AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
April 23, at 9:00 a.m.
State Capitol, Room 303
Helena, MT

ACTION ITEMS

0420-1 Timber Sales:

A. Garnet Creek
Benefits: Common Schools
Location: Flathead County

B. Gird Creek
Benefits: Common Schools
Location: Ravalli County

C. South of Blanchard
Benefits: Common Schools, State Reform School
Location: Missoula County

0420-2 Communitization Agreement:

A. Elaine 34X-21BXC Well
Benefits: Common Schools
Location: Richland County

B. Jacobson 7-41H Well
Benefits: Common Schools
Location: Richland County

C. Pine 12-1 1H Well
Benefits: Common Schools
Location: Richland County

D. Prewitt 21-25-4H Well
Benefits: Common Schools
Location: Richland County

0420-3 Non-Disturbance Agreement: GB Energy Park LLC
Benefits: Capitol Buildings
Location: Meagher County

0420-4 Land Banking Parcels: Preliminary Approval for Sale

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

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

C. Fergus County
Benefits: Common Schools
Location: Fergus County

0420-5 Cabin Site and Home Site Sales: Preliminary Approval for Sale
Benefits: Common Schools, Montana Tech, MSU 2nd, University of Montana, School for the Deaf & Blind, Public Buildings, Veterans Home
Location: Big Horn, Blaine, Chouteau, Fergus, Flathead, Gallatin, Golden Valley, Judith Basin, Lewis & Clark, Meagher, Missoula, Powell, Sanders, Wheatland, Yellowstone Counties

0420-6 Commercial Lease: Proposed Wind Development
Benefits: Common Schools
Location: Garfield, Rosebud, and Custer Counties

0420-7 **Easements:**

A. Standard Grant

Benefits: Capitol Buildings, Common Schools, Public Land Trust- Nav. River, Schools for the Deaf & Blind

Location: Beaverhead, Custer, Lincoln, Meagher, Powell, Prairie, Sweet Grass, Toole Counties

B. Acknowledgement of Pre- Existing Easement

Benefits: N/A

Location: Meagher County

PUBLIC COMMENT

0420-1

TIMBER SALE:

A. Garnet Creek

B. Gird Creek

C. South of Blanchard

Land Board Agenda Item
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0420-1A <u>Timber Sale: Garnet Creek</u>

Location: Flathead County
Section 16, T37N, R22W

Trust Beneficiaries: Common Schools

Trust Revenue: $55,310 (estimated, minimum bid)

Item Summary

Location: The Garnet Creek Timber Sale is located approximately 56 miles north of Columbia Falls, MT.

Size and Scope: The sale includes 10 harvest units (147 *acres*) of tractor logging.

Volume: The estimated harvest volume is 5,093 tons (685 *MBF*) of sawlogs and 2,278 tons of post & pole material.

Estimated Return: The minimum bid is $10.86 per ton, which would generate approximately $55,310 for the Common Schools Trust and approximately $20,321 in Forest Improvement fees.

Prescription: This sale has harvest prescriptions that include Clearcut with Reserves, Overstory Removal, and Seed Tree with Reserves designed to capture the value of dense lodgepole pine stands with poor growth and vigor and reduce future fuel load while regenerating stands.

Road Construction/Maintenance: The Montana Department of Natural Resources and Conservation (DNRC) is proposing 0 miles of new permanent road construction, 0 miles of road reconstruction, and 1.6 miles of road maintenance.

Access: Access is obtained through the North Fork road maintained by the county.

Public Comments: Three comments were received. Two comments were from Montana Fish, Wildlife & Parks noting the project area included habitat for diverse species of interest to FWP and stated they communicated their concerns to DNRC's wildlife biologist assigned to the project. These concerns were addressed in the EA. The third comment was from a landowner adjacent to the project area expressing interest in fuels reduction bordering his land. Internal and external issues and concerns were incorporated into project planning and design.

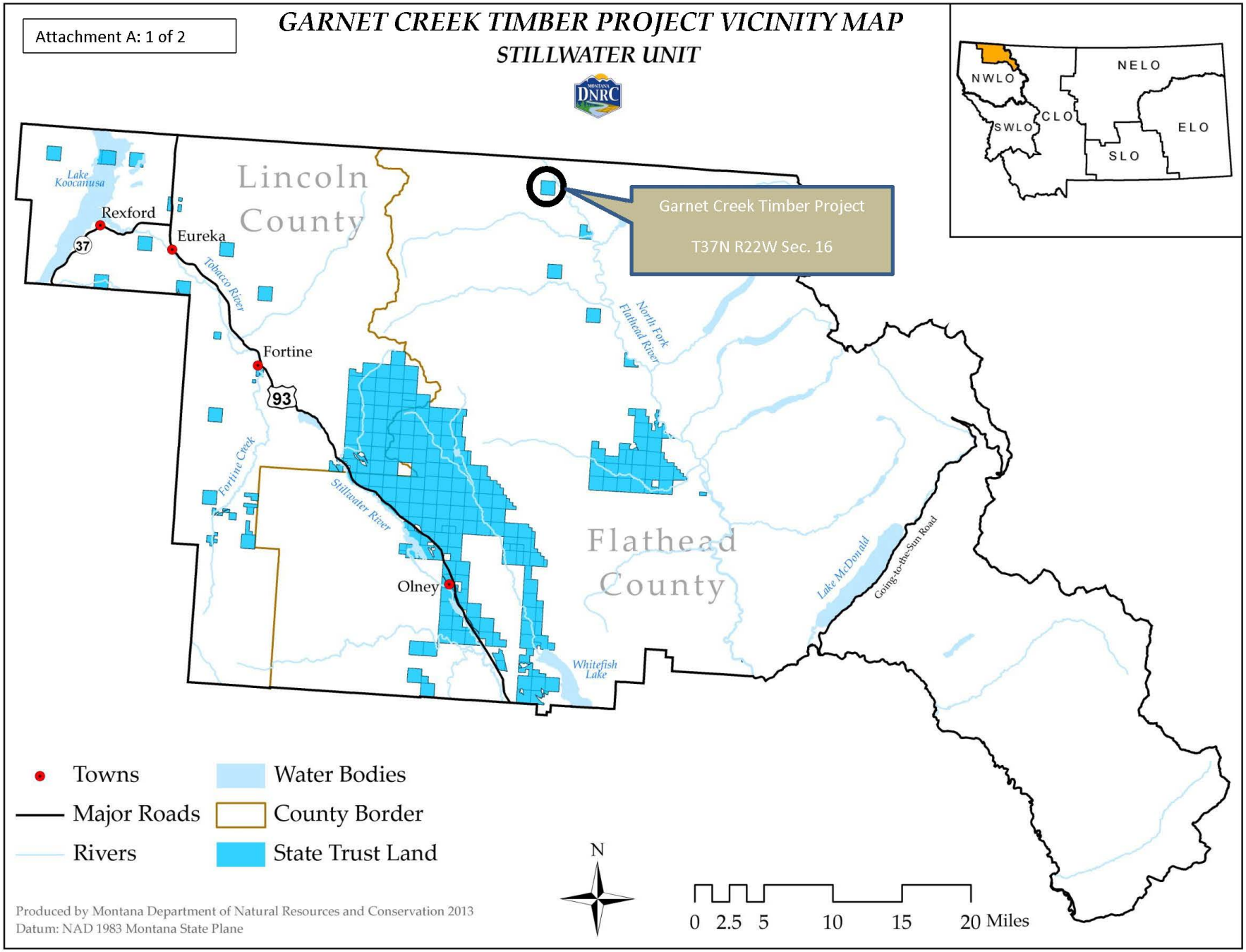
DNRC Recommendation

The director recommends the Land Board direct DNRC to sell the Garnet Creek Timber Sale.

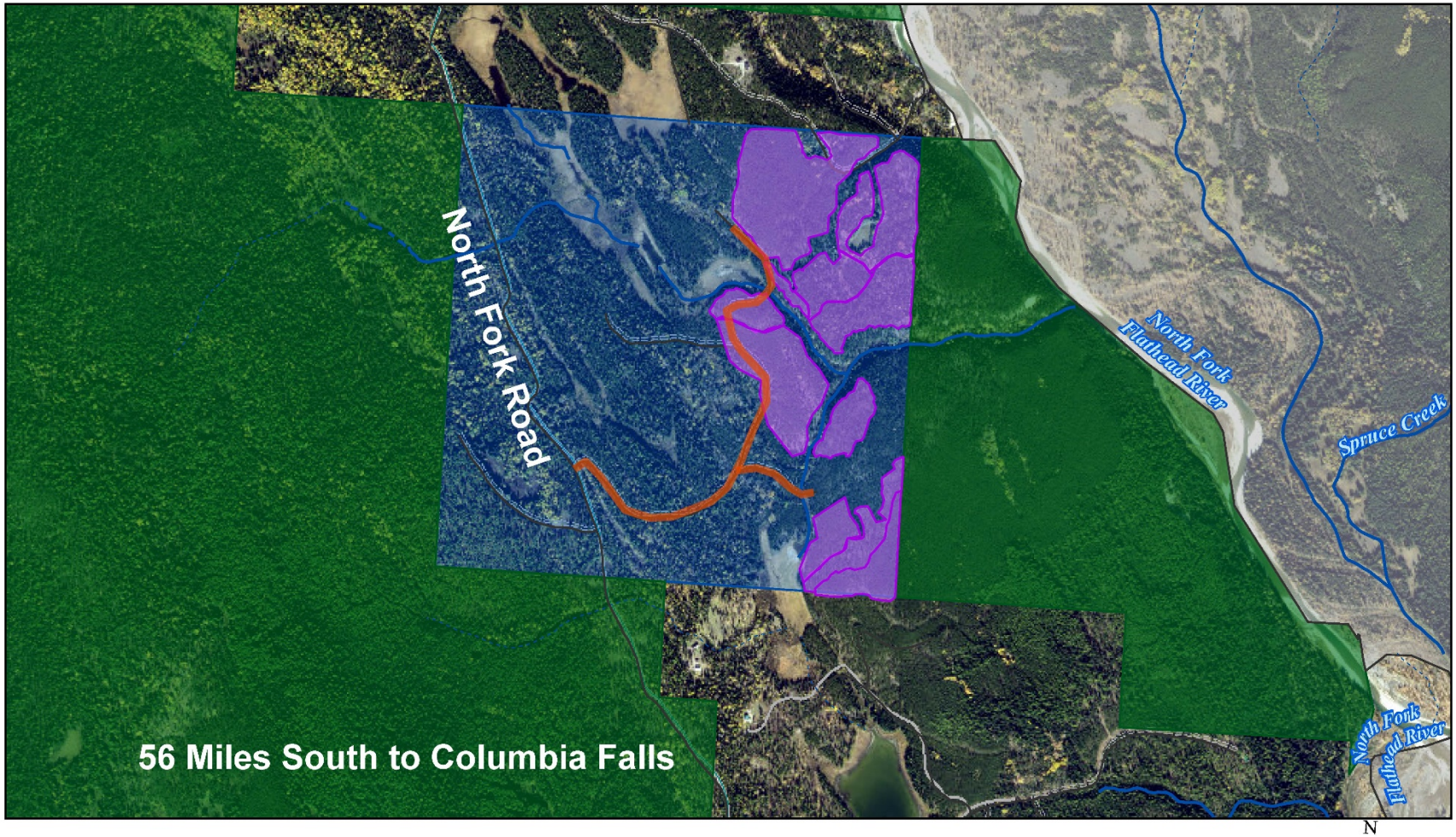
Attachment A: 1 of 2

GARNET CREEK TIMBER PROJECT VICINITY MAP

STILLWATER UNIT



Garnet Creek Timber Sale Harvest Units and Haul Route



- Haul Route
- Garnet Creek Harvest Units
- Existing Road
- Perennial Stream
- Intermittent Stream
- Montana State Trust Lands
- US Forest Service
- National Park Service

N

0 0.25 0.5 0.75 1 Miles

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0420-1B <u>Timber Sale: Gird Creek</u>

Location: Ravalli County
Section 16, T5N, R19W

Trust Beneficiaries: Common Schools

Trust Revenue: $31,369 (estimated, minimum bid)

Item Summary

Location: The Gird Creek project area is located approximately 9 miles southeast of Hamilton Montana.

Size and Scope: The sale includes 6 harvest units (*400 acres*) of skyline (*287 acres*) and tractor (*113 acres*) logging.

Volume: The estimated harvest volume is 10,817 tons (1,384 MBF) of sawlogs.

Estimated Return: The minimum bid is $2.90 per ton, which would generate approximately $31,369 for the Common Schools Trust and approximately $33,533 in Forest Improvement fees.

Prescription: This sale has a combination of salvage and sanitation harvest with a lesser amount of shelterwood and seed tree harvest prescriptions designed to reduce insect and disease issues and to promote forest health.

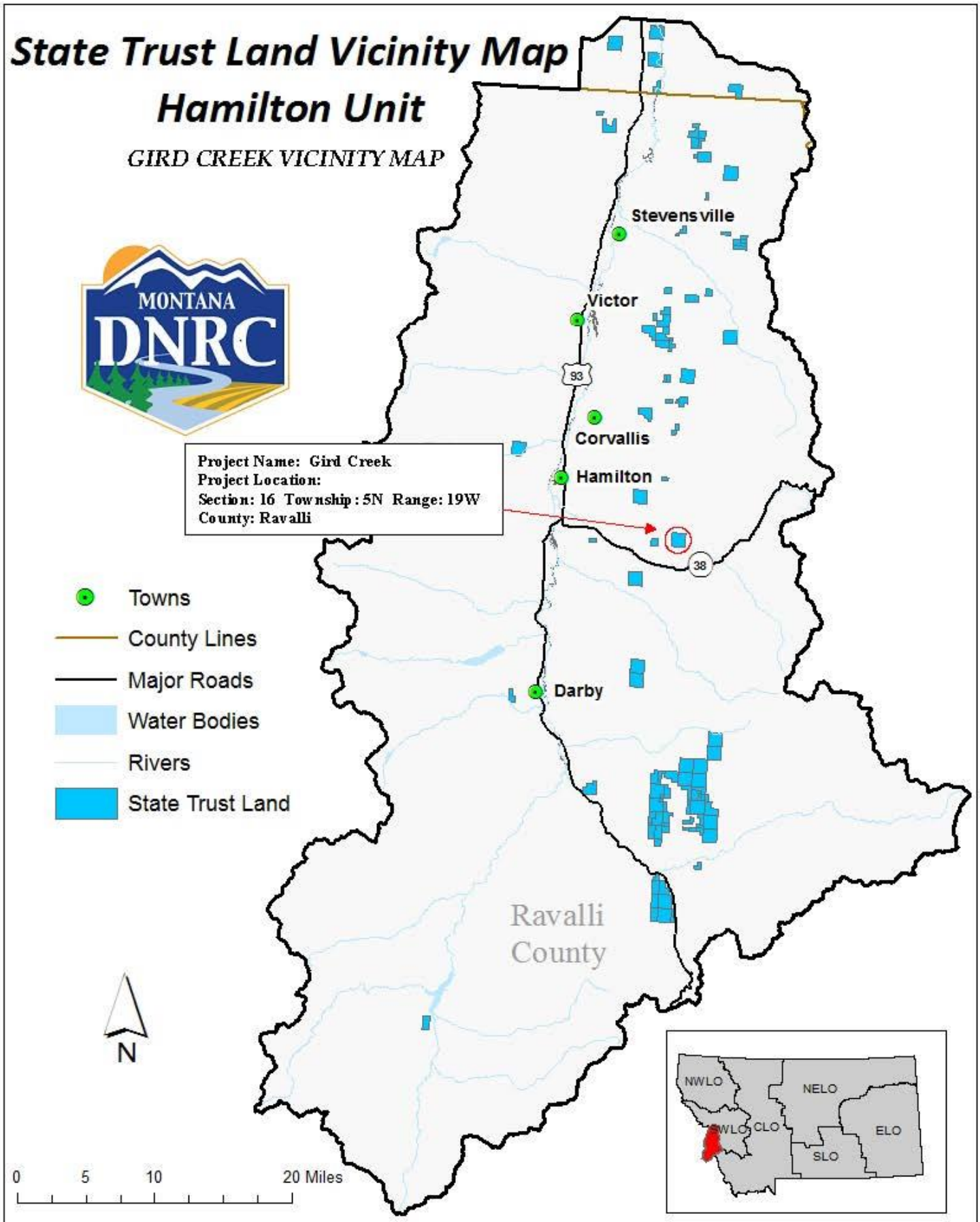
Road Construction/Maintenance: The Department of Natural Resources and Conservation (DNRC) is proposing 6.1 miles of road maintenance and 3.0 miles of new permanent road construction.

Access: DNRC has obtained a temporary road use permit to use FS road #714 and road #13248.

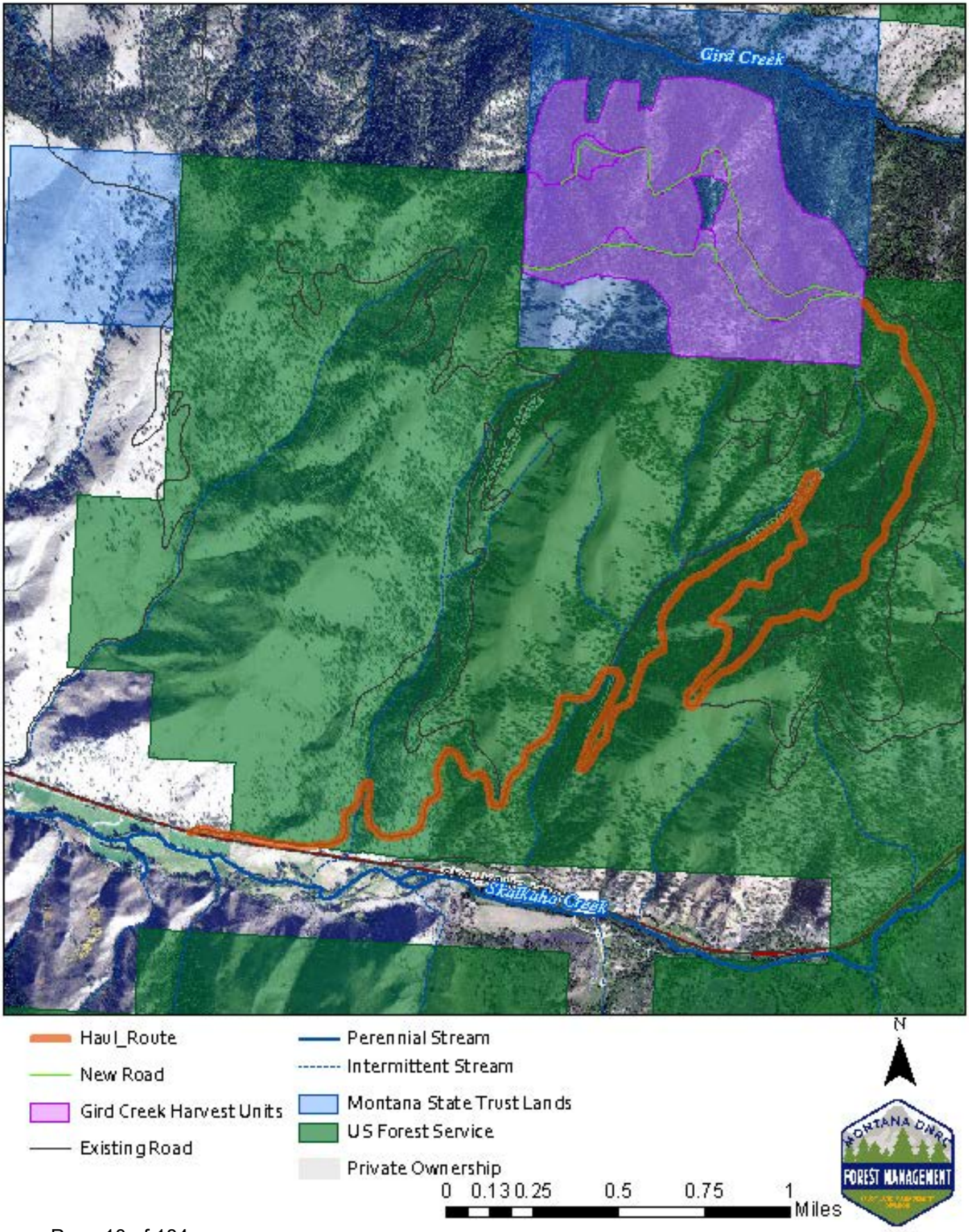
Public Comments: Three comments were received. The Confederated Salish and Kootenai Tribes had “no comments at this time” pertaining to sites of cultural significance. Montana Fish Wildlife and Parks (FWP) supported the proposed vegetation treatments and encouraged leaving patches of security/thermal cover. FWP also requested that new roads be stored (gated/barricaded) to prevent motorized use. A private landowner in the area supported the proposed vegetation treatments but was concerned about erosion issues from the construction of new roads. Internal and external issues and concerns were incorporated into project planning and design.

DNRC Recommendation

The director recommends the Land Board direct DNRC to sell the Gird Creek Timber Sale.


State Trust Land Vicinity Map
Hamilton Unit
GIRD CREEK VICINITY MAP
MONTANA
DNRC
Stevensville
Victor
93
Corvallis
Hamilton
38
Darby
Project Name: Gird Creek
Project Location:
Section: 16 Township: 5N Range: 19W
County: Ravalli
Towns
County Lines
Major Roads
Water Bodies
Rivers
State Trust Land
Ravalli County
N
0 5 10 20 Miles
NWLO
NELO
SWLO
CLO
ELO
SLO
Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane

Gird Creek Haul Route and Harvest Units



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0420-1C <u>Timber Sale: South of Blanchard</u>

Location: Missoula County
Section 6 T14N R14W (State Reform School)
Section 36 T15N R15W (Common School)
Sections 30, 31, and 32 T15N R14W (Common School)

Trust Beneficiaries: Common School (97.5%) and State Reform School (2.5%)

Trust Revenue: $125,795 (estimated, minimum bid)

Item Summary

Location: The South of Blanchard Timber Sale is located approximately 2.5 miles west of Clearwater Junction, MT.

Size and Scope: The sale includes 7 harvest units (*390* acres) of ground-based logging.

Volume: The estimated harvest volume is 9,437 tons (*1.179 MMBF*) of sawlogs.

Estimated Return: The minimum bid is $13.33 per ton, which would generate approximately $125,795 for the Common School and State Reform School Trusts and approximately $28,594 in Forest Improvement fees.

Prescription: This sale has a harvest prescription of shelterwood, and commercial thinning designed to improve tree growth, progressing towards the desired future conditions.

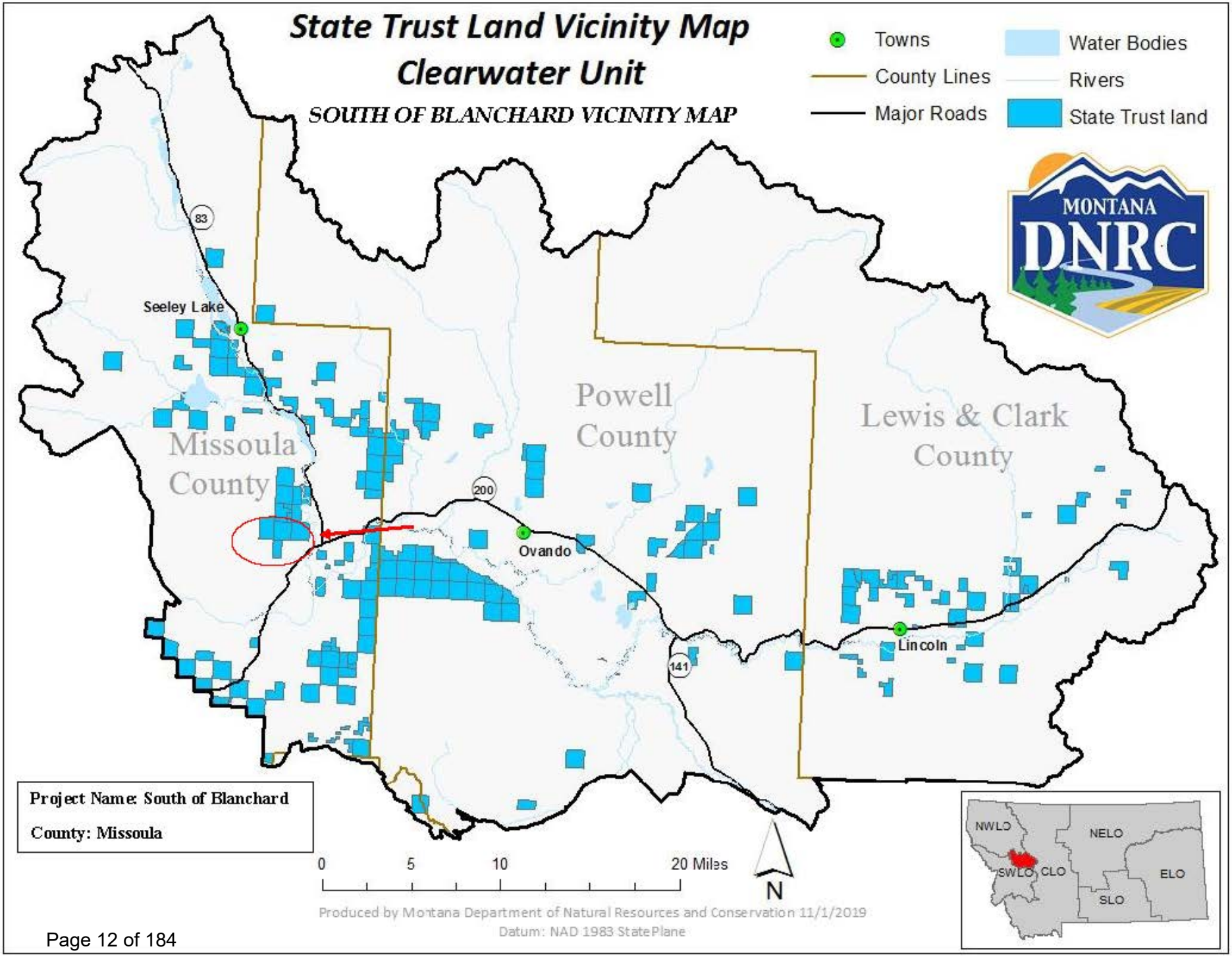
Road Construction/Maintenance: The Montana Department of Natural Resources and Conservation (DNRC) is proposing 1 mile of new permanent road construction, 1 mile of road reconstruction, and 10 miles of road maintenance.

Access: Access is obtained through Blanchard Creek County and DNRC roads.

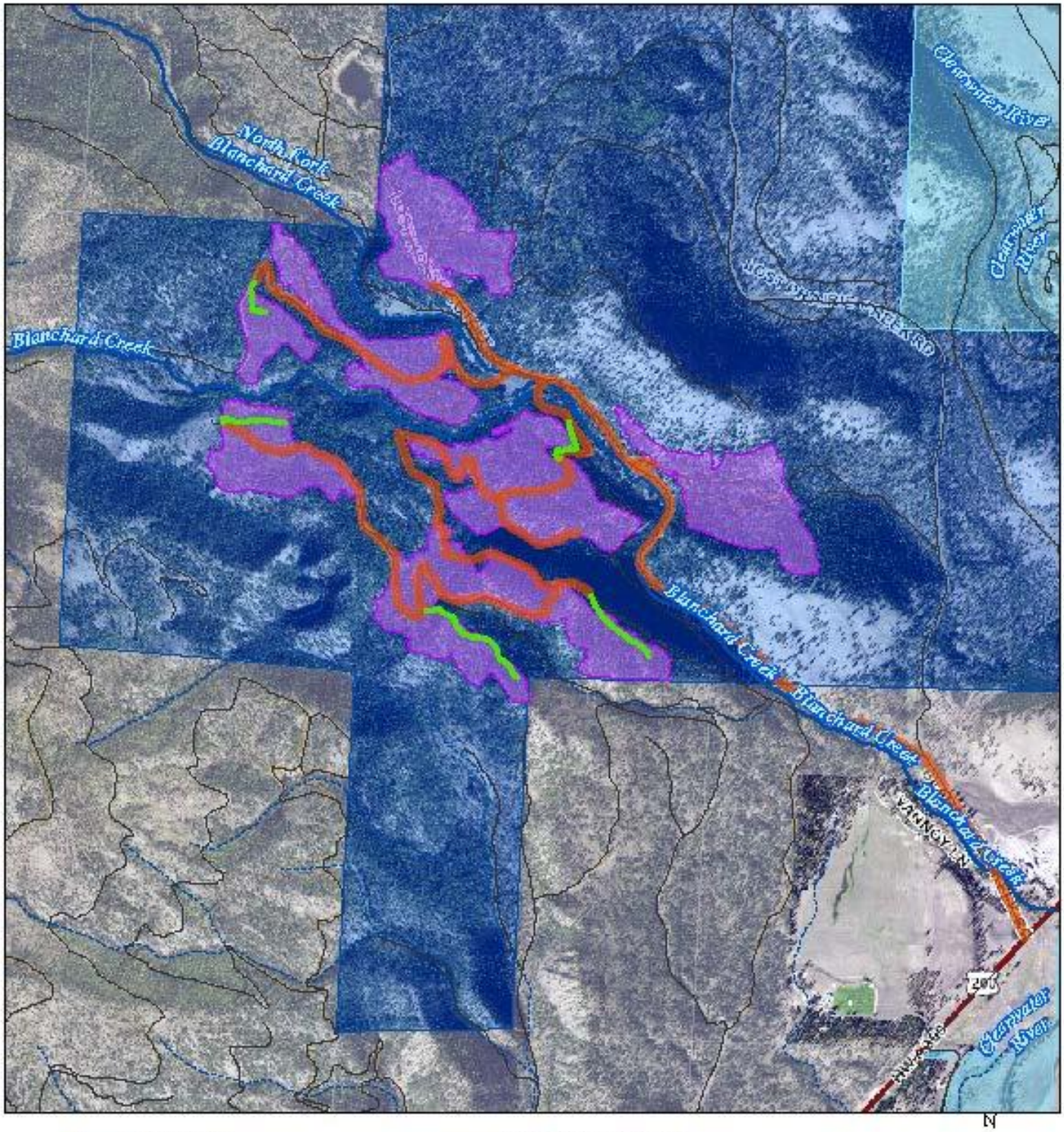
Public Comments: Four public comments were received. Weyerhaeuser, the Northern Cheyenne Tribe, and Montana Department of Fish, Wildlife, and Parks had either no concern or was in support of the project. One local resident had concerns regarding the Blanchard Creek Road system. With this concern in mind, minor changes were made to the amount of road maintenance that DNRC will complete as part of this sale.

DNRC Recommendation

The director recommends the Land Board direct DNRC to sell the South of Blanchard Timber Sale.


State Trust Land Vicinity Map
Clearwater Unit
SOUTH OF BLANCHARD VICINITY MAP
Towns
County Lines
Major Roads
Water Bodies
Rivers
State Trust land
MONTANA
DNRC
83
Seeley Lake
Missoula County
Powell County
Lewis & Clark County
200
Ovando
141
Lincoln
Project Name: South of Blanchard
County: Missoula
0
5
10
20 Miles
N
Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane
NWLO
NELO
SWLO
CLO
ELO
SLO

South of Blanchard Haul Route and Harvest Units



Haul Route
New Road
South of Blanchard Harvest Units
Existing Road
Perennial Stream
Intermittent Stream
Montana State Trust Lands
Montana Fish, Wildlife, and Parks
Private Ownership

N

0 0.13 0.25 0.5 0.75 1 Miles

0420-2

COMMUNITIZATION AGREEMENT:

A. Elaine 34X-21BXC Well

B. Jacobson 7-41H Well

C. Pine 12-1 1H Well

D. Prewitt 21-25-4H Well

Land Board Agenda Item
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0420-2A Communitization Agreement: Elaine 34X-21BXC Well

Location: Richland County
T24N R56E Section 16

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary
XTO Energy 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.

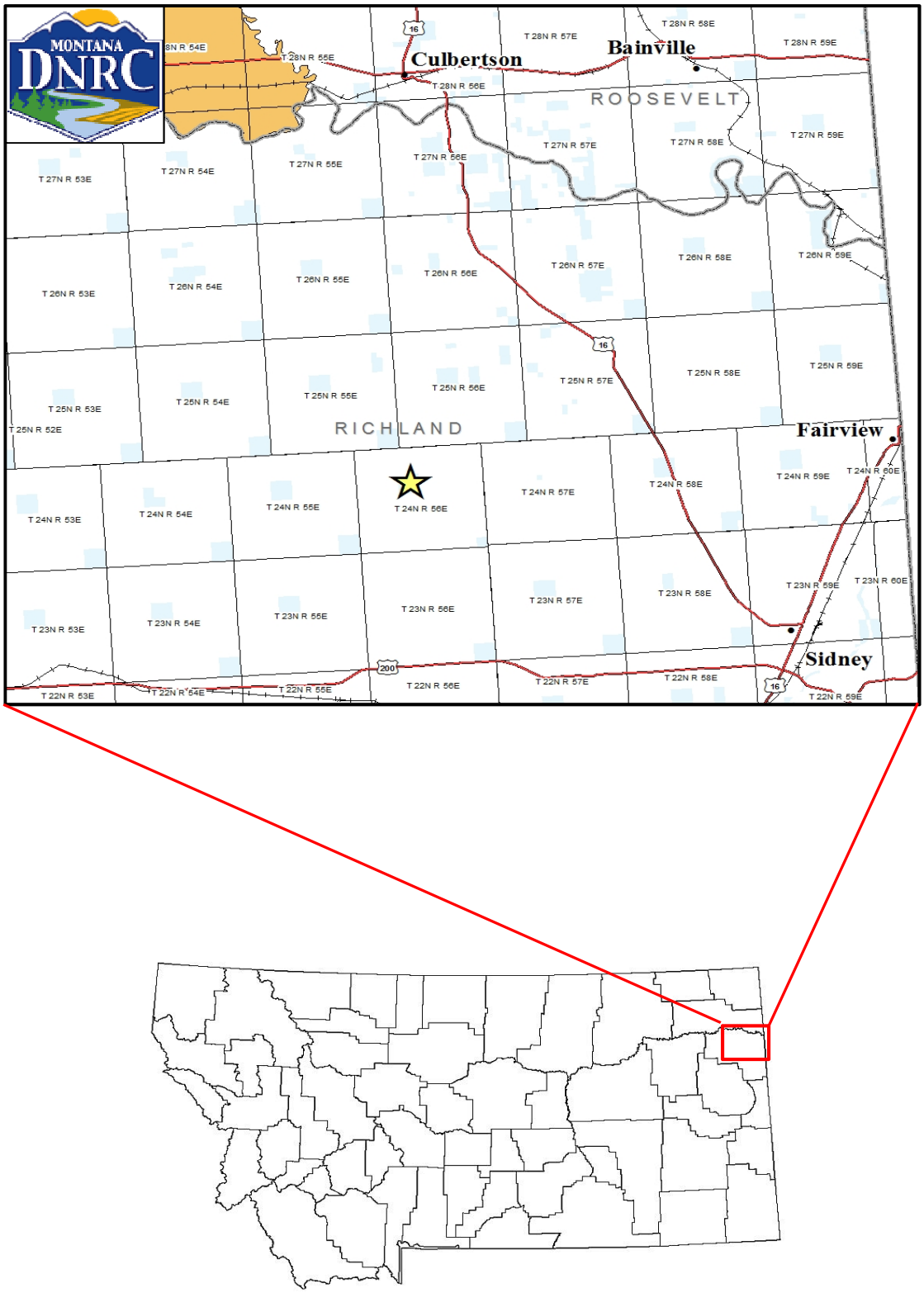
A communitization agreement brings together small tracts of land within a spacing unit for the distribution of production revenues. The agreement allows the State to receive its proper royalty share of production revenues from the spacing unit.

The Elaine 34X-21BXC well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately 19 miles northwest of Sidney, and was drilled into private land in Section 21. DNRC owns 640.00 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 the spacing unit comprised of Sections 16 & 21 of T24N R56E.

The DNRC tract comprises 50.00% of the communitized area. DNRC will consequently receive 6.5% of all oil production (13.00% royalty x 50.00%) and 6.25% of all gas production (12.5% royalty x 50.00%.

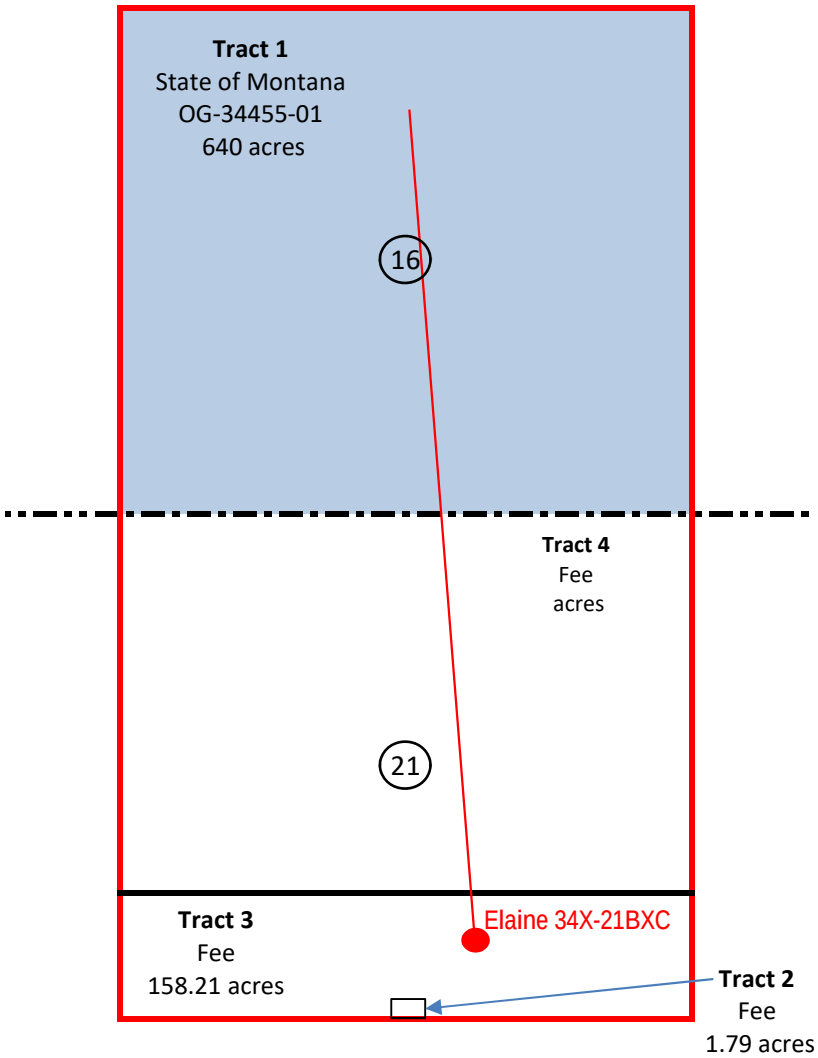
DNRC Recommendation
The director recommends the Land Board approve this Communitization Agreement.

Vicinity Map
Elaine 34X-21BXC



Township 24 North Range 56 East

Sections 16 & 21



Tract No.	Type	Acres	Tract Participation	Royalty %	*Owner's Interest*
1	State of Montana OG-34455-01	640.00	50.0000000%	13.00%	6.500000%
2	Fee	1.79	0.1398438%	15.00%	0.020977%
3	Fee	158.21	12.3601562%	15.00%	1.854023%
4	Fee	480.00	37.5000000%	18.75%	7.03125%
Total		1,280.00	100.000%		

** The Operator of the Communitized Area is XTO Energy Inc.*

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0420-2B <u>Communitization Agreement: Jacobson 7-41H Well</u>

Location: Richland County
T26N R59E Section 8

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

Abraxas Petroleum Corporation 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.

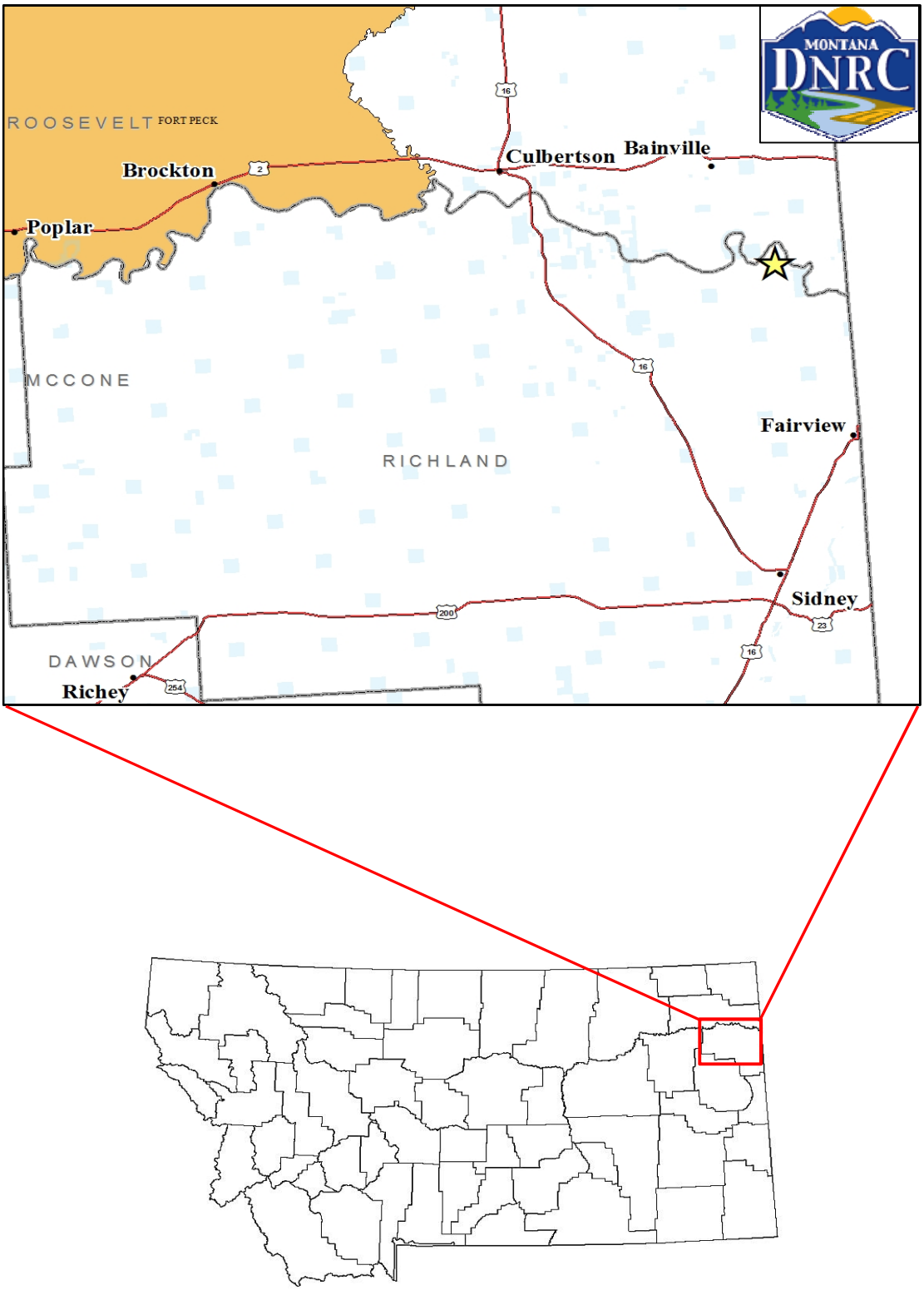
The Jacobson 7-41H well is a horizontal Ratcliffe formation oil well. The well is located approximately 13 miles northwest of Fairview, and was drilled into private land in Section 7. DNRC owns a portion of Section 8 which includes 21.67 acres of the 480.20 mineral acres in the permanent spacing unit that will be communitized. The Agreement encompasses any wells producing from the Ratcliffe formation in NE¼ of Section 7 & N½ of Section 8 of T26N R59E.

The DNRC tract comprises 4.5127% of the communitized area. DNRC will consequently receive 0.5867% of all oil and gas production (13.00% royalty x 4.5127%).

DNRC Recommendation

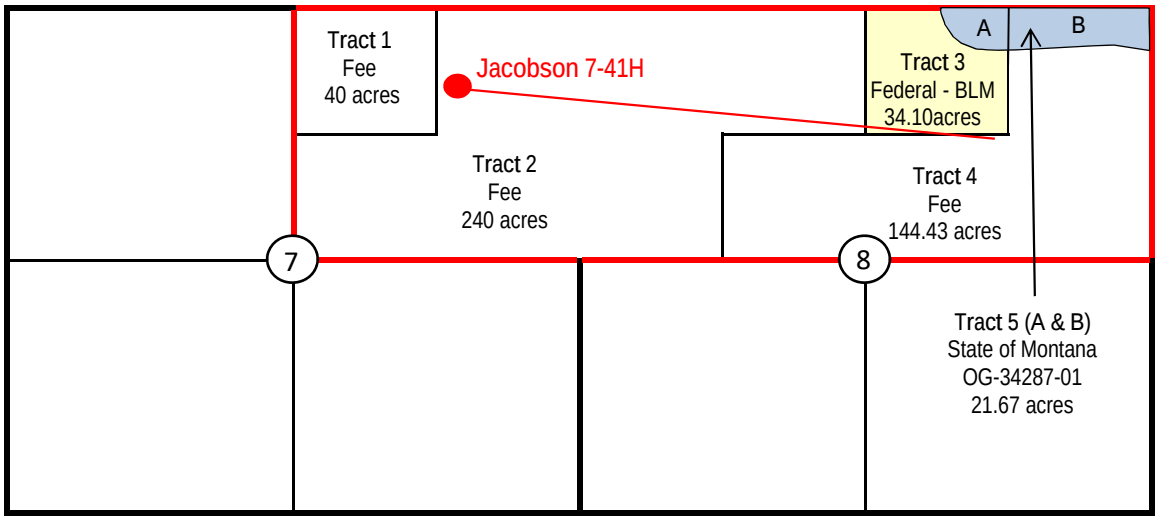
The director recommends the Land Board approve this Communitization Agreement.

Vicinity Map
Jacobson 7-41H Well



Township 26 North Range 59 East

Sections 7 & 8



*The communitized area is only NE1/4 of section 7 and N1/2 of section 8.

Tract No.	Type	Acres	Tract Participation	Royalty %	*Owner's Interest Decimal*
1	Fee	40.00	8.33%	16.67%	0.0138859
2	Fee	240.00	49.98%	various	
3	Federal - BLM	34.10	7.10%	12.50%	0.0088765
4	Fee	144.43	30.08%	15.00%	0.0451156
5a	State of Montana OG-34287-01	6.00	1.25%	13.00%	0.0016243
5b	State of Montana OG-34287-01	15.67	3.26%	13.00%	0.0042422
Total		480.20	100.000%		

** The Operator of the Communitized Area is Abraxas Petroleum Corporation.*

Land Board Agenda Item
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0420-2C <u>Communitization Agreement: Pine 12-1 1H Well</u>

Location: Richland County
T24N R51E Section 12

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.

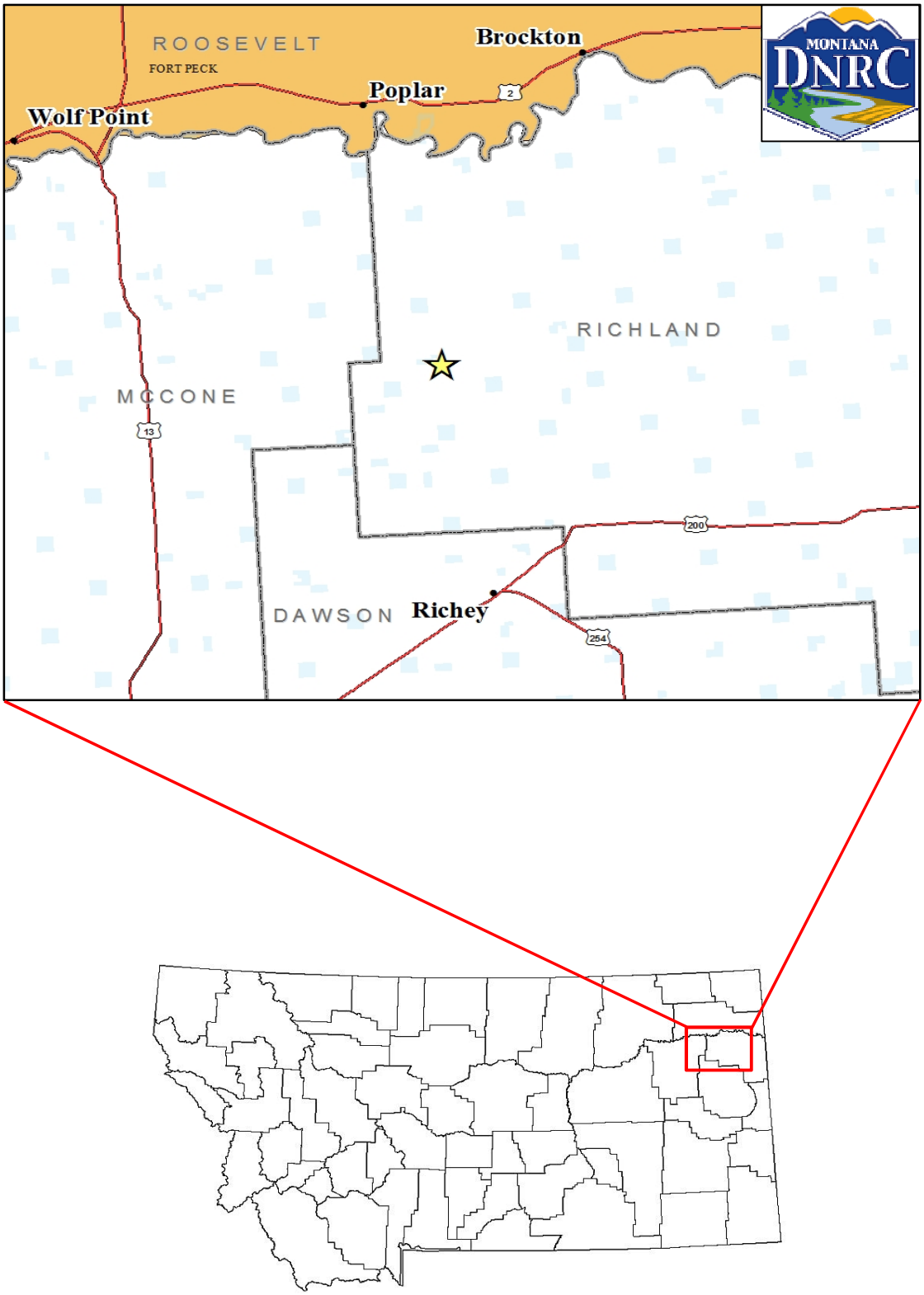
The Pine 12-1 1H well is a horizontal Bakken/Three Forks formation oil well. The well is located approximately 15 miles north of Richey, and was drilled into private land in Section 12. DNRC owns 320.00 acres of the 879.72 mineral acres in the permanent spacing unit that will be communitized. The Agreement encompasses any wells producing from the Bakken/Three Forks Formation in the spacing unit comprised of Sections 1 & 12 of T24N R51E.

The DNRC tract comprises 36.375% of the communitized area. DNRC will consequently receive 6.0637125% of all oil and gas production (16.67% royalty x 36.375%).

DNRC Recommendation

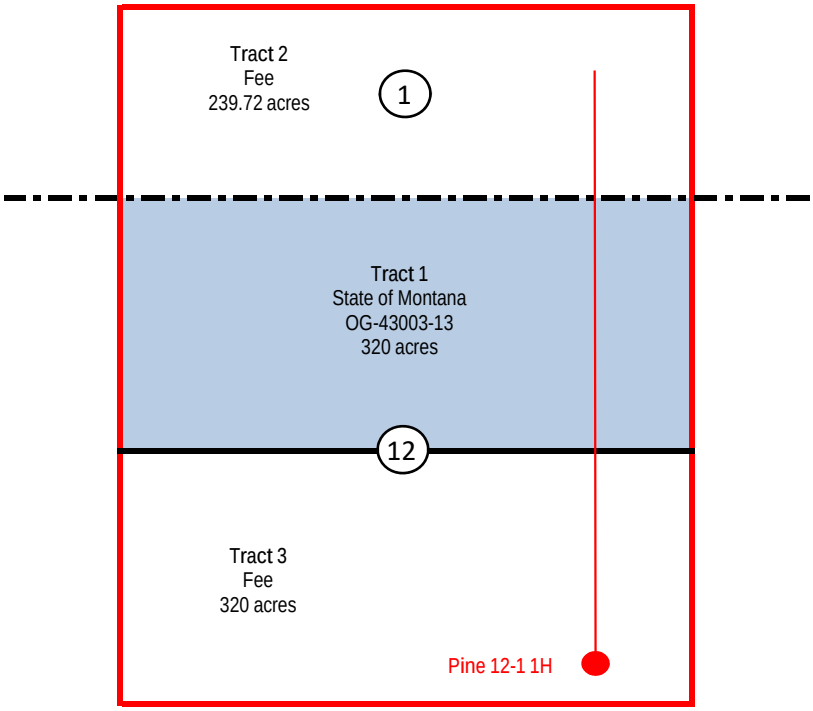
The director recommends the Land Board approve this Communitization Agreement.

