

**United States Department of the Interior
Bureau of Land Management**

Categorical Exclusion DOI-BLM-MT-C020-2016-0085-CX

**Short Term Use for Scenic Road R/W
MTM-103821-01**

***Location:* Prairie County, Montana**
T. 13 N., R. 50 E., Sec. 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

U.S. Department of the Interior
Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, MT 59301
Phone: 406-233-2800
FAX: 406-233-2921



UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

CATEGORICAL EXCLUSION REVIEW AND APPROVAL

A. Background

BLM Office: Miles City Field Office

Serial/Case File No.: MTM-103821-01

NEPA Number (if applicable): DOI-BLM-MT-C020-2016-0085-CX

Proposed Action Title/Type: Short Term Use for Scenic Road Right-of-Way, MTM-103821-01.

Location of Proposed Action (w/county):

Prairie County, Montana

T. 13 N., R. 50 E., Sec. 34, SW¹/₄SW¹/₄.

See attached map

Background: Scenic View Road has an existing Title V FLPMA right-of-way (ROW), MTM-103821. It was issued to Prairie County in June, 2014. The ROW is 11, 805 feet long and 60 feet wide, consisting of 16.3 acres, more or less.

Description of Proposed Action:

The proposed action is to issue a short term Title V FLPMA right-of-way (ROW) to Prairie County to repair a portion the Scenic View Road (serial number MTM-103821). In order to complete the proposed work additional work space is needed since some of the work would be completed outside of their 60 foot ROW width. The road was constructed prior to 1960 and provides access to the Terry Badlands Scenic Overlook as well as the Terry Badlands Wilderness Study Area (WSA). Due to the erodible soils and heavy rains in the past years, a large washout in T. 13 N., R. 50 E., Sec. 34; SW¹/₄SW¹/₄ has caused the road to become narrow and hazardous for travelers on the road. The road currently serves as the north boundary for the WSA therefore the road cannot be moved to the south. All work would be done north of the Scenic View Road, outside the WSA. The county is proposing to use or borrow dirt from a location on a nearby section of State land (T.13N., R. 50E., Sec. 36), approximately 1500-2000 cubic yards as well as a small knob on BLM land (1000 cubic yards) would be used to fill the large washout. Additionally, the existing 36" culvert would be extended another 60-80 ft to transport the run-off farther down into the wash out.

And a 3 ft berm with 3:1 slopes would be built to the west of washout to re-direct that run-off as well. The top soil would be removed and replaced after all the fill work is completed and re-seeded to BLM specs.

The short term use authorization would extend approximately 150 ft beyond the centerline of Scenic View Road and 450 ft adjacent to the roadway, consisting of 1.55 acres, more or less. The equipment needed would include; a dozer, pay-loader, dump trucks, backhoe and a grader. The project may have up to 5 workers on the project. The county would need to stage their equipment either on private or State land. Start time would begin July 15, 2016 due to the sage grouse nesting period. The project area falls within the General Sage Grouse Management Habitat and there is no sage grouse leks on Federal land. No hazardous material would be used, produced, or stored in connection with the proposed ROW. The ROW would be issued for a term of 3 years and subject to the attached stipulations.

The standard stipulations for cultural and/or paleontological resource protections and hazardous materials stipulation would be made a part of the ROW grant, as would the standard Civil Rights stipulation and standard stipulation that all activities associated with the ROW would be conducted within the authorized limits of the grant. Fences, gates, culverts, cattleguards, and brace panels shall be reconstructed, if necessary, to appropriate Bureau standards and/or specifications as determined by the authorized officer and all operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices. The applicant would be responsible for weed control on disturbed areas within the limits of the ROW and for coordinating with parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and other ROW holders]. Ninety days prior to termination of the ROW, the holder shall contact the authorized officer to arrange a joint inspection of the ROW and to agree on an acceptable termination (and rehabilitation) plan. The ROW would be granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and to the attached stipulations. Prairie County is exempt from paying processing and monitoring fees, and rental as provided for by regulations found at 43 CFR 2804.16 and 2806.14, respectively. The ROW will be monitored for use and before closure.

