pleasant Valley Road. In addition to improving public access and safety, the USFWS and NRCS will also restore a portion of Pleasant Valley Creek which is currently impacted by the presence of the road within the historical floodplain. A determination was made that the most viable option to improve access, reduce maintenance costs, and restore the natural hydrology was to relocate approximately 3.03 miles of roadway out of the floodplain habitat (0.71 mile of which is state school trust lands). Currently there is 0.1 mile of road on trust lands which will be reclaimed as a result of the project. USFWS will hold the public road easement in its name; however, Flathead County will provide maintenance.

DNRC Recommendation

The director recommends approval of this public county road application.

Rights of Way Applications

October 19, 2015



Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	ONEOK Rockies Midstream, LLC 2700 Lincoln Ave SE Sidney MT 59270
Application No.:	17089
R/W Purpose:	a 4" buried natural gas pipeline
Lessee Agreement:	ok
Acreage:	0.32
Compensation:	\$2921.00
Legal Description:	20-foot strip through NW4NW4, Sec. 16, Twp. 23N, Rge. 57E Richland County
Trust Beneficiary:	Common Schools

Item Summary

ONEOK Rockies Midstream, LLC has made application for four 4" and one 6" natural gas pipelines. The pipelines were previously authorized to be installed through two land use licenses in 2003 and 2006. This application is to convert the licenses to 30-year term easements. ONEOK Rockies Midstream, LLC has agreed to compensation in the amount of \$70/rod which is consistent with other installations in the area.

DNRC Recommendation

The director recommends approval of these 30-year term easements for these natural gas pipelines.

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: ONEOK Rockies Midstream, LLC
2700 Lincoln Ave SE
Sidney MT 59270

Application No.: 17090
R/W Purpose: a 6" buried natural gas pipeline
Lessee Agreement: ok
Acreage: 2.89
Compensation: \$26,711.00
Legal Description: 20-foot strip through E2SW4, W2SE4, S2NW4, N2NW4,
Sec. 36, Twp. 23N, Rge. 57E
Richland County

Trust Beneficiary: Common Schools

Item Summary

See page 34

DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	ONEOK Rockies Midstream, LLC 2700 Lincoln Ave SE Sidney MT 59270
Application No.:	17091
R/W Purpose:	a 4" buried natural gas pipeline
Lessee Agreement:	ok
Acreage:	2.27
Compensation:	\$20,862.00
Legal Description:	20-foot strip through E2SE4, E2NE4, Sec. 36, Twp. 25N, Rge. 53E Richland County
Trust Beneficiary:	Common Schools

Item Summary

See page 34

DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	ONEOK Rockies Midstream, LLC 2700 Lincoln Ave SE Sidney MT 59270
Application No.:	17092
R/W Purpose:	a 4" buried natural gas pipeline
Lessee Agreement:	ok
Acreage:	1.2
Compensation:	\$11,095.00
Legal Description:	20-foot strip through S2NW4, N2SW4, Sec. 5, Twp. 25N, Rge. 57E Richland County
Trust Beneficiary:	Common Schools

Item Summary

See page 34

DNRC Recommendation

See page 34

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: ONEOK Rockies Midstream, LLC
2700 Lincoln Ave SE
Sidney MT 59270

Application No.: 17093
R/W Purpose: a 4" buried natural gas pipeline
Lessee Agreement: ok
Acreage: 0.56
Compensation: \$5139.00
Legal Description: 20-foot strip through S2NW4, Sec. 5, Twp. 25N, Rge. 57E
Richland County
Trust Beneficiary: Common Schools