Vicinity Map
Pine 12-1 1H Well



Township 24 North Range 51 East

Sections 1 & 12



Tract No.	Type	Acres	Tract Participation	Royalty %	*Net Owner's Interest*
1	State of Montana OG-43003-13	320.00	36.375%	16.67%	6.0637125%
2*	Fee Lot 1	214.72	24.408%	20.00%	4.8816000%
2	Fee Lot 2	25.00	2.842%	N/A	2.8420000%
3	Fee	320.00	36.375%	16.67%	6.0637125%
Total		879.72	100.000%		

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

** Please note: all the sections on the north border of this township are smaller due to PLSS.*

Land Board Agenda Item
April 23, 2020

0420-2D Communitization Agreement: Prewitt 21-25-4H Well

Location: Richland County
T25N R58E Section 36

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary
Whiting Oil & Gas Corporation 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.

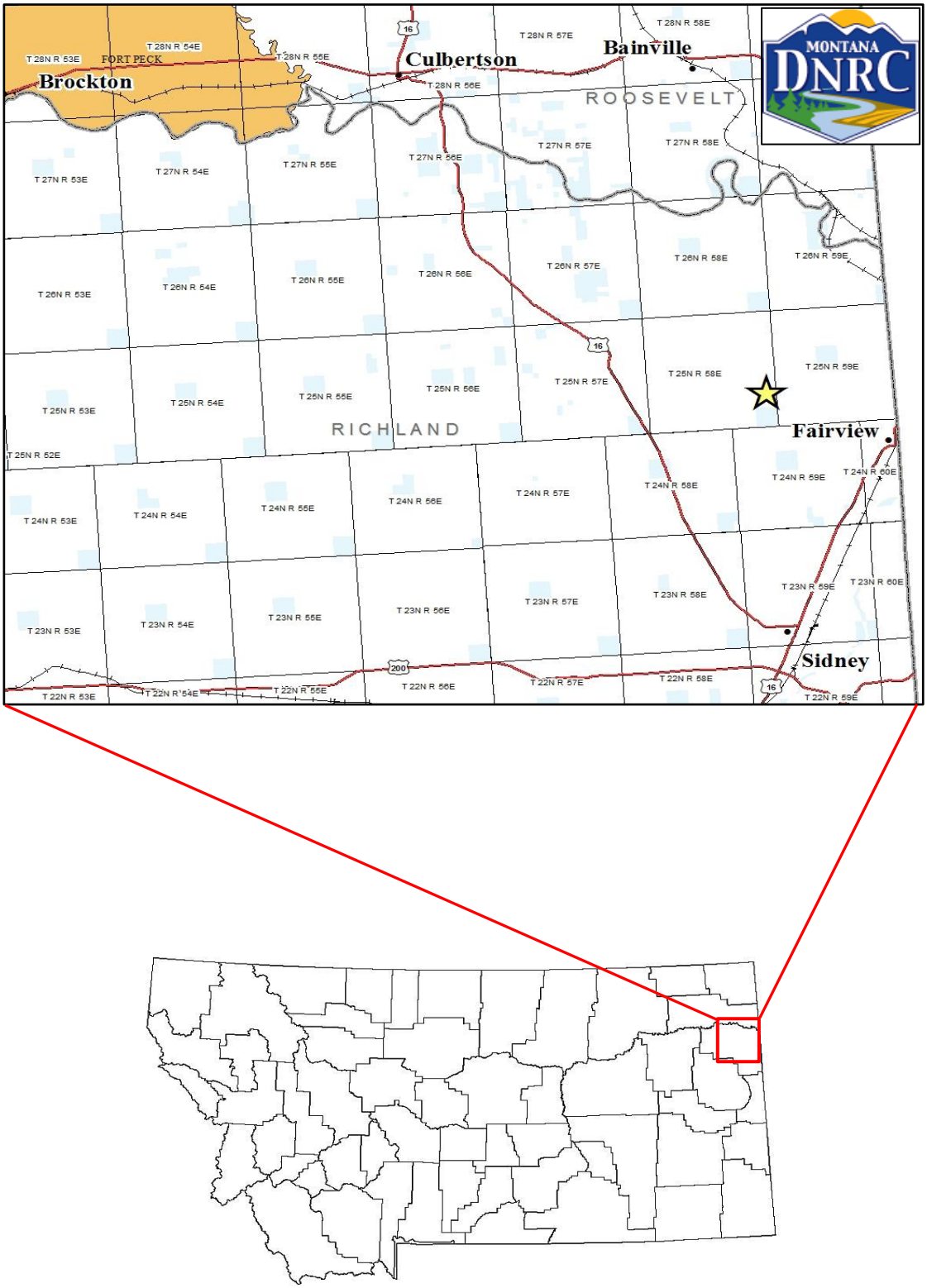
A communitization agreement brings together small tracts of land within a spacing unit for the distribution of production revenues. The agreement allows the State to receive its proper royalty share of production revenues from the spacing unit.

The Prewitt 21-25-4H well is a horizontal Bakken formation oil well. The well is located approximately 6.5 miles northwest of Fairview, and was drilled into private land in Section 25. DNRC owns Section 36, which includes 640.00 acres of the 1280.00 mineral acres in the permanent spacing unit that will be communitized. The Agreement encompasses any wells producing from the Bakken Formation in the spacing unit comprised of Sections 25 & 36 of T25N R58E.

The DNRC tract comprises 50.00% of the communitized area. DNRC will consequently receive 8.335% of all oil and gas production (16.67% royalty x 50.00%).

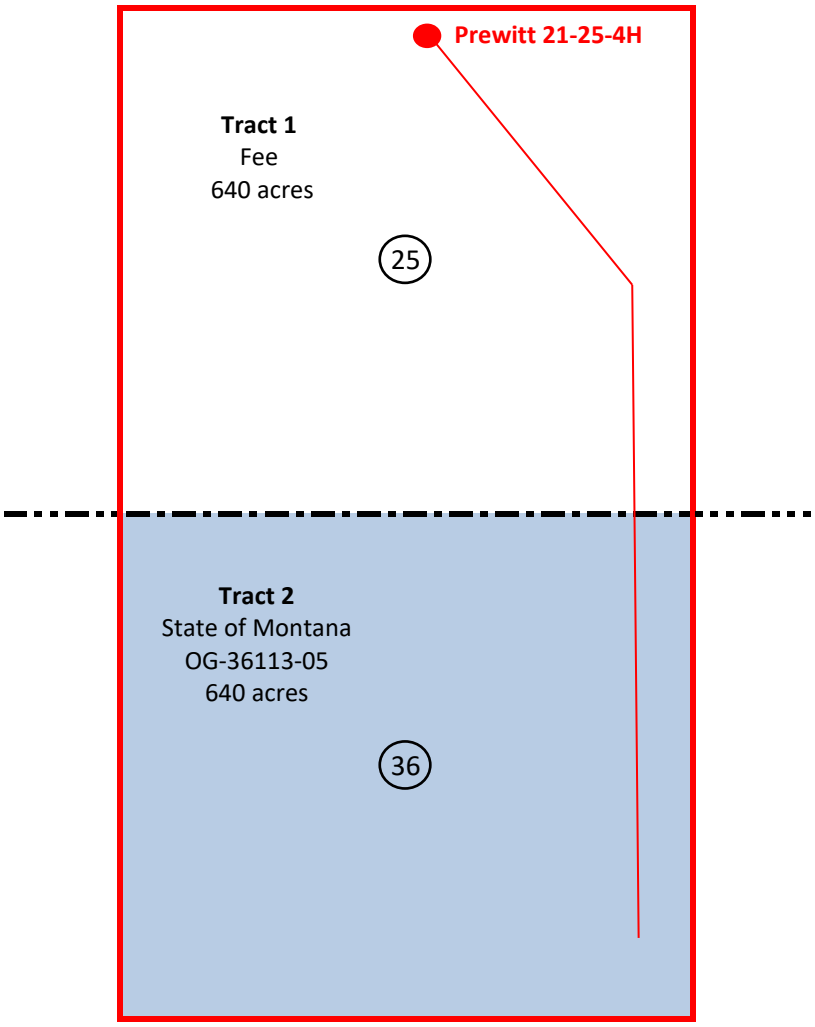
DNRC Recommendation
The director recommends the Land Board approve this Communitization Agreement.

Vicinity Map
Prewitt 21-25-4H



Township 25 North - Range 58 East

Sections 25 & 36



Tract No.	Type	Acres	Tract Participation	Royalty %	*Owner's Interest Decimal*
1		640.00	50.00%	various	
2		640.00	50.00%	16.67%	0.08335
Total		1,280.00	100.00%		

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

0420-3

NON-DISTURBANCE AGREEMENT:
GB Energy Park LLC

Land Board Agenda Item
April 20, 2020

0420-3 Non-Disturbance Agreement: GB Energy Park LLC

Location: Township 8 North, Range 11 East, Section 28
Meagher County

Trust Benefits: Capitol Buildings

Trust Revenue: $125,000

Item Summary

GB Energy Park LLC (GBEP) is developing the Gordon Butte Pumped Storage Project, to be located in Central Montana, [Exhibit 1] 25 miles west of Harlowton near Martinsdale. [Exhibit 2] The Project will be built on and adjacent to a prominent flat-topped landform called Gordon Butte. The Project consists of upper and lower closed-loop reservoirs connected by an underground concrete and steel hydraulic shaft that will generate hydroelectric power through one or more turbine-generators located at the bottom reservoir. [Exhibit 3]

The State owns the oil & gas and coal rights underneath Section 28, which is located on top of Gordon Butte. The upper reservoir is also located on top of the butte, with the majority of the reservoir located on Section 28. [Exhibit 4]

Coal is not present in this area of the State. The probability that there is commercial oil & gas in this area is low but State lands in this area were leased for oil & gas late 70s - early 80s. No wells were drilled, and State lands in the area have not been leased since then. GBEP is concerned that their project could be harmed if oil & gas exploration or development were to occur on Section 28. Discussions between GBEP and the department produced the attached Non-Disturbance Agreement [Exhibit 5]. The Agreement prohibits the State from occupying or conducting any surface operations within 600 feet of the perimeter of the upper reservoir, in return for a payment from GBEP. An upfront payment of $125,000 will be due at the commencement of construction on the project. The payment is greater than the State would receive in annual rentals if the section were leased for oil & gas over 50 years. The agreement term is 50 years, with the right to renew for an additional 50-year term.

The Agreement provides significant revenue to the trust beneficiary with minimal impact on the department's ability to lease the section for oil & gas exploration if such interest arises in the future.

DNRC Recommendation

The director recommends approval of the proposed Non-Disturbance Agreement.

Exhibit 1

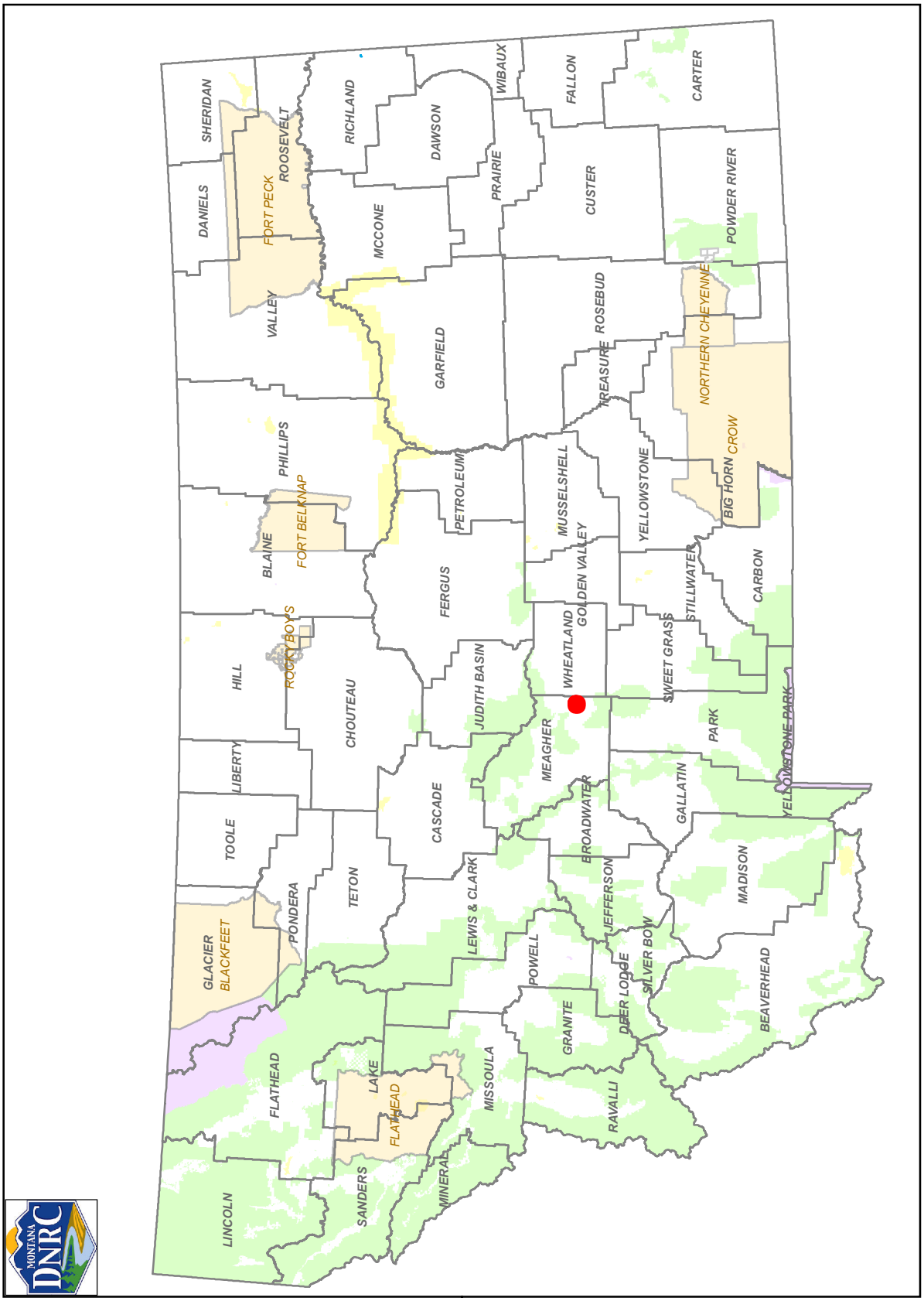

SHERIDAN
DANIELS
ROOSEVELT
FORT PECK
RICHLAND
DAWSON
WIBAUX
FALLON
CARTER
PRAIRIE
CUSTER
POWDER RIVER
MCCONE
VALLEY
GARFIELD
ROSEBUD
TREASURE
NORTHERN CHEYENNE
CROW
BIG HORN
PHILLIPS
FORT BELKNAP
BLAINE
PETROLEUM
MUSSELSHELL
YELLOWSTONE
STILLWATER
CARBON
FERGUS
GOLDEN VALLEY
HILL
ROCKY BOYS
WHEATLAND
SWEET GRASS
CHOUTEAU
JUDITH BASIN
PARK
YELLOWSTONE PARK
LIBERTY
MEAGHER
GALLATIN
CASCADE
TOOLE
BROADWATER
MADISON
TETON
JEFFERSON
PONDERA
LEWIS & CLARK
GLACIER
BLACKFEET
POWELL
SILVER BOW
DEER LODGE
BEAVERHEAD
GRANITE
FLATHEAD
LAKE
MISSOULA
RAVALLI
MINERAL
SANDERS
LINCOLN

Exhibit 2

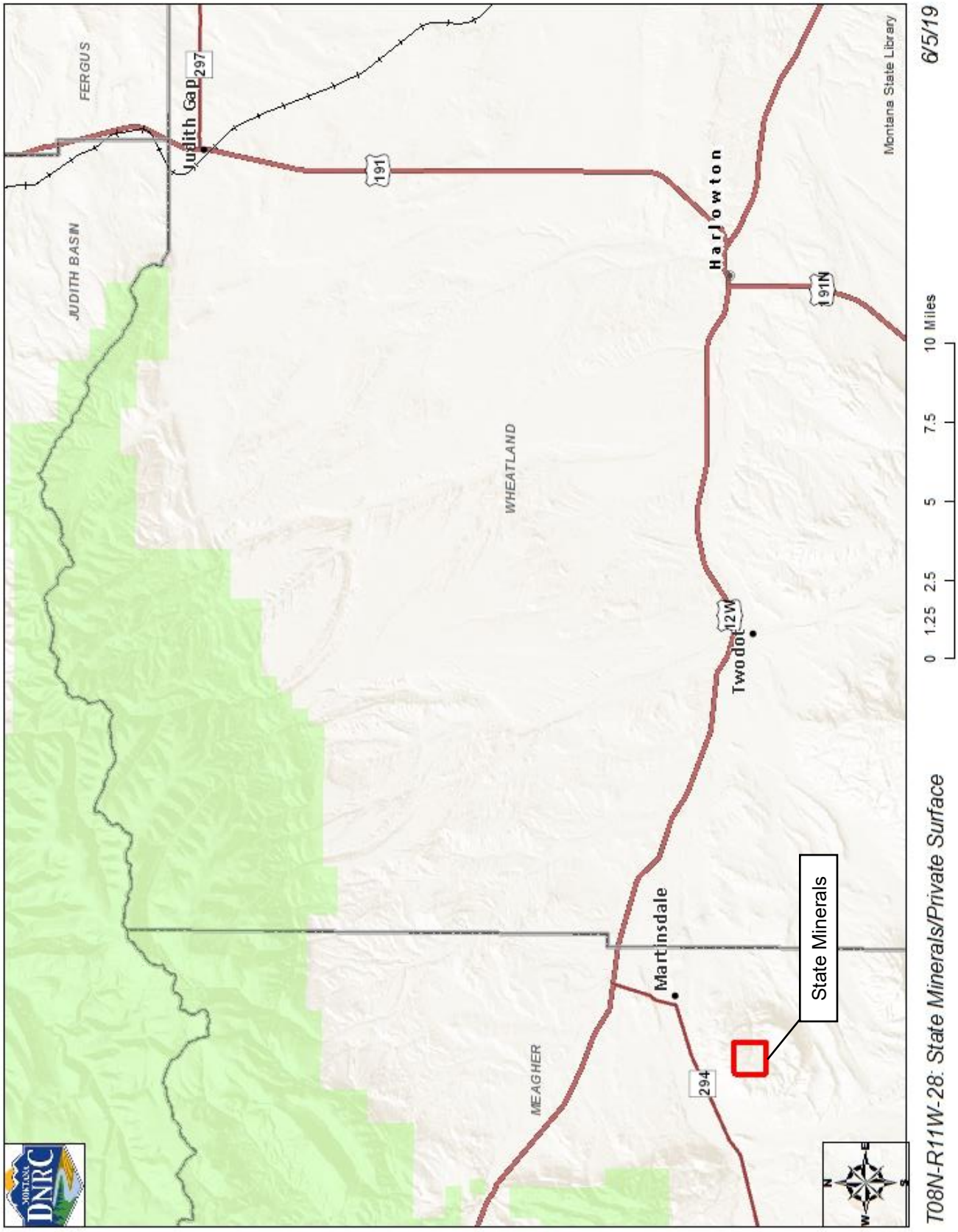
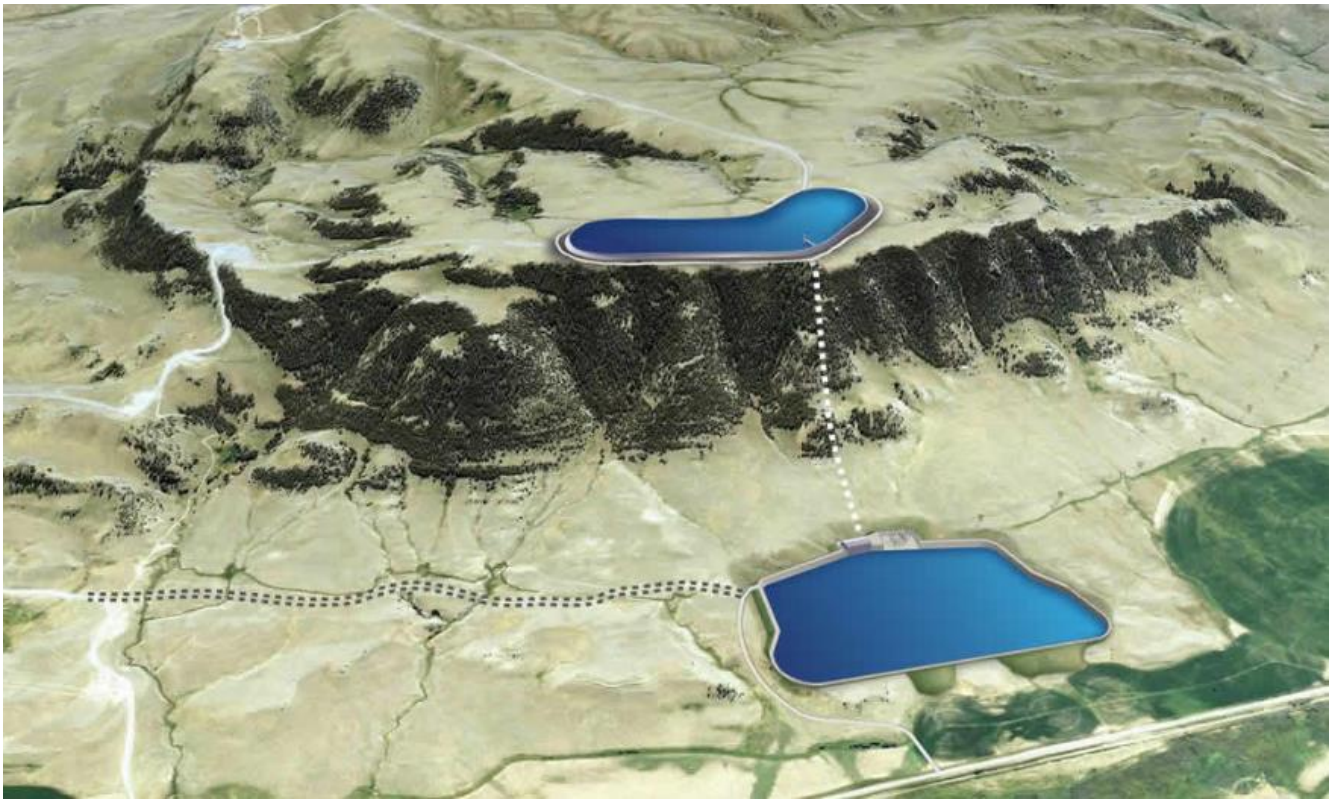
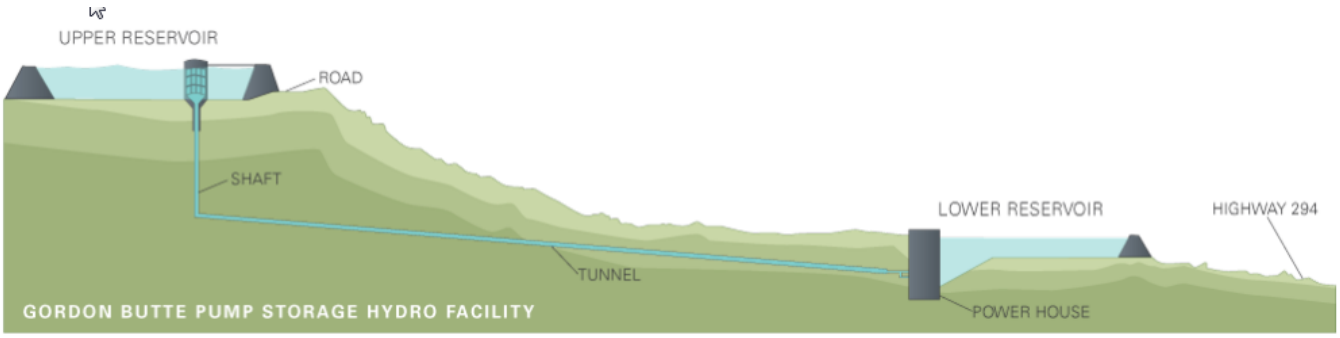

FERGUS
JUDITH BASIN
Judith Gap
297
191
Harlowton
191N
WHEATLAND
12W
Twodot
Martinsdale
294
MEAGHER
State Minerals
0 1.25 2.5 5 7.5 10 Miles
Montana State Library
6/5/19
T08N-R11W-28: State Minerals/Private Surface

Exhibit 3





Images from Absaroka Energy LLC Website (www.gordonbuttepumpedstorage.com)

Exhibit 4

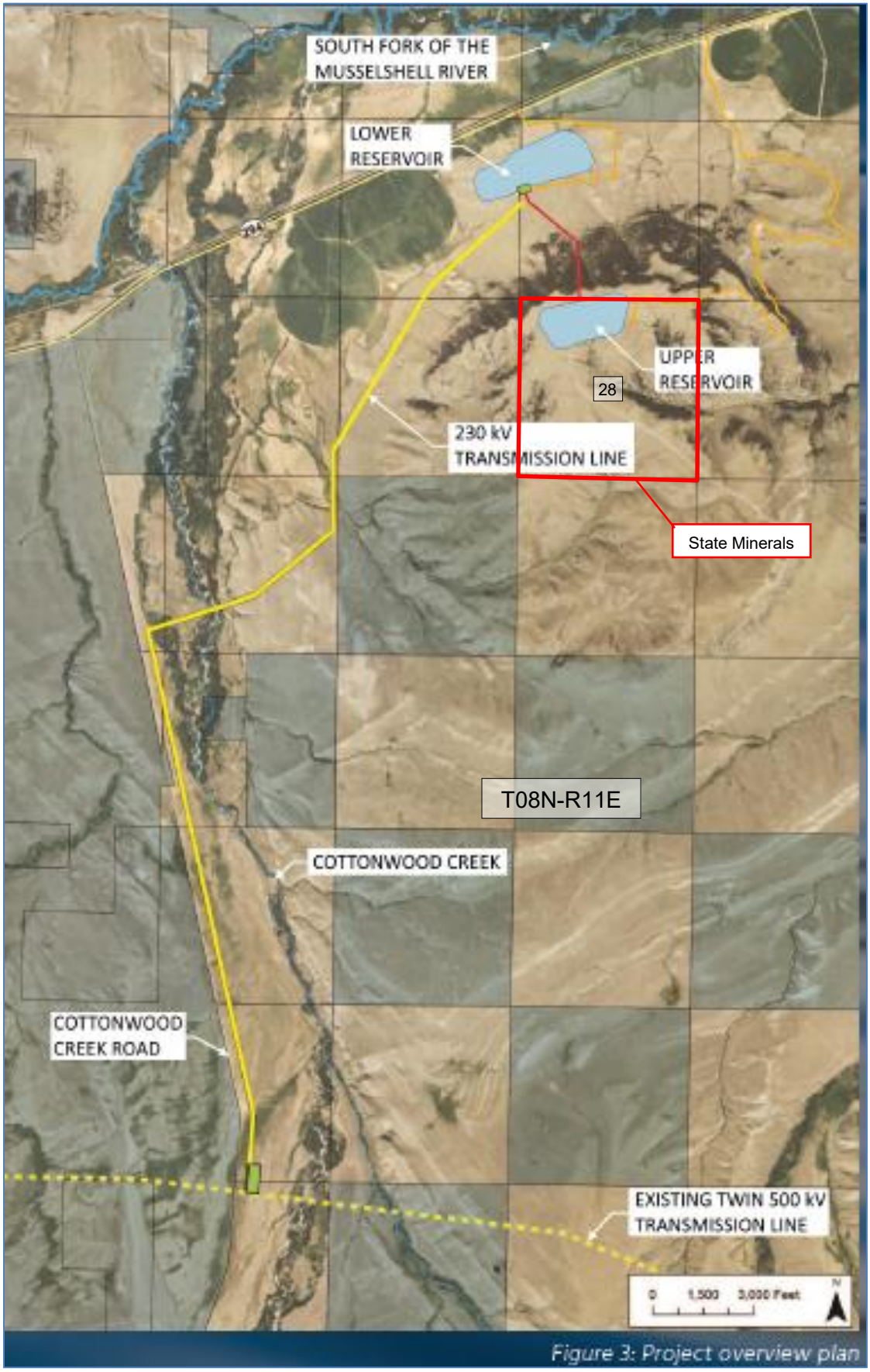


Image from Absaroka Energy LLC Website (www.gordonbuttepumpedstorage.com)

NON-DISTURBANCE AGREEMENT

This Non-Disturbance Agreement (this "Agreement") is entered into as of _____, 2020 (the "Effective Date"), among the State of Montana, Department of Natural Resources and Conservation (the "State"), with a mailing address of P.O. Box 201601, Helena, Montana 59620-1601; 71 Ranch LP, a Montana limited partnership ("71 Ranch"), with mailing address of 106 Ranch Road, Martinsdale, Montana 59053; and GB Energy Park LLC, a Montana limited liability company ("GBEP"), with mailing address of P.O. Box 309, Bozeman, Montana 59771. The State, 71 Ranch, and GBEP may be referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

A. GBEP is developing the Gordon Butte Pumped Storage Project consisting of upper and lower closed-loop reservoirs connected by an underground concrete and steel-lined hydraulic shaft that will generate hydroelectric power through one or more turbine-generators located at the bottom reservoir, among other facilities (the "Project"). The Project is located near Martinsdale, Montana.

B. GBEP is the holder of that certain hydropower license issued by the Federal Energy Regulatory Commission on December 14, 2016, as Project P-13642, which covers the Project area, linear facilities, construction and operation of the Project.

C. The Project's upper reservoir is to be located atop a prominent landform called Gordon Butte, predominately in Section 28, Township 8 North, Range 11 East, in Meagher County, Montana ("Section 28"). The position of the Project within Section 28 is or shall be constructed consistent with the diagrams included on the attached Exhibit A ("Project Features"). 71 Ranch is the owner of the surface estate of Section 28. 71 Ranch and GBEP are parties to that certain Agreement for Purchase, Sale and Easement of Real Property (the "Purchase Agreement") dated as of October 14, 2014, wherein, among other things, 71 Ranch has granted GBEP an option to purchase a portion of 71 Ranch's right, title and interest in and to Section 28 for use in connection with the Project.

D. The State is the owner of some or all of the mineral estate (restricted to oil, gas and coal) in Section 28 (collectively, the "Minerals"). The State does not own the surface estate of Section 28.

E. GBEP has sought an agreement from the State, as current owner of the Minerals, that would protect the Project from any future mineral exploration or mineral development activities in Section 28.

NOW, THEREFORE, upon consideration of the covenants given herein, and the terms and conditions of this Agreement, the sufficiency of which is acknowledged by the Parties, the Parties covenant and agree as follows:

ARTICLE 1
NON-DISTURBANCEAGREEMENT

1.1 **Restrictions on Mineral Development**. During the Term (as defined below) of this Agreement, the State hereby covenants and agrees not to occupy or conduct any surface operations within 600 feet of the exterior boundary of the upper reservoir. With regards to vertical restrictions, the State covenants and agrees not to prospect, explore, or develop the Minerals within 1500 feet below the Project Features on Section 28. (Collectively, the limitations, restrictions and covenants in this clause are referred to as the "Development Restrictions".)

1.2 **Development Restrictions not sale or lease of Minerals**. The Parties understand and agree that nothing in this Agreement nor the Development Restrictions is or shall be deemed a sale, transfer, assignment, conveyance, license, or lease of the Minerals, and the State shall retain all other rights, title and interest in and to the Minerals, subject to the Development Restrictions described above.

ARTICLE 2
TERM OF AGREEMENT

2.1 **Term**. The term of this Agreement (the "Term") shall begin on the Effective Date and continue until the earlier of: (a) the date upon which the Project is abandoned and decommissioned; or (b) fifty (50) years from the Effective Date. GBEP shall have the option to renew this Agreement for one (1) additional fifty (50) year term, subject to the approval of the Montana State Board of Land Commissioners, which approval may require additional consideration. The following shall not be deemed abandonment or otherwise evidence GBEP's intent to abandon the Project: (w) any delay in pre-construction or construction of Project not exceeding ten (10) consecutive years; (x) following initial production of commercial electricity from the Project, any non-use of the Project not exceeding twenty-four (24) consecutive months; (y) following initial production of commercial electricity from the Project, any non-use of the Project due to construction, maintenance, repairs, upgrades, enlargements, inspections, and the like; (z) any non-use of the Project due to a Force Majeure Event.

2.2 **GBEP's right of early termination**. GBEP, and only GBEP, may terminate this Agreement at any time upon no less than thirty (30) days prior written notice to the State.

ARTICLE 3
CONSIDERATION AND PAYMENT

3.1 **One Time Payment**. As consideration for the above Development Restrictions and the other terms and conditions of this Agreement, GBEP will make a one time payment to the State in the amount of one hundred and twenty five thousand dollars ($125,000). The one time payment will be made on or before the start of construction of the Project which includes mobilizing equipment to the Project site or activity at the Project site of a ground disturbing nature.

ARTICLE 4
DEFAULT

4.1 **Default**. The failure of any Party to this Agreement to observe or perform any of the obligations, or to dispute in writing the alleged failure, of such Party provided for herein within thirty (30) days after written notice of such default shall be deemed an Event of Default under this Agreement.

4.2 **Remedies of Default**. If an Event of Default occurs, the non-defaulting Party may at once thereafter or at any time subsequently during the existence of such Event of Default without any further notice, any one or more, or any combination thereof, the following: (a) terminate this Agreement immediately without further notice and hold the defaulting Party liable for, and shall have recourse to any appropriate means to recover, all damages resulting from such Event of Default, with interest thereon from the date of such termination at a rate equal to 10% per annum, or (b) offset any monetary costs, fees, or damages incurred or suffered by such non-defaulting Party against all present and future monetary payments due under this Agreement, or (c) seek specific performance of such defaulting Party's obligations under this Agreement, or (d) seek injunctive relief relating to the Event of Default, or (e) pursue any and all available remedies under this Agreement, at law, or in equity for the enforcement of the defaulting Party's obligations under this Agreement.

ARTICLE 5
MISCELLANEOUS

5.1 **Interpretation**.

(a) The words "this Agreement," "herein," "hereby," "hereunder" and "hereof," and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "this Article," "this Section" and "this Subsection," and words of similar import, refer only to the Article, Section or Subsection hereof in which such words occur. The word "or" is not exclusive, and the word "including" (in its various forms, such as "include" and "shall include") means including without limitation.

(b) Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and *vice-versa*, unless the context otherwise requires.

(c) The term "Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the State of Montana.

5.2 **Notices**. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid for overnight delivery to a reputable national overnight air courier service or (iii) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid.

Notices, demands and communications, in each case to the Parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

Notices to State:

_____
_____
_____

Notices to GBEP:

Carl Borgquist
PO Box 309
Bozeman, MT 59771

Notices to 71 Ranch:

_____
_____
_____

5.3 **Binding Effect, Covenants Running with Land, Assignment**.

(a) **Binding Effect, Covenants Running with Land.** This Agreement and all of the provisions hereof: (i) shall be binding upon and inure to the benefit of the Parties and their respective transferees, successors, and assigns and all persons claiming by, through or under them (collectively, "Transferees"); (ii) shall be covenants running with Section 28 and the Minerals, and any sale, lease, or other transfer of Section 28 or the Minerals, or any part thereof, including transfers with or without consideration, by operation of law, as a result of judicial and nonjudicial proceedings, or by conveyances in lieu of foreclosure or condemnation (collectively, a "Transfer"), shall be subject to this Agreement and the rights granted herein; and (iii) by consummation of a Transfer of Section 28 or the Minerals or any part thereof, by acceptance of a deed, transfer, lease, assignment or other instrument of conveyance of Section 28 or the Minerals or any part thereof, such Transferees shall be entitled to and bound by all rights, liabilities and obligations set forth in the terms and provisions of this Agreement.

(b) **Assignment**. This Agreement and any of the rights, interests or obligations hereunder may be assigned by any Party hereto with prior notice to, but without the need to obtain consent of, the other Party or Parties, and such assignment shall relieve the assigning Party of its obligations under this Agreement; *provided*, however, that upon GBEP's acquisition of Section 28 pursuant to the Purchase Agreement, all of 71 Ranch's right, title and interest in and to this Agreement shall automatically transfer to, and vest in, GBEP without the need to provide notice

to any Party herein. The absolute right to assign under this Subsection is a material inducement for the Parties to enter into this Agreement.

5.4 **Severability**. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Montana law, but if any provision of this Agreement is held to be prohibited by or invalid under Montana law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, and the Parties shall amend or otherwise modify this Agreement to replace any prohibited or invalid provision with an effective and valid provision that gives effect to the intent of the Parties to the maximum extent permitted by Montana law.

5.5 **No Strict Construction**. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

5.6 **Amendment and Waiver**. Any provision of this Agreement may be amended or waived only in a writing signed by the Parties. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

5.7 **Complete Agreement**. This Agreement contains the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way.

5.8 **Counterparts and Recordability**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement. This Agreement shall be recorded in the real property records of Meagher County, Montana.

5.9 **Governing Law**. This Agreement shall be construed and enforced in accordance with the laws of the State of Montana, excluding the choice of law provisions thereof.

5.10 **Attorneys' Fees**. In the event of a dispute between the Parties relating to this Agreement the prevailing Party shall be entitled to its costs, reasonable attorneys' fees, paraprofessionals' fees, and expert witness fees incurred therein or therefrom from the losing Party.

5.11 **No Guaranty of Information Shared**. GBEP makes no representations or warranties of any kind or nature, and hereby disclaims the same, regarding the accuracy, completeness, and relevancy of all materials, examinations, reviews, reports, and the like obtained, developed, or reviewed in connection with the negotiations related to this Agreement.

5.12 **No Warranty of Title.** Regardless of any of the above provisions of this Agreement, actual or implied, the State of Montana does not warrant title to its lands.

5.13 **Force Majeure**.

(a) **Performance Excused**. If either Party is rendered wholly or partially unable to perform its obligations under this Agreement, or is delayed in such performance, due to a Force Majeure Event (as defined below), that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent and for-the duration so affected.

(b) **Force Majeure Event**. A Force Majeure Event shall include the following: (i) natural disasters, fire, tornadoes, drought, losses to or reductions in aquifers, flooding, earthquakes, breaches of reservoirs, or landslides; (ii) explosions, acts of God, terrorism or an act of public enemy; (iii) national, regional or area-wide strikes, labor disturbances, disputes and lockouts; (iv) public disorder or civil disturbance, revolution, commotion, blockades, blockages, embargoes, civil insurrections, riots, invasion, war (declared or undeclared) or other armed conflict or hostilities; (v) sabotage and material physical damage to the Project or any portion thereof caused by third parties, transportation delays caused by third parties, unavailability of materials caused by third parties, equipment design or manufacturing defects or serial defects caused by third parties; (vi) condemnation, expropriation or confiscation; (vii) epidemic, plague or quarantine; (viii) unforeseen conditions (including without limitation, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); (ix) a material change in law; or (x) loss of biological processing ability at the Plant through no fault of the parties.

[REMAINDER OF PAGE INTENTIONALLY BLANK, SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

STATE OF MONTANA, DNRC

By:_____

Its:_____

STATE OF MONTANA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, as _____, State of Montana, DNRC.

_____
Notary Public

GB ENERGY PARK LLC, a Montana limited liability company

By:_____

Its:_____

STATE OF MONTANA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, as _____ of GB ENERGY PARK LLC, a Montana limited liability company.

_____
Notary Public

(SIGNATURE PAGE OF GBEP TO MINERAL DEVELOPMENT ABATEMENT AGREEMENT)

71 Ranch LP, a Montana limited partnership

By:_____

Its:_____

STATE OF MONTANA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, as _____ of 71 Ranch LP, a Montana limited partnership.

_____
Notary Public

(SIGNATURE PAGE OF 71 RANCH TO MINERAL DEVELOPMENT ABATEMENT AGREEMENT)

0420-4

LAND BANKING PARCELS:
Preliminary Approval for Sale

A. Rosebud County

B. Beaverhead County

C. Fergus County

0420-4A Land Banking Parcel: Preliminary Approval for Sale

Location: Rosebud County

Trust Benefits: Common Schools

Trust Revenue: Appraisal to be completed after preliminary approval

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting preliminary approval to sell one parcel totaling approximately 640 acres nominated for sale in Rosebud County. The sale was nominated by the lessee and is located approximately 19 miles southeast of Forsyth, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
1079	640±	ALL T4N-R43E, Sec. 36	Darell J. & Tammy R. Luther	Common Schools

The sale parcel has been used primarily for livestock grazing purposes and has below average productivity for agricultural and grazing lands statewide.

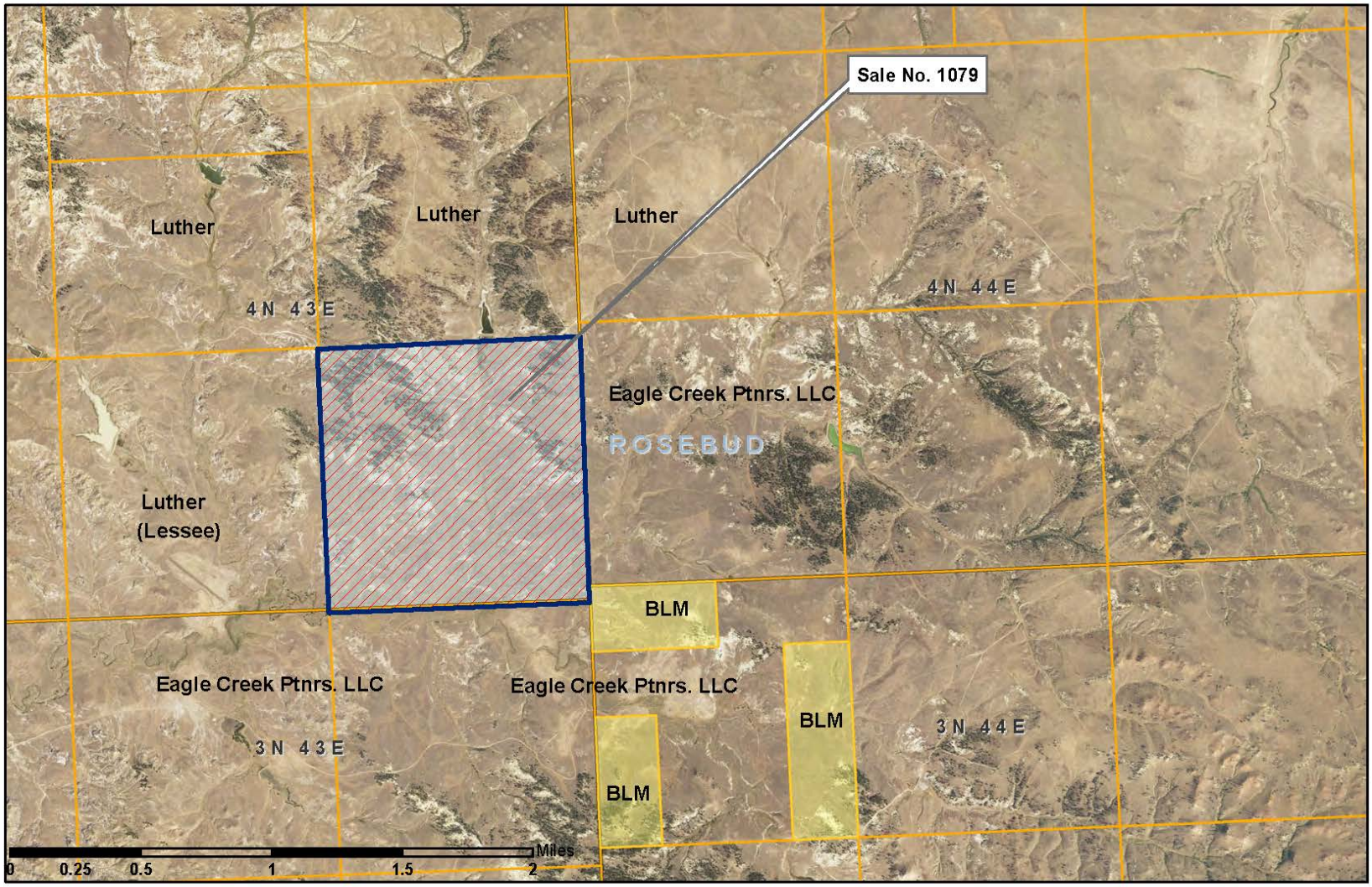
Sale No. 1079 is almost entirely surrounded by private land and is not legally accessible by the public. The southeast corner of the property is adjacent to BLM land; however, there is no legal access to the BLM parcel either. The sale of this parcel would not restrict or eliminate access to adjacent private land.

MEPA scoping has been completed, and no potentially negative issues related to the sale of this parcel have been identified.

With the Land Board's preliminary approval to sell this parcel, DNRC can continue the due diligence necessary to fully evaluate this parcel and process it for sale.

DNRC Recommendation

The director recommends the Land Board grant preliminary approval to sell this parcel.

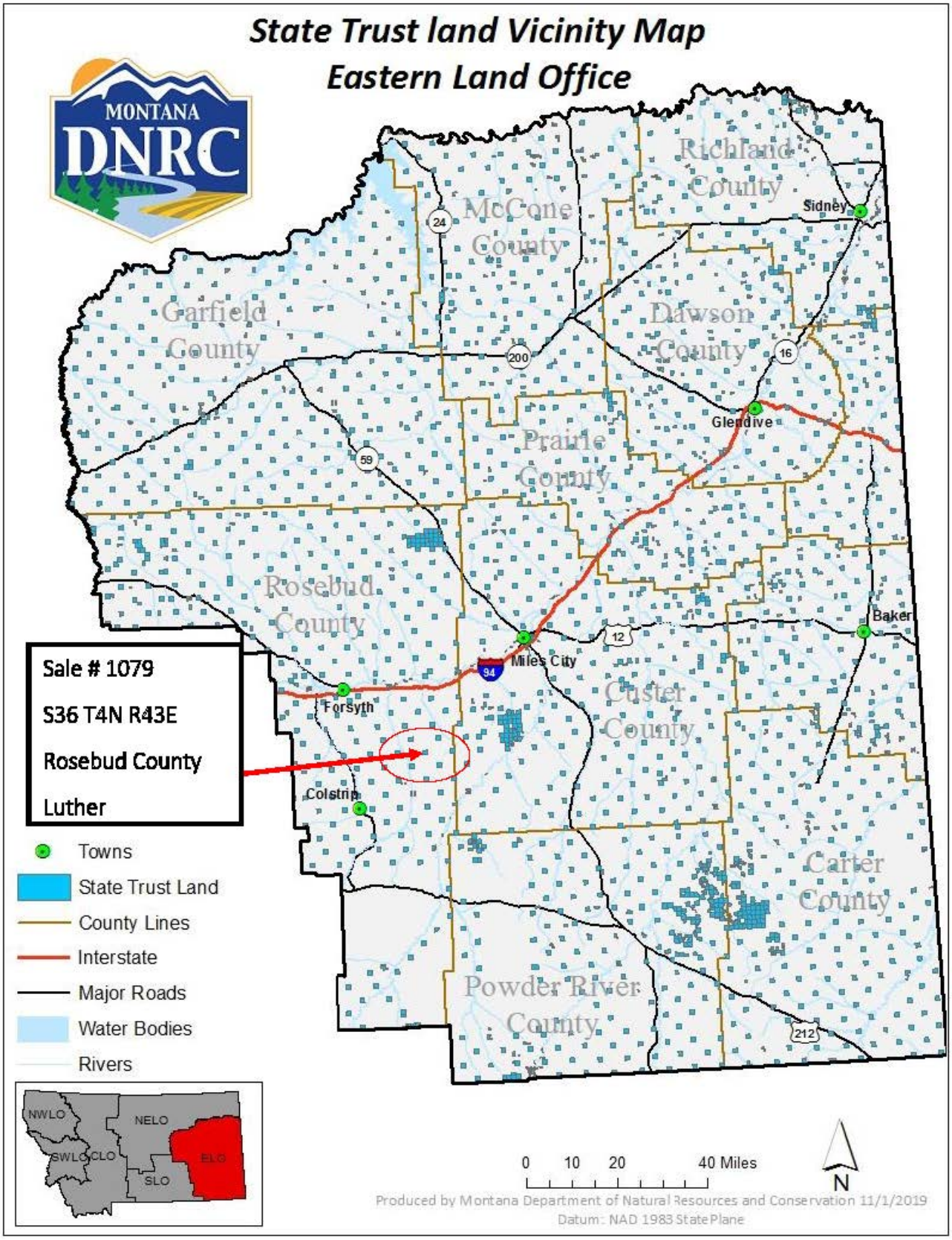


Location: Rosebud County S36 T4N R43E
Prepared on: 10 MARCH 2020
Prepared By: DNRC REMB Staff
Projection: NAD 1983 MT State Plane

Rosebud County Sale: Luther
Sale No. 1079, Common Schools

Sale #1079 | BLM | Owner Parcels | Montana State Trust Land

N


State Trust land Vicinity Map
Eastern Land Office
MONTANA
DNRC
Richland County
McCone County
Garfield County
Dawson County
Prairie County
Rosebud County
Custer County
Carter County
Powder River County
Sidney
Glendive
Baker
Miles City
Forsyth
Colstrip
24
200
16
59
12
94
212
Sale # 1079
S36 T4N R43E
Rosebud County
Luther
Towns
State Trust Land
County Lines
Interstate
Major Roads
Water Bodies
Rivers
NWLO
NELO
SWLO
CLO
ELO
SLO
0 10 20 40 Miles
N
Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 State Plane

Land Board Agenda Item
April 23, 2020

0420-4B <u>Land Banking Parcel: Preliminary Approval for Sale</u>

Location: Beaverhead County

Trust Benefits: Common Schools

Trust Revenue: Appraisal to be completed after preliminary approval

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting preliminary approval to sell one parcel totaling approximately 640 acres nominated for sale in Beaverhead County. The sale was nominated by the lessee and is located approximately 10 miles southeast of Jackson, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
1080	640±	ALL, Section 16, T7S-R14W	The Hairpin LC	Common Schools

Sale parcel 1080 includes approximately 640 acres of grazing land. The parcel has above average productivity for grazing lands statewide. The lessee currently holds a grazing lease on the parcel.

This isolated parcel is surrounded by private land and is not legally accessible to the public. The sale of this parcel would not restrict or eliminate access to adjacent private land. Public comments include one reply in support of the sale, two that would like to see the profits from the sale used to purchase publicly-accessible land in the nearby region, and one that would like to see the Hairpin Ranch participate in the Block Management Program and allow hunting on the property.