B. Land Use Plan Conformance

Land Use Plan Name: BLM 2015 Miles City Resource Management Plan

Date Approved/Amended: Approved September 21, 2015

The proposed action is in conformance with the applicable LUPs because it is specifically provided for in the following LUPs decision(s):

This proposed action is in conformance with the BLM 2015 Miles City Resource Management Plan (ARMP) which was approved in September, 2015. On page 3-8 of the ARMP, it states; "On the remaining surface acres in the planning area, Major ROWs are allowed on 445,170 surface acres (16%) and Minor ROWs are allowed on 1,809,798 surface acres (66%)." On page 2-8 of the ARMP, it states: "Minor ROWs will be allowed with design features to protect breeding, nesting and brood rearing in GRSG GHMA

(1,365,000).” The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5.

C: Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9E (19) for issuance of rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No X	Rationale: <i>The project is to improve public safety on the Scenic View Road which is under a Title V FLPMA Right-of-Way.</i> BKK 4/18/2016
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	No X	Rationale: <i>Impacts would not be significant as the proposed action is to authorize a short term use Title V FLPMA right-of-way. There are no Areas of Critical Environmental Concern, Wilderness Study Areas, Monuments, and other areas with special designation involved with this proposal. The proposed action would not occur in a floodplain or wetland area.</i> BKK 4/18/2016 The project area is located in the Greater Sage Grouse General Habitat Management Area designated by the Miles City Field Office Approved Resource Management plan. The proposed project does not meet the desired conditions for sage-grouse habitat as outlined in the Miles City Approved Resource Management Plan due to the rough topography of the Wilderness Study Area and the surrounding areas and the high amount of juniper encroachment. No significant impacts are expected as a result of the short term use right-of-way. FAP 6/7/2016
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		

Yes	No X	Rationale: <i>No controversial environmental effects or unresolved conflicts.</i> <i>BKK 4/18/2016</i>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	No X	Rationale: <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.</i> <i>BKK 4/18/2016</i>
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
Yes	No X	Rationale: <i>This action is not connected to another action that would require further environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis.</i> <i>BKK 4/18/2016</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No X	Rationale: <i>This action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.</i> <i>BKK 4/18/2016</i>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
Yes	No X	Rationale: <i>A Class III cultural inventory was conducted to cover the temporary use locations. Report MT-020-11-303 covers 6.79 acres and report MT-020-16-101 covers an additional acre. No cultural sites were identified. No Historic Properties were identified or will be affected.</i> <i>CJ 06/27/2016</i>
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	No X	Rationale: <i>This area does not provide habitat for threatened, endangered or candidate species.</i> FAP 6/14/2016
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	No X	Rationale: <i>No laws are being violated by this action.</i> <i>BKK 4/18/2016</i>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	No X	Rationale: <i>Does not have a disproportionately high and adverse effect on low income or minority populations.</i> <i>BKK 4/18/2016</i>
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Yes	No X	Rationale: <i>This project will not limit access or use to sacred sites on federal lands.</i> <i>CJ 06/27/2016</i>

12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

Yes	No X	Rationale: <i>Under the authorization the applicant is responsible for weed control within the authorized area for the term of the right-of-way.</i> BKK 4/18/2016
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/s/ Guy Stickney
Engineer