Item Summary

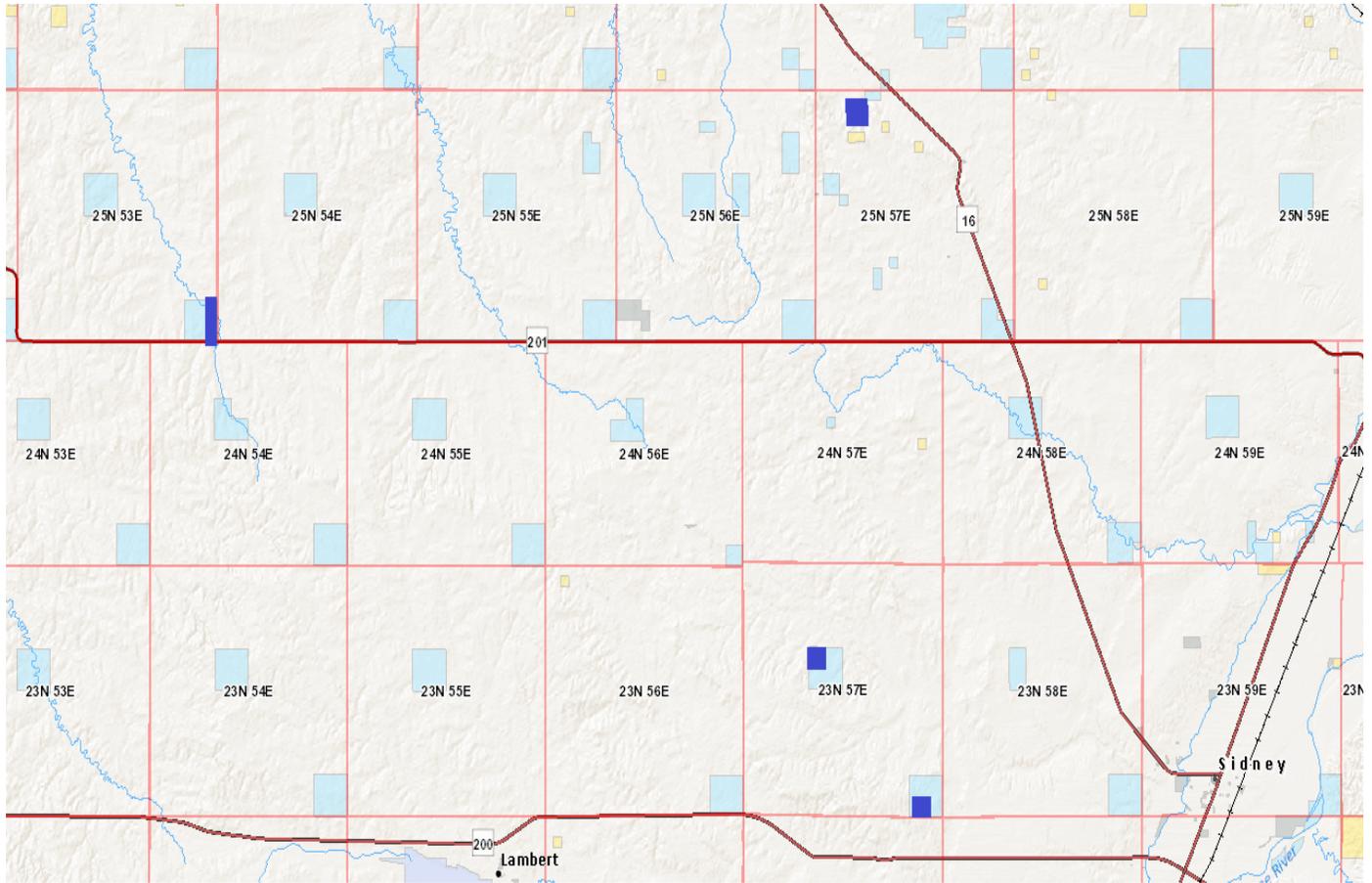
See page 34

Department Recommendation

See page 34

Rights of Way Applications

October 19, 2015



Application #'s 17089-17093

ONEOK Rockies

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Northwestern Energy 40 E Broadway Butte MT 59701
Application No.:	17094
R/W Purpose:	a buried 7.2kV distribution line
Lessee Agreement:	ok
Acreage:	0.64
Compensation:	\$437.00
Legal Description:	20-foot strip through SW4SW4, Sec. 29; SE4SE4, Sec. 30 Twp. 3S, Rge. 6W, Madison County
Trust Beneficiary:	Eastern College – MSU/Western College

Item Summary

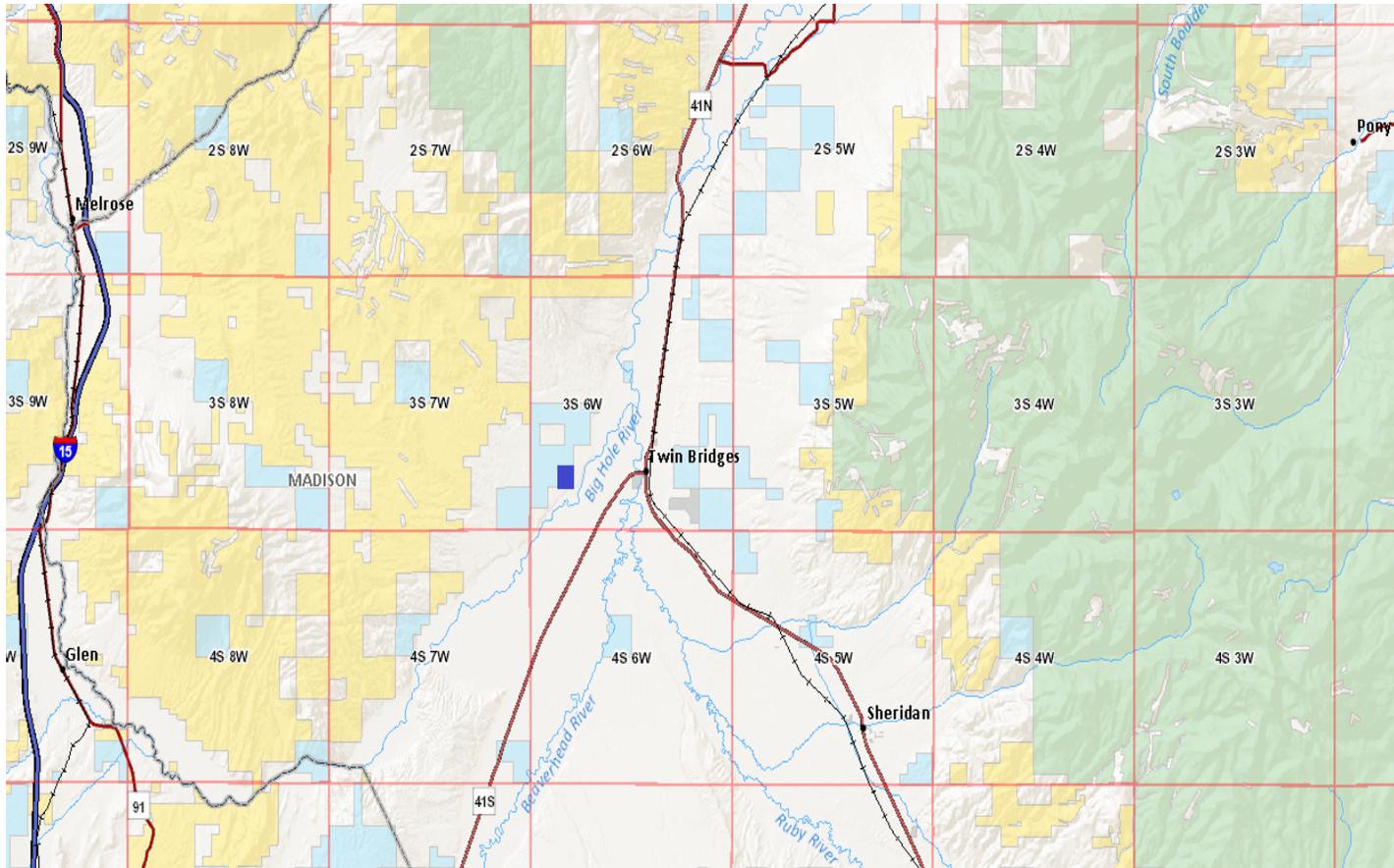
Northwestern Energy has made application to install a buried 7.2kV distribution line to provide service to a private home site. The new line will tie in to an existing powerline facility on the state section that is currently under easement. The proposed route is the most direct route and will cause the least amount of environmental impact.