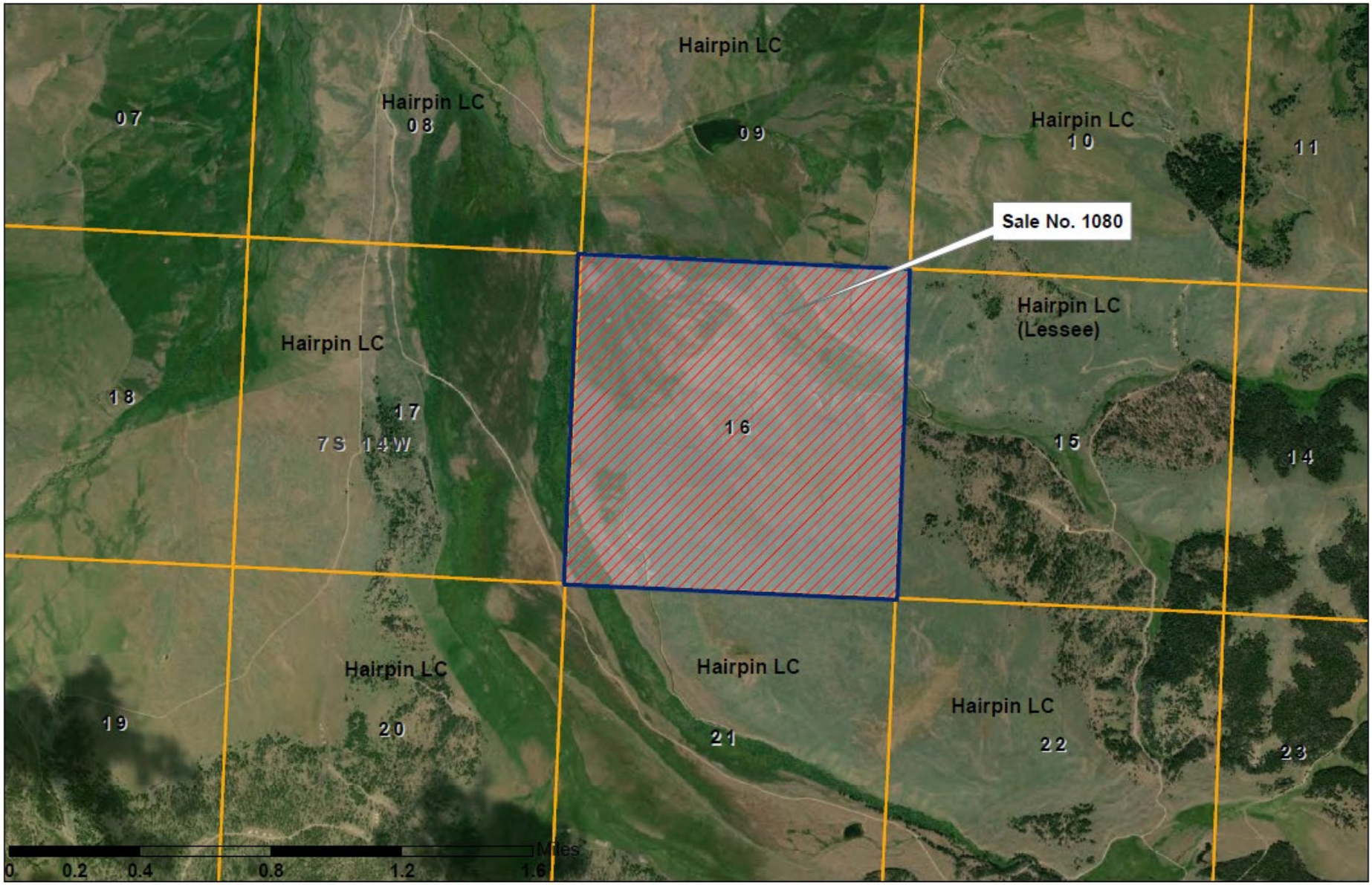
No potentially negative issues were identified through the MEPA process regarding the sale of this parcel. Two streams on the section, Sage and Andrus have been identified as possibly containing westslope cutthroat trout. The Montana Department of Fish, Wildlife and Parks supports the sale of this isolated tract and is working with the Hairpin Ranch on a cutthroat conservation project to construct a fish barrier.

Hairpin has agreed to provide temporary access to remove state timber on nearby state land prior to the completion of this sale.

With the Land Board's preliminary approval to sell this parcel, DNRC can continue the due diligence necessary to fully evaluate these parcels and process them for sale.

DNRC Recommendation

The director recommends the Land Board grant preliminary approval to sell this parcel.

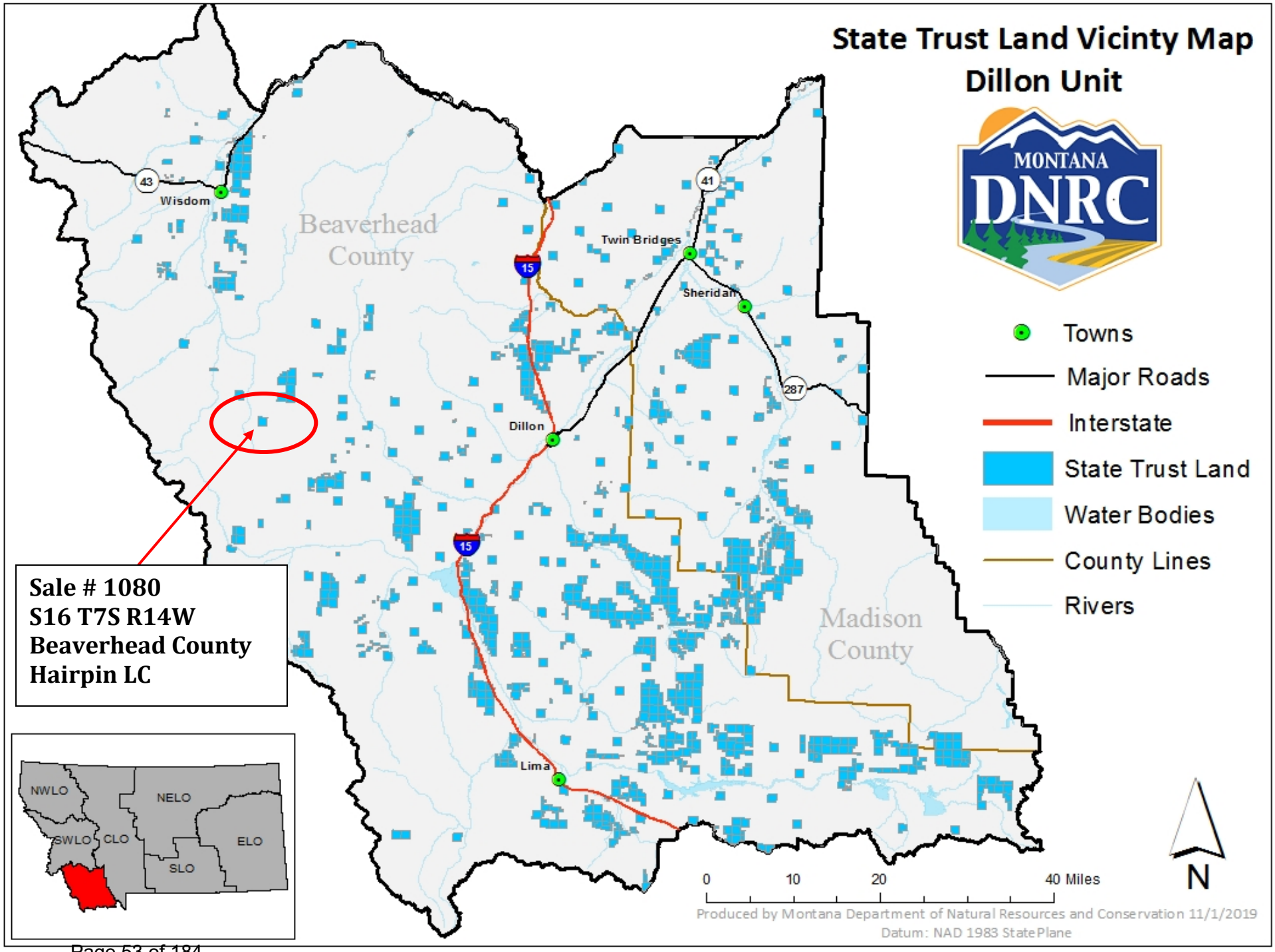


Location: Beaverhead County S16 T7S R14W
Prepared on: 10 MARCH 2020
Prepared By: DNRC REMB Staff
Projection: NAD 1983 MT State Plane

Beaverhead County Sale: Hairpin LC
Sale No. 1080, Common Schools

Sale # 1080 | Montana State Trust Land | Owner Parcels

N


State Trust Land Vicinty Map
Dillon Unit
MONTANA
DNRC
Towns
Major Roads
Interstate
State Trust Land
Water Bodies
County Lines
Rivers
Beaverhead County
Madison County
Wisdom
Twin Bridges
Sheridan
Dillon
Lima
43
41
287
15
Sale # 1080
S16 T7S R14W
Beaverhead County
Hairpin LC
NWLO
NELO
SWLO
CLO
ELO
SLO
0
10
20
40 Miles
N
Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane

Land Board Agenda Item
April 23, 2020

0420-4C Land Banking Parcel: Preliminary Approval for Sale

Location: Fergus County

Trust Benefits: Common Schools

Trust Revenue: Appraisal to be completed after preliminary approval

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting preliminary approval to sell one parcel totaling approximately 120 acres nominated for sale in Fergus County. The sale was nominated by the lessee and is located approximately 9 miles southwest of Winifred, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
1081	120±	E2NE4 & NE4SE4 T20N-R17E, Sec. 16	Terry L. & Aileen L. Noble	Common Schools

The sale parcel has been used primarily for livestock grazing purposes with a small portion (2.2 acres) of agricultural use.

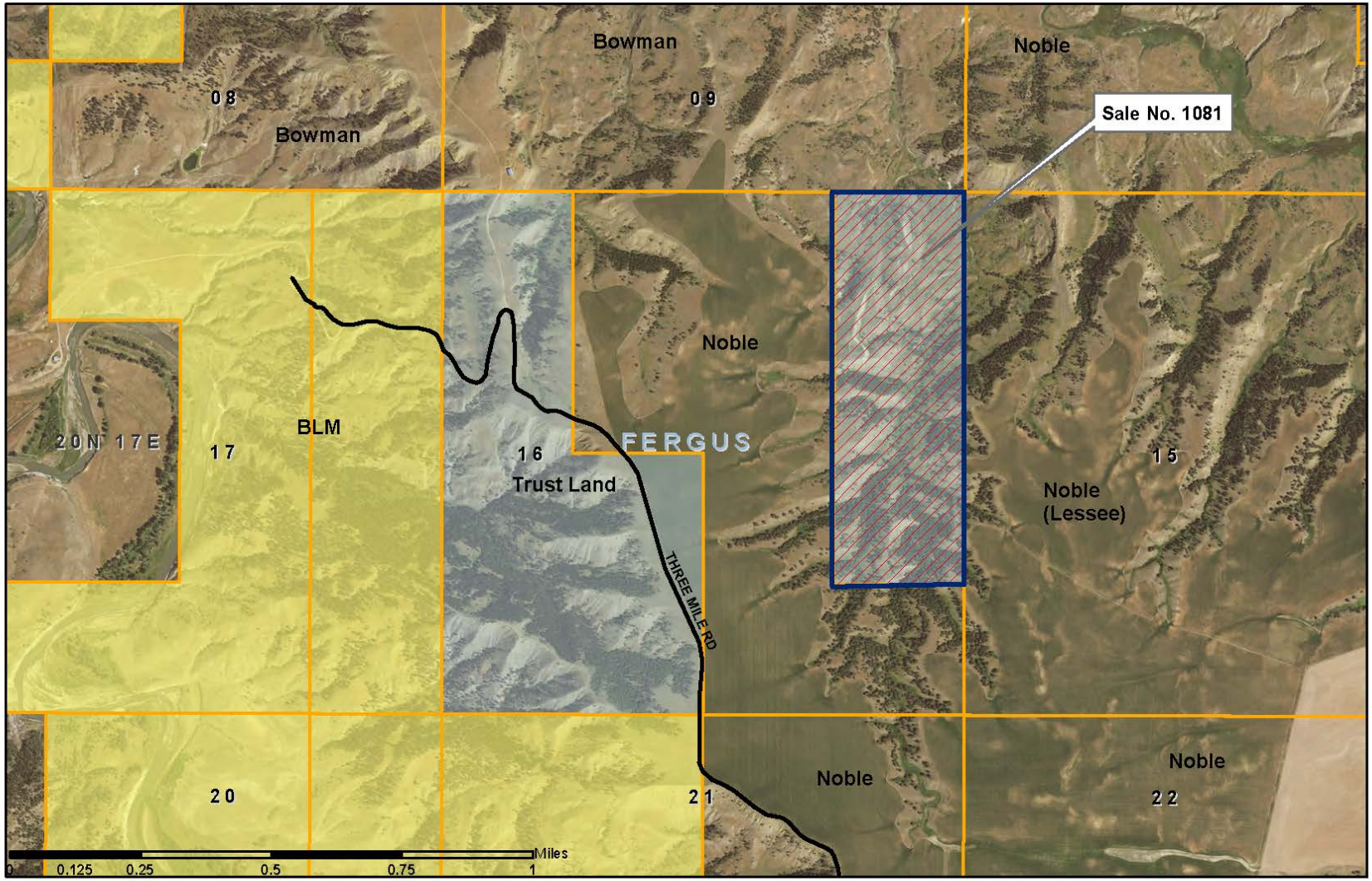
Sale No. 1081 is surrounded entirely by private land and is not legally accessible by the public. The sale of this parcel would not restrict or eliminate access to adjacent private land.

MEPA scoping has been completed, and no potentially negative issues related to the sale of this parcel have been identified.

With the Land Board's preliminary approval to sell this parcel, DNRC can continue the due diligence necessary to fully evaluate this parcel and process it for sale.

DNRC Recommendation

The director recommends the Land Board grant preliminary approval to sell this parcel.



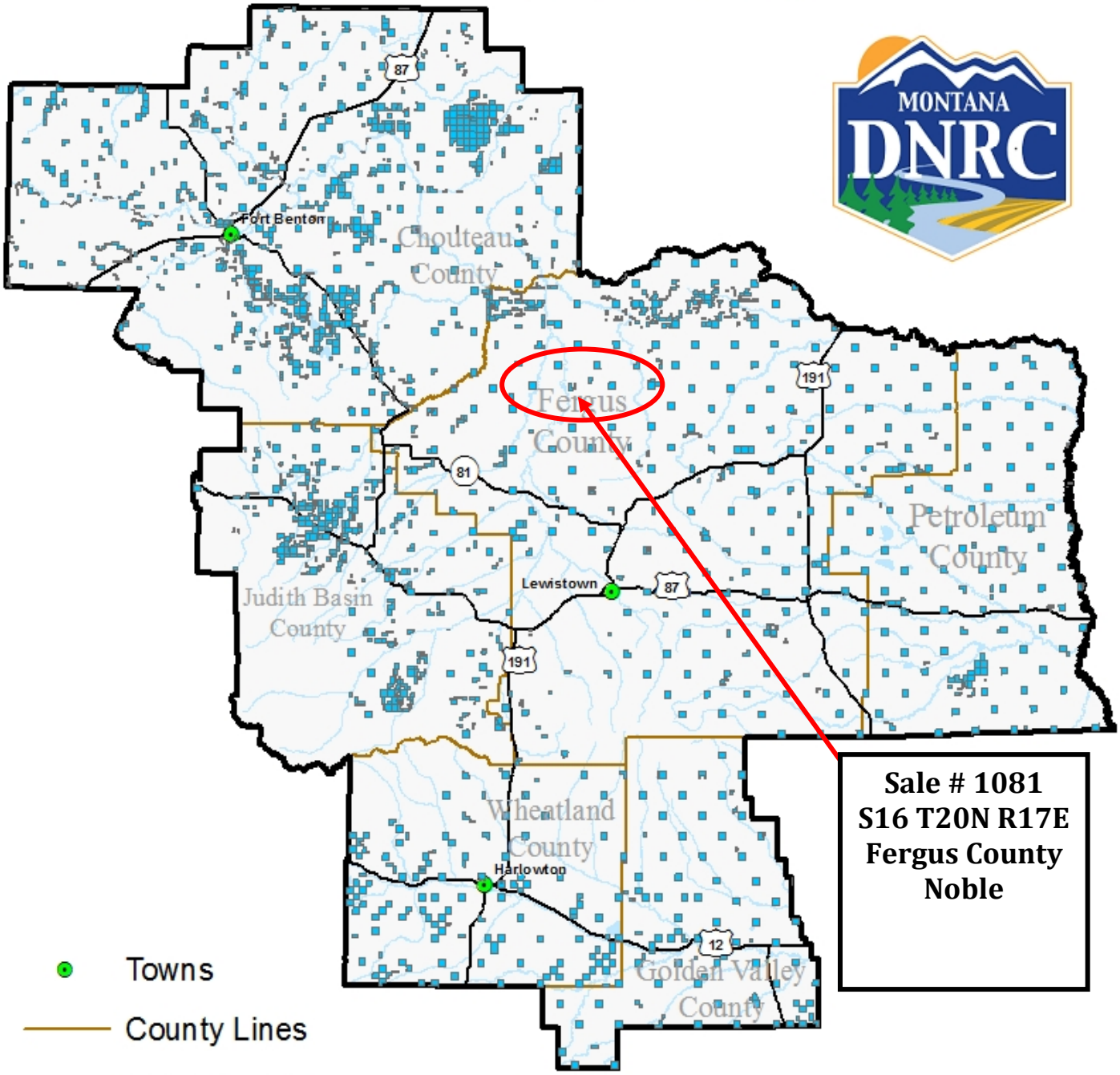
Location: Fergus County S16 T20N R 17E
Prepared on: 10 MARCH 2020
Prepared By: DNRC REMB Staff
Projection: NAD 1983 MT State Plane

Fergus County Sale: Noble
Sale No. 1081, Common Schools

Sale #1081 | Montana State Trust Land | BLM | Owner Parcels | Roads

N

State Trust Land Vicinity Map
Lewistown Unit

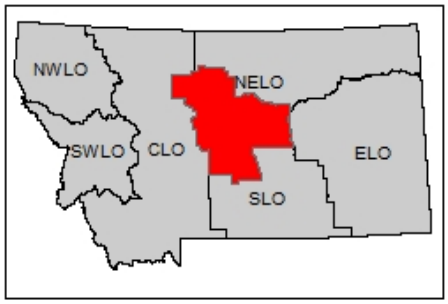


Sale # 1081
S16 T20N R17E
Fergus County
Noble

Towns
County Lines
Major Roads
Rivers
State Trust Land
Water Bodies

N

0 10 20 40 Miles



Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane

0420-5

CABIN AND HOME SITE SALES:

Preliminary Approval for Sale

Land Board Agenda Item
April 23, 2020

0420-5 Cabin and Home Site Sales: Preliminary Approval for Sale

Location: Big Horn, Blaine, Chouteau, Fergus, Flathead, Gallatin, Golden Valley, Judith Basin, Lewis & Clark, Meagher, Missoula, Powell, Sanders, Wheatland, Yellowstone Counties
Trust Benefits: Common Schools, Montana Tech, MSU 2nd, University of Montana, School for the Deaf & Blind, Public Buildings, Veterans Home
Trust Revenue: (appraisal to be completed after preliminary approval)

Item Summary
The Department of Natural Resources and Conservation (DNRC) is requesting preliminary approval of 87 cabin and home sites nominated for sale in Big Horn, Blaine, Chouteau, Fergus, Flathead, Gallatin, Golden Valley, Judith Basin, Lewis & Clark, Meagher, Missoula, Powell, Sanders, Wheatland, and Yellowstone Counties. These sales were nominated by the lessees and DNRC in conjunction with the Cabin and Home Site 2020-2021 Sales Program.

Sale Number	# of Acres	Legal	Nominator	Trust
Big Horn County				
1155	1.6±	PT SW4SW4SE4SW4 T2N-R33E, Sec. 27	Kenneth D. Fox	Common Schools
Blaine County				
1156	8.82±	PT NE4SW4, PT NW4SW4, PT SW4NW4 T33N-R19E, Sec. 36	Mary Lou & Bruce Butcher	Common Schools
Chouteau County				
1158	7±	PT E2E2NW4NE4SE4, PT NE4NE4SE4 T24N-R7E, Sec. 28	Olson Farms, Inc.	Common Schools
1159	4.5±	Lots 7, 8, & 9 of Block 30, School Addition to City of Geraldine T21N-R11E, Sec.1	Rick Shinaberger	Common Schools
Fergus County				
1160	16.37±	PT NW4SE4SW4, PT NE4SW4SW4 T17N-R20E, Sec. 35	Judith Mountain Property, LLC	Veterans Home
Flathead County				
1106	0.64±	Lot 5, Echo Lake T27N-R19W, Sec. 5	James Baird & Jolene Baird-Wynder	Montana Tech
1107	1.46±	Lot 30, Echo Lake T27N-R19W, Sec. 5	Kevin Scott & Anna Crista Hunter	Montana Tech
1108	1.803±	Lot 42, Echo Lake T27N-R19W, Sec. 5	DNRC	Montana Tech
1109	3.462±	Lot 44, Echo Lake T27N-R19W, Sec. 5	DNRC	Montana Tech
1110	2.977±	Lot 45, Echo Lake T27N-R19W, Sec. 5	DNRC	Montana Tech

1111	1.756±	Lot 1, Rogers Lake T27N-R23W, Sec. 30	Ronald & Charlotte Destein	Montana Tech
1112	0.815±	Lot 3, Rogers Lake T27N-R23W, Sec. 30	DNRC	Montana Tech
1113	1.361±	Lot 12, Rogers Lake T27N-R23W, Sec. 30	DNRC	Montana Tech
1114	1.212±	Lot 16, Rogers Lake T27N-R23W, Sec. 30	DNRC	Montana Tech
1138	1.551±	Lot 1, Beaver Lake T31N-R22W, Sec. 20	Rod & Sonya Herrick	Montana Tech
1139	2.774±	Lot 3, Beaver Lake T31N-R22W, Sec. 20	Caroline Saunders Smith	Montana Tech
1166	2.238±	Lot 5, Beaver Lake T31N-R22W, Sec. 20	Lonnie & Catherine Collinsworth	Montana Tech
1140	2.513±	Lot 8, Beaver Lake T31N-R22W, Sec. 20	Richard Kramer	Montana Tech
1141	1.457±	Lot 16, Beaver Lake T31N-R22W, Sec. 20	Philip R. Hambley	Montana Tech
1142	1.318±	Lot 5, McGregor Lake T26N-R25W, Sec. 16	Mark Rugland	Common Schools
1143	1.997±	Lot 9, McGregor Lake T26N-R25W, Sec. 16	Jay & Diana Winters	Common Schools
1144	1.231±	Lot 21, McGregor Lake T26N-R25W, Sec. 16	Chris Neater	Common Schools
1145	1.471±	Lot 4, McGregor Lake T26N-R25W, Sec. 16	DNRC	Common Schools
1146	1.29±	Lot 11, McGregor Lake T26N-R25W, Sec. 16	DNRC	Common Schools
1040	1.055±	Lot 4, Olney Townsite T32N-R23W, Sec. 7	Joseph & Kathleen Krass	School for the Deaf & Blind
1147	1.045±	Lot 11, Olney Townsite T32N-R23W, Sec. 7	Vincent L. Marks	School for the Deaf & Blind
1148	1.619±	Lot 19, Olney Townsite T32N-R23W, Sec. 7	Joseph & Kathleen Krass	School for the Deaf & Blind
1149	1.064±	Lot 24, Olney Townsite T32N-R23W, Sec. 7	Nathan & Patti Conkle	School for the Deaf & Blind
1150	2.771±	Parcel 3, COS 21331 T32N-R23W, Sec. 7	John & Karen Strean	School for the Deaf & Blind
1151	3.546±	Parcel 2, COS 21331 T32N-R23W, Sec. 7	John & Karen Strean	School for the Deaf & Blind
1152	4±	NW4NE4 T32N-R23W, Sec. 18	Starla & Ted Guckenberg	Montana Tech
1153	2±	Lot in SE4NE4 T33N-R24W, Sec. 23	Wade, Mark, & Ben Fredenberg, Jovite Kottraba	Common Schools

Gallatin County				
1117	1±	NW4NW4NE4 T1S-R4E, Sec. 8	Robert L. Steinmann	University of Montana
1163	2.9±	NE4SE4SW4 T1N-R5E, Sec.36	David & Lu Anne Odt	Common Schools
Golden Valley County				
1161	2±	PT SW4NW4SW4, PT N2NW4SW4SW4 T5N-R22E, Sec. 9	Steven Heiken	Common Schools
Judith Basin County				
1162	2±	PT SE4SE4SE4 T15N-R15E, Sec. 18	Steven & Greg Grove	Common Schools
Lewis & Clark County				
1118	1.794±	Lot 1, Lincoln Flats T14N-R8W, Sec. 16	Edward, Sue, & David Trapp	Common Schools
1119	1.015±	Lot 20, Lincoln Flats T14N-R8W, Sec. 16	Marvin & Judith Hagen	Common Schools
1164	2±	Rhoda Island in NW4 T16N-R2W, Sec. 29	Dale, Ben, & Joe Kerkvliet	Common Schools
Meagher County				
1165	2±	NE4SE4NE4 T8N-R6E, Sec. 16	Ben R. Galt	Common Schools
Missoula County				
1082	1.622±	Lot 12, Clearwater River West Shore T16N-R15W, Sec. 10	Susan Hedahl	MSU 2nd
1083	2.471±	Lot 13, Clearwater River West Shore T16N-R15W, Sec. 10	Michael England	MSU 2nd
1084	3.133±	Lot 14, Clearwater River West Shore T16N-R15W, Sec. 10	Betty Dustin	MSU 2nd
1085	1.412±	Lot 15, Clearwater River West Shore T16N-R15W, Sec. 10	Catherine M. White	MSU 2nd
1086	1.013±	Lot 16, Clearwater River West Shore T16N-R15W, Sec. 10	Tim & Karen Tanberg	MSU 2nd
1092	2.654±	Lot 4, Morrell Flats T16N-R15W, Sec. 14	Richard Jimmerson & Sylvia Miller	MSU 2nd
1093	1.443±	Lot 18, Seeley Lake Development T16N-R15W, Sec. 4	Elizabeth Moody, et al.	MSU 2nd
1094	0.832±	Lot 23, Seeley Lake Development T16N-R15W, Sec. 4	Richard & Sharon Evans	MSU 2nd
1095	1.464±	Lot 30, Seeley Lake Development T16N-R15W, Sec. 4	Janet & Steve Gustuson	MSU 2nd
1096	1.335±	Lot 37, Seeley Lake Development T16N-R15W, Sec. 4	Rye Svingen, Callie Puls, & Timothy Svingen	MSU 2nd
1097	1.367±	Lot 45, Seeley Lake Development T16N-R15W, Sec. 4	Robert & Nancy Quirino	MSU 2nd
1098	1.58±	Lot 11, Seeley Lake Outlet East T16N-R15W, Sec. 4	Cannon Investments, LP	MSU 2nd

1099	1.221±	Lot 14, Seeley Lake Outlet East T16N-R15W, Sec. 4	Mathew J. Johnson	MSU 2nd
1100	1.093±	Lot 15, Seeley Lake Outlet East T16N-R15W, Sec. 4	Wallace, Nila, & Holly Beebe	MSU 2nd
1101	1.699±	Lot 26, Seeley Lake Outlet East T16N-R15W, Sec. 4	Timothy J. & Cindy A. Thurston	MSU 2nd
1102	1.815±	Lot 27, Seeley Lake Outlet East T16N-R15W, Sec. 4	Mitchell Parrish, Jeremy Jensen, Cody Mickelson	MSU 2nd
1103	1.646±	Lot 28, Seeley Lake Outlet East T16N-R15W, Sec. 4	Steve & Diane Holden	MSU 2nd
1104	2.019±	Lot 29, Seeley Lake Outlet East T16N-R15W, Sec. 4	John & Tina Devries	MSU 2nd
1004	1.774±	Lot 7, Seeley Lake Outlet West T16N-R15W, Sec. 4	Ronald & Nancy Michaelson	MSU 2nd
1105	1.142±	Lot 8, Seeley Lake North T17N-R15W, Sec. 16	Lori A. Kennedy	MSU 2nd
1120	1.584±	Lot 1, Clearwater River East Shore T16N-R15W, Sec. 10	Daniel Cassidy	MSU 2nd
1121	1.113±	Lot 3, Clearwater River East Shore T16N-R15W, Sec. 10	Rose Lockwood	MSU 2nd
1122	1.2±	Lot 4, Clearwater River East Shore T16N-R15W, Sec. 10	William & Brandon Grosvenor	MSU 2nd
1123	1.956±	Lot 5, Clearwater River East Shore T16N-R15W, Sec. 10	Corri Smith	MSU 2nd
1124	2.91±	Lot 7, Clearwater River East Shore T16N-R15W, Sec. 10	Jim R. & Janice R. Voyles	MSU 2nd
1125	2.236±	Lot 8, Clearwater River East Shore T16N-R15W, Sec. 10	Chris W. McEnaney	MSU 2nd
1126	2.856±	Lot 9, Clearwater River East Shore T16N-R15W, Sec. 10	Ben D. & Shirley A. Martello	MSU 2nd
1127	2.587±	Lot 11, Clearwater River East Shore T16N-R15W, Sec. 10	Jody B. & Rospi T.K. Welter	MSU 2nd
1128	2.408±	Lot 35, Clearwater River East Shore T16N-R15W, Sec. 10	Edward L. Linford	MSU 2nd
1129	3.067±	Lot 36, Clearwater River East Shore T16N-R15W, Sec. 10	Douglas E. Closson	MSU 2nd
1130	1.527±	Lot 23, Clearwater River East Shore Inland T16N-R15W, Sec. 10	Tim Locke & Colleen Taylor	MSU 2nd
1131	1.018±	Lot 24, Clearwater River East Shore Inland T16N-R15W, Sec. 10	Lukian Sanford	MSU 2nd
1132	1.38±	Lot 25, Clearwater River East Shore Inland T16N-R15W, Sec. 10	Rody & Colleen Taylor	MSU 2nd
1133	1.21±	Lot 46, Clearwater River East Shore Inland T16N-R15W, Sec. 10	Roy N. Johnstone	MSU 2nd

1134	1.122±	Lot 7, Placid Lake West T16N-R15W, Sec. 30	Joanna B. Kreitzberg	MSU 2nd
1135	2.345±	Lot 10, Placid Lake West T16N-R15W, Sec. 30	Raine & Hugh Kidder	MSU 2nd
1136	0.753±	Lot 1, Placid Lake East T16N-R15W, Sec. 28	Fred & Carolyn Sayre	MSU 2nd
1137	1.312±	Lot 2, Placid Lake East T16N-R15W, Sec. 28	Sayre Family Limited Partnership	MSU 2nd
Powell County				
1087	1.637±	Lot 3, Morrell Creek T17N-R15W, Sec. 36	Diane M. McKay	Common Schools
1088	1.195±	Lot 5, Morrell Creek T17N-R15W, Sec. 36	Timothy D. Hoag	Common Schools
1089	1.036±	Lot 6, Morrell Creek T17N-R15W, Sec. 36	Macintosh Realty, LLC	Common Schools
1090	1.39±	Lot 7, Morrell Creek T17N-R15W, Sec. 36	Robin Rau, Lisa Vandehey, Patrick Vandehey, Karla Bening, & Kristophe Schmidt	Common Schools
1091	1.386±	Lot 8, Morrell Creek T17N-R15W, Sec. 36	Thomas & Sandra Knuchel	Common Schools
Sanders County				
1115	1.627±	Tract 2, COS 3491 T24N-R27W, Sec. 36	Jerry Pope & Michelle Day	Common Schools
1116	2.28±	Lot 7, Mudd Creek T22N-R27W, Sec. 12	Dennis K. Mayhew	Public Buildings
Wheatland County				
1157	6±	NW4NE4SE4 T6N-R18E, Sec. 36	Brent T. Williams	Common Schools
Yellowstone County				
1154	3.6±	E2SW4 T1N-R28E, Sec. 36	Gretchen V. Schubert	Common Schools

These sale parcels are currently leased as cabin or home sites and produce an average income for residential leases statewide.

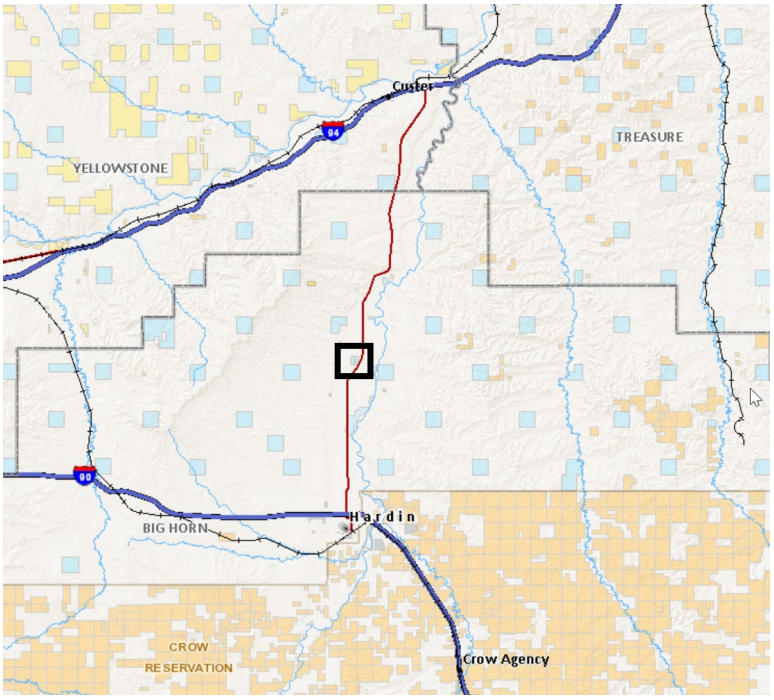
Preliminary approval allows DNRC to enter these sites in the Cabin/Home Site Sales process, the next step of which is an appraisal by a Montana general certified appraiser in summer 2020 or 2021. After appraisal, these sites will be brought to the Land Board again to set the minimum bid for the land and maximum value of any improvements.

Each parcel will be sold with the access that is currently provided to the current lessee under their lease agreement.

DNRC Recommendation

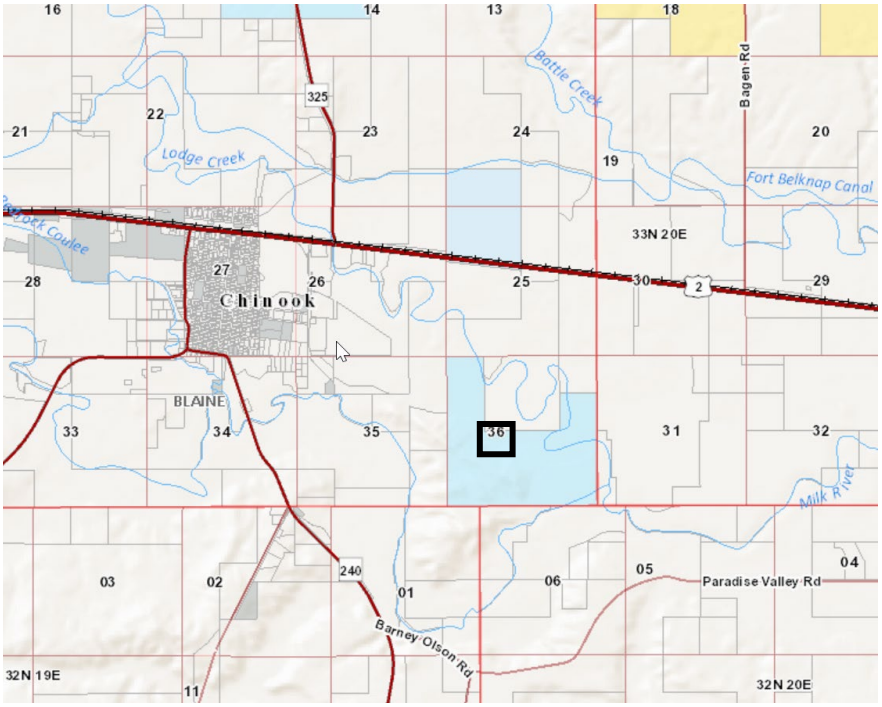
The director recommends the Land Board grant preliminary approval to sell these cabin and home sites.

BIG HORN COUNTY SALE



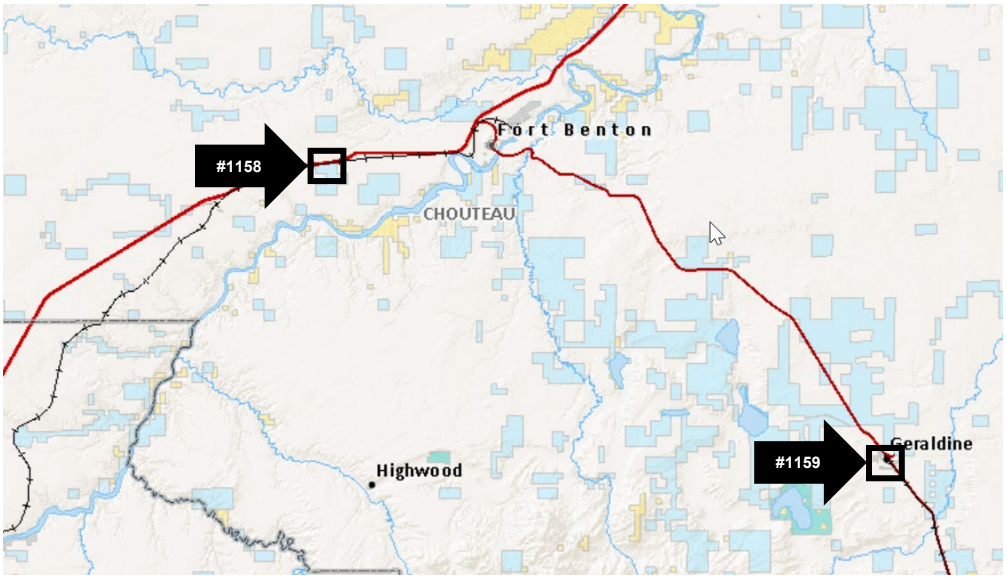
PT SW4SW4SE4SW4, T2N-R33E, Sec. 27

BLAINE COUNTY SALE



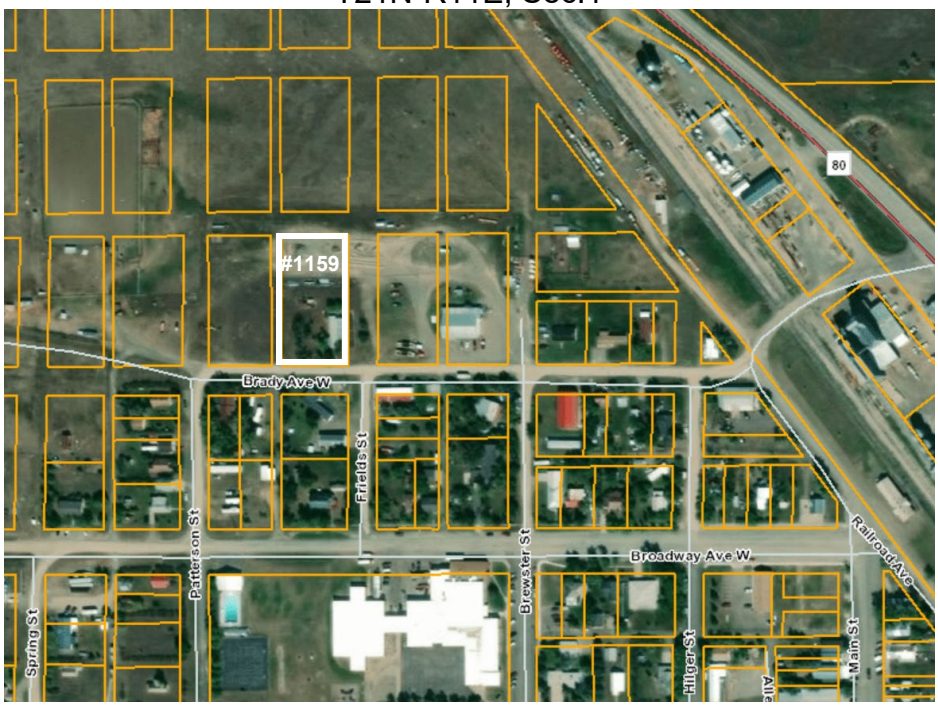
PT NE4SW4, PT NW4SW4, PT SW4NW4, T33N-R19E, Sec. 36

CHOUTEAU COUNTY SALES

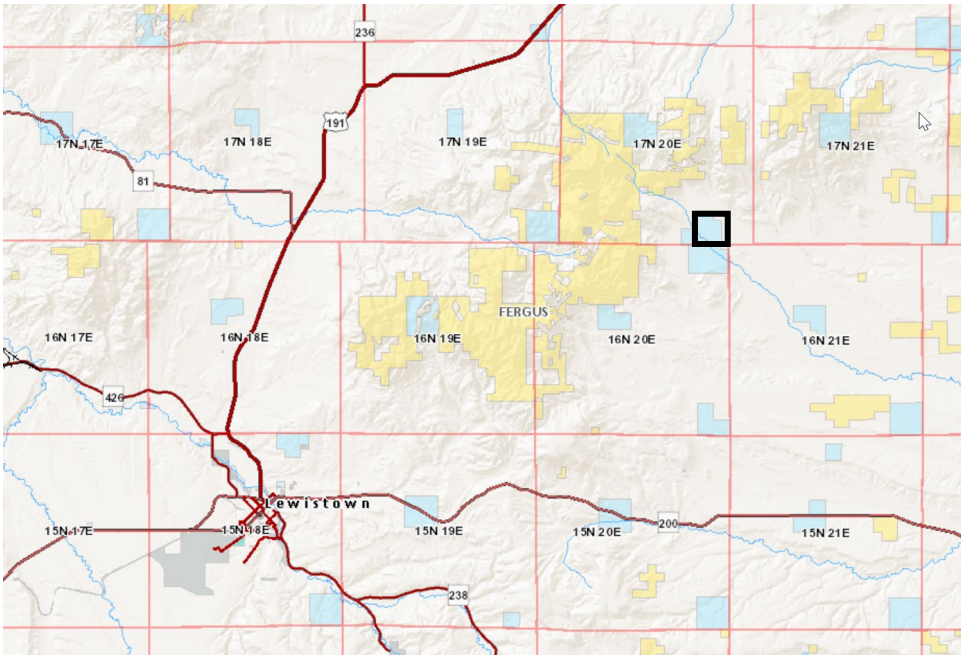


PT E2E2NW4NE4SE4, PT NE4NE4SE4, T24N-R7E, Sec. 28

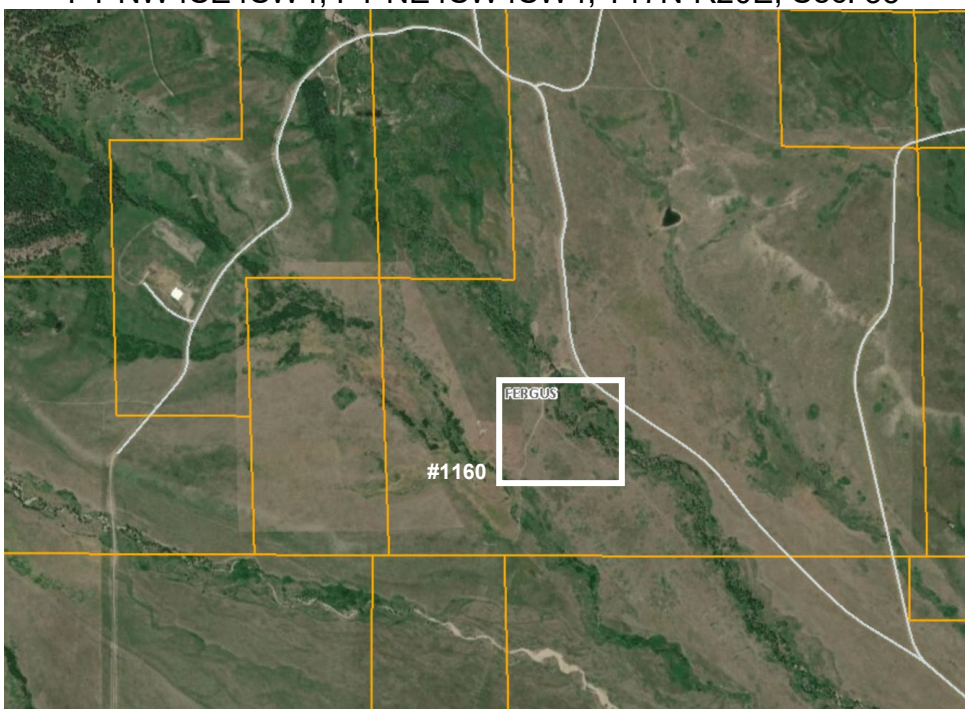
Lots 7, 8, & 9 of Block 30, School Addition to City of Geraldine
T21N-R11E, Sec.1



