

VALLEY COUNTY ABSTRACT
PO BOX 26
GLASGOW MT 59230

BUFFALO COULEE

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this 13th day of November, 2014, by Timothy H. Potter, Timothy H. Potter, Jr., Fred Potter, and Lloyd A. Potter (collectively "Landowner"), whose mailing address is 610 Riverside Drive, Glasgow, Montana 59230, to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department").

I. RECITALS

- A. The people of the State of Montana recognize that certain native plant communities providing important wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire conservation easements by voluntary, cooperative means to conserve wildlife habitat.
- B. The Landowner is the owner of certain real property in Valley County, Montana (the "Land"), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Land consists of three geographically separate parcels, the "Buffalo Coulee Unit," the "Riverside Unit" and the "Mooney Coulee Unit," all as depicted on separate pages of Exhibit B.
- C. The Land possesses significant natural habitat for fish and wildlife, scenic open space, and public recreational opportunities such as hunting and fishing, all of which are collectively termed "Conservation Values" and are valuable to the people of Montana and worthy of perpetual conservation. In particular, the Land possesses a diverse assemblage of native vegetation comprising riparian wildlife habitat along the Milk River and Buffalo Coulee and upland sagebrush grassland habitat in the adjoining foothills.
- D. The Land has a history of ranching and farming generally compatible with its wildlife values, and the Department and Landowner desire to cooperate to continue its dual roles in the landscape as a productive agricultural operation and as habitat for fish and wildlife.

- E. Public hunting is an effective tool of wildlife management, and the opportunity for public hunting is a desirable use of the Land.
- F. The Conservation Values of the Land can be protected by the Landowner granting this Deed of Conservation Easement (the "Easement") to the Department and conveying the rights specified herein, and by the Landowner retaining fee title to the Land with the rights specified herein.
- G. The Landowner and the Department intend that the Conservation Values of the Land be preserved and maintained in perpetuity by this Easement.

II. AGREEMENT

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§76-6-101, *et seq.*, Montana Code Annotated (MCA); the Department's wildlife habitat acquisition authority, §§87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

A. PURPOSES

1. The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Land. The Landowner and the Department intend that this Easement will limit the use of the Land to livestock grazing, crop production, other agricultural uses, fish and wildlife habitat conservation and enhancement, and directly related agricultural and conservation land management activities.
2. A further purpose of this Easement is to provide to the Department, on behalf of the public, the right of reasonable public access to the Land for recreational hunting and fishing, as provided in Paragraph II.C.4.
3. It is also a purpose of this Easement to recognize that the Landowner possesses rights for the continuation of agricultural practices, such as rest-rotation livestock grazing and crop production, that are consistent with the Conservation Values; provided, however, nothing herein shall be construed to impose upon either the Landowner or the Department an affirmative obligation to continue a livestock or agricultural operation on the Land.
4. Pursuant to the terms of §76-6-107, MCA, the Land preserved by this Easement may not be converted or diverted to any uses other than those provided for by this Easement.

B. LANDOWNER'S RIGHTS

Landowner reserves to itself, and to its heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to engage in or permit others to engage in all uses of the Land that are not expressly prohibited or restricted by this Easement and that are not

inconsistent with the purposes of this Easement. Without limiting the generality of the previous statement, and subject to the restrictions on Landowner's activities in this Easement, the rights enumerated below in Paragraphs II.B.1. through II.B.11. are expressly reserved by Landowner. As specified in the paragraphs below, Landowner's exercise of certain of these rights is conditioned upon prior approval by the Department under the procedures provided in Paragraph II.G. of this Easement (hereinafter referred to as "Prior Approval"), and Landowner's exercise of other rights is subject to the requirement of prior notice to the Department provided in Paragraph II.G. (hereinafter referred to as "Prior Notice").

1. Livestock Grazing. The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise and graze livestock; provided that any livestock grazing is consistent with a rest-rotation grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "Standards for Grazing Livestock", more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing, including the terms of Paragraph II.B.2. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used through the years. Any changes in the Management Plan must be adopted through the procedures outlined in Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to a rest-rotation system as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may substitute for cattle with Prior Approval. Additionally, Landowner may raise, pasture and graze six or fewer horses that Landowner maintains for personal use, with such grazing subject to the same requirements and management provisions as apply to cattle under this Easement and the Management Plan.
2. Agricultural Activities and Habitat Management. The right to use the Land and to use equipment on the Land to raise agricultural crops and to manage habitat for wildlife, all in a manner consistent with the following provisions:
 - a. In the areas labeled as "Agricultural Field" in Exhibit B, Landowner may cultivate, farm, harvest, and conduct associated activities for the purpose of producing agricultural crops. Grain harvest will be conducted to retain a minimum stubble height of 12 inches, as allowed by planted crop variety. Agricultural Field areas that produce a crop in a given year may only be cultivated for planting or fallowing after winter with the intent of retaining winter food and cover for wildlife.
 - b.
 - i. The areas in the Mooney Coulee and Riverside Units labeled as "Restored Permanent Cover" in Exhibit B are to be managed in the same manner as the adjoining Habitat Zones, and are subject to the provisions of Paragraph II.B.2.d. below.
 - ii. The areas in the Buffalo Coulee Unit labeled as "Restored Permanent Cover" in Exhibit B are managed to convert from crop land (at the time of the Easement grant)

to range land, and this rangeland is available for livestock grazing under the terms of the Easement and the Management Plan, with one exception. That exception is the approximately 40-acre fenced area of Restored Permanent Cover located in the SE1/4SE1/4 of Section 19, T30N, R37E; this area must remain fenced to exclude livestock, and must be managed for game bird habitat and residual cover, as provided for in the Management Plan,