DNRC Recommendation

The director recommends approval of this buried distribution line.

Rights of Way Applications

October 19, 2015



Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	J Burns Brown Operating PO Box 420 Havre MT 59501
Application No.:	17096
R/W Purpose:	a buried 4" natural gas pipeline
Lessee Agreement:	ok
Acreage:	0.77
Compensation:	\$1527.00
Legal Description:	20-foot strip through Government Lot 3, SE4NW4, Sec. 6, Twp. 34N, Rge. 15E Hill County
Trust Beneficiary:	Common Schools, Public Buildings

Item Summary

J Burns Brown Operating has made application for one 4" and one 6" natural gas pipeline. The pipelines were previously authorized to be installed through two land use licenses in 2004. This application is to convert the licenses to 30-year term easements. The recommended compensation is \$15/rod which is consistent with other installations in the area.

DNRC Recommendation

The director recommends approval of these 30-year term easements for these natural gas pipelines.

Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: J Burns Brown Operating
PO Box 420
Havre MT 59501

Application No.: 17097
R/W Purpose: a buried 4" natural gas pipeline
Lessee Agreement: ok
Acreage: 1.06
Compensation: \$2087.00
Legal Description: 20-foot strip through Government Lots 1 & 2, NE4NW4
Sec. 7, Twp. 34N, Rge. 15E
Hill County

Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: J Burns Brown Operating
PO Box 420
Havre MT 59501

Application No.: 17098
R/W Purpose: a buried 6" natural gas pipeline
Lessee Agreement: ok
Acreage: 2.95
Compensation: \$5850.00
Legal Description: 20-foot strip through W2NW4, NW4SW4, E2SW4, SW4SE4
Sec. 16, Twp. 35N, Rge. 18E
Blaine County

Trust Beneficiary: Common Schools

Item Summary

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DNRC Recommendation

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Rights of Way Applications

October 19, 2015

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: J Burns Brown Operating
PO Box 420
Havre MT 59501

Application No.: 17099
R/W Purpose: a buried 6" natural gas pipeline
Lessee Agreement: ok
Acreage: 2.63
Compensation: \$5191.00
Legal Description: 20-foot strip through SW4NW4, NW4SW4, E2SW4, S2SE4
Sec. 36, Twp. 35N, Rge. 18E
Blaine County