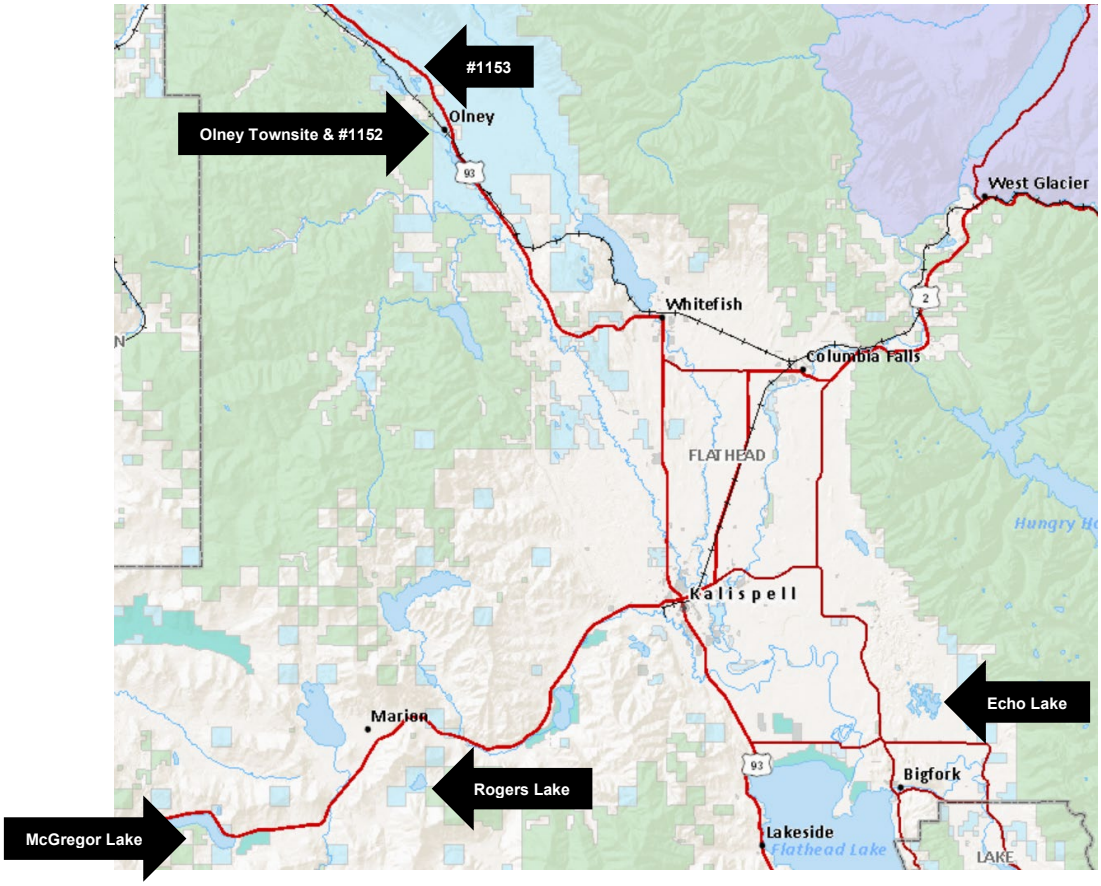
FERGUS COUNTY SALE



PT NW4SE4SW4, PT NE4SW4SW4, T17N-R20E, Sec. 35

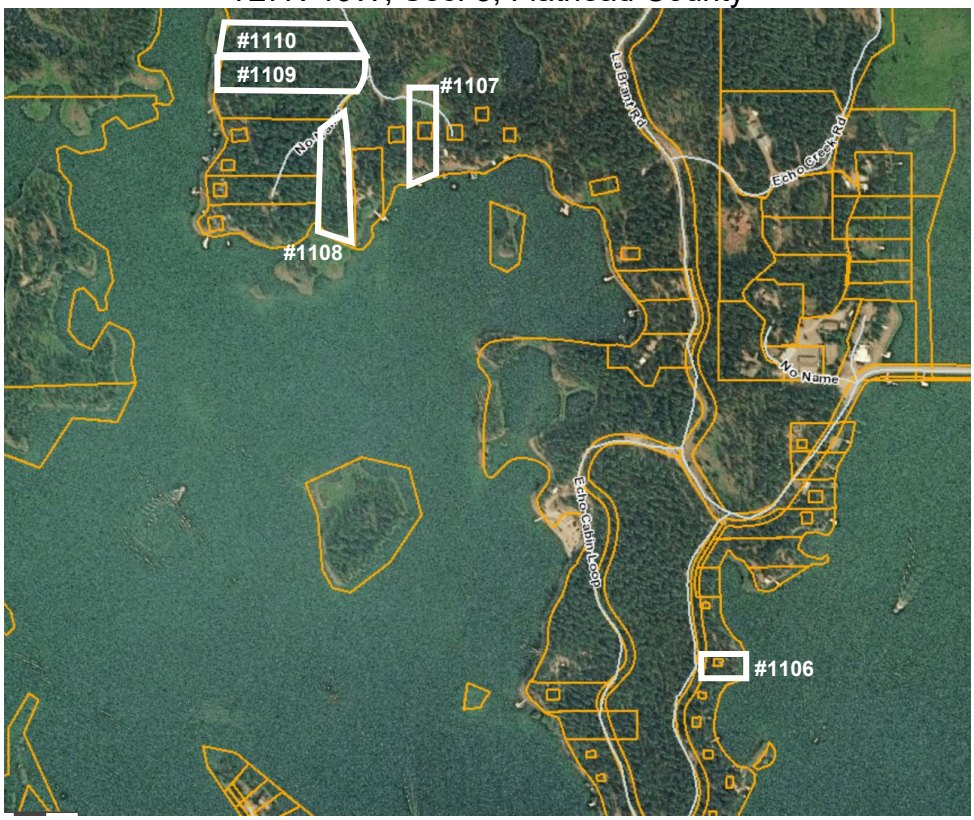


FLATHEAD COUNTY SALES



Echo Lake

T27N-19W, Sec. 5, Flathead County



Rogers Lake

T27N-R23W, Sec. 30, Flathead County

Beaver Lake

T31N-R22W, Sec. 20, Flathead County

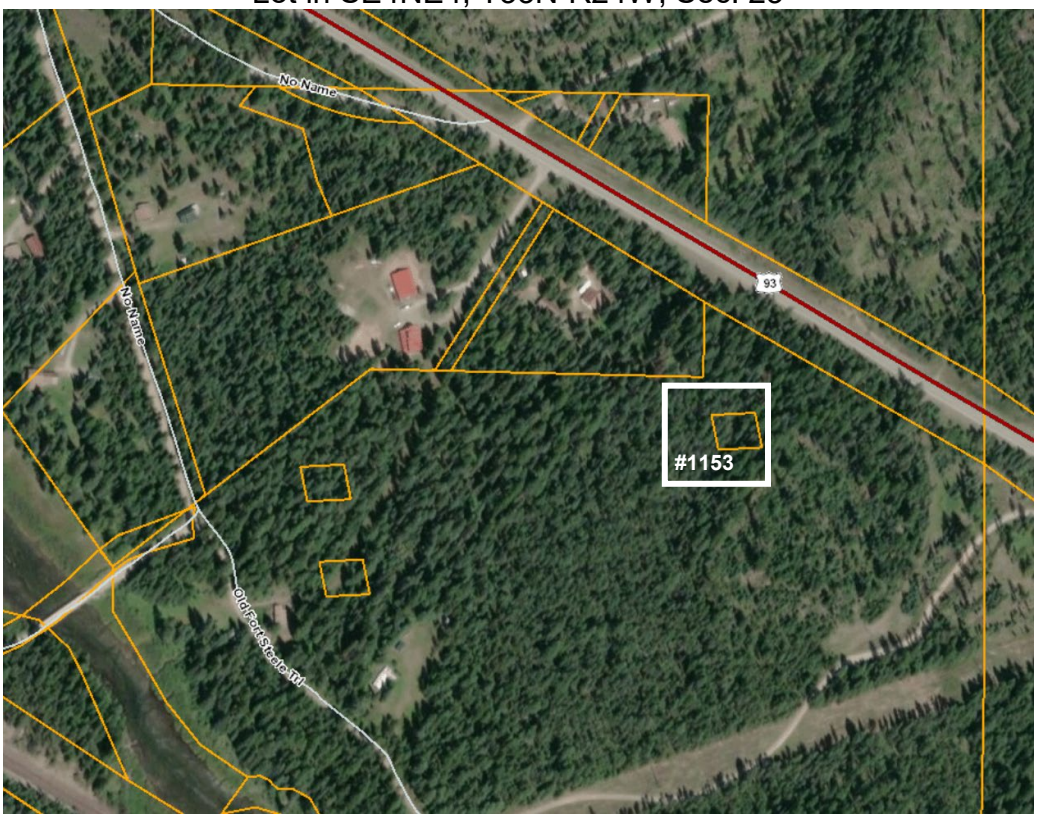
McGregor Lake

T26N-R25W, Sec. 16, Flathead County

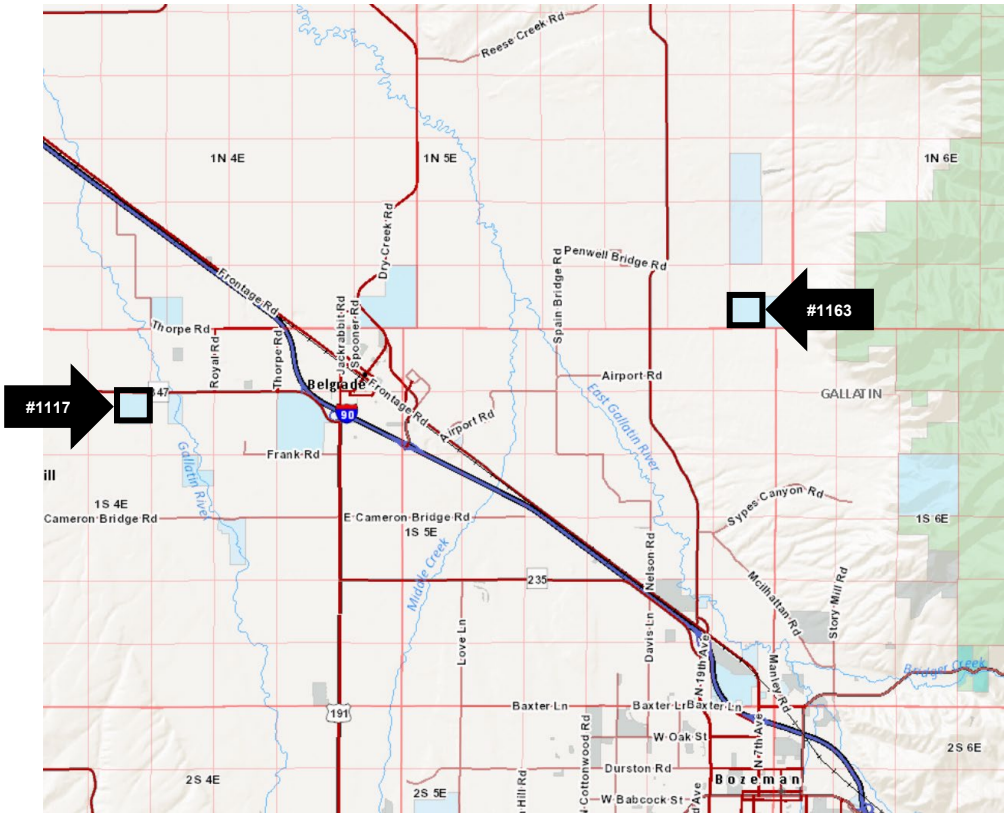
Olney Townsite
T32N-R23W, Sec. 7

NW4NE4, T32N-R23W, Sec. 18

Lot in SE4NE4, T33N-R24W, Sec. 23



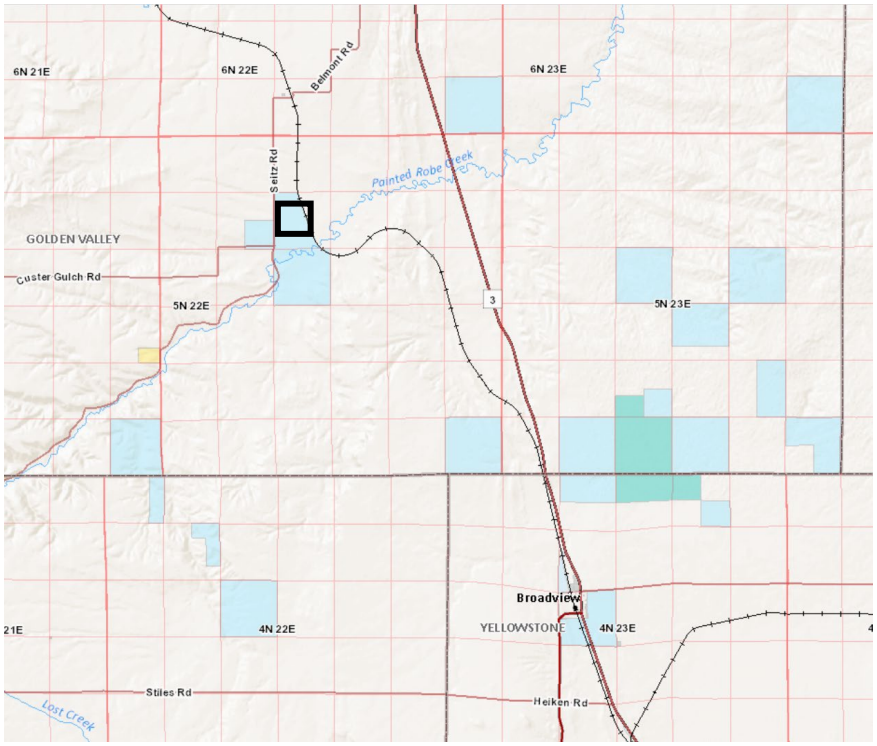
GALLATIN COUNTY SALES



NW4NW4NE4, T1S-R4E, Sec. 8

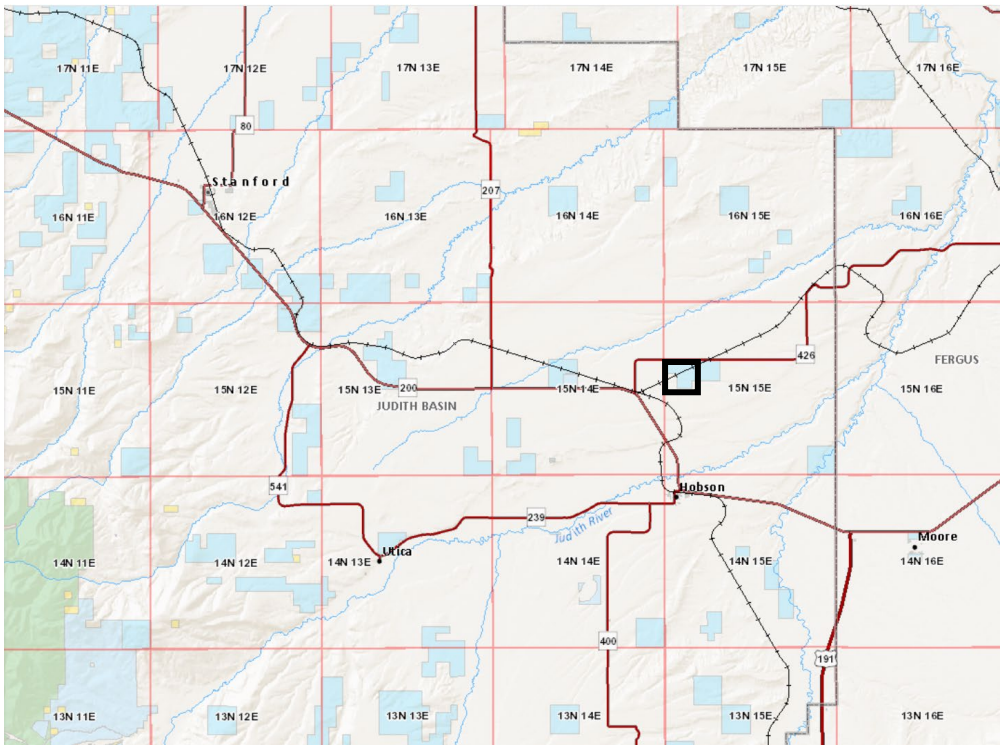
NE4SE4SW4, T1N-R5E, Sec.36

GOLDEN VALLEY SALE



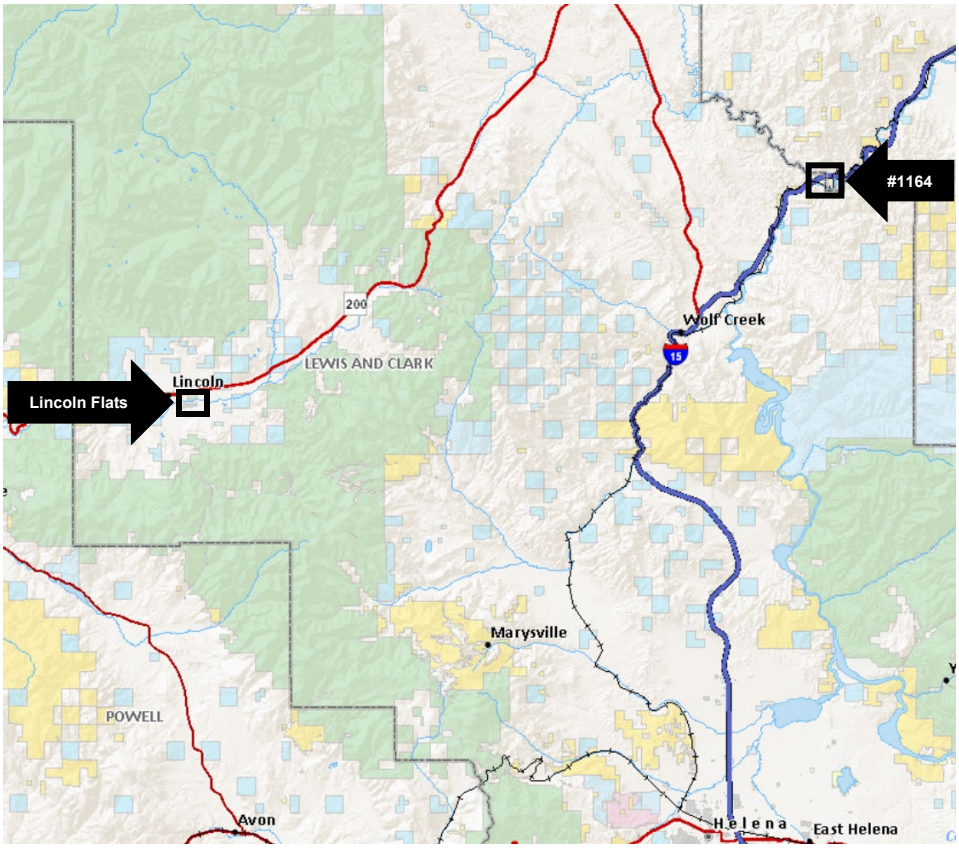
PT SW4NW4SW4, PT N2NW4SW4SW4, T5N-R22E, Sec. 9

JUDITH BASIN COUNTY SALE



PT SE4SE4SE4, T15N-R15E, Sec. 18

LEWIS & CLARK COUNTY SALES

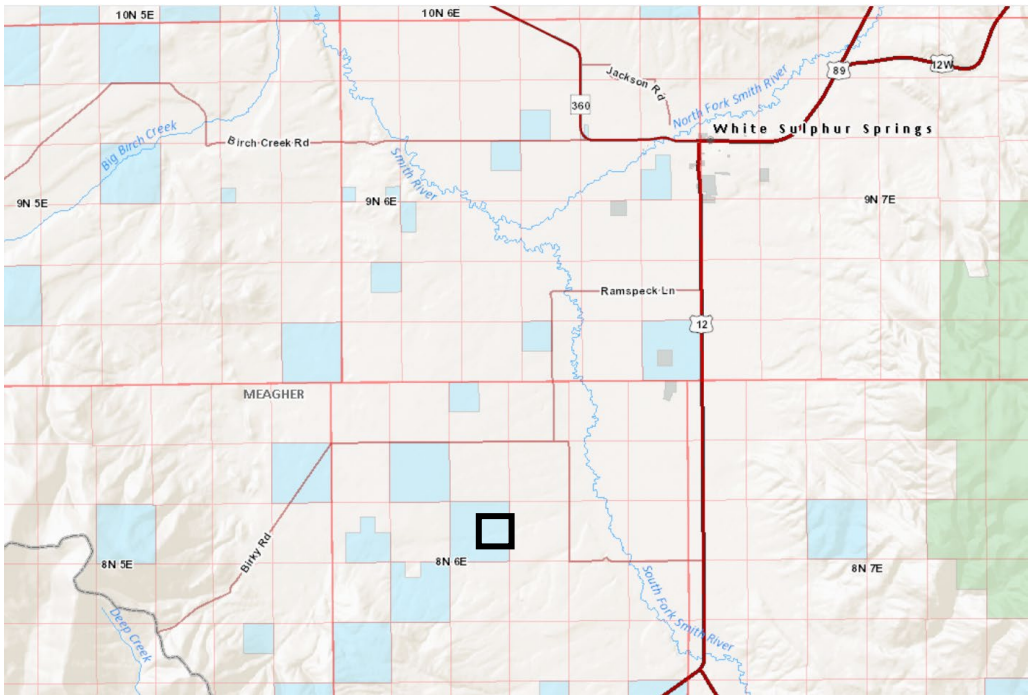


Lincoln Flats

T14W-R8W, Sec. 16, Lewis & Clark County

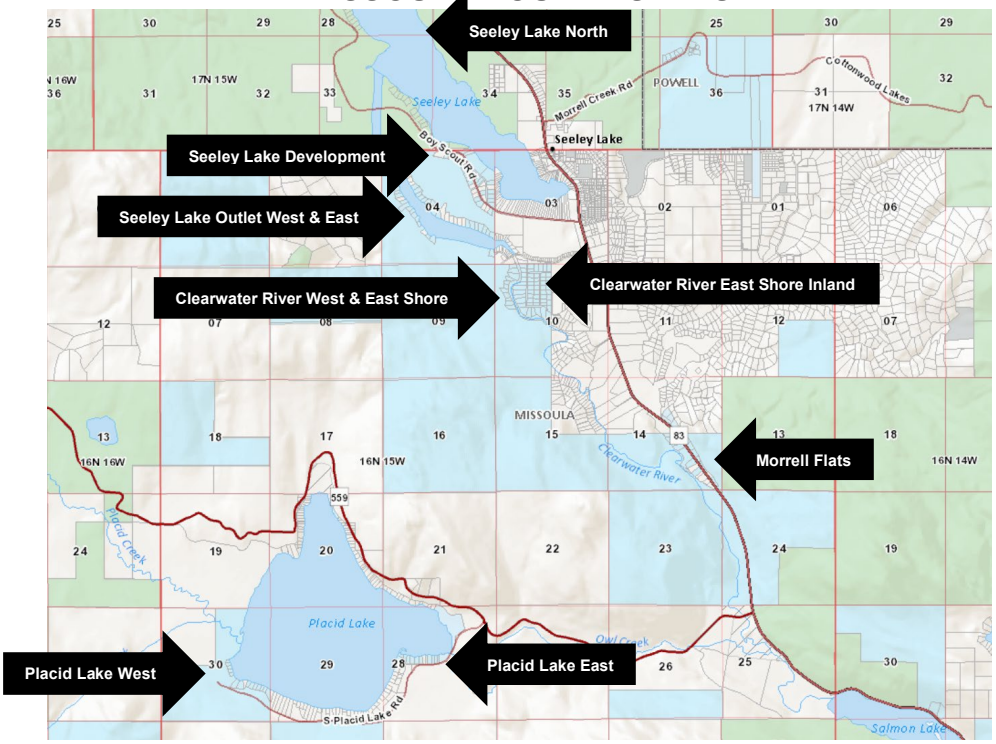
Rhoda Island in NW4, T16N-R2W, Sec. 29, Lewis & Clark County

MEAGHER COUNTY SALE



NE4SE4NE4, T8N-R6E, Sec. 16

MISSOULA COUNTY SALES

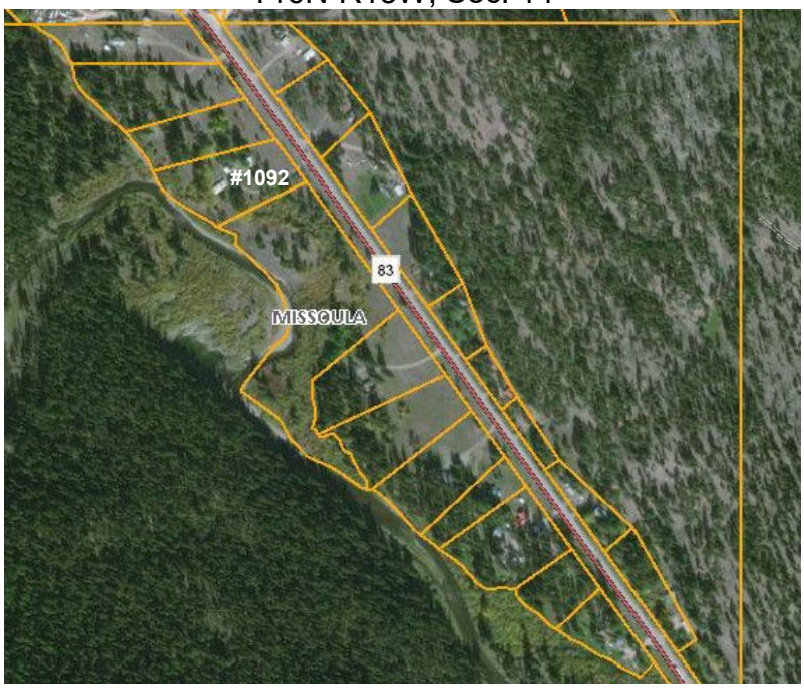


Clearwater River West Shore & East Shore

T16N-R15W, Sec. 10

Clearwater River East Shore Inland
T16N-R15W, Sec. 10

Morrell Flats
T16N-R15W, Sec. 14



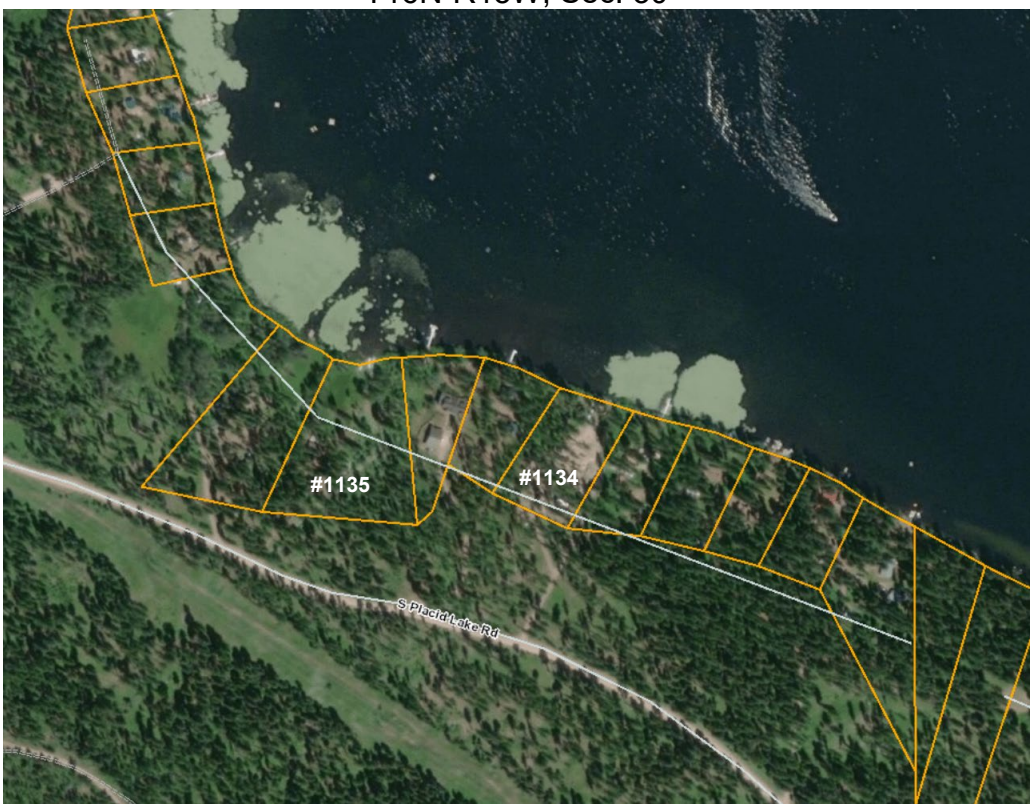
Seeley Lake Development
T16N-R15W, Sec. 4

Seeley Lake North
T17N-R15W, Sec 16

Seeley Lake Outlet East & West

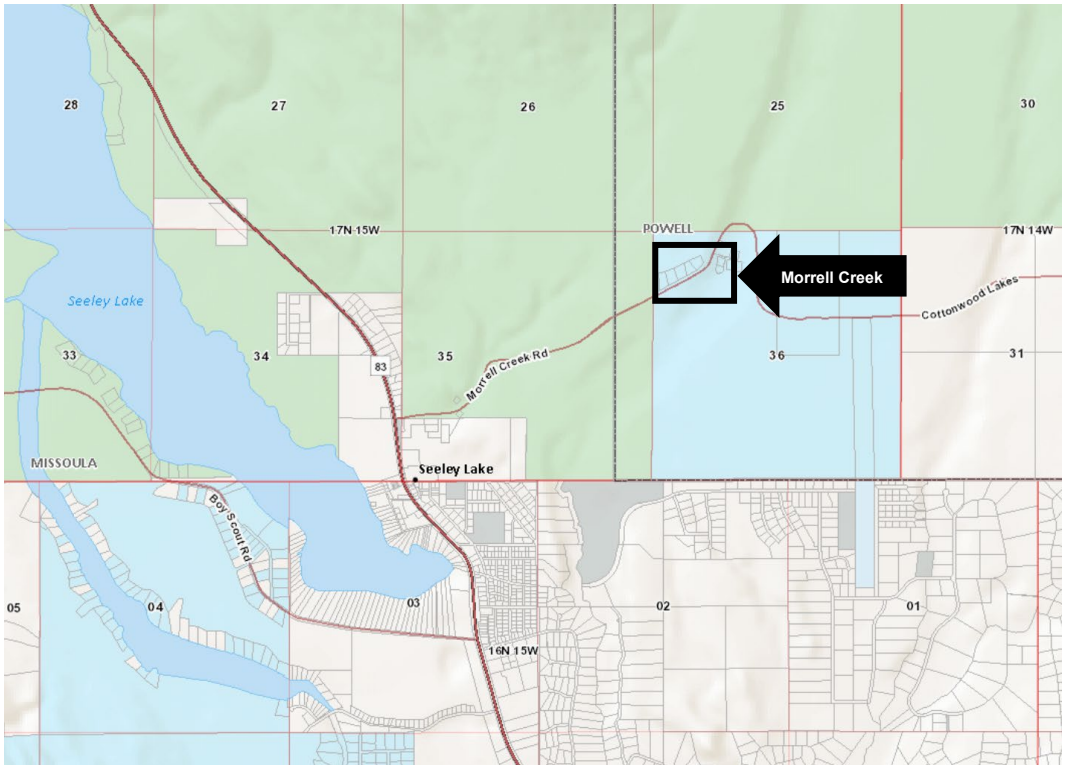
T16N-R15W, Sec. 4

Placid Lake West
T16N-R15W, Sec. 30



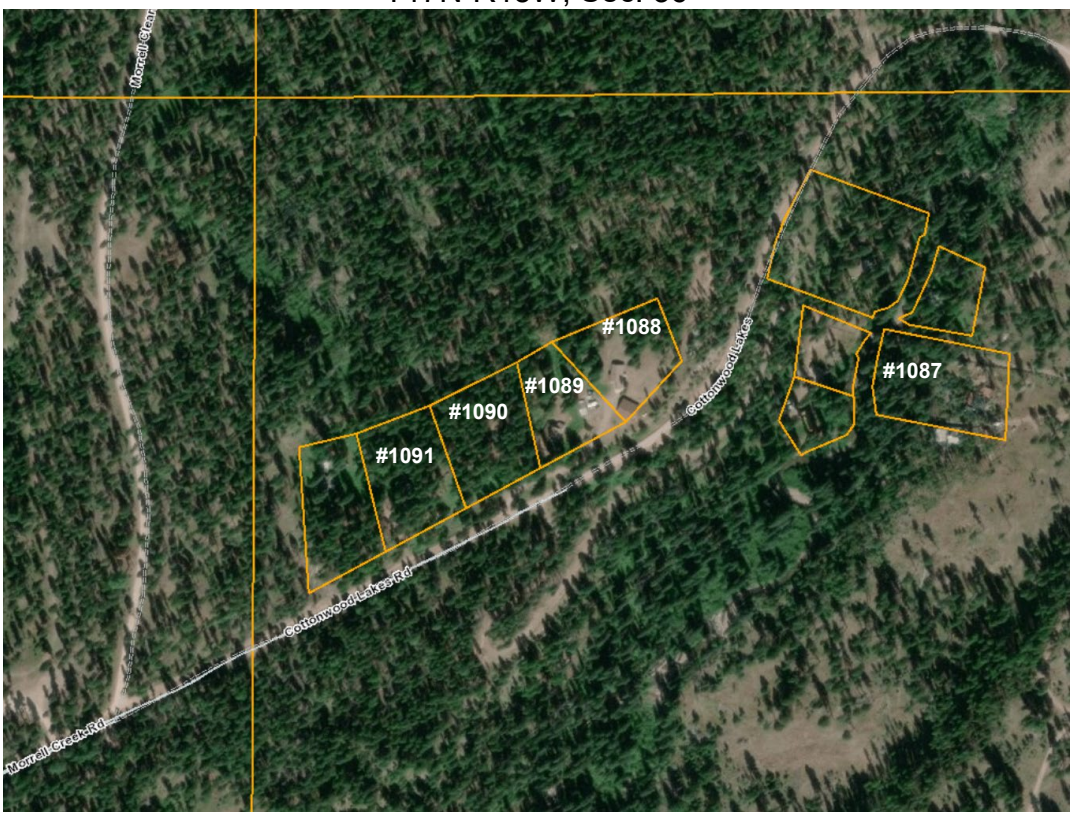
Placid Lake East
T16N-R15W, Sec. 28

POWELL COUNTY SALES

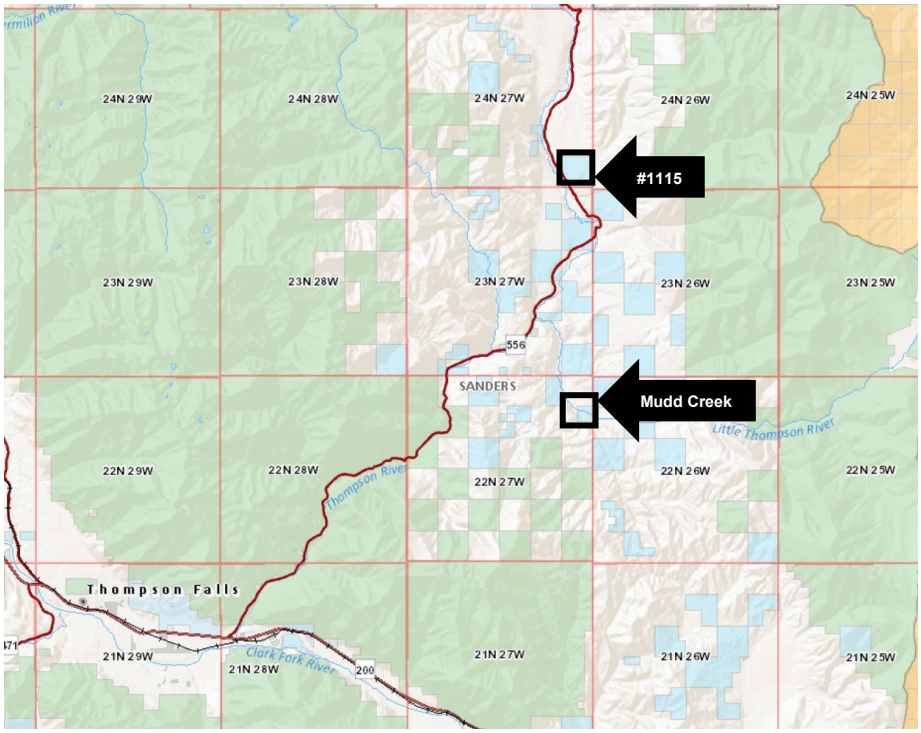


Morrell Creek

T17N-R15W, Sec. 36



SANDERS COUNTY SALES

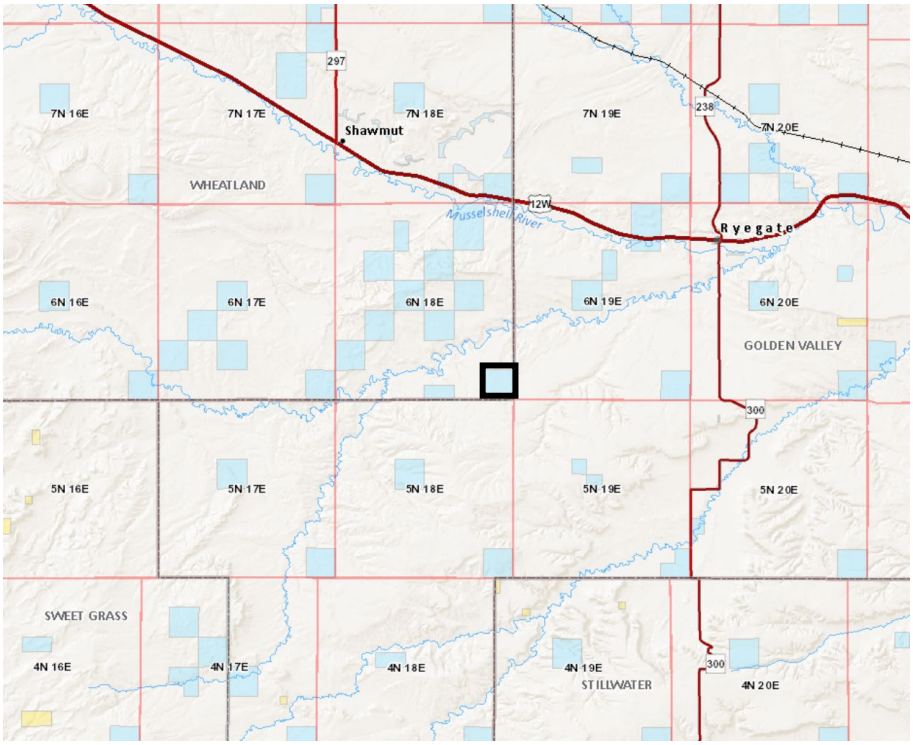


Tract 2, COS 3491, T24N-R27W, Sec. 36

Mudd Creek

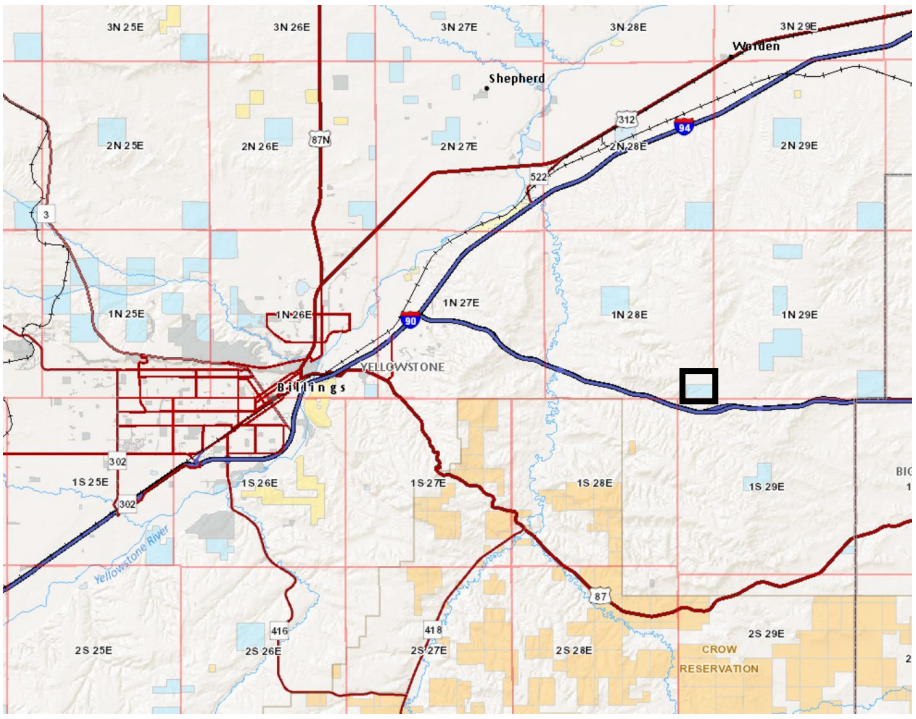
T22N-R27W, Sec. 12

WHEATLAND COUNTY SALE



NW4NE4SE4, T6N-R18E, Sec. 36

YELLOWSTONE COUNTY SALE



E2SW4, T1N-R28E, Sec. 36

0420-6

COMMERCIAL LEASE:

Proposed Wind Development

Land Board Agenda Item
April 23, 2020

0420-6 Commercial Lease: Proposed Wind Development

Location: Garfield, Rosebud, and Custer Counties

Trust Benefits: Common Schools

Trust Revenue: $433,655 (10-year Option to Lease)

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting approval to issue an exclusive Option to Lease, and subsequently issue a commercial lease for the development of 5,120 acres as part of the Clearwater Wind Farm (project).

The Option to Lease provides site control for rights associated with wind power project development, as well as the right for the optionee to enter into a long-term commercial Lease for the construction and operation of a wind power project. Development activity is not authorized through an Option to Lease. The Option to Lease is also contingent upon an environmental review conducted in compliance with the Montana Environmental Policy Act (MEPA) and associated decision document signed by the department. The Option to Lease provides that the final decision for the MEPA document may require modifications to the lease to ensure compliance with the MEPA decision.

The proposed trust land is intermingled with private land that is already leased to the proponent for the project. The proposed Option to Lease would facilitate the State's ability to participate in the wind development that is planned around the trust land parcels and share in the long-term revenue opportunity afforded to the adjacent private land owners within the project's boundaries. The proposed Option to Lease includes the following lands, as depicted on the attached map:

S	Twn		Range		County	Acres
16	13	N	42	E	Garfield	640
36	13	N	42	E	Rosebud	640
16	12	N	42	E	Rosebud	640
36	12	N	42	E	Rosebud	640
16	12	N	43	E	Rosebud	640
26	12	N	43	E	Rosebud	640
16	12	N	44	E	Rosebud	640
36	13	N	45	E	Custer	640

The proposed Option to Lease is for up to ten years. If a Lease is exercised during the Option to Lease period, the proponent could commence construction and development of wind power facilities. The Lease includes a 35-year initial term, followed by two 10-year renewal options, and an 18-month decommissioning term.

The Option to Lease is based on the proposal and preliminary development plans for the project. The final site plan, including location and quantities of turbines and ultimate acreage leased will be

determined based on environmental analysis and factors, wind studies, the power purchase agreement, and final determination of turbine technology. These factors will be evaluated and finalized throughout the Option to Lease term.

Trust Revenue:

Under the Option to Lease: annual rent will be a percentage of the land value for the entire 5,120-acre premises. The annual rent under the Option for years one through five is 1.5% of the land value, or $40,030. Annual rent for years six through ten is 1.75% of the land value, or $46,701.

Under a commercial Lease: annual rent will consider the greater of three factors: applicable statutory minimum base rent for the leased land; revenue shares from actual energy sold; or production capacity for the number of megawatts (MW) installed on the Lease premises.

	Under Option to Lease	**Under Commercial Lease** Annual Rent is the Higher of these Factors		
Land Value	**Option Fees** Annual fee for yrs 1-5: $40,030 Annual fee for yrs 6-10: $46,701	**4% of Land Value** Reduced rent for first two years at 3% of Land Value	**$3,000 per MW** Installed Capacity	**Revenue Sharing**
$2,668,651	$433,655 *if Option is held for 10 years*	$106,746* +2% annually **in year 1 of full rent, if Option is exercised for full 5,120 acres*	$90,000* +2.5% annually **based on an estimated 30 megawatts installed on state lands*	3.00% yrs 1-5 3.50% yrs 6-10 4.00% yrs 11-15 4.50% yrs 16-20 5.00% yrs 21-term

Proposal:

In October of 2018 the department released an RFP for commercial development. Clearwater Energy Resources LLC was the successful proponent.

The entire wind development project is proposed to be between 300-750 megawatts across approximately 140,000 acres of private land in Rosebud, Custer, and Garfield Counties. The trust land portion is proposed to contribute approximately 30 megawatts through 12 turbines, or approximately 4%-10% of the production capacity of the entire project. Clearwater Energy Resources LLC forecasts commercial operation by the end of 2021, assuming a contract with a power purchaser is established, and all necessary permitting is secured, including Land Board approval of the Lease in this item.

The proposed new transmission line for the project utilizes approximately 85 miles of private transmission line easements that will allow the project to access the Colstrip Transmission System (CTS) at the Colstrip Substation located in Colstrip, Montana. The project will construct, own and operate the transmission line that will connect the project substation to the Colstrip Substation.

Clearwater Energy Resources LLC has applied for and received approval for tax abatements under the New or Expanding Industry Classification as set in MCA 15-24-1402 from Rosebud County in September 2019 and Custer County in January 2020. An identical tax abatement from Garfield County will be pursued in the next few months. Over 30 years, it is anticipated that at full build out,

the project will pay over $200 million in property taxes. County Commissioners in Rosebud, Garfield, and Custer County have all expressed support for the project.

MEPA:

The department scoped the project under MEPA in August of 2019. At that time, the trust land lease area was proposed to be over 9,000 acres. The proponent has since reduced the size of the trust land component of the project to 5,120 acres of the original scoped sections.

The department received five comments from scoping. Two letters were in support of the project, including a letter of support from Rosebud County. Two form letters were received in opposition to general wind development, and there was one request for more information. No comments were received from current lessees or adjacent land owners. Upon Land Board approval of the commercial lease, Clearwater Energy Resources LLC will contract with a third party to complete the environmental analysis as required through MEPA for the development of trust land. The department will be involved in the development of the MEPA document throughout the process and will be the final decision maker for the environmental analysis.

To date, Clearwater Energy Resources LLC has conducted a site characterization assessment of species/habitats of concern and has also completed 3+ years of avian monitoring (aerial nest surveys and avian use monitoring) within the anticipated wind development project area. They have contacted the sage grouse oversight team regarding the impacts on sage grouse habitat and are coordinating with DNRC on habitat mitigation requirements.

Existing Uses on the proposed project area:

In Fiscal Year 2019, revenue from agriculture and grazing leases within the project area totaled $36,400. Agriculture and grazing uses are compatible with wind development, and lease operations will continue within the project area up until construction begins. During wind farm construction, operations would be partially and temporarily interrupted. After wind farm construction, agriculture and grazing activities would reconvene and continue generating revenue for the trust.

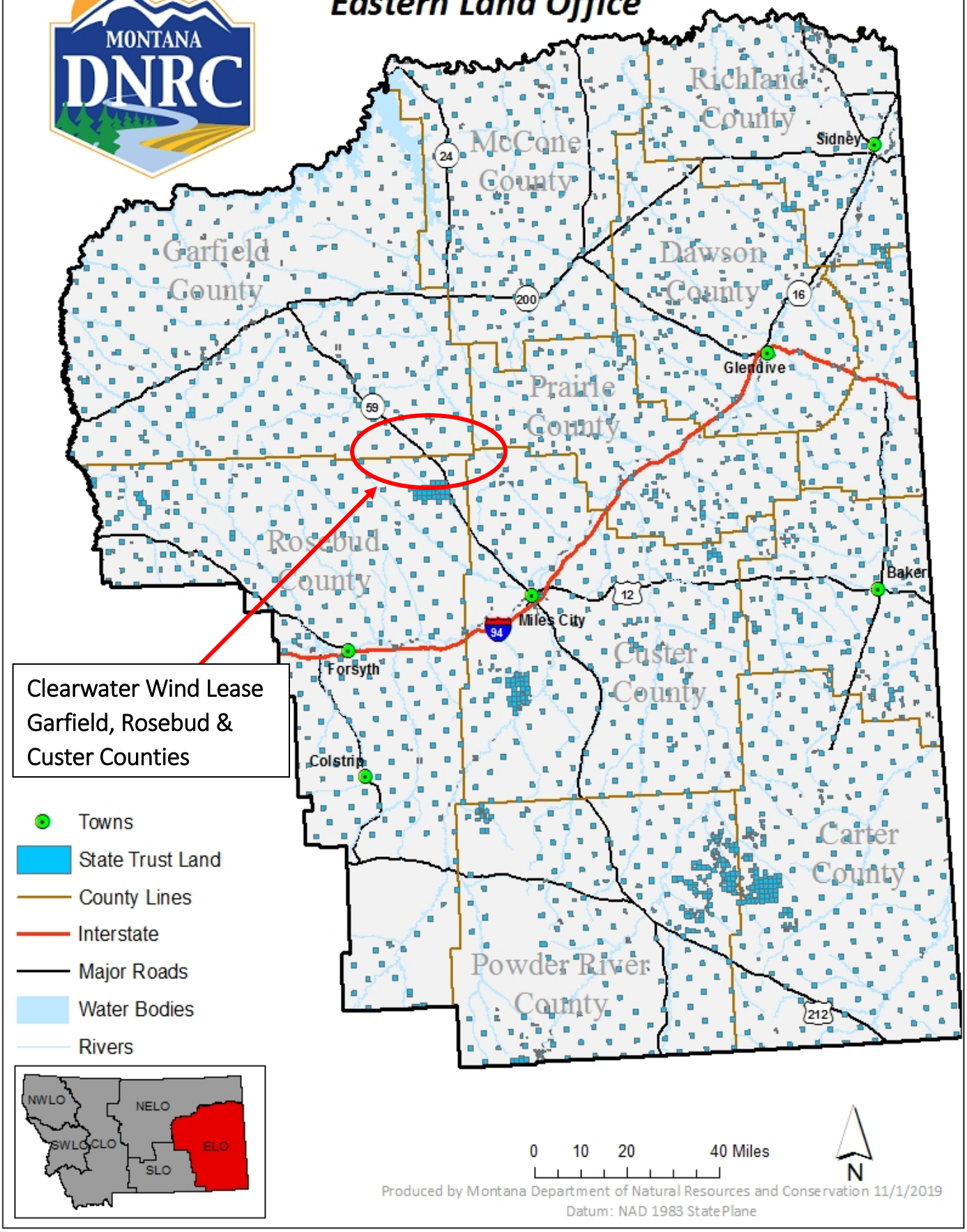
The project area currently has eight active agriculture and/or grazing leases. These leases would remain intact until such time that a commercial Lease is executed. If a commercial Lease is executed, the portions of the agriculture and grazing leases within the footprint of the lease area will be withdrawn in accordance with their lease terms. The commercial Lease will become the primary use of the land, and the agriculture and grazing uses will be reauthorized through land uses licenses. Upon that transition, the proponent must compensate the agriculture and grazing lessees for any improvements upon the land (lessee settlement agreement) in accordance with MCA § 77-6-302. There are no other surface or mineral leases within the lease area.

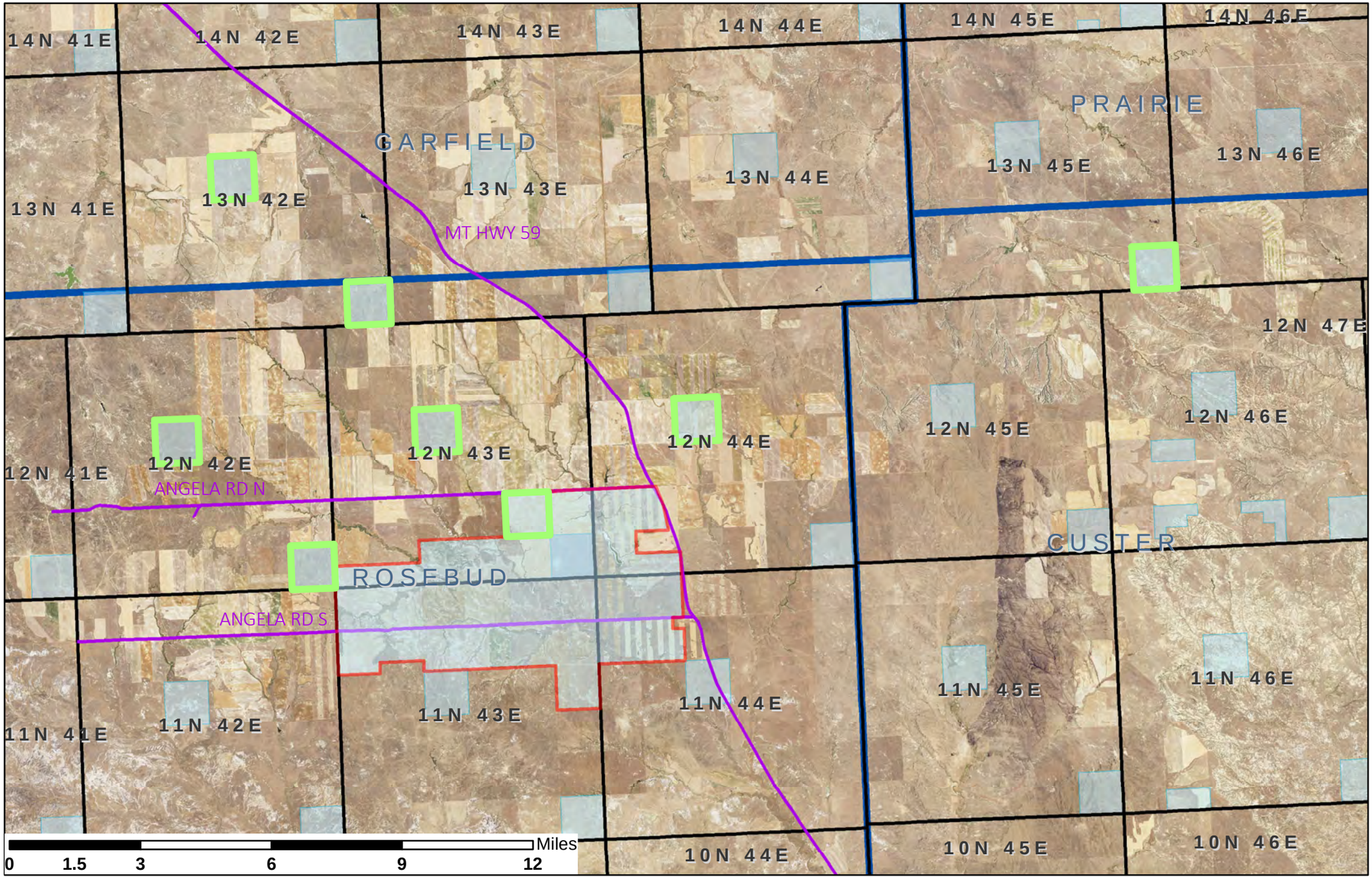
There are three easements for overhead power within the project area. Those easements would remain intact and would not be impacted by the lease.

Recommendation

The director recommends that the Board approve the Option to Lease and associated commercial Lease for the Clearwater Wind Farm in Garfield, Rosebud, and Custer Counties.

State Trust land Vicinity Map
Eastern Land Office





Location: Garfield, Rosebud & Custer Counties
Prepared on: 17 MARCH 2020
Prepared By: DNRC REMB Staff
Projection: NAD 1983 MT State Plane

Clearwater Wind Lease - Trust Beneficiary: Common Schools

Clearwater Wind Lease | Roads | Trust Lands | Angela Farms | County

N

MONTANA DEPARTMENT OF NATURAL
RESOURCES & CONSERVATION

OPTION TO LEASE AGREEMENT #3103235

This Option to Lease Agreement, is entered into this ____ Day of _____, _____, (the "Effective Date" by and between the Montana Department of Natural Resources and Conservation, whose address is P.O. Box 201601, Helena, MT 59620 (hereinafter referred to as the "Department") and **Clearwater Energy Resources, LLC**, whose address is 155 Grand Avenue, Suite 706, Oakland, CA 94612 (hereinafter referred to as the "Optionee").

GRANT OF OPTION: In consideration of an annual payment **("Option Rent")**, the Department grants to the Optionee an option to lease (the "Option") 5,120 acres described as:

County	Sec	Twp.	Rge.	Acres	Land Value
Garfield	16	13N	42E	640	$297,600
Rosebud	36	13N	42E	640	$297,600
Rosebud	16	12N	42E	640	$297,600
Rosebud	36	12N	42E	640	$297,600
Rosebud	16	12N	43E	640	$297,600
Rosebud	26	12N	43E	640	$448,000
Rosebud	16	12N	44E	640	$435,051
Custer	36	13N	45E	640	$297,600

And as illustrated in Exhibit A, attached hereto (the "Land") upon those terms and conditions as in the form, terms, and conditions of that lease agreement attached hereto as Exhibit B, and incorporated herein as if fully set forth. The Option Rent shall be payable annually, in advance, with the first year's Option Rent due on the Effective Date, and subsequent Option Rent due on the anniversary thereafter. Option Rent is:

Years one through five: 1.5% of the land value under Option; $40,030 for all acres
Years six through ten: 1.75% of the land value under Option; $46,701 for all acres

TERM: This Option shall remain in effect from the date of this Option for ten years until 12 noon, Mountain Time on the _____ Day of _____, _____, at which time it will expire and terminate automatically, unless earlier terminated by Optionee (the "Option Term").

Optionee may terminate the Option at any time prior to the expiration of the Option Term. Optionee will provide the Department with a written notice of early termination at least thirty (30) days prior to the intended date of early termination. Upon the Department's receipt of such notice of termination, this Option shall terminate and the Optionee shall be released from all obligations under this Option, other than those obligations that expressly survive such termination. Under early termination, Optionee shall not be entitled to any refund of any prepaid Option Rent.

PAYMENT OF SPECIAL ASSESSMENTS AND TAXES: Optionee will pay all special assessments (i.e. SIDs, RIDs, etc.) and other like impositions levied, assessed, or attributable to the Land as a result of Optionee's activities during the Option Term. The Optionee will pay before delinquent, directly to the

taxing authority, all Taxes that may accrue during or are attributable to Optionee's activities on the Land during the Option Term, including privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203.

MANNER OF EXERCISE OF OPTION: The Optionee may exercise the Option as to all or any portion of the Land at any time before the expiration of the Option Term by giving written notice of exercise of the Option to the Department, at the address of the Department set out above. The notice of exercise of the Option must specify a description of the Land for which the Option is being exercised, the date upon which the lease of the Land is to commence, and such date must be within the Option Term.

If the Option is exercised prior to the expiration of the Option Term, any Option Rent paid for the unused portion of the Option Term will be applied to the first year rental payment of the lease agreement.

EXECUTION OF LEASE AGREEMENT: Upon receipt of the notice of exercise of lease option, the Department must prepare or cause to be prepared duplicate originals of the lease agreement which is attached as Exhibit "B". The Department will deliver these duplicate originals for execution to the Optionee within thirty (30) days after receipt of the Optionee's notice of exercise of the option. The Optionee must deliver the fully executed duplicate lease agreements to the Department within fourteen (14) days after receipt by the Optionee.

DUE DILIGENCE AUTHORIZED: Through the Option Term, Optionee is permitted to access the Land for the limited purpose of conducting due diligence activities in support of project regulatory approval, in accordance with the following:

PERMITTED ACTIVITIES:

1) Data collection, survey, geotechnical sampling and environmental research in support of project design, review and land use regulatory approval.
2) The Optionee shall obtain prior written approval, not to be unreasonably withheld, from Department for the locations of all geotechnical borings. The boring sites shall be reclaimed pursuant to the Reclamation section listed below.

During the Option Term the Optionee will conduct its activities on the Land in a neat and orderly manner and will allow no waste or debris of Optionee to accumulate thereon.

ACCESS TIMING RESTRICTIONS: Optionee must notify Department prior to accessing the Land during the Option Term. Department reserves the right to restrict or preclude any activity to the extent necessary for environmental concerns, safety, or other land management reasons, provided that Department shall make a good faith effort to ensure that Optionee's due diligence activities are reasonably accommodated during the Option Term.

EXISTING RIGHTS: Optionee enters into this Option subject to any leases or other rights existing on the Effective Date, and any easements, agriculture, grazing or mineral rights that that may be conveyed after the Effective Date but prior to Optionee exercising their Option and executing a lease (Future Lease). A list of the leases existing on the Effective Date and copies of the contracts are attached hereto as Exhibit C. Should the Department enter into any Future Lease, the Department shall furnish Optionee with a copy. Any Future Lease shall not interfere or compete with Optionee's Permitted Activities.

WEEDS: Optionee shall be responsible for controlling all noxious weeds on the Land that were introduced by Optionee's activities thereon.

RECLAMATION: Optionee shall take all reasonable precautions to prevent or minimize damage to natural (i.e., vegetation, soil, water, wildlife), and cultural resources on the Land. Optionee shall reclaim

any disturbed areas in the Land to the condition such Land was in prior to Optionee's due diligence activities. When any action requires disturbance, all soil materials shall be salvaged, safeguarded from loss due to wind or water erosion or machinery activity, and shall be replaced on all disturbed areas.

LIABILITIES: Optionee hereby assumes all responsibility for all claims, damages, and lawsuits that may result from any and all damages, injury or death to persons and/or property that occur upon or about the Land that is caused by or arising out of Optionee's use of the Land. The Optionee further agrees that they will be responsible for any damage caused by Optionee when entering, crossing or leaving state-owned subject land.

ENVIRONMENTAL REVIEW CONTINGENCY: All terms of this Option to Lease are contingent upon an environmental review conducted in compliance with the Montana Environmental Policy Act (MEPA), and associated decision document signed by Department. Department will have the sole right to determine whether MEPA compliance shall consist of the completion of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Department shall ultimately be responsible for signing a Record of Decision (ROD) or other appropriate decision document. Optionee and Department agree that the final decision for the MEPA may require modifications to the attached lease document to ensure compliance with the MEPA decision.

Date:_____

STATE OF MONTANA, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By:_____
Mike Atwood, Chief
Real Estate Management Bureau

ACKNOWLEDGMENT

STATE OF MONTANA
County of Lewis and Clark

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

_____
(Notary Signature)

[SEAL]

Date:_____ OPTIONEE

By:_____

Its:_____

ACKNOWLEDGMENT

STATE OF _____

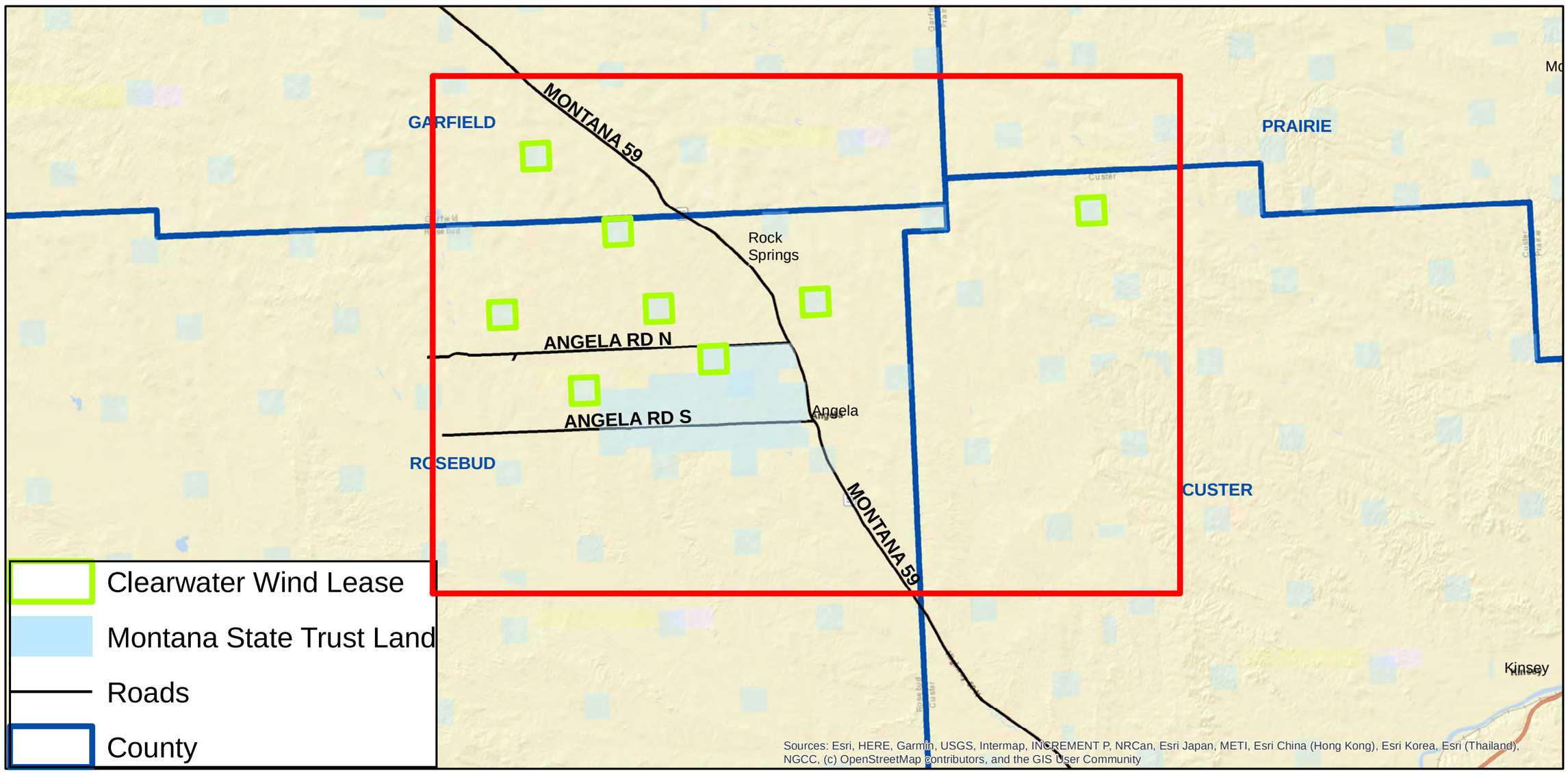
County of _____

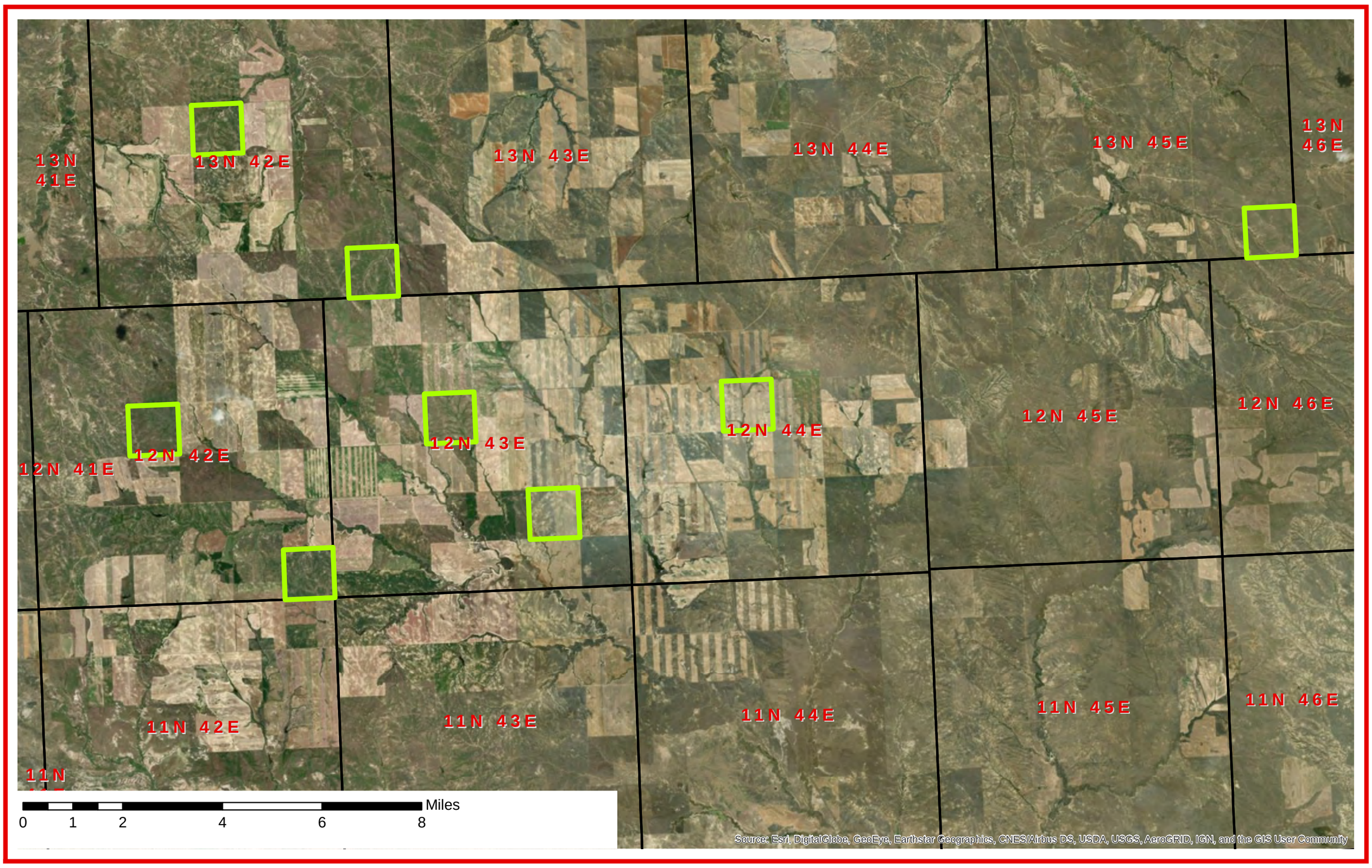
This instrument was acknowledged before me on _____, ____, by _____, as _____ of Optionee, _____.

_____
(Notary Signature)

[SEAL]

CLEARWATER WIND LEASE - OPTION EXHIBIT A





MONTANA DNRC

Legend

Clearwater Wind Lease

Township & Range

Location: Garfield, Rosebud & Custer Counties, MT
Date: 3-17-2020
Prepared By: REMB Staff Member
Projection: NAD83 Montana State Plane

Inset Area from top map shown in bottom map

N

EXHIBIT B

LEASE AGREEMENT

CLEARWATER ENERGY RESOURCES, LLC

CLEARWATER WIND

LOCATION, MONTANA

LEASE NO. 3103235

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THIS COMMERCIAL LEASE AGREEMENT (this "Lease") is entered into as of the _____ day of _____, _____, (the "Commencement Date"), by and between the **State of Montana by and through its Board of Land Commissioners**, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as "Lessor"), and _____, whose address is_____ (hereinafter referred to as the "Lessee").

1. LEASE TERM AND LAND DESCRIPTION

Lease Number	Commencement Date	Term of Lease	Expiration Date

Land Located in _____ County

Description	Sec.	Twp.	Rge.	Acres

2. RENT SCHEDULE

Lease Year	Description	Due Date Pre-Operations	Due Date Post-Operations	Base Rent (Minimum Rent)	Operating Fees	
					Percentage Rent	Capacity Rent
Installation Fees	One-time Fees	NA	45 days after Operations Date	NA	NA	NA
1 – Reduced Rent Period	Base Rent until Operations Date	*Commencement Date*	NA		NA	NA
2 – Reduced Rent Period	Base Rent until Operations Date	*Anniversary of Commencement*	NA		NA	NA
3	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
4	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
5	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
6	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
7	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
8	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
9	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
10	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
11	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD

12	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
13	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
14	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
15	Base Rent until Operations Date	*Anniversary of Commencement*	*March 1*		TBD	TBD
16	MARKET ADJUSTMENT					

3. PURPOSE.

The purpose of this Lease is to grant Lessee the exclusive right to use the Land incorporated into the Lease for the development, construction, maintenance, and Operations of a wind farm and associated Wind Power Facilities.

4. DEFINITIONS.

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

"Adjustment Period Escalator" is Two Percent (2%) compounded annually and applied to the prior year's Base Rent as demonstrated in the Base Rent Schedule. The Adjustment Period Escalator will not be applied to Base Rent for the First Lease Year or the first year that any Market Adjustment is applied.

"Base Rent" is the amount obtained by multiplying the Land Value by the applicable Lease Rate Percentage. Base Rent is annually adjusted by the Adjustment Period Escalator; provided, however, the Adjustment Period Escalator will not be applied to Base Rent for the First Lease Year or the first year that any Market Adjustment is applied. The Base Rent is the minimum rental due annually.

"Capacity Rent" is calculated annually based on Operational Turbines located on the Land during the applicable Production Year and is the product of the Capacity Rent Rate multiplied by the number of megawatts of Installed Capacity of all Operational Turbines located on the Land during the applicable Production Year.

"Capacity Rent Rate" is Three Thousand Dollars ($3,000.00) per megawatt of Installed Capacity for Turbines installed on the Land for the first Production Year and is increased by Two and a Half Percent (2.5%) annually each year thereafter.

"Commencement Date" means the date this Lease goes into effect, legally binding the Lessor and Lessee to the terms of the Lease.

"Commercial Purpose" per MCA 77-1-902(3)(a) means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business. Lessor acknowledges and deems that the use of the Land by Lessee for the purposes permitted and contemplated under this Lease constitutes a Commercial Purpose hereunder and under said statute.

"Default Rate" shall mean One Percent (1%) compounded monthly.

"Department" means the Montana Department of Natural Resources and Conservation.

"Decommissioning" is defined in Section 9.4.

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

"Environmental Laws" means any existing and future Laws relating to, or imposing liability or standards of conduct concerning, the protection of human health, the environment or natural resources, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, Releases or threatened Releases of Hazardous Substances, including without limitation: (a) the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), §75-10-701, et seq., MCA; (b) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; (c) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 5101, et seq.; (d) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; (e) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; (f) the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; (g) the Clean Air Act, 42 U.S.C. § 7401, et seq.; (h) the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq; and (i) the Major Facility Siting Act, §§ 75-20-101 et seq., MCA.

"Expiration Date" means the last day of the Term as provided in Section 1 and 6.1 of this Lease.

"First Lease Year" means the first 12-month period starting on the Commencement Date.

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

"Gross Revenues" for the purposes of calculating Percentage Rent, shall mean the aggregate total revenue actually received by Lessee during the applicable Production Year, from the sale of electrical energy (other than Test Electricity) generated from or attributable to the Operational Turbines located on the Land, as applicable, net of all sales and use taxes and wheeling, integration, transmission and/or congestion charges (if any) imposed thereon or attributable thereto. Gross Revenues will also include payments received by Lessee from: (a) the sale of, renewable energy credits or pollution credits or greenhouse gas reduction credits that directly result from, generation of electrical energy from such Operational Turbines; and (b) from any power purchaser, if such payments are made specifically in lieu of revenues from the normal operation of such Operational Turbines. Gross Revenues shall not include production tax credits, other tax benefits and credits, or any reimbursement thereof or a payment elected instead of production tax credits pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009 (or any extension or renewal thereof, or any successor program). If Lessee sells the production, energy, electricity or capacity from the Wind Power Facilities to a person or entity affiliated with, or in any way related to, Lessee, then "Gross Revenues" shall mean all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms' length bona fide transaction. Gross Revenues shall be calculated on a cash basis as opposed to an accrual basis, meaning that Gross Revenues shall not include revenues that are not actually received during the billing period. It is the intent of the Lessor and the Lessee that Gross Revenues shall not include any revenues other than those set forth in this definition.

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

"Improvements" mean any structures or Wind Power Facilities installed or constructed by Lessee upon the Land.

"Installation Fees" are one-time fees as described in Section 8.2.

"Installed Capacity" means the installed nameplate capacity of the energy generating equipment as determined by the manufacturer.

"Land" means the real property described in Section 1 of this Lease.

"Land Value" is _____ Dollars ($x), which is the monetary value of the bare Land, excluding operating revenue and the value of Improvements thereon, determined by an appraisal by a certified general appraiser or a department staff appraiser or by a limited valuation, per § 77-1-902(4), MCA, and subject to Market Adjustment as provided in this Lease.

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

"Lease Rate Percentage" means (i) during the Reduced Rent Period, Three Percent (3%), and (ii) after the Reduced Rent Period, Four Percent (4%), in each case such rate is subject to modification pursuant to a scheduled Market Adjustment and is not to be below that rate established per § 77-1-905, MCA.

"Lease Year" means each calendar year during the Term, except that the first Lease Year shall be the First Lease Year, and unless the First Lease Year shall itself end on the last day of a calendar year, the Second Lease Year shall extend from the end of the First Lease Year until the end of the then current calendar year.

"Leasehold Mortgage" means any mortgage, deed of trust, assignment of rents, assignment of leases, security agreement or other hypothecating instrument (including any sale-leaseback arrangement documentation entered into for financing purposes) encumbering Lessee's interest under this Lease or the leasehold estate in the Premises hereby created, or any interest hereunder, Lessee's rents and other sums due from any Sublessees, Lessee's rights under Subleases and any other agreements executed in connection with Lessee's use or operation of the Premises, or Lessee's interest in any fixtures, machinery, equipment, Land, buildings, Improvements or other property constituting a part of the Premises.

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

"Lessee's Address" means:

Lessee's Address

"Lessor's Address" means:

Montana Department of Natural
Resources and Conservation
Attn: Real Estate Management Bureau Property Mgmt Section

1539 Eleventh Avenue
PO BOX 201601
Helena, MT 59620-1601

With copies to:

Montana Department of Natural
Resources and Conservation
Eastern Land Office
321 Main Street
Miles City, MT 59301

"Market Adjustment" means a review of current Base Rent factors, conducted at scheduled intervals during the term of the Lease, which will be used to determine the Base Rent Schedule for the next period. It includes consideration of the minimum Lease Rate Percentage at the time, as well as an appraisal process to update the Land Value. The Market Adjustment Schedule and Provisions are found in **Exhibit C**.

"Material Default" means an uncured Default by Lessee under Section 19. a), c), d), or e)

"Operations Date" means the date a power purchasing utility or other entity first receives power (other than Test Electricity) produced from any of the Turbines located on the Land or included within each Project that includes Turbines located on the Land. Lessee shall provide written notice to Lessor of the Operations Date, within 30 days of said date.

"Operations" means (a) determining the feasibility of wind energy conversion for any such Projects, including studies of wind speed, wind direction and other meteorological data; (b) converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted; (c) developing, constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing, operating and monitoring, Wind Power Facilities; (d) allowing the overhang of turbine blades onto the Land from turbines located on property adjacent to the Land; (e) vehicular and pedestrian ingress, egress and access to and from Wind Power Facilities, including by cranes and other construction equipment, over and across the Land by means of roads and lanes thereon if existing, or otherwise by such roads and ways, including but not limited to turning radius from public roads, if necessary, as Lessee or anyone else may construct from time to time; and (f) conducting surveys, tests and studies, including but not limited to biological, cultural, geotechnical and environmental, testing, drilling, and sampling and studies; and (g) Decommissioning.

"Operational Turbine" means a Turbine that (a) has been installed on the Land and is producing electric energy (other than Test Electricity) pursuant to this Lease, and (b) which has not been removed by Lessee.

"Percentage Rent" is calculated annually by multiplying the applicable Percentage Rent Rate by the annual Gross Revenues derived from Operational Turbines located on the Land.

"Percentage Rent Rate" is Three Percent (3%) for years one (1) through five (5); Three and a Half Percent (3.5%) for years six (6) through ten (10); Four Percent (4%) for years eleven (11) through fifteen (15); Four and a Half Percent (4.5%) for years sixteen (16) through twenty (20); and Five Percent (5%) for years twenty-one (21) through the remainder of the lease term.

"Premises" means the Land and all Improvements.

"Production Year" means the 12 calendar month period during the Term beginning with the Operations Date and ending on December 31 of each year. The first Production Year may be less than a 12-month period.

"Project" means one or more Turbines and associated Wind Power Facilities that are constructed, installed and/or operated on the Land and/or on other real property in the vicinity of the Land, by or on behalf of Lessee, as an integrated energy generating and delivery system.

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

"Reduced Rent Period" means the period of the Lease term commencing on the Commencement Date and continuing through the Second Lease Year.

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

"Rent" means Base Rent and all other amounts, including Installation Fees, required to be paid by Lessee under this Lease.

"Second Lease Year" means the period between the end of the First Lease Year and the last day of the current calendar year.

"Sublease" means a sublease, license, concession, or other agreement (whether written or oral) according to which Lessee grants any party the right to use or possess all or any portion of the Premises, subject and subordinate to Lessee's retained interest in this Lease.

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

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

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

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

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

"Term" is defined in Section 6.

"Test Electricity" means energy produced for the purposes of initial testing, commissioning, performance testing and start-up procedures of the Wind Power Facility.

"Turbine(s)" means wind turbine generator(s).

"Wind Power Facilities" means (a) Turbines, wind energy conversion systems and wind power generating facilities (including associated towers, foundations and other structures and equipment and other power generation facilities) to be operated in conjunction with wind turbine installations, in each case of any type or technology; (b) transmission facilities, including overhead and underground transmission, distribution and collector lines, wires and cables, splice and junction boxes, switch panels, conduits, footings, foundations, towers, poles, crossarms, guy lines and anchors; (c) substations, interconnection and/or switching facilities, circuit breakers and transformers; (d) operational and maintenance building; (e) overhead and underground control, communications and radio relay systems and telecommunications equipment, including microwave towers, dishes, and control, fiber, wires, cables, conduit and poles; (f) meteorological towers, guy wires, braces and wind measurement equipment; (g) roads and erosion control facilities; (h) temporary laydown yards; (i) signs; (j) fences and other safety and protection facilities; and (k) other minor or incidental improvements, facilities, appliances, machinery and equipment associated with any of the foregoing.

5. EXHIBITS.

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

Exhibit A – Memorandum of Lease

Exhibit B – Approved Map

Exhibit C – Market Adjustment Schedule and Provisions

Exhibit D – Decommissioning Plan

Exhibit E – Post-Construction Environmental Monitoring

Exhibit F – Existing Leases

[*Exhibit D and Exhibit E are dependent on the Lease Proposal and subsequent Environmental Analysis.*]

6. LEASE TERM, RENEWAL, TERMINATION, AND RELEASE.

6.1 Term.

Subject to the terms, covenants, conditions and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor the Land for the term of thirty-five (35) years starting on the Commencement Date ("Initial Term").

6.2 Extension Option; Decommissioning Term.

a) Extension Option.

Unless at the time of renewal a default by Lessee (as defined below) shall be continuing following the expiration of any notice and cure period hereunder, Lessee may extend the Term of the Lease for one period of ten (10) years ("First Extension Term") and, thereafter, for a second period of ten (10) years ("Second Extension Term"). Lessee must provide Lessor written notice of Lessee's intention to extend the Term of this Lease delivered at least three (3) months prior to the expiration of the First Extension Term or Second Extension Term, as applicable. The Base Rent will be adjusted at renewal according to the process outlined in Exhibit C. The Initial Term, First Extension Term, Second Extension Term, and Decommissioning Term are collectively referred to herein as the "Term".

b) Decommissioning Term.

At any time during the Initial Term, First Extension Term, or Second Extension Term, as applicable, Lessee may elect to commence the Decommissioning Term (as herein defined) by written notice to Lessor. The

"Decommissioning Term" is a period of up to eighteen (18) months and shall be for purposes of accomplishing Decommissioning. The Decommissioning Term shall commence upon the date specified in Lessee's notice to Lessor, however, in no event shall such commencement date be later than the day immediately following the expiration of the Second Extension Term. For purposes of clarification, the Decommissioning Term is optional and Lessee may also satisfy all or any portion of its Decommissioning obligations during the Initial Term, First Extension Term, or Second Extension Term, as applicable. If so commenced, the Decommissioning Term shall be considered part of the "Term" for purposes of this Lease.

6.3 Lessee Right to Terminate; Release.

Lessee shall have the right, in accordance with the terms of this Lease, at any time and from time to time during the Term, to surrender or terminate all or any portion of its right, title and interest in this Lease, provided that no partial surrender or termination of this Lease shall be for less than tracts of approximately forty (40) acres or a governmental lot corresponding to a quarter-quarter section, by giving Lessor not less than sixty (60) days written notice thereof and by executing and causing to be acknowledged and recorded a release describing with particularity the portion of such right, title or interest so released and the part of the Land to which it applies. Upon any such release by Lessee, the parties' respective rights and obligations hereunder (including as to the rental payments) shall cease as to the portion of the Land or the right, title or interest herein as to which such release applies, but in no case shall surrender or termination be effective until Lessee shall have completed its Decommissioning requirements in accord with the terms of this Lease. This Lease and the parties' respective rights and obligations hereunder shall remain in full force and effect as to any right, title, and interest of Lessee not so released.

7. RIGHTS; COVENANTS; CONDITION OF PREMISES; RESERVATIONS.

7.1 Lessor's Rights.

The Land leased by this Lease shall be used and occupied for the Operations of Wind Power Facilities, as those terms are defined above. In addition:

a) Lessee shall have the exclusive right to develop and use the Land for wind energy purposes and to convert all of the wind resources of the Land; provided, however, that nothing expressly or impliedly contained in this Lease or represented to Lessee shall be construed as requiring Lessee to: (i) continue operation of any Wind Power Facilities from time to time located on the Land or elsewhere or (ii) generate or sell any minimum or maximum amount of electrical energy from the Land; and the decision when and to what extent to construct, install or operate Wind Power Facilities, or to generate or sell electrical energy, shall be solely in Lessee's discretion, subject to Section 17 of this Lease.

b) Lessee shall have an exclusive right to use, convert, maintain, and capture the free and unobstructed flow of wind over and across the Land.

c) Lessee shall have a non-exclusive right for audio, visual, view, reflective light, shadow flicker, noise, shadow and any other effects attributable to the Operations on the Land.

7.2 Lessor and Lessee Covenants.

Lessor covenants that Lessee will have quiet and peaceful possession of the Land subject only to the terms, conditions, and reservations of this Lease, including prior existing rights disclosed to Lessee in writing on or before the Commencement Date. Lessor covenants to observe and perform all of the terms, covenants, and conditions applicable to Lessor in this Lease. Lessor covenants and agrees that neither Lessor's activities nor those activities authorized by Lessor upon the Land will interfere with, impair or materially increase the cost of (i) the construction, installation, maintenance or operation of any Improvements or the Project, (ii) vehicular or pedestrian access to, or the transmission of energy from, the Land, any Improvements or any Project, (iii) any Operations of Lessee on the Land or with respect to the Project or (iv) the undertaking of any other activities or the free enjoyment and exercise of any other rights

or benefits given to or permitted Lessee hereunder, or (v) in any other way, unreasonably interfere with the free and unobstructed flow of wind over and across the Land. Lessee covenants to pay the Rent when due, and to observe and perform all of the terms, covenants, and conditions applicable to Lessee in this Lease.

7.3 Condition of Land.

Except as expressly set forth in this Lease, Lessee accepts possession of the Land on the Commencement Date in the then-current condition on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis. Lessor makes, and Lessee affirms that Lessor has made, no representations or warranties of any kind whatsoever with regard to the condition of the Land or its fitness or suitability for any particular purpose. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the Land and any applicable rights, reservations, restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

7.4 Lessor Reservation of Rights.

Lessor reserves the following rights, subject to the terms and conditions of this Lease:

a) All rights and privileges of every kind and nature, except as are herein specifically granted;

b) The right to lease all or any portion of the Land to other persons for the purposes of exploring for and removing timber, minerals, ores, metals, coal, asphalt, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary and convenient to exercise such reserved rights. Such new grants shall not interfere with the rights and privileges granted to Lessee herein and shall be subordinate to the rights of Lessee. Any new grant as described in this part (b) shall include provisions requiring that such third-party grantee indemnify Lessee for any and all damages caused to any structures or Wind Power Facilities placed upon the surface of the Land by Lessee subsequent to the Commencement Date;

c) The right at all times during the life of this Lease to go upon the Land, except Lessee's fenced areas, and every part thereof for the purpose of visually inspecting same to ascertain if said Lessee and those holding thereunder by and from it are carrying out the terms, covenants, and agreements of this Lease. Lessor shall comply with all safety policies and procedures of Lessee;

d) The right at any time to grant an easement or right-of-way upon, over, under, though, or across all or any part of the Land for any ditch, reservoir, communication system, electric power line, pipeline, or other lawful purpose. Such new grants shall be compatible with the rights and privileges granted to Lessee herein and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Land shall include provisions requiring that such third-party grantee reimburse Lessee for any and all damages caused to any structures or Wind Power Facilities placed upon the surface of the Land by Lessee subsequent to the Commencement Date; and

e) The right to use the Land, and grant permits or licenses to use the land, for other surface uses including agriculture, livestock grazing, ranching, and other purposes, provided, however, that within the setback area of the Turbines consisting of approximately a 250-foot diameter circle around each Turbine which shall be exclusive to Lessee, Lessor shall have no right to use the Land for any purposes except for the growing of crops, grazing of livestock, and pedestrian activities.

7.5 Reservation of Oil, Gas, and Minerals; Existing and Future Leases.

No transfer of mineral ownership, mineral rights, or pore space rights, including sand, gravel, scoria, or stone, is intended or granted to Lessee by or through this Lease. Rather, Lessor expressly excepts and reserves from this Lease all rights to all oil, gas, and other minerals in, on or under the Land and that might be produced or mined from the Land. Lessor reserves the right to develop the minerals on the Land owned by Lessor as long as such development (including any drilling or mining) does not interfere with Lessee's use of the Land with the exception of the prior rights of existing leases and does not materially diminish the amount of land surface of the Land available for the Lessee's Wind Power Facilities. Lessee acknowledges receipt of information from Lessor that there are existing mineral leases that cover part of the Land. Lessor has had and will have a full opportunity to investigate the status of all existing leases, and the past, present and any future (or potential) mining activities under the existing leases. Lessee enters into and accepts this Lease subject to the prior rights of existing leases. Lessor shall include as a term and

condition to any conveyance on or after the Commencement Date of any interest in the mineral estate in the Land, including any lease thereof, that any owner or lessee, as applicable, of any mineral interest in the Land (a) shall use the surface of the Land only in a manner that reasonably accommodates Lessee's surface use as described herein and with due regard for the rights of Lessee with respect to the surface use, (b) shall make only such use of the surface of the Land as to avoid material impairment of Lessee's actual or anticipated surface use as described herein, and (c) shall limit any activity to occur only on those areas of the surface of the Land that are not closer to any wind turbine or proposed wind turbine of Lessee than the greater of (i) twenty (20) times the height of any building or other structure to be installed by such owner or lessee, as applicable, or (ii) five hundred (500) feet; provided, however, that temporary or permanent equipment for oil and gas exploration or production, such as drilling and workover rigs, may be installed on the Land so long as it is installed at least five hundred (500) feet from the base of any wind Turbine or proposed wind Turbine of Lessee. No minerals of any kind, including but not limited to sand, gravel, or stone, found on the Land, shall be sold by the Lessee unless purchased from Lessor.

7.6 Reservation of Right to Evaluation Recreational Use.

As of the Commencement Date, the Land will be subject to all general recreational use rules in ARM Chapter 36.25.

The ARM for recreational use and categorical exclusions is currently under review and may be changed in the near future. This lease is subject to all laws and rules as they may be changed over time. If the referenced ARM language is modified prior to lease execution, this section may be modified accordingly by mutual agreement of Lessor and Lessee.

8. RENT; INSTALLATION FEES; OTHER PAYMENT TERMS; AUDIT RIGHTS.

8.1 Rent.

All Rent due to Lessor will be paid in lawful money of the United States of America, at Lessor's Address, post-marked on or before the due date, without notice or demand and without right of deduction, abatement, or setoff.

a) Pre-Operations Date Rent.

The annual lease fee payable prior to the Operations Date shall be the Base Rent. Lease fees due prior to the Operations Date shall be paid annually, in advance, on the Commencement Date, and each anniversary of the Commencement Date thereafter. *The Lease fee for the First Lease Year must be paid through a cashier's check, or through EFT.* Should the Operations Date occur in the middle of a payment cycle under this subsection, a credit would be calculated and applied to the next invoice accordingly.

b) Post-Operations Date Rent. Following the Operations Date, the annual lease fee for each Production Year shall be the greater of the Base Rent, Capacity Rent, or Percentage Rent, payable in arears, due on or before March 1 annually. Along with each payment under this subsection, Lessee shall deliver to Lessor a report detailing calculation data for Capacity Rent and Percentage Rent values for each year. Such report shall include, but not be limited to, specific information on installed capacity and Operational Turbines upon the Land, and Gross Revenue calculations, for the applicable Production Year upon the Land.

8.2 Installation Fees.

Unless specified otherwise, all installation fees are due within forty-five (45) days after the Operations Date.

a) Turbine Capacity.

Lessee shall pay to Lessor a one-time installation fee equal to One Thousand Dollars ($1,000.00) per megawatt of Installed Capacity for Turbines installed on the Land. Should additional Turbines be installed

on the Land after the Operations Date, payment must be made for the additional Installed Capacity within sixty (60) days of operation as to the applicable additional Turbine. Additional installation fees will be due for replacement of any existing Turbines only if the installed capacity is increased, in which case Lessee shall pay for an installation fee for the difference between the originally Installed Capacity and the new Installed Capacity. This provision would be applicable when a Turbine is replaced due to damage or Lessee elects to repower the project.

b) Roads, Transmission Lines, and Underground Cabling.

Lessee shall pay to Lessor the following one-time installation fee payments:

i) New Roads: Three Dollars ($3.00) per lineal foot of new roads constructed by or for Lessee on the Land;

ii) Improved Existing Roads: One Dollar ($1.00) per lineal foot of private roads existing on the Land as of the Commencement Date that are improved by or for Lessee;

iii) Transmission Lines: Two Dollars ($2.00) per lineal foot of overhead transmission lines installed by or for Lessee on the Land; and

iv) Underground Cabling: One Dollar ($1.00) per lineal foot of underground cabling installed by or for Lessee on the Land.

Overhead or underground lines, cabling and wires (which shall be deemed to include any electrical lines, communications lines, fiber optic cables and grounding wires) that are bundled or co-located with, adjacent or parallel to, or stacked along with other overhead or underground lines, cabling and wires on an integrated set of poles or in a single trench shall be considered a single line, cable or wire for purposes of determining the total distance that such line, cable or wire traverses the Land and calculating the amount due hereunder. No additional installation fee payment shall be due upon any replacement of an existing road, transmission line, or underground cable upon the Land during the term of this Lease. In instances of co-located, parallel or adjacent roads, lines, or cables, the installation will be treated as a single installation and the highest applicable per lineal foot installation fee described within this subsection shall apply.

c) Meteorological Tower.

If a meteorological tower is installed by Lessee on the Land, Lessee shall pay to Lessor a one-time installation fee equal to One Thousand Dollars ($1,000.00) per meteorological tower installed, payable within forty-five (45) days of the date the meteorological tower is installed. No additional installation fee payment shall be due upon any replacement of an existing meteorological tower during the term of this Lease.

d) Temporary Laydown Yard.

If a portion of the Land is used by Lessee as temporary laydown yard for temporary storage of Lessee's equipment and materials in connection with the construction of the Improvements, then Lessee shall pay to Lessor a one-time use fee equal to Four Hundred Dollars ($400.00) per acre occupied by such temporary laydown yard. No additional installation fee payment shall be due upon any replacement of such temporary laydown yard during the term of this Lease, except to the extent of any increase in occupied acreage resulting therefrom. Any temporary laydown yard shall be reclaimed to its original condition and reseeded with a seed mix approved by the Lessor within six (6) months of the completion of construction.

e) Turning Radius.

If a portion of the Land is used by Lessee as a temporary turning radius area for Lessee's equipment in connection with the construction of the Improvements, then Lessee shall pay to Lessor a one-time use fee equal to Two Hundred Dollars ($200.00) per acre occupied by such turning radius. No additional installation fee payment shall be due upon any replacement of such turning radius during the term of this Lease, except to the extent of any increase in occupied acreage resulting therefrom.

f) Substations and Operation and Maintenance Building.

Any substations, interconnection and/or switching facilities, or similar high voltage transmission facility or any operation and maintenance buildings installed on the Land shall require an installation fee of Five Thousand Dollars ($5,000.00) per acre occupied.

8.3 Rent During Decommissioning Term.

During the Decommissioning Term, the lease fee shall be Base Rent pro-rated and paid in advance of each calendar quarter until the earlier of completion of Decommissioning (as defined in this Lease and Exhibit D) or the expiration of the Decommissioning Term.

8.4 Additional Payment to State Agricultural and Grazing Lessees.

For those surface leases disclosed to Lessee on or before the Commencement Date, Lessee shall be liable and agrees to pay Lessor's surface lessee(s) for damage to improvements of such surface lessee(s), potentially including the breaking of land. Lessee agrees to work closely with the Department and any surface lessee to meet this requirement. This obligation shall not be interpreted to create third-party beneficiary rights in favor of such surface lessee.

8.5 Late Charge.

Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Lessor does not receive the full amount of any Rent postmarked on or before the due date, Lessee shall pay a late charge to Lessor. The late charge will be an amount equal to Ten Percent (10%) of any overdue Rent for Lessor's cost of collecting and handling such late payment due as additional Rent. If payment of the Rent and late charge are not made in full within thirty (30) days of the due date, the outstanding balance of the unpaid Rent and the late fee shall accrue interest at the Default Rate. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Lessor retains sole discretion to apply payments received to past due Rent, including any late charge(s) and interest, before applying a payment to current Rent. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost that Lessor will incur due to the late payment by Lessee.

8.6 Additional Rent.

Lessor will not be required to pay any costs or expenses or provide any services in connection with Lessee's use of the Land. Accordingly, Lessee covenants and agrees to separately pay, in addition to the Rent, all utilities and services attributable to Lessee's use of the Land and all taxes and special assessments levied against Lessee's Improvements, whether assessed separately or not, as provided in Sections 11 and 12 below.

8.7 Lessor Audit Rights.

Upon Lessor's request, but not more than once per year, Lessee shall provide all reasonable documentation necessary for Lessor to conduct a meaningful audit at a convenient place somewhere within the state of Montana. Lessee shall keep true, accurate, and complete books, records, accounts, contracts, and data sufficient to support and verify the calculation of all amounts due under this Lease for a period consistent with Lessor's records retention policies. Lessee shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. Lessee agrees that Lessor, or any representative of Lessor, legislative auditors, or the legislative fiscal analyst shall have the right at all reasonable times, and upon provision of reasonable notice, to inspect such books, accounts, contracts, records, documents, and any other relevant data in the possession or control of Lessee, any affiliate of Lessee, any assignee and/or any Sublessee, and pertaining to the calculation of amounts due under this Lease, including, without limitation, statements, documents, records, or other data from third parties which verify price paid for, or quantity of, electricity generated by the Project, as applicable. Documents may include information relating to the production of energy generated under this Lease, the price thereof, or agreements thereto, as well as any other pertinent information reasonably necessary for any audit of operations to review Lessee's performance of its obligations under this Lease. Such records, reports, and other documents may be audited at any reasonable time at a convenient place somewhere within the State of Montana. Lessor, any representative of Lessor, legislative auditors, nor the legislative fiscal analyst shall disclose any information it receives from Lessee that Lessee has previously identified as

confidential or that the Lessor determines in its sole discretion is protected from mandatory public disclosure under a specific exemption to the Montana public records laws. Further, Lessor, any representative of Lessor, legislative auditors, nor the legislative fiscal analyst shall be permitted to take, keep or retain copies of the records provided to Lessor to conduct an audit under this Section, which records shall be collected by Lessee at the conclusion of the audit.

If the audit determines that Rent has been underpaid, then Lessee shall pay Lessor the amount of the deficiency. Lessee shall pay Lessor any deficiency within thirty (30) days of final determination of the amount of the deficiency. If the audit determines that Rent has been overpaid, then the overpayment shall be credited against Lessee's next payment(s) due, or, if this Lease has expired, the overpayment shall be refunded to Lessee in accordance with Lessor's refund policy and procedures in place at the time the refund is due.

9. SITE PLAN; IMPROVEMENTS; DECOMMISSIONING.

9.1 Site Plan.

No later than thirty (30) days prior to commencement of construction on the Land, Lessee shall provide Lessor with a copy of the Site Plan. The Site Plan shall include a legal description and survey of the pertinent portion of the Land locating the Wind Power Facilities, utilities and grading, and a drawing of the elevation of the energy generating equipment and transmission facilities. The Site Plan shall also identify any and all planned Improvements, including Improvements necessary to calculate installation fees under this Lease.

9.2 Construction of Improvements and Alterations; Approval.

Lessee will consult with Lessor at least sixty (60) days prior to the commencement of construction on the Land to describe Lessee's plan and schedule for construction on the Land. As part of the consultation, Lessee will present a preliminary site plan showing the proposed location of wind turbines, new roads, overhead lines, an electric substation (if any), and other Wind Power Facilities on the Land, and solicit Lessor's advice and input, and when commercially reasonable, implement Lessor's advice, before finalizing the site design. Depicted on **Exhibit B** hereto and made a part hereof, are any excluded areas of the Land upon which Lessee may not install Wind Power Facilities. All expenses of constructing, installing, maintaining, repairing, altering, or demolishing any Improvements shall be the sole responsibility of Lessee. Lessee shall at all times comply with all Laws, including any applicable city and state building codes and fire codes. Lessor will have the right to post notices of non-responsibility or similar notices on the Land in order to protect the Land against any liens resulting from such work.

When Lessee commences construction of Improvements on the Land, Lessee shall diligently endeavor to cause the Operations Date to occur within eighteen (18) months. Upon completion of the initial Improvements for the Land, Lessee shall deliver to Lessor an electronic "as-built" survey of the Premises in both .shp (or other ArcGIS compatible file) and .pdf format. The Lessee shall also furnish to the Lessor copies of certificates of occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

9.3 Title to Improvements.

During the Term, Lessee will be deemed to own, and hold title to all Improvements, and shall have the right to grant liens or other security interests in the Improvements. If any Improvements remain upon the Land after the Term of this Lease, and applicable laws and/or this Agreement provide Lessor a reversionary right in the title to any such remaining Improvements, then such right and title will automatically vest in Lessor without representation or warranty from Lessee.

9.4 Decommissioning.

Prior to the expiration, surrender, or termination of this Lease, including early termination, whether as to the entire Land or only as to a part thereof, Lessee shall fulfill all obligations provided within the Decommissioning Plan attached hereto as **Exhibit D**, as developed between Lessee and Lessor after completion of the appropriate environmental analysis document prior to executing this Lease. In addition to, and accordance with, the terms of the Decommissioning Plan, Lessee shall complete the following decommissioning and restoration (collectively, "**Decommissioning**"):
(a) remove from the Land (or such part thereof, as applicable) any Improvements owned, installed or constructed by Lessee thereon that are above ground on the Land and, to the extent any Improvements also extend below ground, Lessee will remove, raze or demolish such Improvements extending up to two feet below ground, except for any roads that Lessor allows to remain on the Land;
(b) haul away and dispose of all removed concrete and other waste materials in a lawful manner and otherwise leave the surface of the Land (or such part thereof, as applicable) free from debris;
(c) plug and abandon any water wells drilled by Lessee on the Land unless Lessor gives notice to Lessee that Lessor wishes such wells to remain;
cause all liens and encumbrances arising from Lessee's restoration activities to be removed or adequate security posted to cause the removal of such liens or encumbrances; and
(d) otherwise restore the portion of the Land affected by Lessee to a condition as required by Montana law, §§ 75-26-301, et seq., MCA; ARM §§ 17.86.101, et seq. Restoration includes, if applicable, the reseeding of affected areas with grasses and/or natural vegetation in accordance with reasonable and customary land care and maintenance standards in the area relating to weed control and the restoration of disturbed pastureland, as reasonably determined by Lessee upon consultation with county agricultural authorities and in coordination with Lessor, as to matters including seed types and seeding timing and processes, it being the intent that Lessor be able to utilize the Land in the same manner as before Lessee's use.

If Lessee fails to complete Decommissioning prior to the termination or expiration of the Term, including the Decommissioning Term, if applicable, then Lessor may do so, in which case Lessee shall reimburse Lessor for reasonable costs of removal and restoration incurred by Lessor. All Decommissioning will comply with the requirements of §§ 75-26-301, et seq., MCA; ARM §§ 17.86.101, et seq. Further, all Improvements and personal property remaining on the Land on the day after the termination or expiration of the Term, including the Decommissioning Term, shall be conclusively deemed abandoned by the Lessee and shall automatically become property of Lessor without representation or warranty per applicable law.

9.5 Secondary Uses and Post-Construction Restoration.

Lessee's use of the Land for Wind Power Facilities shall not unreasonably disturb grazing, agriculture, or other permitted secondary uses of the Land, granted under one or more leases, licenses, or permits issued prior to the Commencement Date. Upon the completion of the construction of the Lessee Improvements, all Land disturbed by Lessee, its agents, contractors, and/or employees, and not required for continuing operations of the Wind Power Facilities, shall be restored to a condition and forage density reasonably similar to its original condition and forage density, consistent with the continued use of the Land pursuant to this Lease. Reclamation shall include, as reasonably required, leveling, terracing, mulching, and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests. After the completion of construction, no refuse, waste, or other litter of any kind shall be left on the Land by Lessee. This post-construction reclamation requirement is separate and apart from the requirements found in Section 9.4 above.

10. <u>USE AND ENVIRONMENTAL COMPLIANCE.</u>

10.1 Use and Compliance.

The Lessee agrees to comply with all applicable laws, rules, and regulations in effect upon the Commencement Date of this Lease and those laws, rules, and regulations which may be enacted or adopted thereafter from time to time and which do not impair or impede the obligations of this Lease and which do

not deprive the Lessee of an existing property right recognized by law. Lessee shall keep Lessee's Improvements in good repair, and pay all costs and expenses in connection therewith. Lessee shall not commit waste or permit impairment or deterioration of the Land, except for impairment or destruction caused by the construction, installation, and removal of Improvements contemplated by this Lease, ordinary wear and tear, and damage by casualty and condemnation. Excavations and Improvements shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.

a) Noxious Weeds.

The Lessee shall be responsible for controlling any noxious weeds introduced by Lessee's activity on the Premises or adjacent state-owned land. The Department Field Office that has jurisdiction for that locale must review the Lessee's methods of control. The Lessee shall comply with the Montana County Noxious Weed Management Act.

b) Resource Removal.

Lessee shall not remove or intentionally destroy any vegetation on the Land, including trees of any variety, without the consent of Lessor, except in connection with Lessee's activities (including, without limitation, the construction and operation of Wind Power Facilities).

c) Post Construction Restoration.

Upon completion of construction on the Land, Lessee will restore the soil surface on any portion of the Land disturbed by Lessee that is not within five feet (5') of the Wind Power Facilities to substantially the same condition prior to construction.

d) Rangeland Assessment.

Prior to any construction on the Land, Lessee shall hire a range professional, acceptable to Lessor, to prepare a one-time rangeland assessment to document the baseline condition (including forage density, forage type, and list and location of noxious weeds) for those areas of the Land on which Lessee intends to construct Wind Power Facilities. The range professional shall also take representative photographs of each such area prior to construction. Lessee shall be responsible for the cost of the rangeland assessment.

10.2 Compliance with Title 77, MCA.

Lessor and Lessee specifically acknowledge that the Land is state school trust land managed by the Montana Board of Land Commissioners and agree that this Lease is subject to the provisions of Title 77, Mont. Code Ann., and all associated Administrative Rules of Montana.

10.3 Post-Construction Environmental Monitoring and Montana Environmental Policy Act (MEPA).

Environmental analysis is required prior to execution of this Lease. Lessee understands that there may be additional environmental monitoring required from the Lessee after construction and/or Operations, based on the project specifications and the environmental analysis conducted prior to lease execution. Any additional monitoring requirements will be made part of this Lease by mutual agreement of Lessor and Lessee and attached hereto as **Exhibit E** prior to lease execution. Lessee agrees to pay all costs associated with such post-construction environmental monitoring and any environmental analysis conducted under MEPA as may be required.

10.4 Environmental Matters.

Lessor has made no representations to Lessee concerning the presence of toxic or Hazardous Substances within the definition of the CECRA on the Land. Lessee agrees as follows: Lessee will (a) comply with all Environmental Laws applicable to the operation or use of the Land by Lessee or the construction, installation, alteration or demolition of any Improvements by Lessee; (b) use reasonable efforts to cause all Sublessees and other persons occupying the Land to comply with all Environmental Laws; (c) immediately pay or cause to be paid all costs and expenses incurred by Lessee in such compliance; and (d) keep or cause the Land to be kept free and clear of any liens arising from Lessee's use and occupancy of the Land imposed thereon pursuant to any Environmental Laws.

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

If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee related to the Land or has good reason to believe that Lessee or the conditions on the Land are in violation of any Environmental Laws, as a result of Lessee's activities under the Lease, at Lessor's written request (such request shall describe the basis for such request in reasonable detail), at any time and from time to time, Lessee will provide to Lessor a report to Lessor's reasonable satisfaction concerning such purported violation, indicating the presence or absence of Hazardous Substances and the potential cost of any removal or remedial action in connection with any Hazardous Substances on the Land. Any such report will be conducted at Lessee's sole cost and expense. If Lessee fails to deliver to Lessor any such report within ninety (90) days after being requested to do so by Lessor pursuant to this Section, Lessor may obtain the same, and the cost of such assessment (together with interest thereon at the Default Rate) will be payable by Lessee on demand.

Lessor may, at its option, at any time and from time to time, obtain at its sole cost and expense an environmental site assessment report for the Land.

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

10.5 Survival.

The reimbursement obligations under this Section 10 will survive the expiration or earlier termination of this Lease.

11. UTILITIES; REPAIRS; WATER RIGHTS.

11.1 Installation and Repairs.

Lessee will install any water, sewer, storm water, electric, communication lines, natural gas lines, roads, sidewalks, and/or any other infrastructure as required for the development of the Land. Lessee will maintain, repair, replace and keep the Premises in reasonably good condition and repair.

11.2 Utilities.

Lessee will pay before delinquent all water, sewer, natural gas, electricity, telephone and any other utility charges related to the Premises, and arising by, through or under Lessee, including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Land or Improvements.

11.3 Water Rights.

Any water right appropriated or secured on the Land by any individual or party for use on or off such Land shall be appropriated or secured in the name of the Lessor unless prior written permission to do otherwise is granted by the Lessor. Lessor shall be notified prior to such development or appropriation of water right.

12. TAXES.

12.1 Payment of Taxes.

Lessee will pay before delinquent, directly to the taxing authority, all taxes that accrue during, or are attributable to, any part of the Term and levied against Lessee's Improvements, including privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203, if applicable and any other taxes levied by the State including electrical generation taxes listed in MCA 15-24-3004, et seq.

12.2 Special Assessments.

Lessee will pay all special assessments (i.e. SIDs, RIDs, etc.) and other like impositions levied, assessed, or attributable to the Land and Lessee's Improvements during the Term.

13. INSURANCE.

13.1 Types of Required Insurance.

Lessee shall procure and maintain, or cause one or more of its Sublessees to provide and keep in force and name Lessor as an additional insured, the following:

a) Commercial General Liability Insurance: For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase an maintain commercial general liability insurance within limits of $1,000,000 per occurrence / $2,000,000 aggregate per year protecting Lessee and the Lessor, their elected and appointed officials, agents, and employees, against all claims for bodily injury, death, personal injury, property damage, contractual liability, violation of or non-compliance with any laws, regulations, or rules, and financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors. This provision is intended to require Lessee to purchase and maintain general liability insurance that includes protection for (a) Lessee's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct, and (b) the Lessor's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct.

b) Property Insurance. For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase a maintain all-risk fire and extended coverage property insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering loss or damage to the Improvements and betterments on a full replacement cost basis, excluding existing architectural and engineering fees, undamaged excavation, footings and foundations.

c) Worker's Compensation and Employer's Liability Insurance. For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall either obtain and maintain an independent contractor exemption or shall purchase and maintain worker's compensation and employer's liability insurance covering Lessee and its employees and agents. Lessee shall also require each of its sub-contractors, for the duration of this Lease and until the Lessor certifies that reclamation is complete, to either obtain and maintain an independent contractor's exemption or to purchase and maintain workers' compensation and employer's liability insurance covering each sub-contractor and its employees and agents.

d) Environmental Impairment Liability Insurance. For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain sudden and accidental pollution liability insurance with limits of $1,000,000 per occurrence/ $2,000,000 aggregate per year protecting Lessee and the State, their elected and appointed officials, agents, and employees, against all claims for bodily injury, death, personal injury, property damage, contractual liability, violation of or non-compliance with any laws, regulations, or rules, and financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Lease. Sudden and accidental pollution liability insurance can be purchased on an "occurrence" basis or a "claims made" basis. If coverage is written on a "claims made" basis it shall include the longest retroactive date and extended reporting periods available.

e) Automobile Liability Insurance. For the duration of this Lease and until the Lessor certifies that

reclamation is complete, Lessee shall purchase and maintain business automobile liability insurance covering any automobile - including all owned, hired and non-owned automobiles – used in connection with Lessee's business. Business automobile liability insurance shall have limits of not less than $500,000 per person, $1,000,000 per accident, and $100,000 for property damage. Lessee shall require each of its sub-contractors to purchase and maintain business automobile liability insurance with the same limits.

13.2 Terms of Insurance.

a) Each insurance policy required by this Lease shall be written for the limits of liability specified in this Lease or required by law, whichever coverage is greater.

b) Each insurance policy required by this Lease shall be written on an "occurrence" basis (not "claims made" basis), unless otherwise agreed to by subsequent written agreement between Lessee and Lessor.

c) Each insurance policy required by this Lease shall be maintained without interruption for the time periods required by this Lease and shall contain a provision that coverage will not be canceled, allowed to expire, changed, reduced, or restricted for any reason unless and until the insurance carrier that issued the policy has given Lessor at least thirty (30) days prior written notice of cancelation, expiration, change, reduction, or restriction of coverage.

d) Lessee is responsible for paying all premiums, deductibles, and retentions applicable to each insurance policy required by this Lease.

e) All insurance coverage of any kind purchased and maintained by Lessee or any sub-contractor as required by this Lease shall be purchased only from an insurance carrier currently authorized to do business in the State of Montana with an A. M. Best's rating of no less than A-.

f) All insurance coverage of any kind purchased and maintained by Lessee or any sub-contractor as required by this Lease shall be primary coverage. Any insurance or self-insurance maintained separately by Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's or sub-contractor's insurance and shall not contribute with it.

g) Both Lessee and Lessor shall be identified on the declaration pages of the general liability, property, environmental impairment liability, business automobile liability, and excess/umbrella policies required by this Lease as named insureds (Lessee being identified as the primary or first named insured). These insurance policies shall provide Lessor no less coverage than is provided to Lessee and shall contain no provision limiting Lessor's coverage to claims of vicarious or general supervisory liability.

h) Lessee, its sub-contractors, or the insurance carrier issuing all insurance policies required by this Lease must provide complete certified copies of all such policies (and associated declaration pages) to Lessor prior to execution of this Lease and as a necessary condition precedent to the formation, and enforceability of any provision, of this Lease.

i) Failure to obtain and maintain all required insurance shall be considered a material breach of this Lease. Lessee shall notify Lessor immediately if any insurance required by this Lease is canceled, expires, changes, is reduced, or restricted in coverage or if any insurer notifies Lessee of its intent to cancel, allow to expire, change, reduce, or restrict the coverage of such insurance.

j) The indemnity and insurance provisions of this Lease can be modified only by subsequent written agreement between Lessee and Lessor.

14. DAMAGE OR DESTRUCTION.

In the event of any Substantial Damage arising from or relating to Lessee's activities on and use of the Land or any Improvements from any causes whatsoever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Land or remove any damaged Improvements and restore the affected portion of the Land as nearly as possible to its condition immediately prior to such damage or destruction unless Lessor and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate upon Lessee's completion of a remediation plan developed by the Department pursuant to this Section. Lessee's duty to repair any damage or destruction of the Land, and to restore or remove any Improvements and to restore the Land, shall not

be conditioned upon the availability of insurance proceeds from which the cost thereof may be paid. Unless this Lease is so terminated by mutual agreement as described in this Section 14, there shall be no abatement or reduction in Rent during such period of repair and restoration.

15. CONDEMNATION.

15.1 Notice.

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

15.2 Termination Option on Substantial Taking.

If a Substantial Taking occurs during the Term, Lessee may, at its option, terminate this Lease by giving notice to Lessor on or before sixty (60) days after the Taking Date. In such event, this Lease will terminate thirty (30) days after the date of Lessee's notice of termination, and all Base Rent and other Rent will be apportioned to the date Lessee surrenders possession.

15.3 Continuation of Lease.

If a Taking occurs during the Term that is not a Substantial Taking, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking and Base Rent will be adjusted to reflect the reduced Land remaining after the Taking. If a Substantial Taking occurs but Lessee does not exercise its termination option this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking and Base Rent after the Taking Date will be adjusted to reflect the reduced Land remaining after the Taking.

15.4 Awards for Permanent Taking.

If there is compensation paid as a result of any Taking of the Land or Lessee's interest therein, then the award or compensation payable therefor, whether pursuant to a judgment, by agreement or otherwise, including any damages and interest (collectively, the "Award"), will be allocated as follows: (a) any portion of the Award attributable to the Taking of or injury to this Lease, or the Improvements shall be paid to Lessee, without reduction on account of any early termination effected due to the Taking; (b) any portion of the Award attributable to any cost or loss that Lessee may sustain in the removal and/or relocation of the Improvements, or Lessee's chattels and trade fixtures, shall be paid to Lessee; (c) any portion of the Award attributable to Lessee's anticipated or lost profits, to damages because of deterrent to Lessee's business or to any special damages of Lessee, shall be paid to Lessee; and (d) any portion of the Award attributable to the Taking of the fee, and all remaining amounts of the Award, shall be paid to Lessor.

15.5 Award for Temporary Taking.

If all or any portion of the Premises shall be taken for temporary use or occupancy, the foregoing provisions shall not apply and the Lessee shall continue to pay the full amount of Rent and the Lessee shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease as though the temporary Taking had not occurred, subject to any order of the condemning authority. In the event of a temporary Taking, Lessee shall be entitled to receive the entire amount of the compensation award for such taking, unless the period of temporary use or occupancy shall extend beyond the Expiration Date in which case the compensation shall be apportioned between the Lessor and the Lessee as of the Expiration Date.

16. ASSIGNMENT, SUBLETTING AND FINANCING.

16.1 Assignment.

Lessee shall have the right to do any of the following, without Lessor's consent, with respect to all or any portion of the Land: finance Improvements; grant , sub-leases, licenses or similar rights (however denominated) to one or more Assignees, *provided* no such grant shall exceed the rights granted to Lessee by Lessor under this Lease; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees all right or interest in this Lease, or any or all right or interest of Lessee in the Land or in any or all of the Improvements that Lessee or any other party may now or hereafter install on the Land, provided the proposed assignee is one of the following: (a) an Affiliate of Lessee; (b) a present or future purchaser of electricity generated by the Improvements or engaged in the transmission or distribution of such electricity; (c) a party to a merger or reorganization transaction involving Lessee or a sale or transfer involving all or substantially all of Lessee's assets, including, but not limited to, the Improvements; (d) a regulated utility; or (d) a financially responsible entity whose credit rating is investment grade (each an "Assignee"). An "Affiliate" means, with respect to Lessee, any entity directly or indirectly controlling, controlled by or under common control with Lessee. The term "control" (including the terms "controlled by" or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract, or otherwise. Lessee shall provide notice of an assignment (including the address of the assignee thereof for notice purposes) to Lessor, *provided* that failure to give such notice shall not constitute a default under this Lease but rather shall only have the effect of not binding Lessor with respect to such assignment until such notice shall have been given.

For other such assignments, Lessee must first obtain Lessor's consent, which consent may be determined in Lessor's sole and absolute discretion. Notwithstanding the foregoing, Lessor's consent will not be required for any transfer of Lessee's interest under this Lease to a Foreclosure Transferee. Lessor will recognize any Foreclosure Transferee as a substitute Lessee under this Lease and will honor all rights and interest of such substitute Lessee as if the substitute Lessee was the initial Lessee under this Lease and such Foreclosure Transferee shall be bound by the terms and conditions of this Lease. Additionally, if the Foreclosure Transferee is a Qualified Mortgagee, such Qualified Mortgagee shall have the right to assign its interest under this Lease without the consent of Lessor and, upon such assignment, Lessor shall recognize the assignee as a substitute Lessee under this Lease and the Qualified Mortgagee shall be released of any further liability under the Lease.

However, any assignee must be registered with the Montana Secretary of State to conduct business in the State of Montana. If Lessee assigns its rights in this Lease, as permitted or approved pursuant to this Section 16, then Lessee shall be relieved of all liabilities hereunder accruing from and after the date of such assignment, but only if (i) the assignor gives Lessor notice of the assignment, and where consent is required, obtains Lessor's written consent; (ii) the assignment is expressly made subject to this Lease; and (iii) the assignee expressly assumes Lessee's obligations which arise on or after the date of such assignment. An assignment as described in this paragraph shall not relieve Lessee from any liability that arose prior to the assignment.

16.2 Subletting.

Lessee may sublease the Land or portions thereof in accordance with the terms of this Section 16. Lessee may grant possessory or use rights under its leasehold estate under this Lease, whether by sublease, license, or other instrument to an Assignee without Lessor's consent. All other subleases shall require Lessor's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Lessee shall inform Lessor of all proposed subleases by delivering a copy of the sublease to Lessor. No sublease shall be effective until a valid sublease agreement with a valid attornment provision is delivered to the Lessor, as hereinafter provided. All subleases shall include an attornment provision whereby upon the early termination of this Lease or repossession of the Land by Lessor, the Sublessee shall attorn to the Lessor as its landlord under all of the terms, covenants and conditions of this Lease (prorated for the actual amount of Land used by Sublessee) for the balance of the remaining Term, with the same force and effect as if

Sublessee were the Lessee under this Lease. Such attornment shall be effective and self-operative immediately upon Lessee's termination, and each Sublessee subject thereto shall agree to execute, acknowledge, and deliver to Lessor any document that Lessor reasonably requests to confirm such attornment.

16.3 Financing.

a) Lessee's Right to Encumber. Throughout the Term, Lessee may from time to time, upon written notice to Lessor, but without having to secure Lessor's consent, execute and deliver one or more Leasehold Mortgages securing any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Leasehold Mortgages to secure promissory notes evidencing construction, interim or permanent financing for the Land or Improvements, or to secure Lessee's obligations under development, reimbursement or other agreements with governmental or quasi-governmental entities, utility companies or other third parties concerning matters such as sales or property tax abatement or rebate programs, public improvements or utilities. A Qualified Leasehold Mortgagee shall have the absolute right to do one, some, or all of the following things without further consent from Lessor: (a) assign its Leasehold Mortgage; (b) enforce its Leasehold Mortgage; (c) acquire title to the leasehold estate under this Lease as a Foreclosure Transferee; (d) take possession of and operate the Land and the Improvements or any portion thereof in accordance with this Lease and perform any obligations to be performed by Lessee hereunder, or cause a receiver to be appointed to do so; (e) assign or transfer the leasehold estate under this Lease to a third party; or (f) exercise any rights of Lessee hereunder.

b) Qualified Mortgagees' Cure Rights. Each Qualified Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder, including for purposes of curing any default or alleged default by Lessee, including any uncured Default by Lessee (as defined below). As a precondition to exercising any rights or remedies as a result of any default or alleged default by Lessee, Lessor shall deliver a duplicate copy of the applicable default notice to each Qualified Mortgagee concurrently with delivery of such notice to Lessee. In the event of an uncured Default by Lessee after delivery of such notice and the expiration of Lessee's cure period, but prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Mortgagee notice of such Default by Lessee, and afford it a period of: (a) Sixty (60) days after such notice is given in which to cure such Default by Lessee if such Default by Lessee is a failure to pay Rent; or (b) Sixty (60) days after such notice is given in which to cure such Default by Lessee if such Default by Lessee is not a failure to pay Rent; provided, however, that if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee, but cannot reasonably be cured within such 60-day period, then so long as any Qualified Mortgagee commences a cure within such 60-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to diligently pursue the cure to completion. However, if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee, but cannot reasonably be cured until the Qualified Mortgagee obtains possession of the Land, then so long as any Qualified Mortgagee commences to obtain possession of the Land within such 60-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to obtain possession of the Land, and then promptly commence and thereafter diligently pursue the cure to completion. If a Qualified Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting the proceedings described above, then the 60-day period specified above for commencing such proceedings shall be extended for the period of such prohibition.

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

d) New Lease to Qualified Mortgagee. If this Lease (a) terminates because of Lessee's uncured Default by Lessee; or (b) is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting

creditors' rights, then, so long as a Qualified Mortgagee has cured any such monetary Default by Lessee, and is making commercially reasonable efforts to cure any such non-monetary Default by Lessee as provided herein, Lessor shall immediately, upon written request from such Qualified Mortgagee, received within ninety (90) days after any such event, without demanding additional consideration therefor, recognize the Qualified Mortgagee's interest in this Lease, or enter into a new lease in favor of such Qualified Mortgagee. The new lease shall: (i) contain the same agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Lessee prior to such termination, foreclosure, rejection or disaffirmance hereinafter referred to as a "Terminating Event"); (ii) be for a term commencing on the date of such Terminating Event, and continuing for the remaining Term before giving effect to such Terminating Event; (iii) contain a lease of the Land or such portion thereof as to which such Qualified Mortgagee held a Leasehold Mortgage on the date of such Terminating Event; (iv) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor. At the option of the Qualified Mortgagee, the new lease may be executed by a designee of such Qualified Mortgagee, without the Qualified Mortgagee assuming the burdens and obligations of Lessee thereunder. The provisions of this paragraph shall survive the termination or cancellation of this Lease.

16.4 Assignment by Lessor.

If Lessor sells or otherwise transfers the Land, or if Lessor assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Lessor's obligations hereunder which arise on or after the date of sale or transfer, and Lessor shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer or assignment, but this Lease shall otherwise remain in full force and effect.

16.5 Separability

Lessee may use the Land in connection with the Project or Lessee may divide the Land between two or more separate collections of associated Wind Power Facilities constructed, installed and/or operated on the Land and/or on other lands in the general vicinity of the Land by or on behalf of Lessee or an affiliate or Assignee(s) thereof as an integrated energy generating and delivery system. If Lessee elects to so divide the Land into two or more projects, then Lessor shall, within twenty (20) days after request from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee two or more independent new lease agreements (which shall supersede and replace this Lease). The bifurcation will provide Lessee with separate leasehold estates in different portions of the Land, as designated by Lessee. Each such new leasehold agreement shall: (a) specify the portion(s) of the Land to be covered thereby, (b) contain the same terms and conditions as this Lease (except for any legal descriptions, Base Rent, or requirements that have been fulfilled by Lessee or any other person or entity prior to the execution of such new agreements, and except for any modifications that may be required to ensure that each party's combined obligations under such new agreements do not exceed such party's obligations under this Lease) and be in a form reasonably acceptable to Lessee; (c) be for a term equal to the remaining Term of this Lease; (d) contain the same grant of access and transmission rights and associated communications rights as are contained in this Lease for the benefit of each of the bifurcated leasehold estates, covering such portion or portions of the Land outside of the benefited estate in each case as Lessee may designate; (e) require payment to Lessor of only an acreage-proportionate part of each Base Rent payment due (which under all such new agreements shall in the aggregate equal the Base Rent amounts that are due pursuant to this Lease); and (f) provide for payments thereafter due under Percentage Rent or Capacity Rent and elsewhere to be paid with respect to the wind turbines and Wind Power Facilities actually installed under such new lease for the portion of the Land subject to such leasehold estate. Further, notwithstanding any other provision of this Lease, (i) in the event of any uncured default under any such new leasehold agreement, such event of default shall not affect, or cause a termination of, any other such new leasehold agreement or any rights or interests granted under any other such new leasehold agreement, and (ii) in the event of a termination of any such new leasehold agreement, the remaining new leasehold agreements and all rights granted therein, including all rights affecting any portions of the Land (regardless

of whether such portions of the Land are part of or outside the benefited estate), shall remain in full force and effect without any further compensation due Lessor.

17. TERMINATION BY LESSOR.

Lessor may terminate this Lease upon written notice to Lessee under the following circumstances:

a) Lessee fails to commence construction of the Wind Power Facilities on the Land within ten (10) years of the Commencement Date, or
b) Lessee ceases Operations upon the Land for a period of 18 consecutive months and Lessee has not notified Lessor in writing of its intention to resume Operations, or
c) In the event of a Material Default by Lessee.

18. LIENS AND ESTOPPEL CERTIFICATES.

18.1 Liens.

Lessee will not allow any liens to be recorded, filed, claimed, or asserted against the Land. In the event a lien is recorded, filed, claimed, or asserted, the Lessee will cause the same to be released or discharged within thirty (30) days thereafter. If the Lessee defaults under the foregoing covenant, then the Lessor may, upon written notice to Lessee, cause any such claimed lien to be released of record by bonding or payment or any other means available. All sums paid and costs and expenses incurred by the Lessor in connection therewith, together with interest on all such sums at the Default Rate from the date incurred until paid, will be due and owing from the Lessee to the Lessor upon demand therefore.

18.2 Lien Contests.

If Lessee has a good faith dispute as to any lien for which Lessee is responsible, Lessee may contest the same by appropriate proceedings so long as Lessee bonds over the lien or deposits with Lessor security in an amount acceptable to Lessor (but in no event more than the amount required by applicable laws) which may be used by Lessor to release such lien and pay interest and costs if Lessee's contest is abandoned or is unsuccessful. Upon final determination of any permitted contest, Lessee will promptly pay any judgment rendered and cause the lien to be released.

18.3 Estoppel Certificates.

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

19. DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.

19.1 Defaults by Lessee.

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

a) Failure to Pay Rent. Lessee fails to pay any Base Rent or any other Rent, including late charges and interest accruing thereon, payable by Lessee under the terms of this Lease when due, and such failure

continues for sixty (60) days after written notice from Lessor to Lessee of such failure;

b) Failure to Perform Other Obligations. Lessee breaches or fails to comply with any term, provision, or covenant of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of sixty (60) days after written notice thereof from Lessor to Lessee; or, if such breach or noncompliance cannot be reasonably cured within such 60-day period, Lessee does not commence to cure such breach or noncompliance within such 60-day period and thereafter pursue such cure in good faith to completion;

c) Execution and Attachment against Lessee. Lessee's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Lessee, or is subject to any attachment by any creditor or claimant against Lessee and such attachment is not discharged or disposed of within thirty (30) days after levy; provided, however, that this provision shall not apply in the event of a foreclosure or transfer in lieu of foreclosure under a Leasehold Mortgage by a Qualified Mortgagee or to a transfer of Lessee's interest in this Lease and the Premises to a Foreclosure Transferee.

d) Fraud or Misrepresentation. Lessee's fraud or misrepresentation, or concealment of material facts relating to its procurement of this Lease, which if known to Lessor would have prevented its issuance of this Lease. Also, any material false certification or statement by Lessee in any other document or report required to be submitted under this Lease, which was known to be false by Lessee at the time it was made.

e) Unauthorized Use of Premises. Lessee's use, or knowledge or permission of someone else's use, of the Premises for any unlawful or unpermitted purpose, and such unlawful use continues for thirty (30) days after written notice from Lessor to Lessee to cease such use.

19.2 Lessor's Remedies.

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

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

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

20. DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

20.1 Defaults by Lessor.

Either of the following events, which continue beyond the applicable notice and cure period, will constitute a "Default by Lessor" under this Lease: (a) Lessor breaches or fails to comply with any provision of this Lease applicable to Lessor, and such breach or noncompliance continues for a period of thirty (30) days after notice thereof from Lessee to Lessor; or, (b) if such breach or noncompliance cannot be reasonably cured within such 30-day period and Lessor does not commence to cure such breach or

noncompliance within such 30-day period and does not thereafter pursue such cure in good faith to completion.

20.2 Lessee's Remedies.

If any Default by Lessor occurs, Lessee will have the right, at Lessee's election, then or at any later time, to exercise the remedy described below. Further, the exercise of such remedy will not prevent the concurrent or subsequent exercise of any other remedy otherwise available to Lessee at law or in equity. Lessee may, at Lessee's option but without obligation to do so, and without releasing Lessor from any obligations under this Lease, make any payment or take any action as Lessee deems necessary or desirable to cure any Default by Lessor in such manner and to such extent as Lessee in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessee notifies Lessor of Lessee's intention to do so and affords Lessor at least ten (10) days in which to make such payment or take such action. Lessor will pay Lessee, upon demand, all advances, costs, and expenses of Lessee in connection with making any such payment or taking any such action, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessee.

21. DECOMISSIONING SECURITY.

Prior to the start of construction of Wind Power Facilities on the Land, Lessee shall provide security ("Decommissioning Security") to Lessor to cover the estimated costs associated with fulfilling Lessee's Decommissioning obligations pursuant to this Lease (the "Decommissioning Costs"). At Lessee's option, the Decommissioning Security shall be either a removal bond from an individual or entity engaged in the construction business and reasonably acceptable to the parties, a surety bond from an insurance company with a Best's Rating of not less than A, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to the parties and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to the parties, a cash deposit, or other security reasonably acceptable to both parties. The amount of the Decommissioning Security shall be based on a written estimate from an engineer licensed to practice in the State of Montana selected by Lessee and reasonably acceptable to Lessor, which sets forth such engineer's estimate of the Decommissioning Costs, minus estimated salvage value. The Decommissioning Security shall be reviewed every five (5) years and may be adjusted to assure that Decommissioning will occur in accordance with this Lease and the Decommissioning Plan.

The Decommissioning Security shall remain in effect until one (1) year after the expiration of the Lease Term, unless fully drawn upon earlier by Lessor or unless Lessor provides the issuer of the Decommissioning Security written notice authorizing expiration. The Decommissioning Security shall be phased in as follows:

On or before the start of construction of Wind Power Facilities on the Land, Lessee shall provide Lessor with Decommissioning Security to cover Thirty Percent (30%) of the estimated Decommissioning Costs.

On or before the 180th day following the start of construction of Wind Power Facilities on the Land, Lessee shall provide Lessor with Decommissioning Security to cover Sixty Percent (60%) of the estimated Decommissioning Costs.

On or before the commercial operation date of the Wind Power Facilities on the Land, Lessee shall provide Lessor with Decommissioning Security to cover One Hundred Percent (100%) of the estimated Decommissioning Costs.

22. LESSEE LIABILITY; INDEMNIFICATION.

Lessee shall protect, defend, indemnify, and save harmless Lessor its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, penalties, fines, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Lessee's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors.

Lessee waives all claims, demands, causes of action, and recourse against Lessor, including claims of contribution or indemnity, arising in favor of Lessee on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors.

23. UTILITY INSTALLATION

The Lessee, at its sole cost and expense, shall determine the availability of, and shall cause to be installed in, on, and about the Land, all facilities necessary to supply thereto all water, sewer, gas, electricity, telephone, and other like services required in the Lessee's operations hereunder. The Lessee shall pay all connection or acreage assessments or charges levied by any public utility, agency, or municipality with respect to their services. Notwithstanding the foregoing, the Lessee shall not enter into any contract or agreement with any city, county, or other governmental agency or body or public utility with reference to sewer lines or connections, water lines or connections, or street improvements relating to the Land without the prior written consent of the Lessor, which consent shall not reasonably be withheld.

24. MISCELLANEOUS

24.1 Force Majeure.

If performance of this Lease or any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction, or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance and shall immediately continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

24.2 Notices.

All notices or other communications required or permitted under this Lease, including payments to Lessor, shall be in writing and shall be deemed properly given and received: (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one (1) business day after deposit with a private courier or overnight delivery service with a written acknowledgment of receipt; or (c) five (5) business days after the date postmarked on the cover of any correspondence or notice when deposited in the United States mail, certified - return receipt requested, with postage prepaid. All such notices shall be sent to the address shown in this Lease under the definitions of Lessee's Address and Lessor's Address. In the case of notices to a Qualified Mortgagee, to the address set forth in its most recent notice to Lessor. Any party may change its address for purposes of this paragraph by giving written notice

of such change to the other parties in the manner provided in this paragraph.

24.3 Binding Effect.

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

24.4 Entire Agreement; Modifications.

This Lease contains the entire agreement between the parties respecting its subject matter. Any agreement, understanding, representation, statement, promise, or inducement respecting the Premises, this Lease, or any other matter referenced herein not expressly set forth in this Lease or a subsequent writing signed by both parties is null and void. All modifications to this Lease must be in writing and signed by the Lessor and the Lessee. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct, or absence of a response to a unilateral communication, shall be binding on either party. If executed properly under this Section 24, modifications of this Lease do not need independent consideration to be legally enforceable.

24.5 Enforcement Expenses.

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

24.6 No Waiver.

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

24.7 Captions.

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

24.8 Severability.

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

24.9 Authority to Bind.

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

25.10 Only Lessor/Lessee Relationship.

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

25.11 Reasonableness.

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

25.12 Governing Law; Venue; Jurisdiction; Rule of Construction.

This Lease will be governed by and construed according to the laws of the State of Montana. In the event of litigation concerning this Lease, venue shall be in the First Judicial District in and for the County of Lewis and Clark, Montana. The parties acknowledge and agree that they have each participated in the drafting of this Lease, and therefore, any rule of construction to the effect that ambiguities are to be resolved against the party drafting a contract shall not be employed in the interpretation of this Lease and is hereby waived.

25.13 Time of Essence.

Time is expressly declared to be of the essence of this Lease.

25.14 Broker.

Lessor represents and warrants that no broker or agent negotiated, or was instrumental in negotiating or consummating this Lease on behalf of Lessor. Lessee will indemnify and hold Lessor harmless from all damages paid or incurred by the Lessee from any claims asserted against Lessor by brokers or agents claiming through the Lessee.

25.15 Cooperation.

Lessor shall fully support and cooperate with Lessee in the conduct of its Operations and the exercise of its rights hereunder, and in carrying out and otherwise giving full force and effect to the purpose and intent of this Lease, including in Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Operations. Lessor shall have no monetary obligation in paying any permit fees or consultant charges associated with any governmental permits required.

25.16 Recording.

This Lease may not be recorded. Lessor and Lessee shall execute in recordable form and Lessee shall then record a memorandum of this Lease in the form attached to this Lease as **Exhibit A**. Following due and proper compliance with its rules, regulations, and procedures, Lessor shall consent to the recordation of the interest of an assignee in the Land and the recordation of any documents related to the Project.

25.17 Wind Energy Rights Act.

The parties acknowledge and agree that this Lease shall be construed and given effect in accordance with §70-17-401, MCA, et seq., the Montana Wind Energy Rights Act, to the extent applicable, as follows:

a) Term Specification. The parties acknowledge and agree that, if this Lease and/or the leasehold estate demised hereunder shall not have sooner expired or terminated in accordance with the terms hereof, the Term shall expire and terminate on [55 Years from Commencement Date], said date defining the specified term and date of termination contemplated under§70-17-406(1)(d), MCA.

b) Tax Liability. Nothing in this Lease shall be construed as making Lessor liable, and Lessee shall be responsible, for any property tax associated with the Wind Power Facilities and the Projects or other equipment related to the development of the Wind Power Facilities and the Projects during the Term, as required under §70-17-406(1)(f), MCA.

c) Compliance with Laws. Lessee shall comply with federal, state, and local laws and regulations, including those applicable to the Wind Power Facilities and the Projects, as required under §70-17-406(1)(h), MCA.

d) Remedies. Notwithstanding anything in this Section or this Lease to the contrary, to the extent that this Lease or any terms hereof should fail to be in accordance with the requirements set forth in §70-17-401, MCA, et seq., including specifically, but without limitation, §70-17-406(1), MCA, this Lease shall be construed as reformed to the minimum extent necessary so as to satisfy such requirements. The parties agree that, to the fullest extent permitted by law, reformation of this Lease shall be the sole and exclusive remedy of the parties in the event of any failure or alleged failure of this Lease to be in accordance with the

foregoing requirements.

25.18 Confidentiality.

Lessee understands that, in accordance with Mont. Const. art. II, § 9, and Montana's public records laws, as such laws may be amended, that Lessor must disclose to the public upon request any records it receives from Lessee. Lessor shall not disclose any information it receives from Lessee that Lessee has previously identified as confidential and that the Lessor determines in its sole discretion is protected from mandatory public disclosure under a specific exemption to the Montana public records laws.

25.19 Survival of Terms, Conditions, Restrictions Reservations, and Covenants.

Any term, condition, restriction, reservation, or covenant that gives rise to any rights or claims of Lessor against Lessee shall be deemed to survive the termination, relinquishment, or abandonment of this Lease until all claims have been settled or resolved.

25. SIGNATURES

Having read and intending to be bound by the terms and provisions of this Lease, Lessor and Lessee have signed it as of the date first stated above.

LESSEE, _____:

By: _____
AUTHORIZED SIGNATORY NAME AND TITLE

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by LESSEE AUTHORIZED SIGNATORY NAME as authorized signatory of _____, a Delaware limited liability company.

STATE OF _____

COUNTY OF _____

_____
Notary Public

LESSOR, STATE OF MONTANA, DNRC:

By: _____

_____, CHIEF
REAL ESTATE MANAGEMENT BUREAU

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, CHIEF, REAL ESTATE MANAGEMENT BUREAU, State of Montana, DNRC.

STATE OF MONTANA

COUNTY OF _____

_____

Notary Public

EXHIBIT A

Form of Memorandum – Placeholder

The placeholder will be replaced with the actual exhibit prior to lease signature.

EXHIBIT B

Map of Areas where no Wind Power Facilities may be Located

This exhibit is dependent on the lease proposal and subsequent Environmental Analysis.

The placeholder will be replaced with the actual exhibit prior to lease signature.

EXHIBIT C
MARKET ADJUSTMENT
SCHEDULE AND PROVISIONS

Base Rent for the Land shall be subject to Market Adjustments determined in accordance with these provisions. The Market Adjustments will apply in Lease Year 16, 31, 46, 61, 76 and 91. The process for the Market Adjustment will commence on the date that is 90 days after the first day of Lease Years 15, 30, 45, 60, 75, and 90 as applicable (the "Market Date").

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

SELECTION OF APPRAISERS
Lessor and Lessee shall each hire an appraiser meeting the qualifications set forth in these provisions and shall instruct such appraiser to prepare an appraisal of the market value of the Land based upon the assumptions and meeting the requirements set forth these provisions. The appraiser so retained by Lessor is herein referred to as "Lessor's Appraiser," and the appraisal prepared by Lessor's Appraiser is herein referred to as "Lessor's Appraisal." The appraiser so retained by Lessee is herein referred to as "Lessee's Appraiser," and the appraisal prepared by Lessee's Appraiser is herein referred to as "Lessee's Appraisal." Each appraiser shall be subject to the approval of the other party, which approval will not be unreasonably withheld. Lessor's Appraiser and Lessee's Appraiser shall each be instructed to complete their respective appraisals and deliver their results to both Lessor and Lessee.

LAND VALUE
The Parties acknowledge and agree, and any Appraisal shall reflect such acknowledgment and agreement, that the Operations conducted by Lessee pursuant to the Lease do not reduce the Land Value for purposes of this Market Adjustment appraisal.

DETERMINATION OF BASE RENT
If the difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is equal to or less than 10%, then the Land Value shall be deemed to be the mathematical average of the two appraisals. See the following example of a scheduled Market Adjustment for a 50,000 square foot lease, at a 6% lease rate with two different appraisal values:

Lessor Appraisal = $6.50 per square foot

Lessee Appraisal = $6.10 per square foot

Land Value= $6.30 per square foot

New Annual Base Rent = $6.30 x 50,000 (or applicable square footage) x 6% (or applicable Lease Rate) = $18,900.

If the difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is greater than 10%, then:

a) Lessor and Lessee shall have 30 days from the Appraisal Report Date within which to agree upon the Land Value between the two appraisals; OR
b) If Lessor and Lessee are unable to agree on the Land Value within such 30 day period, then Lessor and Lessee shall jointly select a third appraiser to prepare an appraisal of the

market value of the Land utilizing the same scope of work from the Lessor's Appraisal and the Lessee's Appraisal. The third appraiser shall be provided copies of both appraisals. The third appraisal shall be prepared and delivered to both Lessor and Lessee. The Land Value shall be the mathematical average of the two appraisals that are closest in dollar amount.

The Land Value determined in accordance with the foregoing provisions shall be binding and conclusive on the parties. Base Rent for the Land, as adjusted by the Market Adjustment, shall be amount obtained by multiplying the Land Value by a percentage determined in accordance with 77-1-905, MCA, or the rate bid in the lease proposal, whichever is higher.

QUALIFICATIONS OF APPRAISERS; REPLACEMENT
Each of Lessor's Appraiser, Lessee's Appraiser and any third appraiser must (a) have an MAI designation by the Appraisal Institute (or similar designation available on the Market Date); (b) be a Certified General Appraiser licensed in the State of Montana; and (c) have appraised similar types of uses in the three years prior to such Market Date. If any appraiser designated to serve in accordance with these provisions shall fail, refuse, or otherwise become unable to act, a new appraiser shall be appointed by the contracting party.

SCOPE OF WORK
The Lessor shall draw up the scope of work that meets the statutory requirements at the time, and supply the scope of work to all appraisers. All appraisals conducted during a Market Adjustment shall be subject to the same scope of work.

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

PAYMENT
Lessor shall pay all costs, fees and expenses of Lessor's Appraiser, and Lessee shall pay all costs, fees and expenses of Lessee's Appraiser. If a third appraiser is required, Lessor and Lessee shall share equally all costs, fees and expenses of such third appraiser.

MARKET ADJUSTMENT SCHEDULE

Lease Year	Schedule
16	"Market Adjustment"
17 through 30	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
31	"Market Adjustment"
32 through 45	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
46	"Market Adjustment"
47 through 60	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
61	"Market Adjustment"
62 through 75	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
76	"Market Adjustment"
77 through 90	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
91	"Market Adjustment"
92 through 99	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.

EXHIBIT D

Decommissioning Plan

This exhibit is dependent on the lease proposal and subsequent Environmental Analysis.

The placeholder will be replaced with the actual exhibit prior to lease signature. The final exhibit will include specific reclamation requirements, including reclamation bond amount and review schedule.

EXHIBIT E

Post-Construction Environmental Monitoring

This exhibit is dependent on the lease proposal and subsequent Environmental Analysis.

The placeholder will be replaced with the actual exhibit prior to lease signature.

Option Exhibit C – List of Existing Rights

Existing Leases		
Use	Name	Number
Grazing	Murnion, Perry	6480
Grazing	Red Butte Ranch Co	5625
Grazing	Killen Land & Livestock	796
Grazing	Killen, John	7901
Grazing	H&H Farming	9402
Ag	Murnion, Seth	10847
Ag	Hirsch, Cole M	7904
Grazing	Doran, Ryan J	267
Existing Easements		
Purpose	Holder	Number
Overhead Power	McCone Electric	D-13892
Overhead Power	McCone Electric	D-13098
Overhead Power	McCone Electric	D-13099

0420-7

EASEMENTS:

A. Standard Grant

B. Acknowledgement of Pre-Existing Easement

Land Board Agenda Item
April 23, 2020

0420-7A <u>Easements:</u>

Location: Beaverhead, Custer, Lincoln, Meagher, Powell, Prairie, Sweet Grass, Toole

Trust Benefits: Capitol Buildings, Common Schools, Public Land Trust – Nav. River, School for Deaf and Blind

Trust Revenue: Capitol Buildings = $12,820
Common Schools = $35,672
Public Land Trust = $3,149
School for Deaf and Blind = $100

<u>Item Table of Contents</u>

Applicant	Right-of-Way Purpose	Term	Page(s)
Sinclair Lane Road Users Assoc.	Private Access Road (addition)	Permanent	146-147
Powell County	Historic County Roads	Permanent	148-157
Northern Telephone Coop. Inc.	Buried Telecommunications Cable		158-159
Mid-Rivers Telephone Cooperative	Buried Fiber-Optic Cable	Permanent	160-169
Dan C. and Mary A. Hill	Historic Private Access Road	Permanent	170
Judy Brown and Sharon Cummins	Historic Private Access Road	Permanent	171-172
Mid-Rivers Telephone Cooperative	Buried Fiber-Optic Cable	Permanent	173-175
Sweet Grass County	Bridge Construction and Maintenance	Permanent	176-177
Martinsdale Land & Cattle, LLC	Historic Private Access Road	Permanent	178-179
Frontier Communications	Overhead Fiber Optic Cable	Permanent	180-181

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Sinclair Lane Road Users Association & Concord View Homes P O Box 1922 Eureka MT 59917
Application No.:	17414
R/W Purpose:	Late-Comer Application to Existing Easement
Lessee Agreement:	N/A (Existing Agreement – No Lessee)
Acreage:	N/A (Existing Easement Agreement)
Compensation:	$4,035.00
Legal Description:	30-foot strip through NW4NE4, Sec. 16, Twp. 36N, Rge. 26W, Lincoln County
Trust Beneficiary:	Common Schools

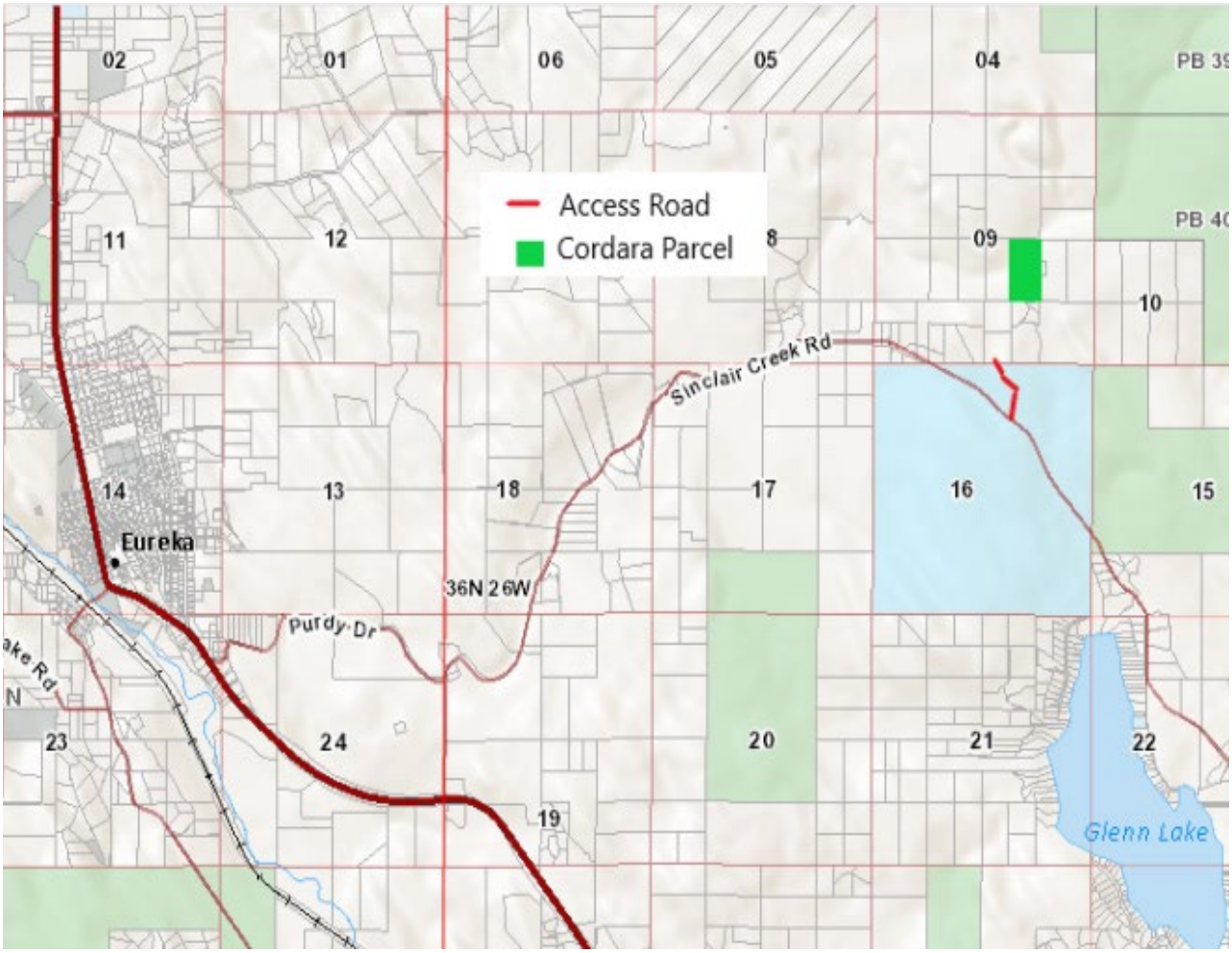
Item Summary

The Land Board approved the application of Sinclair Lane Road Users Association in January, 2017 for a private access road to multiple private ownerships in the Eureka area. The original RUA membership was determined at the time the easement was granted, with several land owners who utilize the road not participating in the RUA and easement. One of the landowners, John Cordara of Concord View Homes, now wishes to join the RUA and receive access rights under the easement issued to the RUA. As a result of not becoming an initial member, Mr. Cordara is responsible for compensating the State for the road easement as well as the associated 1% conveyance fee assessment for access to his parcel through the RUA. Mr. Cordara has fully joined the membership of the RUA and now needs recognition from the State for legal access to his ownership. His parcel of land to be accessed is described as follows:

- Parcel D of Certificate of Survey No. 3778, Sec. 9, Twp. 36N, Rge. 26W

DNRC Recommendation

The director recommends approval of the Late-Comer Application of John Cordara.


Access Road
Cordara Parcel
02
01
06
05
04
PB 39
11
12
8
09
PB 40
10
Sinclair Creek Rd
14
13
18
17
16
15
Eureka
36N 26W
Purdy Dr
23
24
20
21
22
19
Glenn Lake

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Powell County 409 Missouri Avenue Deer Lodge, MT 59722
Application No.:	17186
R/W Purpose:	a public County road known as Browns Lake Road
Lessee Agreement:	N/A (Historic)
Acreage:	2.54
Compensation:	$7,620.00
Legal Description:	30-foot strip through S2NE4, S2SW4, Sec. 16, Twp. 14N, Rge. 11W, Powell County
Trust Beneficiary:	Common Schools

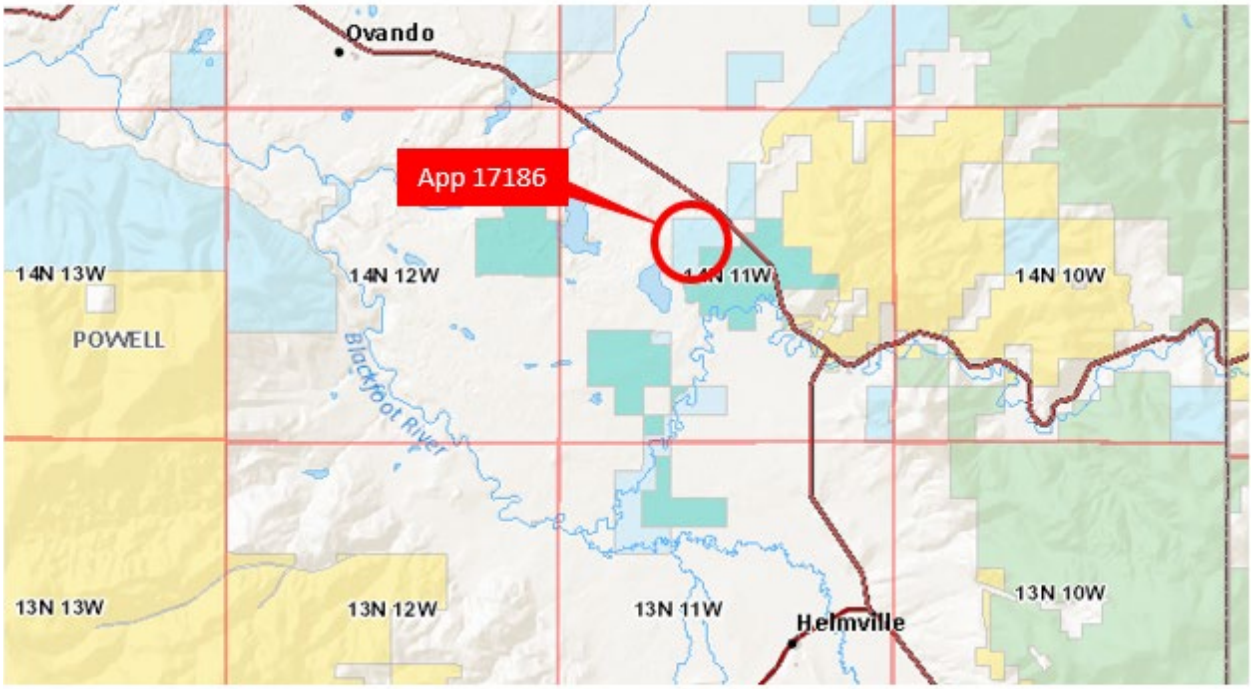
Item Summary

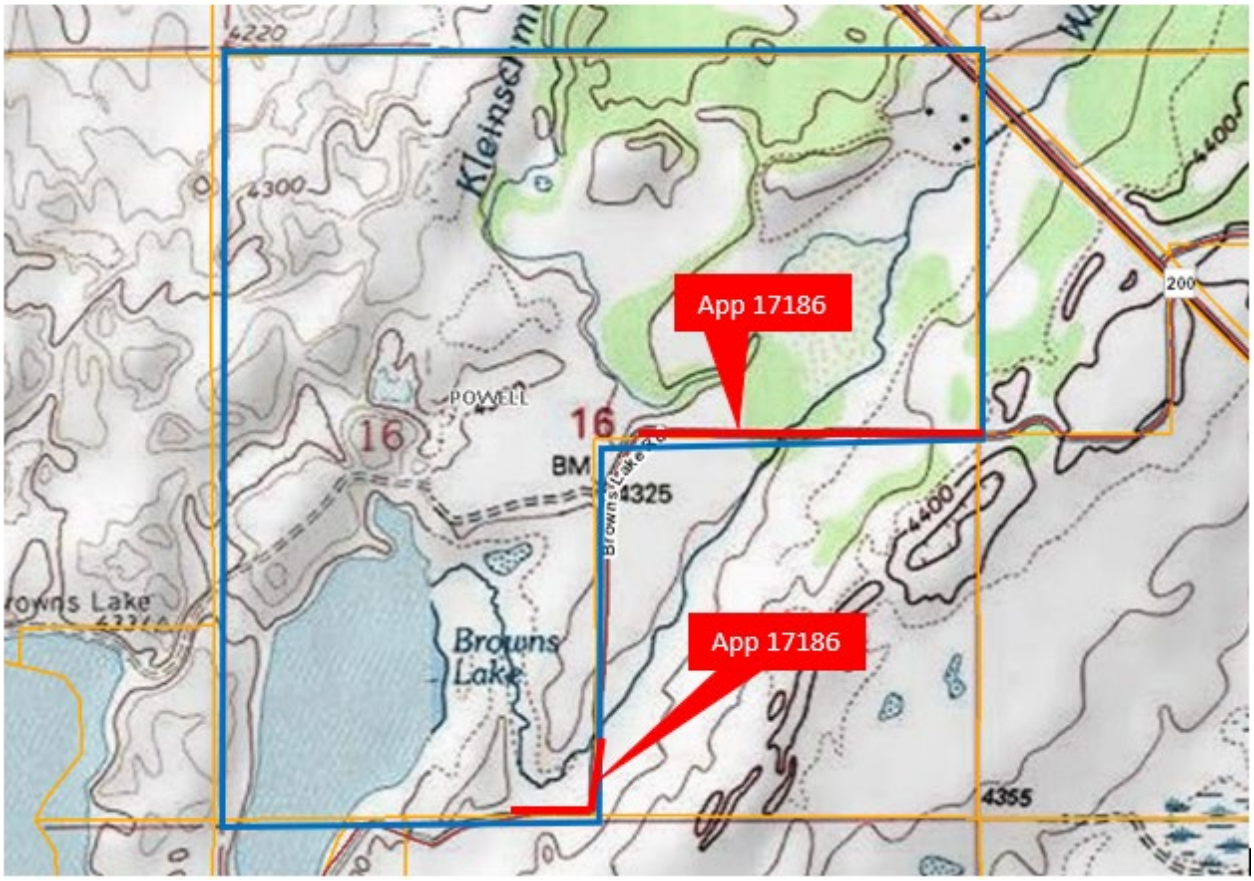
Powell County has made application for this county road that was constructed on state lands many years ago without proper authorization from the Land Board. Pursuant to §77-1-130, MCA the county is requesting recognition of this road as a historic right of way.

DNRC Recommendation

The director recommends approval of the application of Powell County.

R/W Application 17186





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Powell County 409 Missouri Avenue Deer Lodge, MT 59722
Application No.:	17187
R/W Purpose:	a public County road known as Dempsey Road
Lessee Agreement:	N/A (Historic)
Acreage:	0.92
Compensation:	$552.00
Legal Description:	30-foot strip through SE4SE4, Sec. 36, Twp. 7N, Rge. 10W, Powell County
Trust Beneficiary:	Common Schools

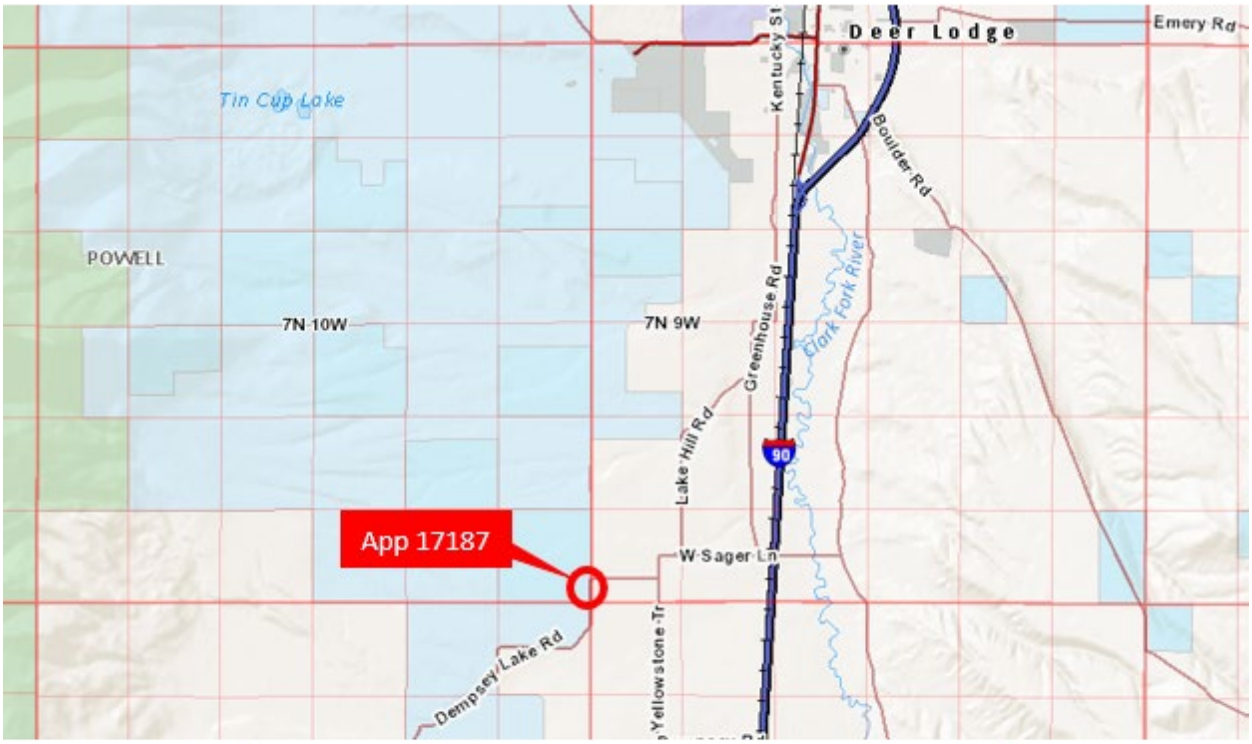
Item Summary

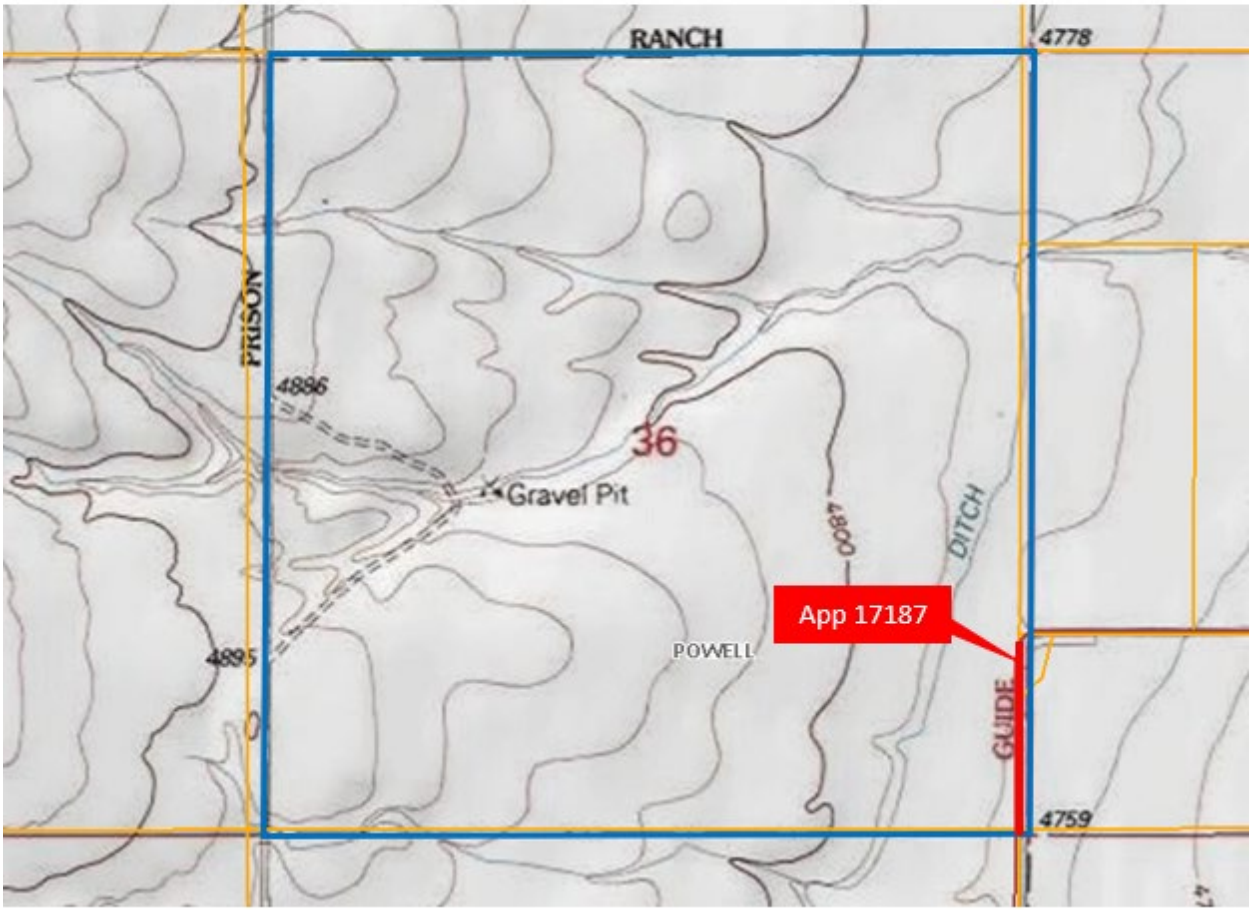
See page 148 for summary.