4-26-16
Date

/s/ Christopher Morris
Supervisory Division of Non-Renewable Resources

7/7/2016
Date

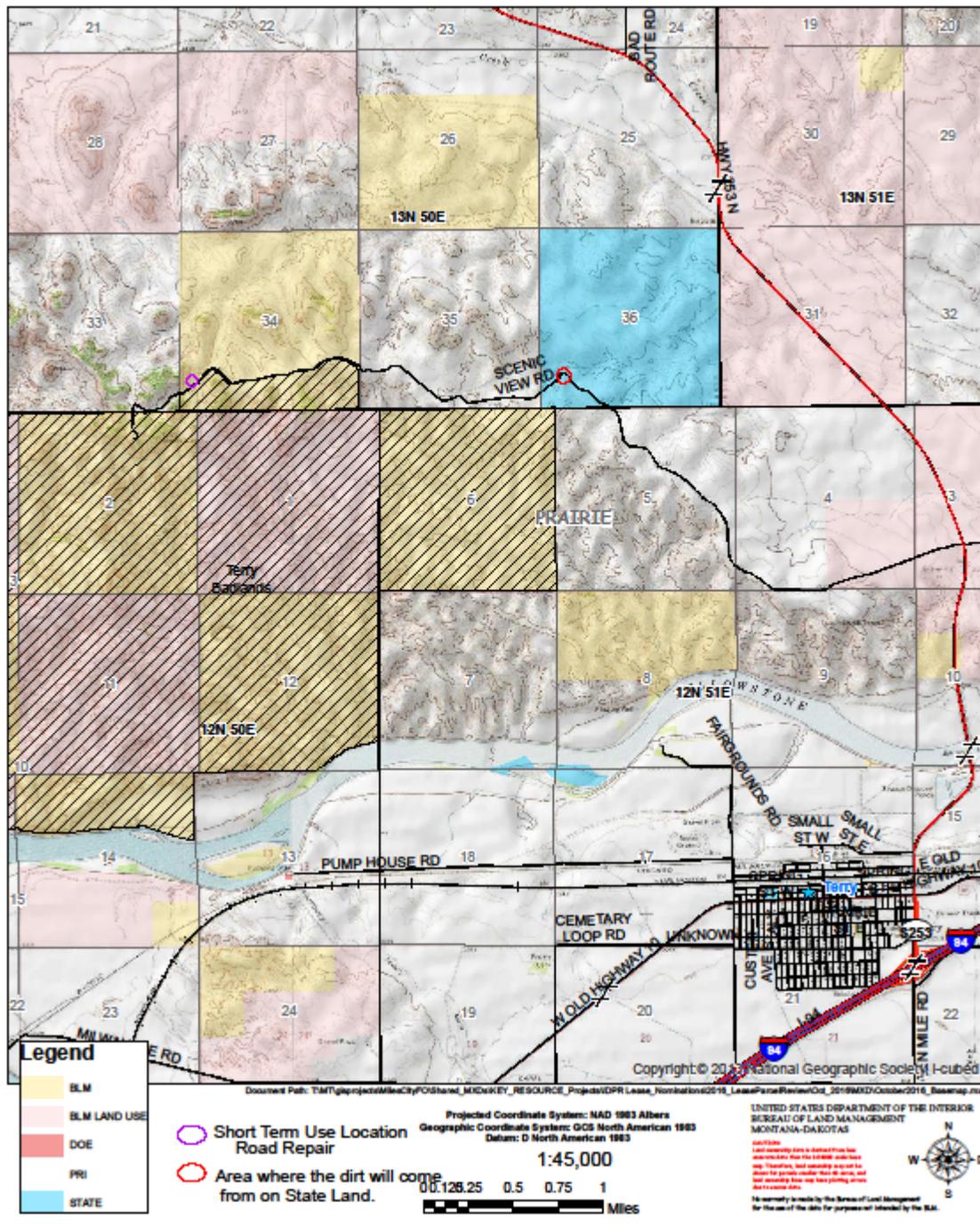
/s/ Kathy Bockness
Environmental Coordinator

