

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

DOI-BLM-MT-C020-2018-0018-EA

**In Lieu Selection
Custer, Prairie and Richland Counties**

***Location:* Prairie, Custer and Richland Counties, Montana (MT)**

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Chapter 1 - Purpose and Need for Action

Proposed Action and Background

The Bureau of Land Management (BLM) is required to convey federal land to the State of Montana (State) in order to fulfill a legal obligation dating back to Montana statehood (The Enabling Act of 1889). This environmental analysis (EA) addresses 5,816.63 acres valued at \$2,291,756 to satisfy the remaining entitlement and close out the \$4.1 million federal obligation to the State. The lands analyzed in this EA are all located within the BLM Miles City Field Office (MCFO).

The Enabling Act of 1889, under which Washington, North Dakota, South Dakota, and Montana were admitted to the Union, states, "That upon admission of each of said states into the Union, sections numbered sixteen and thirty-six in every township of said proposed states ... are hereby granted to said states for the support of common schools....". Over time, most of the obligation due Montana has been satisfied, including the conveyance of substantial acreage in lieu of Sections 16 and 36 where prior appropriation prevented conveyance to the State. The most recent in lieu selections in Montana were approved in 1984, and again in 1990, leaving a balance of 1184.16 acres still subject to in lieu selection. At that time, the State determined they would defer additional applications to complete the selection due to staffing and resource constraints.

In the spring and summer of 2015, the State and the BLM reviewed the 1,184.16 acres known as "base land" and agreed to freeze the remaining entitlement while a selection application was developed by the State. Based on a comparable sales approach, the obligation to the State was determined to be \$4,104,727. This methodology is consistent with a Supreme Court ruling under *Andrus v. Utah*, 446 U.S. 500 (1980) that provides selections in lieu of base land can be based on "roughly equivalent value" rather than a tract-by-tract match. The same methodology was used to value the selected lands.

In December 2015, the State filed a selection application that included 16,055.74 acres of land located in Chouteau, Custer, Fallon, Hill, Prairie, Richland, and Yellowstone counties with a total value of \$7,429,360 million dollars. The State prioritized the application and the BLM phased review of the lands based on those priorities. A total of 2,126.11 acres valued at \$1,824,980 were determined suitable for conveyance to the State and were used to partially fulfill the entitlement (see DOI-BLM-MT-0000-2016-0001-EA).

Purpose and Need

BLM is responsible for satisfying the remaining \$2,279,747 entitlement to the State of Montana under the Enabling Act of 1889. BLM is responding to the State's application by considering whether certain State lands identified in their December 2, 2015 application are suitable for conveyance to fully, or partially, satisfy the remaining obligation.

Decision to be Made

The BLM will determine whether the lands addressed in this EA are suitable for conveyance and what, if any, measures are necessary to reduce potential impacts. The impacts disclosed by this EA will assist in identifying which parcels are suitable for conveyance to the State to satisfy in full, or in part, the remaining \$2,279,747 of the total \$4,104,727 obligation.

If the lands, or a portion of them, are found suitable for conveyance, then the decision identifying the parcels to be conveyed would be published in the *Federal Register*. That decision, called an initial classification, would become final 30 days after publication in the *Federal Register*, subject to requests for administrative review by the Secretary of the Interior.

Upon resolution of any requests for administrative review, BLM would convey title to the lands via a document called a “clear list”. BLM would not issue the clear list until the relevant permittees/leases have been compensated for any improvements, and the current right-of-way holders have been given an opportunity to convert their grants, as provided for by BLM land disposal policy.

Conformance with the Land Use Plan

The public land in the project area is managed according to decisions contained in the 2015 Rocky Mountain Region Record of Decision (ROD) (BLM 2015a) and the Miles City Approved Resource Management Plan (ARMP) (BLM 2015b).

The lands analyzed in this EA lie within the Category 2 land tenure allocation of the Miles City ARMP. This category allows for conveyance out of federal ownership under certain circumstances, including selection by the State, subject to additional review to determine if lands are suitable for conveyance. As a result, the lands addressed in this EA were included in the Proposed Classification notice published in the *Federal Register* on October 17, 2016 and extended on November 15, 2017.

This EA is tiered to the information and analysis contained in the aforementioned plan.

Relationship to Statutes, Regulations, Other Plans, or other NEPA Documents

The State of Montana selection application was filed pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), Sec. 102(a) of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701, 1712), and Sec. 7 of the Taylor Grazing Act of 1934 (43 U.S.C. 315f). The authority to transfer “in lieu” lands to the State is found in Sections 2275 and 2276 of the Revised Statutes and is guided by regulations found at 43 CFR 2621. Satisfaction of the State’s entitlement and disposal of parcels for that purpose are considered to serve the national interest in the context of Section 102(a)(1) of the FLPMA. Implementing the action alternative in its entirety would fulfill this obligation.

In accordance with Sec. 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, a Level 1 Hazardous Materials Survey was completed on all parcels. No

hazardous substances and no petroleum products or their derivatives are known to have been released or disposed of on any of the parcels analyzed in this EA.

Cultural resource inventories and investigations were conducted on the parcels analyzed in this EA in accordance with Section 106 responsibilities under the National Historic Preservation Act (NHPA) and in consultation with the State Historic Preservation Office (SHPO) and with tribal entities. Results of this work are described in Chapter 3. Tribal coordination and consultation was also conducted on lands included in this EA as outlined in Chapter 2.

No formal consultation is required under Section 7 of the Endangered Species Act of 1973, as amended, because there is no impact to threatened or endangered species as a result of the proposed action or alternatives.

Public Involvement, Consultation and Coordination

Notification and scoping for this project was initiated through the publication of a *Federal Register* Notice on October 17, 2016. The 60-day scoping period was announced through local newspapers/press releases, on the BLM Montana State Office website, and posted online in the NEPA ePlanning website. The State also posted the required legal notices in the Billings Gazette, Miles City Star, and the Havre Daily News.

The Proposed Classification Notice was mailed to 237 individuals, agencies and other entities. This mailing list included all grazing permittees/lessees, other authorization holders, 21 different tribes (48 members of tribal governments or Historic Preservation Officers), adjacent landowners, Resource Advisory Council members, conservation organizations, delegations at the state and national levels, and other interested parties.

The BLM provided official two-year notification of the potential conveyance of lands to grazing allotment permittees in accordance with 43 CFR § 4110.4-2. Notices of the proposal were also sent to other holders of rights-of-way and agricultural leases.

Project information regarding the State's entire selection application was available to the public on the BLM Montana/Dakotas website in December 2015, including the lands addressed in this EA. All project information moved to BLM's ePlanning website at <http://bit.ly/2dqd7rR> on October 17, 2016 when scoping was initiated for all lands in the application.

The BLM conducted early outreach with tribes across Montana, Wyoming, North, and South Dakota between February and June 2016 prior to sending the formal scoping notices to 48 tribal officials and entities in October 2016. Early conversations with the tribes revolved around how cultural inventories would be conducted and future involvement in the project.

Three public open houses were held in November 2016 at each of the 3 field offices managing lands included in the State's application (Miles City, Billings, and Havre). Both the BLM and the State of Montana staff and management were present at the open houses to address questions and provide background information. As a result, a total of 11 written submissions from 9 commenters were received during the scoping period.

The project was phased to more effectively address resource concerns, tribal consultation, and public scoping comments. The EA involving selected lands in Chouteau, Hill, and Custer Counties was posted to ePlanning under DOI-BLM-MT-0000-2016-0001-EA on April 2017 prior to finding those lands suitable for conveyance. The classification on the 2,126.11 acres analyzed in the April 2017 EA was published in the *Federal Register* on November 15, 2017 and became final on December 15, 2017. This notice also extended the segregation on the remaining lands in the State's application, including these parcels, to allow for continued review. Notice of this project was posted in the NEPA Register on the BLM's ePlanning website on January 30, 2018.

Consultation with the Montana State Historic Preservation Office as required under Section 106 of the NHPA for the lands addressed in this EA occurred in September-October 2017, with a recommendation that the BLM develop an agreement with the State (DNRC) in order to address issues with the transfer of lands containing eligible properties.

Tribal site visits related to land in Richland County were hosted by the Miles City Field Office in August 2017 to gather input on cultural resources expected to be important to tribal groups. Four tribes attended the site visits. A government-to-government Regional Tribal Consultation Session on the lands addressed in this EA was convened at the BLM Montana/Dakotas State Office in Billings on October 31-November 1, 2017. Twelve tribes were present and participated in the consultation. DNRC was present at both the site visits and the formal meeting with the Tribal Historic Preservation Officers (THPOs).

Seventeen tribes from Montana, Wyoming, South Dakota and Wyoming were invited to participate and review the Programmatic Agreement relating to historic properties. Coordination and consultation efforts will continue with these tribes as stated in the stipulations of the Programmatic Agreement.

Consultation was not required with the U.S. Fish and Wildlife Service given conveyance of any of the lands would not result in an adverse effect to threatened or endangered species, and none of the parcels contain designated critical habitat.

These efforts, along with interdisciplinary review by BLM resource specialists, assisted with identification of issues to be carried forward in this analysis. Information gathered from all these activities has been used to inform the analysis contained in this EA.

Persons, Groups, Tribes, and Agencies Consulted

The BLM consulted with the following persons and groups:

- Montana Department of Natural Resources and Conservation
- Affected BLM Grazing Permittees
- Holders of other Land Use Authorizations besides Grazing
- Custer County Commissioners
- Prairie County Commissioners

Richland County Commissioners
Montana State Historic Preservation Office
Rocky Boy (Chippewa Cree)
Crow Tribe
Ft. Belknap Indian Community (Assiniboine, Gros Ventre)
Ft. Peck Tribes (Sioux and Assiniboine)
Northern Cheyenne Tribe
Mandan, Hidatsa and Arikara Nation
Spirit Lake Sioux Tribe
Standing Rock Sioux Tribe
Turtle Mountain Band of Chippewa
Cheyenne River Sioux Tribe
Crow Creek Sioux Tribe
Lower Brule Sioux Tribe
Rosebud Sioux Tribe of Indians
Oglala Sioux Tribe
Sisseton-Wahpeton Oyate
Yankton Sioux Tribe
Northern Arapaho Nation

Resource Issues Identified for Analysis

The BLM focuses its analysis on “issues that are truly significant to the action in question, rather than amassing needless detail” (40 CFR 1500.1(b)). The issues considered in this EA have a relationship with the proposed action and are within the scope of analysis.

Based on a review of issues identified through scoping, interdisciplinary review by BLM resources specialists, and ongoing tribal consultation efforts, the resources/issues carried forward in this EA that could be impacted to a level requiring further analysis are summarized below.

Issue 1 - Cultural Resources

What would be the effect on cultural resources if the lands were conveyed?

Issue 2 - Wildlife and associated habitat (including General Habitat Management Areas for Greater Sage-grouse)

What would be the impacts to wildlife populations and habitats if the lands were conveyed?

Issue 3 - Livestock Grazing

What would be the effect on livestock grazing operations if the lands were conveyed?

Issue 4 - Uses other than Livestock Grazing

What would be the effect on current authorized uses if the lands were conveyed?

Issue 5 – Socioeconomics

What would be the effect on the socioeconomics of the area if the selected lands were conveyed?

Issue 6 - Tribal Treaty Rights and Sovereignty

What would the effect be on tribal rights and sovereignty if the lands were conveyed?

Resource Issues Eliminated from Further Analysis

Based on a review of scoping comments and additional review of information and data by resource specialists and the interdisciplinary team, certain resources are not present or would not be impacted to a degree to require detailed analysis. Appendix A, Resources/Issues Considered but Dismissed, provides the rationale for specific resources.

The BLM also determined the following issues raised by the public during scoping and during tribal visits will not receive further consideration based on the following reasons:

Close Public Land to Livestock Grazing

Making public land unavailable for livestock grazing is not considered further. Review of this issue is outside the scope of the proposed action to satisfy the debt owed to the State of Montana under the Enabling Act of 1889. Land use allocations and the availability of lands for livestock grazing is addressed during higher level land use planning.

Review BLM's Grazing Management Program

BLM's management of livestock grazing is also outside the scope of the proposed action and is not considered further. This proposed action focuses on which lands selected by the State are suitable for conveyance to satisfy the debt owed under the Enabling Act, and does not review BLM's grazing management program.

Manage BLM lands to benefit trees, wildlife and nature

This proposed action will fulfill a legal obligation established through Congressional action as a requirement upon granting statehood to Montana in 1889. The FLPMA, as amended, did not repeal these statutes, and recognized the continuing obligation inherent in the various enabling statutes admitting western states into the union. Therefore, comments regarding general management of BLM lands, and management established under FLPMA, have been eliminated from further analysis.

Transfer Land to the Tribes

Transfer of the selected land to Tribal entities, rather than to the State of Montana, does not meet the purpose and need for this proposal and does not satisfy the Enabling Act, therefore, will not be analyzed in detail.

Chapter 2 - Proposed Action and Alternatives

Introduction

This EA analyzes two alternatives: the No Action (Alternative A) and the Proposed Action (Alternative B). The lands included in the Proposed Action reflect the next group of State priorities.

Alternatives Considered but Eliminated

Alternatives that include lower priority lands identified by the State in their December 2, 2015 application have been eliminated from detailed study at this time. If the value of lands found suitable for conveyance as a result of this EA is not adequate to satisfy the remaining federal obligation to the State, the BLM will review other lands included in the State's application in a subsequent EA.

Alternative A (No Action)

Under the No Action alternative, none of the 5,816.63 acres analyzed in this EA would be found suitable for conveyance and the lands would remain in federal ownership and be restored to management guided by the current land use plan upon expiration of the extended Proposed Classification on December 1, 2019. An obligation to the State of \$2,279,747 would remain and the federal government would still be required to address the obligation in the future.