DNRC Recommendation

See page 148 for recommendation.

R/W Application 17187





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Powell County 409 Missouri Avenue Deer Lodge, MT 59722
Application No.:	17189
R/W Purpose:	a public County road known as Upper Dry Gulch Road
Lessee Agreement:	N/A (Historic)
Acreage:	5.02 (1.38 acres in Sec. 36 Twp. 15N, Rge. 12W and 3.64 acres in Sec. 34, Twp. 15N Rge. 11W
Compensation:	$15,060.00
Legal Description:	60-foot strip through NE4SW4, SE4NE4, Sec. 36, Twp. 15N, Rge. 12W and a 30-foot strip through N2N2, Sec. 34, Twp. 15N, Rge. 11W, Powell County
Trust Beneficiary:	Common Schools and Capitol Buildings

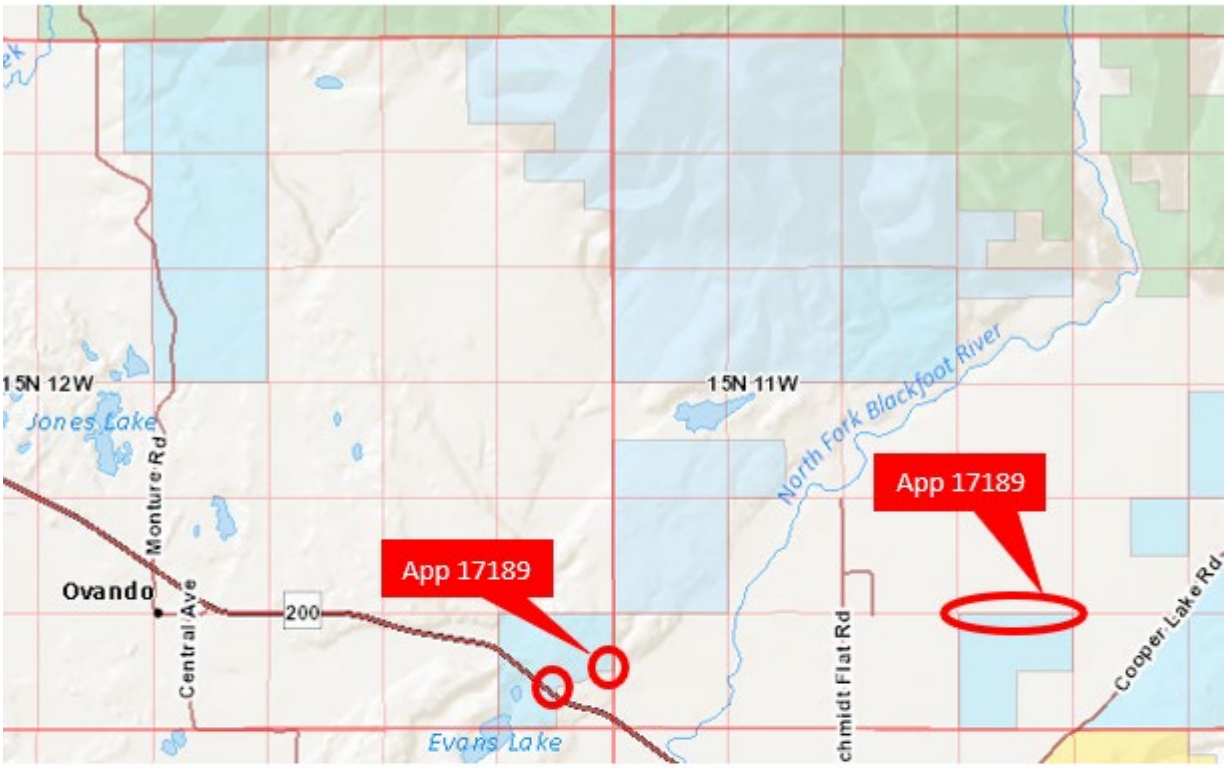
Item Summary

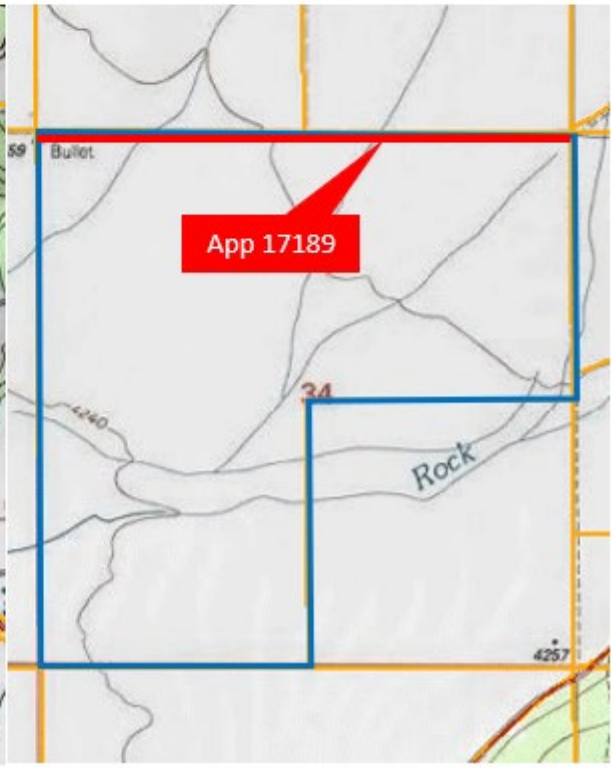
See page 148 for summary.

DNRC Recommendation

See page 148 for recommendation.

R/W Application 17189





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Powell County 409 Missouri Avenue Deer Lodge, MT 59722
Application No.:	17192
R/W Purpose:	a public County road known as Upper Clarks Canyon Road (formerly known as Snowshoe Creek Road)
Lessee Agreement:	N/A (Historic)
Acreage:	6.94
Compensation:	$4,164.00
Legal Description:	60-foot strip through N2SW4, SE4SW4 and a 30-foot strip through SE4SW4, S2SE4, Sec. 16, Twp. 10N, Rge. 7W, Powell County
Trust Beneficiary:	Common Schools

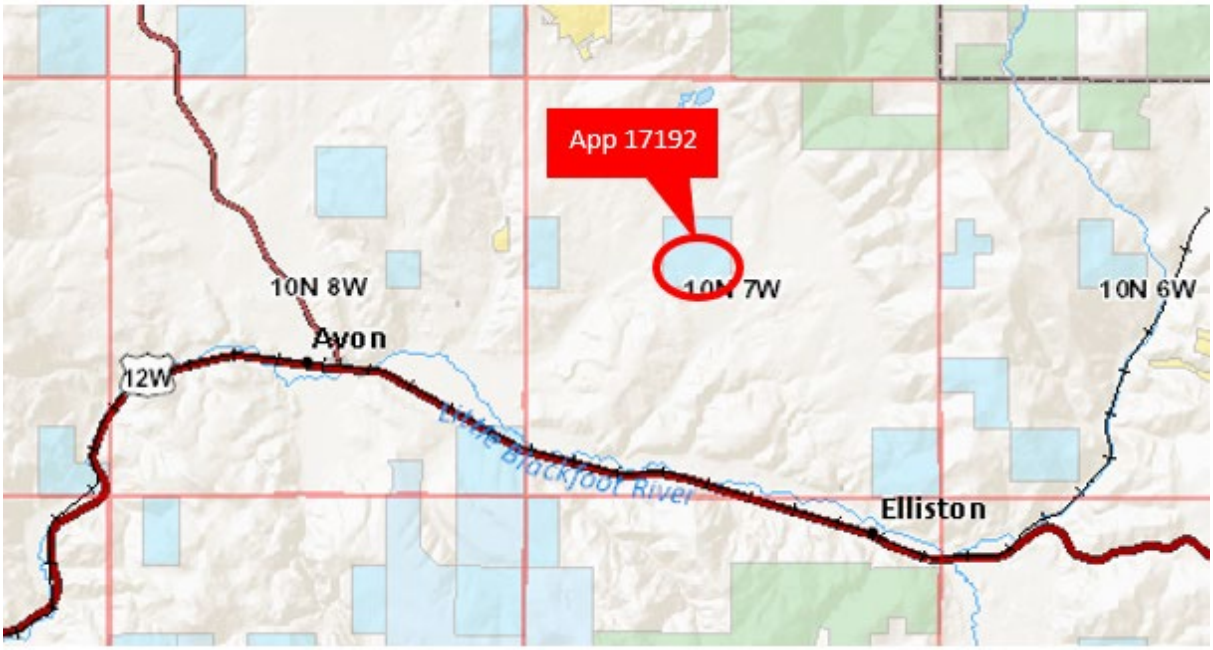
Item Summary

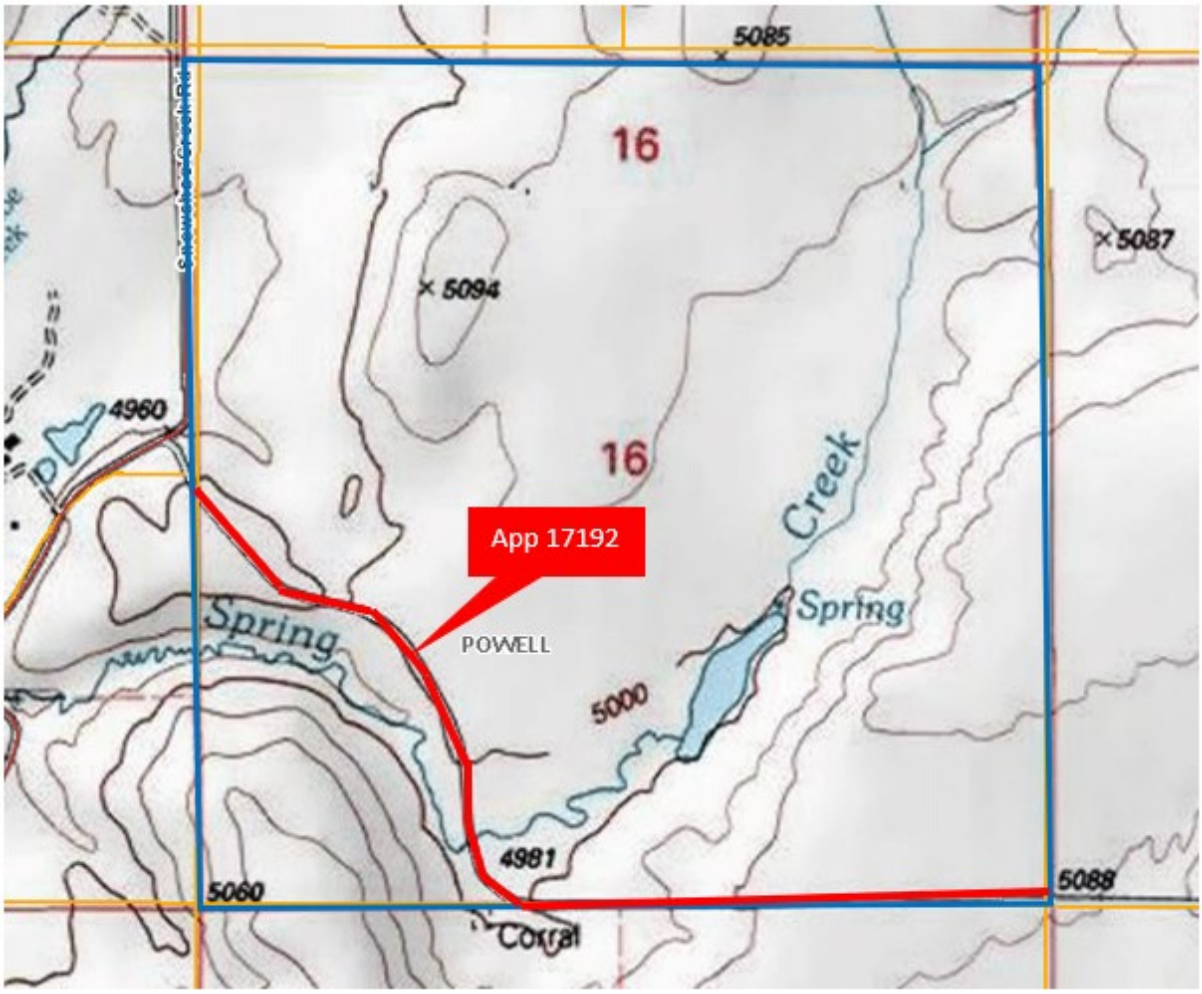
See page 148 for summary.

DNRC Recommendation

See page 148 for recommendation.

R/W Application 17192





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Powell County 409 Missouri Avenue Deer Lodge, MT 59722
Application No.:	17194
R/W Purpose:	a public County road known as Boulder Road
Lessee Agreement:	N/A (Historic)
Acreage:	13.06
Compensation:	$7,836.00
Legal Description:	30-foot strip through Gov. Lots 4 & 5, Sec. 6, Twp. 6N, Rge 8W; 60-foot strip through W2SW4, Sec. 16, Twp. 6N, Rge. 8W; and a 60-foot strip through W2NE4, N2NE4, SE4SE4, Sec. 36, Twp. 7N, Rge. 9W, Powell County
Trust Beneficiary:	Common Schools

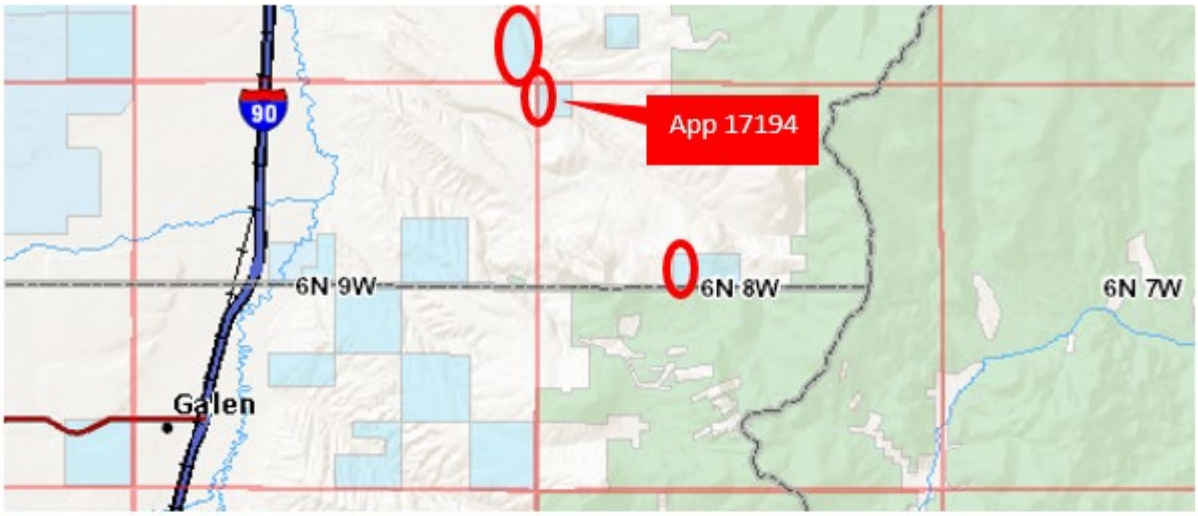
Item Summary

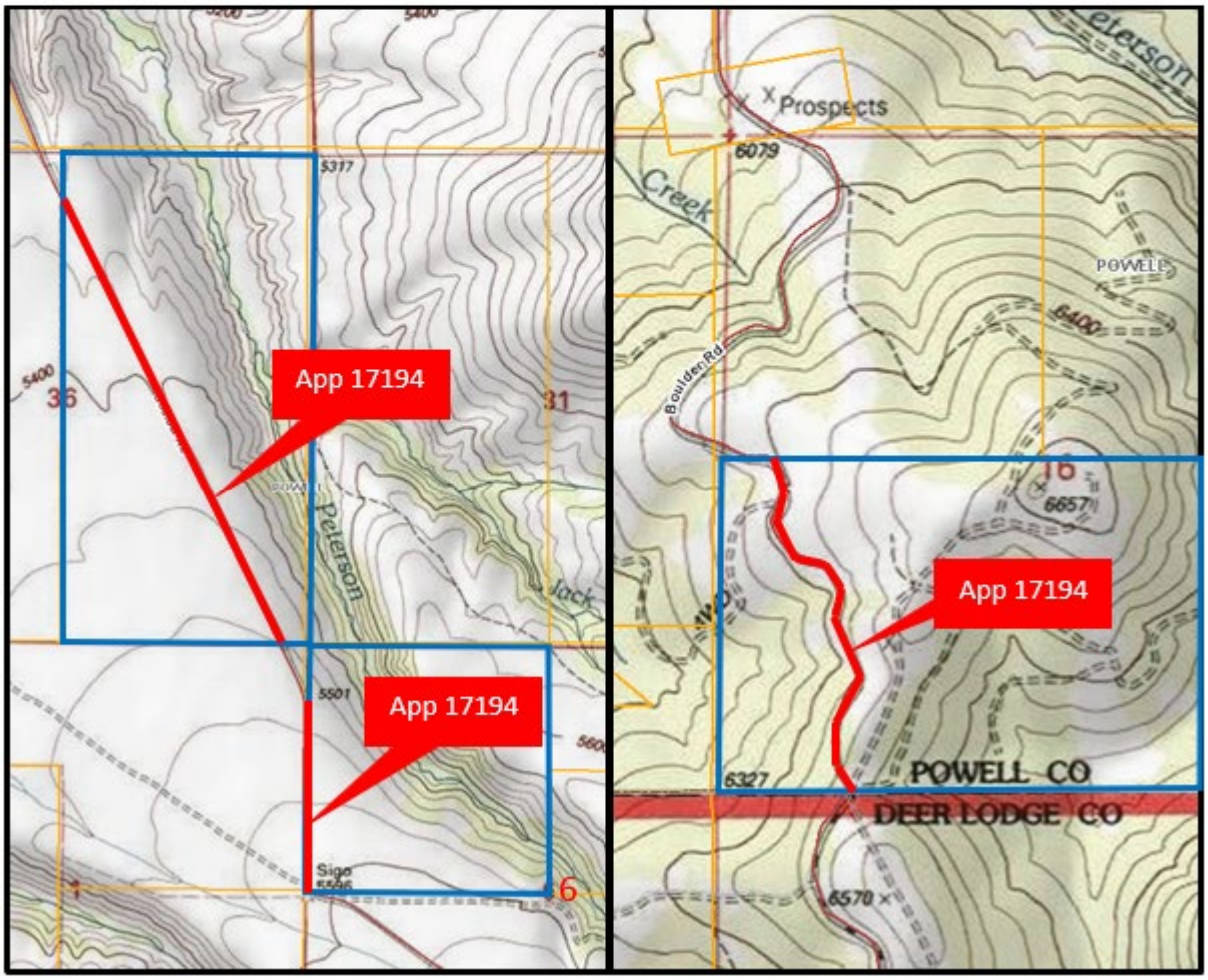
See page 148 for summary.

DNRC Recommendation

See page 148 for recommendation.

R/W Application 17194





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Northern Telephone Cooperative, Inc. PO Box 190 Sunburst, MT 59482
Application No.:	18871
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	ok
Acreage:	0.32
Compensation:	$128.00
Legal Description:	20-foot strip through SW4SW4, Sec. 36, Twp. 35N, Rge. 3W, Toole County
Trust Beneficiary:	Common Schools

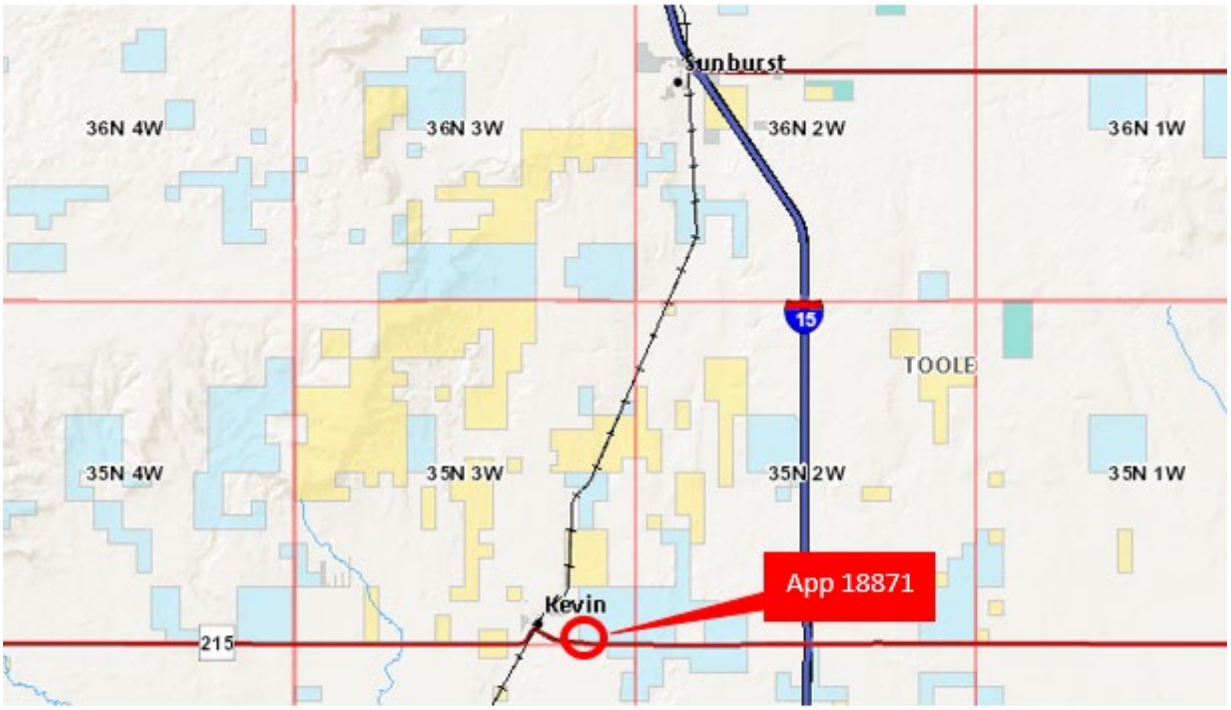
Item Summary

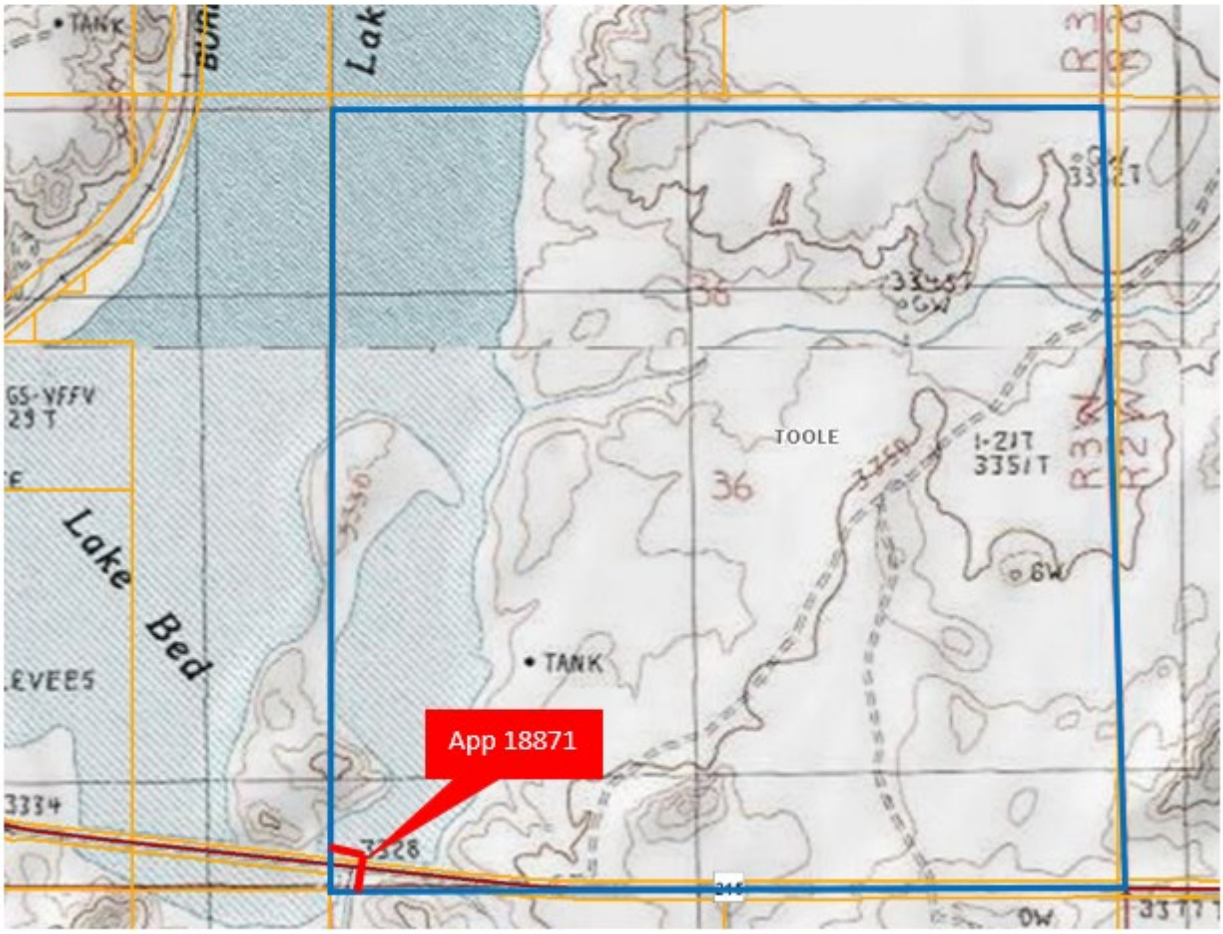
Northern Telephone Cooperative is requesting an easement to cross State Trust land for the purpose of upgrading their current facilities in the Kevin Exchange service area. The new installation will provide state of the art telecommunications facilities and allow for future growth capabilities. The route chosen follows existing roads and ground previously disturbed causing minimal impacts.

DNRC Recommendation

The director recommends approval of the application of Northern Telephone Cooperative, Inc.

R/W Application 18871





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative PO Box 280 Circle, MT 59215
Application No.:	18872
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	Needed
Acreage:	3.91
Compensation:	$2,346.00
Legal Description:	16-foot strip through N2S2 and a 16-foot strip through NW4SW4, Sec. 36, Twp. 11N, Rge. 53E, Prairie County
Trust Beneficiary:	Common Schools

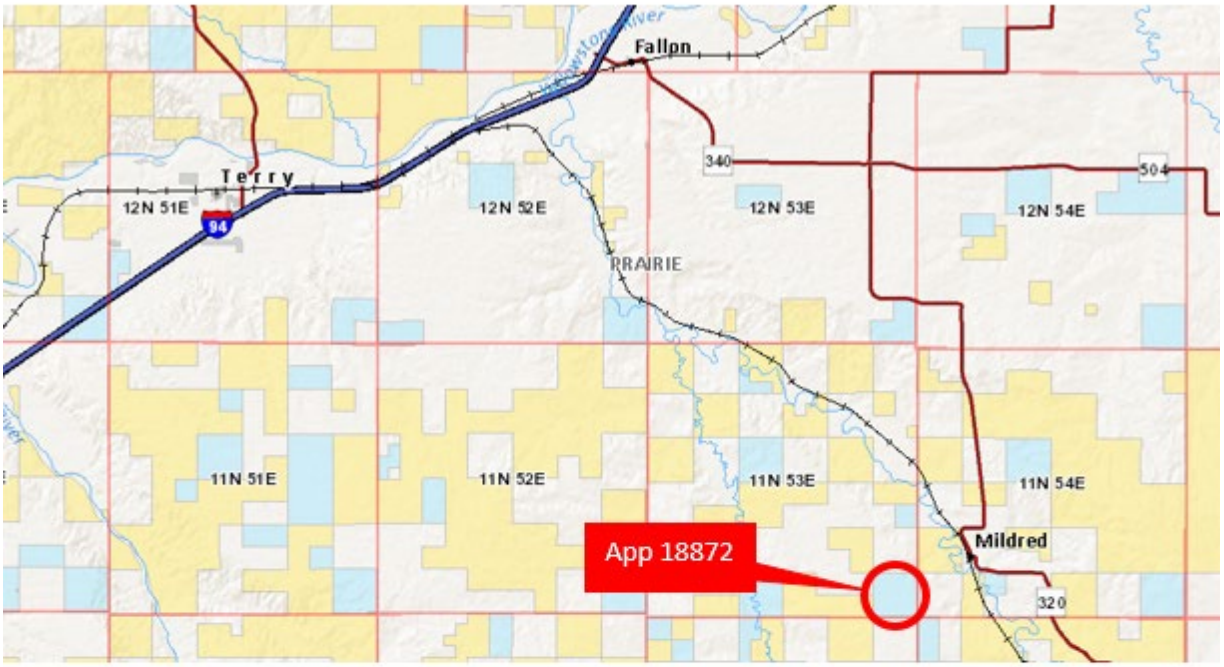
Item Summary

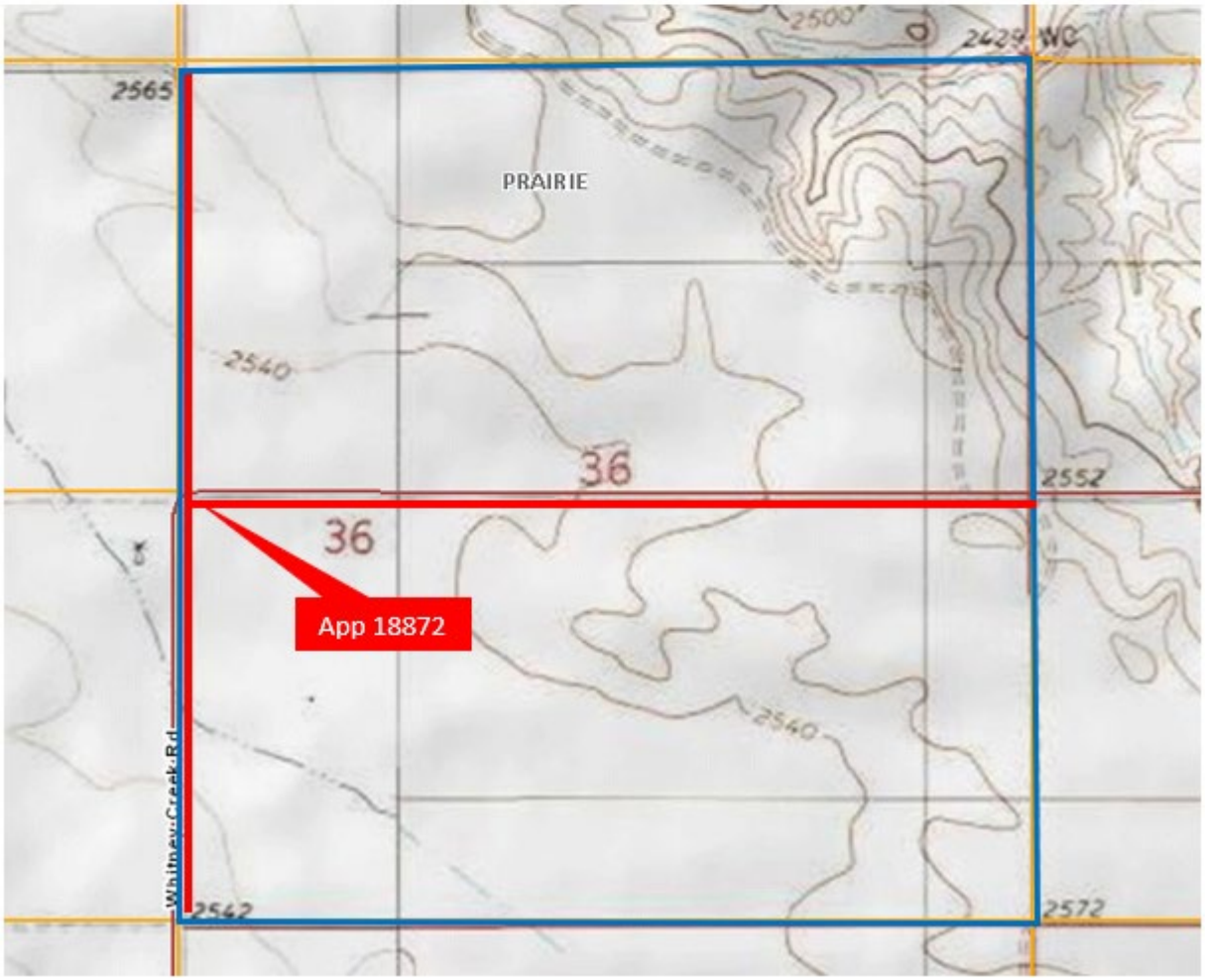
Mid-Rivers Telephone Cooperative is requesting easements to place fiber optic cable across State Trust land in rural Custer, Prairie and Wibaux counties. This project is part of a 145 mile project to replace existing copper wires to provide more reliable communications to rural customers. This project is located within Sage Grouse general habitat and consultation has occurred with the Sage Grouse program.

DNRC Recommendation

The director recommends approval of the application of Mid-Rivers Telephone Cooperative.

R/W Application 18872





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative PO Box 280 Circle, MT 59215
Application No.:	18873
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	1.30
Compensation:	$780.00
Legal Description:	16-foot strip through W2SW4, SE4SW4, Sec. 16, Twp. 11N, Rge. 56E, Prairie County
Trust Beneficiary:	Common Schools

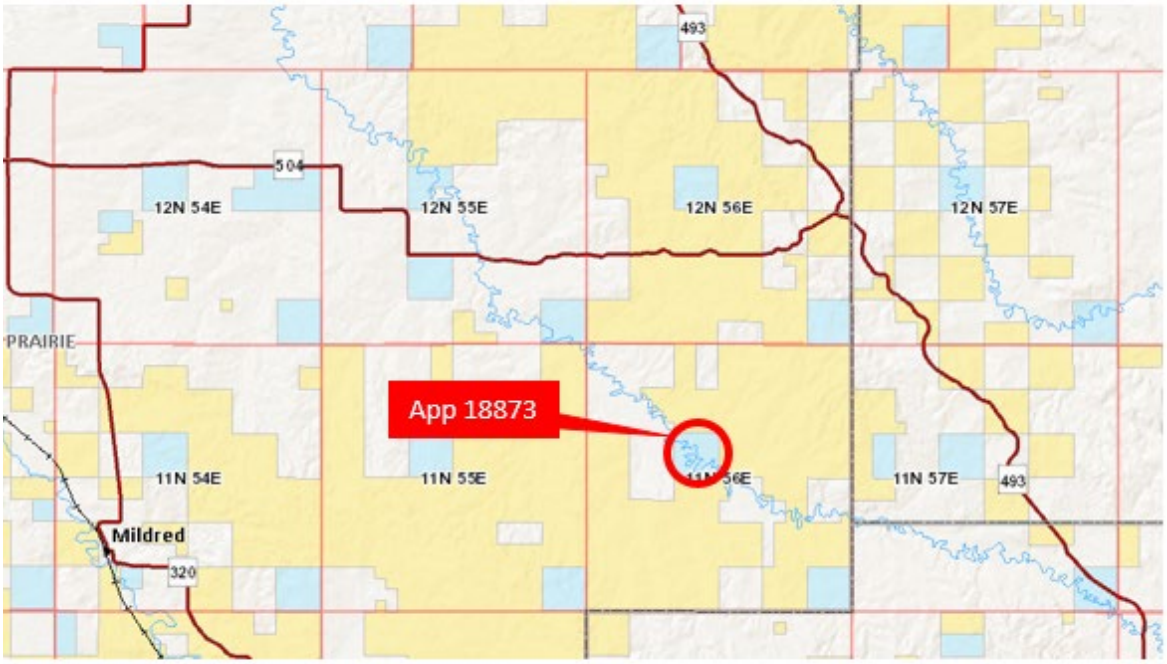
Item Summary

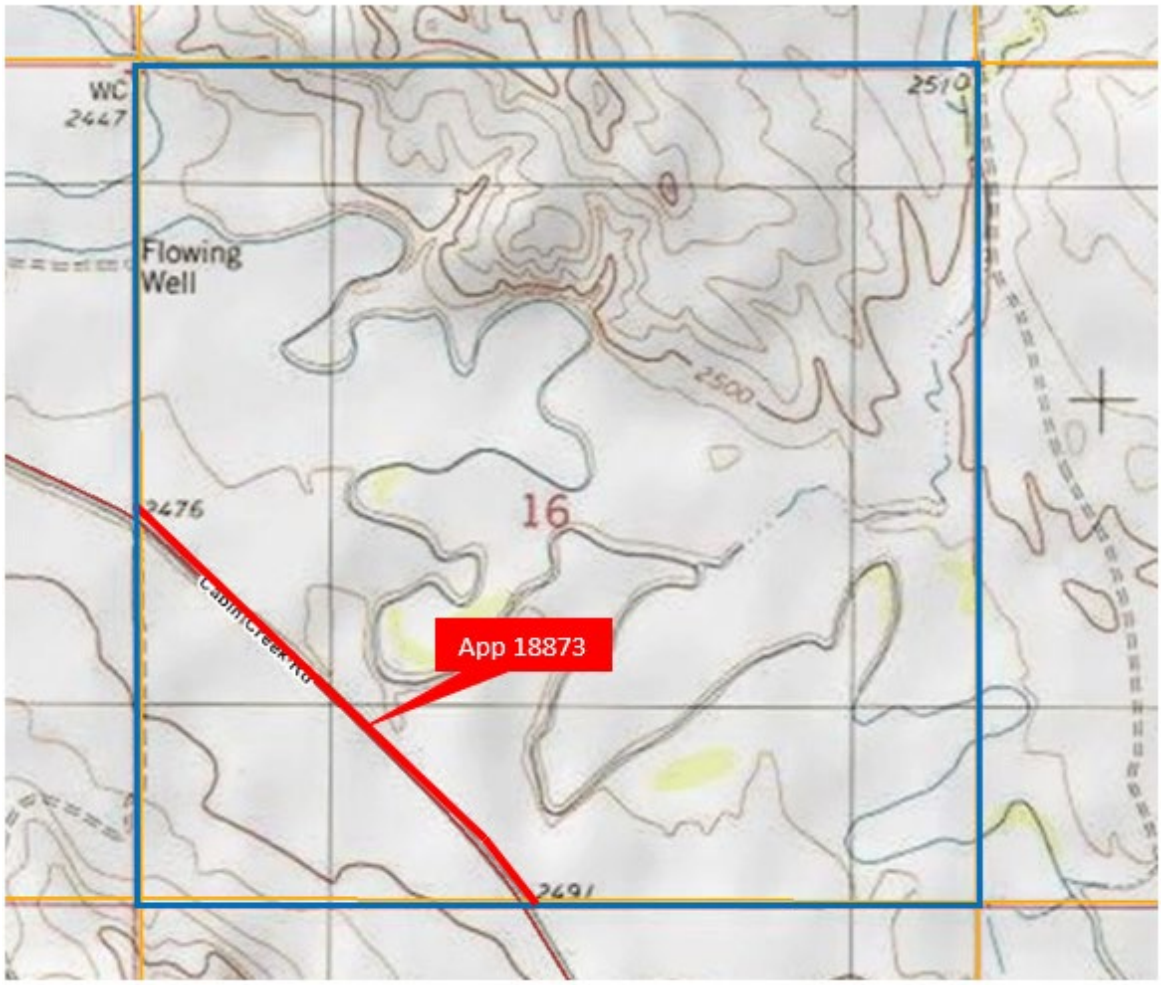
See page 160 for summary.

DNRC Recommendation

See page 160 for recommendation.

R/W Application 18873





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative PO Box 280 Circle, MT 59215
Application No.:	18874
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	0.38
Compensation:	$228.00
Legal Description:	16-foot strip through SW4SW4, Sec. 4, Twp. 10N, Rge. 53E, Prairie County
Trust Beneficiary:	Common Schools

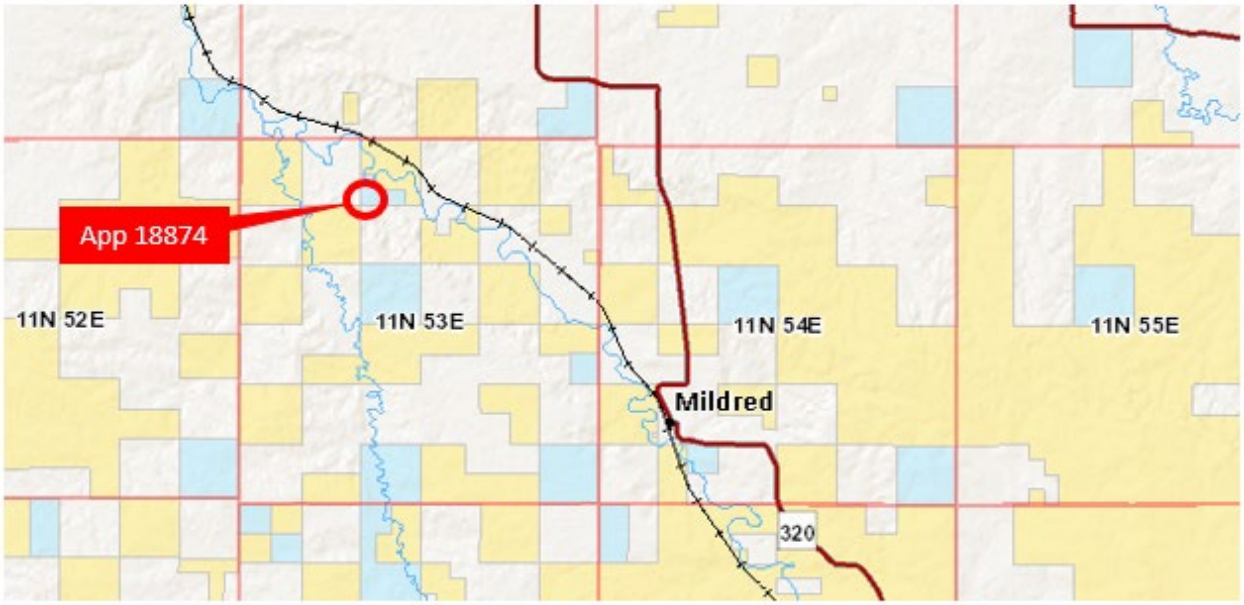
Item Summary

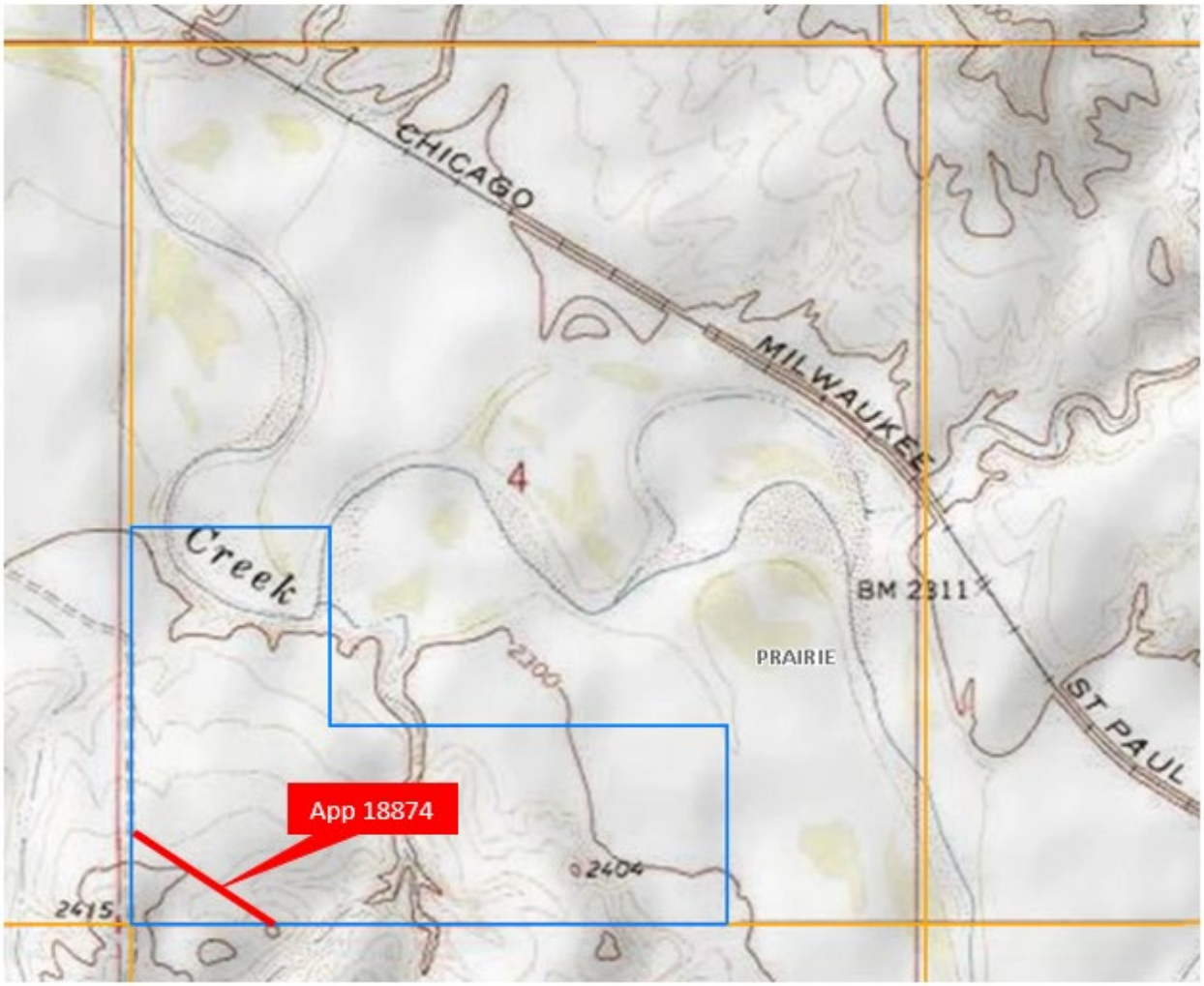
See page 160 for summary.

DNRC Recommendation

See page 160 for recommendation.

R/W Application 18874





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative PO Box 280 Circle, MT 59215
Application No.:	18875
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	1.02
Compensation:	$612.00
Legal Description:	16-foot strip through S2SE4 and a 16-foot strip through SW4SE4, Sec. 6, Twp. 10N, Rge. 53E, Prairie County
Trust Beneficiary:	Common Schools

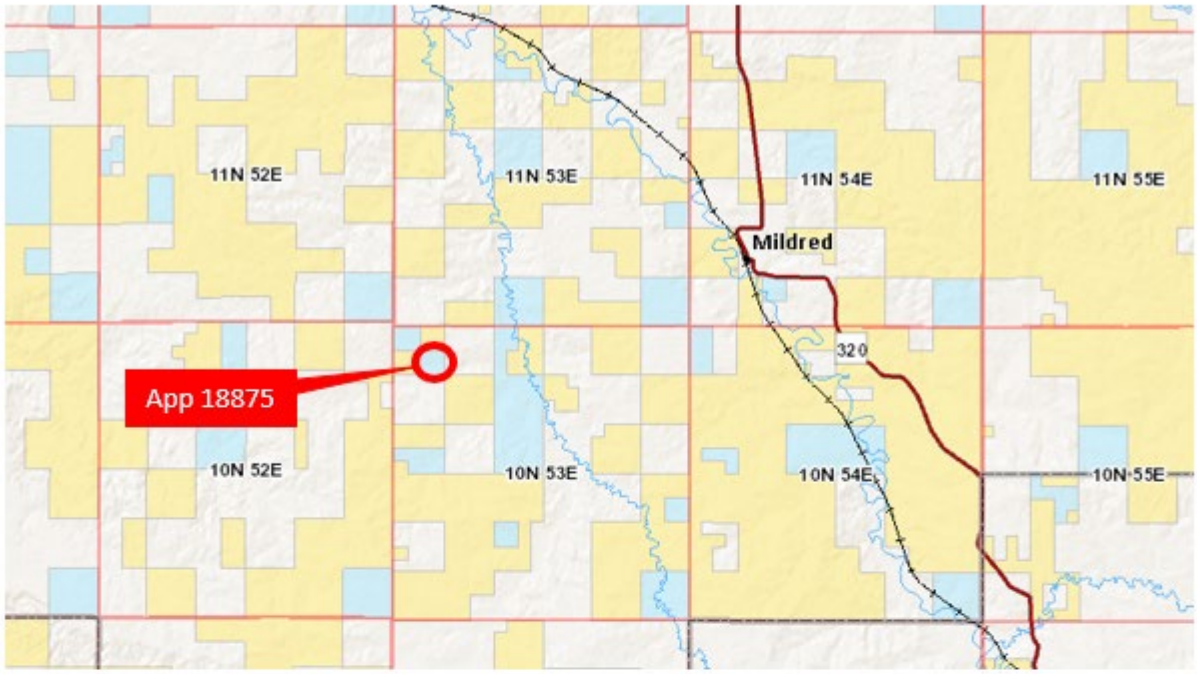
Item Summary

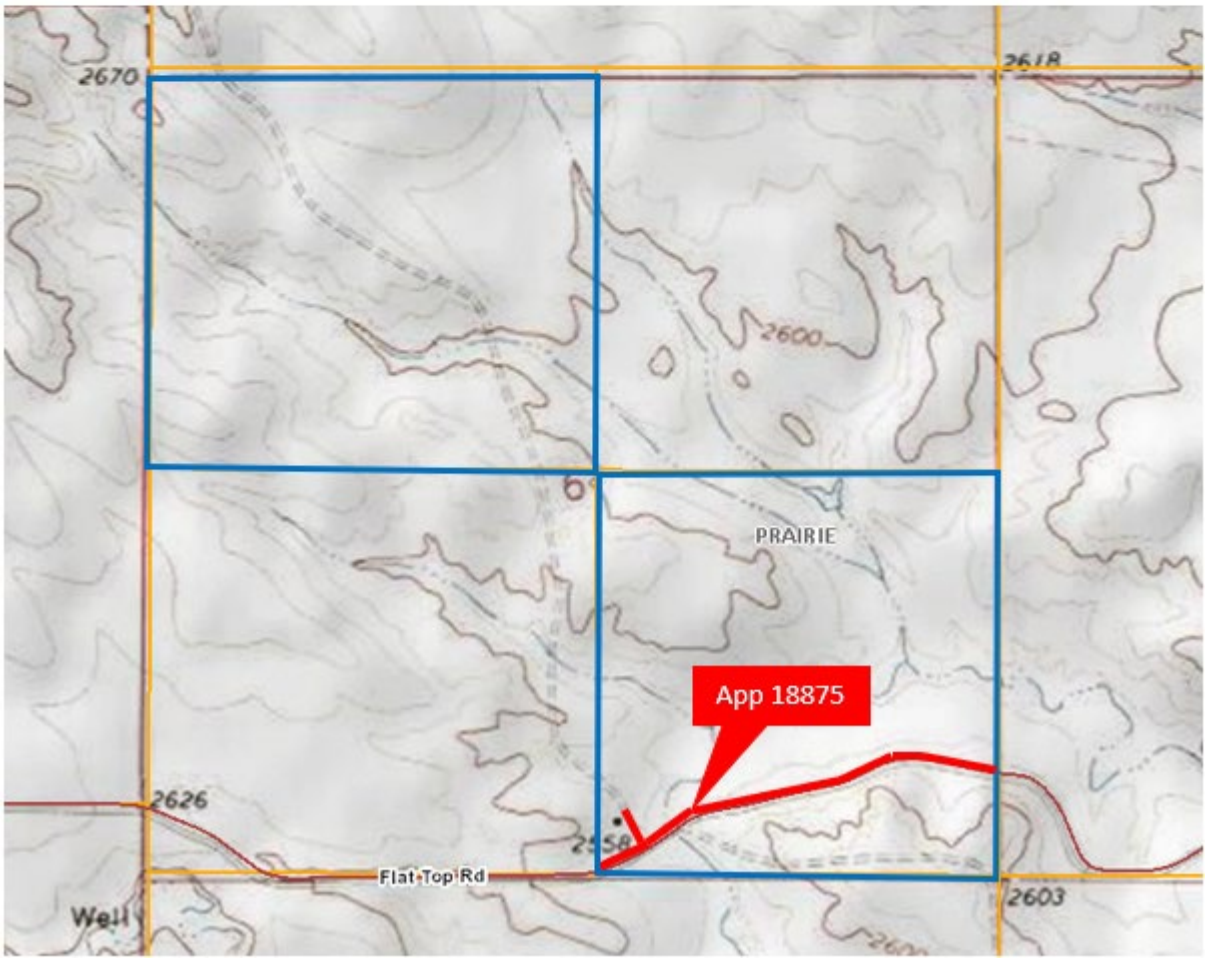
See page 160 for summary.

DNRC Recommendation

See page 160 for recommendation.

R/W Application 18875





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative PO Box 280 Circle, MT 59215
Application No.:	18876
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	0.72
Compensation:	$432.00
Legal Description:	16-foot strip through N2NW4, NW4NE4, Sec. 9, Twp. 10N, Rge. 53E, Prairie County
Trust Beneficiary:	Common Schools

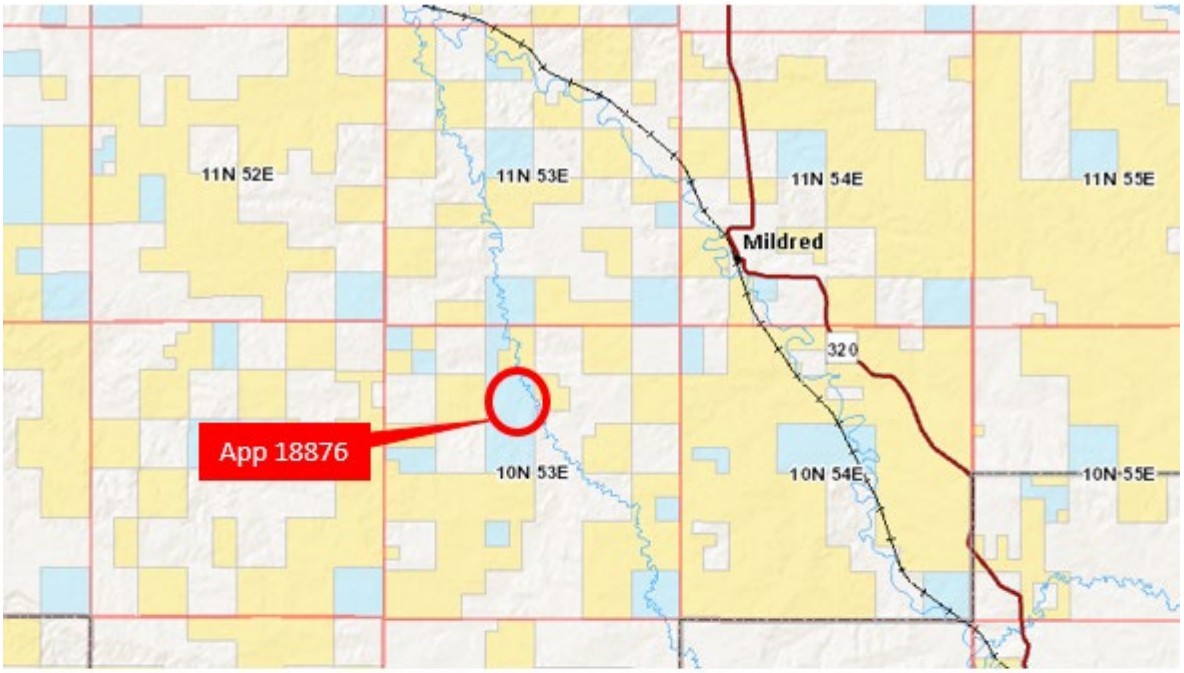
Item Summary

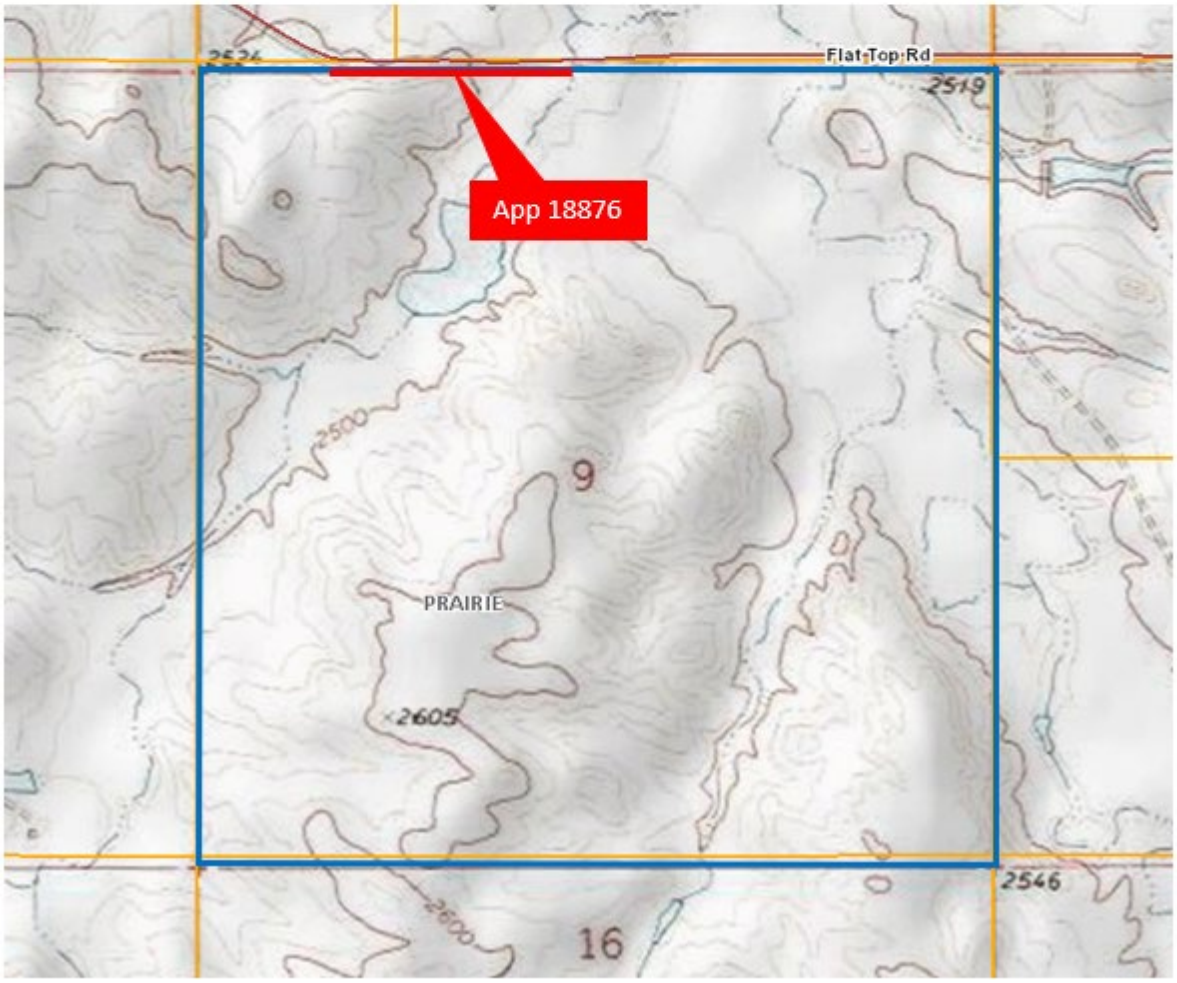
See page 160 for summary.

DNRC Recommendation

See page 160 for recommendation.

R/W Application 18876





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Dan C. & Mary A. Hill PO Box 240009 Dell, MT 59724
Application No.:	18877
R/W Purpose:	a private access road to a single-family residence and associated outbuildings and to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	0.95
Compensation:	$950.00
Legal Description:	30-foot strip through SE4NE4, Sec. 27, Twp. 8S, Rge. 8W, Beaverhead County
Trust Beneficiary:	Capitol Buildings

Item Summary

Dan and Mary Hill have made application for the use of an existing road to access a single-family residence and to conduct normal farming and ranching operations. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The private property to be accessed is described as:

- E2W2SW4, E2SW4, W2SE4 Sec. 26, Twp. 8S, Rge. 8W, Beaverhead County

DNRC Recommendation

The director recommends approval of the application of Dan and Mary Hill.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Judy Brown & Sharon Cummins PO Box 124 Dillon, MT 59725
Application No.:	18878
R/W Purpose:	a private access road to a single-family residence and associated outbuildings, to conduct normal farming and ranching operations, and timber management
Lessee Agreement:	N/A (Historic)
Acreage:	0.95
Compensation:	$950.00
Legal Description:	30-foot strip through SE4NE4, Sec. 27, Twp. 8S, Rge. 8W, Beaverhead County
Trust Beneficiary:	Capitol Buildings

Item Summary

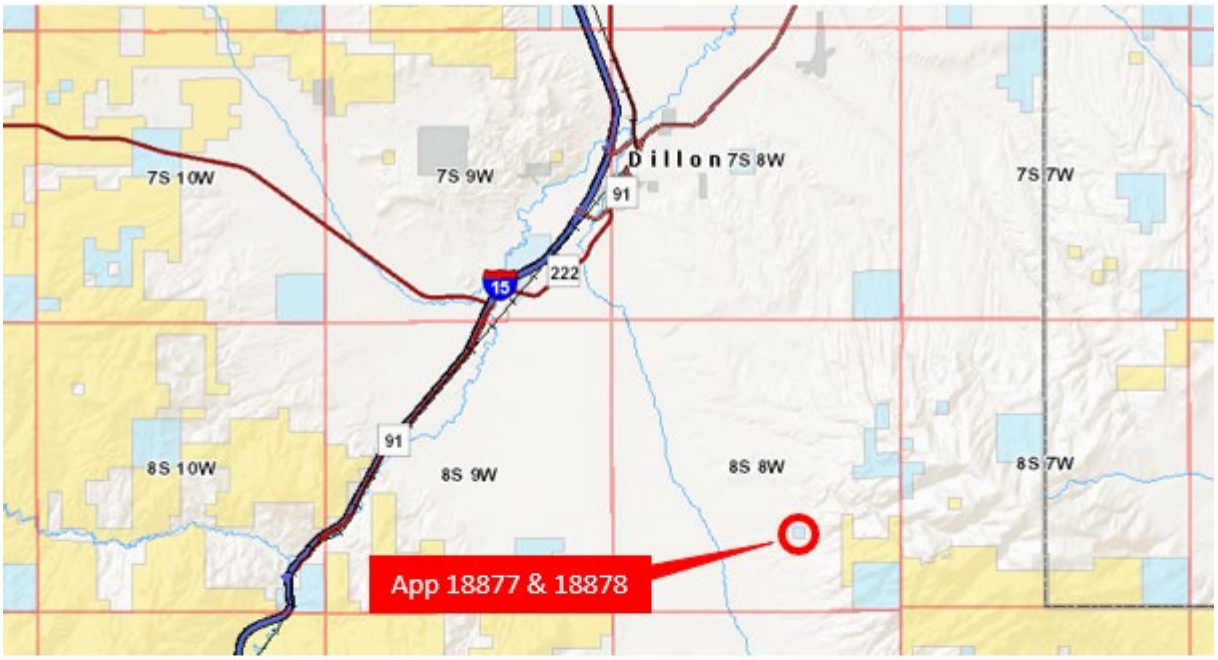
Judy Brown and Sharon Cummins have made application for the use of an existing road to access a single-family residence and to conduct normal farming and ranching operations and timber management. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The private property to be accessed is described as:

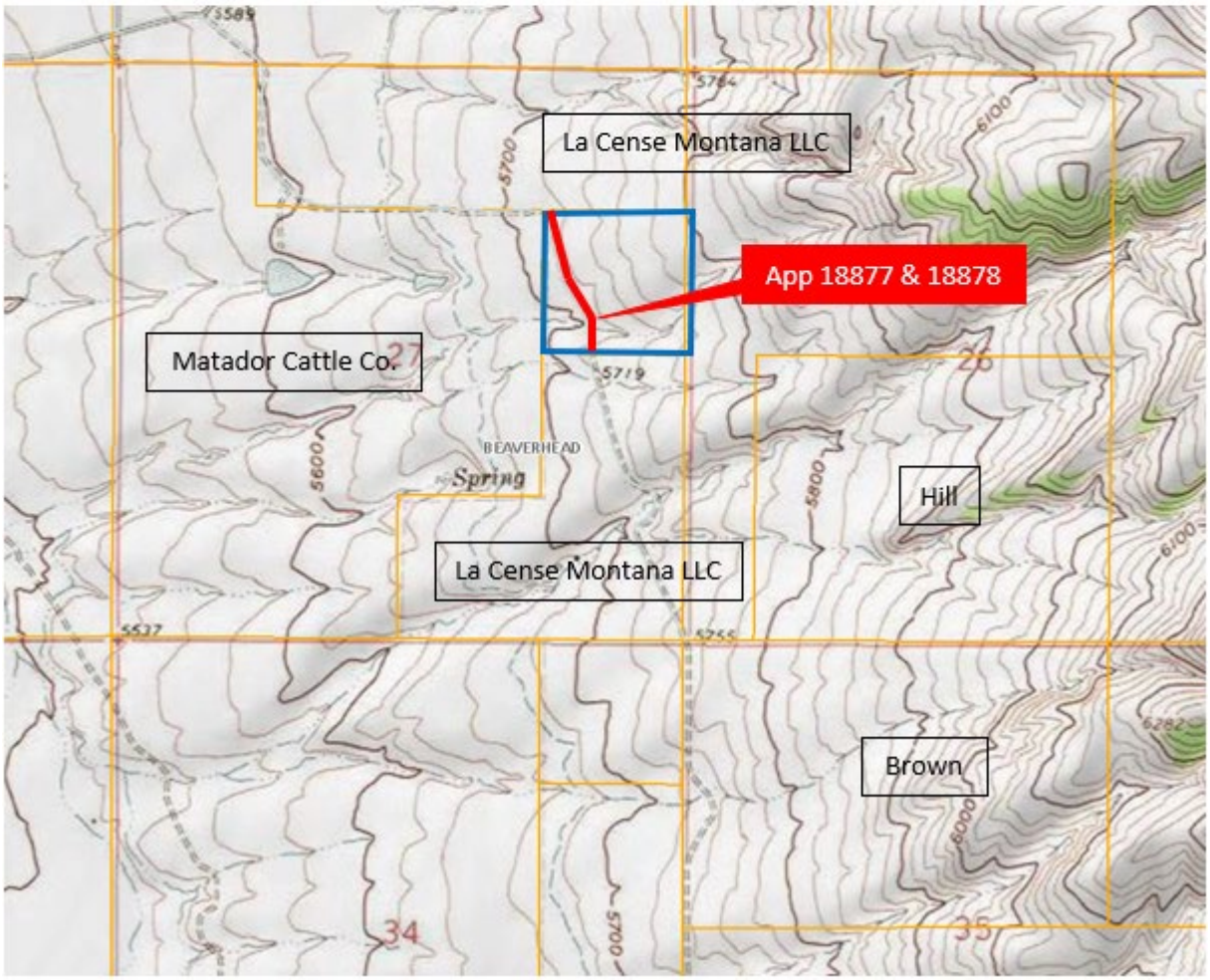
- E2SE4, SE4NE4, Sec. 34, Twp. 8S, Rge. 8W, Beaverhead County
- W2NE4, NW4, Sec. 35, Twp. 8S, Rge. 8W, Beaverhead County
- All, Sec. 1, Twp. 9S, Rge. 8W, Beaverhead County
- N2, SE4, NE4SW4, Sec. 2, Twp. 9S, Rge. 8W, Beaverhead County
- N2NE4, NE4NW4, Sec. 12, Twp. 9S, Rge. 8W, Beaverhead County

DNRC Recommendation

The director recommends approval of the application of Judy Brown and Sharon Cummins.

R/W Application 18877 & 18878





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative PO Box 280 Circle, MT 59215
Application No.:	18879
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	1.96
Compensation:	$1,176.00
Legal Description:	16-foot strip through E2E2, Sec. 27, Twp. 9N, Rge. 53E, Custer County
Trust Beneficiary:	Common Schools

Item Summary

Mid-Rivers Telephone Cooperative is requesting easements to place fiber optic cable across State Trust land in rural Custer, Prairie and Wibaux counties. This project is part of a 145 mile project to replace existing copper wires to provide more reliable communications to rural customers. This project is located within Sage Grouse general habitat and consultation has occurred with the Sage Grouse program.

DNRC Recommendation

The director recommends approval of the application of Mid-Rivers Telephone Cooperative.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative PO Box 280 Circle, MT 59215
Application No.:	18880
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	0.98
Compensation:	$588.00
Legal Description:	16-foot strip through E2SE4, Sec. 22, Twp. 9N, Rge. 53E, Custer County
Trust Beneficiary:	Common Schools

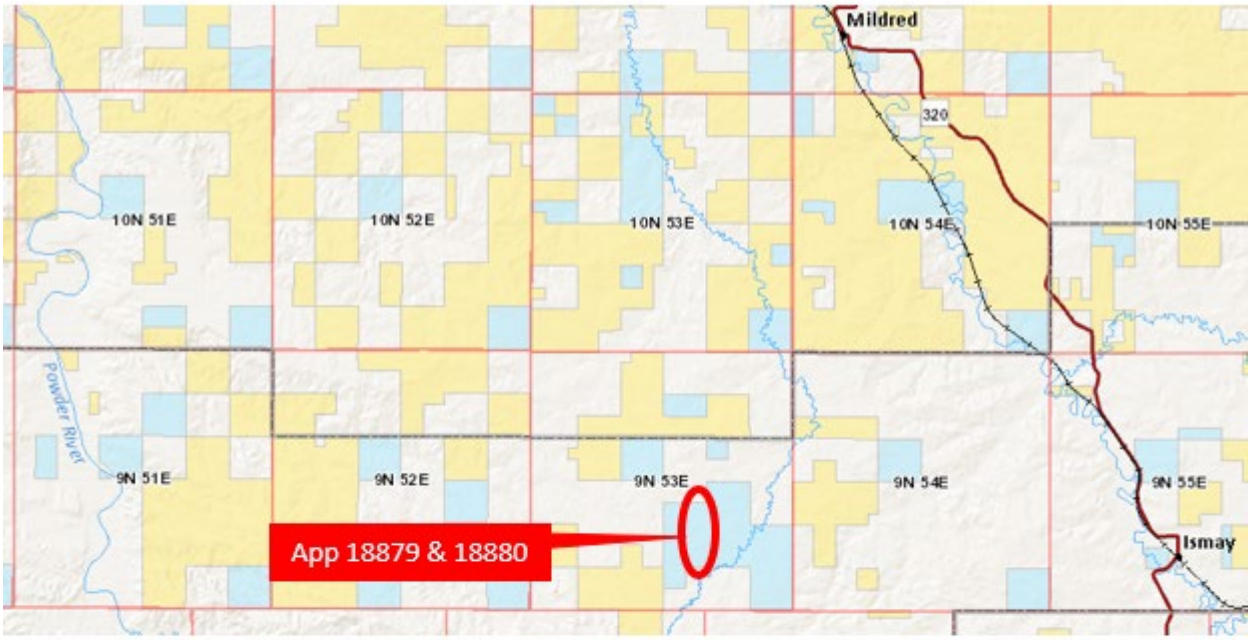
Item Summary

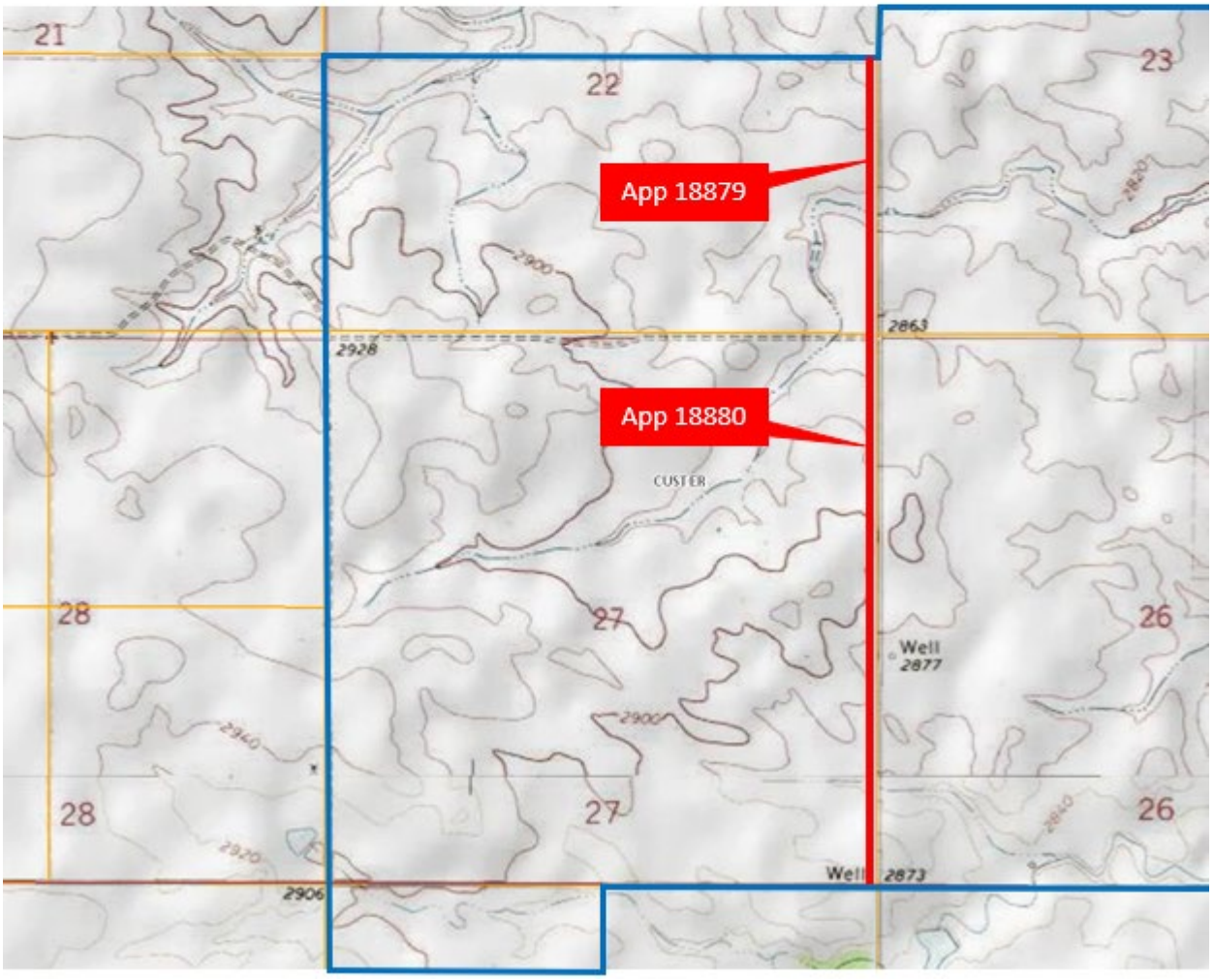
See page 173 for summary.

DNRC Recommendation

See page 173 for recommendation.

R/W Application 18879 & 18880





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Sweet Grass County PO Box 888 Big Timber, MT 59011
Application No.:	18881
R/W Purpose:	a public County bridge
Lessee Agreement:	N/A (Navigable River)
Acreage:	0.20
Compensation:	$3,000.00
Legal Description:	60-foot strip across the Boulder River in NW4SW4, Sec. 13, Twp. 1N, Rge. 14E, Sweet Grass County
Trust Beneficiary:	Public Land Trust - Navigable River

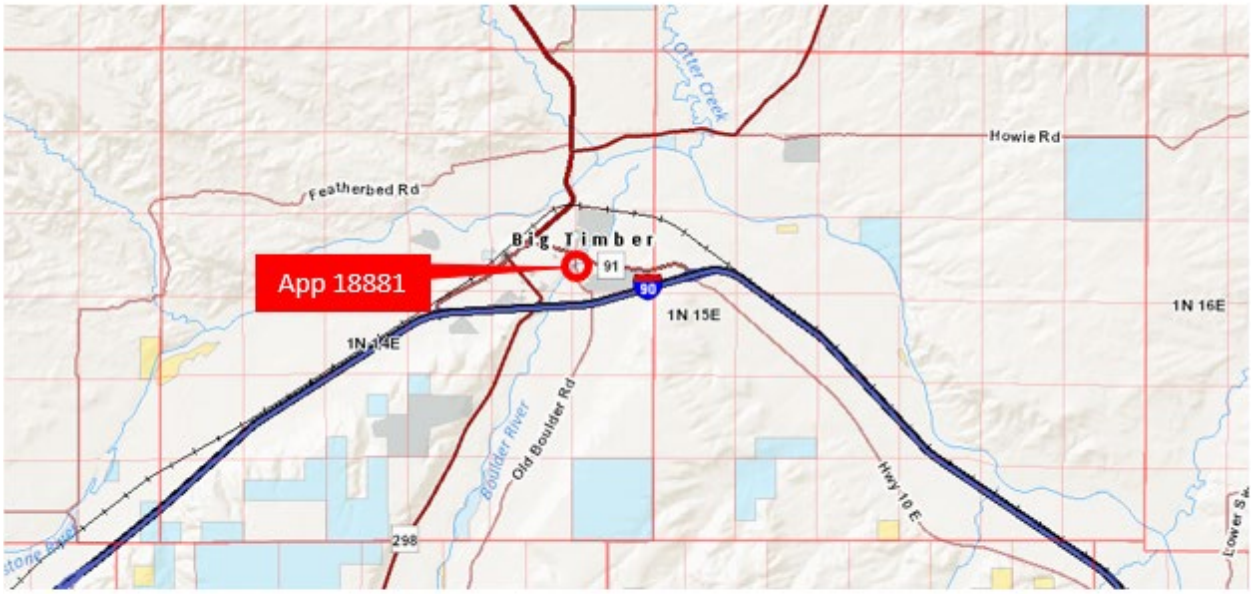
Item Summary

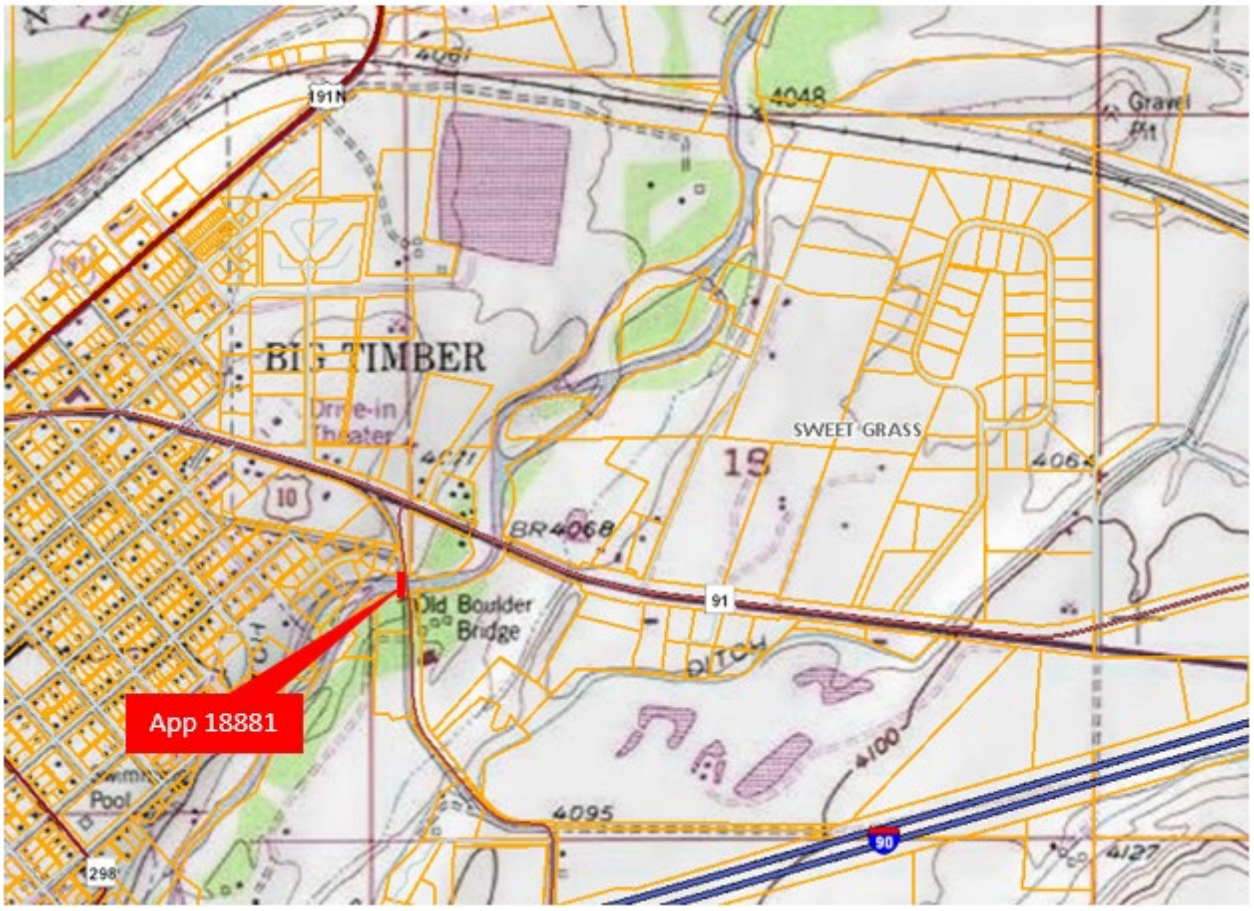
Sweet Grass County is planning to construct a new bridge over the Boulder River to replace the existing historic bridge. The existing bridge was built in 1921 and has structural deficiencies which creates a concern for public safety. The existing three-span timber bridge will be replaced with a single-span precast, prestressed concrete structure. Construction is planned for the fall of 2020.

DNRC Recommendation

The director recommends approval of the application of Sweet Grass County.

R/W Application 18881





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Martinsdale Land & Cattle, LLC PO Box 3645 Bozeman, MT 59772
Application No.:	18882
R/W Purpose:	a private access road to a single-family residence and associated outbuildings and to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	0.08
Compensation:	$100.00
Legal Description:	12-foot strip through SE4NE4, Sec. 32, Twp. 9N, Rge. 11E, Meagher County
Trust Beneficiary:	School for Deaf and Blind

Item Summary

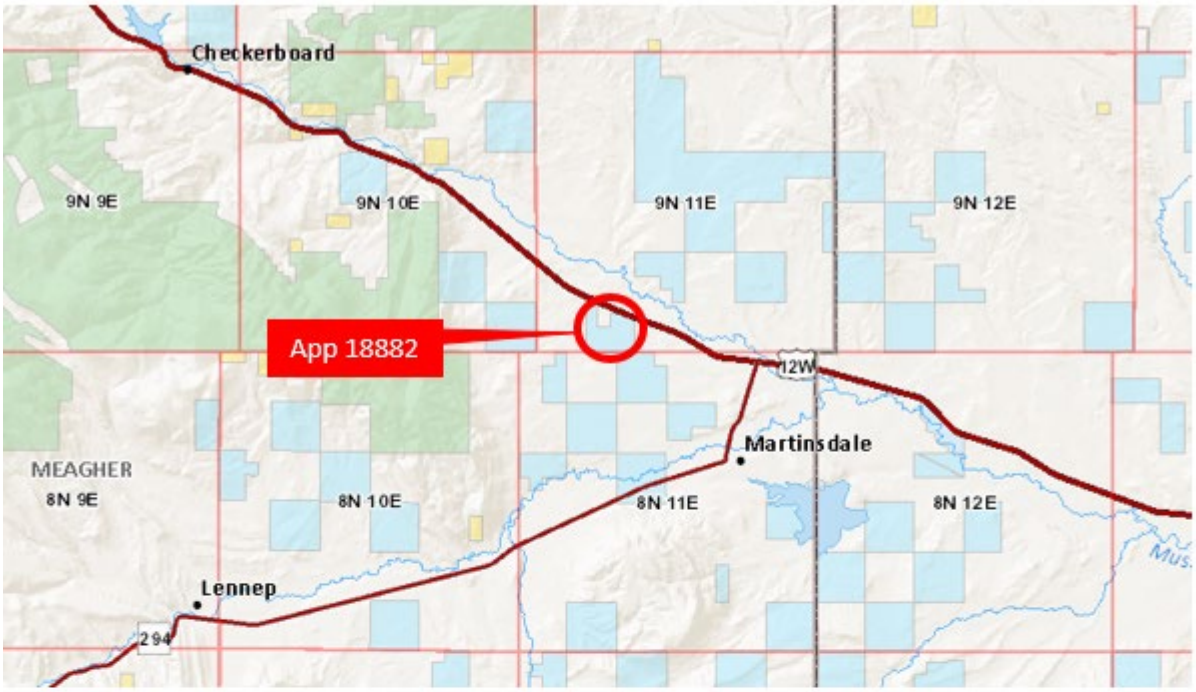
Martinsdale Land & Cattle have made application for the use of an existing road to access a single-family residence and to conduct normal farming and ranching operations. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The private property to be accessed is described as:

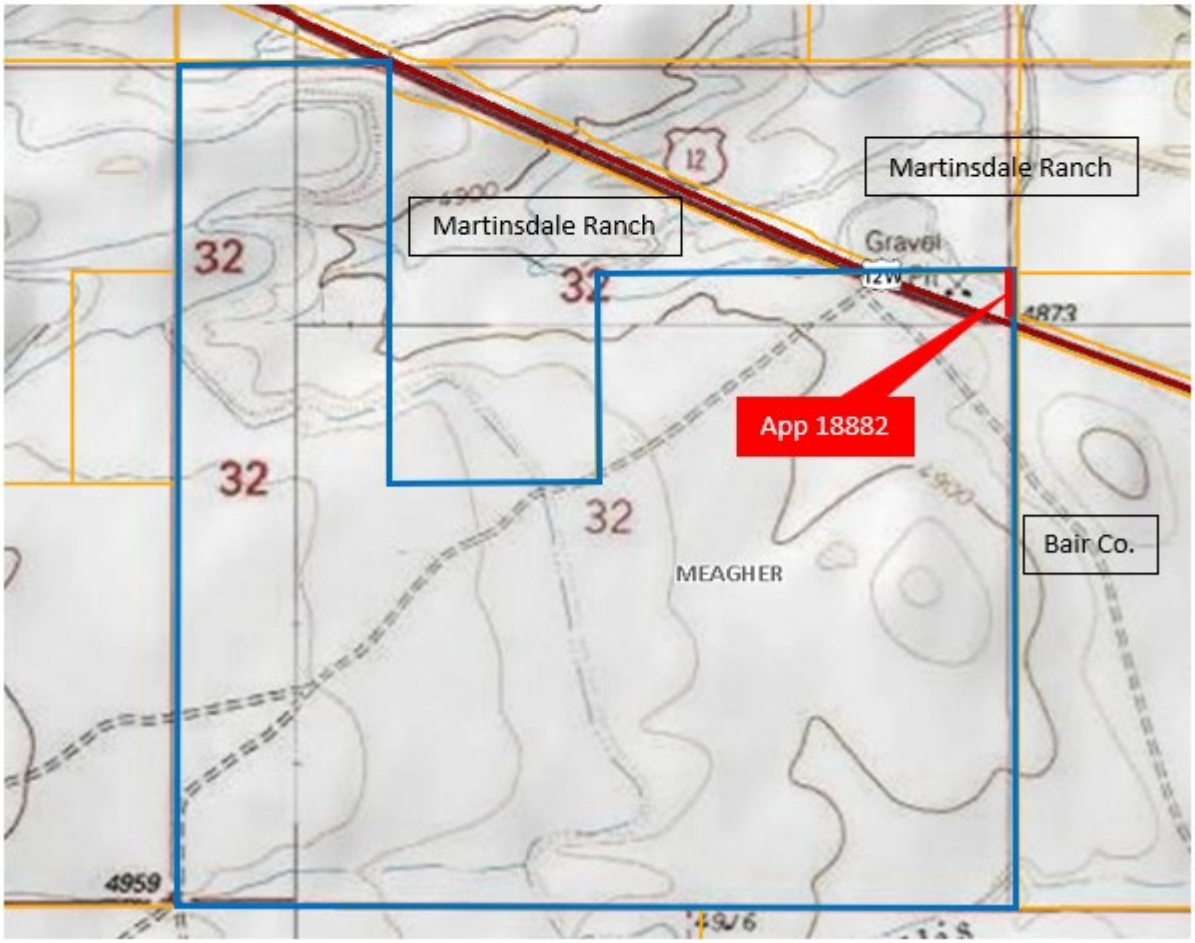
- S2SW4, Sec. 27, Twp. 9N, Rge. 11E, Meagher County
- SW4SE4, Sec. 28, Twp. 9N, Rge. 11E, Meagher County
- E2NE4, NW4NE4, Sec. 33, Twp. 9N, Rge. 11E, Meagher County
- N2NW4, NE4, Sec. 34, Twp. 9N, Rge. 11E, Meagher County

DNRC Recommendation

The director recommends approval of the application of Martinsdale Land & Cattle.

R/W Application 18882





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Frontier Communications 747 W. Prairie Ave. Hayden, ID 83835
Application No.:	18883
R/W Purpose:	an overhead fiber optic cable
Lessee Agreement:	N/A (Navigable River - Unleased)
Acreage:	0.89
Compensation:	$1,184.00
Legal Description:	20-foot strip through Gov. Lot 3 and NW4SW4, Sec. 16 and 20-foot strip across the Kootenai River in Gov. Lots 6 and 7, Sec. 17, Twp. 30N, Rge. 29W, Lincoln County
Trust Beneficiary:	Common Schools and Public Land Trust – Navigable Rivers

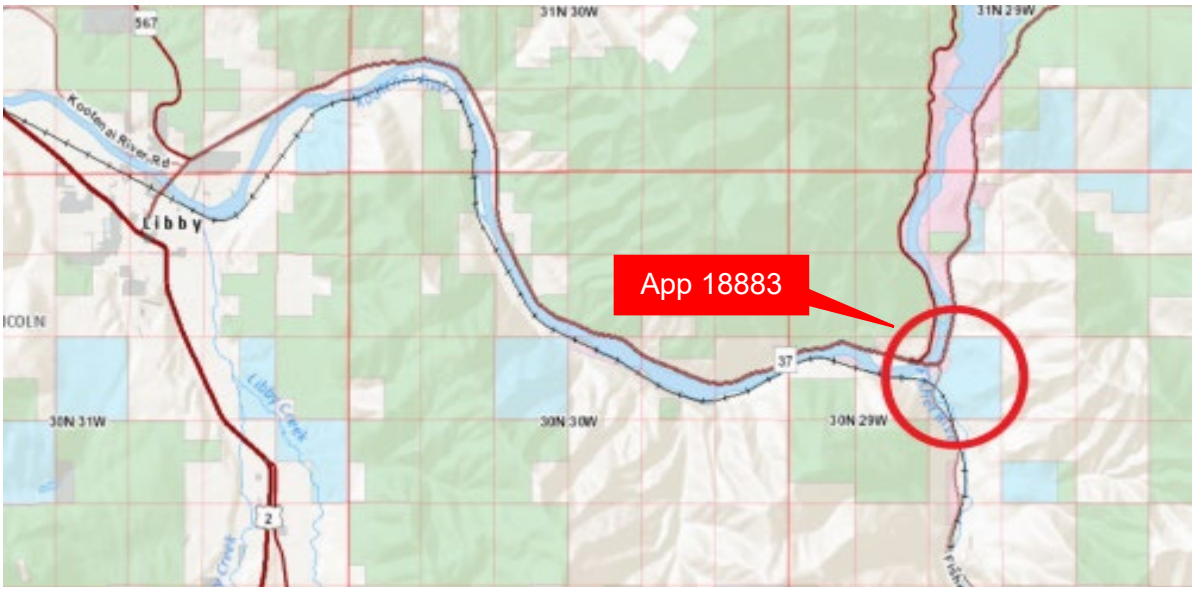
Item Summary

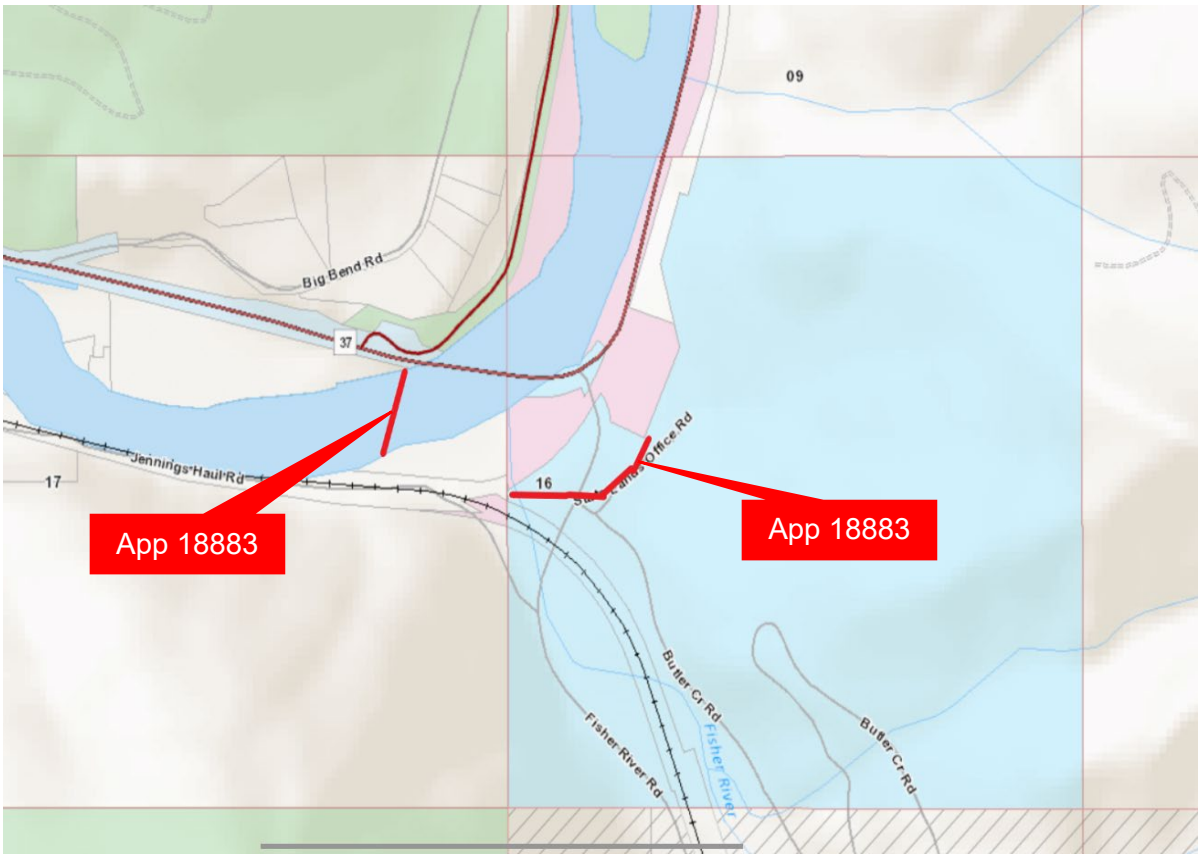
Frontier Communications has been contracted by the Department of Administration, SITSD to provide upgraded fiber optic services to the DNRC Libby Unit Office. The existing cable was installed many years ago and does not provide sufficient service for office communications and is in need of replacement. The existing cable was not installed under an authorized easement; therefore this upgrade will correct a trespass situation on Trust Lands.

DNRC Recommendation

The director recommends approval of the application of Frontier Communications.

Right of Way Application #18883





Land Board Agenda Item
April 23, 2020

0420-7B <u>Acknowledgement of Pre-Existing Easement</u>

Location: Meagher County
Sec. 6, Twp. 7N, Rge. 11E

Trust Benefits: N/A

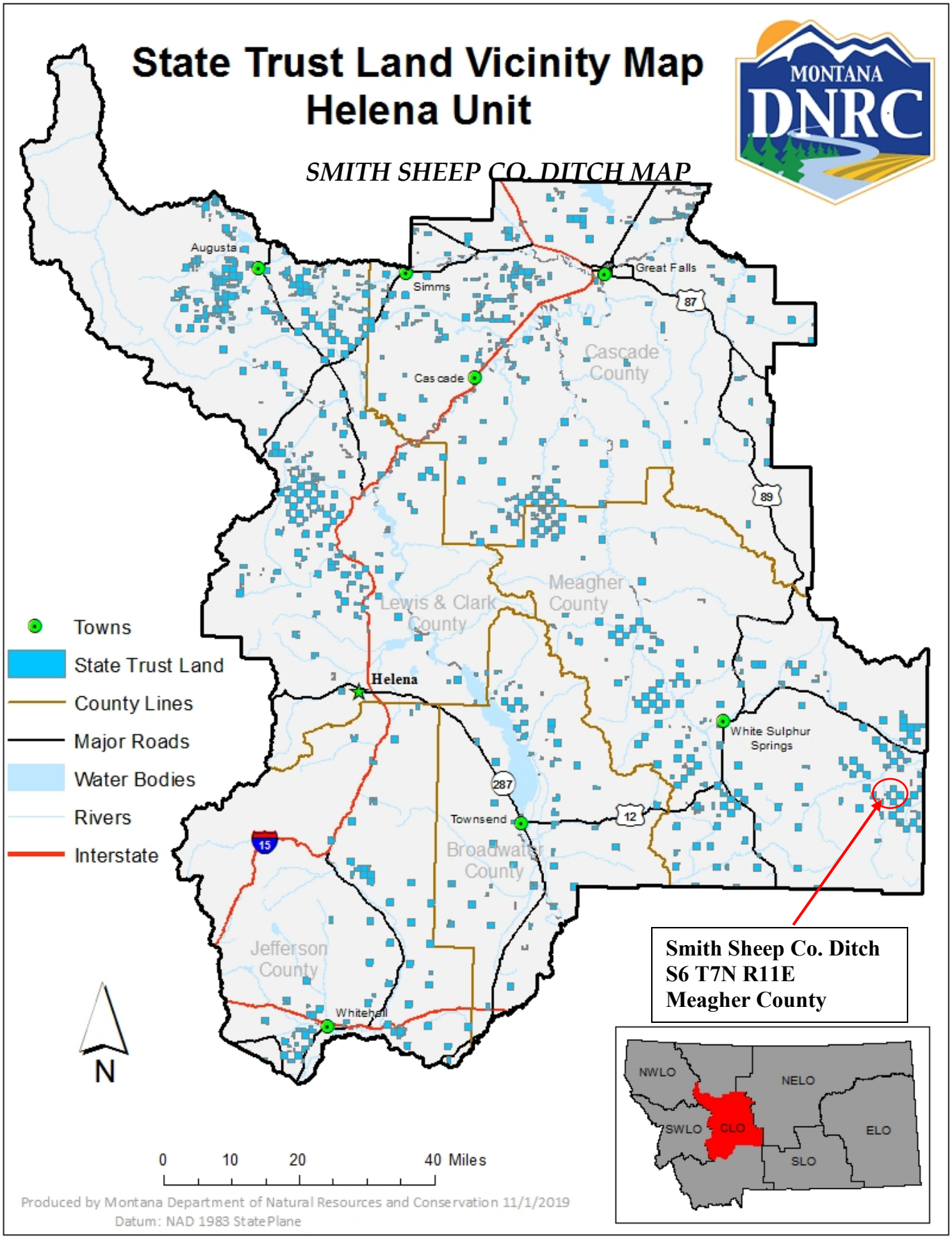
Trust Revenue: $0.00

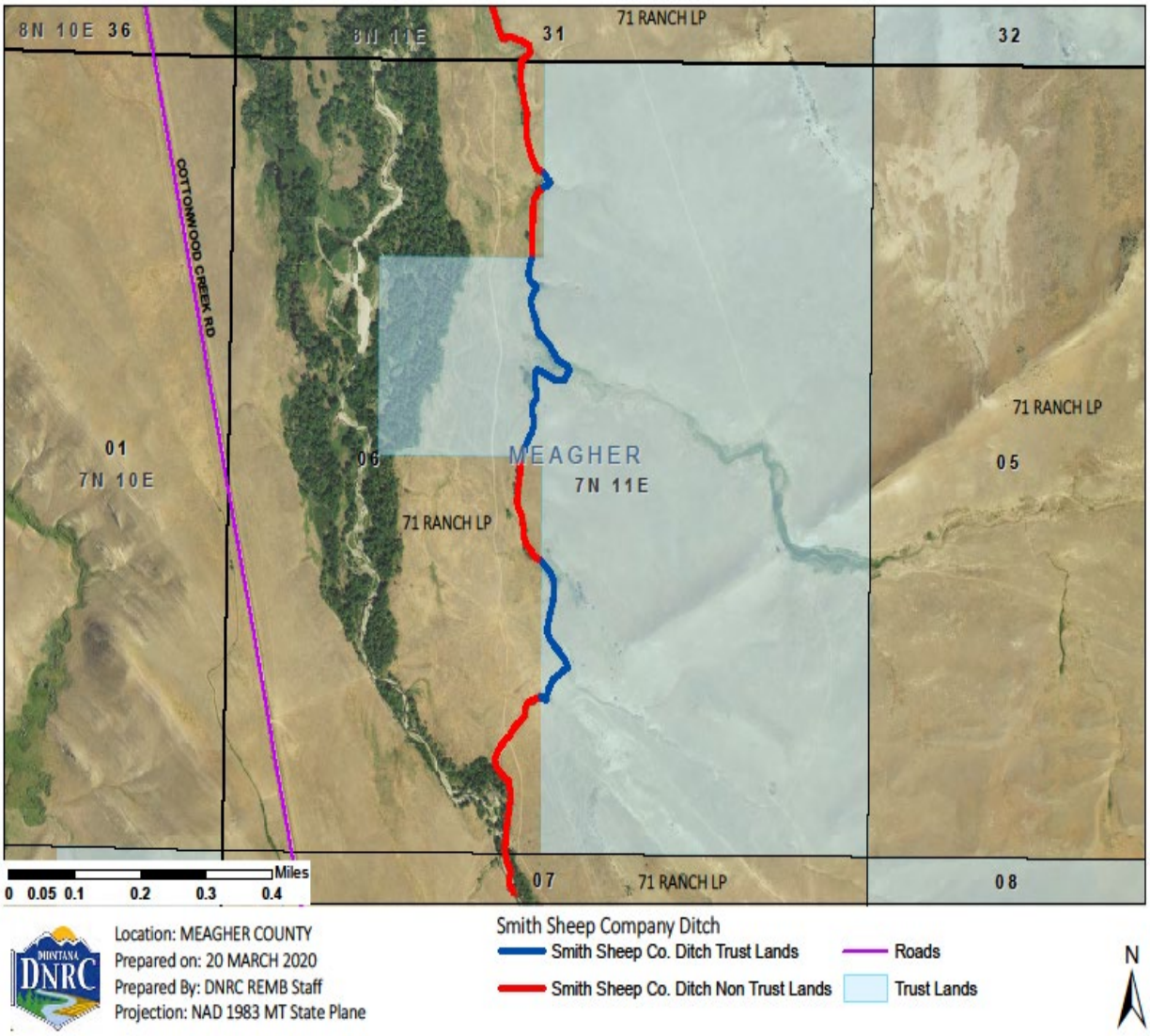
Item Summary

71 Ranch LP has requested an acknowledgement of pre-existing easement for an irrigation ditch known as the Smith Sheep Company Ditch. The water right claims associated with this diversion have priority dates between 1889 and 1911, all of which have been adjudicated. The State acquired its ownership within this Section as of November 4, 1919, therefore the ditch rights and uses pre-date the State's acquisition of this property. If approved, the Department will issue a 30-foot wide easement for the ditch corridor as shown on the attached exhibits.

Department Recommendation

The director recommends approval for an acknowledgement of pre-existing easement for this irrigation ditch.


State Trust Land Vicinity Map
Helena Unit
SMITH SHEEP CO. DITCH MAP
MONTANA DNRC
Augusta
Simms
Great Falls
Cascade
Cascade County
Lewis & Clark County
Meagher County
Helena
White Sulphur Springs
Townsend
Broadwater County
Jefferson County
Whitehall
87
89
287
12
15
Towns
State Trust Land
County Lines
Major Roads
Water Bodies
Rivers
Interstate
N
0 10 20 40 Miles
Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane
Smith Sheep Co. Ditch
S6 T7N R11E
Meagher County
NWLO
NELO
SWLO
CLO
ELO
SLO


8N 10E 36
8N 11E
31
71 RANCH LP
32
COTTONWOOD CREEK RD
01
7N 10E
06
MEAGHER
7N 11E
71 RANCH LP
71 RANCH LP
05
07
71 RANCH LP
08
Miles
0 0.05 0.1 0.2 0.3 0.4
Location: MEAGHER COUNTY
Prepared on: 20 MARCH 2020
Prepared By: DNRC REMB Staff
Projection: NAD 1983 MT State Plane
Smith Sheep Company Ditch
Smith Sheep Co. Ditch Trust Lands
Smith Sheep Co. Ditch Non Trust Lands
Roads
Trust Lands
N