7/7/2016
Date



Short Term Use For Scenic View Road
MTM-103821-01

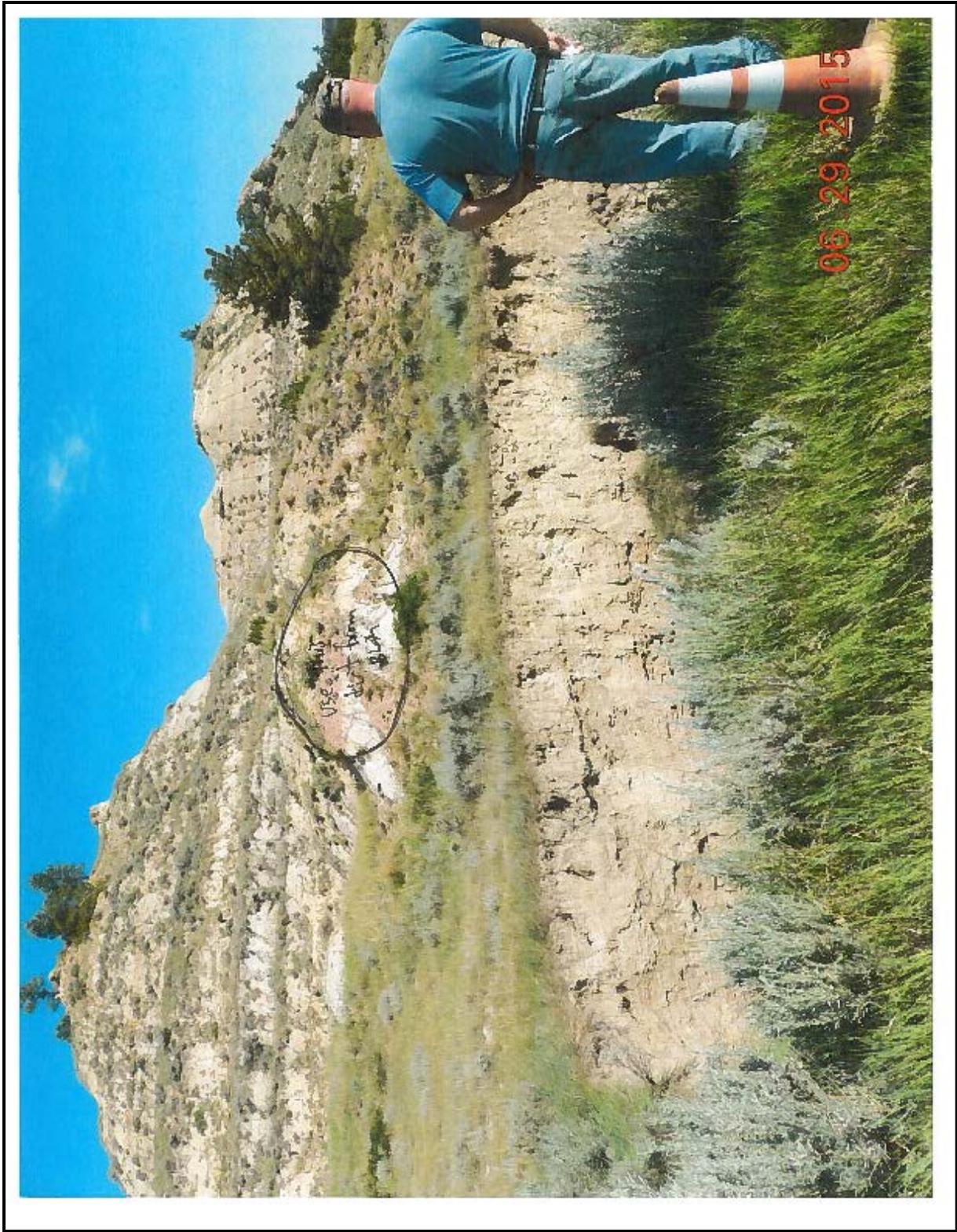
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Date: 4/15/2016