Alternative B (Proposed Action)

Under Alternative B, the BLM would use lands suitable for conveyance to satisfy the remaining \$2,279,747 obligation.

The lands considered in this EA (refer to Figure 1 – Vicinity Map) are located within Custer, Prairie and Richland counties and are described as follows:

Principal Meridian, Montana

T. 5 N., R. 46 E.,

sec. 24, E1/2.

T. 4 N., R. 47 E.,

sec. 6;

sec. 8, NW1/4NE1/4, SE1/4NE1/4, N1/2NW1/4, and NE1/4SE1/4.

T. 12 N., R. 50 E.,

sec. 14; lots 1 thru 4, S1/2SW1/4, and S1/2SE1/4.

T. 12 N., R. 52 E.,

sec. 3, lots 1, 2, and 3;

sec. 5;

sec. 6, lots 2 thru 7, S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4, and SE1/4;

sec. 7, lots 1 thru 7, NW1/4NE1/4, and E1/2NW1/4;

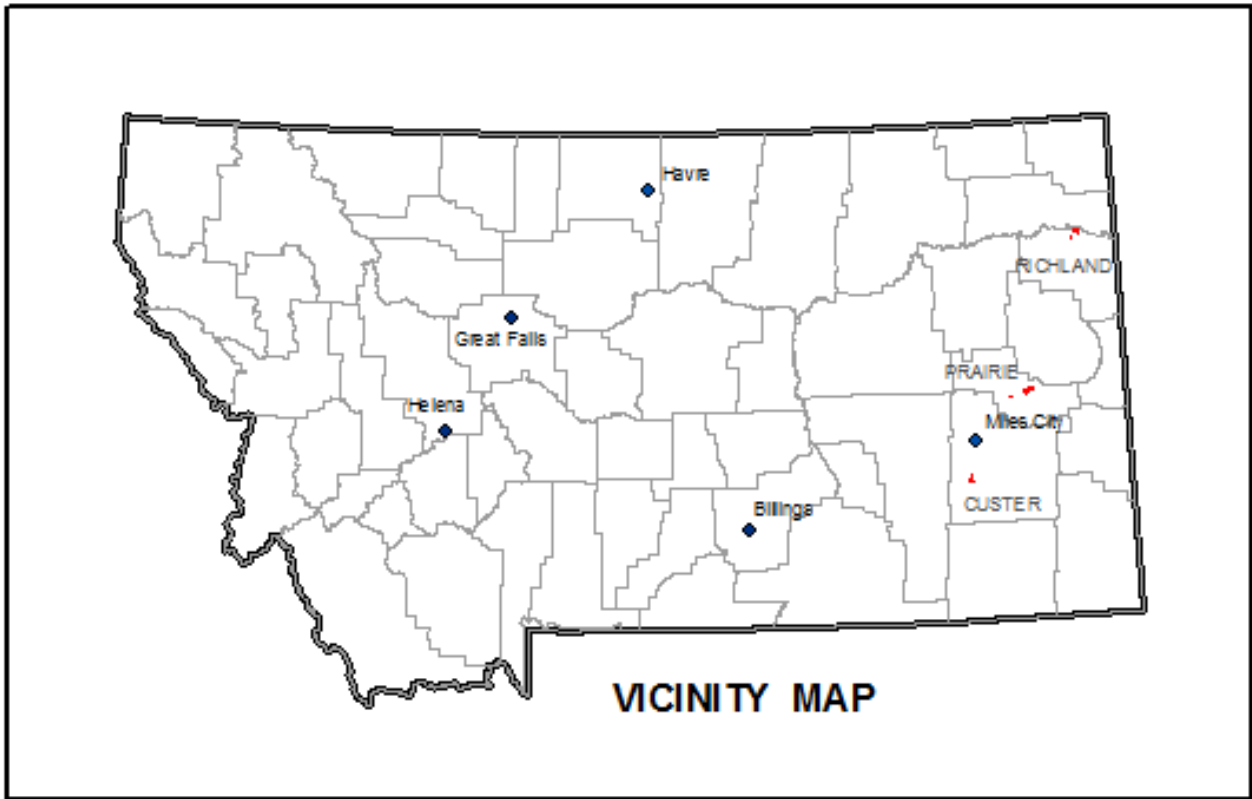
sec. 8, lots 1, 2, and 3.

T. 13 N., R. 52 E.,

sec. 29, E1/2SE1/4SW1/4, E1/2NW1/4SE1/4SW1/4, E1/2SW1/4SE1/4SW1/4, and S1/2SE1/4;

sec. 30, S1/2SW1/4 and S1/2SE1/4;
 sec. 33, lots 5, 6, and 7.
 T. 26 N., R. 55 E.
 sec. 1, lot 4;
 sec. 2, lots 1 and 2, and SW1/4NE1/4.
 T. 27 N., R. 56 E.,
 sec. 7, lots 7 thru 12, SE1/4SW1/4, and S1/2SE1/4;
 sec. 8, lot 12 and S1/2SW1/4;
 sec. 9, lots 3, 4, and 5, SE1/4SW1/4, and SW1/4SE1/4;
 sec. 17, E1/2, N1/2NW1/4, SW1/4NW1/4, and SW1/4;
 sec. 18, lots 1 thru 4, NE1/4, E1/2NW1/4, SE1/4SW1/4, and SE1/4; and
 sec. 22, NE1/4NE1/4, SW1/4NW1/4, and W1/2SW1/4.

Figure 1 - Vicinity Map showing selected lands in red.



Detailed maps can be found in Appendix C, Maps. Chapter 3 contains additional discussion on the land included in this EA.

Lands conveyed to the State would be subject to encumbrances of record at the time of conveyance (see Chapter 3, Existing Land Uses other than Grazing). Right-of-way holders would be offered the opportunity to convert authorizations to perpetual easements in accordance with BLM regulations (43 CFR 2807.15).

BLM would determine reasonable compensation and pay affected cooperators for the adjusted value of their interest in authorized permanent range improvements (43 CFR 4120.3-6).

Future management actions conducted by the State on the conveyed lands, such as changing the land use of a parcel, would be subject to State regulations and the Montana Environmental Policy Act (MEPA).

Chapter 3 - Affected Environment and Environmental Consequences

General Setting

The parcels analyzed for suitability and potential transfer to the State are situated in eastern Montana in Custer, Prairie, and Richland counties (see Appendix C, Maps), all located within the BLM's Miles City Field Office. Human activities have influenced these lands over many decades, including infrastructure development (roads, powerlines, pipelines, water developments, rail lines, etc.), weed control activities, leasing/permitted activities (i.e., oil and gas leasing) and livestock grazing. All of the lands exhibit characteristics representative of the 10-14 inch precipitation zone in eastern Montana's sedimentary plains.

Custer County lands

The 1,144.93 acres in Custer County (valued at \$457,972) comprise four inholdings of BLM-administered land surrounded by a block of State trust land lying northwest of the Tongue River and State Secondary Highway 332 (the Tongue River Road)--in an area known as the Tongue River Ranch. The terrain consists of level to rolling rangeland dominated by grassland vegetation, though all of the acres lie in what is considered general habitat for the greater sage grouse by both the BLM and the State of Montana.

Prairie County lands

The 2,504.48 acres in Prairie County (valued at \$999,404) are situated in the vicinity of Terry, Montana, with most of the lands lying north of Interstate 94 and the Yellowstone River. One parcel lies south of the Yellowstone River and is crossed by an active BNSF railroad line. The area is fairly level, with native grassland vegetation across most of the acreage, though certain lands contain or are adjacent to irrigated cropland. All of these lands lie in habitat considered general sage grouse habitat by the State of Montana, but only 1,742.47 acres are designated general habitat management areas in the BLM's approved land use plan.

Richland County lands

The main block of the 2,167.22 acres in Richland County (valued at \$834,380) lie approximately 3 miles south of the town of Culbertson, on the south side of the Missouri River. All but one parcel are located west of State Highway 16, in an area exhibiting the rolling to broken rangeland, breaks, and bluffs common to upland river corridors of the eastern Montana plains. Some of the lands exhibit areas of ground subsidence resulting from historic underground coal mining, even though reclamation of these mines has occurred. Most if not all of these lands have

been leased for oil and gas in the past, however no development has occurred. None of these lands lie in habitat for the greater sage-grouse designated by either the BLM or the State.

Table 1 (below) lists the lands considered in this EA.

Table 1 - Selected Lands by Location

County	Land Description	Acres	Value¹
Custer	T. 5 N., R. 46 E., sec. 24, E1/2. T. 4 N., R. 47 E., sec. 6; sec. 8, NW1/4NE1/4, SE1/4NE1/4, N1/2NW1/4, and NE1/4SE1/4.	1,144.93	\$457,972
Prairie	T. 12 N., R. 50 E., sec. 14; lots 1 thru 4, S1/2SW1/4, and S1/2SE1/4. T. 12 N., R. 52 E., sec. 3, lots 1, 2, and 3; sec. 5; sec. 6, lots 2 thru 7, S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4, and SE1/4; sec. 7, lots 1 thru 7, NW1/4NE1/4, and E1/2NW1/4; sec. 8, lots 1, 2, and 3. T. 13 N., R. 52 E., sec. 29, E1/2SE1/4SW1/4, E1/2NW1/4SE1/4SW1/4, E1/2SW1/4SE1/4SW1/4, and S1/2SE1/4; sec. 30, S1/2SW1/4 and S1/2SE1/4; sec. 33, lots 5, 6, and 7.	2,504.48	\$999,404
Richland	T. 26 N., R. 55 E. sec. 1, lot 4; sec. 2, lots 1 and 2, and SW1/4NE1/4. T. 27 N., R. 56 E., sec. 7, lots 7 thru 12, SE1/4SW1/4, and S1/2SE1/4; sec. 8, lot 12 and S1/2SW1/4; sec. 9, lots 3, 4, and 5, SE1/4SW1/4, and SW1/4SE1/4; sec. 17, E1/2, N1/2NW1/4, SW1/4NW1/4, and SW1/4; sec. 18, lots 1 thru 4, NE1/4, E1/2NW1/4, SE1/4SW1/4, and SE1/4; sec. 22, NE1/4NE1/4, SW1/4NW1/4, and W1/2SW1/4.	2,167.22	\$834,380
		5,816.63	\$2,291,756

¹ Parcel valuations were derived jointly by the State and BLM using a comparable sales methodology and concurred in for use in this project by agreement dated November 28, 2016.

Analysis Assumptions

The federal action of conveying lands to the state does not result in surface disturbing activities or direct impacts to most resources. Potential indirect effects associated with conveyance result from future management actions of the State (see analysis assumptions below) and any differing management policies.

The Montana Environmental Policy Act (MEPA) requires State agencies to prepare a written environmental review that is available to the public. This review may be a simple checklist environmental assessment (checklist EA), a more comprehensive EA, or a more detailed environmental impact statement (EIS). MEPA requires that the level of analysis (checklist EA, EA, or EIS) and the degree of public involvement increase, depending on the significance of the potential or identified environmental impacts. This process provides opportunities for public comment that could modify future proposed activities.

Analysis of the land in this EA was conducted by BLM resource specialists who relied on professional knowledge of the areas involved, review of current databases, file information, inventories, and site visits. The following analysis assumptions guide the impact analysis for this action.

- Management of the lands by the State would be subject to applicable State and federal laws (see Appendix B, Applicable State and Federal Laws).
- Existing land uses, including current livestock grazing, livestock stocking rates (AUMS), agricultural development, and utility and road right-of-ways, would be maintained unless or until changed by the state under state regulation and MEPA.
- It is anticipated that ROW holders would request their grants be converted to perpetual easements as allowed by BLM policy.
- The BLM would compensate owners of range improvements for the adjusted value of their interest as required by Section 204(g) of FLPMA and as outlined in Appendix D.

These analysis assumptions are not applied to Alternative A (the No Action alternative) because the parcels would not be conveyed to the State.

Relevant Past and Ongoing Actions

Past and present uses include grazing and agricultural uses, oil and gas leasing, as well as authorizations for utility lines and roads.

Resource Issue 1 - Cultural Resources

Affected Environment

In accordance with Section 106 responsibilities under the National Historic Preservation Act of 1966, as amended (NHPA), Class III intensive cultural resource inventories were conducted on

all of the lands included in this EA (Kuntz Field Research Archaeology 2015, Western Cultural, Inc. 2016a, 2016b, 2016c, and Melton 2017). As a result, 11 historic era sites associated with mining, ranching, homesteading, and railroading, and 14 sites related to Native American activities and occupation were identified on the lands included in this EA. Five of these properties are recommended as eligible to the National Register of Historic Places, and eight are undetermined, and thus are treated as eligible. Regardless of the State of Montana’s management under State law or policy, conveyance of lands containing eligible properties out of federal ownership must be considered an adverse effect as provided in 36 CFR 800.5(vii) unless adequate and enforceable conditions ensure the long-term preservation of the significant aspects of any eligible properties.

Table 2 describes the recorded properties identified across the project area and the potential impact based on the BLM’s eligibility findings determined through consultation with tribal entities and the State Historic Preservation Office (SHPO) (letter dated October 10, 2017) as provided for by the NHPA.

Table 2 - Eligibility and Effect Findings for Recorded Cultural Properties on Lands Considered in the EA

Identified Cultural Resources	Not Eligible	Eligible	Undetermined (treated as Eligible)	Effect Finding if Conveyed out of Federal management
Custer County				
24CR1341 (lithics/windmill)	X	---	---	No Effect.
24CR1342 (lithic scatter)	X	---	---	No Effect.
Prairie County				
24PRDE-3 (lithic scatter)	X	---	---	No Effect.
24PE0605 (railroad)	X (non-contributing element)	---	---	No Effect.
24PE0745 (railroad)	X (non-contributing element)	---	---	No Effect.
24PE755 (lithic scatter)	---	---	X	Adverse Effect.
24PE0756 (single tipi ring)	X	---	---	No Effect.
24PE0754 (historic homestead)	X	---	---	No Effect.
24PE0757(historic debris)	X	---	---	No Effect.
24PE0759 (historic waterspreader)	X	---	---	No Effect.
24PE744 (Lewis and Clark Trail)	---	---	---	Undetermined
Richland County				
24RL0497 (stone alignment)	---	X	---	Adverse Effect.

Identified Cultural Resources	Not Eligible	Eligible	Undetermined (treated as Eligible)	Effect Finding if Conveyed out of Federal management
24RL0627 (cairn and lithics)	---	X	---	Adverse Effect.
24RL0494 (cairn)	---	---	X	Adverse Effect.
24RL498 (rockshelter)	---	---	X	Adverse Effect.
24RL0499 (stone circle)	---	---	X	Adverse Effect.
24RL492 (historic trash)	X	---	---	No Effect.
24RL0496 (lithic scatter)	---	---	X	Adverse Effect.
24RL088 (reclaimed historic coal mine)	X	---	---	No Effect.
24RL0024/26/89 (historic coal mine, reclaimed)	X	---	---	No Effect.
24RL0500 (cairn)	---	---	X	Adverse Effect.
24RL0075 (alignments.cairns/lithics)	---	X	---	Adverse Effect.
24RL0076 (lithic scatter)	---	---	X	Adverse Effect.
24RL0087 (historic coal mine, reclaimed)	X	---	---	No Effect.
24RL493 (cairns)	---	---	X	Adverse Effect.
24RL495 (cairns)	---	X	---	Adverse Effect.

Environmental Impacts - Alternative A (No Action)

No lands considered in this EA would be conveyed to the State under this alternative, and therefore all lands, and cultural resources would continue to be managed under applicable federal law and BLM policy. There would be no effect from this action; however the obligation to the State would remain on the books and would have to be satisfied with other lands to meet the requirements of the Enabling Act.

Environmental Impacts - Alternative B

Using lands in this EA where eligible or undetermined properties exist to satisfy the in lieu obligation would result in an adverse effect due to removing those lands and associated eligible properties from federal management under the provisions of the National Historic Preservation Act (NHPA).

In accordance with Section 106 of the NHPA, impacts would be mitigated through the Programmatic Agreement (PA) to resolve adverse effects to historic properties. (See Appendix E). Under the agreement, the State of Montana would abide by certain management stipulations for historic properties with eligible or undetermined status in order to allow the conveyance to proceed. DNRC would evaluate the undetermined sites as provided for in the PA. This legally binding agreement would avoid, minimize or mitigate adverse impacts to a non-significant level and would ensure long-term preservation of the eligible properties' significance.

Resource Issue 2 - Existing Land Uses other than Grazing

Affected Environment

Land use authorizations, other than those associated with livestock grazing, on the land being analyzed for conveyance to the State in this EA include 3 rights-of-way, and 1 agricultural use permit for irrigated hay. These uses are detailed in Table 3.

Road 152 in Richland County is an existing county road administered by Richland County and will be recognized in any land conveyance.

There are no active mining claims or mineral material authorizations on the land being analyzed for conveyance to the State in this EA. There are a few old and abandoned coal mines located on the Richland parcels that have been reclaimed.

Table 3 - Existing Land Uses Other than Grazing

Authorization Number	County	Type of Authorization	Length or Area of Authorization	Expiration Date of Authorization	Holder of Authorization
MTM 87388	Prairie	Ag Use Permit (irrigated hay)	37.92 acres	12/31/2018	Dennis Teske
MTM 99059	Prairie	Road ROW, 60' wide	5.34 acres	12/31/2039	Prairie County
MTM 054795	Richland	Telephone ROW (underground cable)	1.45 acres	12/31/2041	Nemont Telephone Cooperative, Inc.
MTM 105771	Richland	Fiber Optic ROW (underground cable)	1.45 acres	12/31/2042	Nemont Telephone Cooperative, Inc.

The BLM holds 8 water rights/claims on the lands analyzed in this EA as detailed in Table 4. Seven of the 8 would be transferred to DNRC upon conveyance of the land. BLM would retain 42M 30068785 as the water serves additional lands not selected by the State. After conveyance, the State could request BLM relinquish a portion of the water serving the selected land.

Table 4 - Water Rights Associated with Selected Lands

Reference Number	Source	Purpose	Priority Date	County
42C 79553	Reservoir on Geddes Creek	Stockwater	Feb 1968	Custer
42C 79554	Reservoir on Geddes Creek	Wildlife	Feb 1968	Custer
42M 30068785	Well serving Owl Pipeline	Stockwater	Jan 23, 2014	Prairie
42M 81053	Knuth's Artesian Well	Stockwater	June 30, 1937	Prairie
42M 81054	Knuth's Artesian Well	Wildlife	June 30, 1937	Prairie
42M 81055	Reservoir on Coal Creek	Stockwater	Oct 31, 1971	Prairie
42M 81056	Reservoir on Coal Creek	Wildlife	Oct 31, 1971	Prairie
42M 81057	Reservoir on Coal Creek	Irrigation (see Court Order under 42M 81056)	Oct 31, 1971	Prairie

Environmental Impacts - Alternative A (No Action)

Under Alternative A, none of the lands would be conveyed to the State but would continue to be managed in accordance with the Miles City ARMP.

Rights-of-way would continue under BLM administration and under BLM right-of-way regulations, subject to renewal upon expiration. There would be no change in management of the rights-of-way. Oil and gas leasing would continue in accordance with the Miles City ARMP, and the single permit for irrigated hay would likely remain in place. Rental rates would continue to be calculated according to BLM regulations. Renewals and applications for new authorizations would be processed by the BLM.

Environmental Impacts - Alternative B

Under Alternative B, it is expected the holders of the right-of-ways would request their authorizations that cross the selected lands be converted to perpetual easements prior to conveyance. The conveyance would then be issued subject to this easement. This would eliminate the term of the grants and the need to renew the authorizations. There would be no change in on-the-ground management or impacts to natural or cultural resources since conversion to an easement is administrative in nature.

New requests for lands uses would be addressed by the State through their processes. Upon expiration of any land uses that were not converted to perpetual terms, the State would be responsible for determining whether to allow the use in question to continue, and what terms and conditions would apply, including compensation for use of State-administered land.

All lands conveyed to the State would contain a reservation to the United States of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945). The likelihood of this reserved right being exercised in the foreseeable future is low.

The conveyance would also be taken subject to the current terms of the existing agricultural lease through its expiration (12/31/2018) unless the holder were to relinquish the authorization prior to conveyance, so no impacts to those authorized uses are expected, with the exception of changes to rents (see the Socioeconomic section). Road 152 in Richland County is an existing county road, any conveyance to DNRC would be taken subject to that road.

Resource Issue 3 - Livestock Grazing

Affected Environment

Grazing is authorized on all of the selected lands under review in this EA, which lie within 11 grazing allotments. Grazing allotment information, including the total federal acres and Animal Unit Months (AUMs) associated with entire allotment as well as the acres and AUMs associated with the selected lands are illustrated in Table 5. The 1,402 authorized AUMs associated with the selected lands comprise approximately 32% percent of the 4,366 authorized AUMs in the allotments. One AUM is equivalent to the amount of forage necessary for the sustenance of one cow or its equivalent for a period of one month.

Table 5 - Grazing Allotment Information for Selected Lands in this EA

Allotment Name and Number	County	Total Federal Allotment Acres	Selected Acres	Total Authorized AUMs in Allotment	Authorized AUMs Selected
Humes 00498	Custer	1,144.93	1,144.93	143	143
Pine Creek 00733	Prairie	446*	462.15*	100	100
Dolatta 01307	Prairie	260.80	260.80	66	66
Eaton River AMP 01254	Prairie	11,182	1,781.53	2,343	480
Dugout Cr. Unit 01470	Richland	569	166.67	156	45
Lawson Place 01496	Richland	750	40	188	11
Day Creek 01495	Richland	157	120	43	33
Carlisle 01458	Richland	244	197.91	82	67
Caldwell 01441	Richland	966	117.21	274	121
Hardscrabble Creek 01465	Richland	787	75.41	219	22
McGinnis 01500	Richland	2,670	1,114.07	752	314

*The selected land acreage is calculated based on legal land descriptions established by federal survey and differs from the acreage estimation in the allotment file. All the public land in the Pine Creek allotment would be conveyed.

Range improvements exist on certain selected lands to facilitate livestock use and grazing management. Table 6 outlines general information regarding these improvements.

Range improvements on lands conveyed to the State to satisfy the in lieu entitlement will become property of the State and administered by DNRC. DNRC’s policy for lands acquired by selection is to hold ownership of improvements and enter into maintenance and use agreements with State permittees. Prior to any conveyance to the State, the BLM will determine what, if any compensation is due to cooperators with an interest/ investment in authorized range improvements. See Appendix D for further information.

Table 6 - Range Improvements Associated with Selected Lands in this EA

Range Improvement Name & Number	Allotment	County	Type of Authorization	Investment by Cooperator (Y/N)
Hume Fence (410206)	Humes	Custer	Maintenance Agreement	N
Green Pipeline (414099)	Humes	Custer	Cooperative Agreement	Y

Range Improvement Name & Number	Allotment	County	Type of Authorization	Investment by Cooperator (Y/N)
Dolatta Exchange Fence (2674)	Dolatta	Prairie	Cooperative Agreement	Y
Dolatta Shrub Planting (420160)	Dolatta	Prairie	Cooperative Agreement	Y
Coal Creek Pipeline Extension (12157)	Eaton River AMP	Prairie	Cooperative Agreement	Y
Owl Pipeline (13144)	Eaton River AMP	Prairie	Cooperative Agreement	Y
Coal Creek Waterspreaders (411735)	Eaton River AMP	Prairie	Cooperative Agreement	Y
Coal Creek Diversion (411738)	Eaton River AMP	Prairie	Maintenance Agreement	N
Knuths Art Well 1 (412124)	Eaton River AMP	Prairie	Cooperative Agreement	Y
Coal Creek Mgmt Fence (412679)	Eaton River AMP	Prairie	Maintenance Agreement	Y
Coal Creek Pipeline (419672)	Eaton River AMP	Prairie	Cooperative Agreement	Y
East Fence (2669)	Caldwell	Richland	Cooperative Agreement	Y
Sorby Fence (411309)	Caldwell	Richland	Permit	N
Sorby Fence (411511)	Caldwell	Richland	Permit	N
Day Creek Pipeline (418254)	Carlisle	Richland	Cooperative Agreement	Y
Glasscock Fence (418484)	Hardscrabble Creek	Richland	Permit	N
River View Pipeline (417482)	McGinnis	Richland	Cooperative Agreement	Y

Environmental Impacts - Alternative A (No Action)

No direct, indirect, or cumulative impacts would occur under Alternative A. Livestock grazing would continue as currently managed. Permit renewal processes and AUM rates would continue under current BLM grazing regulations and procedures. Range improvement projects would continue to be managed in accordance with BLM policy and the provisions of authorizing permits and agreements.

Environmental Impacts - Alternative B

Most of the 5,816.63 acres identified in this alternative for potential transfer to the State would continue to be used for livestock grazing. Lands currently under an agricultural permit would continue to be used for agriculture. Any future authorization to change land use of a parcel would be subject to State regulations and the Montana Environmental Policy Act (MEPA).

No direct or indirect effects would be expected upon conveyance of the parcels since the State would offer the existing holders of BLM grazing authorizations the first opportunity to acquire a State grazing permit to continue utilizing the land.

Three entire allotments would be removed from BLM management under this alternative (Humes, Pine Creek and Dolatta). Portions of the remaining 8 allotments would continue to be subject to BLM grazing regulations since they contain other federal land not selected by the State. Authorized use on the remaining BLM permits would be adjusted to reflect the decrease in federal acreage and AUMs within the BLM grazing allotments.

Livestock grazing on conveyed lands would be managed by the State under State regulations. Compensation to permittees for investments in range improvements would eliminate financial impacts resulting from the transfer of the improvements to the State. Maintenance requirements for the existing improvements are not expected to differ substantially under State management.

Resource Issue 4 - Wildlife and Associated Habitats, including Special Status Species

Affected Environment

A biological inventory conducted in the fall of 2016 supplemented existing BLM information, and documented the association of certain species and their habitats with particular lands analyzed in this EA (EMI 2016). No designated critical habitats lie within the proposed action areas. Three species listed as threatened or endangered under the Endangered Species Act have been known or have the potential to occur on or utilize lands in this EA as summarized in Table 7.

Table 7 - Listed Species with Known or with the Potential to Occur by Analysis Area

Common Name of Species	Status*	County	Habitat Characteristics
Northern Long-Eared Bat	ESA T, BLM S	Richland	Cave openings, rock cliffs and crevices
Least Tern	ESA T, BLM SS	Prairie	Sandy, gravelly habitat
Piping Plover	ESA T, BLM SS	Prairie	Lands adjacent to streams/rivers used as migration corridors

*ESA T = Endangered Species Act threatened. BLM S = BLM Sensitive Species. BLM SS = BLM Special Status Species.

None of the analysis areas lie within Priority Habitat Management Areas designated for the Greater Sage-Grouse in the BLM's Miles City ARMP, but 2,887.40 acres of the lands analyzed in this EA are within BLM's designated General Habitat Management Areas, even though high quality habitat for sage-grouse nesting was not observed during inventories. The state of Montana designated their own management areas in their 2014 Greater Sage-Grouse Habitat Conservation Strategy which has small variations from the BLM's designated management areas. All of the lands in Custer and Prairie counties (3,649.41 acres) are in general sage grouse habitat as mapped by the State of Montana.

No special status plants or their habitats are known to occur in the proposed action areas--these lands lie outside of the target plant species range. None of the lands analyzed in this EA contain streams or water bodies hosting fisheries. While some of the lands in Prairie County lie adjacent to the Yellowstone River, the river itself is not part of the selected lands, and thus impacts to fisheries is not expected or discussed further. Table 8 summarizes the sensitive species with potential to occur in the analysis area.

Table 8 - BLM Sensitive Species with Potential to Occur in Analysis Area

Common Name of Species	Custer	Prairie	Richland	Rationale for Potential to Occur
Baird's Sparrow	X	X	X	Abundant grassland habitat
Bald Eagle	---	X	---	Trees for nesting, water near area
Black-tailed Prairie Dog	X	X	---	Colonies observed. None exhibit enough size to host or reintroduce black-footed ferrets.
Brewer's Sparrow	X	X	X	Abundant grassland habitat
Burrowing Owl	X	X	---	Habitat provided by existing prairie dog colonies
Chestnut-collared longspur	X	X	X	Abundant grassland habitat
Dakota Skipper	X	X	X	Abundant open grassland habitat
Ferruginous Hawk	---	---	X	Cliffs for potential nesting
Golden Eagle	---	---	X	Cliffs for potential nesting
Gray Wolf	X	X	X	Abundant grassland habitat
Great Plains Toad	---	---	---	Pond habitat
Greater Sage Grouse	X	X	X*	Abundant shortgrass prairie, but sub-dominant to non-existent sagebrush habitats, resulting in potential breeding habitat, but very low quality nesting habitat.
Loggerhead Shrike	X	X	X	Abundant open grassland habitat
Long-billed Curlew	X	X	X	Abundant grassland habitat
McCown's Longspur	X	X	X	Abundant grassland habitat
Milk Snake	X	X	X	Abundant shortgrass prairie
Mountain Plover	X	X	X	Abundant open grassland habitat
Pallid Bat	---	---	X	Cave openings, rock cliffs, and crevices
Plains Hog-nosed Snake	X	X	X	Abundant shortgrass prairies
Plains Spadefoot	X	X	X	Abundant shortgrass prairies
Sage Thrasher	X	X	X	Abundant grassland habitat
Sagebrush Sparrow	X	X	X	Abundant grassland habitat
Sprague's Pipit	X	X	X	Abundant open grassland habitat
Swift Fox	X	X	X	Abundant grassland habitat
Townsend's big-eared Bat	---	---	X	Cave openings, rock cliffs, and crevices

*None of the selected lands in Richland County lie within BLM designated General Habitat Management Areas.

Across the analysis area, mule deer are the most abundant big game species due to their adaptation to a great variety of habitats, generally preferring sagebrush, grassland, and conifer types. Other big game species most likely to utilize lands included in this analysis, depending upon location and vegetation types, include white-tailed deer and antelope. Wild turkeys, pheasants, and Hungarian partridge are all species that have been introduced to eastern Montana and would be expected to utilize available habitats within all or portions of these lands.

Environmental Impacts - Alternative A (No Action)

No direct, indirect, or cumulative effects associated with this project would occur since none of the lands would convey to the State under this alternative. Lands would not convey to the State of Montana. On-going uses and requests for new permits or leasing activities would be addressed as needed in accordance with the ARMP and subject to environmental review.

Environmental Impacts - Alternative B

Direct impacts to any wildlife habitats or species would not occur since the proposed action is a title conveyance rather than a proposal resulting in disturbance or construction activities. Indirect impacts of the conveyance could result from potential future State of Montana actions which alter habitats hosting BLM sensitive species (see Table 7) or general wildlife species; those impacts would be considered by the State through their review processes.

The transfer of habitat associated with listed species in Prairie and Richland counties is not expected to have any effect on the least tern, piping plover, or the northern long-eared bat since the State of Montana is still subject to provisions of the ESA. Review under the ESA would be required in the event future projects were proposed.

Management of the 4,646.40 acres of the BLM's designated GHMA in accordance with the Governor's Executive Order 12-2015 and the Greater Sage-Grouse Stewardship Act would result in negligible change to the ongoing conservation of the sage-grouse and its habitat. Therefore, conveyance of any of the GHMA lands, or land outside this habitat, would have no direct or indirect adverse impact on conservation of the Greater Sage Grouse, nor would conveyance result in negative cumulative impacts.

Resource Issue 5 – Socioeconomics

Affected Environment

All of the lands analyzed in this EA are currently leased for grazing under the Taylor Grazing Act, at a total stocking rate of 1,394 AUMs. In 2017, the BLM grazing fee was \$1.87/AUM, generating \$2,606.78 in total revenue. Depending on the specific authorization, revenue for grazing federal lands is distributed to various accounts. The total revenue of \$2,606.78 was distributed in the following manner: \$1,303.38 to the BLM's Range Improvement Fund, \$401.82 to the General Fund of the U.S. treasury, \$291.72 to Prairie County directly, and \$609.86 to the State with eventual pass through of this amount to Custer (\$33.43), Prairie (\$3.27) and Richland (\$573.16) counties.

Other than livestock grazing, 3 other land use authorizations occur on the lands in Prairie, and Richland Counties, including 3 right-of-ways and 1 agricultural lease. Conveyance of any of the lands containing these uses would be made subject to these authorizations.

No revenue is generated from the 3 right-of-way authorizations as all holders (counties and a rural utility service cooperative) are exempt from rental payments under current BLM right-of-way regulations. The single agricultural lease in Prairie County generates an annual payment of \$3,336.96 which is distributed between the County, (\$834.24), the General Treasury (\$834.24) and the Range Improvement Fund (\$1,668.48).

Payment In Lieu of Taxes (PILT) is a federal program which offsets losses to county governments for federal lands within their jurisdictions which cannot be assessed a property tax. Payments are computed utilizing two different formulas based on county population, county acreage and other federal payments received. In 2017, Prairie, and Richland County all received PILT payments under the Alternative B formula amounting to \$0.37/acre for their entitlement acres, without reduction, \$158,456 for Prairie County and \$19,999 for Richland County. Custer County payments were calculated using the Alternative A formula, resulting in a payment of \$2.58/acre, for a payment of \$862,044.

Environmental Impacts - Alternative A (No Action)

Grazing receipts would continue to be distributed in accordance with federal law and BLM regulations. Receipts from the single agricultural permit would continue to be collected and deposited. The BLM would consider including these lands in a future lease sale, depending on expressions of interest, but not until the segregation tied to the selection application expires.

The State, the Federal Treasury, and BLM's Range Improvement Fund would continue to benefit from the revenues collected from these activities and land uses.

Counties would continue to receive PILT payments as they have in the past.

Environmental Impacts - Alternative B

Livestock grazing is expected to continue on any conveyed lands and would be managed by the State under State regulations rather than BLM regulations. The base rate charged per AUM by the State is calculated annually using a formula set in state law (§77-6-507(2), MCA). That formula takes the average price per pound of beef cattle in Montana for the previous year, times a multiplier established by the State Land Board. The State rate for 2017 is \$14.01/AUM. Using this rate, the cost of the 1,394 AUMs associated with the lands under review would increase to \$19,529 compared with \$2,606.78 under BLM administration. The dollar increase in grazing fees by allotment would range from \$133.54 for the 11 AUM Lawson Place Allotment to \$5,827.20 for the Humes Allotment with 480 selected AUMs. After conveyance, this cost would fluctuate on a yearly basis as the factors in both the federal and state formulas are adjusted on an annual basis. Deposits to the BLM's Range Improvement Fund would decline since 50% of collected receipts are deposited there, followed by a decline in deposits to the Federal Treasury and distributions to the State and counties. These grazing revenues would be shifted to the state school trust fund for the benefit of Montana's children.

The agricultural permit for irrigated hay would be managed by the State under State regulations rather than by BLM. Rental for State agricultural leases are generally based on a 25% crop share basis rather than a fixed-rate rent per acre basis established under BLM regulations. Rentals based on a crop share basis are more responsive to variations in seasonal growing and market conditions than fixed-rate rentals. As a result, the overall change in lease rental is expected to be minimal.

Based on 2017 PILT calculations, local county PILT payments to local governments would be reduced as follows:

<u>County</u>	<u>Reduction</u>
Custer County	\$ 2,953.92 (0.3% reduction of \$862,044 payment)
Prairie County	\$ 926.66 (0.6% reduction of \$158,456 payment)
Richland County	\$ 801.87 (4% reduction of \$19,999 payment)

These reductions from conveyance of these lands into State ownership will be somewhat offset by the annual State “Entitlement Share Payments” determined by State Department of Revenue formulas. In 2017, Custer County received \$693,224, Prairie County received \$264,288, and Richland County \$883,465. As discussed earlier, State grazing leases will also generate significant annual revenue to the state school trust fund.

Future rental receipts for the 3 right-of-ways would only be paid to the State if the holders did not request conversions of the right-of-way grants. Future lease and royalty payments from oil and gas leasing or production would be assessed in accordance with State regulations and go to the State to benefit the school trust.

Resource Issue 6 - Tribal Treaty Rights and Sovereignty

Affected Environment

Lands in this EA are situated in eastern Montana in the historic homeland of several Northern Plains tribes that ceded lands under a variety of treaties with the federal government. As sovereign nations, the federal government and federally recognized tribes enjoy a government-to-government relationship different from relationships forged between State governments and tribes. Lands managed by non-federal entities are not generally managed in consideration of this federal doctrine or relationship between sovereigns.

Environmental Impacts - Alternative A (No Action)

No direct, indirect, or cumulative effects associated with this project would occur since none of the lands would be conveyed to the State under this alternative. Other lands in the State of Montana would have to be used in order to satisfy the remaining entitlement.

Environmental Impacts - Alternative B

Because treaty rights are recognized on federal land and dependent upon provisions of the specific treaties, conveyance of the 5,816.63 acres from the federal estate has the potential to impact these rights. Engagement of tribes by the State in management decisions related to DNRC Trust lands could lessen this impact by working to accommodate to requests for access and use.

Cumulative Impacts

Cumulative impacts are those resulting when added to other past, present, or reasonable foreseeable actions. The appropriate geographic area for considering the cumulative impacts related to this conveyance action is the county level since the effects are mainly related to social and economic factors rather than resource issues.

Past, and present uses include grazing, agriculture, and oil and gas leasing. Reasonably foreseeable future actions include:

- Continued livestock grazing authorized by the State.
- Continued agricultural leasing by the State.
- Continued right-of-way uses

Cumulative Impacts of the Proposed Action (Alternative A)

No cumulative impacts associated with this project would occur since none of the lands would convey to the State under this alternative.

Cumulative Impacts of the Proposed Action (Alternative B)

The proposed action would result in few direct or indirect impacts, thereby resulting in few or limited cumulative impacts primarily due to the fact that management of the lands, should they be conveyed to the State, they would continue as it has in the past.

List of Preparers

The following BLM personnel participated in the interdisciplinary team process and/or contributed to the preparation of the EA.

Fiona Petersen	Wildlife Biologist, Miles City
Doug Melton	Lead Archaeologist, Miles City
Reyer Rens	Supervisory Rangeland Management Specialist, Miles City
Todd Yeager	Field Manager, Miles City
Beth Klempel	Assistant Field Manager – Nonrenewable Resources, Miles City
Jim Ledger	Realty Specialist, State Office
Kim Prill	Branch Chief, State Office
Renee Johnson	Project Manager/Renewable Energy Lead, State Office
Cyndi Eide	Realty Specialist, State Office

References

- BLM 2015a Record of Decision and Approved Resource Management Plan Amendments for the Rocky Mountain Region, Including the Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming, and the Approved Resource Management Plans for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland. September 2015.
- BLM 2015b Miles City Field Office Approved Resource Management Plan. Attachment 9 from the Record of Decision and Approved Resource Management Plan Amendments for the Rocky Mountain Region, Including the Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming, and the Approved Resource Management Plans for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland. September 2015.
- EMI 2016 Biological Survey Report for the State of Montana Indemnity Project: Richland Prairie, Custer, and Fallon Counties, Montana. November 2016.
- Melton 2017 A Cultural Resources Summary of the State Indemnity Exchange (sic) in the Miles City Field Office, Bureau of Land Management, 2015-2017. BLM Cultural Resources Report MT-020-17-115. September 25, 2017.
- Kuntz Field Research 2016
A Class III Cultural Resource Inventory for Miles City Field Office State Lands Indemnity Exchange Project. November 2016.
- Rocky Mountain Paleo Solutions 2016
Paleontological Survey Report: BLM State of Montana Indemnity Selection, Yellowstone, Prairie, Custer, Fallon, and Richland Counties, Montana. RMPS Report No. MT16YellowstoneWES01R under BLM Permit No. #MTM 107394. November 2016.
- Western Cultural, Inc. 2016a
BLM Indemnity Selection Process, Cultural Resource Inventory, Fallon and Custer Counties, Montana.
- Western Cultural, Inc. 2016b
BLM Indemnity Selection Process, Cultural Resource Inventory, Prairie County, Montana.
- Western Cultural, Inc. 2016c
BLM Indemnity Selection Process, Cultural Resource Inventory, Richland County, Montana

Appendices

Appendix A – Resources/Issues Considered but Dismissed

Determination	Element	Rationale for Determination to Dismiss
NI	Air Quality	Administrative transfer is non-surface disturbing and would have no impact on air quality. Existing uses on the selected parcels is not expected to change.
NP	Areas of Critical Environmental Concern	None of the selected parcels are within an ACEC.
NP	BLM Natural Areas	None of the selected parcels contain a BLM Natural Area.
PI	Cultural Resources	See EA for analysis.
NI	Greenhouse Gas Emissions	Administrative transfer is non-surface disturbing and would have no impact on greenhouse gas emissions. Existing uses on the selected parcels is not expected to change.
NP	Environmental Justice	Less than 50% of potential affected parties are part of a minority population and the minority population in the project area is not greater than the minority population outside the project area.
NP	Farmlands, Prime or Unique	None of the analyzed parcels contain prime or unique farmlands as defined under the Surface Mining Control and Reclamation Act of 1977. Existing uses on the selected parcels is not expected to change.
NP	Fisheries	None of the selected parcels contain fish habitat.
NP	Floodplains	None of the analyzed parcels contain any FEMA mapped floodplains.
NI	Fuels/Fire Management	Administrative transfer is non-surface disturbing and would have no impact on fuels/fire management. Existing management on the selected parcels is not expected to change.
NI	Geology / Mineral Resources / Energy Production	Past O&G leasing has occurred in Richland County. No production has occurred. See EA for analysis. No geothermal, or other leases have been issued under the authority of the Mineral Leasing Act of 1920 (30 U.S.C 181 <i>et seq.</i>). No mining claims are recorded with the BLM on these lands, nor was any evidence of mining activity found on the ground. Existing uses on the selected parcels are not expected to change.
NI	Hydrologic Conditions	Administrative transfer is non-surface disturbing and would have no impact on hydrologic conditions. Existing uses on the selected parcels is not expected to change.
PI	Lands / Access	See EA for analysis.
PI	Livestock Grazing	See EA for analysis.
PI	Migratory Birds	See EA for analysis (Wildlife section).
PI	Native American Religious Concerns	See EA for analysis (Cultural Resources section).
NI	National Historic Trail	The Lewis and Clark NHT corridor (Yellowstone River) is located adjacent to the Prairie County parcels. Administrative transfer would have no impact to the historical route or trail. The State has jurisdiction over the river thus the historic values and setting of the trail would not change.

Determination	Element	Rationale for Determination to Dismiss
NI	Paleontology	A paleontological inventory took place on the selected lands (Rocky Mountain Paleo Solutions 2016). Paleontological localities were identified however they were determined non-significant.
NI	Recreation	Only dispersed recreation occurs on the selected parcels, including the Lewis and Clark SRMA. Administrative transfer is non-surface disturbing and would have no impact on recreation resources or dispersed recreational opportunities. Existing uses on the selected parcels are not anticipated to change.
PI	Socio-Economics	See EA for analysis.
NI	Soils	Administrative transfer is non-surface disturbing and would have no impact on soils. Existing uses on the selected parcels will not change.
PI	Sensitive Animal Species	See EA for analysis (Wildlife section).
PI	T&E, or Candidate Species, Plants and Animals	None of the selected parcels contain listed designated habitats under the ESA. Evidence of use/occurrence of listed species does exist. See EA for analysis (Wildlife section). No listed plants occur on any of the lands analyzed in this EA.
PI	Tribal Treaty Rights and Sovereignty	See EA for analysis.
NI	Vegetation	Administrative transfer is non-surface disturbing and would have no impact on overall vegetative conditions. Existing uses on the selected parcels is not expected to change.
NI	Visual Resources	Administrative transfer is non-surface disturbing and would have no impact on visual resources. Existing uses on the selected parcels is not expected to change.
NP	Wastes, Hazardous or Solid	None of the selected parcels contain any recognized environmental conditions (RECs), hazardous wastes, or solid wastes.
NI	Water Resources / Quality	There are no known water rights on the selected parcels. Administrative transfer is non-surface disturbing and would have no impact on water resources/quality. Existing uses on the selected parcels will not change.
NI	Wetlands / Riparian Zones	Administrative transfer is non-surface disturbing and would have no impact on wetlands or riparian areas. Existing uses on the selected parcels will not change.
NP	Wild & Scenic Rivers	None of the selected parcels are within or adjacent to a designated Wild and Scenic River.
NP	Wilderness/WSAs/ Areas with Wilderness Characteristics	None of the selected parcels are within or adjacent to a wilderness, wilderness study area, or any areas with wilderness characteristics.
PI	Wildlife, except for T&E listed and candidate species	See EA for analysis (Wildlife section).
NP	Wild Horses & Burros	None of the selected parcels are within or adjacent to a wild horse herd management area (HMA).

NP = Not present in the area impacted by the proposed or alternative actions

NI = Present, but not affected to a degree that detailed analysis is required

PI = Present with potential for relevant impact that that needs to be analyzed in detail in the EA

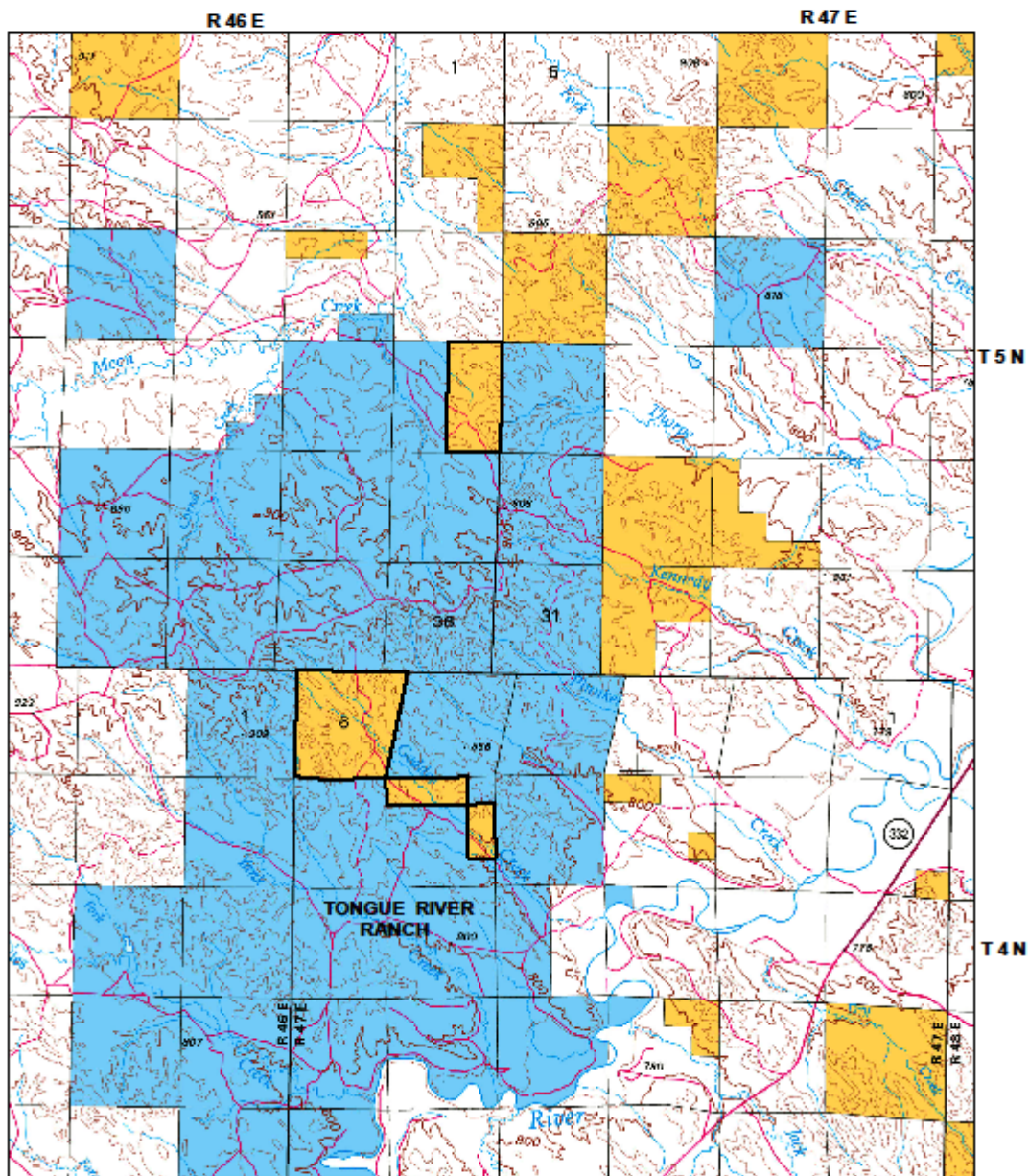
Appendix B - Applicable State and Federal Law

Issue	Law or Regulation MCA=Montana Code Annotated ARM=Administrative Rules of Montana	Description of Requirement
Environmental Review	Montana Environmental Policy Act (MEPA), MCA 75-1-10 ARM 26.2.628 to 663	Requires the state agency involved in the action to, in part, take into consideration the impacts that the proposed action will have on important historic, cultural, and natural resources and, whenever possible, make efforts to preserve those properties. MEPA is not restricted to state lands and requires consideration regardless of land ownership status.
Water	Federal Clean Water Act (CWA)	In 1974, the U.S. Environmental Protection Agency, which oversees the implementation of the CWA, delegated to Montana the authority to enact provisions of the CWA. The Montana Water Quality Act (MCA 75-5-101 et seq.) is the state's primary legislation for fulfilling its responsibilities under the CWA. While the EPA maintains ultimate authority to administer the CWA, it has granted MDEQ, Water Protection Bureau, the primary responsibility for implementing the act in Montana. For projects on trust lands, DNRC works in conjunction with MDEQ, MFWP, and EPA to ensure compliance with the regulations.
Water	Montana Water Pollution Control Act, MCA 75-5-101 et seq.	State's primary legislation for fulfilling its responsibilities under the CWA. MDEQ, Water Protection Bureau, the primary responsibility for implementing the act. For projects on trust lands, DNRC works in conjunction with local agencies, MDEQ, MFWP, and EPA to ensure compliance with the regulations governing waterbodies.
Water	Montana Pesticides Act, MCA 80-8-101	This law provides for the administration of the Federal Fungicide and Rodenticide Act through the MT Dept. of Ag. It is designed to reduce water pollution caused by intrusion of pesticides into surface water and groundwater, and to reduce harm to plant and animal life caused by the misuse of pesticides.


Issue	Law or Regulation MCA=Montana Code Annotated ARM=Administrative Rules of Montana	Description of Requirement
Stream Protection	Montana Stream Protection Act, MCA 87-5-501 through 507, 87-5-509.	MFWP administers the Montana Stream Protection Act (124 permits) for activities that disturb the bed or bank of a stream. ARM 36.11.423 requires an assessment of cumulative watershed effects on projects involving substantial vegetation removal or ground disturbance to ensure the protection of beneficial uses and identify opportunities to mitigate adverse effects.
Special Status Species	Endangered Species Act (16 USC 1531 et seq.)	Protect and recover threatened and endangered plant and animal species.
Special Status Species	T&E plants - ARM 36.11.428; Sensitive plants- ARM 36.11.436.	Both ARM rules direct DNRC to give consideration to T&E and sensitive species during project design, conduct surveys if needed to determine specific locations of plant species of concern populations, and develop mitigation measures designed to avoid or minimize risk to populations.
Sage Grouse	Executive Order 12-2015	Provides for the implementation of Montana's Greater Sage-Grouse Conservation Management Program within the DNRC, clarifies the role of the Montana Sage-Grouse Oversight Team, and identifies considerations required when authorizing new land uses or activities subject to state agency review, and incorporates by reference Executive Order 10-2014.
Sage Grouse	Greater Sage-Grouse Stewardship Act (MCA 76-22-101 thru 118)	Establishes mechanisms to benefit sage grouse habitat and populations on private and public lands that lie within core areas, general habitat, or connectivity areas as defined in the Act. Specifies that fee simple title transfers to the State are to be administered pursuant to Title 77 of the MCA.
Migratory Birds	Migratory Bird Treaty Act and Executive Order 13186	Prohibits illegal hunting, capture, possession, or sale of migratory birds, for the protection of migratory birds.
Wildlife	Montana Nongame and Endangered Species Conservation Act (MCA 87-5-101)	Provides remedies for the protection of the environmental life support system from degradation and provides remedies to prevent

Issue	Law or Regulation MCA=Montana Code Annotated ARM=Administrative Rules of Montana	Description of Requirement
		depletion and degradation of natural resources.
Wildlife	Bald Eagle and Golden Eagle Protection Act (16 USC 668-668d)	Prohibits take of bald or golden eagles.
Cultural Resources	Montana State Antiquities Act (MSAA) (MCA 22-3-401 et seq.) with administrative procedures in ARMs 36.2.801 through 813	Defines the duties and responsibilities of the State Historic Preservation Office (SHPO). Mandates that state agencies, in consultation with the SHPO, develop procedures to be followed for identification of NRHP-eligible cultural (heritage) properties and paleontological (fossilized plant and animal remains which are rare and critical to scientific research) resources when the agency intends to authorize an undertaking on state-owned land.
Cultural Resources	Montana Human Remains and Burial Site Protection Act (MCA 22-3-801 et seq.)	Provides for the protection of human remains and all associated grave goods accidentally discovered from unmarked, or marked but unprotected burial sites.
Noxious Weeds	Montana Noxious Weeds Control Act (MCA 7-22-2101) (MCA 7-22-2151)	Requires DNRC to enter into a written cooperative agreement with district weed boards throughout the state. The agreement must specify mutual responsibilities for noxious weed management on state-owned lands.
Noxious Weeds	Noxious Weeds – ARM 36.25.132	DNRC requires lessees or licensees of state trust land to keep the land free of noxious weeds in compliance with MCA 7-22-21.
Air Quality	Clean Air Act of Montana (75-2-101 to 429)	Purpose is to achieve and maintain levels of air quality that will protect human health and safety and, prevent injury to plant and animal life and property.


Appendix C - Maps

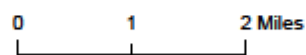


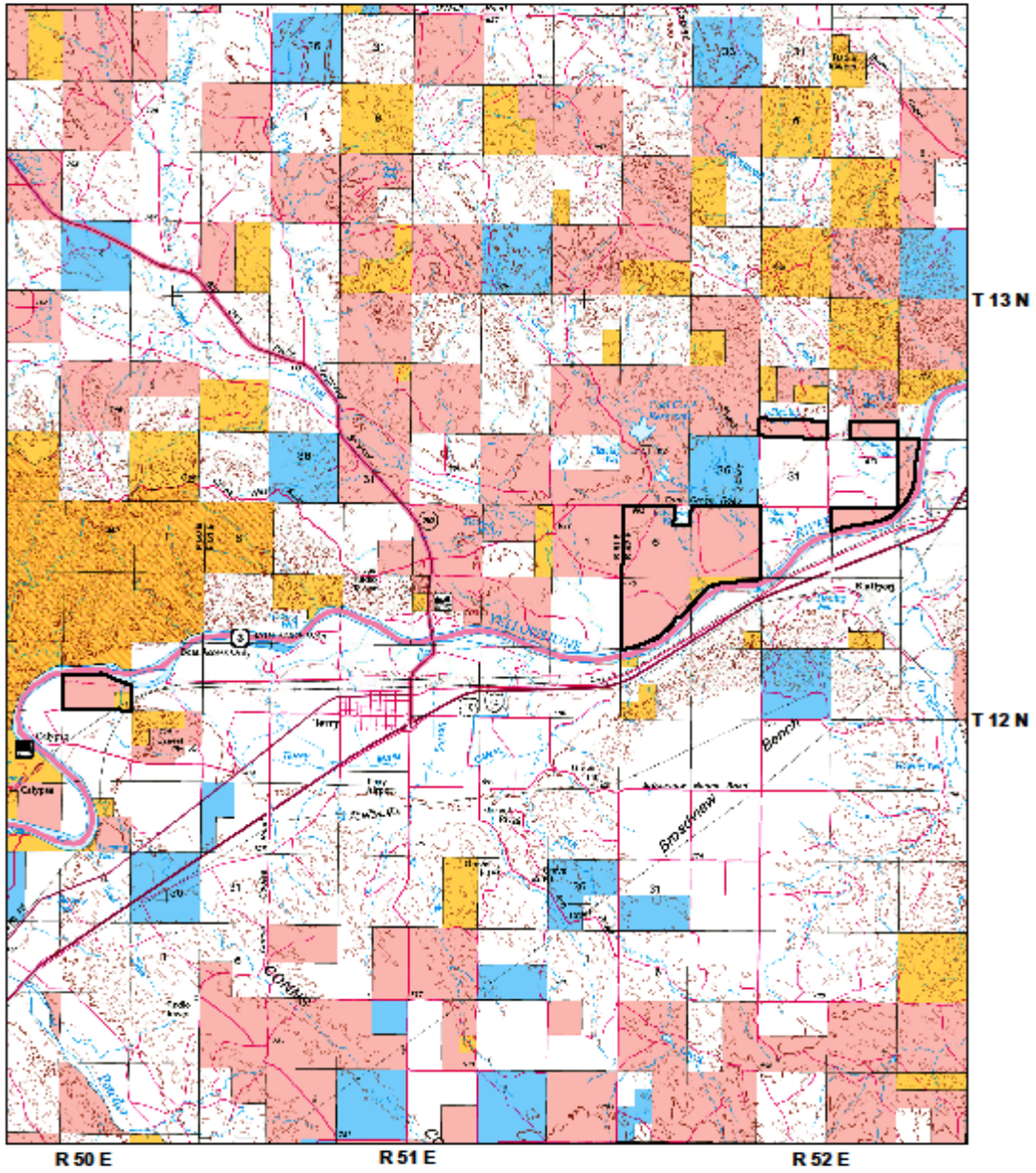
APPENDIX C - Map 1
Custer County Parcels

 Selected Parcels

 BLM

 State, DNRC



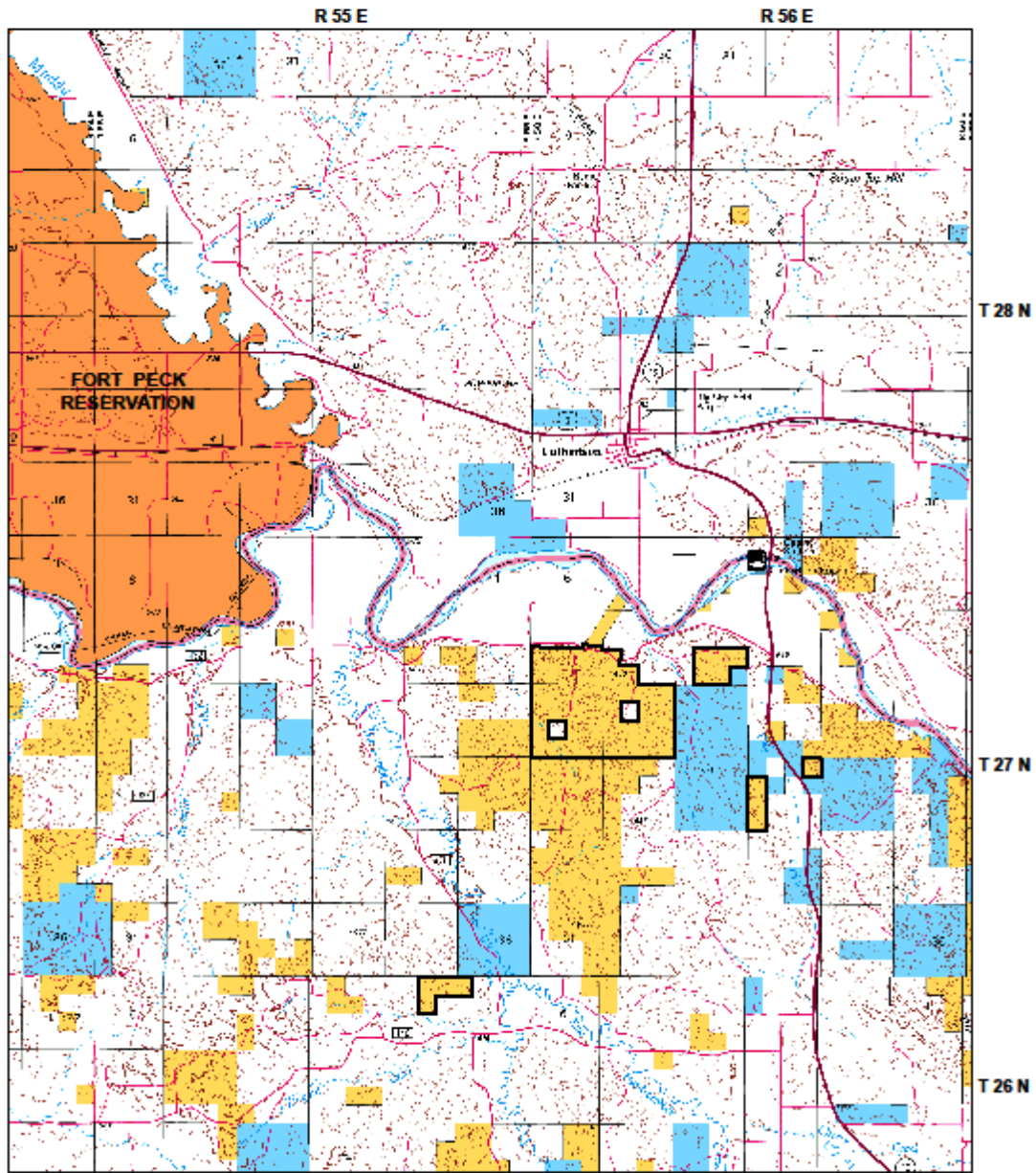


**APPENDIX C - Map 2
Prairie County Parcels**


Selected Parcels




- BLM
- BLM- Bankhead/Jones Lands
- State, DNRC

0 2 4 Miles



**APPENDIX C - Map 3
Richland County Parcels**

 Selected Parcels

-  BLM
-  State, DNRC
-  Fort Peck Reservation

0 2 4 Miles



Appendix D - Compensation of Range Improvements

Fair market value was determined for the grazing permit holder's interest in permitted range improvement projects located on affected parcels of public land. Projects were evaluated on the Humes (#00498), Dolatta (#01307), Eaton River AMP (#01254), Caldwell (#01441), Carlisle (#01458), Hardscrabble Creek (#01465) and McGinnis (#01500) grazing allotments, within the Miles City Field Office.

Permittees of the affected allotments are entitled to reasonable compensation "from the United States" for the adjusted value (replacement cost less depreciation) of an individual's interest in the range improvements within the affected portions of the allotments. Compensation cannot exceed the fair market value of the terminated portion of the individual's interest in the range improvement.

Under Title 43 CFR Sec. 4120.3-6 Removal and Compensation;

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative range improvement agreements to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

The cost approach method estimates depreciated reproduction or replacement costs of improvements. Physical depreciation was determined using an assessment method referred to as the Age-Life method. For this method, the range improvement is first described and units measured (i.e. corral size, miles of fence, etc.) and the current age of a project is determined from information contained in the range project improvement files. Any documented improvements to the project or significant repairs that could affect the age and life of the project were taken into account. Based on this information the expected life was adjusted if appropriate. For example the adjusted age of the improvement is divided by the estimated life (24 yrs. ÷ 40 yrs. expected life = 60%) of the improvement. This yields the depreciation percent, which is subtracted from 100% to give the current percent value of the improvement. The holder's interest in permitted range improvement projects was determined from Cooperative Range Improvement Agreements and Section 4 Permits located in the range improvement files. Below is an example of how the present value of a range improvement project was determined.

Determining the Value of Range Improvement Projects Example

Project #	Name	Units	Replacement Value	Ownership	Depreciation	Present Value
030786	XYZ Reservoir	10,037 cu. yds.	\$70,259	50%	37%	\$22,132

[1] Replacement value × [2] Percent Ownership (0.50) × [3] Current Percent of Depreciation Value (1-0.37 = 0.63) = [4] Present Value.

The remote location of worksites and the corresponding freight and labor expenses were considered during estimate selection. The following estimates were based on 2017 contracted costs and deemed appropriate.

2017 Contracted Costs

WELL DRILLING	\$35.00/ft
LINE FENCE CONSTRUCTION	\$2.00/ft
WATER PIPELINE CONSTRUCTION	\$2.75/ft
EARTH MOVING	\$2.50/cubic yard
LABOR	\$21.00/hour

The expected life of range improvements, as recognized by the BLM, is displayed below (source: NRCS Field Office Technical Guide, MCFO project monitoring data)

Life Expectancy of Range Improvement Projects

IMPROVEMENT	EXPECTED LIFE (YEARS)
Waterspreaders	15
Livestock Pipelines	20
Wells	20
Fences	20
Tree/Shrub Establishment	15

Appendix E - Programmatic Agreement

DRAFT PROGRAMMATIC AGREEMENT

AMONG

**THE BUREAU OF LAND MANAGEMENT,
THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION,
THE MONTANA STATE HISTORIC PRESERVATION OFFICE, THE ADVISORY
COUNCIL ON HISTORIC PRESERVATION, THE CHEYENNE RIVER SIOUX TRIBE,
THE CROW TRIBE, THE CROW CREEK SIOUX TRIBE, THE FORT BELKNAP INDIAN
COMMUNITY, THE FORT PECK TRIBE, THE LOWER BRULE SIOUX TRIBE, THE
MANDAN, HIDATSA, AND ARIKIRA NATION, THE NORTHERN ARAPAHO NATION,
THE NORTHERN CHEYENNE TRIBE, THE OGLALA SIOUX TRIBE, THE ROCKY BOY
RESERVATION, THE ROSEBUD SIOUX TRIBE OF INDIANS, THE SISSETON-
WAHPETON OYATE, THE SPIRIT LAKE SIOUX TRIBE, THE STANDING ROCK SIOUX
TRIBE, THE TURTLE MOUNTAIN BAND OF CHIPPEWA, AND THE YANKTON SIOUX
TRIBE**

REGARDING

**RESOLUTION OF ADVERSE EFFECTS TO HISTORIC PROPERTIES RESULTING
FROM THE STATE OF MONTANA INDEMNITY SELECTION**

WHEREAS, The United States Government is fulfilling its obligation to the State of Montana under the Enabling Act of 1889 which provided for the territories of Montana, North and South Dakota and Washington to form State Governments and granted each state lands for the benefit and support of the common schools, and

WHEREAS, Pursuant to Section 10 of the Enabling Act, sections 16 and 36 of every township were dedicated to the States for the benefit and support of common schools, and in those instances where Sections 16 and 36 were otherwise disposed of or encumbered, the States were allowed to select other surveyed, unreserved, and unappropriated public lands, to complete the entitlement, known as in lieu selections; and

WHEREAS, the Bureau of Land Management (BLM) on behalf of the United States, and the Department of Natural Resources (DNRC) on behalf of the State of Montana, are the agents of the final in lieu selection and have agreed to convert the remaining land entitlement to a roughly equivalent value that stands at \$2,279,747; and

WHEREAS, the DNRC has selected lands located in Custer, Prairie, and Richland counties (See Appendix 1) and administered by the BLM's Miles City Field Office totaling 5,816.63 acres, with the roughly equivalent value of \$2,291,756; and

WHEREAS, Pursuant to 36 CFR 800.4, the BLM conducted Class III Cultural Resource Inventories of the parcels described in Appendix 2 and provided formal reports of the findings to DNRC, the Montana SHPO, and invited signatories to this Programmatic Agreement (PA); and

WHEREAS, the BLM has consulted with the Montana SHPO under Section VIII(F) of the Case by Case Provisions of the 2015 Protocol implementing BLM's National Programmatic Agreement for Cultural Resources with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, BLM has determined that pursuant to 36 CFR 800.5 Prairie and Richland County parcels selected by DNRC contain cultural resources that are undetermined or eligible for listing

on the National Register of Historic Places (Historic Properties) as concurred by the Montana SHPO (See Appendix 2); and

WHEREAS, BLM has consulted with several of the invited signatories to this PA through an on-site tour of selected stone feature sites in Richland County and subsequently through a formal meeting with THPOs representing the Cheyenne River Sioux Tribe, the Crow Tribe, the Crow Creek Sioux Tribe, the Fort Belknap Indian Community, the Fort Peck Tribe, the Mandan, Hidatsa, and Arikara Nation, the Northern Arapaho Nation, the Northern Cheyenne Tribe, the Rocky Boy Reservation, the Rosebud Sioux Tribe of Indians, the Spirit Lake Sioux Tribe, and the Standing Rock Sioux Tribe; and

WHEREAS, the DNRC was present at both the on-site tour and the formal meeting with the THPOs. The DNRC presented its interests in the selected BLM administered lands at those meetings; and

WHEREAS, BLM has afforded the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on the State of Montana Indemnity Selection and the effects to historic properties, and that the BLM has taken into account the potential for future effects to these historic properties; and

WHEREAS, BLM has determined, as concurred by the SHPO, conveying the selected lands to Montana constitutes an adverse effect to historic properties since they would leave Federal management and that future land management actions by DNRC, after the subject parcels are conveyed to the State of Montana, may constitute an Adverse Effect to Historic Properties in Prairie and Richland Counties. Therefore, a PA is necessary pursuant to 36 CFR 800.14(b)(1)(ii) and (iii);

NOW, THEREFORE, the BLM, the Montana SHPO, DNRC, ACHP, and invited signatories to this PA agree that implementation of the stipulations will mitigate the adverse effect to historic properties with eligible or undetermined status as described in Appendix 2 and allow the conveyance of the 5,816.63 acres to the State.

STIPULATIONS

1. Prior to finalizing transfer of lands to the DNRC, BLM will fully record and evaluate an unrecorded prehistoric lithic scatter site in T12N, R52E, Sec. 3 of Prairie County (See Appendix 2). BLM will forward its findings to the Montana SHPO, invited signatories, and the DNRC for comments on eligibility and effect.
2. Prior to finalizing transfer of lands to the DNRC, BLM will conduct a Class II inventory in the parcels in the Tongue River Ranch in Custer County. The purpose of the inventory is to field check 2015 inventory results. BLM will make the results of the inventory available to the DNRC, Montana SHPO, and invited signatories.
3. DNRC shall notify the tribal groups who are invited signatories when it consults with the Montana SHPO under the provisions of A.R.M. 36.2.803 (Appendix 4) and consider tribal responses in their SHPO consultation under the provisions of A.R.M. 36.2.804 and 805 (Appendix 4). This stipulation is limited to the transferred lands listed in Appendix 1.
4. If DNRC proposes an action that is located within 500 feet of an eligible or undetermined site on land conveyed identified in Appendix 2, DNRC will notify and request comments from the signatories and invited signatories. The information to the other parties shall be 1) the nature of the undertaking, 2) what, if any, impacts to the sites are anticipated, and 3) how DNRC proposes to mitigate Adverse Effects. It shall also follow the procedures outlined in the DNRC's administrative rules (A.R.M. 36.2.801-813) that implement the Montana State

Antiquities Act (Title 22, Chapter 3, Part 4 (Appendix 3).

5. If known eligible and undetermined sites in the conveyed tracts identified in Appendix 2 will be impacted, DNRC will follow the procedures in (A.R.M. 36.2.801-813). If avoidance is not feasible, DNRC will prepare a treatment plan. As part of the treatment plan, DNRC shall solicit input from the invited signatories as the nature of the treatment proposed, the appropriateness of the treatment, and if alternative forms of treatment are more agreeable to the signatories.
6. Signatories to this agreement will have 30 working days to respond to DNRC's request for comment.
7. DNRC will use the information provided by the signatories to this agreement as part of its Montana SHPO consultation process under A.R.M. 36.2.801-813 (Appendix 4).
8. Information provided to DNRC from any of the invited signatories will be protected from public disclosure when it contains sensitive information about tribal beliefs and practices and associated locations.
9. If DNRC finds undocumented sites on the conveyed tracts, DNRC will formally record such resources and notify the signatories to this agreement and follow stipulations 3-7 above and the procedures outline in A.R.M. 36.2.807 (See Appendix 4).
10. If human remains are encountered in the course of a DNRC project on the conveyed lands, DNRC will follow the procedures outlined in Montana Human Skeletal Remains and Burial Site Protection Act"(MCA TITLE 22. Chapter 3, Part 8).

AMENDMENT

Any signatory may request an amendment to this PA. Amendments shall be agreed to by all signatories in writing before being executed.

DISPUTE RESOLUTION

Should any party object to the adequacy of any documentation provided, the appropriateness of any finding, proposed treatment, or any other action taken by DNRC under this Agreement, the DNRC shall consult with the objecting party to resolve the objection. If the DNRC or objecting party determine that the objection cannot be resolved, the DNRC will forward all relevant documentation to the Montana Historic Preservation Review Board for a final decision per the mandates at M.C.A. 22-3-424.

Should SHPO and DNRC disagree as to the eligibility of a recorded cultural resource, the SHPO shall request the Montana Historic Preservation Review Board to provide an independent review. The findings of the Montana Historic Preservation Review Board shall be regarded as final for purposes of this agreement.

TERM of AGREEMENT

This Agreement will terminate in 10 years on December 31, 2028. If the signatories and invited signatories agree, the agreement may be extended to a later termination date.

TERMINATION:

Any of the signatories may terminate this Agreement, provided that the party initiating such

INVITED SIGNATORIES:

Cheyenne River Sioux Tribe:

Tribal Chairman Date

Crow Tribe:

Tribal Chairman Date

Crow Creek Sioux Tribe:

Tribal Chairman Date

Fort Belknap Indian Community:

Tribal Chairman Date

Fort Peck Tribe:

Tribal Chairman Date

Lower Brule Sioux Tribe:

Tribal Chairman Date

Mandan, Hidatsa, and Arikara Nation:

Tribal Chairman Date

Standing Rock Sioux Tribe:

Tribal Chairman Date

Turtle Mountain Band of Chippewa Cree

Tribal Chairman Date

Yankton Sioux Tribe:

Tribal Chairman Date

APPENDIX 1
SELECTED LANDS TO BE CONVEYED TO THE STATE OF MONTANA

The lands are located within Custer, Prairie and Richland counties and are described as follows:

Principal Meridian, Montana

T. 5 N., R. 46 E.,

sec. 24, E1/2.

T. 4 N., R. 47 E.,

sec. 6;

sec. 8, NW1/4NE1/4, SE1/4NE1/4, N1/2NW1/4, and NE1/4SE1/4.

T. 12 N., R. 50 E.,

sec. 14; lots 1 thru 4, S1/2SW1/4, and S1/2SE1/4.

T. 12 N., R. 52 E.,

sec. 3, lots 1, 2, and 3;

sec. 5;

sec. 6, lots 2 thru 7, S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4, and SE1/4;

sec. 7, lots 1 thru 7, NW1/4NE1/4, and E1/2NW1/4;

sec. 8, lots 1, 2, and 3.

T. 13 N., R. 52 E.,

sec. 29, E1/2SE1/4SW1/4, E1/2NW1/4SE1/4SW1/4, E1/2SW1/4SE1/4SW1/4, and S1/2SE1/4;

sec. 30, S1/2SW1/4 and S1/2SE1/4;

sec. 33, lots 5, 6, and 7.

T. 26 N., R. 55 E.

sec. 1, lot 4;

sec. 2, lots 1 and 2, and SW1/4NE1/4.

T. 27 N., R. 56 E.,

sec. 7, lots 7 thru 12, SE1/4SW1/4, and S1/2SE1/4;

sec. 8, lot 12 and S1/2SW1/4;

sec. 9, lots 3, 4, and 5, SE1/4SW1/4, and SW1/4SE1/4;

sec. 17, E1/2, N1/2NW1/4, SW1/4NW1/4, and SW1/4;

sec. 18, lots 1 thru 4, NE1/4, E1/2NW1/4, SE1/4SW1/4, and SE1/4; and

sec. 22, NE1/4NE1/4, SW1/4NW1/4, and W1/2SW1/4.

**APPENDIX 2
SELECTED LANDS WITH HISTORIC PROPERTIES TO BE CONVEYED TO THE
STATE OF MONTANA**

COUNTY	LEGAL LOCATION	SITE(S) PRESENT	ELIGIBILITY STATUS
CUSTER	T4N, R47E, Sec.6	None	N/A
	T4N, R47E, Sec. 8	None	N/A
	T4N, R47E, Sec. 8	24CR1341 Historical Windmill and Lithics	Not Eligible
	T5N, R46E, Sec. 24	24CR1342 Lithic Scatter	Not Eligible
PRAIRIE	T13N, R52E, Sec.33	24PE0744 Lewis and Clark NHT	Undetermined
	T12N, R52E, Sec. 3	24PEXXX Lithic Scatter	Undetermined
	T12N, R50E, Sec. 14	24PE605 Milwaukee RR grade	Eligible
		24PE745 Northern Pacific RR Grade	Eligible
		24PE744 Lewis and Clark NHT	Undetermined
	T12N, R52E, Sec. 5	24PE755 Lithic Scatter	Undetermined
		24PE756 Lithic Scatter/Stone Circle	Not Eligible
		24PE744 Lewis and Clark NHT	Undetermined
	T12N, R52E, Sec.6	24PE754 Historical Homestead	Undetermined
		24PE757 Historical Homestead	Undetermined
		24PE759 Historical Waterspreader System	Not Eligible
	T12N, R52E, Sec. 7	24PE744 Lewis and Clark NHT	Undetermined

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COUNTY	LEGAL LOCATION	SITE(S) PRESENT	ELIGIBILITY STATUS
		24PE759 Historical Waterspreader System	Not Eligible
	T12N, R52E Sec. 8	24PE744 Lewis and Clark NHT	Undetermined
RICHLAND	T26N, R55E, Sec. 1	24RL497 Rock Alignment (driveline)	Eligible "D"
	T26N, R55E, Sec. 2	24RL627 Cairns (possible burials)/ lithics	Eligible "D"
	T27N, R56E, Sec. 22	24RL494 Cairn	Undetermined
		24RL498 Rockshelter	Undetermined
	T27N, R56E, Sec. 9	24RL499 Stone Circle	Undetermined
	T27N, R56E, Sec. 8	24RL492 Historical Debris Scatter	Not Eligible
	T27N, R56E, Sec. 18	24RL24/26/89 Hist. Coal Mine	Not Eligible
		24RL88 Hist. Coal Mine	Not Eligible
		24RL496 Lithic Scatter	Undetermined
		24RL500 Rock Cairn	Undetermined
	T27N, R56E, Sec. 17	24RL75 Rock Alignments, Cairns, Possible Stone Circles, Lithics	Undetermined
		24RL76 Lithic Scatter	Undetermined
		24RL87 Jennison-Wicks Coal Mine	Not Eligible
		24RL493 Cairn	Undetermined

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COUNTY	LEGAL LOCATION	SITE(S) PRESENT	ELIGIBILITY STATUS
		24RL495 Large Cairn (Possible Burial)	Eligible "D"
	T27N, R56E, Sec. 7	None	N/A

APPENDIX THREE

RELEVANT PORTIONS OF THE MONTANA STATE ANTIQUITIES ACT

Montana Code Annotated 2017

TITLE 22. LIBRARIES, ARTS, AND ANTIQUITIES

CHAPTER 3. ANTIQUITIES

Part 4. Antiquities

22-3-421. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Affected property owner" means a person or entity whose real property will be physically affected by the activity of an applicant or whose real property is proposed for incorporation into a historic district proposed as eligible for listing in the National Register of Historic Places.

(2) "Antiquities permit" means the permit granted for excavation, removal, or restoration of heritage properties or paleontological remains provided for in **22-3-432**.

(3) "Applicant" means a person who applies to a governmental entity, including a federal, state, or local governmental entity, for a permit, license, or lease on property owned by the governmental entity.

(4) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(5) "Historic preservation office" means the office within the Montana historical society provided for in **2-15-1512**.

(6) "Historic preservation officer" means the officer provided for in **2-15-1512**.

(7) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(8) "Preservation review board" means the board provided for in **2-15-1512**.

(9) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(10) "Registered property" means any heritage property listed in the register.

(11) "State agency" means any executive agency of the state of Montana

22-3-424. Duties of state agencies. State agencies, including the Montana university system, shall:

(1) in consultation with the historical society adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under **22-3-423**;

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(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decision making;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains; and

(4) pursuant to **22-3-422(6)**, provide to the preservation review board on the first Tuesday in February of every even-numbered year the following information:

(a) a list of the heritage properties managed by the agencies as those properties have been identified pursuant to this section;

(b) the status and condition of each heritage property;

(c) the stewardship efforts in which the agencies have engaged to maintain each heritage property and the cost of those activities;

(d) a prioritized list of the maintenance needs for the properties; and

(e) a record of the agencies' compliance with subsections (1) and (2).

22-3-430. Avoidance and mitigation of impacts. (1) Avoidance of impacts to heritage property or paleontological remains is preferred. Avoidance may not be construed to constitute neglect of the property or anticipatory demolition.

(2) If it is not feasible to avoid impacts to heritage property or paleontological remains, a mitigation plan must be developed by the agency, in consultation with the applicant, to minimize adverse effects to the property or remains. Mitigation must be directed at the characteristics of the property that make it eligible for listing in the register. If requested by the agency, the historic preservation officer shall identify suggested mitigation actions in writing at the time that the historic preservation officer submits a proposed finding under **22-3-429**.

22-3-433. Environmental review process. (1) Each state agency responsible for the preparation of an environmental impact statement in accordance with the Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain the comments of the historic preservation officer concerning the identification and location of heritage properties and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action. However, where the grant of an interest in state land requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, the environmental impact statement shall be limited to an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the affected state land.

(2) When heritage properties and paleontological remains are located and identified as described in subsection (1), the responsible state agency, in consultation with the historic preservation officer and the preservation review board, shall include as part of its environmental impact statement a plan for the avoidance or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable. Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with the historic preservation officer and the preservation review board.

APPENDIX FOUR
ADMINISTRATIVE RULES OF MONTANA



TITLE 36
NATURAL RESOURCES AND
CONSERVATION

*Compiled and Published
Under Authority of Law
by*

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DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
PROCEDURAL RULES
36.2.802

Sub-Chapter 8

Antiquities on State Lands

36.2.801 POLICY STATEMENT (1) The purpose of this sub-chapter is to implement Title 22, chapter 3, part 4, MCA, the Montana Antiquities Act, through the establishment of administrative procedures. The department shall conform to the following rules in the systematic consideration of antiquities on state lands prior to reaching a final decision on action requiring compliance with the Montana Antiquities Act. These rules are not intended to require absolute protection of all antiquities but are meant to avoid or mitigate damage to antiquities when feasible. (History: 22-3-424, MCA; IMP, 22-3-424, MCA; NEW, 1986 MAR p. 953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 7 71.)

36.2.802 DEFINITION OF TERMS As used in this sub-chapter, unless the context clearly indicates otherwise, the additional definitions apply:

- (1) "Antiquities" means heritage properties or paleontological remains.
- (2) "Department" means the Montana department of natural resources and conservation.
- (3) "Effect" means a change in the integrity of location, design, materials, workmanship, feeling or association of an antiquity that contributes to its significance. The term includes isolation from or alteration of the surrounding environment, neglect of the property resulting in its deterioration or destruction, transfer or sale without adequate conditions or restrictions regarding preservation, maintenance or use, and destruction or alteration, either partial or total. For heritage properties only, the term includes introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting.
- (4) "Emergency actions" include, but are not limited to:
 - (a) projects to repair or restore property or facilities damaged or destroyed as a result of a disaster when a disaster has been declared by the governor or other appropriate government entity;
 - (b) repairs to public service facilities immediately necessary to maintain service; or
 - (c) projects, whether public or private, undertaken to prevent or mitigate immediate threats to public health safety, welfare, or the environment.
- (5) "Department action" means the department's decision to deny or approve an application for an easement, lease, or other certificate necessary for conducting activity upon or beneath the surface of state lands or under water on state lands if the approved activity will or might have an effect on 'antiquities or the department decision to proceed with an action that will or might have an effect on antiquities. "Department action" does not include decisions regarding a state mineral estate where the surface estate is not in state ownership.
- (6) "Known antiquities" means antiquities on record with SHPO, the department, or the Montana statewide archeology files.
- (7) "Heritage property" means any district, site, building, structure or object located upon or beneath the earth

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or under water that is significant in American history, architecture, archaeology or culture.

(8) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(9) "SHPO" means the historic preservation office provided for in 2-15-1512,MCA.

(10) "Significant" as used in (7) above, means the quality in American history, architecture, archeology, or culture that is present in districts, sites, structures, or objects of state and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

(a) that are associated with events that have made a significant contribution to the broad patterns of our history;

(b) that are associated with the lives of persons significant in our past;

(c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history. (History: 22-3-424,MCA; IME, 22-3-421, MCA; NEW. 1986 MAR p. 953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 771.)

36.2.803 INITIAL CONSULTATION (1) The department shall consult with SHPO early in any decision making process leading to a department action. The department's initial request to SHPO for consultation shall include the following information:

(a) a description of the proposed department action;

(b) a legal description of the state lands affected by the proposed action;

(c) a description of the previous use and classification of the lands;

(d) physical characteristics of the proposed action area, including slope, vegetation, availability of game, and proximity of water, if known, and a topographic map, if available; known antiquities and districts, sites, structures, and objects that the department determines may be antiquities on the affected state lands;

(e)The effect on known antiquities and districts, sites, structures, and objects listed pursuant to (1)(e) above; and

(f)proposed mitigation or evaluation measures to be taken by the department, if any, prior to or following the approval of the action.

(2) If the proposed action involves changes to, or removal of an existing structure, or feature, the department shall also provide the following to SHPO:

(a) photographs of the structure or feature; and

(b) information, including dates, on construction, construction materials and their origin, dimensions, previous use, alterations, integrity of setting, and physical integrity of the structure, if available.

(3) In the initial consultation, the department shall request SHPO to:

(a) determine whether the state lands to be affected by the department action have been adequately surveyed and an adequate record of antiquities and other sites, structures, and objects prepared;

(b) recommend whether a professional survey of the state lands to be affected by the department action should be conducted prior to the proposed action;

(c) determine the relative value of any districts, sites, structures, and objects identified under (1)(e) above; and

(d) review the department's proposed mitigation plan, if any, and recommend appropriate mitigation or

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avoidance actions, if any, necessary to protect known antiquities on state lands, including:

- (i) monitoring of the proposed action;
- (ii) special protective stipulations to the project approval, including data retrieval, recordation, or interpretation;
- (iii) modification of project design to avoid disturbances of known antiquities sites;
- (iv) abandonment of the proposed project; or
- (v) data retrieval and recordation of the antiquity if the effect is unavoidable.

(4) If the department receives no consultation response from SHPO within 10 working days from delivery of its request, the department shall consider SHPO consultation complete and may proceed with consideration of the proposed department action. The department may extend this deadline for large or complex consultation requests. (History: 22-3-424, MCA; IMP. 22-3-424, MCA; NEW. 1986 MAR p. 953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 771.)

36.2.804 DEPARTMENT CONSIDERATION OF SHPO RECOMMENDATION

If SHPO responds to the department's initial consultation request, the department shall consider that response and determine if actions other than those proposed in its initial consultation request pursuant to ARM 36.2.803(1)(g) are appropriate. The determination of whether to implement SHPO's recommendations rests solely with the department. The department shall follow the following procedure:

- (1) If SHPO recommends a professional antiquities survey and:
 - (a) the department accepts that recommendation, the department shall cause a survey to be conducted and conduct a post-survey consultation in accordance with ARM 36.2.805; or
 - (b) the department rejects that recommendation, the department shall notify SHPO of its determination in writing and document therein its reasons and the level of identification and protection of the antiquities that will be required. The department may not proceed with the proposed action until five working days after written notice to SHPO. The department shall afford or require for the antiquities the highest degree of identification and protection feasible within the constraints of time, personnel, budget, and its trust responsibilities.

- (2) If SHPO's response does not include a recommendation for a professional antiquities survey and:
 - (a) the department's determination is to implement all SHPO's recommendations, if any, the department shall notify SHPO of its determination in writing, proceed with the department action, and implement the recommendations; or
 - (b) the department's determination is to not implement all or part of SHPO's recommendations, the department shall notify SHPO of its determination in writing and document therein its reasons and the level of identification and protection of antiquities that will be required. The department shall afford or require for the antiquities the highest degree of identification and protection feasible within the constraints of time, personnel, budget, and its trust responsibilities. The department may not proceed with the proposed action until five working days after delivery of written notice to SHPO. If the department within

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those five working days receives written notice from SHPO that SHPO continues to disagree with the department's decision, the department shall consult with SHPO in person or by telephone. The department shall document the substance of SHPO's comments and the department's response and may then proceed with mitigation measures and the action. (History: 22-3-424, MCA; IMP, 22-3-424, MCA; NEW, 1986 MAR p.953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p.771.)

36.2.805 POST-SURVEY CONSULTATION (1) If the department requires a professional survey, it shall file with the SHPO all survey reports, including maps, photographs and site forms, immediately upon receipt of the final survey report. An analysis of site value must be included in the survey report. The department shall also request a written determination from SHPO of which properties, if any, identified in the survey are antiquities; which antiquities, if any, may be affected by the department action; and comments on the plan of avoidance, mitigation, or documentation.

(2) Unless the department receives comments from SHPO regarding its assessment and proposal for mitigation, avoidance, or documentation within 15 working days of the delivery of the department's assessment and proposal to SHPO, the department may consider the consultation complete and may proceed with its consideration of the proposed action. The department may extend this deadline for those assessments that involve large or complex proposals.

(3) If SHPO responds to the consultation request within the time limits and:

(a) the department's determination is to implement all SHPO's recommendations, if any, the department shall notify SHPO of its determination in writing, implement the recommendations, proceed with the department action; or

(b) the department's determination is to not implement all or part of SHPO's recommendations, the department shall notify SHPO of its determination in writing documenting therein its reasons and the level of identification and protection of antiquities that will be required. The department shall afford or require for the antiquities the highest degree of identification and protection feasible within the constraints of time, personnel, budget, and its trust responsibilities. The department may not proceed with the proposed action until five working days after delivery of written notice to SHPO. If the department receives written notice from SHPO that SHPO continues to disagree with the department's decision, the department shall consult with SHPO in person or by telephone. The department shall document the substance of SHPO's comments and the department's response and may then proceed with mitigation and the action.

(4) The determination of whether to implement SHPO's recommendations rests solely with the department. (History: 22-3-424, MCA; IMP, 22-3-424, MCA; NEW. 1986 MAR p. 953, Eff.5/30/86; TRANS, from DSL, 1996 MAR p. 771.)

Rule 36.2.806 reserved.

36.2.807 DISCOVERY OF ANTIQUITIES AFTER COMMENCEMENT OF PROJECT (1) As is required in part by 22-3-435, MCA, a person who discovers antiquities on state lands administered by the department or who finds that an operation licensed or otherwise entitled by the department may damage antiquities on state lands

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administered by the department shall immediately cease any activity that may affect the antiquities, promptly report the discovery or finding to SHPO and the department, and take all reasonable steps to preserve the antiquities.

(2) If a determination that no antiquities are present was made prior to commencement of a project, but possible antiquities are subsequently discovered during implementation of the agency action, the department shall:

- (a) cause work on the project that could alter the possible antiquities to immediately halt and not resume until the consultation process is completed;
- (b) conduct a preliminary evaluation to determine whether the properties identified are antiquities and, if so, appropriate protection or mitigation measures;
- (c) notify SHPO of the discovery and request concurrence with preliminary evaluations and any mitigation measures proposed.

(3) If the department does not receive a response from SHPO within five working days, the department may consider the consultation complete and may resume the project with whatever mitigation or protective measures it considers appropriate. The department may extend this deadline for these assessments that involve large or complex discoveries.

(4) If SHPO files with the department within five days an assessment identifying antiquities, the department shall follow the procedures for the consideration of antiquities contained in ARM 36.2.804 prior to resumption of the project. (History: 22-3-424, MCA; IMP. 22-3-435, MCA; NEW, 1986 MAR p. 953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 771.)

36.2.808 DEPOSIT OF MATERIALS RELATED TO ANTIQUITIES SITES (1) The department shall deposit with SHPO all inventory reports produced during site or structure identification and evaluation, and other pertinent documents generated during mitigation, unless otherwise agreed by SHPO. These materials include maps, architectural plans, photographs, and inventory site forms. The department shall, when possible, provide for the deposition of cultural and paleontological materials through curation agreements with the Montana historical society, the Montana university system, or another college, university, or museum. (History: 22-3-424, MCA; IMP. 22-3-424, MCA; NEW, 1986 MAR p. 953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 77J.)

Rule 36.2.809 reserved

36.2.810 ANTIQUITIES PERMIT REQUIREMENT (1) As provided in 22-3-432, MCA, no person may excavate, remove, or restore any antiquities on state land administered by the department unless he has secured an antiquities permit from SHPO. (History: 22-3-424, MCA; IME, 22-3-432, MCA; NEW. 1986 MAR p. 953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 771.)

Rule 36.2.811 reserved

36.2.812 PROGRAMMATIC MEMORANDUM OF UNDERSTANDING (1) On a site-specific or project-type basis and with good cause, the department may propose to SHPO - procedures which differ from those outlined above. Alternative procedures agreed to by the department and SHPO may be incorporated into a memorandum of agreement signed by both parties. (History: 22-3-424, MCA; IMP. 22-3-424, MCA; NEW. 1986 MAR p. 953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 771.)

36.2.813 EMERGENCY ACTION (1) The department may take or permit action substantially altering antiquities on state lands that it administers without consultation with the SHPO in an emergency situation. The department shall provide whatever protection and recordation is possible, given the exigencies of the situation. Within five days or as soon thereafter as possible

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following initiation of the action, the department shall notify SHPO of the need for and the results of the action. (History: 22-3-424, MCA; IMP_f 22-3-424, MCA; NEW. 1986 MAR p.953, Eff. 5/30/86; TRANS, from DSL, 1996 MAR p. 771.)

APPENDIX FIVE

SECTION of "MONTANA Human Skeletal Remains and Burial Site Protection Act" MCA TITLE 22, Chapter 3, Part 8.

Discovery -- Reporting Requirements -- Field Review

22-3-805. Discovery -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in **22-3-808**.

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make a determination within 2 working days from the time the person responsible for the excavation notifies the coroner of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, the coroner shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make a determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, the coroner shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or the landowner's representative for a reasonable time extension to complete the review. The field review must include:

- (a) a determination of whether the site can be preserved;
- (b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and
- (c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

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(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

(a) the descendants, if identifiable;

(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity that can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.