Trust Beneficiary: Common Schools

Item Summary

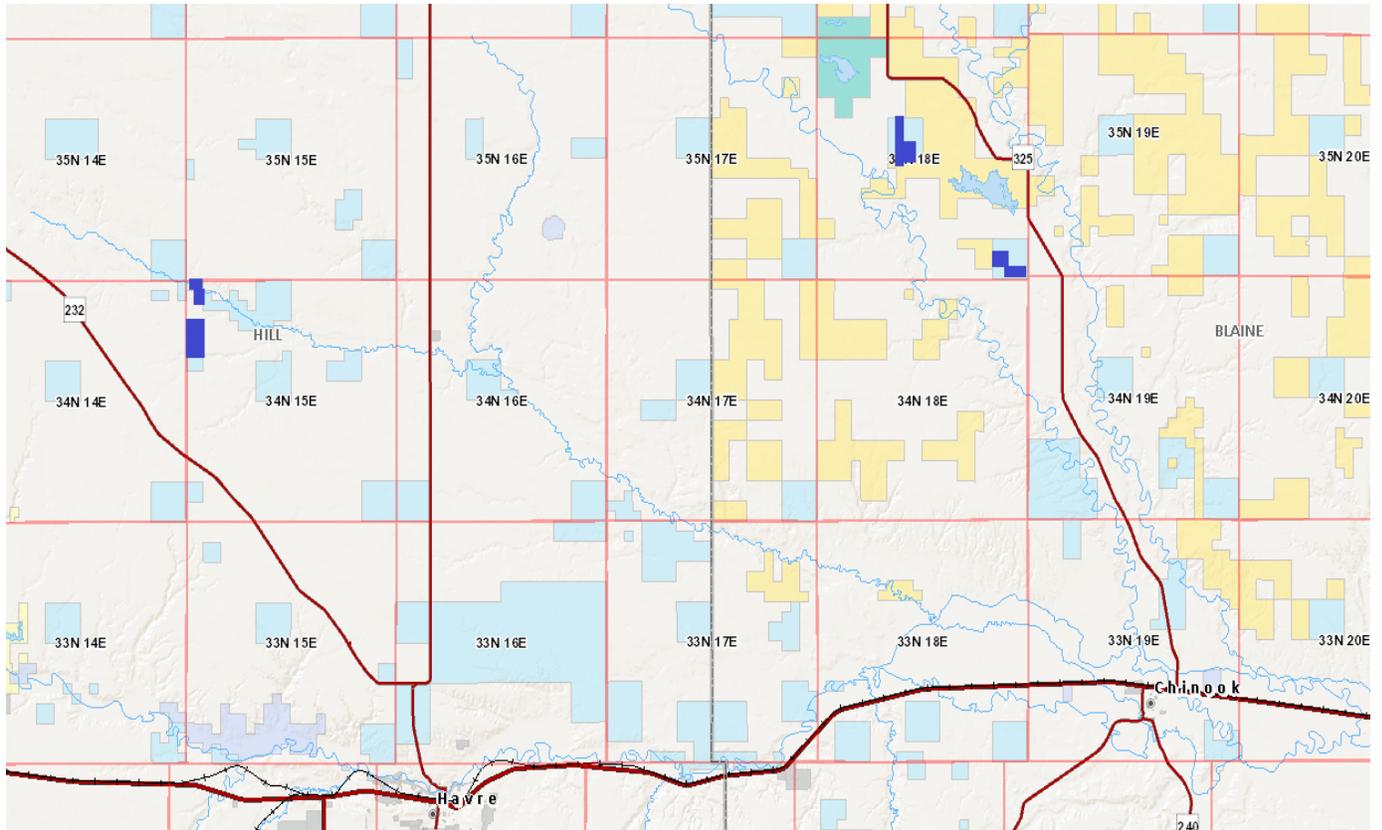
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DNRC Recommendation

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Rights of Way Applications

October 19, 2015



**Land Board Agenda Item
October 19, 2015**

1015-6B Reciprocal Access Agreement: Cadenhead

Location: Flathead, Sanders Counties

**Trust Benefits: Common Schools, Eastern College – MSU/Western College,
MSU Morrill**

Trust Revenue: N/A

Item Summary

I. Applicant:

LUPFER ROAD USER'S ASSOCIATION
6700 Hwy 93 W
P.O. Box 1104
Whitefish, MT 59937

II. Purpose of Reciprocal Access Agreement:

State land is intermingled with Lupfer Road Users Association (cooperator) members' property. In order for both parties to gain legal access, they have proposed to exchange easements as part of this Reciprocal Access Agreement (agreement).

The state will grant a perpetual non-exclusive easement, 40 feet in width, to cooperator for the purpose of constructing, reconstructing, maintaining, repairing, and using a road or road segment for all lawful purposes, including buried utilities.

Cooperator will secure and deliver access rights, 60 feet in width, in favor of the state for all lawful purposes including buried utilities, across Gerald A. Wempner property in Sanders County.

III. Legal Description (R/W):

Flathead County:

State land burdened - Sec. 17, T32N, R23W – 5.53 acres (S.N.S.)
Sec. 20, T32N, R23W – 1.65 acres (A.C.I.)
Sec. 21, T32N, R23W – 4.94 acres (S.N.S.)

State land benefited - none

Coop. land burdened - none

Coop. land benefited - Sec. 20, T32N, R23W – 26.65 acres
TRACT 1, C.O.S. 17607, in SE $\frac{1}{4}$ SE $\frac{1}{4}$;
TRACT 2, C.O.S. 17607, in SE $\frac{1}{4}$ SE $\frac{1}{4}$;
TRACT 1, C.O.S. 19710, in NE $\frac{1}{4}$ SE $\frac{1}{4}$

Sanders County:

State land benefited - Sec. 18, T20N, R26W – 113.94 acres (C.S.)

Cooperator to secure - Sec. 13, T20N, R27W – 5.09 acres
grant across 3rd party

Total R/W Acres:

State grant to coop.: 12.12 acres (40-ft)
 3rd party grant to state: 5.09 acres (60-ft)

Total R/W Miles:

State grant to coop.: 2.50 miles
 3rd party grant to state: 0.70 mile

IV. General Information:

Land Office: Northwest Land Office
 Unit Office: Stillwater Unit and Plains Unit
 County: Flathead and Sanders
 Affected Trusts: Eastern College – MSU/Western College (S.N.S.)
 MSU - Morrill (A.C.I.)
 Common Schools (C.S.)
 Land Classification: Forest

VI. Costs to be Borne by Each Party:

Excess costs, by land value and road costs are summarized as follows:

	EXCESS COSTS	
	State Owes Cooperator	Cooperator Owes State
Land Value	\$ 9,996	\$ 2,454
Road Costs		\$ 1,337
Total Value/Costs	\$ 9,996	\$ 3,791

NET BALANCE

Land Value	\$ 7,542	
Road Costs		\$ 1,337
Subtotals	\$ 6,205	
TOTAL LAND AND ROAD	\$ 6,205	

Cooperator will receive credit of \$9,996 for the state’s proportionate share of the right-of-way acquisition cost of the “Wempner” easement.

Land values are calculated with consideration given to trusts burdened and trusts benefited by the easement granted. The remaining net balance of \$6,205 the state owes cooperator will be paid in cash after approval of this agreement by the Land Board and receipt of the “Wempner” easement.

VI. Results of MEPA Analysis:

No significant impacts are expected and no further analysis required.

VII. Benefits to State:

1. *Describe the rights regarding which DNRC lands are being accessed.*
 - The agreement provides full permanent access for all lawful purposes (including utilities) to 113.94 acres of state trust lands (Common Schools).
2. *Describe the public access situation and the effects of this agreement.*
 - As a result of this agreement, there will be no change to the access rights in favor of the public (no public access to state section 18).

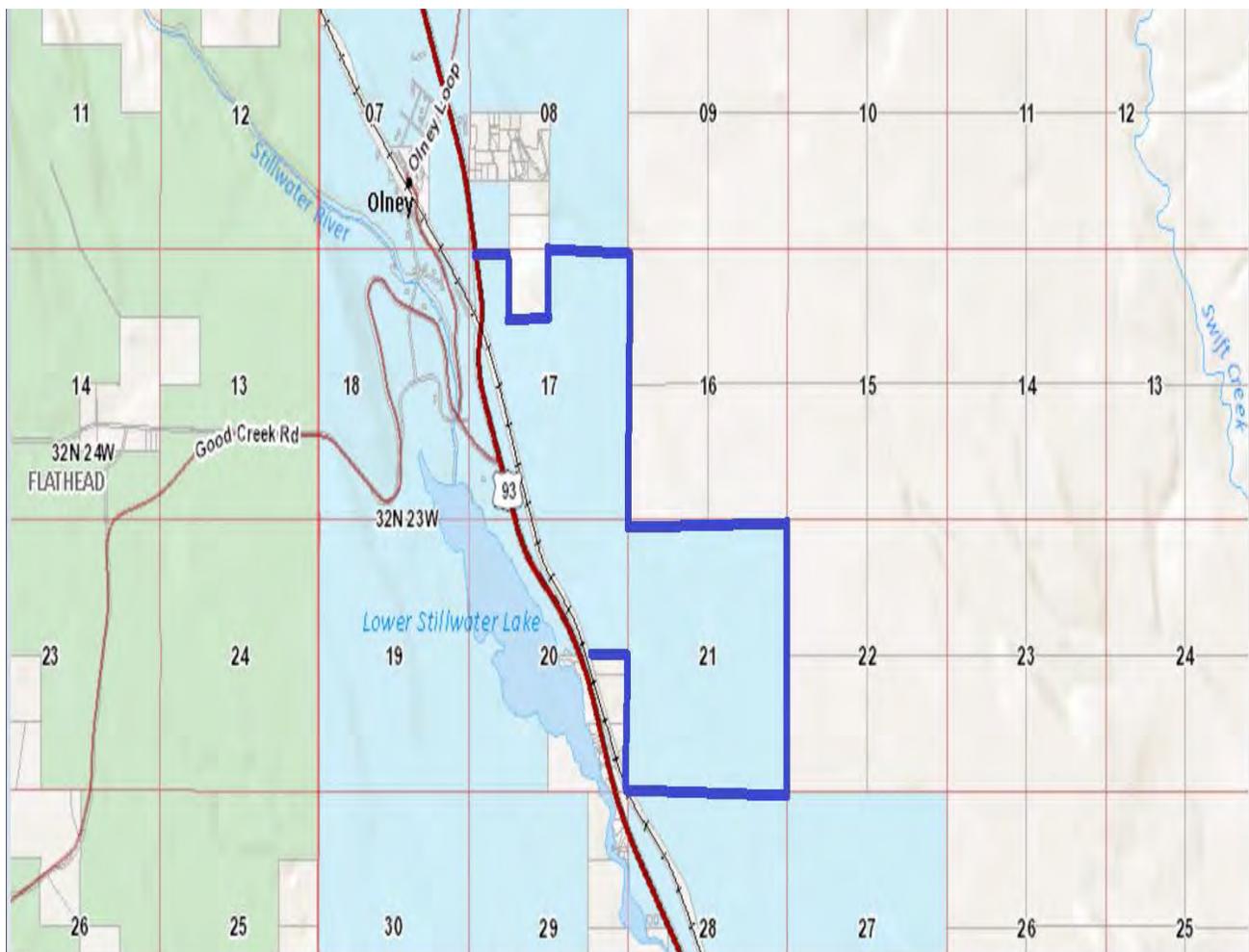
3. Describe other benefits associated with completing the agreement.

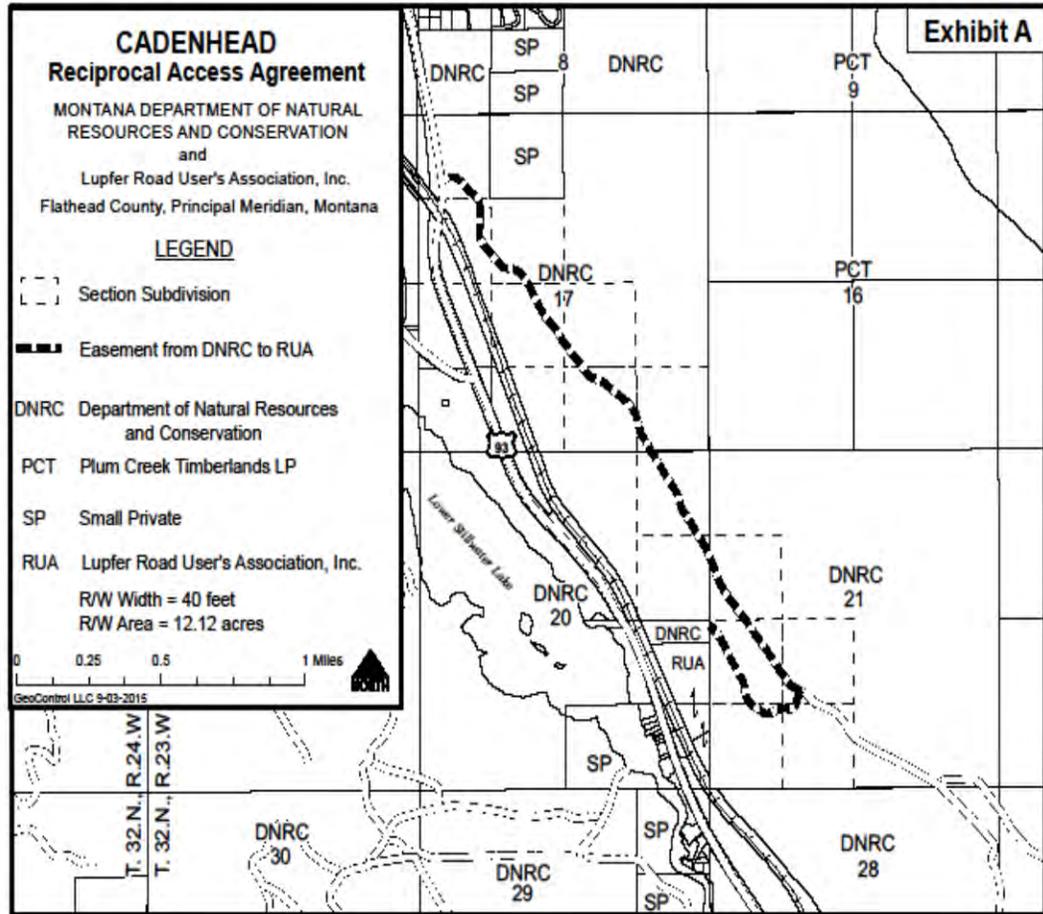
- The agreement provides for acquisition costs to be shared and thereby reduces: access acquisition costs; shared financial obligations for road maintenance' resurfacing; weed management; and road reconstruction—if need be—to current road standards.
- The agreement provides for legal access for land management opportunities and other uses if need be.

DNRC Recommendation

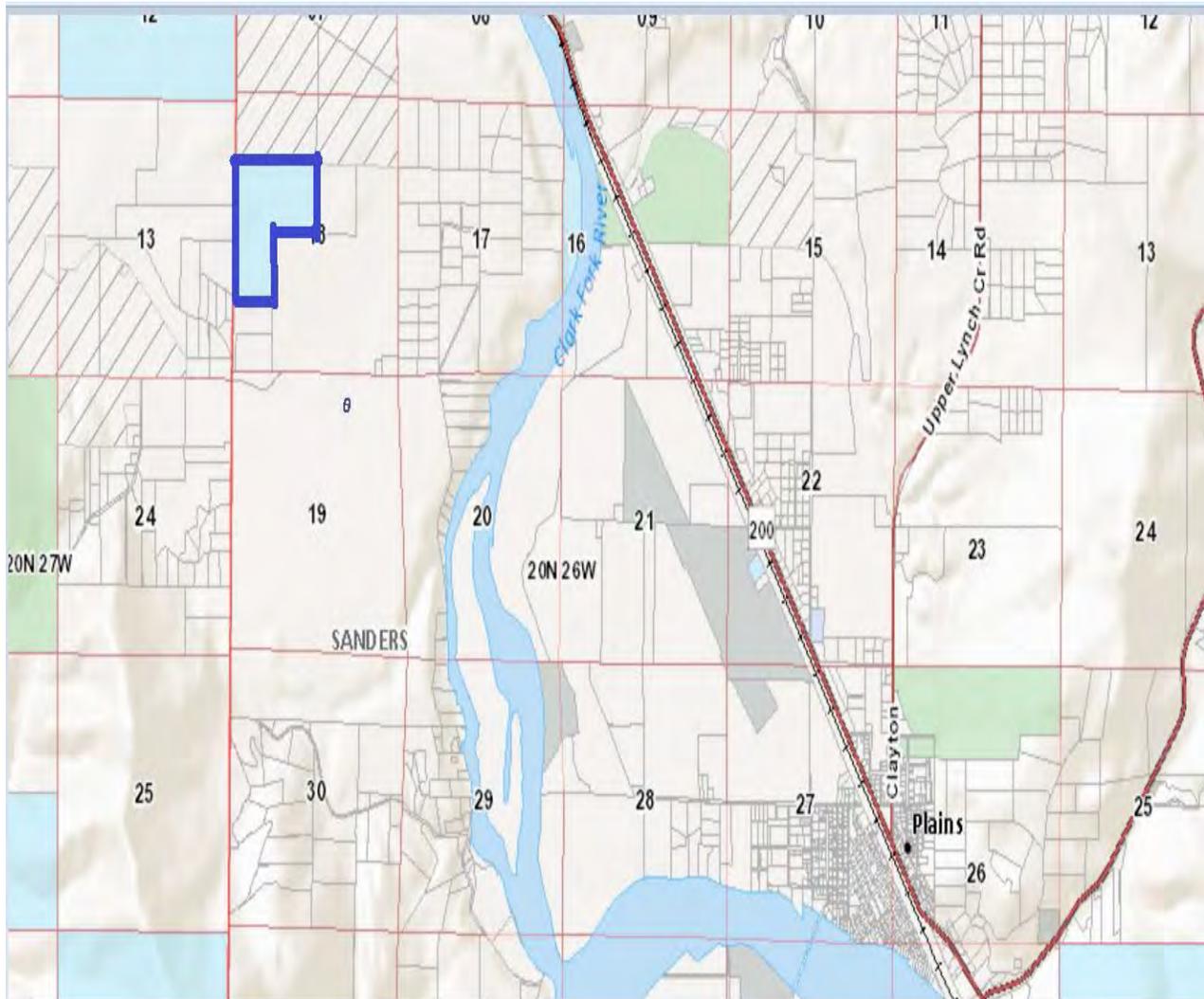
After review of the documents, exhibits, and benefits to the state, the director recommends approval of this proposed reciprocal access agreement with the cooperator.

LOCATION OF ACCESS TO BE GRANATED





LOCATION OF ACCESS TO BE ACQUIRED



**Land Board Agenda Item
October 19, 2015**

1015-6C Reciprocal Access Agreement: Wood Trust

Location: Park County

Trust Benefits: Common Schools

Trust Revenue: N/A

Item Summary

I. Applicant:

Donald E. Wood and Alberta M. Wood Surviving Spouse's Trust and Donald E. Wood and Alberta M. Wood Family Bypass Trust, whose address is 682 East Frontage Road, Livingston, MT 59047; and Roy E. Wood, whose address is 684 East Frontage Road, Livingston, MT 59047-9012

II. Purpose of Reciprocal Access Agreement:

State land is intermingled with lands owned and managed by Wood (cooperator). In order for both parties to gain legal access, they have proposed to exchange easements as part of this reciprocal access agreement.

The state will grant an easement to cooperator, 60 feet in width, for all lawful purposes, including buried utilities, for access to Cooperator lands in the "Wood Trust" area.

Cooperator will grant an easement to the state, 60 feet in width, for all lawful purposes, including buried utilities, for access to state lands in the "Wood Trust" area. Cooperator will also secure and deliver similar access rights in favor of the state, 60 feet in width, across Greeley Creek Ranch, Inc.

III. Legal Description (R/W):

Park County:

State land burdened - Sec. 16, T2S, R12E – 16.80 acres (C.S.)

State land benefited - Sec. 16, T2S, R12E – 640.00 acres (C.S.)

Coop. land burdened - Sec. 4 and 9, T2S, R12E – 9.67 acres

Coop. land benefited - Sec. 15, T2S, R12E- W1/2W1/2

Sec. 21, T2S, R12E - All

Sec. 22, T2S, R12E - W1/2W1/2

Sec. 28, T2S, R12E - N1/2NE1/4, SW1/4NE1/4, W1/2

(Also, grant across third party private in NW1/4NW1/4 and SW1/4SW1/4,
Sec. 9, T2S, R12E – 1.52 acres)

Total R/W Acres:

State grant to coop.: 16.80 acres (60-ft)

Coop. grant to state: 9.67 acres (60-ft)

3rd party grant to state: 1.52 acres (60-ft)

Total R/W Miles:

State grant to coop: 2.31 miles
 Coop grant to state: 1.33 miles
 3rd party grant to state: 0.21 mile

IV. General Information:

Land Office: Central Land Office
 Unit Office: Bozeman Unit
 County: Park
 Affected Trusts: Common Schools (C.S.)
 Land Classification: Grazing

VI. Costs to be Borne by Each Party:

Excess costs, by land value and road costs are summarized as follows:

	EXCESS COSTS	
	State Owes Cooperator	Cooperator Owes State
Land Value	\$ 5,504	\$ 17,294
Road Costs	\$ 9,036	\$ 19,150
Total Value/Costs	\$ 14,540	\$ 36,444

NET BALANCE

Land Value		\$ 11,790
Road Costs		\$ 10,114
Subtotals		\$ 21,904

TOTAL LAND AND ROAD \$ 21,904

Land values are calculated with consideration given to trusts burdened and trusts benefited by the easement granted. The remaining net balance of \$21,904 that the cooperator owes state will be paid in cash after approval of this agreement by the Land Board.

VI. Results of MEPA Analysis:

No significant impacts are expected and no further analysis required

VII. Benefits to State:

1. *Describe the rights regarding which DNRC lands are being accessed.*
 - The agreement provides full permanent access for all lawful purposes to 640 acres of state trust lands (Common Schools).
2. *Describe the public access situation and the effects of this agreement.*
 - As a result of this agreement, there will be no change to the access rights in favor of the public across (no public access to state Section 16).
3. *Describe other benefits associated with completing the agreement.*
 - The agreement provides for acquisition costs to be shared and thereby reduces: access acquisition costs; shared financial obligations for road maintenance; resurfacing; weed management; and road reconstruction—if need be—to current road standards.
 - The agreement provides for legal access for land management opportunities and other uses if need be.

- Cooperator will construct/reconstruct the road into state Section 16 and tie into the existing road system, providing for a more efficient access/haul route for future management activities.

DNRC Recommendation

After review of the documents, exhibits, and benefits to the state, the director recommends approval of this proposed reciprocal access agreement with the cooperator.

VICINITY MAP

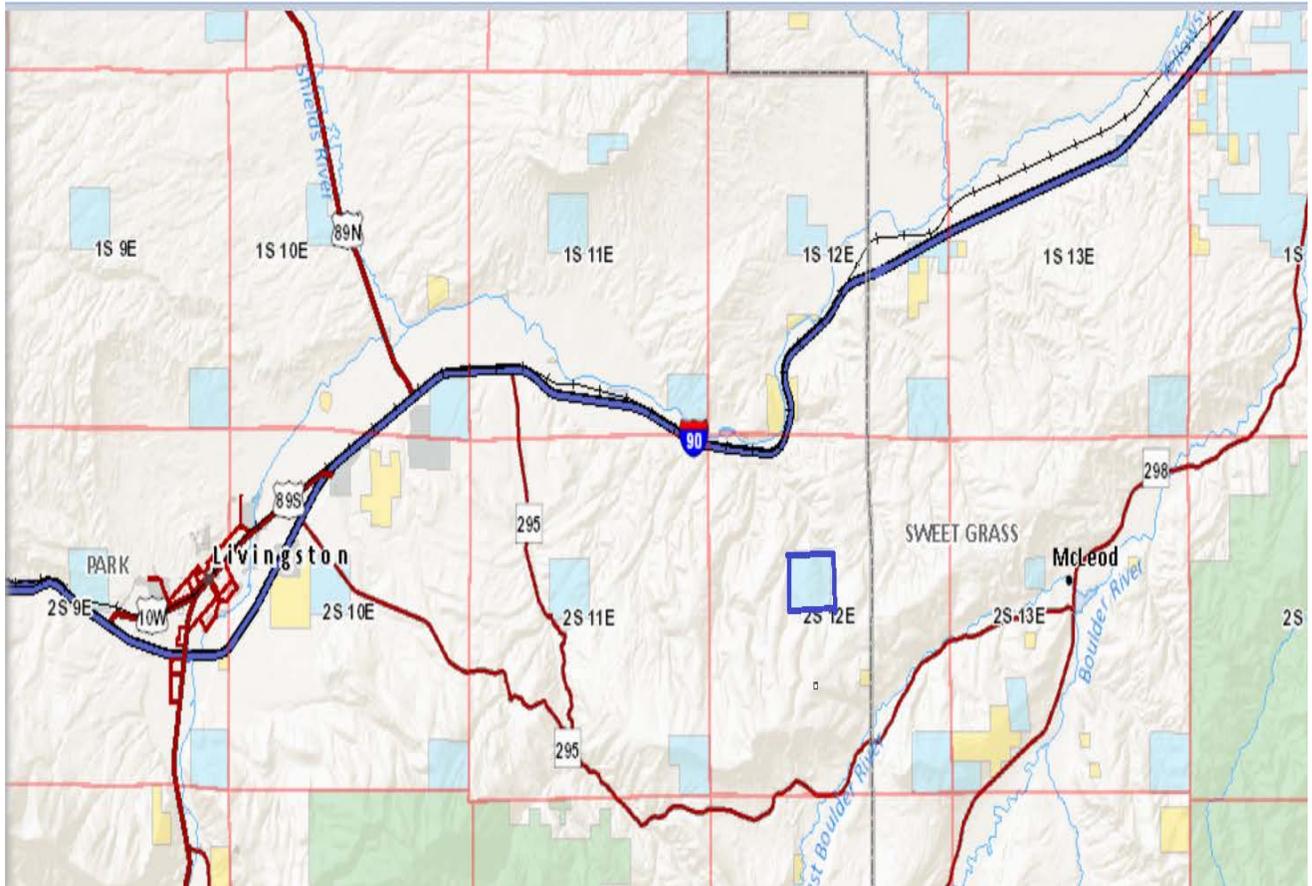


EXHIBIT 1-A
WOOD TRUST
Reciprocal Access Agreement
 MONTANA DEPARTMENT OF NATURAL
 RESOURCES AND CONSERVATION
 and
 DONALD E. WOOD AND ALBERTA M. WOOD
 SURVIVING SPOUSE'S TRUST, DONALD E.
 WOOD AND ALBERTA M. WOOD FAMILY
 BYPASS TRUST, and ROY E. WOOD
 (Cooperator)

Township 2 South, Range 12 East
 Park County, Principle Meridian,
 Montana

LEGEND

- Tributary Area
- wwwww Sub-Tributary Area
- 2 Sub-Tributary Number
- A Road Segment Terminus
- DNRC** Department of Natural Resources and Conservation
- WOOD TRUSTS** Donald E. Wood and Alberta M. Wood Surviving Spouse's Trust, and Donald E. Wood and Alberta M. Wood Family Bypass Trust
- WOOD** Roy E. Wood
- Existing Road
- - - - - New Road
- - - - - County Road
- Easement from DNRC to Cooperator
- - - - - Easement from Cooperator to DNRC