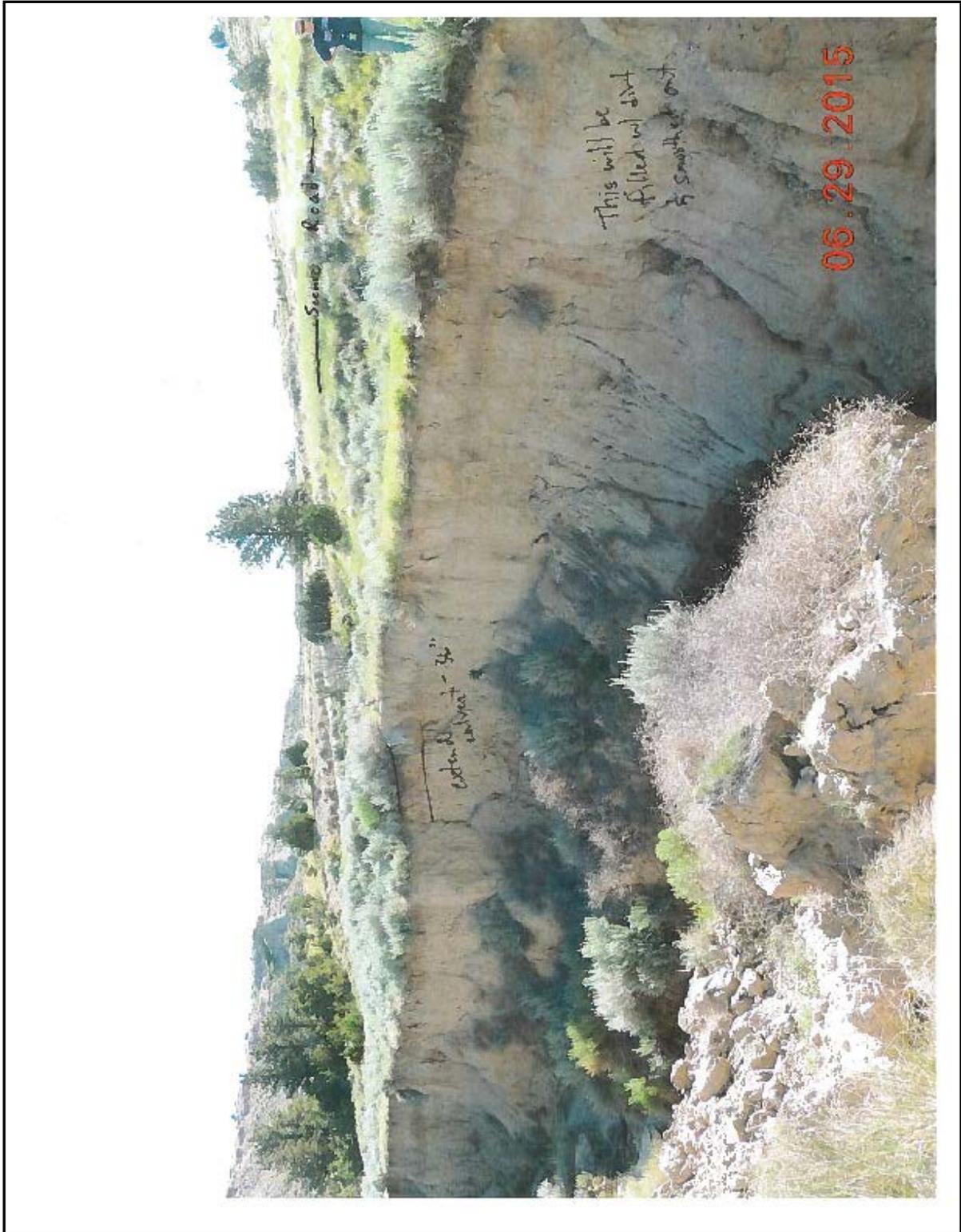
The map shows the project area, in Sec. 34, T. 13 N., R. 50 E.