- c. In the areas labeled as "River Buffer" in Exhibit B, the intent of the Easement is to retain, conserve and enhance natural plant cover, which generally consists of native woody riparian vegetation and accompanying forbs and grasses. However, the Department acknowledges that River Buffer areas may be required by Landowner to serve as annual livestock winter pasture, and has accordingly provided for such uses in the Management Plan. River Buffer areas may not be farmed, plowed or harvested without Prior Approval.
- d. In the two areas each labeled as a "Habitat Zone" in Exhibit B (one consisting of approximately 19 acres in the Riverside Unit and one consisting of approximately 20 acres in the Mooney Coulee Unit), the primary management goal is native habitat conservation and restoration. The grazing of livestock in the Habitat Zones is subject to Prior Approval (which may limit any activity to specific years, specific locations, or specific times of the year) and will only be approved by the Department for purposes of habitat enhancement. Specific habitat enhancement projects and management techniques may be developed cooperatively by FWP and the Landowner, and shall be incorporated into the Management Plan. As the Milk River channel migrates over time and river bottom configurations change, the Riverside and Mooney Coulee Units will retain 19 and 20 acres, respectively, of land designated as Habitat Zone, subject to the provisions described herein.
- e. Areas not labeled in any of the designations provided in above shall be considered as "Rangeland" and may be used for livestock grazing, consistent with the provisions of Paragraph II.B.1.
- f. At the Landowner's request, a representative of the Department will accompany Landowner to verify boundaries of the Agricultural Field, Restored Permanent Cover, River Buffer and Habitat Zone areas. It is not the intent of this Easement to penalize Landowner for activities that result in minor boundary variations from the management boundaries illustrated in Exhibit B or in the Management Plan.
- g. The Land may be leased to another agricultural operator for agricultural purposes, provided that: (i) a written lease must be entered into by the Landowner and the lessee; (ii) the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (iii) a copy of the executed lease must be provided to the Department. The Landowner retains responsibility under this Easement for compliance with the Easement and Management Plan by lessee. Lease of the Land, or of a portion of the Land, are

subject to Prior Notice, so the Department can evaluate and provide input for Landowner and lessee conformance with the Management Plan and grazing system.

- h. Landowner and the Department acknowledge that approximately five acres of the Land, located in the NW1/4 of Section 20, is cultivated and harvested for dry land crop production by a neighboring landowner. The Landowner and the Department accept this agricultural use of these acres as consistent with the terms and provisions of this Easement and the Management Plan. Further, the Landowner and the Department agree that, within two years of the grant of this Easement, this agricultural use must be documented by a lease agreement between Landowner and the neighboring landowner, and that the lease agreement must ensure that this neighboring landowner may not make any use of this portion of the Land, other than this permitted seasonal crop production.
3. Habitat Restoration and Enhancement. The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires Prior Approval.
4. Water Resources and Facilities. The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, domestic use, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, or riparian vegetation is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations and consistent with the Conservation Values.
5. Man-made Structures. Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.B.4):
 - a. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land is prohibited; however, this prohibition does not apply to corrals, fences, windbreaks and other structures necessary to contain livestock, or protect silage storage, or haystacks. With Prior Approval, Landowner may temporarily fence

defined crop areas during the time that they might be susceptible to significant wildlife damage.

- b. The right to maintain, renovate, repair, or replace utilities existing on the Land at the time of the grant of this Easement, including any telephone lines, water lines, and residential or agricultural electricity lines. The construction and installation of any new utility line providing services for uses on the Land requires Prior Notice, and the line must follow a route from existing utility services and/or existing roads that will minimize impact on the Conservation Values. The construction of any new utility line, including new natural gas pipe line or other energy transmission or utility line intended to serve uses outside the Land, requires Prior Approval by the Department.
 - c. In the Mooney Coulee Unit only, the right to construct or place agricultural buildings and structures for agricultural uses, including one shop building, one barn, calving sheds, corrals, storage buildings, and related utility services. Any shop, barn, calving shed or storage building may only be constructed or placed within the area shown in Exhibit B, Mooney Coulee Composite, as "Outbuilding Area." In no case may any building be used as a residence or for any residential purpose.
6. Roads. The right to maintain, repair, and improve roads and trails existing at the time of the grant of this Easement and necessary for generally accepted agricultural management purposes. Any new road requires Prior Approval.
 7. Agricultural Chemicals. The right to use agricultural chemicals for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of noxious weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by Prior Approval. Landowner shall also have the right to use legally authorized pesticides, but only to control pests on cultivated Agricultural Field areas and only in the amount and frequency constituting the minimum necessary to accomplish reasonable control of the targeted pest species. Aerial application or other broadcast methods of herbicide, pesticide, or biological control agents require Prior Approval.
 8. Management of Public Use. The right to regulate public use of the Land at all times; subject, however, to the right of public hunting and fishing access granted to the Department in Paragraph II.C.4.
 9. Oil and Gas Exploration, Extraction, and Development. Subject to Prior Notice, the right to explore for and extract oil and gas in, on, or under the Land, subject, however, to the following conditions:

- a. Landowner may explore for and extract oil and gas only if such activity would not result in significant impairment or interference with the Conservation Values.
- b. Development of oil and gas may only be conducted by subsurface methods (i.e., well drilling) and must be conducted in a manner consistent with site-specific stipulations developed by the Department during the Prior Notice period specified in Paragraph G as necessary to protect the Conservation Values. Under no circumstance may any oil or gas be removed by any surface mining method; it being understood, however, that wells may be drilled and hydrocarbon minerals may be removed at the ground surface, which shall not constitute surface mining as used herein.
- c. No oil and gas exploration, development or extraction activity may take place in a Riparian Area or Habitat Zone shown in Exhibit B, and no oil and gas operation may degrade the quality of any surface water, stream, or ground water. Any waste water resulting from permitted exploration or extraction activities must be piped off of the Land or, subject to Prior Approval, treated so that its quality is substantially equivalent to or cleaner than pre-extraction existing natural water quality where the waste water is discharged, including groundwater, if applicable.
- d. Any incidental surface disturbance resulting from permitted exploration or subsurface extraction activities must be limited, localized, and temporary, and the surface shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting and tending native vegetation until the vegetation is mature, established, and self-perpetuating.
- e. Access for exploration or extraction activities shall be by existing roads; provided, however that, subject to Prior Approval, a new road for this purpose may be constructed if such road is sited and maintained so as to avoid adverse impacts to the Conservation Values. Any new road shall be restored as nearly as practicable to its previous condition after exploration and extraction activities are concluded.
- f. No refinery or secondary production facility may be located on the Land. Any oil and gas developed or produced from the Land must be transported from the Land via pipeline or other method that does not impair the Conservation Values, and the method of and facilities for such transport are subject to Prior Approval. The number and kind of structures used in the exploration for or extraction of oil and gas shall be limited to the minimum necessary to accomplish exploration, development or extraction. Upon the termination of any phase of exploration, development or extraction, all associated structures (that are not necessary for the subsequent phase) shall be removed and those portions of the Land no longer being used for the oil and gas operation shall be restored as nearly as practicable to their previous condition.
- g. For oil and gas and other mineral rights held by a third party, Landowner agrees to notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the

Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

- h. The Landowner must provide Prior Notice to the Department before entering into any lease or other agreement for oil and gas exploration or development on the Land.

10. Subdivision and Conveyance of Land Ownership.

- a. The Land and portions of it may only be divided and conveyed in accordance with the provisions of this Paragraph II.B.10.
- b. For the purposes of this Easement, the Land shall be considered to be comprised of the following three units: the Buffalo Coulee Unit, the Mooney Coulee Unit and the Riverside Unit, all as described in Exhibit A and shown in Exhibit B. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety of that Unit.
- c. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.
- d. The Landowner may sell, grant, donate, bequeath or otherwise convey the Buffalo Coulee Unit in its entirety to another party.
- e. The Landowner may sell, grant, donate, bequeath or otherwise convey the Mooney Coulee Unit in its entirety to another party. .
- f. The Landowner may sell, grant, donate, bequeath or otherwise convey the Riverside Unit in its entirety to another party.
- g. Landowner shall provide the Department with Prior Notice before entering into an agreement that would commit the Landowner to convey the Land or any Unit thereof to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.B.10.

11. Localized Gravel and Dirt Extraction. Landowner may extract gravel and earthen fill from two locations on the Land, the Gravel Pit site shown on Exhibit B (Mooney Coulee Composite) and the Dirt Pit shown on Exhibit B (Riverside Composite). Any material so

extracted may only be used on the Land for purposes consistent with the provisions of this Easement. The total surface area that may be disturbed by such extraction activities may not exceed one acre at each site.

C. DEPARTMENT'S RIGHTS

The rights conveyed to the Department by this Easement are:

1. The right to identify, preserve, and protect in perpetuity the Conservation Values of the Land, including the significant natural fish and wildlife habitat, scenic open space, and public recreational opportunities such as hunting and fishing.
2. The right to enter the Land to monitor Landowner's compliance with the Easement; the right to enforce the restrictions on Landowner's activities and rights under the terms of this Easement; the right to observe, study, and make scientific observations of the Land's wildlife habitat and ecosystems; and the right to establish and maintain vegetation monitoring transects and small livestock enclosures; all upon prior notice to Landowner and in a manner that will not unreasonably interfere with the use of the Land by the Landowner.
3. The right to prevent any activity on or use of the Land that is inconsistent with this Easement and to require the restoration of any areas or features of the Land that may be damaged by inconsistent activity or use by the Landowner, as specified in this Easement.
4. The right, on behalf of the general public, of access by foot for the purpose of recreational hunting and fishing on the Land in accordance with the following terms and conditions:
 - a. The public may hunt all species of game mammals and game birds of all sex and age classes on the Land, in accordance with the applicable hunting regulations adopted by the State of Montana. This public hunting right shall be administered in a manner consistent with all terms of this Paragraph II.C.4.
 - b. When demand exists, Landowner must allow a minimum of 400 hunter days for big game hunting and 350 hunter days for upland and migratory bird hunting. The parties acknowledge that these numbers will provide approximately 750 hunter days of recreation each year. The allowable hunting will be during hunting seasons set by the State of Montana. In addition, when demand exists, Landowner must allow a minimum of 150 angler days of fishing on the Land during the lawful fishing season as set by the State of Montana. (For the purposes of this Easement, one "hunter day" means a single licensed hunter hunting on the Land for any portion of one day, and one "angler day" means a single licensed angler fishing on the Land for any portion of one day.) The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, or immediate family of shareholders, partners, employees, and invited guests of the Landowner do not count towards satisfying the minimum number of hunting days allowed on the Land. The public access for hunting

and fishing must be managed on a non-preferential and nondiscriminatory basis. The Landowner has the right to manage the distribution of hunters and anglers on the Land on account of reasonable concerns of Landowner, including but not limited to Landowner's safety, public safety, and the protection of livestock. In order to fulfill the provision of this section concerning access, and consistent with the terms of this section, Landowner may require the public to obtain written permission to hunt or fish. Further, Landowner may deny access to anyone who is not conducting or in the past has not conducted herself or himself in a prudent, responsible, and safe manner or has trespassed or violated hunting and fishing laws.

- c. For the purposes of hunting and fishing as provided herein, the public may only operate vehicles on public roads and on roads designated as open in the Management Plan. The public may travel by foot onto the Land from these roads and from other publicly accessible areas to hunt throughout the Land for the purposes and in the manner prescribed in this Paragraph II.C.4. The Landowner at its discretion may allow use of other roads by the public from time to time for purposes of game retrieval.
- d. A member of the public who is permitted access to hunt on the Land in the manner prescribed in this Paragraph II.C.4. may also use the Land to access adjoining public or private land that is open to public hunting by that individual on that day.
- e. In the event that ownership of the Land is held by more than one ownership entity, as provided for in Paragraph II.B.10., the Land is nevertheless to be managed under a unified hunter-access system covering all units. Further, the minimum hunter numbers provided in this Paragraph II.C.4. continue to apply to all portions of the Land in the following manner: Any hunter who is permitted to access the Land for any day through the terms of this Easement and consistent with the access management system in operation at that time may, on that day, hunt any or all units of the Land. Such use shall constitute one hunter day.
- f. Except as specifically set forth in this Paragraph II.C.4., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.
- g. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or accepted into any such program.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

Any activity on or use of the Land that is inconsistent with the terms or purposes of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses listed in Paragraphs II.D.1. through II.D.16. are expressly prohibited or restricted. As specified in the paragraphs below, certain activities may be subject to Prior Approval and Prior Notice procedures described in Paragraph II. G. of this Easement.

1. Vegetation Removal. The destruction, removal, control, or manipulation of native vegetation, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without Prior Approval; provided, however, that Landowner does not require Prior Approval to remove trees and other woody vegetation that pose a threat to human safety, permitted operations, travelways and structures.
2. Wetland and Riparian Areas. The draining, filling, dredging, leveling, burning, ditching, diking, or reclamation of any natural or manmade wetland or riparian area are prohibited. However, wetland and riparian areas may be altered, restored, developed or enhanced as a part of a habitat restoration activity, as provided for under Paragraph II.B.3. It is further provided that the restrictions in this paragraph may not impair Landowner's rights specifically authorized under Paragraph II.B.4. to maintain water resources and facilities.
3. Subdivision. The legal or de facto subdivision and conveyance of the Land for any purpose and in any size is prohibited, except as specifically provided for in Paragraph II.B.10. For the purposes of this Easement, a subdivision means a division of land or land so divided that creates one or more parcels, in order that the title to or possession of the parcels may be sold, rented, leased or otherwise conveyed in any manner. The prohibitions of this paragraph do not apply to the lease of agricultural land under Paragraph II.B.2.g.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowner transfer any development or subdivision rights separate from the Land.

4. Water Rights. Landowner will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
5. Agricultural Chemicals. The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.B.7. is prohibited.
6. Roads. The construction of roads in a manner other than as provided for in Paragraph II.B.6. and II.B.9. is prohibited.

7. Land Cultivation. The cultivation or farming of any portion of the Land is prohibited, except as provided in Paragraph II.B.2. and except for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
8. Commercial Recreation. The sale or lease of access to the Land for hunting or fishing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting or fishing on the Land or for access across the Land to reach public land or other private land, is prohibited.
9. Mineral Exploration and Development. Landowner may not engage in, authorize, or contract for any exploration for or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, or similar materials, except as provided for oil and gas exploration and development in Paragraph II.B.10. and except for the limited gravel and dirt excavation provided in Paragraph II.B.11. Any other mineral exploration, development, or extraction is prohibited.
10. Buildings and Structures. The construction or placement of any structure or building on the Land is prohibited, other than as expressly allowed in Paragraphs II.B.4. (water resource development, including irrigation facilities), II.B.5. (utilities and fences), and II.B.10 (oil and gas facilities).
11. Residential Use. Residential use of the Land or any portion thereof is prohibited.
12. Commercial Feedlot. The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire.
13. Shooting Preserve, Wildlife Propagation and Related Activities. The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner has the right to have ranch dogs and household pets on the Land. This prohibition does not apply to common domestic livestock, or to the introduction, transplanted or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplanted or release on the Land.
14. Industrial Use. Unless otherwise authorized herein, any industrial non-agricultural use or activity on the Land is prohibited.
15. Waste Disposal. The dumping or disposal of waste, refuse and debris on the Land is prohibited; provided, however, that the deposit of natural organic material derived from

livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.B.4, are not considered waste disposal.

16. Hazardous Materials. Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided in this Easement. The installation of underground storage tanks is prohibited.

E. MANAGEMENT PLAN

A Management Plan has been developed for grazing and crop land management, wildlife habitat enhancement and restoration, public access and public use management, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by Landowner and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner (hereinafter termed "Successor in Interest"), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

F. EASEMENT BASELINE REPORT

The parties agree that an Easement Baseline Report, will be completed by a natural resource professional familiar with the area, reviewed by the Department and Landowner, and acknowledged by them in writing to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document

any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the improved conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

G. PRIOR NOTICE AND PRIOR APPROVAL

Under the terms of Paragraphs II.B. and II.D., the Landowner must notify the Department before undertaking certain specified activities that are not subject to approval by the Department. This requirement, termed "Prior Notice", informs the Department of the location and type of potential impacts on the Land, affords the Department an opportunity to review the proposed activity, and allows the Department to discuss with the Landowner how the activity will be carried out. Whenever Prior Notice (and not Prior Approval) is required under this Easement, Landowner shall notify the Department in writing not less than 30 days prior to the date the Landowner intends to undertake the activity. The notice shall inform the Department of the nature, location, and purpose of the proposed activity in sufficient detail to enable the Department to make an informed judgment as to consistency of the proposed activity with the requirements of the Easement.

Under the terms of Paragraph II.B. and II.D., the Landowner must obtain advance approval from the Department before undertaking certain specified activities, which approval shall not be unreasonably withheld. This requirement is termed "Prior Approval." Whenever Prior Approval is required, Landowner shall notify the Department in writing, requesting approval for the proposed activity, not less than 60 days before the date the Landowner intends to initiate the activity. The request must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to the consistency of the proposed activity with this Easement. The Department has 60 days from its receipt of the request to review the proposed activity; to determine whether to approve or deny the activity; and to notify the Landowner of its approval or denial. In determining the reasonableness of the withholding of any approval, the Department must determine the significance of the actual or potential impacts of the specified activities on the Conservation Values considering the following criteria: the severity, duration, geographic extent, or frequency of occurrence of the impact of the activities.

A decision by the Department to deny the proposed activity must be based on the Department's determination that the proposed activity is inconsistent with this Easement. If, however, the Department determines that a proposed activity that would otherwise be denied can be modified to be consistent with the Easement, the Department shall inform the Landowner of the manner in which the proposed activity may thereafter be conducted. In such event, the Landowner's activity shall be deemed approved if and only if the Landowner informs the Department of its acceptance of the Department's modifications and subsequently conducts the activity in the manner specified by the Department.

If the Department fails to post or send its response to Landowner's request for Prior Approval within 60 days of its receipt of the request, the proposed activity shall be deemed to be consistent with the terms of this Easement. The Department has no further right to object to the activity

identified by such request.

The Landowner shall be under no liability or obligation for any failure to give Prior Notice for any activity undertaken by Landowner necessitated by virtue of fire, flood, act of God, or other element, or any other emergency; however, after such an event, if there is damage to the Conservation Values protected by this Easement, the Landowner shall notify the Department of the damage as soon as practicable.

Any notice, response, demand, request, consent, approval, denial, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier or personal delivery service with documentation of receipt and the date of delivery. A notice is considered given on the date of its receipt; a response is considered given on the date of its posting by the respondent. Communications should be addressed as follows:

To Landowner: Timothy H. Potter, Sr.
610 Riverside Drive
Glasgow, MT 59230

To Department: Administrator, Wildlife Division
Department of Fish, Wildlife & Parks
P.O. Box 200701
Helena, MT 59620-0701

or to such other address as either party from time to time shall designate by written notice to the other.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that the Landowner has violated the terms of this Easement or that a violation is threatened, or if the Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged.

If the Landowner fails to cure the violation within 30 days after receipt of notice from the Department, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, or fails to continue diligently to cure such violation until finally correct, the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by the terms of this Easement or damage to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Land to the condition that existed prior to the injury.

If the Department, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Land, the Department may pursue its remedies under this paragraph without prior notice but with reasonable notice of the time and place of the application for injunction to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement, and the Landowner agrees that if Department's remedies at law for any violation of the terms of this Easement are inadequate, the Department shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Department may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner shall not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches or prescription.

I. HOLD HARMLESS AND INDEMNITY

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or its agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or its agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and its employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowner or its agents, employees or contractors.

J. EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement be carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the Prior Approval of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is 40 percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party 60 percent of the unencumbered value of the real property and the Department shall be entitled to receive 40 percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

K. ASSIGNMENT

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any

assignment, the Department shall require that the conservation purposes that this Easement is intended to advance continue to be carried out.

L. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, et seq., MCA, or Section 170(h) of the Internal Revenue Code, as amended, and any amendment must be consistent with the purposes of this Easement and may not affect its perpetual duration.

M. RECORDATION

The Department shall record this instrument or an abstract of it in a timely fashion in the official records of Valley County, Montana, and may re-record it at any time as may be required to preserve its rights in this Easement.

N. GENERAL PROVISIONS

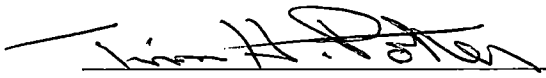
1. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, et seq., MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.
2. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement.
3. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
4. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
5. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.
6. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.

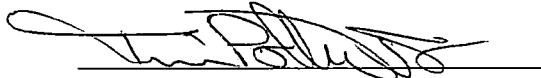
- 7. Headings. The section headings provided in this Easement are for information purposes only.
- 8. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, Landowner and the Department have set their hands on the day and year first above written.

GRANTED BY: LANDOWNER

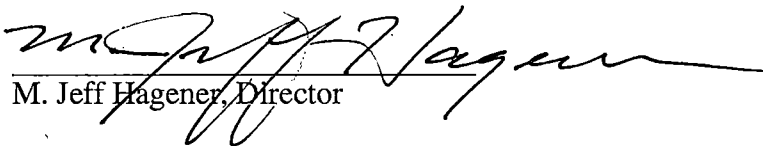








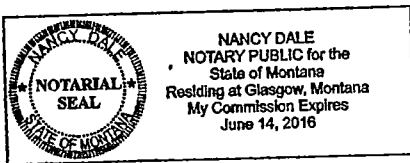
ACCEPTED BY: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS


M. Jeff Hagener, Director

ACKNOWLEDGEMENTS

STATE OF MONTANA)
 : ss.
COUNTY OF VALLEY)

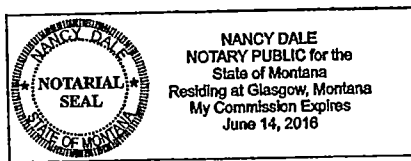
This instrument was acknowledged before me on 11-13, 2014,
by Tim H. Potter.



Nancy Dale
Notary Public for the State of Montana
Printed Name: Nancy Dale
Residing at: Glasgow
My Commission Expires 6/14/2016

STATE OF MONTANA)
 : ss.
COUNTY OF VALLEY)

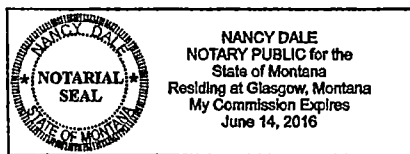
This instrument was acknowledged before me on Nov. 13, 2014, by
Tim H. Potter, Jr.



Nancy Dale
Notary Public for the State of Montana
Printed Name: Nancy Dale
Residing at: Glasgow
My Commission Expires 6/14/2016

STATE OF MONTANA)
 : ss.
COUNTY OF VALLEY)

This instrument was acknowledged before me on Nov. 13, 2014,
by Fred Potter.



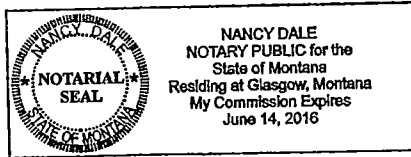
Nancy Dale
Notary Public for the State of Montana
Printed Name: Nancy Dale
Residing at: Glasgow
My Commission Expires 6/14/2016

STATE OF MONTANA)
 : ss.
COUNTY OF VALLEY)

This instrument was acknowledged before me on Nov 13, 2014,
by Lloyd A. Potter

Nancy Dale

Notary Public for the State of Montana
Printed Name: Nancy Dale
Residing at: Glasgow
My Commission Expires 6/14/2016



STATE OF MONTANA)
 : ss.
COUNTY OF LEWIS AND CLARK)

This instrument was acknowledged before me on November 3, 2014, by
M. Jeff Hagener, as Director of the Montana Department of Fish, Wildlife and Parks.

Betty L. Warren

Notary Public for the State of Montana
Printed Name: _____
Residing at _____
My Commission Expires _____

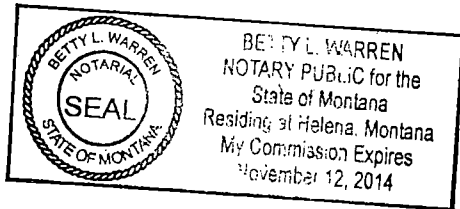


EXHIBIT A – LEGAL DESCRIPTION

(Tract designations taken from title commitment)

BUFFALO COULEE UNIT LEGAL DESCRIPTION**TRACT 1:**Township 30 North, Range 37 East, MPMSection 19: SE¹/₄SE¹/₄

Section 20: Lot 10

Section 29: NE¹/₄, S¹/₂NW¹/₄, NE¹/₄SW¹/₄, NW¹/₄SE¹/₄, S¹/₂S¹/₂, NE¹/₄SE¹/₄, NW¹/₄SW¹/₄Section 30: Lots 1, 2, 3, 4, E¹/₂W¹/₂, E¹/₂Section 32: NE¹/₄NE¹/₄Section 33: NW¹/₄NW¹/₄Township 30 North, Range 36 East, MPMSection 24: SE¹/₄Section 25: NE¹/₄**TRACT 2:**Township 30 North, Range 37 East, MPMSection 20: Lots 6, 8, 9, S¹/₂S¹/₂ of Lot 5, S¹/₂S¹/₂SW¹/₄NE¹/₄, S¹/₂ of Lot 4, NW¹/₄ of Lot 4, NW¹/₄SE¹/₄NW¹/₄, S¹/₂SE¹/₄NW¹/₄, NE¹/₄SW¹/₄, NW¹/₄SE¹/₄**RIVERSIDE UNIT LEGAL DESCRIPTION****TRACT 3 (part):**Township 29 North, Range 38 East, MPMSection 3: Lots 5, 7, SE¹/₄NW¹/₄, NE¹/₄SW¹/₄, S¹/₂SW¹/₄, SE¹/₄

Excepting therefrom a parcel of land located in Lot 5, and more particularly described on Certificate of Survey #119, filed September 11, 1981, as Misc. File No. 21648, Doc. No. 37211.

Section 4: Lots 12 and 13

MOONEY COULEE LEGAL DESCRIPTION**TRACT 3 (part):**Township 29 North, Range 38 East, MPMSection 24: Lot 1, NW¹/₄NE¹/₄, SE¹/₄NE¹/₄, NE¹/₄SE¹/₄Section 24: That part of the SW¹/₄NE¹/₄, NW¹/₄ lying northerly of the County RoadExcepting therefrom a tract of land located in the NW¹/₄NW¹/₄ Section 24 and more particularly described in Warranty Deed to School District No. 14, dated August 8, 1922, recorded September 22, 1922, in book 34 of Deeds on page 470, Doc. No. 154295.Excepting therefrom a tract of land located in the NW¹/₄NW¹/₄NW¹/₄ Section 24 and more particularly described on Certificate of Survey No. 299RB, filed January 20, 1999, as Misc. File No. 23260, Doc. No. 109941.

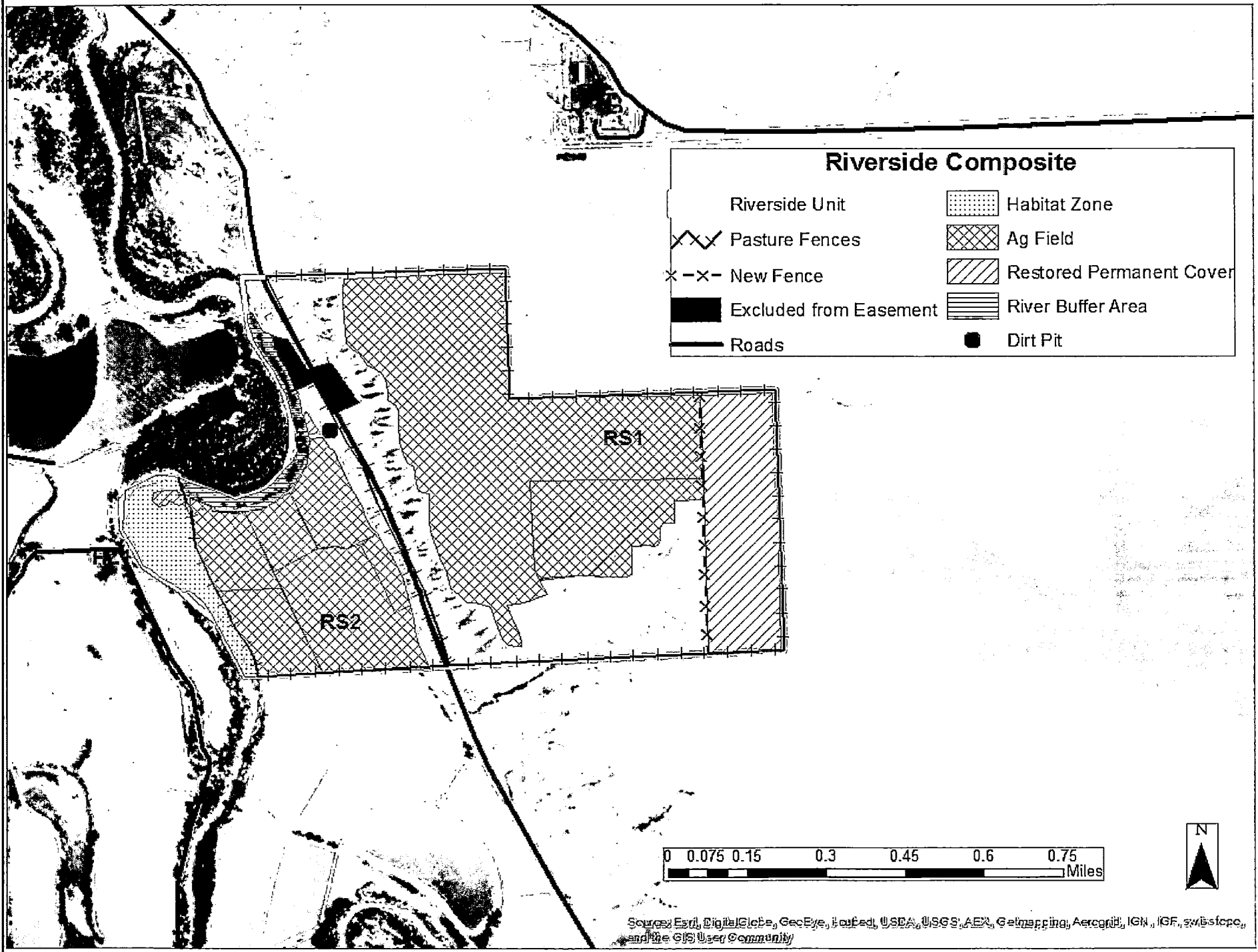
TRACT 4:

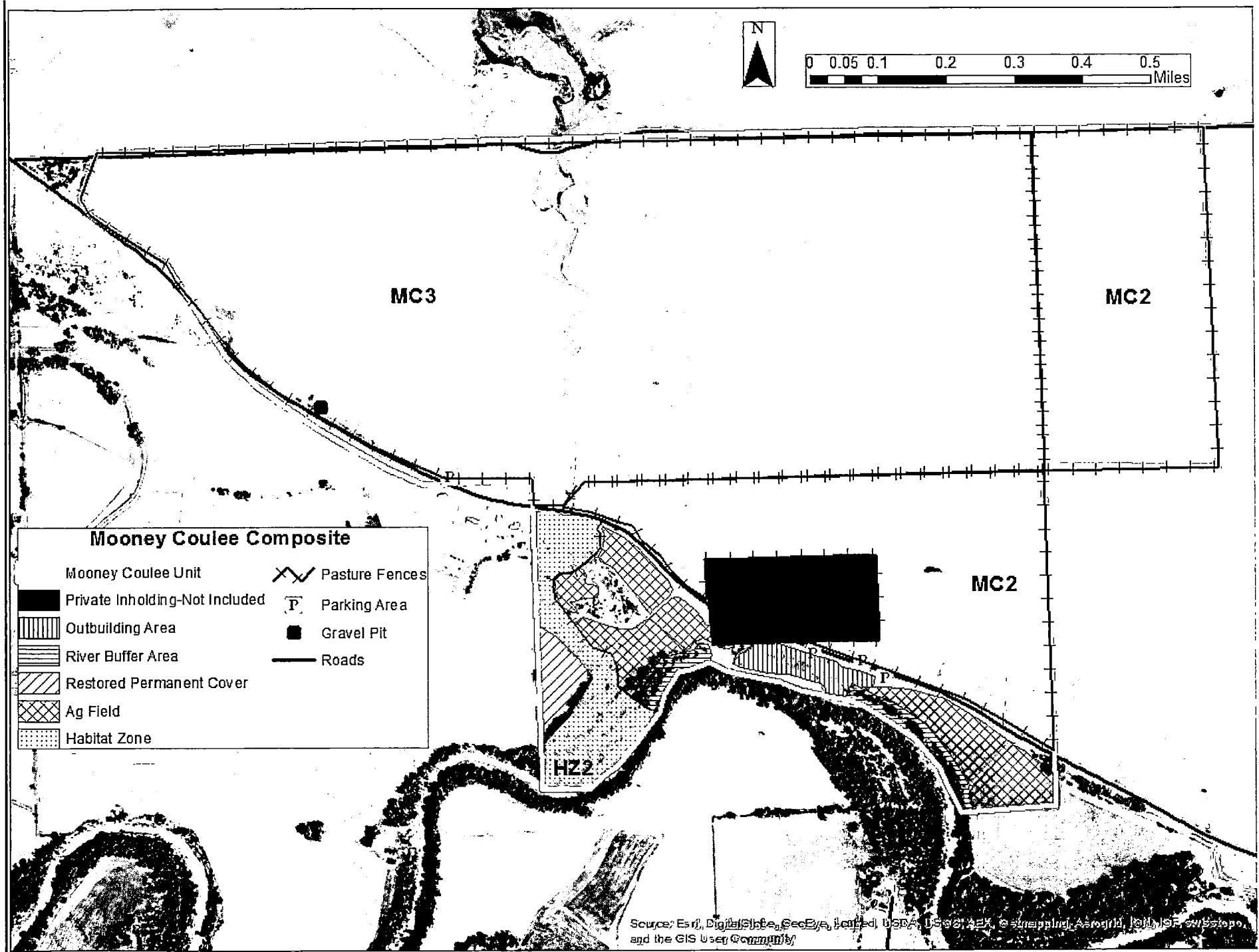
Township 29 North, Range 39 East, MPM

Section 19: Lots 1, 2, 3, 5, NE $\frac{1}{4}$ SW $\frac{1}{4}$

Excepting therefrom the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ as shown on Donaldson Subdivision Plat filed October 27, 2004, as Doc. No. 126619, SP260B.

-- END OF LEGAL DESCRIPTION --





Mooney Coulee Composite

Mooney Coulee Unit	Pasture Fences
Private Inholding-Not Included	Parking Area
Outbuilding Area	Gravel Pit
River Buffer Area	Roads
Restored Permanent Cover	
Ag Field	
Habitat Zone	

Source: Esri, DigitalGlobe, GeoEye, Earthstar (USA), USGS, AeroGRID, IGN, and the GIS User Community

EXHIBIT C

FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP WMAs, wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also, on some areas where wildlife production is the primary objective, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife, and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in the implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of

forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches yet provide flexibility to conserve and protect habitat needs where they are the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

Grazing plan

Prior to grazing livestock the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the management plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects the management plan will be included as an attachment to the grazing lease or contract. On conservation easements the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Standards for Summer/Fall Systems

This standard applies to upland pastures in native plant communities (i.e., generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing allowing native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e., grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any

particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

Table 1. Livestock Grazing Formula using a three-pasture approach as an example.

Grazing Seasons*	Pasture 1	Pasture 2	Pasture 3
Year One	A	B	C
Year Two	B	C	A
Year Three	C	A	B

*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.

A = livestock grazing allowed during the growing season

B = livestock grazing begins after seed-ripe time

C = rest from livestock grazing yearlong

Winter and/or Early Spring Grazing

In some situations, an early grazing treatment (prior to mid-May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two years. Hay, grain, salt, protein, or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in Table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designate for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e., a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

Scope

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

Non-native Pasture

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in Year One then deferred from grazing until near seed-ripe in Year Two (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations it may be necessary to apply the guideline series entitled: *The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances it might be necessary to fence out riparian from the hayfield to protect it from grazing.

Stocking Rate

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

Mineral and Other Supplements

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

Flexibility

Rarely, a severe environmental influence (i.e., fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.