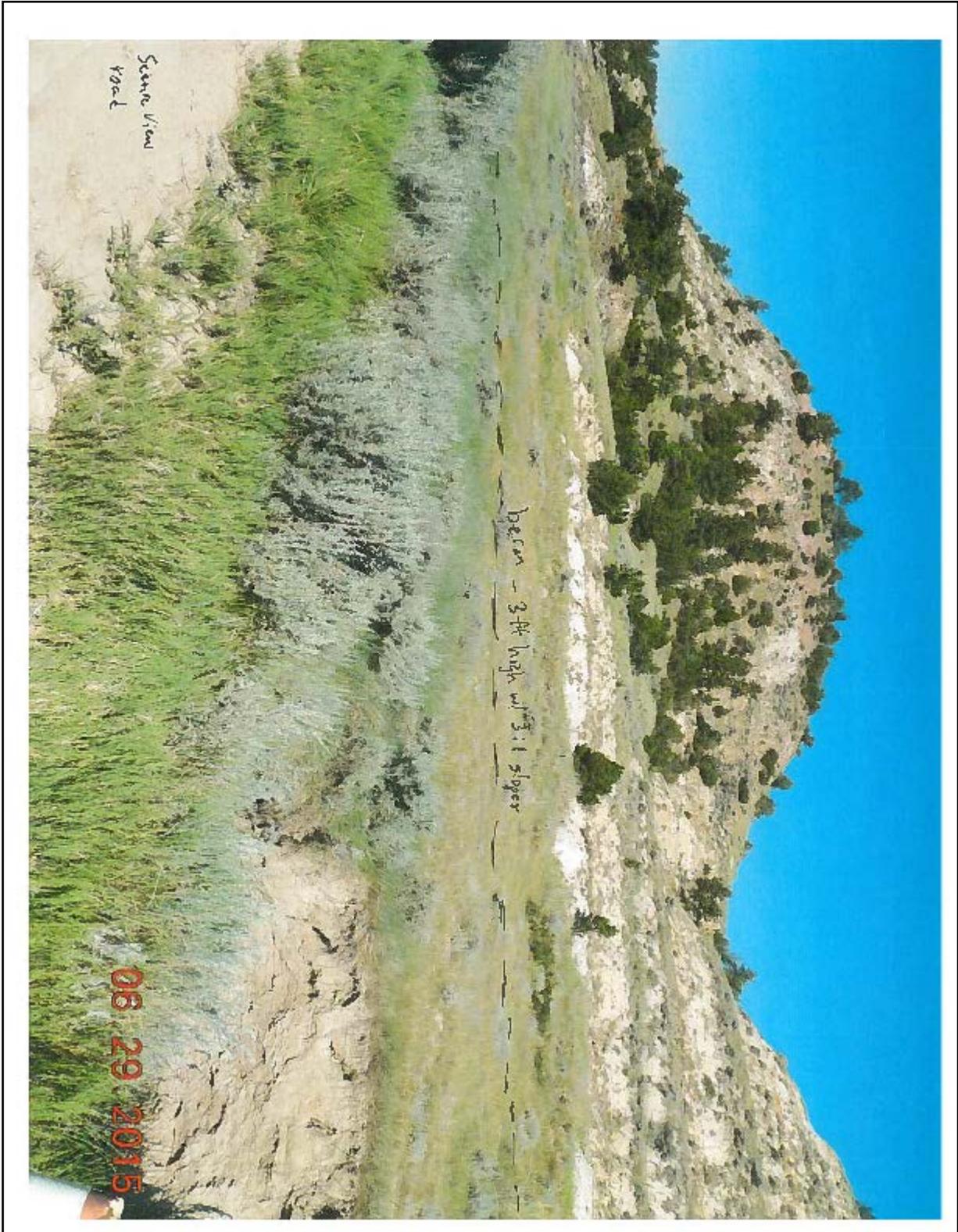
The pictures show the large wash next to the Scenic View Road.



This picture show the small dirt knob (T. 13 N., R. 50 E., Sec. 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$) that would be used as fill, approximately 1000 cubic yards.



This picture shows the location of the existing culvert. It would be extended another 60-80 feet.



This picture shows the location of the 3 ft berm that will be located above the headcut to prevent additional erosion.

Decision Record for Categorical Exclusion
Short Term Use for Scenic Road Right-of-Way MTM-103821-01
DOI-BLM-MT-C020-2016-0085-CX

Decision: I have made the decision to issue a short term use Title V FLPMA right-of-way (ROW) to Prairie County for additional work space to repair and improve the Scenic View Road (MTM-103821). The road was constructed prior to 1960 and provides access to the Terry Badlands Scenic Overlook as well as the Terry Badlands Wilderness Study Area (WSA). Due to the erodible soils and heavy rains in the past years, a large washout in T. 13 N., R. 50 E., Sec. 34; SW¼SW¼ has caused the road to become narrow and hazardous for travelers on the road. The road currently serves as the north boundary for the WSA therefore the road cannot be moved to the south. All work will be done south of the Scenic View Road, outside the WSA. The county is proposing to use or borrow dirt from the a location on a nearby section of State land (T.13N., R. 50E., Sec. 36), approximately 1500-2000 cubic yards as well as a small knob on BLM land (1000 cubic yards) will be used to fill the large washout. Additionally, the existing 36” culvert will be extended another 60-80 ft to transport the run-off farther down into the wash out. And a 3ft berm with 3:1 slopes will be built to the west of washout to re-direct that run-off as well. The top soil would be removed and replaces after all the fill work is completed and re-seeded to BLM specs.

The short term use authorization would extend approximately 150 ft beyond the centerline of Scenic View Road and 450 ft adjacent to the roadway, consisting of 1.55 acres, more or less. Start time would begin July 15, 2016. No hazardous material would be used, produced, or stored in connection with the proposed ROW. The ROW would be issued for a term of 3 years and subject to the attached stipulations

The standard stipulations for cultural and/or paleontological resource protection and hazardous materials stipulation would be made a part of the ROW grant, as would the standard Civil Rights stipulation and standard stipulation that all activities associated with the ROW would be conducted within the authorized limits of the grant. Fences, gates, culverts, cattleguards, and brace panels shall be reconstructed, if necessary, to appropriate Bureau standards and/or specifications as determined by the authorized officer and all operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices. The applicant would be responsible for weed control on disturbed areas within the limits of the ROW and for coordinating with parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and other ROW holders]. Ninety days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way and to agree on an acceptable termination (and rehabilitation) plan. The ROWs would be granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and to the attached stipulations. Prairie County is exempt from paying processing and monitoring fees, and rental as provided for by regulations found at 43 CFR 2804.16 and 2806.14, respectively. The ROW would be monitored for use and before closure.

Rational for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (19), and none of the exceptions in 516 DM 2 apply. Further the action is in conformance the BLM 2015 Miles City Resource Management Plan which was approved on September 21, 2015.

I considered the proposed action and associated stipulations which will be included in the right-of-way and which are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

D: Signature

/s/ **Todd Yeager**
Signature of Authorizing Official

7/11/2016
Date

Name: Todd D. Yeager

Title: Field Manager

Contact Person

For additional information concerning this CX review and decision, contact:

Beth Klempel, Realty Specialist (406-233-2896)
BLM – Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

Administrative Review or Appeal Opportunities

A BLM decision to issue a ROW may be appealed under regulations 43CFR 2881.10 in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2881.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the

decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

STIPULATIONS:

- a. Any cultural and/or paleontological resource (historic or prehistoric site or object) unearthed or discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder. .
- b. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

- c. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
- d. All operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices as stated in BLM Manual 9113- Road Standards and in accordance with the “Gold Book” requirements for roads. The Gold Book and the BLM Manual 9113 can be found on the web at:
http://www.blm.gov/mt/st/en/prog/energy/oil_and_gas/operations/gold_book.print.html
- e. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within the limits imposed in the grant stipulations).
- f. The holder of this right-of-way grant or the holder’s successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
- g. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.
- h. The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and other right-of-way holders].
- i. Ninety days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree on an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, and/or seeding. The

authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

- j. The holder shall seed all disturbed areas with the seed mixture listed below. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within six months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to insure this does not occur.) Where drilling is not possible, seed shall be broadcast and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the authorized officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The authorized officer is to be notified a minimum of seven (7) days prior to seeding of the project.

Seed Mixture (clayey) - Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted only when western wheatgrass is unavailable. The combination for the seed mixture must include at least four of the following species including Western wheatgrass:

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre</i> <i>*PLS</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS.