

# **DRAFT ENVIRONMENTAL ASSESSMENT**

**FOR THE**

## **COAL CREEK CONSERVATION EASEMENT**



**SEPTEMBER 2019**



**MONTANA FISH,  
WILDLIFE & PARKS**

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## Chapter 1.0: Purpose of and Need for Action

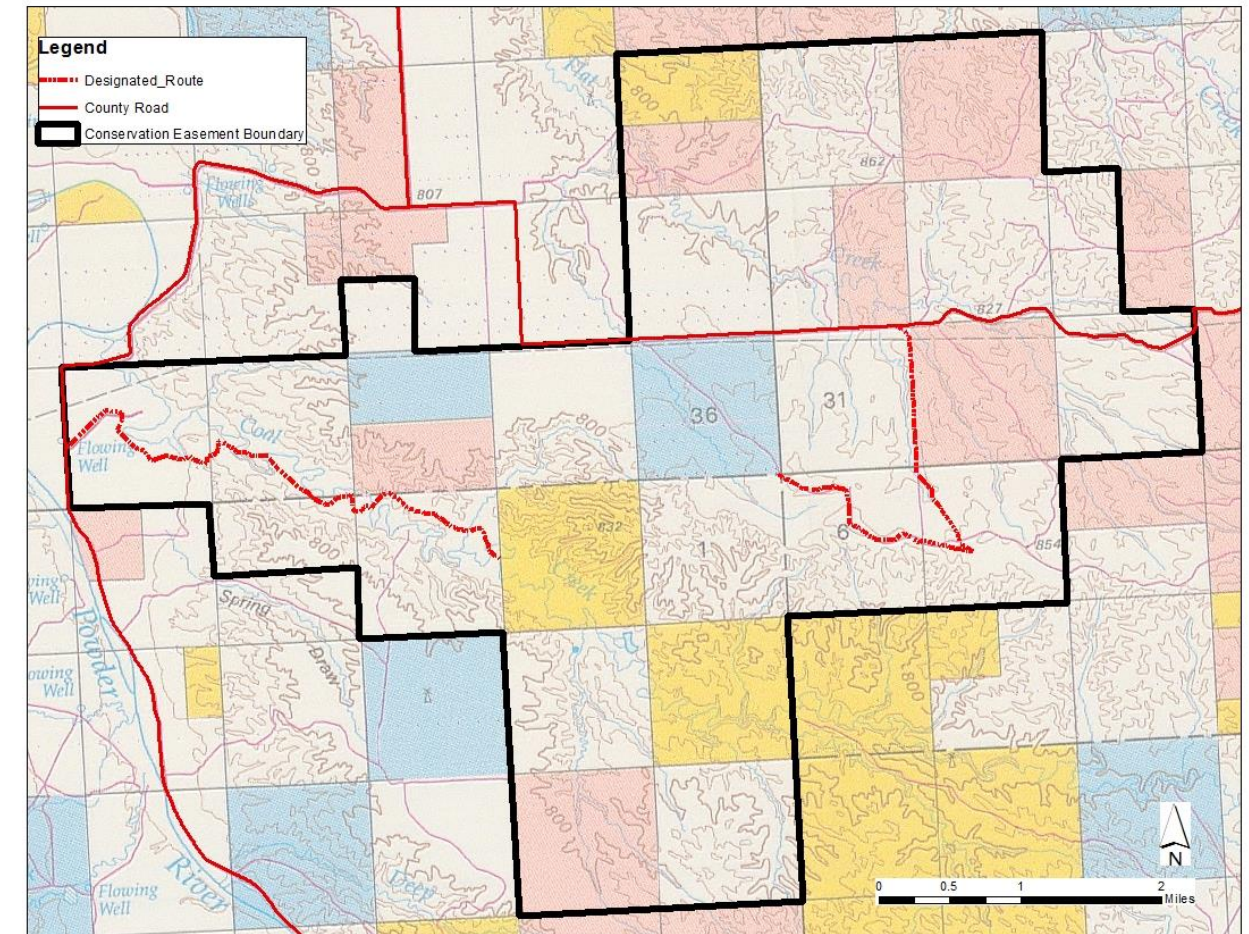
### 1.1 Proposed Action

The Montana Department of Fish, Wildlife and Parks (hereafter, “FWP” or “the Department”) proposes to purchase two separate and distinct but overlapping perpetual conservation easements totaling 10,072.22 acres in Custer and Prairie Counties, Montana. The reason for two separate conservation easements, rather than one single easement, is to take advantage of available funding sources, which have somewhat unique requirements. The first conservation easement, the Coal Creek Agricultural Land Easement, will utilize primarily Natural Resources Conservation Service (NRCS) Agricultural Lands Easements (ALE) funding for 6,591.57 acres. The ALE program does not fit well for areas under tillage agriculture. Therefore, the Coal Creek Agricultural Land Easement does not include cultivated land. The second conservation easement, The Coal Creek (FWP) Conservation Easement, will utilize Habitat Montana dollars to fund the remaining acres, but will encumber the entire property to ensure that the property remains in a single unit in the future. Both conservation easements would be administered by FWP. See Chapter 2, section 2.1 below for further details on anticipated funding sources. The easements can be viewed in their entirety, including maps and legal descriptions of easement land, in Attachment A. The two proposed easements will collectively be referred to as the “Coal Creek Conservation Easement”, “Conservation Easement”, or “Ranch” herein (Figures 1 and 2).



*Figure 1. The proposed Conservation Easement is located in Eastern Montana approximately 12 miles south of Terry, MT.*

Conservation easements are voluntary binding agreements, between a landowner, and in this case, FWP. Through the conservation easement, FWP pays that landowner and, in exchange, the landowner agrees to limit certain uses of the property in order to protect high-priority wildlife habitat and conservation values. The conservation easement deeds are recorded and run with the land in perpetuity. Developing and implementing conservation easements requires an ongoing partnership between FWP and willing private landowners with the primary intent of conserving important native wildlife habitats and providing public access, while keeping the land in private ownership. The proposed Coal Creek Conservation Easement would encompass a diversity of Eastern Montana habitat types, protecting conservation values in perpetuity.



**Figure 2. Boundary of the Coal Creek Conservation Easement and associated public land leases (black outline). While the easement would only encumber deeded land (white), DNRC land (blue) and BLM land (gold) leased by the Landowner are shown to demonstrate the footprint of the project.**

## 1.2 Need for the Action

The proposed Coal Creek Conservation Easement provides excellent year-round habitat for mule deer, with more than 90% of the proposed easement considered mule deer winter range. The proposed Conservation Easement is within sage grouse general range and contains intact Wyoming big sagebrush grasslands that provide nesting and winter cover for sage grouse and habitat for other sagebrush associated species. The proposed Conservation Easement is within designated core bighorn sheep range, although bighorn sheep are not known to frequent the property at this time. White-tailed deer and wild turkeys are abundant in the portion of the proposed Conservation Easement that is nearest to the Powder River. Sharp-tailed grouse are year-round residents. Pronghorn utilize the proposed Conservation Easement seasonally, as does the occasional elk. The proposed Conservation Easement supports numerous non-game species and is within the range of 17 Species of Greatest Conservation Need identified in the 2015 FWP State Wildlife Action Plan.



One of the primary habitat features on the proposed Conservation Easement is the Coal Creek riparian zone, which consists of a large, uninterrupted silver sagebrush (*Artemisia cana*) bottom that traverses the property for roughly 5.5 linear miles. Such bottoms have been largely converted to hay or crop production in eastern Montana, so this represents a unique opportunity to conserve a habitat type that has largely disappeared. Several seeps and springs dot the landscape in the hills and draws leading into Coal Creek. These natural water features create numerous permanent wetlands and large mesic drainages dominated by green ash (*Fraxinus pennsylvanica*), plains cottonwood (*Populus deltoides*) and Rocky Mountain juniper (*Juniperus scopulorum*) overstories, providing for an exceptional level of habitat and biological diversity in otherwise xeric eastern Montana. The southern portion of the property contains large tracts of Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) grasslands and scenic badlands, the northern portion of the property contains large tracts of ponderosa pine (*Pinus ponderosa*) and juniper.

Native rangeland can be at risk of degradation through improper grazing or vegetation treatments that directly impact shrubs, riparian zones, and hardwood draws. The proposed Conservation Easement contains extensive hardwood draws and riparian areas, with some woody recruitment occurring. Implementation of a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (see Attachment A, Draft Deeds of Conservation Easement, Exhibit C in each) would improve recruitment and the long-term sustainability of hardwood draws on the proposed Conservation Easement. These draws provide critical browse, seed and berry production, and cover for a variety of wildlife species. See Attachment B, Management Plan, Chapter 2 for a description of land cover and ecological sites that occur on the proposed Conservation Easement.

Public access in Eastern Montana is at risk by commercial interests on private land or private landowners unwilling to deal with the public. The proposed Conservation Easement represents an opportunity to conserve a large area of high-quality, diverse habitat and provide public access in a landscape dominated by private land. The proposed Conservation Easement is expected to provide a minimum 600 hunter days annually for mule deer, upland game birds, antelope, whitetail, and occasionally elk. The proposed Conservation Easement is easily accessed by county roads and designated routes within the Ranch (Figure 2).

Purchase of this Conservation Easement would result in a large ‘footprint’ of conservation and public access. The property is adjacent to the 25,920-acre Fluss Ranch Conservation Easement and a 12,960-acre block of public land to the south. In total, 41,440 acres would be under conservation easement and 54,400 acres would be open to public hunting access, all in one large block. Collectively, the terrestrial, wetland, and aquatic habitats, recreational opportunities, and agricultural sustainability are referred to as the land’s “conservation values.”

### **1.3 Objectives of the Action**

The objectives of the proposed Coal Creek Conservation Easement are twofold. First, to protect conservation values including open space, rangeland health, habitat quality, and value of the land for wildlife in perpetuity, while simultaneously preserving the agricultural character of the land and supporting the ranching operation. Second, to provide managed public access to the proposed Conservation Easement for hunting and trapping. These objectives are reflected in the Recitals and Agreement of each draft Deed of Conservation Easement (Attachment A) and the Management Plan (Attachment B).

### **1.4 Relevant Authorities**

Montana Fish, Wildlife and Parks has the authority under state law (§ 87-1-201, Montana Code Annotated (MCA)) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. Section 76-6-103 MCA authorizes the acquisition of conservation easements to protect “significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.” Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance with local growth policies. The proposed Deeds of Conservation Easement would be submitted to Custer and Prairie Counties for their review in accordance with this requirement. In 1987, the Montana Legislature passed HB 526 which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee-title acquisition (§ 87-1-241 and 242, MCA). The Habitat Montana Program, developed as a result of this legislation, provides direction for all FWP’s wildlife habitat acquisition programs.

### **1.5 Relevant Plans**

#### 2015 State Wildlife Action Plan (SWAP)

<http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>

The proposed Coal Creek Conservation Easement contains SWAP Tier I riparian/wetland areas associated with Coal Creek and its tributaries, Flat Creek and its tributaries, and a portion of the Lower Powder River Terrestrial Focal Area. The Coal Creek drainage is unique in that a large number of seeps and springs dot the landscape in the hills and draws leading into the creek, creating permanent and semi-permanent wetlands and large mesic, drainages. This is an extremely unique and diverse habitat type in xeric eastern Montana. There is a vast, intact silver sagebrush bottom along Coal Creek. The proposed Conservation Easement also contains Tier I shrub grassland in the southern portion of the property, which is comprised of Wyoming Big Sagebrush grasslands that are contiguous with sagebrush grasslands that exist on adjacent federal (BLM) land to the south. Other Tier I habitat types include conifer-dominated woodlands consisting of juniper and pine that occur mainly on the northern portion of the property, and native grasslands throughout the property.

The proposed Conservation Easement is within the range of an array of SWAP Species of Greatest Conservation Need (SGCN), including: 2 amphibian SGCN (Great plains toad, Northern Leopard Frog), 13 bird SGCN (American White Pelican, Baird's Sparrow, Bobolink, Brewer's Sparrow, Burrowing Owl, Chestnut-collared Longspur, Ferruginous Hawk, Golden Eagle, Greater Sage-Grouse, Loggerhead Shrike, Long-billed Curlew, Sharp-tailed Grouse, and Sprague's Pipit), 1 mammal SGCN (Black-tailed Prairie Dog), and 1 reptile SGCN (Greater Short-horned Lizard).

## **1.6 Decision to be Made**

The decision to be made is whether FWP should move forward with the proposed purchase of the 10,072.22-acre Coal Creek Conservation Easement. Following completion of the draft Environmental Assessment (EA) and public comment period, the FWP Region 7 supervisor will issue a Decision Notice that makes a recommendation to the Fish and Wildlife (FW) Commission on a course of action. This course of action could be either of the Proposed Action or the No Action alternatives, or an action that is within the scope of the analyzed alternatives. As with other FWP conservation projects that involve land interests, the FW Commission would make the final decision. This draft EA and the comments FWP receives are part of the decision-making process.

## **Chapter 2.0: Alternatives Including the Proposed Action**

### **2.1 Alternative A: Proposed Action: Purchase the proposed Coal Creek Conservation Easement.**

The Department would purchase two, partially-overlapping conservation easements totaling 10,072.22-acres using Habitat Montana funding and funds from an NRCS ALE grant for the protection of wildlife habitat. Pending review and approval of the appraisal by FWP and NRCS ALE, the combined value of both conservation easements determined by an independent appraisal is approximately \$3,693,000. The total cost of the Conservation Easement will not exceed \$3,693,000. ALE funding would cover approximately 50% of the total cost and Habitat Montana funds would cover the remainder. Habitat Montana funds are earmarked state funds derived from the sale of Montana hunting licenses. No Montana state tax dollars would be used to fund the Conservation Easement. As earlier described, the purpose of two easements would be to take full advantage of the ALE funding source, while also using Habitat Montana funds to expand the Conservation Easement area to encompass the entire Ranch. In addition to the cost of the Conservation Easement, FWP and the landowner would share the costs (50/50) of grazing infrastructure improvements needed to establish a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (Exhibit C within each draft Deed of Conservation Easement in Attachment A), involving a total estimated cost of \$359,653.45 (FWP cost share not to exceed \$179,826.73; for more detail see Chapter 3.6 in Attachment B). Anticipated monitoring costs of the Conservation Easement by FWP staff is estimated to be between \$1,000-2,000 annually.

Under the terms of the Deeds of Conservation Easement, each party would retain or receive certain rights. The draft Deeds of Conservation Easement are included in Attachment A, and the draft Management Plan is included as Attachment B.

## **2.2 Alternative B: No Action. The Department would not purchase the Coal Creek Conservation Easement.**

For the No Action Alternative, FWP would not purchase the Coal Creek Conservation Easement. The landowner would not be required to protect the conservation values in perpetuity. In the future, the proposed Conservation Easement could be threatened with conversion to tillage agriculture or other risks to the conservation values such as improper grazing management, subdivision, or rangeland treatments intending to enhance forage production while reducing or eliminating native shrubs and forbs. Current and future owners of the Ranch may be unlikely to provide public access.

## **Chapter 3.0: Affected Environment & Predicted Environmental Consequences**

### **3.1 Land Use**

The proposed Conservation Easement is currently a working ranch, and it would remain a working ranch under the Proposed Action alternative. The Ranch includes approximately 2,080.5 acres of land with a tillage history, most of which have been converted back to grass cover and currently used for grazing or haying. Cultivated areas within the section containing the Ranch headquarters will be used to grow hay, crops, or for grazing. Elsewhere on the Ranch, the Landowner will generally be required to maintain a minimum of two-thirds of cultivated land in grass cover at any given time (see Attachment B, Management Plan, Chapter 4 for a complete description of management of cultivated and prior-cultivated areas). One residential area containing two currently-occupied home sites currently exists on the Ranch, the Conservation Easement allows for one more Residential Development area and up to 4 total single-family dwellings to occur on the Ranch. There are also various infrastructure developments including outbuildings, shops, and corrals. A more detailed analysis of land cover can be found in the Management Plan, Attachment B, Chapter 2: Grasslands Component Description.

#### Proposed Action:

The proposed Conservation Easement would protect and conserve wildlife habitat, while providing for the continuation of the traditional ranching operation and providing public access for hunting and trapping in perpetuity. The proposed Conservation Easement would ensure that habitat and ranching resources are maintained. The Conservation Easement (Attachment A) would prohibit destruction of native habitats or other activities that would negatively impact conservation values. The Proposed Action Alternative ensures that the primary use of the proposed Conservation Easement in the future would be cattle ranching. The terms of the



Conservation Easement do require some of the current land management practices to be modified, such as the implementation of a grazing system that adheres to “FWP Minimum Standards for Grazing Livestock” (See Attachment A, draft Deeds of Conservation Easement, Exhibit C in each) as well as provisions for allowing public access. To implement and accommodate the grazing plan, the landowner and FWP would cost-share on new fence construction and other improvements necessary to implement the grazing system.

Where the landowner owns the minerals, the Conservation Easement would prohibit mining. The Conservation Easement could not prevent mineral owners other than the landowner from developing minerals on the Ranch. The potential for oil and gas development on the proposed Conservation Easement is low.

#### No Action:

If the proposed Conservation Easement were not approved, the primary land use on the Ranch would likely still be cattle ranching. However, the Ranch would be at risk of conversion (destruction of native vegetation), subdivision, and degradation of habitat due to improper grazing and other threats. Public access to the Ranch may be limited or precluded.

### **3.2 Habitat and Vegetation**

The proposed Coal Creek Conservation Easement provides excellent year-round habitat for mule deer, with more than 90% of the proposed Conservation Easement considered mule deer winter range. The proposed Conservation Easement is within sage-grouse general range and contains intact Wyoming Big Sagebrush grasslands that provide nesting and winter cover for sage-grouse and habitat for other sagebrush associated species. The proposed Conservation Easement is within designated core bighorn sheep range, although bighorn sheep are not known to frequent the property at this time. White-tailed deer and wild turkeys are abundant in the portion of the Ranch that is nearest to the Powder River. Sharp-tailed grouse are year-round residents. Pronghorn utilize the proposed Conservation Easement seasonally. The proposed Conservation Easement supports numerous non-game species and is within the range of 17 Species of Greatest Conservation Need identified in the 2015 FWP State Wildlife Action Plan.

One of the primary habitat features on the proposed Conservation Easement is the Coal Creek riparian zone, which consists of a large, uninterrupted silver sagebrush (*Artemisia cana*) bottom that traverses the property for roughly 5.5 linear miles. Such bottoms have been largely converted to hay or crop production in eastern Montana, so this represents a unique opportunity to conserve a habitat type that has largely disappeared. Several seeps and springs dot the landscape in the hills and draws leading into Coal Creek. These natural water features create numerous permanent wetlands and large mesic drainages dominated by green ash (*Fraxinus pennsylvanica*), plains cottonwood (*Populus deltoides*) and Rocky Mountain juniper (*Juniperus scopulorum*) overstories, providing for an exceptional level of habitat and biological diversity in otherwise xeric eastern Montana. The southern portion of the property contains large tracts of Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) grasslands and scenic badlands, the northern portion of the property contains large tracts of ponderosa pine (*Pinus ponderosa*) and juniper.

#### Proposed Action:

The proposed Conservation Easement would positively impact vegetation and wildlife habitat. The terms of the proposed Conservation Easement would protect the quantity, quality, and character of the native plant communities. Many shrub species are important to wildlife for cover and forage values. The terms of the Conservation Easement would prevent the removal, control, or manipulation of sagebrush and other woody species, except in very limited and necessary circumstances. The grazing system, as described in Chapter 3 of the Management Plan (Attachment B), would maintain and enhance the vigor and productivity of vegetation through time. Riparian areas and woody draws are expected to be maintained or improved as the rest treatments in the grazing system allow shrubs and trees to rebound and reestablish. Maintaining productive vegetation will benefit both wildlife and the ranching operation. The Department would require a Baseline Inventory Report that documents the existing condition of the Ranch at the time the Conservation Easement is acquired. The report would document wildlife habitat, plant communities, roads, fences, water developments, and other features. Additional vegetation photo points and other monitoring plots would be established and maintained by FWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness. The proposed action would have a positive impact on habitat and vegetation.

#### No Action:

Without protections offered by the terms of the proposed Conservation Easement, the quantity, quality, and character of the native plant communities could decline. Woody draws, in particular, are at risk because grazing regimes that do not include periods of growing season rest can prevent recruitment of woody species. This is problematic for a variety of wildlife that rely on woody species for browse, seed and berry production, and cover. The remainder of the Ranch would be vulnerable to sodbusting or other development or disturbance. Future impacts to native vegetation and overall productivity of plant communities could be considerable and reduced habitat quality would have detrimental impacts to wildlife.

### **3.3 Terrestrial Species**

The proposed Conservation Easement supports the following game species: mule deer, white-tailed deer, pronghorn, elk (occasional), wild turkey, sage-grouse, sharp-tailed grouse, pheasants (in limited portions of the Ranch), hungarian partridge (occasional). It is also within the range of bighorn sheep, although bighorn sheep do not currently tend to use the Ranch. The proposed Conservation Easement also supports a variety of raptors and songbirds, reptiles and amphibians, small mammals, bats, and common species including bobcat, coyote, red fox, badger, raccoon, and skunks. The proposed Conservation Easement is within the range of many SWAP Species of Greatest Conservation Need, listed in section 1.5.

#### Proposed Action:

The proposed Coal Creek Conservation Easement would benefit a variety of wildlife. The terms of the Conservation Easement would serve to protect the land as agricultural and open space and to provide year-round and seasonal habitat for many of Montana's native wildlife species. Conserving native plant communities is important for most of Montana's indigenous wildlife species. Protection from subdivision and conversion to tillage agriculture, and implementation of the grazing system would ensure adequate quantity and quality of forage and cover for a variety of wildlife species. No adverse effects are expected on the diversity or abundance of game species, non-game species or unique, rare, threatened, or endangered species.

Wild game populations fluctuate over time and may periodically exceed FWP management objectives, thus contributing to above-average wildlife use of the Ranch, resulting in game damage problems. Such circumstances on the Ranch would be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts would be provided on an "as needed" basis to the Ranch, upon agreement of both the landowner and FWP.

The proposed action would ensure public hunting access to the Conservation Easement in perpetuity. Hunting on the proposed Conservation Easement would not negatively impact the overall distribution and population of game species in the area. The seasonal harvest of game species is evaluated on an annual basis by FWP biologists. Hunting seasons and quota recommendations are submitted to the Fish and Wildlife Commission during the annual hunting season setting process.

Any new or renovated fencing would follow the guidelines for wildlife friendly fences described in Chapter 6 of the Management Plan (Attachment B) to ensure the fences do not impede wildlife movements (particularly pronghorn and sage-grouse) within and through the designated pastures.

#### No Action:

Without terms to conserve the Ranch as agricultural and open space to provide year-round habitat for many of Montana's native wildlife species, there would be no provisions preventing development for recreational purposes or changes in land use that could be detrimental to wildlife. The selection of the No Action Alternative would allow the landowner to close the Ranch to public hunting, which would result in a lack of public access and would reduce FWP's ability to manage big game numbers.

### **3.4 Fisheries Species and Water Resources**

The proposed Conservation Easement includes portions of Coal Creek and Flat Creek, along with a number of unnamed minor tributaries. Species that may occur in these creeks include: Bigmouth Buffalo, Black Bullhead, Black Crappie, Blue Sucker, Brassy Minnow, Brook Stickleback, Burbot, Channel Catfish, Common Carp, Creek Chub, Fathead Minnow, Flathead Chub, Freshwater Drum, Goldeye, Green Sunfish, Lake Chub, Largemouth Bass, Longnose Dace, Longnose Sucker, Northern Pike, Paddlefish, Plains Minnow, Pumpkinseed, Rainbow Trout, River Carpsucker, Sand Shiner, Sauger, Shorthead Redhorse, Shovelnose Sturgeon, Sturgeon Chub, Smallmouth Bass, Smallmouth Buffalo, Stonecat, Walleye, Western Silvery

Minnow, Western Silvery/Plains Minnow, White Sucker, and Yellow Bullhead. Although the list above includes a number of fish species commonly pursued by anglers, they typically don't occur as far upstream as the Ranch. If they were to utilize those portions of Coal or Flat Creek, it would be during periods of extremely high flow during the spring.

Proposed Action:

Current agricultural uses on the Ranch have been compatible with maintenance of water quality. However, if the proposed Conservation Easement is implemented, positive impacts should be realized in surface and ground water as a result of improvements in soil condition by implementing the grazing system. The grazing system will result in more residual vegetation, which will reduce runoff and soil erosion. The proposed grazing system should improve livestock distribution, range conditions, and riparian vigor throughout the Ranch.

No Action:

Without terms to conserve the Ranch, there would be no provisions to protect fisheries species and water resources. If the Ranch were developed, subdivided, or sold without protections provided by the Conservation Easement, there would be no assurances that riparian areas, fish species, and water resources would be conserved.

### **3.5 Aesthetics and Recreation**

The proposed Coal Creek Conservation Easement has the potential to provide high-quality hunting and trapping experiences for the public. The vast tracts of open space, rangeland, wooded draws, and riparian areas contribute to the aesthetic value of the landscape.

Proposed Action:

Implementing the proposed Conservation Easement would ensure managed public hunting and trapping opportunities are provided on the proposed Conservation Easement in perpetuity. Hunting on the proposed Conservation Easement is currently leased to an outfitter. Therefore, the proposed Conservation Easement would drastically increase the level of public recreation on the Ranch, as the landowner would be required to provide a minimum 600 hunter days annually. The proposed Conservation Easement is located within FWP Region 7, Deer/Elk/Antelope Hunting District 704. Hunting would be allowed on the Conservation Easement consistent with all Fish and Wildlife Commission-established regulations and dates/seasons. The landowner would retain the ability to manage the distribution and numbers of the hunters on the proposed Conservation Easement. The public may be required to sign in or otherwise obtain permission before hunting. Public access would be walk-in only and via public roads or designated routes. The terms of the Conservation Easement would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, or wildlife viewing on the Ranch. See the draft Deeds of Conservation Easement (Attachment A) and Chapters 7-8 of the Management Plan (Attachment B) for additional details on how public access would be managed.

The terms of the Conservation Easement would protect open space and scenic values in perpetuity by retaining current land use and prohibiting developments that would impact such values.

No Action:

Hunting on the Ranch has been leased to an outfitter for the last several years. The Ranch has provided minimal to no public recreational opportunities. In the absence of the Conservation Easement, hunting and public access on the Ranch would likely continue to be limited and commercialized. There would be no guarantee of public access to or across the Ranch.

In the near future, the aesthetic values would likely remain unchanged under the No Action Alternative. While the Ranch does provide open-space aesthetics, without public access the ability of the public to enjoy this aesthetic value has been limited and would continue to be limited. If rural subdivision, expanded tillage, or other changes in land use or developments were to occur, the aesthetic value of the area could be diminished.

### **3.6 Public Services, Taxes, and Community**

Proposed Action:

Under the Proposed Action Alternative, the ranching operation would continue similar to the past. Neighboring landowners may observe more recreational activities by the public on the Ranch. To minimize issues of trespass onto neighboring properties, boundary signs will be posted along the exterior of the Ranch and particularly at any problem areas identified by neighboring landowners. Hunters will be provided with maps of the Conservation Easement. It is the responsibility of the hunter to know where they are at and avoid trespassing. Those guilty of trespassing could be prosecuted. No other impacts to neighboring landowners are expected.

There would be no impact on local or state tax bases or revenues, no alterations of existing utility systems, nor increased use of energy sources. The Ranch would continue to be used for agricultural purposes and would continue to be taxed as agricultural.

Services required from local governments would remain the same. The Conservation Easement would not impact local employment opportunities or local schools. The addition of public access to the Ranch could result in increased demand for goods and services from private businesses that support the area, which could result in a modest increase in revenues for these businesses. Infrastructure improvements needed for establishing a grazing system may also result in minor temporary need for goods and services. However, the terms of the Conservation Easement would restrict future residential and commercial development on the Ranch.

No Action:

The No Action Alternative would not impact local taxes and public services if the land continued to be maintained as a working ranch. However, changes in land use classifications (e.g., agricultural to recreational) could increase local property taxes for the county if such changes involved housing or other taxable developments. Such developments may also require higher

demand for utilities, improved or expanded roads, and other services that would likely be partially or wholly provided by state and local governments and service utilities.

### **3.7 Cumulative Effects**

Proceeding with the proposed Conservation Easement would contribute to the preservation of important grassland, sagebrush grassland, riparian woody draw, and other habitats for the benefit of numerous wildlife species. The implementation of the proposed grazing system would benefit native vegetation, improve or maintain rangeland health, and contribute to clean water, clean air, and functioning ecosystem processes, thus contributing to healthy wildlife populations. With regard to habitat protection, the difference between the proposed action and the no action alternative is one of degree. The Conservation Easement would protect the habitat with virtual certainty for perpetuity. The no action alternative entails a possibility of habitat degradation: sod-busting, sagebrush eradication, and possible overgrazing. The likelihood and extent of this degradation is difficult to quantify. The Ranch will continue to be a livestock operation; this use is the same between the proposed and no-action alternatives.

Purchase of the Coal Creek Conservation Easement would result in a large ‘footprint’ of conservation and public access. The property is adjacent to the 25,920-acre Fluss Ranch Conservation Easement and a 12,960-acre block of public land to the south. In total, 41,440 acres would be under conservation easement and 54,400 acres would be open to public access, all in one large block. Including the Fluss Ranch Conservation Easement, there are 7 existing Conservation Easements in FWP Region 7. They are as follows: the Buxbaum Ranch Conservation Easement south of Sidney, MT; the Horse Creek Complex Conservation Easement near Hodges, MT; the North Sunday Creek Conservation Easement north of Miles City, MT; the Brewer Conservation Easement near Powderville, MT; and finally the Bice Conservation Easement and Hirsch Conservation Easement are located on the Tongue River south of Miles City, MT. Lack of access to places to hunt is a primary barrier preventing recruitment and retention of hunters. The Region 7 conservation easements provide guaranteed public access in a landscape comprised of approximately 75% private lands. Public access associated with the proposed Coal Creek Conservation Easement could have a positive impact on local businesses, bringing income into the local community. Finally, the Conservation Easement would help retain a traditional ranching operation with the associated economic and community values. Other than impacts listed in this Environmental Assessment, no additive or interacting ties to other circumstances or events in the local area are known at this time. Based on the similar, existing conservation easements mentioned above, some of which have been in place since the mid 1980’s, the anticipated cumulative effects of the proposed Conservation Easement are largely positive in nature and small in magnitude.



## **Chapter 4.0: Resources Considered but Eliminated from Detailed Analysis**

The Montana Environmental Policy Act, MCA § 75-1-101 *et seq.* (MEPA), provides for the identification and elimination from detailed study of issues which are not significant or which have been covered by a prior environmental review, narrowing the discussion of these issues to a brief presentation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (ARM 12.2.434(d)). While these resources are important, they were either unaffected or mildly affected by the Proposed Action and the effects could be adequately mitigated.

### **4.1 Air Quality**

The Department anticipates there would be no changes to the ambient air quality for either the Proposed Action or No Action Alternatives.

### **4.2 Noise and Utilities**

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed Conservation Easement, the Landowner would retain the right to maintain, repair, or replace existing utilities. Additionally, the proposed Conservation Easement would allow for new utilities and right of ways as long as they are consistent with the terms of the Conservation Easement.

### **4.3 Risk and Health Hazards**

The Department anticipates there would be no changes to risks and health hazards for either the Proposed Action or No Action Alternatives.

### **4.4 Cultural and Historic Resources**

The Proposed Action and No Action Alternatives would not cause a change in land use, so FWP anticipates there would be no impacts to cultural sites or historic resources. The Proposed Action does not prohibit the development of paleontological resources but requires reclamation and other practices to protect conservation values.

## **Chapter 5.0: Need for an Environmental Impact Statement**

Based on the significance criteria evaluated in this EA, is an Environmental Impact Statement (EIS) required?

No. The proposed Conservation Easement would affect 10,072.22 acres in that it would conserve important wildlife habitat and provide public access in perpetuity with minimal effects to the current land uses (agricultural—livestock operations) and to the existing natural resources on the land.

This EA revealed no significant impacts from the Proposed Action. The significance criteria described in ARM 12.2.431 were used in this determination. Based upon the above assessment, an EIS is not required and an EA is the appropriate level of review.

Some limited, minor impacts from the Proposed Action were identified in this EA, such as anticipated positive changes to vegetation and habitat from the proposed grazing system, and an increase in members of the public accessing the Ranch.

## **Chapter 6.0: Public Participation and Collaborators**

### **6.1 Public Involvement**

Prior to the preparation of this draft EA, formal public participation specific to the proposed purchase of this Conservation Easement began with a public scoping process. This scoping process represented the first step in the environmental review process, wherein FWP invited the public to identify any issues and concerns related to this Conservation Easement. Copies of the scoping notice were mailed to neighboring landowners, interested parties, the Custer and Prairie County Commissioners, and DNRC and BLM staff. Notice of the public scoping period was placed in three newspapers (the Miles City Star, Terry Tribune, and the Helena Independent Record), and on the FWP website.

Montana Fish, Wildlife, and Parks received two comments during the scoping process, these comments and FWP responses are listed below. Pursuant to this, FWP will continue the environmental review process to purchase the Conservation Easement.

#### **Comment #1:**

Name: Bert Otis

City: Emigrant

Dear Fish Wildlife & Parks Commission,

The proposed Coal Creek CE looks like a great way to help keep land open to the public for hunting. Using the mix of money from NRCS and Habitat Montana, looks like a great way to get enough dollars to make this possible.

Thank you

Bert Otis

**Comment #2:**

Name: Dale Tribby

City: Miles City

The Montana Sportsmen Alliance has and will continue to support FWP administered Conservation Easements. This being said, specific to the Coal Creek CE, we ask you address and provide for in the EA/CE the following: 1) Please work with BLM and Montana DNRC to insure reasonable driving/parking access is provided to allow for access to all parts of the property, as well as adjacent BLM and DNRC lands. Having parking areas three or more miles from the boundary of the property limits accessibility and especially game retrieval for most users; 2) we believe the Coal Creek CE project area provides high quality mule deer winter range. As such, we would ask access for the purpose of shed hunting be limited to date of no earlier than April 15 annually; (3) because the area provides high quality mule deer winter range, the grazing management plan should recognize and provide for the forage of wintering mule deer; and 4) the mouth of Coal Creek (adjacent to the Powder River) has in the past supported healthy populations of wild turkeys. Please insure the CE provides the opportunity for spring turkey hunting.

Once the CE is released, we will provide additional comments. We ask MSA is notified of the release of the EA and/or any additional documents.

*FWP Response: 1) FWP has no regulatory authority over BLM or DNRC land. The Designated Routes shown in Attachment B, Management Plan, Figure 7.1 reflect current BLM travel management policies. The designated routes shown in Figure 7.1 of the Management Plan provide access to the entire property, with almost the entire Ranch accessible within 3.5 miles from a designated route. The more southerly of the two routes is contingent upon the installation and future viability of Coal Creek crossings. 2) The Landowner is not required to allow public access for shed hunting. Given that permission to shed hunt will be at the discretion of the landowner, we do not anticipate unacceptable levels of disturbance to wintering deer due to this activity. 3) The grazing plan is designed to address the year-round needs of wildlife and livestock. See Attachment B, Management Plan, Chapter 3: Grazing Management, and especially Chapter 3.7: How the grazing plan addresses Fish and Wildlife Objectives. 4) The Coal Creek (FWP) Deed of Conservation Easement states: "When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 600 hunters on the Land per year ("hunter days") on a first-come, first-served basis.". Thus, the Conservation Easement will provide opportunity for spring turkey hunting.*

Public notification of the EA release and opportunities to comment will be by:

- Two public notices in each of the following papers: *Miles City Star, Terry Tribune, and Helena Independent Record*;
- Direct mailing or email to adjacent landowners, interested parties, Custer and Prairie County Commissioners, DNRC staff, and BLM staff;
- Public notice on the FWP web page: <http://fwp.mt.gov>;
- A public meeting will be hosted at the **FWP Region 7 Office, 352 I-94 Business Loop, Miles City, MT on October 3, 2019 from 6:30-8:30 p.m.**

Copies of this EA will be available for public review at FWP Region 7 headquarters in Miles City and on the FWP web site (<http://fwp.mt.gov/news/publicNotices/>).

## **6.2 Comment Period**

The public comment period will extend for thirty days beginning September 18, 2019. Written comments will be accepted until 5:00 p.m., October 17, 2019 and can be mailed or emailed to the addresses below:

Coal Creek Conservation Easement Environmental Assessment  
c/o Melissa Foster, FWP Wildlife Biologist  
Montana Fish, Wildlife & Parks  
P.O. Box 1630  
Miles City, MT 59301

or email comments to: [mfoster@mt.gov](mailto:mfoster@mt.gov)

## **6.3 Approximate Timeline of Events**

(Contingent on Decision Notice and subsequent approvals)

Public Comment Period: September 18, 2019 to October 17, 2019  
Decision Notice Published: Late October 2019  
Project Submitted to Fish & Wildlife Commission: December 2019

## **6.4 Offices & Programs Contributing to the Document**

### Montana Fish, Wildlife, and Parks

John Ensign, Region 7 Wildlife Manager, Miles City, MT  
Kelvin Johnson, Habitat Biologist, Glasgow, MT  
Brandi Skone, Region 7 Nongame Biologist, Miles City, MT  
Mat Rugg, Fisheries Biologist, Glendive, MT  
Candace Durran, Land Agent, Helena, MT  
Zach Zipfel, Legal Counsel, Helena, MT

## **Chapter 7.0: EA Preparer**

Melissa Foster, FWP Wildlife Biologist, Baker, MT.

### **Attachments:**

- A. Draft Coal Creek Deeds of Conservation Easement
- B. Draft Coal Creek Conservation Easement Management Plan

After Recording, please return to:  
Montana Department of Fish, Wildlife, & Parks  
Land Unit  
P.O. Box 200701  
Helena, MT 59620-0701

## **COAL CREEK (ALE) DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by Glen French, aka Glenn J. French, aka Glen J. French of 1884 Ten Mile Road, Ismay, MT 59336 (“Landowner”) 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”) and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

- Exhibit A** - Legal Description of the Coal Creek (ALE) Conservation Easement
- Exhibit B** - Map of the Land
- Exhibit C** - FWP Minimum Standards for Grazing Livestock and ALE Grassland Component Plan
- Exhibit D** – Map of Designated Routes and Prior Cultivated Land
- Exhibit E** - NRCS Agricultural Land Easement “Minimum Terms for Agricultural Land Easements”
- Exhibit F** - Water Rights

### **I. RECITALS**

- A.** The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from willing Landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource values.
- B.** The Landowner is the owner of certain real property in Custer County and Prairie County, Montana (the “Land” or “Protected Property”), comprised of approximately 6,591.57 acres legally described in Exhibit A and depicted in Exhibit B.
- C.** The Land possesses significant agricultural values and communities of native plants, fish and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities,

all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.

- D.** The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement (“Easement”) to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- E.** Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- F.** The Land provides important opportunities for public recreational hunting, fishing, and trapping, and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and for wildlife management purposes.
- G.** This Deed of Conservation Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (“ACEP”) 16 U.S.C. § 3865, *et seq.* and 7 CFR Part 1468 for the purposes of protecting grazing uses and related Conservation Values by restoring and conserving the Land.
- H.** The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

## **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.*, MCA; the Department’s wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, 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, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.



2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

## **B. RIGHTS CONVEYED TO THE DEPARTMENT**

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance, by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon **Prior Notice** to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly convey to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.

As per the NRCS Minimum Deed Terms: The Department will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Department and Landowner are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary,

the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Department, the United States will have reasonable access to the Protected Property with advance notice to Department and Landowner or Landowner's representative.

3. **Injunction and Restoration.** Subject to C.II.12, to enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval**, which will not be unreasonably denied, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting and trapping on the Land and across the Land to adjacent public land as provided for in the Management Plan and in accordance with the following terms and conditions:
  - a. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including livestock.
  - b. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
  - c. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 400 hunters on the Land per year ("hunter days") on a first-come, first-served basis.
    1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from midnight to midnight.
    2. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days". The term "immediate family" is defined to include spouses, children, in-laws, and parents.
    3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.

d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.

e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA , and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA , and thereby this grant creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access over and across county roads and 2 Designated Routes that are identified in Exhibit D attached to this Easement and incorporated herein by this reference. The public may not drive off the County roads or designated routes for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public may park immediately adjacent to designated routes as long as they do not impede traffic on designated routes. The public may travel on foot from the Designated Routes or from other publicly accessible areas to hunt and trap throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot across the Land to adjacent public land where public recreational use is allowed. Upon agreement with the Landowner, the Department may open additional Designated Routes, as shown and described in the Management Plan.

g. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

i. Public access for trapping will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter days outlined in Paragraph II B.5. above.

j. Except as specifically set forth in this Paragraph II.B.5., 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.

k. 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, the 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 be accepted into any such program.

## C. LANDOWNER RIGHTS

The Landowner reserves to itself, and to its heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Easement; (c) are consistent with the purposes of this Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval or Prior Notice**, as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserve the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a 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 "FWP Minimum 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. 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 in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to FWP Minimum Standards for Grazing Livestock as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle, up to 50 horses, and domestic sheep and goats. Sheep and goats are only allowed on the Land until the Land transfers to any subsequent Landowner after the date of this Easement. The only exception is if the Landowner at the time the Easement is granted converts ownership to a Revocable Trust with Landowner as the sole beneficiary, the Revocable Trust will be allowed to graze sheep and goats until it transfers to any subsequent Landowner. Other species of grazing animal, including sheep and goats, may be considered with **Prior Approval**.
2. **Leasing the Land.** With **Prior Notice**, the Land may be leased to another agricultural operator for agricultural purposes, provided that:
  - a. a written lease must be entered into by the Landowner and the lessee(s);

b. the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and

c. a copy of the executed lease must be provided to the Department.

d. Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s).

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, 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. Any water resource, structure, or facility that would significantly impact wildlife habitat, wildlife movement, or migration on or through the Land 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.
5. **Fences.**
  - a. The right to remove, maintain, or repair existing fences, corrals and other livestock containment structures.
  - b. With **Prior Notice** the right to construct, renovate, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “**wildlife friendly**” as provided in the Management Plan. This does not apply to corrals, fences, windbreaks, and other structures necessary to contain livestock, or protect stored feed.
6. **Roads.** To maintain existing roads and bridges or waterway crossings as herein permitted.

7. **Non-Commercial Recreational Use.** Landowner reserves to himself and to his immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.
8. **Utilities.**
  - a. **Existing Utilities.** Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines (“Utilities”).
  - b. **New Utilities on the Land.** Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.8.d. (“Utility Plan”) below.
  - c. **New Utilities serving adjacent properties.** Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.8.d. below.
  - d. **Utility Plan.** Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department’s approval of the Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Fergus County, signed by the Landowner, the Department, and the utility service provider prior to construction.
9. **Renewable Energy Generation for Use On the Land.** With **Prior Approval** of the Department, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities (hereafter “renewable energy production”) solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner’ utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department and Paragraph II.C.9.
10. **Pesticide Application and Weed Management.**
  - a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) on prior cultivated land as shown in the Baseline Report and in Residential/Agricultural Building Areas as described in Paragraph II.C.6. Except as provided in Paragraph II.C.10.b. through e. below, **Prior Approval** is required to use pesticides on the Land on other than prior cultivated land and in Residential/Agricultural



Building Areas. Any pesticide use should be only in the amount and frequency constituting the minimum necessary based on pesticide label use instructions and all applicable state and federal regulations concerning use to accomplish reasonable control of the targeted pest species.

b. **Weed Management.** The right to use herbicides 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 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**.

c. **Prior Approval** is required for aerial application of any pesticide or biological control agent on the Land.

d. Landowner shall have the right to use legally authorized pesticides that are directly applied to livestock for health purposes.

e. Prairie dog colonies currently occupy approximately 10 acres on the Land. With **Prior Approval**, the Landowner may use pesticides as described in Paragraph II.C.10.a. to control prairie dogs when the minimum of 10 acres of active prairie dog colonies is exceeded. Landowner shall not be held responsible if the acreage is reduced below the 10-acre minimum due to natural causes of mortality such as plague, predation or other environmental factors.

**11. Regulation of Public Use.** The right to regulate public use of the Land at all times; subject, however, to the right of public hunting and trapping access granted to the Department in Paragraph II.B.5.

**12. Oil, Gas, or Mineral Exploration and Extraction.** Subject to, and without limiting any obligations of Landowner under, Montana Code Annotated § 82-11-202, Landowner shall not mine or extract, or initiate the mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method; provided however, with **Prior Approval**, Landowner may conduct limited mining activity for materials (e.g., sand, gravel, rock) used for agricultural operations on the Land where the extraction of materials used for such agricultural operations is limited, localized, and does not harm the Conservation Values or the agricultural uses of the Land.

a. The existing extraction sites will be identified in the Baseline Report.

b. Landowner shall use or develop no more than two areas of no more than two acres each at any time. Extraction locations constructed by Landowner, or existing extraction locations must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.

c. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Conservation Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.

This Conservation Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

**13. Subdivision and Conveyance of Land Ownership.** For the purposes of this Easement:

a. The Land shall be considered to comprise one unit, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. 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.

b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.

c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey the Land 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.C.14.

d. With **Prior Approval** the restrictions contained in this Paragraph do not prohibit the Landowner from entering into a de minimis boundary line adjustment with a neighboring landowner to address encroachments.

**14. Industrial and Commercial Uses.** The right to:

a. Conduct agricultural production and related activities as provided for in this Easement and the Management Plan.

b. With **Prior Approval** conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.

c. With **Prior Approval** and provided it does not significantly increase vehicular traffic to or through the Land, operate home-based businesses, small-scale manufacturing of products and distribution of those products, small-scale commercial enterprises related to agriculture including but not limited to agri-tourism, processing, packaging, and marketing of farm products, farm and machinery repair, and small-scale commercial enterprises compatible with agriculture.

**15. Prior Cultivated Land.** Prior cultivated land consisting of approximately 75.50 acres encumbered by the ALE and shown in the Baseline Report may be converted to grassland. The Grantor is allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities as per the Management Plan.

However, Grantor shall not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the Land affected by this restriction will be set forth within the Management Plan.

**D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES**

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, 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**; however, the Landowner does not require **Prior Approval** to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.

## **2. Wetland and Riparian Areas.**

a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Cultivated land, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.

b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.4.

c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.

3. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners' association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

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, including any water rights existing at the time of execution of this Easement as shown in Exhibit F, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by the Landowner after execution of this Easement. 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.C.10. is prohibited.
6. **Roads.** The construction of new roads is prohibited.
7. **Surface Alteration.** The cultivation or farming of any portion of the Land is prohibited, except as provided for in II.C. for grazing uses, and grassland and 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, fishing, trapping, or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting fishing, wildlife viewing or trapping operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, wildlife viewing or trapping on the Land or for access across the Land to reach public land or other private land, is prohibited.
9. **Mineral Exploration and Extraction.** 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, sand, gravel, or similar materials, except as provided for Paragraph II.C.12. Any other mineral exploration, development, or extraction is prohibited.
10. **Manmade Structures.** Except as provided for in II.C., the construction or placement of any structure on the Land is prohibited.
11. **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. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
12. **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, transplantation 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, transplantation or release on the Land. Domestic livestock is allowed per II.C.1

- 13. Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the large scale manufacture or distribution of any products is prohibited .
- 14. Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited; except within a single landfill for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. The deposit of natural organic material derived from livestock and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.5., are not considered waste disposal.
- 15. 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. The installation of underground storage tanks is prohibited.

#### **E. MANAGEMENT PLAN**

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan includes a description of the ALE Grasslands Components. The Management Plan has been signed by the 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 Management 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 (“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 purposes and terms of the Easement. 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 (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or 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. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner's request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner's compliance with the terms and conditions 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 changed habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the changed habitat 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**

**1.** Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give the Department as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

**2.** Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email with confirmation requested, and 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 its consistency with this Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as

modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

3. If the Department fails to respond to Landowner's notice of Prior Approval within 60 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.

4. The Landowner shall be under no liability or obligation for any failure to give Prior Notice or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

5. Any notice, demand, request, consent, approval, 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, or email with confirmation requested, addressed as follows:

To Landowner: Glen French  
1884 Ten Mile Road  
Ismay, MT 59336

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

With a copy to: Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
P.O. Box 1630  
Miles City, MT 59301

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

## **H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES**

If the Department determines that the Landowner has violated the terms of this Easement, or if the Landowner undertake 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, when 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:

1. fail to cure the violation within 30 days after receipt of notice from the Department, or
2. 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, within 30 days of Landowner' receipt of notice from the Department, if Landowner fail to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. fail to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent and that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice 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. The Landowner agree that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner' liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. 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' 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 may 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, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner's violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In the event of litigation concerning the terms of this Easement, each side shall bear its own costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

## **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 their 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 the 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 their agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and their 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 their agents, employees or contractors.

#### **J. TERMINATION, 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 are 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 64.9 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 the 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 35.1 percent of the unencumbered value of the real property and the Department shall be entitled to receive 64.9 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. SUBORDINATION**

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of \_\_\_\_\_ [Bank], [address] ("Lienholder"). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, under Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana (the "Mortgage"). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases,

rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **L. 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 § 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 values and Purposes of this Easement are to be carried out in perpetuity.

#### **M. 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 §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the Purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of affected County or Counties.

#### **N. RECORDING**

The Department shall record this instrument in a timely fashion in the official records of affected Counties and may re-record it at any time as may be required to preserve its rights in this Easement.

#### **O. REPRESENTATIONS AND WARRANTIES**

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in

anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.

3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

## **P. GENERAL PROVISIONS**

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. 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.
3. 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. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.L above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner' title in any respect.

5. 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.
6. 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.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement remain in effect.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Landowner shall be joint and several.
12. Section Headings. Section headings are for convenience only and will not be given effect in interpretation of this Easement.

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

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

*This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The Exhibit E is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future uses of the Protected Property identified in Exhibit A is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in Exhibit E that is appended to and made a part of this easement deed.*







## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE COAL CREEK (ALE) CONSERVATION EASEMENT**

#### **Township 9 North, Range 51 East**

Section 1: Government Lots 1, 2, 3, 4, 5, 6, and 7, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>  
Section 3: Government Lots 1, 2, 3, and 4, S<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>, S<sup>1</sup>/<sub>2</sub>  
Section 4: Government Lots 1, 2, 3, and 4, S<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>  
Section 11: All  
Section 13: Government Lots 1, 2, 3, and 4, W<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>,  
SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>

#### **Township 10 North, Range 51 East**

Section 25: NE<sup>1</sup>/<sub>4</sub>  
Section 33: All  
Section 35: S<sup>1</sup>/<sub>2</sub>

#### **Township 9 North, Range 52, East**

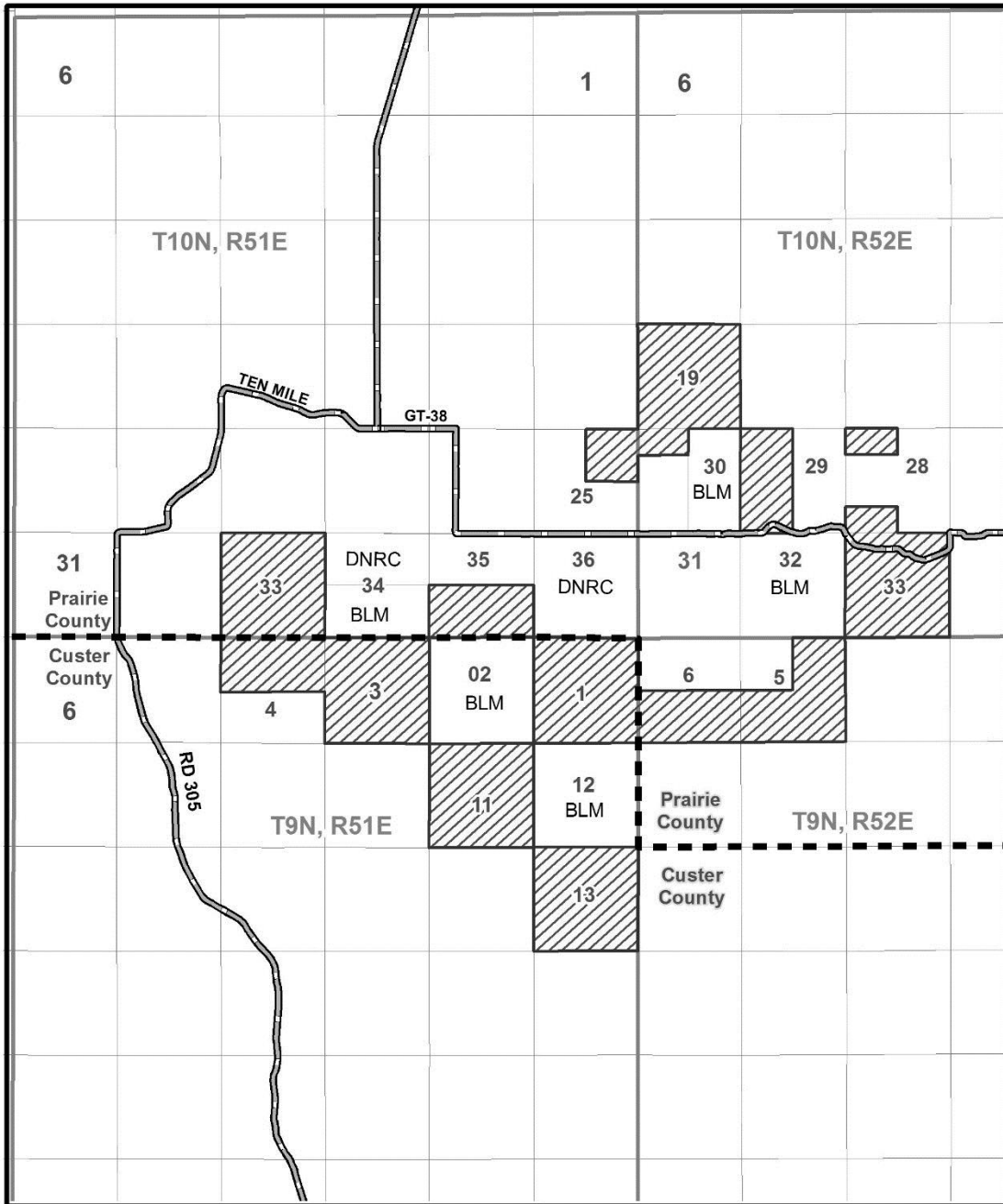
Section 5: Government Lots 1 and 2, S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>  
Section 6: S<sup>1</sup>/<sub>2</sub>

#### **Township 10 North, Range 52 East**


Section 19: Governments Lots 1, 2, 3, and 4, E<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>  
Section 28: N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>  
Section 29: W<sup>1</sup>/<sub>2</sub>  
Section 30: Government Lot 1, NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
Section 33: All


**END OF EXHIBIT A**

**EXHIBIT B  
MAP OF THE LAND**

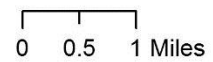


 Coal Creek (ALE) Conservation Easement

 County Road

 County Boundary



 0 0.5 1 Miles

**END OF EXHIBIT B**

**EXHIBIT C**  
**FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK**  
**AND**  
**ALE GRASSLANDS COMPONENT PLAN**

**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-managed Wildlife Management Areas (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 WMAs, 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 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 is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches and to provide flexibility to conserve and protect habitat needs on WMAs where wildlife habitat is 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 Grazing Standard 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 to allow 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 how 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.**

<b>Grazing Seasons</b>	<b>Pasture 1</b>	<b>Pasture 2</b>	<b>Pasture 3</b>
<b>Year One</b>	A	B	C
<b>Year Two</b>	B	C	A
<b>Year Three</b>	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 (2) 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 the 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 designated 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 can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the 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 unique needs of a livestock operation. For instance, 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, holding corrals, or pastures used for weaning and shipping. Also, one or more pastures may be necessary for rounding up or transitioning livestock between summer/fall and winter seasons, which may require annual fall grazing. As long as the majority of the native rangelands involved are within a grazing system that meets the minimum standards for yearlong rest and season long deferment, 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 minimum standards for season long deferment and yearlong rest applied to native rangelands do not necessarily apply to non-native 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 2 (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 cultivated land 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.

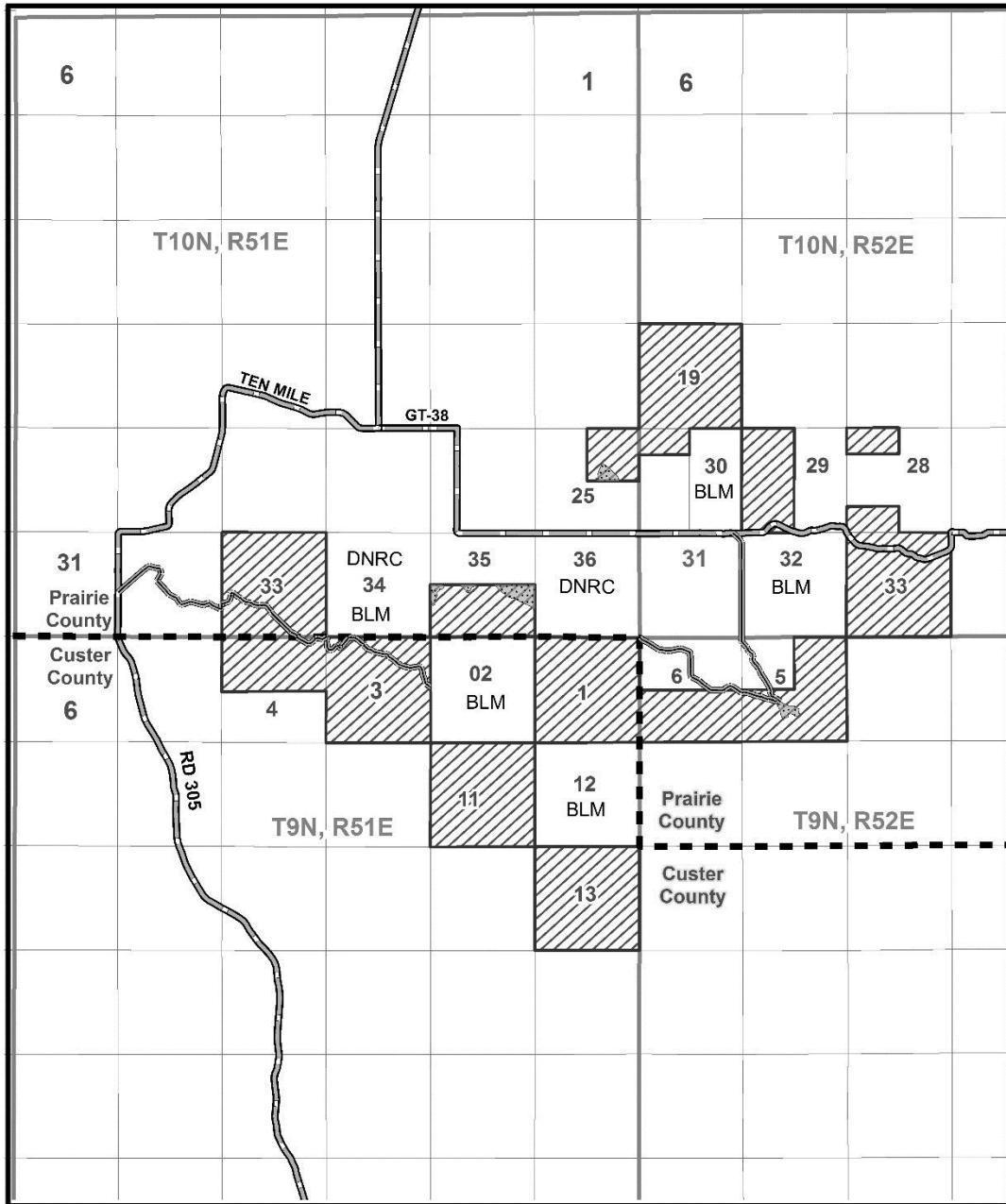
On FWP lands livestock within pasture grazing systems are not to be fed hay.


### **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.

**END OF EXHIBIT C**

**EXHIBIT D**  
**MAP OF DESIGNATED ROUTES AND PRIOR CULTIVATED LAND**




 Coal Creek (ALE) Conservation Easement

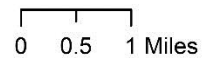
 Prior Cultivated Land

 Designated Route

 County Road

 County Boundary



 0 0.5 1 Miles

**END OF EXHIBIT D**

## **EXHIBIT E**

### **MINIMUM TERMS FOR AGRICULTURAL LAND EASMENTS**

The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit A, hereafter referred to as “the Protected Property” for the purpose of protecting grazing uses and related conservation values by restoring and conserving the Protected Property.

Glen French, aka Glenn J. French, aka Glen J. French of 1884 Ten Mile Road, Ismay, MT 59336 (Landowner), the Montana Department of Fish, Wildlife, & Parks (Department), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Department to protect grazing uses and related conservation values by restoring and conserving the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Department.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between the ALE and this Exhibit. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control; provided however, if other sections of the ALE have terms and conditions that are consistent with, but more restrictive to the rights of the Landowners than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive to the rights of the Landowners than Section I Paragraph 4 and 5 and Section II then Section I Paragraph 4 and 5 and Section II will control.

#### **SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS**

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Landowners, the Department and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the

following:

**1. Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Landowners and Department. Landowners agree the use of the property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Department and Landowners agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Department.

The Department must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Department. NRCS will give the Department and Landowners a reasonable amount of time, not to exceed 180 days, to take corrective action. If Department fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

**2. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed **2%**, of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, paved areas, and any other surfaces that are covered by asphalt or concrete. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Department by this ALE.

**3. Limitations on Nonagricultural Uses.** Any activities inconsistent with the purposes of the ALE are prohibited. The provisions of this ALE limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

- (i) agricultural production and related uses conducted as described in the ALE Plan;
- (ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Department approves in writing as being consistent with the conservation purposes of this Easement;
- (iii) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;

- (iv) commercial enterprises related to agriculture or forestry which do not require buildings or structures, including but not limited to agritourism, processing, packaging, and marketing of farm or forest products; and
- (v) small-scale commercial enterprises which do not require buildings or structures and are compatible with agriculture or forestry.

(C) *Construction on the Protected Property* – All new structures and improvements are prohibited except for agricultural structures and utilities to serve them, including on-farm energy structures allowed under **Section I, Paragraph (4)(C)** that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related conservation values of the Protected Property, provided that the utilities or agricultural structures are approved in advance in writing by the Department and are consistent with the ALE Plan described in Section I, Paragraph 1.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by the Department, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements.

(D) *Granting of easements for utilities and roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact *the protection of the grazing uses, grassland conservation value*, and related conservation values of the Protected Property as determined by the Department in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (i) dam construction in accordance with an ALE plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;
- (ii) erosion and sediment control pursuant to a plan approved by the Department or;
- (iii) soil disturbance activities required in the construction of approved agricultural structures, roads and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or (iv) Grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan.

(F) *Oil, Gas, or Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by the Landowner as of the date of this ALE or later acquired by Landowner, using any surface mining,

subsurface mining, or dredging method, from the Protected Property is prohibited.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Landowners must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this Deed and will incorporate by reference in this Deed.

(G) *Crop Cultivation* - Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non-grassland agricultural product is prohibited.

**4. Preserving Agricultural Uses:** No uses will be allowed that decrease the ALE's protection for the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph 1.

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits,

with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

(D) *Grassland Uses of the Protected Property* – Landowners are allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Landowners must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the property affected by this restriction will be set forth within the ALE Plan for the Protected Property that has been approved by Landowners, Department, and NRCS.

## **SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS**

**1. United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Department, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Landowners, including, but not limited to, attorney's fees and expenses related to Landowners violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Department, including, but not limited to, attorney's fees and expenses related to Department's violations or failure to enforce the easement against the Landowners up to the amount of the United States contribution to the purchase of the ALE.

The Department will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Department and Landowners are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Department, the United States will have reasonable access to the Protected Property with advance notice to Department and Landowners or Landowners representative.

In the event of an emergency, the United States may enter the Protected Property to prevent,



terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Department and Landowners or Landowners representative at the earliest practicable time.

**2. General Disclaimer and Landowners Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Department's or Landowners negligent acts or omissions or Department's or Landowners breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Landowners must indemnify and hold harmless United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Landowners negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

**3. Environmental Warranty.** Landowners warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowners warrant that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Landowners further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowners warrant the information disclosed to the Department and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowners hereby promises to hold harmless and indemnify Department and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Landowners or any other prior owner of the Protected Property. Landowners indemnification obligation will not be affected by any authorizations provided by Department or the United States to Landowners with respect to the Protected Property or any restoration activities carried out by Department at the Protected Property; provided, however, that Department will be responsible for any Hazardous Materials contributed after this

date to the Protected Property by Department.

“Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

**4. Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Department and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Department and the United States stipulate that the fair market value of the ALE is 65 percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Landowners must reimburse Department and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Department and the United States.

The allocation of the Proportionate Share between the Department and the United States will be as follows: (a) to the Department or its designee, 25 percent of the Proportionate Share; and (b) to the United States 75 percent of the Proportionate Share. Until such time as the Department and the United States receive the Proportionate Share from the Landowners or the Landowners successor or assign, the Department and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Department, the Department must reimburse the United States for the amount of the Proportionate Share due to the United States.

**5. Amendment.** This ALE may be amended only if, in the sole and exclusive judgment of the Department and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Department must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Department, Landowners, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void

**EXHIBIT F  
WATER RIGHTS**

Known water rights appurtenant to the Land at the time of Execution of this Easement. Only those water rights listed below whose place of use is, in whole or in part, on the Land, are encumbered by this Easement.

**42J 10334 00  
42J 11392 00  
42J 3156 00  
42J 3157 00  
42J 3158 00  
42J 3159 00  
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42J 3167 00  
42J 3168 00  
42J 3169 00  
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42J 3171 00  
42J 3172 00  
42J 3173 00  
42J 3174 00**

After Recording, please return to:  
Montana Department of Fish, Wildlife, & Parks  
Land Unit  
P.O. Box 200701  
Helena, MT 59620-0701

## **COAL CREEK (FWP) DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by Glen French, aka Glenn J. French, aka Glen J. French of 1884 Ten Mile Road, Ismay, MT 59336, (“Landowner”) 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”).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

**Exhibit A** - Legal Description of the Coal Creek (FWP) Deed of Conservation Easement

**Exhibit B** - Map of the Land

**Exhibit C** - FWP Minimum Standards for Grazing Livestock

**Exhibit D** - Map of Residential/Agricultural Building Area and Designated Routes

**Exhibit E** - Water Rights

### **I. RECITALS**

- A. The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from willing Landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource values.
- B. The Landowner is the owner of certain real property in Custer and Prairie County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Conservation Easement Boundary is depicted in Exhibit B.

Two separate and distinct overlapping Deeds of Conservation Easement encumber all or a portion of the Coal Creek Ranch. The first easement (Coal Creek (ALE) Deed of Conservation Easement) encompasses approximately 6,591.57 acres of land within the Coal Creek Ranch, funded in part through the Agricultural Conservation Easement Program, 16 U.S.C. § 3865, *et seq.* This program facilitates and provides funding to the Department for the purchase of an Agricultural Land Easement (“ALE”) which is depicted on Exhibit B and referred to there and in this easement as the “ALE”. By funding this easement, the USDA-NRCS recognizes that a portion of the Land provides agricultural values worth conserving in perpetuity.

This second easement (Coal Creek (FWP) Deed of Conservation Easement covers the entire 10,072.22-acre property described in Exhibit A and depicted on Exhibit B. This easement complements the ALE, by encumbering additional acreage and acquiring additional rights from the Landowner not acquired through the ALE. Thus, the land is encumbered by both the ALE and also this second larger easement. This easement is in addition to the ALE and in no way amends, modifies, or supersedes the terms of the ALE.

- D.** The Land possesses significant agricultural values and communities of native plants and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.
- E.** The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement (“Easement”) to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- F.** Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- G.** The Land provides important opportunities for public recreational hunting, fishing, and trapping, and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and for wildlife management purposes.
- H.** The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

### **III. 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.*, MCA; the Department’s wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

#### **A. PURPOSES**

- 2.** The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity, the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety wildlife species, and to prevent

any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the Conservation Values and the purposes of the Easement.

2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
4. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

## **B. RIGHTS CONVEYED TO THE DEPARTMENT**

The rights conveyed to the Department in perpetuity by this Easement are the following:

3. **Identification and Protection.** To identify, preserve, protect, and enhance, by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
4. **Access.** Upon **Prior Notice** to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.

3. **Injunction and Restoration.** Subject to C.II.13, to enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval**, which will not be unreasonably denied, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting and trapping on the Land and across the Land to adjacent public land as provided for in the Management Plan and in accordance with the following terms and conditions:
  - b. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including livestock.
  - b. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
  - c. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 600 hunters on the Land per year (“hunter days”) on a first-come, first-served basis. The 600 hunter days includes the 400 hunter days provided for in the Coal Creek Conservation Easement (ALE), for a total minimum of 600 hunter days on the Land per year.
    4. A “hunter day” is defined as one hunter hunting on the Land for one day, or any part of one day, measured from midnight to midnight.
    5. The Landowner, Landowner’s immediate family, Landowner’s shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating “hunter days”. The term “immediate family” is defined to include spouses, children, in-laws, and parents.
  3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
  - d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
  - e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the



public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA , and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA , and thereby this grant creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access over and across county roads and 2 Designated Routes that are identified in Exhibit D attached to this Easement and incorporated herein by this reference. The public may not drive off the County roads or designated routes for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public may park immediately adjacent to designated routes as long as they do not impede traffic on designated routes. The public may travel on foot from the Designated Routes or from other publicly accessible areas to hunt and trap throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot across the Land to adjacent public land which allow public recreational use. Upon agreement with the Landowner, the Department may open additional Designated Routes, as shown and described in the Management Plan.

g. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

i. Public access for trapping will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter days outlined in Paragraph II B.5. above.

j. Except as specifically set forth in this Paragraph II.B.5., 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.

k. 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, the 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' participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.

## C. LANDOWNER RIGHTS

The Landowner reserves to itself, and to its heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Easement; (c) are consistent with the purposes of this Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval or Prior Notice**, as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner' activities in this Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserve the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a 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 "FWP Minimum 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. 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 in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to FWP Minimum Standards for Grazing Livestock as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle, up to 50 horses, and domestic sheep and goats. Sheep and goats are only allowed on the Land until the Land transfers to any subsequent Landowner after the date of this Easement. The only exception is if the Landowner at the time the Easement is granted converts ownership to a Revocable Trust with Landowner as the sole beneficiary, the Revocable Trust will be allowed to graze sheep and goats until it transfers to any subsequent Landowner. Other species of grazing animal, including sheep and goats, may be considered with **Prior Approval**.
2. **Agricultural Activities.** The right to use the Land and to use equipment on the Land for agricultural purposes and to manage habitat for wildlife, all in a manner consistent with the following provisions:
  - a. The areas cultivated at the time the Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan. If the cultivated land is used for grazing, livestock grazing will comply with the terms of the Easement and the Management Plan.

b. Areas not designated in the Baseline Report as “Residential/Agricultural Building Areas”, or “cultivated” shall be considered “rangeland” and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.

**5. Leasing the Land.** With **Prior Notice**, the Land may be leased to another agricultural operator for agricultural purposes, provided that:

a. a written lease must be entered into by the Landowner and the lessee(s);

b. the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and

c. a copy of the executed lease must be provided to the Department.

d. Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s).

**4. 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**.

**5. 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, 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, or wildlife habitat, wildlife movement, or migration on or through the Land 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.

**6. 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.C.5.):

a. **Residential/Agricultural Building Areas.** The purpose of the Residential/Agricultural Building Area is to allow Landowner flexibility in the use of the residences and outbuildings and to cluster residential and agricultural structures on the Land. If

necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Residential/Agricultural Building Areas.

i. There is presently one existing Residential/Agricultural Building Area of approximately 15 acres in size shown in Exhibit D.

ii. With **Prior Approval**, the Landowner may delineate one additional Residential/Agricultural Building Area, of no more than 15 acres in size or add 15 acres to the existing Residential/Agricultural Building Area. Landowner must submit the proposed location and dimensions of said new Residential/Agricultural Building Area to the Department.

iii. If a new Residential/Agricultural Building Area is approved pursuant to this Paragraph II.C.6, the Department may file in the public records of the affected county a “Notice of Exercise of Reserved Residential/Agricultural Building Area” that documents the location of the approved new Residential/Agricultural Building Area for the information and benefit of Landowner, Department, and their respective successors and assigns, and the public.

b. **Residences.** The right to place or construct, alter, improve, remove, replace, and maintain up to four single-family residences, and associated non-residential improvements necessary for agricultural purposes and to be located within the two Residential/Agricultural Building Areas or the expanded existing Residential/Agricultural Building Area. Landowner may relocate or replace any of the four single-family residences and associated non-residential improvements to one of the two allowed Residential/Agricultural Building Areas as shown on Exhibit D.

c. **Agricultural/Commercial Structures.** The right to construct, remove, maintain, renovate, repair or replace agricultural and commercial structures that are not used for human habitation, including, but not limited to barns, chicken houses, shelters, sheds, machine sheds, and barns. The right to place agricultural structures outside of the Residential/Agricultural Building Areas with **Prior Approval**.

d. **Fences.**

i. The right to remove, maintain, or repair existing fences, corrals and other livestock containment structures.

ii. With **Prior Notice** the right to construct, renovate, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “**wildlife friendly**” as provided in the Management Plan. This does not apply to corrals, fences, windbreaks, and other structures necessary to contain livestock, or protect stored feed.

7. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings in connection with farming or ranching as herein permitted. Any road, bridge, or waterway crossings constructed for one or more of such purposes shall be sited and maintained so as to minimize adverse impact on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department's approval shall be contingent on confirmation that (a) the road's intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values.

The Landowner's written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

8. **Non-Commercial Recreational Use.** Landowner reserves to himself and to his immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.

9. **Utilities.**

a. **Existing Utilities.** Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines ("Utilities").

b. **New Utilities on the Land.** Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.9.d. ("Utility Plan") below.

c. **New Utilities serving adjacent properties.** Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.9.d. below.

d. **Utility Plan.** Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. Landowner and the Department will mutually determine the completeness of the Utility

Plan and its adherence to the general and specific intentions of this Easement prior to the Department's approval of the Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of appropriate County, signed by the Landowner, the Department, and the utility service provider prior to construction.

**10. Renewable Energy Generation for Use On the Land.** With **Prior Approval** of the Department, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities (hereafter "renewable energy production") solely for use on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department and Paragraph II.C.9.

**11. Pesticide Application and Weed Management.**

a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) on cultivated land and prior cultivated land as shown in the Baseline Report, and in Residential/Agricultural Building Areas as described in Paragraph II.C.6. Except as provided in Paragraph II.C.11.b. through e. below, **Prior Approval** is required to use pesticides on the Land on other than cultivated land, prior cultivated land, and in Residential/Agricultural Building Areas. Any pesticide use should be only in the amount and frequency constituting the minimum necessary based on pesticide label use instructions and all applicable state and federal regulations concerning use to accomplish reasonable control of the targeted pest species.

b. **Weed Management.** The right to use herbicides 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 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**.

c. **Prior Approval** is required for aerial application of any pesticide or biological control agent on the Land.

d. Landowner shall have the right to use legally authorized pesticides that are directly applied to livestock for health purposes.

e. Prairie dog colonies currently occupy approximately 10 acres on the Land. With **Prior Approval**, the Landowner may use pesticides as described in Paragraph II.C.11.a. to control prairie dogs when the minimum of 10 acres of active prairie dog colonies is exceeded. Landowner shall not be held responsible if the acreage is reduced below the

10-acre minimum due to natural causes of mortality such as plague, predation or other environmental factors.

**12. Regulation of Public Use.** The right to regulate public use of the Land at all times; subject, however, to the right of public hunting and trapping access granted to the Department in Paragraph II.B.5.

**13. Oil, Gas, or Mineral Exploration and Extraction.** Subject to, and without limiting any obligations of Landowner under, Montana Code Annotated § 82-11-202, Landowner shall not mine or extract, [or initiate the mining or extraction of](#), soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method; provided however, with **Prior Approval**, Landowner may conduct limited mining activity for materials (e.g., sand, gravel, rock) used for agricultural operations on the Land where the extraction of materials used for such agricultural operations is limited, localized, and does not harm the Conservation Values or the agricultural uses of the Land.

a. The existing extraction sites will be identified in the Baseline Report.

b. Landowner shall use or develop no more than two areas of no more than two acres each at any time. Extraction locations constructed by Landowner, or existing extraction locations must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.

c. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Conservation Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.

This Conservation Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

**14. Subdivision and Conveyance of Land Ownership.** For the purposes of this Easement:

a. The Land shall be considered to comprise one unit, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. 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.

b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.

c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey the Land 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.C.14.

d. With **Prior Approval** the restrictions contained in this Paragraph do not prohibit the Landowner from entering into a de minimis boundary line adjustment with a neighboring landowner to address encroachments.

**15. Industrial and Commercial Uses.** The right to:

a. Conduct agricultural production and related activities as provided for in this Easement and the Management Plan.

b. With **Prior Approval** conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.

c. With **Prior Approval** and provided it does not significantly increase vehicular traffic to or through the Land, operate home-based businesses, small-scale manufacturing of products and distribution of those products, small-scale commercial enterprises related to agriculture including but not limited to agri-tourism, processing, packaging, and marketing of farm products, farm and machinery repair, and small-scale commercial enterprises compatible with agriculture.

**16. Prior Cultivated Land.** Prior cultivated land consisting of approximately 75.50 acres encumbered by the ALE and shown in Exhibit D and the Baseline Report may be converted to grassland. The Grantor is allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities as per the Management Plan.

However, Grantor shall not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline. Determinations of nesting seasons



for birds whose populations are in significant decline and the areas of the Land affected by this restriction will be set forth within the Management Plan.

#### **D. RESTRICTIONS ON LANDOWNER ACTIVITIES**

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, 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**; however, the Landowner does not require **Prior Approval** to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.
2. **Agricultural Activities.** Cultivation of areas previously cultivated on land encumbered by the ALE Easement and shown in the Baseline Report is prohibited.
3. **Wetland and Riparian Areas.** For the purpose of this conservation easement:
  - a. Riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Wild hay fields, cultivated fields, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.
  - b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.4.
  - c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.
4. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of

the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners' association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

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.

5. **Water Rights.** Landowner will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land, including any water rights existing at the time of execution of this Easement as shown in Exhibit E, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by the Landowner after execution of this Easement. 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.
6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.11. is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.7. is prohibited.
8. **Surface Alteration.** The cultivation or farming of any portion of the Land is prohibited, except as allowed for in II.C.2, or for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, trapping, or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting fishing, wildlife viewing or trapping operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, wildlife viewing or trapping on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Extraction.** 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, sand, gravel, or similar materials, except as provided for Paragraph II.C.13. Any other mineral exploration, development, or extraction is prohibited.

- 11. Manmade Structures.** Except as provided for in II.C., the construction or placement of any structure on the Land 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 cultivated annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
- 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, transplantation 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, transplantation or release on the Land. Domestic livestock is allowed per II.C.1.
- 14. Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the large scale manufacture or distribution of any products is prohibited.
- 15. Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited, except within a single landfill for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. 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.C.5., 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. The installation of underground storage tanks is prohibited.

## **E. MANAGEMENT PLAN**

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the 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 Management 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 (“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 purposes and terms of the Easement. 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 (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or 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 nonresidential physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner’s compliance with the terms and conditions 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 changed habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the changed habitat 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

1. Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give the Department as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

2. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or personal delivery, or email with confirmation requested, and 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 its consistency with this Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

3. If the Department fails to respond to Landowner's notice of Prior Approval within 60 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.

4. The Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

5. Any notice, demand, request, consent, approval, 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, or email with confirmation requested, addressed as follows:

To Landowner:

Glen French  
1884 Ten Mile Road  
Ismay, MT 59336

To Department:

Department of Fish, Wildlife & Parks  
Attention: Administrator, Wildlife Division  
1420 E. Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620-0701

With a copy to:

Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
P.O. Box 1630  
Miles City, MT 59301

- a. or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

## **H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES**

If the Department determines that the Landowner has violated the terms of this Easement, 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, when 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:

1. fails to cure the violation within 30 days after receipt of notice from the Department, or
2. 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, within 30 days of Landowner's receipt of notice from the Department, if Landowner fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. fails to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that

existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent and that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice 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. The Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner's liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. 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 may 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, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner's violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In the event of litigation concerning the terms of this Conservation Easement, each side shall bear its own costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt

of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

#### **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 their 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 the 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 their agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and their 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 their agents, employees or contractors.

#### **J. TERMINATION, 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 are 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 55.6% 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 the 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 44.4% percent of the unencumbered value of the real property and the Department shall be entitled to receive 55.6% 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. SUBORDINATION**

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of \_\_\_\_\_[Bank], [address] (“Lienholder”). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, under Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana (the “Mortgage”). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **L. 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 § 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 values and Purposes of this Easement are to be carried out in perpetuity.

#### **M. 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 §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the Purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of affected County or Counties.

## **N. RECORDING**

The Department shall record this instrument in a timely fashion in the official records of affected counties and may re-record it at any time as may be required to preserve its rights in this Easement.

## **O. REPRESENTATIONS AND WARRANTIES**

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.
3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are

now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

**P. GENERAL PROVISIONS**

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. 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.
3. 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. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.L above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. 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.
6. 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.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement remain in effect.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).



**ACCEPTED BY:**

**MONTANA DEPARTMENT OF FISH, WILDLIFE  
AND PARKS**

By: \_\_\_\_\_  
Martha Williams, Director

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

This instrument was signed before me on \_\_\_\_\_

SEAL

\_\_\_\_\_  
Notary Public

EXHIBIT "A"  
LEGAL DESCRIPTION OF THE COAL CREEK (FWP)  
DEED OF CONSERVATION EASEMENT

Township 9 North, Range 51 East

Section 1: Government Lots 1, 2, 3, 4, 5, 6, and 7, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>  
Section 3: Government Lots 1, 2, 3, and 4, S<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>, S<sup>1</sup>/<sub>2</sub>  
Section 4: Government Lots 1, 2, 3, and 4, S<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>  
Section 11: All  
Section 13: Government Lots 1, 2, 3, and 4, W<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>

Township 9 North, Range 52, East

Section 5: Government Lots 1, 2, 3, and 4, S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>  
Section 6: Government Lots 1, 2, 3, 4, 5, 6, and 7, S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>

Township 10 North, Range 51 East

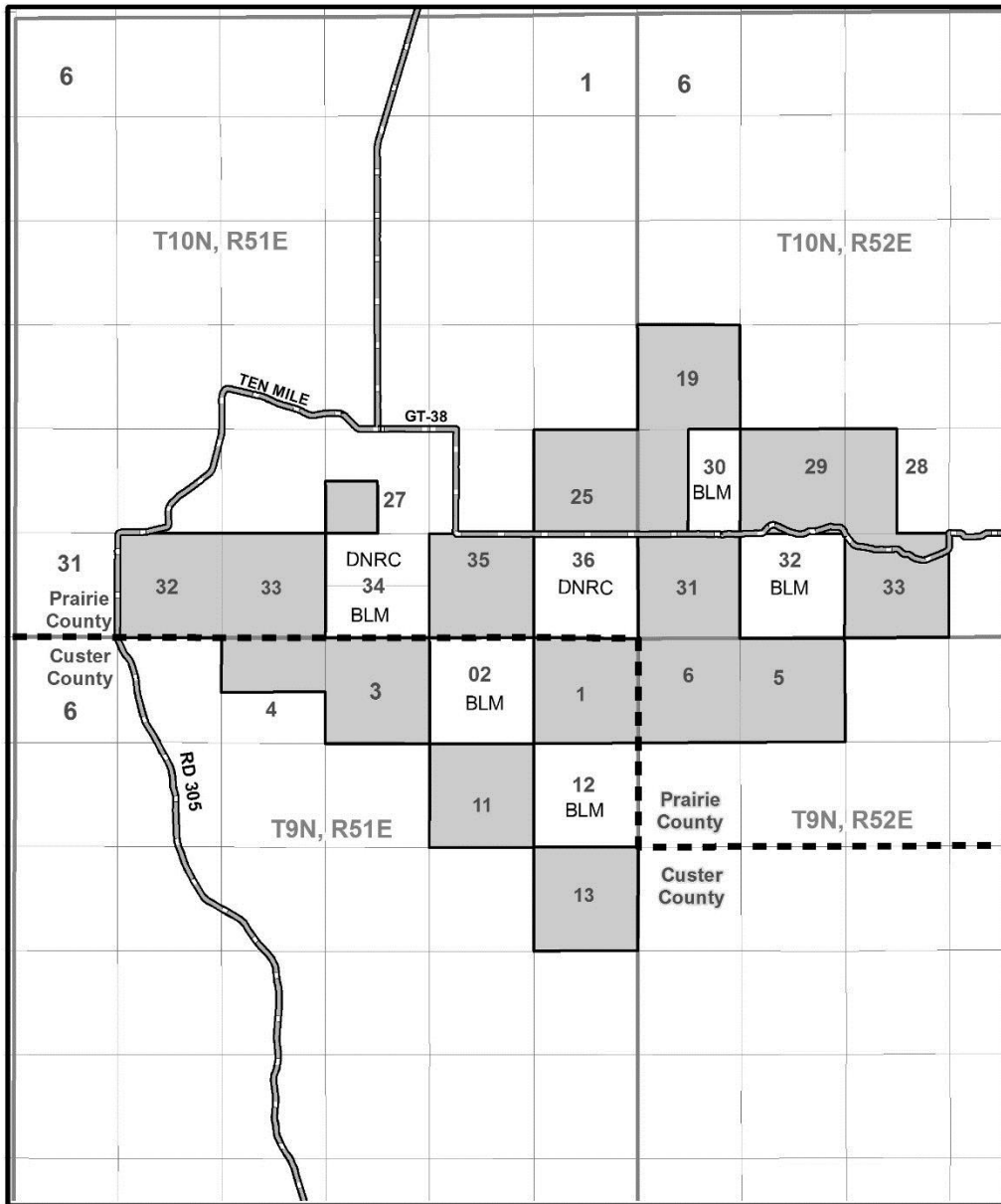
Section 25: All  
Section 27: SW<sup>1</sup>/<sub>4</sub>  
Section 32: All  
Section 33: All  
Section 35: All

Township 10 North, Range 52 East

Section 19: Government Lots 1, 2, 3, and 4, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>  
Section 28: W<sup>1</sup>/<sub>2</sub>  
Section 29: All  
Section 30: Government Lots 1, 2, 3, and 4, E<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>  
Section 31: Government Lots 1, 2, 3, and 4, E<sup>1</sup>/<sub>2</sub>, E<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>  
Section 33: All.

END OF EXHIBIT A

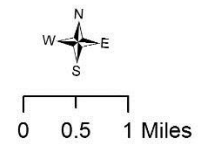
## EXHIBIT B MAP OF THE LAND



Coal Creek (FWP) Conservation Easement

County Road

County Boundary



**END OF EXHIBIT B**

## **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-managed Wildlife Management Areas (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 WMAs, 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 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 is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches and to provide flexibility to conserve and protect habitat needs on WMAs where wildlife habitat is 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 Grazing Standard 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 to allow 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 how 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.**

<b>Grazing Seasons</b>	<b>Pasture 1</b>	<b>Pasture 2</b>	<b>Pasture 3</b>
<b>Year One</b>	A	B	C
<b>Year Two</b>	B	C	A
<b>Year Three</b>	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 (2) 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 the 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 designated 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 can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the 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 unique needs of a livestock operation. For instance, 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, holding corrals, or pastures used for weaning and shipping. Also, one or more pastures may be necessary for rounding up or transitioning livestock between summer/fall and winter seasons, which may require annual fall grazing. As long as the majority of the native rangelands involved are within a grazing system that meets the minimum standards for yearlong rest and season long deferment, 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 minimum standards for season long deferment and yearlong rest applied to native rangelands do not necessarily apply to non-native 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 2 (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 cultivated land 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.

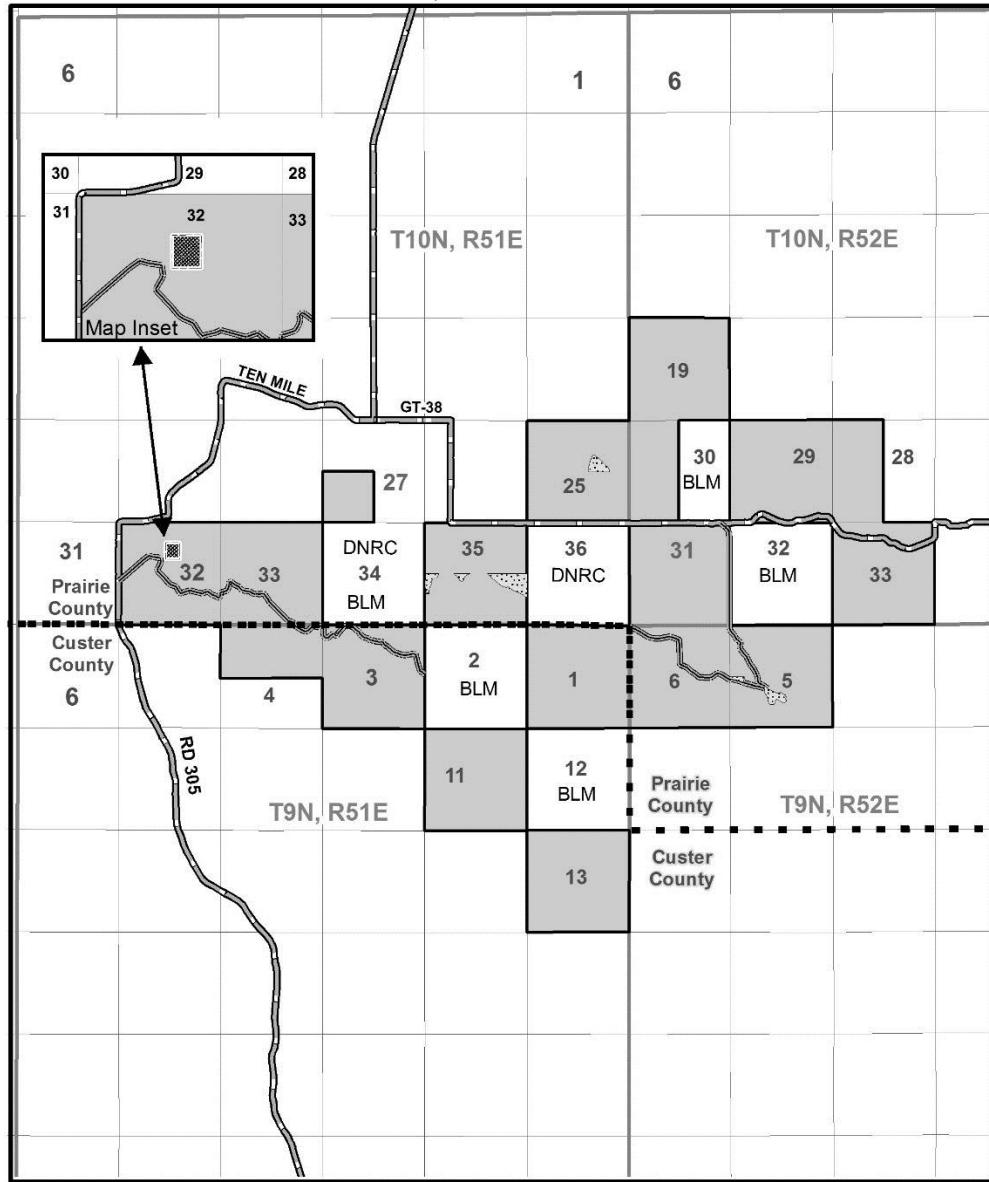
On FWP lands livestock within pasture grazing systems are not to be fed hay.

### **Flexibility**

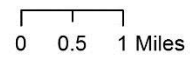
Rarely, a severe environmental influence (i.e. fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, 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.

**END OF EXHIBIT C**

**EXHIBIT D**  
**MAP OF RESIDENTIAL/AGRICULTURAL BUILDING AREA, PRIOR**  
**CULTIVATED LAND, AND DESIGNATED ROUTES**



- Coal Creek (FWP) Conservation Easement
- Residential / Agricultural Building Area
- Prior Cultivated Land
- Designated Route
- County Road
- County Boundary



**END OF EXHIBIT D**

**EXHIBIT E  
WATER RIGHTS**

Known water rights appurtenant to the Land at the time of execution of this Easement.

42J 10334 00  
42J 11392 00  
42J 3156 00  
42J 3157 00  
42J 3158 00  
42J 3159 00  
42J 3160 00  
42J 3161 00  
42J 3162 00  
42J 3163 00  
42J 3164 00  
42J 3165 00  
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42J 3171 00  
42J 3172 00  
42J 3173 00  
42J 3174 00

**END OF EXHIBIT E**



**MONTANA FISH,  
WILDLIFE & PARKS**

# **DRAFT MANAGEMENT PLAN**

**FOR THE DISTINCT AND OVERLAPPING**

## **COAL CREEK CONSERVATION EASEMENTS**

**SEPTEMBER 2019**



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## 1. INTRODUCTION

Two distinct overlapping Deeds of Conservation Easement (“Easement(s)”) have been granted by Glen French, aka Glenn J. French, Glen J. French, (“Landowner”) whose address is 1884 Ten Mile Road, Ismay, MT 59336 to Montana Department of Fish, Wildlife and Parks (“FWP”) whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701. The Easements encumber all or a portion of the Coal Creek deeded property depicted in Figure 1.1 as follows: The Coal Creek Agricultural Land Easement (ALE) Deed of Conservation Easement was granted by the Landowner to FWP on [REDACTED] and recorded in Document No. [REDACTED] of the records of Prairie County, Montana, and Document No. [REDACTED] of the records of Custer County, Montana AND the Coal Creek (FWP) Deed of Conservation Easement granted by the Landowner to FWP on [REDACTED] and recorded in Document No. [REDACTED] of the records of Prairie County, Montana and Document No. [REDACTED] of the records of Custer County, Montana. The United States Department of Agriculture Natural Resources Conservation Service (NRCS) maintains a right of enforcement for the ALE Conservation Easement. The FWP Conservation Easement is in addition to the ALE Conservation Easement and in no way amends, modifies, or supersedes the ALE Conservation Easement terms. This Management Plan incorporates the provisions of the Easements into one document that is relevant to the entire Coal Creek Conservation Easement (hereafter referred to as the “Land”).

This Management Plan, dated as of [REDACTED] 2019, is entered into as an agreement between the Landowner and FWP. As required by both Easements, this and future management plans will be consistent with “FWP Minimum Grazing Standards for Grazing Livestock vers. 1.2” which meets and exceeds NRCS grazing practice requirements of the Agricultural Lands Easement Program administered by the NRCS. As applicable to the ALE Conservation Easement, this management plan also serves as both the ALE Management Plan and Grasslands Component Plan.

Whereas conservation easements are intended to endure in perpetuity, the purpose of a management plan is to document strategies that are consistent with the terms and intent of the conservation easements while meeting the current needs of the Landowner and FWP. By design, management plans are intended to be periodically reviewed and updated, upon mutual agreement by the Landowner and FWP, to accommodate changing conditions on the Land, fluctuating wildlife populations, advancing technologies, improved scientific knowledge, changing agricultural practices, and other as-yet unidentified future situations.

## 2. GRASSLAND COMPONENT DESCRIPTION

The Land is located approximately 12 miles south of Terry, Montana. In addition to the approximately 10,072.22-acres of deeded land under conservation easement, the Landowner currently holds leases on approximately 4,480 acres of BLM and 960 acres of DNRC lands that are not encumbered by the easement but contribute to a total management footprint of 15,512.22 acres (Figure 1.1). The Coal Creek Conservation Easement is comprised of a variety of landcover types and associated ecological systems (Table 2.1, Figure 2.1). Detailed descriptions of each ecological system, including species compositions, can be found below. One of the primary habitat features on the Land is the Coal Creek

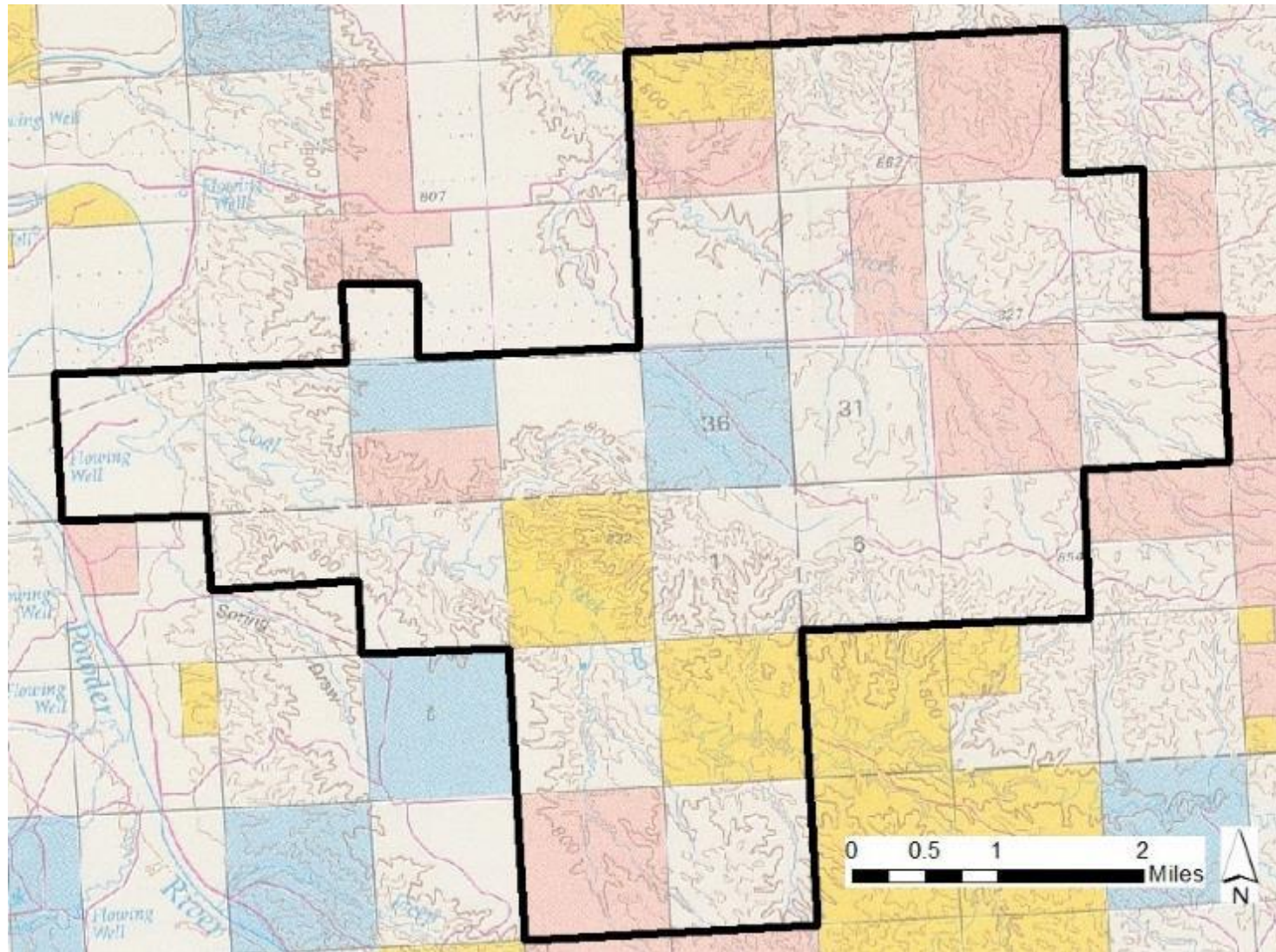


Figure 1.1. Boundary of the Coal Creek Conservation Easement and associated public land leases (black outline). The Easements only encumber deeded lands (white). DNRC lands (blue) and BLM lands (gold & pink) leased by the Landowner are shown to demonstrate the footprint of the project.

Table 2.1. Landcover of ecological systems within the Coal Creek Conservation Easement ALE and FWP Conservation Easements. Montana Level 3 Landcover data from the Montana State Library. Colors correspond with map, Figure 2.1.

Ecological System	ALE CE (acres)	FWP CE (acres)
Great Plains Mixedgrass Prairie	4084.6	5038.3
Great Plains Badlands	1245.8	1322.4
Great Plains Sand Prairie	680.9	992.4
Great Plains Riparian	205.8	259.6
Great Plains Ponderosa Pine Woodland and Savanna	194.1	228.7
Cultivated Crops	75.5	2080.5
Big Sagebrush Steppe	79.6	95.5
Great Plains Wooded Draw and Ravine	25.0	43.3
Great Plains Floodplain	0.0	8.8
Pasture/Hay	0.0	2.0
Emergent Marsh	0.4	0.7

riparian zone, which consists of a large, uninterrupted silver sagebrush (*Artemisia cana*) bottom that traverses the property for roughly 5.5 linear miles. Once prevalent throughout southeastern Montana, most silver sage bottoms have been converted to hay or cropland. An additional unique habitat feature along Coal Creek is the presence of several seeps and springs that dot the landscape in the hills and draws leading into Coal Creek. These natural water features create numerous permanent wetlands and large mesic drainages dominated by green ash (*Fraxinus pennsylvanica*), plains cottonwood (*Populus deltoides*) and Rocky Mountain juniper (*Juniperus scopulorum*) overstories, providing for an exceptional level of habitat and biological diversity in otherwise xeric eastern Montana. The southern portion of the property contains large tracts of Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) grasslands and scenic badlands, the northern portion of the property contains large tracts of ponderosa pine (*Pinus ponderosa*) and juniper. The Land is within designated core bighorn sheep range, although bighorn sheep are not known to frequent the property at this time. Mule deer, white-tailed deer, wild turkeys, and sharp-tailed grouse are year-round residents. The Land is within sage-grouse general range. Pronghorn utilize the Land seasonally, as does the occasional elk. Finally, a variety of nongame species utilize the Land as year-round residents, or during breeding, nesting, or migration. Soil types and Ecological Site Descriptions for the Land can be found in Table 2.2 and Figure 2.2. The communities found on the Land not only provide excellent wildlife habitat, but provide significant agricultural conservation values as well—livestock ranching is the dominant industry in this portion of the state.

*Great Plains Mixedgrass Prairie*<sup>1</sup>.

The Great Plains Mixedgrass Prairie ecological system occurs on uplands, slopes, and creek bottoms, and is the most common ecological system within the Coal Creek Conservation Easement (Table 2.1, Figure 2.1). This system occurs on a variety of soils (primarily fine to medium-textured soils) and ecological sites (Table 2.2). Throughout the property Wyoming big sagebrush – western wheatgrass (*Pascopyrum*

<sup>1</sup>Information about each ecological system is derived from the Montana Natural Heritage Program Field Guide to Ecological Systems, available online at [http://fieldguide.mt.gov/displayES\\_LCLU.aspx](http://fieldguide.mt.gov/displayES_LCLU.aspx), as well as field observation and unpublished data.



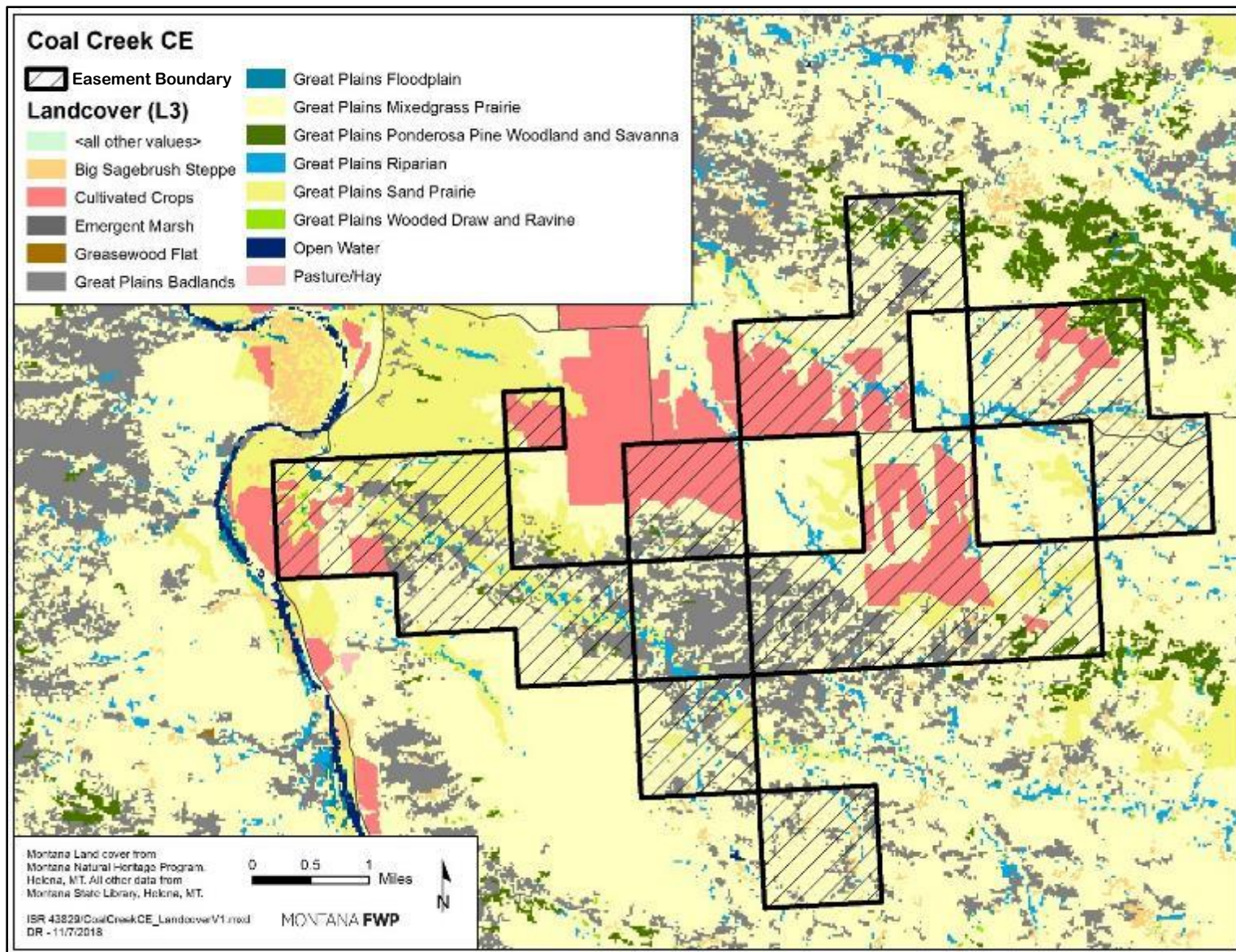


Figure 2.1. Landcover for ecological systems within the Coal Creek Conservation Easement. Acreages for each ecological system can be found in Table 2.1. Montana Level 3 Landcover data from the Montana State Library.



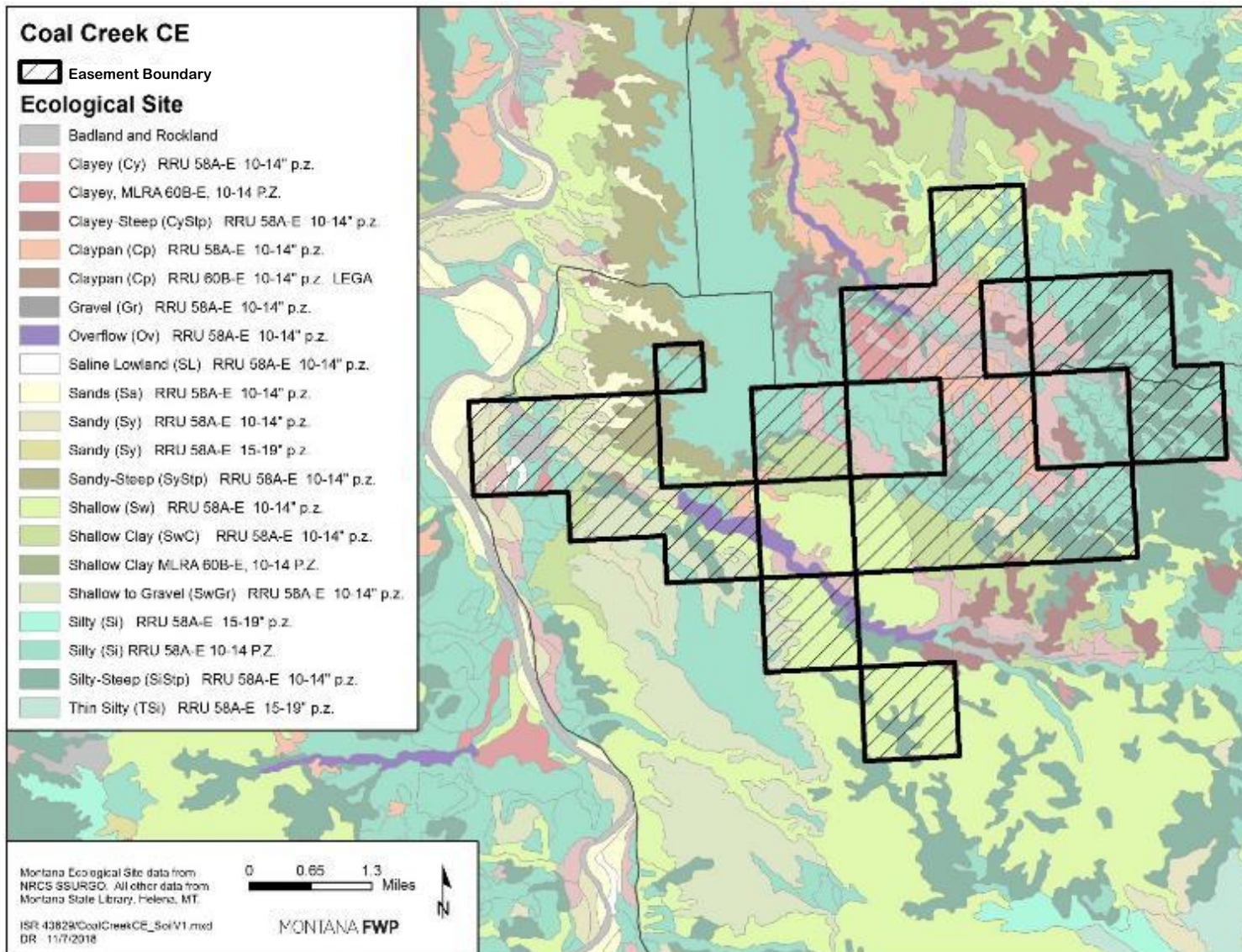


Figure 2.2. Ecological Sites and soil types within the Coal Creek Conservation Easement. Acreages for each soil and ecological site and associated ecological systems can be found in Table 2.2.

Table 2.2. Soil types, corresponding major plant community types, and Ecological Sites within the Coal Creek ALE Conservation Easement (ALE CE), and FWP Conservation Easement (FWP CE). Data from NRCS SSURGO. Landcover of ecological systems is mapped in Figure 2.1. Ecological Sites and soil types are mapped in Figure 2.2.

Map Symbol	Soil Type	ALE CE (acres)	FWP CE (acres)	Ecological Site	Ecological Systems
115	Spinekop silty clay loam, 0-2% slopes	0.0	43.6	Clayey (Cy) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Cultivated Crops, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe, Great Plains Wooded Draw and Ravine
2	Abor-Delpoint-Kobase complex, 4-15% slopes	222.1	777.6		
39C	Ethridge silty clay loam, 2-8% slopes	3.5	3.6		
48	Ethridge silty clay loam, warm, 0- 2% slopes	5.5	60.8		
489A	Spinekop silty clay loam, 0-2% slopes	0.0	0.1		
49	Ethridge silty clay loam, 2-8% slopes	25.9	46.9		
531D	Kobase silty clay loam, 2-15% slopes, gullied	27.2	27.5		
53A	Kobase silty clay loam, 0-2% slopes	8.5	8.6		
73	Kobase silty clay loam, 0-2% slopes	3.7	3.8		
74	Kobase silty clay loam, warm, 2-8% slopes	60.3	81.9		
958D	Abor-Delpoint-Kobase complex, 4-15% slopes	6.1	6.1		
62A/94	Marvan silty clay, warm, 0-2% slopes	0.0	24.6	Clayey, MLRA 60B-E, 10-14 P.Z.	Great Plains Mixedgrass Prairie Cultivated Crops Great Plains Sand Prairie
95	Marvan silty clay, warm, 2-8% slopes	9.3	187.7		
	Abor-Cabbart-Delpoint complex, 8-25% slopes	22.5	22.7	Clayey-Steep (CyStp) RRU 58A-E 10-14" p.z.	Great Plains Badlands Great Plains Mixedgrass Prairie
	Abor-Cabbart-Delpoint complex, 8-25% slopes	8.6	8.7		
421D	Gerdrum-Creed complex, 4-15% slopes, gullied	41.8	42.2	Claypan (Cp) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe
60	Gerdrum-Creed complex, 2-8% slopes	0.3	199.4		
61	Gerdrum-Creed complex, 4-15% slopes, gullied	59.8	60.5		
39	Creed-Gerdrum complex, 2-8% slopes	11.1	11.2	Claypan (Cp) RRU 60B-E 10-14" p.z. LEGA	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe

Table 2.2. Continued

Map Symbol	Soil Type	ALE CE (acres)	FWP CE (acres)	Ecological Site	Ecological Systems
79	Kremlin-Tinsley-Degrad complex, 4-15% slopes	0.0	3.8	Gravel (Gr) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Cultivated Crops
123	Ustic Torrifuvents, 0-4% slopes, occasionally flooded	15.1	25.8	Overflow (Ov) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe
456A	Havre and Glendive soils, channeled, 0-2% slopes, frequently flooded	163.0	164.5		
141	Zatoville silty clay loam, loamy substratum, 0-2% slopes	0.0	34.9	Saline Lowland (SL) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Cultivated Crops, Great Plains Badlands, Great Plains Sand Prairie
67	Hanly-Glendive complex, 0-2% slopes	0.0	20.5	Sands (Sa) RRU 58A-E 10-14" p.z.	Cultivated Crops, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine, Emergent Marsh
80	Lihill loamy sand, 4-15% slopes	71.6	72.3		
12	Busby fine sandy loam, 0-2% slopes	0.0	87.9	Sandy (Sy) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Cultivated Crops, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe, Great Plains Wooded Draw and Ravine, Great Plains Floodplain, Great Plains Ponderosa Pine Woodland and Savanna
13	Busby fine sandy loam, warm, 2-8% slopes	4.8	10.1		
15	Busby-Blackhall-Twilight fine sandy loams, 8-25% slopes	41.6	42.0		
27A	Busby fine sandy loam, 0-2% slopes	0.0	0.2		
34	Chinook fine sandy loam, 2-8% slopes	17.6	22.5		
352D	Chinook-Twilight fine sandy loams, 2-12% slopes	11.6	11.7		
35C	Chinook fine sandy loam, 2-8% slopes	6.6	6.6		
36	Chinook-Tinsley complex, 4-25% slopes	10.8	29.4		
38	Chinook-Twilight-Blackhall fine sandy loams, 8-15% slopes	32.7	69.3		
451A	Glendive fine sandy loam, 0-2% slopes, occasionally flooded	34.8	35.1		
62	Glendive fine sandy loam, 0-2% slopes	121.8	211.0		

Table 2.2. Continued

Map Symbol	Soil Type	ALE CE (acres)	FWP CE (acres)	Ecological Site	Ecological Systems
83	Lihill-Yetull complex, 8-35% slopes	174.5	223.6	Sandy-Steep (SyStp) RRU 58A-E 10-14" p.z.	Cultivated Crops, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
20/3F	Cabbart-Rock outcrop-Yawdim complex, warm, 15-70% slopes	1575.7	1590.3	Shallow (Sw) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe, Great Plains Wooded Draw and Ravine Great Plains Ponderosa Pine Woodland and Savanna, Emergent Marsh
8	Blackhall-Busby-Rock outcrop complex, 8-45% slopes	0.0	10.4		
9	Blackhall-Delpoint-Rock outcrop complex, 15-50% slopes	110.1	113.8		
98	Neldore-Rock outcrop-Abor complex, 15-50% slopes	515.4	520.9	Shallow Clay (SwC) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe, Great Plains Wooded Draw and Ravine
991F	Neldore-Rock outcrop-Abor complex, 15-50% slopes	310.8	313.7		
12E	Tinsley gravelly sandy loam, 8-35% slopes	448.0	452.1	Shallow to Gravel (SwGr) RRU 58A-E 10-14" p.z.	Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Ponderosa Pine Woodland and Savanna, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine
103	Pinelli loam, 0-2% slopes	0.0	6.5	Silty (Si) RRU 58A-E 10-14 P.Z.	Great Plains Mixedgrass Prairie, Cultivated Crops, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe, Great Plains Wooded Draw and Ravine, Pasture/Hay, Great Plains Ponderosa Pine Woodland and Savanna
104	Pinelli loam, 2-8% slopes	17.8	173.0		
105	Pinelli-Weingart-Gerdrum complex, 0-6% slopes	0.0	23.2		
127	Vanstel silt loam, 0-2% slopes	0.0	12.3		
128	Vanstel silt loam, 2-8% slopes	29.8	32.8		
131	Yamacall loam, warm, 0-2% slopes	0.0	103.2		
133	Yamacall-Busby complex, 2-8% slopes	34.8	35.1		
134	Yamacall-Busby complex, 8-15% slopes	6.8	20.2		
135	Yamacall-Busby-Blacksheep complex, 8-25% slopes	32.4	119.9		



Table 2.2. Continued

Map Symbol	Soil Type	ALE CE (acres)	FWP CE (acres)	Ecological Site	Ecological Systems
136	Yamacall-Delpoint loams, warm, 2-8% slopes	0.0	8.6	Silty (Si) RRU 58A-E 10-14 P.Z. Continued from previous page	Great Plains Mixedgrass Prairie, Cultivated Crops, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe, Great Plains Wooded Draw and Ravine, Pasture/Hay, Great Plains Ponderosa Pine Woodland and Savanna
137	Yamacall-Delpoint-Cabbart loams, 4-15% slopes	94.7	208.9		
138	Yamacall-Gerdrum complex, 2-8% slopes	13.2	42.4		
27	Cambeth, calcareous-Cabbart-Yawdim complex, 4-25% slopes	233.9	254.8		
37B	Degrad loam, 0-4% slopes	52.6	53.0		
42	Degrad loam, 0-4% slopes	14.0	301.0		
43	Delpoint-Busby-Blackhall complex, 4-15% slopes	55.0	123.0		
44	Delpoint-Cabbart loams, 4-15% slopes	0.0	40.6		
54	Floweree silt loam, 0-2% slopes	1.2	57.9		
55	Floweree silt loam, 2-6% slopes	21.9	56.7		
63	Glendive loam, 0-2% slopes	0.0	2.8		
64C	Pinehill loam, 2-8% slopes	60.7	61.3		
76	Kremlin loam, 0-2% slopes	16.1	16.3		
77	Kremlin loam, warm, 2-8% slopes	28.0	267.9		
797E	Yamacall-Busby-Blacksheep complex, 8-25% slopes	27.5	27.8		
79A	Yamacall loam, warm, 0-2% slopes	0.0	0.4		
84	Lonna silt loam, 0-2% slopes	8.0	8.0		
85	Lonna silt loam, 2-8% slopes	56.2	56.7		
89	Lonna-Cambeth silt loams, 2-8% slopes	58.3	58.9		
892D	Yamacall-Delpoint-Cabbart loams, 4-15% slopes	17.6	17.7		
90	Lonna-Cambeth-Cabbart silt loams, 4-12% slopes	174.3	325.6		
91	Lonna-Cambeth-Cabbart silt loams, 12-25% slopes	152.2	195.6		
995C	Yamacall-Gerdrum complex, 2-8% slopes	44.5	45.4		

Table 2.2. Continued

Map Symbol	Soil Type	ALE CE (acres)	FWP CE (acres)	Ecological Site	Ecological Systems
297E	Cambeth-Cabbart-Yawdim complex, 15-25% slopes	224.3	226.4	Silty-Steep (SiStp) RRU 58A-E 10-14" p.z.	Great Plains Mixedgrass Prairie, Cultivated Crops, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe, Great Plains Ponderosa Pine Woodland and Savanna, Great Plains Wooded Draw and Ravine
383F	Delpoint-Cabbart-Yawdim complex, 25-70% slopes	41.7	42.1		
45	Delpoint-Cabbart-Yawdim complex, 4-25% slopes	269.1	432.3		
46	Delpoint-Cabbart-Yawdim complex, 25-70% slopes	328.3	433.5		
47	Delpoint-Yamacall-Cabbart loams, 8-25% slopes	240.6	292.1		
967E	Delpoint-Cabbart-Yawdim complex, 4-25% slopes	3.5	3.6		
11	Borollic Camborthids-Ustic Torrfluvents, complex, 0-8% slopes	49.9	194.8		Great Plains Mixedgrass Prairie, Cultivated Crops, Great Plains Sand Prairie, Great Plains Riparian, Big Sagebrush Steppe

*smithii*) associations are common within the Great Plains Mixedgrass Prairie ecological system. These sagebrush grasslands commonly contain moderate density (10-25% canopy cover) sagebrush, especially where they occur near or adjacent to Big Sagebrush Steppe systems. The result is extensive sagebrush grasslands that are valuable to a variety of sagebrush-associated wildlife species. In the northern portion of the Land, ponderosa pine and juniper have spread into the Great Plains Mixedgrass Prairie ecological system.

Common grass species in the Great Plains Mixedgrass Prairie ecological system include western wheatgrass, thickspike wheatgrass (*Elymus lanceolatus*), green needlegrass (*Nassella viridula*), blue grama (*Bouteloua gracilis*), and needle and thread (*Hesperostipa comata*). Within these systems, western wheatgrass tends to be the dominant grass species, especially on finer-textured soils, with dominance decreasing under prolonged periods of heavy grazing. Sites with a strong component of green needlegrass indicate a more favorable moisture regime and moderate grazing pressure, whereas needle and thread increases with coarser soil textures, or under heavy grazing pressure. Cool season exotics such as Kentucky bluegrass (*Poa pratensis*), smooth brome (*Bromus inermis*), Japanese brome (*Bromus japonicus*), and crested wheatgrass (*Agropyron cristatum*) are common in eastern Montana mixedgrass prairies and tend to increase in dominance with heavy grazing. These non-native cool-season grasses are ubiquitous throughout eastern Montana grassland systems. In many places, these species have been promoted by overgrazing or intentionally introduced by ranchers hoping to improve forage production. The Coal Creek Conservation Easement is no exception, but in general these nonnative species occur at low density within native systems on the Land. Forb diversity tends to be high within these systems, with common species including yarrow (*Achillea millefolium*), scarlet globemallow (*Sphaeralcea coccinea*), western sagewort, (*Artemisia ludoviciana*), boreal sagewort (*Artemisia frigida*), silver lupine (*Lupinus argenteus*), fuzzy beardtongue (*Penstemon eriantherus*), shining penstemon (*Penstemon nitidus*), Missouri goldenrod (*Solidago missouriensis*) and dalea (*Dalea* species). Common shrub species include western snowberry (*Symphoricarpos occidentalis*), serviceberry (*Amelanchier alnifolia*), horizontal juniper (*Juniperus horizontalis*), silver sage and Wyoming big sagebrush.

The dominant land uses within Great Plains Mixedgrass Prairie are grazing and dryland farming (Luna and Vance 2017<sup>2</sup>). United States Department of Agriculture Farm Service Agency records indicate that approximately 2,080.5 acres of the Land have a tillage history. Of these, approximately 75.5 acres are encumbered by both the ALE and FWP Conservation Easements and referred to as ‘prior cultivated’ land. The remaining 2005 acres are encumbered by the FWP Conservation Easement and referred to as ‘cultivated’ land. Cultivated and prior cultivated land will be shown in the Baseline Report. Although portions of the Land have a history of tillage or conversion to non-native grasses, much of the Great Plains Mixedgrass Prairie on the Coal Creek Conservation Easement remains healthy and functional, and the long-term viability of native plant communities within this ecological system is expected to be maintained or improved under the grazing system described herein.

#### Great Plains Badlands.

The Great Plains Badlands ecological system is the second most common ecological system comprising the Coal Creek Conservation Easement. This system occurs within the mixed grass and sand prairie systems of eastern and southeastern Montana. Great Plains Badlands are characterized by rugged,

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<sup>2</sup>Luna, T. and L. K. Vance. 2010. Great Plains Mixedgrass Prairie. Montana Field Guide. Montana Natural Heritage Program. [http://FieldGuide.mt.gov/displayES\\_Detail.aspx?ES=7114](http://FieldGuide.mt.gov/displayES_Detail.aspx?ES=7114).

eroded land formations and sparse vegetative cover. Soils are typically consolidated clayey soils with bands of sandstone or isolated consolidates. Characterized by clay soils, steep slopes, and limited vegetation, badlands tend to be erosive and received precipitation contributes little to soil moisture. Vegetation communities associated with this ecological system are adapted to soils that are dry throughout the growing season. Common plant associations include greasewood (*Sarcobatus vermiculatus*) and Gardner's saltbush (*Atriplex gardneri*) or few-flowered buckwheat (*Eriogonum pauciflorum*) and threadleaf snakeweed (*Gutierrezia sarothrae*). Grass cover tends to be sparse, with species such as western wheatgrass, bluebunch wheatgrass (*Pseudoroegneria spicata*), and Indian ricegrass (*Achnatherum hymenoides*). Common forbs include few-flowered buckwheat, threadleaf snakeweed, curlycup gumweed (*Grindelia squarrosa*), longleaf wormwood (*Artemisia longifolia*), and Nuttall's povertyweed (*Monolepis nuttalliana*). Other shrubs that may be present include Wyoming big sagebrush, silver sagebrush, rabbitbrush (*Chrysothamnus viscidiflorus* and *Ericameria nauseosa*), saltbush (*Atriplex species*), and Rocky Mountain juniper.

#### Great Plains Sand Prairie.

Great Plains Sand Prairie comprises approximately 10% of the Land and occurs on coarse-textured soils that have weathered in place from sandstone caprock or marine shale formations. Soils in sand prairies are highly permeable and susceptible to wind erosion (blowouts) and vegetation loss. Within the Coal Creek Conservation Easement, sand prairies are intermixed with Great Plains Mixedgrass Prairie. Needle and thread is often the dominant grass species. Other common species include little bluestem (*Schizachyrium scoparium*), threadleaf sedge (*Carex filifolia*), bluebunch wheatgrass, and purple threeawn (*Aristida purpurea*). Forb species include scurf pea (*Psoralea* species), Indian breadroot (*Pediomelum*), and Narrowleaf purple coneflower (*Echinacea angustifolia*). Common shrubs include silver sage, Wyoming big sagebrush, horizontal juniper, skunkbush sumac (*Rhus trilobata*), and Soapweed yucca (*Yucca glauca*). The grazing system described in Chapter 3 of this Management Plan incorporates periods of rest which will allow plants to recover from grazing and minimize the occurrence of blowouts and vegetation loss within Great Plains Sand Prairie systems.

#### Great Plains Riparian.

Great Plains Riparian Systems comprise approximately 3% of the Coal Creek Conservation Easement. The primary inputs of water to these systems overland flow from local precipitation and groundwater inflow (Decker, 2007)<sup>3</sup>. Flooding is the key ecosystem process, creating suitable sites for seed dispersal and seedling establishment, and controlling vegetation succession. Great Plains Riparian systems that occur on the Coal Creek Conservation Easement include riparian forests or woodlands, as well as shrublands, tallgrass or mixedgrass wet meadows, herbaceous wetlands, and gravel/sand flats. This system is found on alluvial soils in highly variable landscape settings, from confined, deep cut ravines to wide streambeds. Common woody species in riparian systems include plains cottonwood, willows (*Salix spp.*), redosier dogwood (*Cornus stolonifera*), western snowberry, chokecherry (*Prunus virginiana*), and woods rose (*Rosa woodsii*). In areas where the channel is incised, the understory may be dominated by Wyoming big sagebrush or silver sagebrush. Riparian areas can have a high herbaceous species richness, but are also prone to invasion by exotic grasses and forbs. Primary threats to floodplain systems include overgrazing and conversion to agriculture. The health of these systems may be heavily influenced by the condition of the surrounding landscape, because the quality and quantity of ground and surface water inputs into riparian areas depends on the quantity and health of vegetation in the uplands. The grazing

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<sup>3</sup> Decker, Karin. 2007. *Western Great Plains riparian woodland and shrubland ecological system ecological integrity assessment*. Ft. Collins, Colo: Colorado State University, Colorado Natural Heritage Program.

system prescribed in Chapter 3 of this Management Plan will address these threats by preventing additional conversion, providing periods of rest from grazing to benefit riparian systems, and providing residual cover on a landscape scale which will slow erosion, improve moisture retention, and reduce sediment loads in overland flow.

#### Great Plains Ponderosa Pine Woodland and Savanna.

This ecological system occupies less than 3% of the Land and is characterized by the historic or current presence of ponderosa pine. Species compositions are similar to Great Plains Mixedgrass Prairie.

#### Big Sagebrush Steppe.

Big Sagebrush Steppe comprises approximately 1% of the Coal Creek Conservation Easement and occurs as small patches interspersed within badlands and mixedgrass prairie (Figure 2.1). The soils are typically deep and non-saline, often with a microphytic crust. These areas are dominated by Wyoming big sagebrush with western wheatgrass, with shrub canopy cover ranging from 10-25% and herbaceous cover typically greater than 25%. Big Sagebrush Steppe, in conjunction with sagebrush on adjacent mixedgrass prairie sites, provides important habitat for a variety of sagebrush-associated wildlife species. Other shrub species present may include silver sagebrush, greasewood, saltbush, and rabbitbrush. Other grass and sedge species include Indian ricegrass, blue grama, Sandberg's bluegrass (*Poa secunda*), bluebunch wheatgrass, threadleaf sedge and needleleaf sedge (*Carex duriuscula*). Japanese brome and cheatgrass (*Bromus tectorum*), indicators of disturbance in this system, typically occur at moderate density on the Land. Common forbs include Hood's phlox (*Phlox hoodii*), prickly pear (*Opuntia* species), scarlet globemallow, purple prairie clover (*Dalea purpurea*), gayfeather (*Liatris punctata*), and milkvetch (*Astragalus* species).

#### Great Plains Wooded Draw and Ravine.

Great Plains Wooded Draw and Ravine ecological systems comprise less than 1% of the Coal Creek Conservation Easement and are associated with intermittent to ephemeral streams. These narrow, linear bands of woody vegetation provide critical wildlife cover, browse and mast production. Snow entrapment and seasonal, short-duration flooding provide critical moisture that promotes woody species and contributes to deep loamy soils. Green ash is the dominant overstory species, with occasional Boxelder (*Ulmus rubra*). Common understory species include chokecherry, as well as hawthorne (*Crataegus* species), current (*Ribes* species), Woods' rose, silver buffaloberry (*Shepherdia argentea*), and western snowberry. The herbaceous layer is often dominated by sedges (*Carex* species) and grasses such as northern reedgrass (*Calamagrostis stricta*), western wheatgrass, bluebunch wheatgrass, and thickspike wheatgrass. Common forbs include American licorice (*Glycyrrhiza lepidota*), yarrow, meadow rue (*Thalictrum dasycarpum*), and bedstraw (*Galium* species). Exotics such as Russian olive (*Elaeagnus angustifolia*), yellow sweetclover (*Melilotus officinalis*) and Kentucky bluegrass occur in these systems. Shade and moisture draw livestock into woody draws and ravines, concentrating use, and causing mechanical damage to woody species. Browsing and trampling by livestock can limit the growth and recruitment of woody species. The grazing system described in Chapter 3 of this Management Plan will provide periods of growing-season rest, allow woody species to recruit out of the browse zone, and is designed to improve the long-term viability of woody draws on the Land.

#### Great Plains Floodplain and Emergent Marsh.

Floodplains and marsh occupy nearly 10-acres of the Land. Emergent marshes occur in numerous seeps, springs, or water-holding depressions occur in association with Coal Creek.

## **3. GRAZING MANAGEMENT**

### **3.1 Land Unit Description**

The grazing system on the Coal Creek Conservation Easement encompasses a total of 15,512.22 acres (10,072.22 deeded acres, 4,480 BLM, and 960 DNRC acres; Figure 1.1). Ecological systems and communities found on the Land are described in detail in Chapter 2, the Grassland Component Description, of this Management Plan. The primary historic land use has been livestock grazing. United States Department of Agriculture Farm Service Agency records indicate that approximately 2,080.5 acres of the Land have a tillage history. Of these, approximately 75.5 acres are encumbered by both the ALE and FWP Conservation Easements and referred to as 'prior cultivated' land. The remaining 2005 acres are encumbered by the FWP Conservation Easement and referred to as 'cultivated' land. Cultivated and prior cultivated land will be mapped in the Baseline Report. These lands were initially converted to small grains, but most of them have been converted back to perennial introduced grass cover for grazing or haying. The Land will continue to be managed as a working cattle ranch. The grazing system described in Chapter 3.3, Planned Management Narrative with Tables and Maps, follows cattle through winter, spring, summer, and fall and adheres to the ALE Grassland Component Plan and Minimum Standards for Grazing Livestock (Exhibit C in both Easements).

### **3.2 Current Management Narrative**

This section describes what has occurred with grazing management on the Land prior to adoption of this grazing plan. The Land was acquired by Glen French during three purchases in 2001, 2006, and 2009. Since that time, the grazing system has been adaptive, changing annually based on weather and forage conditions. The Coal Creek Conservation Easement is part of three BLM allotments shown in Figure 3.1. Pasture names are listed in Figure 3.2.

The ranch currently summers around 480 head of mother cows that are 2 years old and up. Calving typically starts around April 1<sup>st</sup> for 60 days in pastures in the western half of the ranch. The mother cows are moved to the improved pasture set during the growing season, then to pastures in the eastern portion of the ranch for late summer and fall, then gathered in early November and moved to adjacent land for weaning and shipping, and finally moved to the Six Section or Winter Pastures for winter. Feeding occurs in the Winter Pasture Set, with dates depending on weather conditions but in general the mother cows are fed starting in late December or early January. Weanling replacement heifers (approximately 75 head) are wintered at the ranch headquarters, typically fed until early May, then spend their yearling summer in the Improved Pasture Set. They spend their yearling winter on adjacent land, calving their first calf in the corrals at ranch headquarters, then are moved to the mother cow herd. Approximately 75 head of dry or aging cows are removed from the herd throughout the annual cycle, maintaining stable numbers with the addition of replacement heifers. Bulls (20-30 head) are either confined to corrals at ranch headquarters, the Improved Pasture Set, or with cows.

The ranch also runs approximately 800 sheep, 100 goats, and 30 horses. Lambing usually occurs around the third week in May at the ranch headquarters. The sheep are kept in the Home Pasture Set and fed for approximately three months, then move through the Pass-thru Pasture to the Sheep and Old Sheep Pastures, then back to the Home Pasture Set and ranch headquarters to winter. Goats are confined to

# BLM Allotments

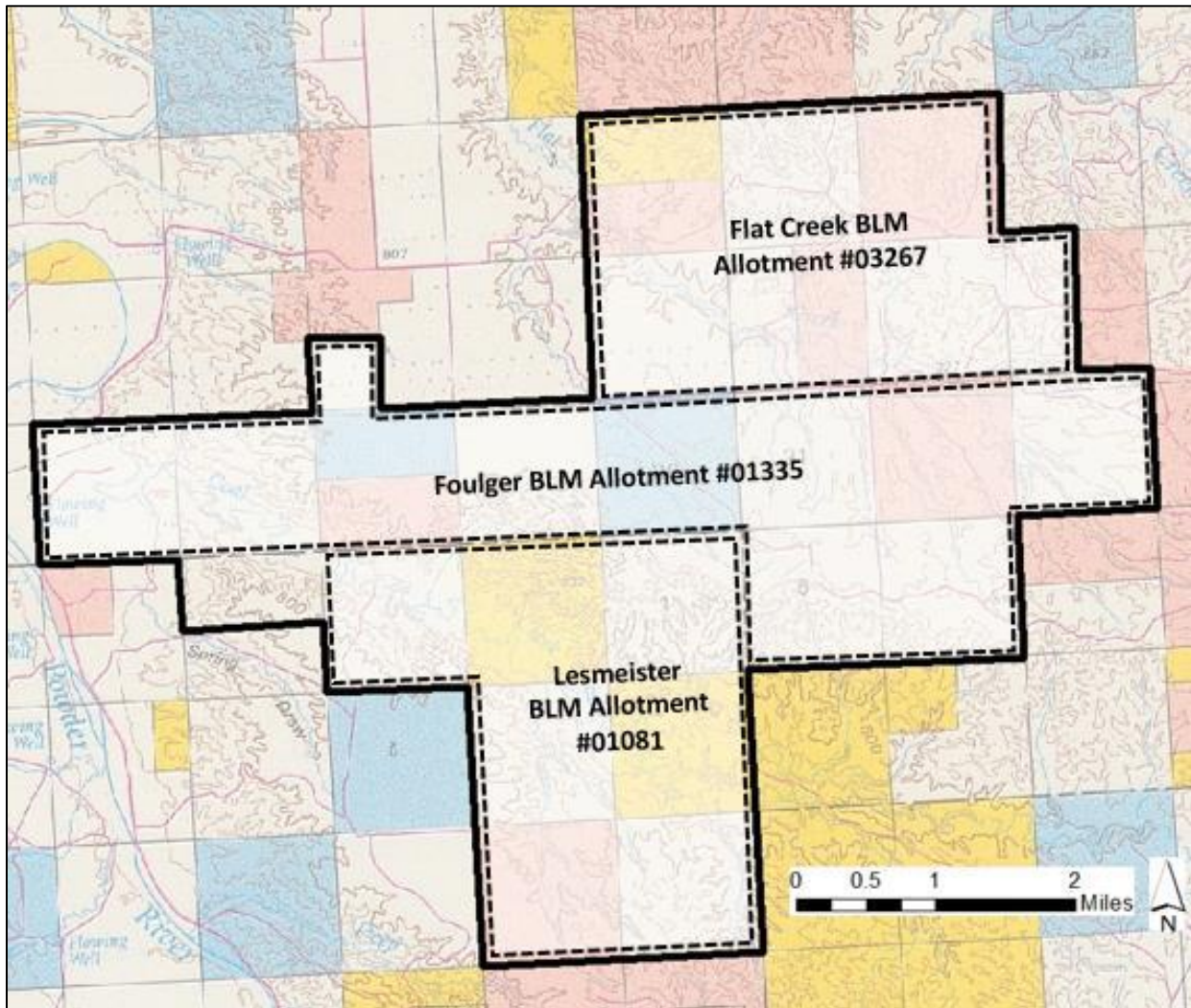


Figure 3.1: Bureau of Land Management (BLM) allotments on the Coal Creek Conservation Easement.

# Pasture Names

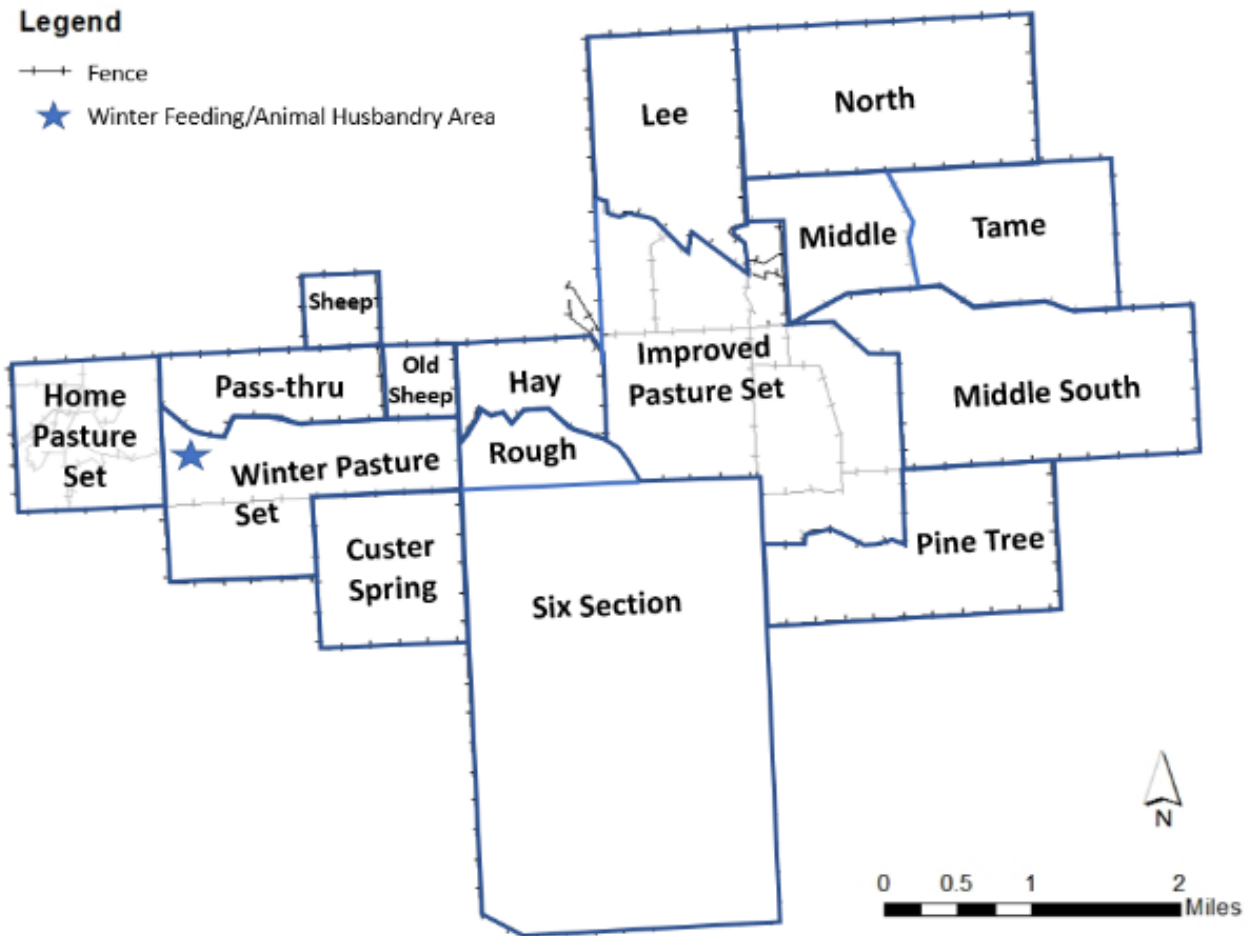


Figure 3.2: Names of pastures and pasture sets on the Coal Creek Conservation Easement.



corrals at the ranch headquarters year-round. Broodmares are typically pastured with the mother cows, and several other horses are kept in corrals at the ranch headquarters.

Below is a brief description of how pastures (Figure 3.2) have generally been used:

- Home Pasture Set: These pastures have been used year-round, with the heaviest use during calving, lambing, and winter due to their proximity to the ranch headquarters.
- Pass-thru Pasture: This pasture has been used as a pass-through for animals traveling between pastures near the ranch headquarters and elsewhere on the ranch and has received annual use.
- Hay Pasture: This pasture has been used as hay ground, and also used as a pass-through pasture to facilitate movement of livestock throughout the ranch.
- Sheep and Old Sheep Pastures: These pastures have been used annually for sheep grazing, typically between September and mid-December.
- Winter Pasture Set: These pastures have been used as winter pastures. Cattle are typically moved into the winter pasture set between mid-November and early December. Cattle are fed hay in these pastures, typically beginning in late December or early January each year. These pastures have also been used for calving in some years.
- Custer Spring Pasture: This pasture has been used during winter, calving, or early spring.
- Six Section Pasture: The Six Section Pasture was used for summer grazing until approximately 2010, when it switched to a winter pasture. It has also been used for calving in some years.
- Improved Pasture Set: At the time of purchase, cropland in these pastures was still being farmed, was enrolled in CRP, or was idle but degraded. Mr. French began restoring these pastures for grazing in approximately 2005. The seed mix consisted primarily of pubescent wheatgrass (*Thinopyrum intermedium*) and intermediate wheatgrass (*Thinopyrum intermedium*), with roughly 20% alfalfa (*Medicago sativa*). Many areas have a component of volunteer crested wheatgrass, among other species. As these fields have been restored, they have been used primarily during the growing season to provide rest in the native pastures. In recent years, the western portion of the Improved Pasture Set has been used every year for yearlings from approximately early May through early October. The eastern portion of the Improved Pasture Set has been used primarily for mother cows prior to being turned out on native summer pastures. Bulls have been kept in the Improved Pasture Set during times when they are not with the cows.
- Native pastures in the eastern portion of the property (Lee, North, Middle, Middle South, Pine Tree) have been used primarily during late summer and fall. The grazing regime in these summer pastures has incorporated periods of both growing season and year-long rest and rotation of season of use, but not in any set rotational system. As the quality and quantity of improved pastures has increased, these pastures have received a greater amount of rest.

Below is a brief description of current BLM allotment allowed dates of use and Animal Unit Months (AUMs):

- The current BLM permit for the Lesmeister #01081 grazing allotment authorizes an 11/7-1/7 season of use allocating 265 AUMs on BLM lands.
- The current BLM permit for the Flat Creek #03267 grazing allotment authorizes a 6/15-9/15 season of use allocating 300 AUMs on BLM lands.

- The current BLM permit for the Foulger #01335 grazing allotment authorizes year-round use allocating 240 AUMs on BLM lands.

### **3.3 Planned Management Narrative with Tables and Maps**

#### **Overview**

The Coal Creek Conservation Easement comprises one contiguous parcel of land, currently consisting of several permanent pastures. Some fences will need to be replaced and additional watering sources will need to be installed to implement the grazing system as described in this management plan. Range improvements are detailed in Chapter 3.6. Figure 3.2 provides an overview of the Coal Creek Conservation Easement, and provides names assigned to individual pastures as well as to pasture sets used in the grazing system.

Pastures on adjacent land or comprising a mix of leased public and deeded land are incorporated herein for completeness. However, conservation easement restrictions do not apply to BLM, DNRC, or adjacent private land. They only apply to deeded lands specifically described in the Coal Creek deed of Conservation Easement. It is the responsibility of the Landowner to adhere to grazing standards and limitations set by the managing agency on leased public land. Use will not exceed authorized AUMs and Standards for Rangeland Health will be met on public land administered by the BLM. Any changes proposed on BLM land will be subject to NEPA analysis and approval.

The Coal Creek Conservation Easement is unique in that the Improved Pasture Set, which is dominated by land with a tillage history that have been planted to perennial forage for grazing, will receive the majority of the growing season grazing treatment each year (approximately June 1 – August 1). This allows for native pastures in the eastern and southern portions of the ranch to be rested through the growing season every year, and rested completely every third year.

There are some areas of the ranch that will be available for livestock use every year. Livestock will be fed hay in the Winter Pasture Set on an annual basis. A portion of the Winter Pasture Set (not to exceed 100 acres, fence locations will be subject to prior approval by FWP) may be fenced and used to confine livestock for winter feeding and during other times of the year, the approximate location is shown as a star in Figure 3.2. Other portions of the ranch include core areas needed to conduct annual ranch operations, including but not limited to calving, weaning, shipping, other animal husbandry practices, and pastures needed to facilitate livestock movement on the ranch.

Young cows will continue to be managed as they have been in the past. Weanlings will be wintered at the ranch headquarters, then spend their yearling summer in the Improved Pasture Set. They will spend their yearling winter on adjacent land, calving their first calf in the corrals at ranch headquarters, then join the mother cow herd.

Bulls will continue to be either confined to corrals at ranch headquarters, the Pass-thru Pastures, Improved Pasture Set, or with cows.

Sheep will continue to be kept in the Home Pasture Set and fed for approximately three months, then move through the Pass-thru Pastures to the Sheep Pasture, the Hay Pasture, or adjacent land, then back

to the Home Pasture Set and ranch headquarters to winter. Goats will continue to be confined to the Home Pasture Set or corrals at the ranch headquarters year-round.

Broodmares will continue to be pastured with the mother cows, and several other horses will be kept in corrals at the ranch headquarters. Grazing horses on BLM lands associated with the Coal Creek Conservation Easement would require BLM NEPA analysis and approval.

### **Grazing Rotation and Schedules: Mother Cows**

*Winter:* Mother cows will be wintered and fed hay in the Winter Pasture Set or the Hay Pasture arriving no sooner than early November each year. Feeding will occur only on deeded land. Turn-in dates will depend on winter severity. The Old Sheep Pasture will typically be used during the month of November, although livestock will need to move through this pasture at other times of the year. The Custer Spring and Rough Pastures will also be available for grazing between early November and early December. In most years cattle should be in the Custer Spring and Rough Pastures for 2-3 weeks, moving between the winter feeding areas and grazing these pastures depending on forage availability and weather. Cattle should have access to the Custer Spring and Rough Pastures for no more than 30 days total. In mild weather years, the landowner may stay in fall pastures through December 1, providing an opportunity to rest the Custer Spring and Rough Pastures. Cattle may stay in the Winter Pasture Set until winter feeding is no longer necessary and calves are strong enough to begin moving through the grazing rotation.

*Spring:* As spring green-up occurs and calves grow, groups of cow-calf pairs will be moved in stages through the Pass-Thru Pastures to adjacent land, then through the Lee Pasture to summer in the Improved Pasture Set.

*Summer:* The Improved Pasture Set will receive the majority of the growing season grazing treatment each year (approximately June 1 – August 1). Cattle may enter and depart the Improved Pasture Set at the discretion of the landowner.

*Fall:* Native pastures on the eastern and southern portions of the ranch (North, Middle, Middle South, Pine Tree, and Six Section) will be grazed after seed ripe from approximately August 1 through mid-November for two consecutive years, and rested for one of three years. Treatments will be rotated among years as described and illustrated on maps in Figures 3.3, 3.4, and 3.5 as well as in Table 3.1. The Tame Pasture contains a large approximately 130-ac flat with a tillage history that will be planted to a mix of pubescent wheatgrass and alfalfa, and will be available for annual use in the fall. When the Six Section Pasture is available for grazing, it will be used last in the rotation, when temperatures are cooler and cattle are less likely to congregate in woody draws and riparian areas. Cattle should enter these pastures no sooner than July 31 and depart no later than December 1 each year. Cattle may be moved to the Improved Pasture Set, Pass-thru Pastures, Hay, Winter, or Home Place Pasture Set for weaning and shipping of calves in approximately mid-November

# Mother Cows – Year 1

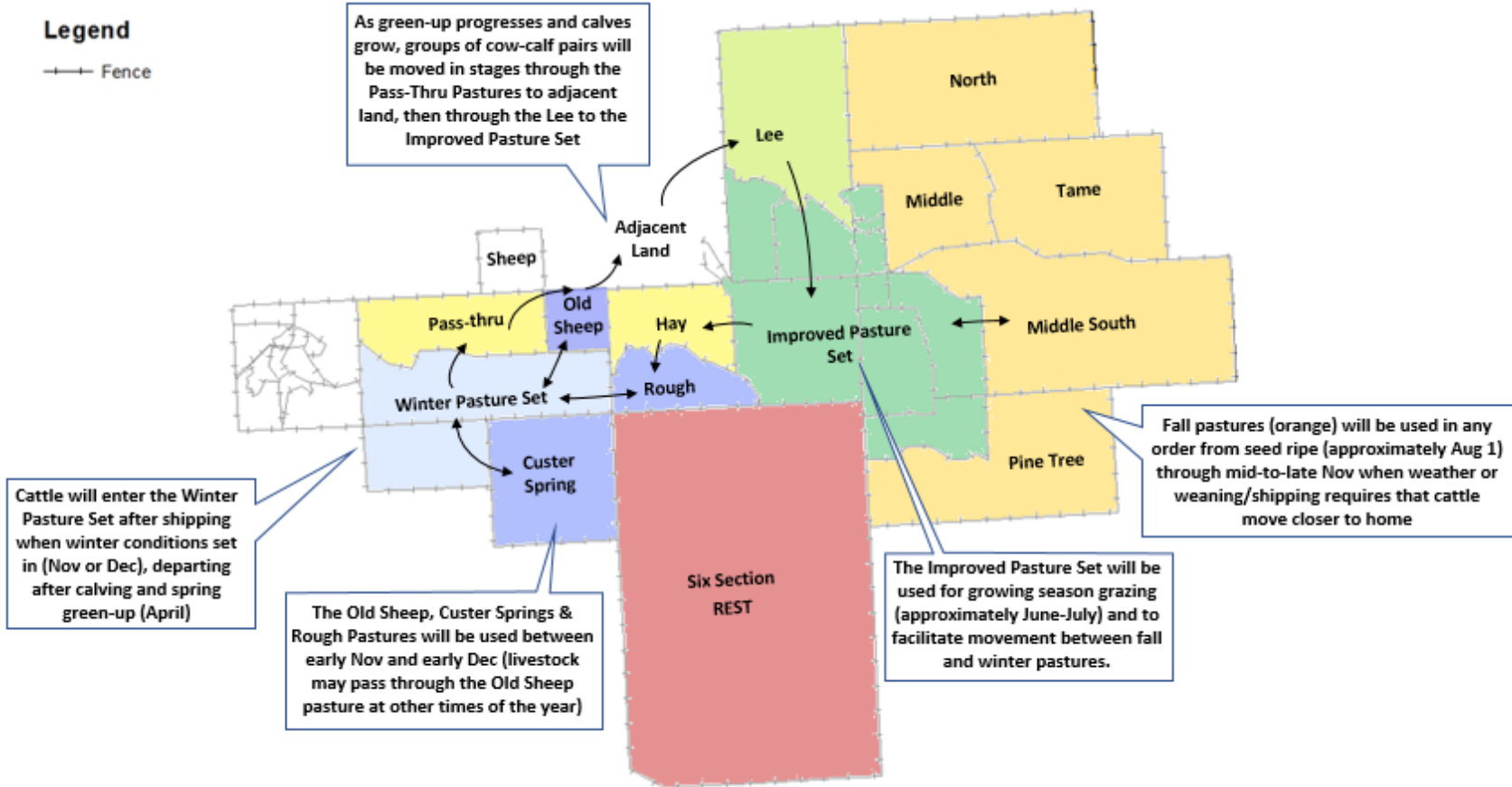


Figure 3.3: Map of the mother cow grazing schedule for Year 1. Dates are approximate, allowed dates of use are detailed on page 19.

# Mother Cows – Year 2

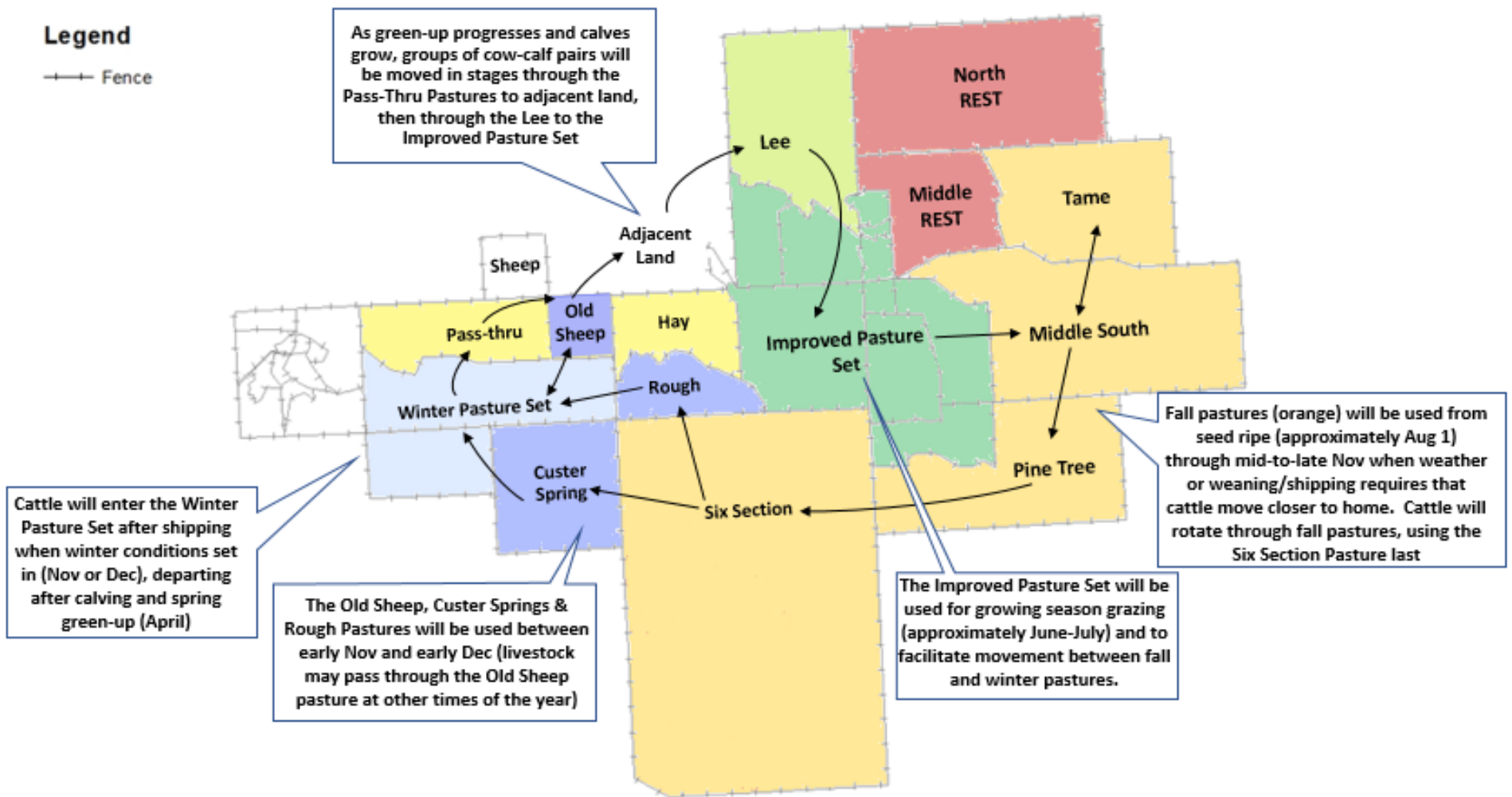


Figure 3.4: Map of the mother cow grazing schedule for Year 2. Dates are approximate, allowed dates of use are detailed on page 19.

# Mother Cows – Year 3

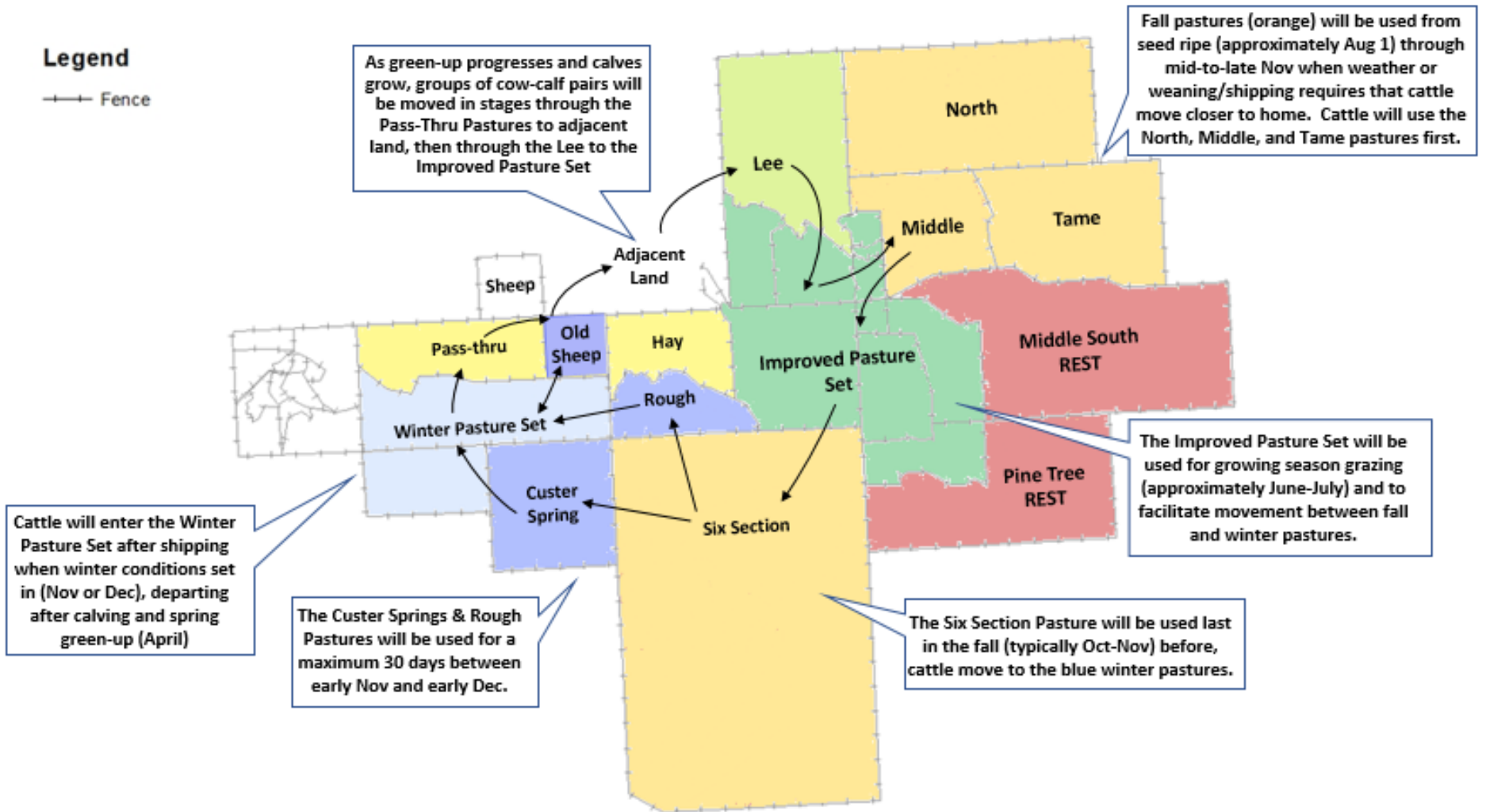


Figure 3.5: Map of the mother cow grazing schedule for Year 2. Dates are approximate, allowed dates of use are detailed on page 19.

Table 3.1: Description of grazing rotation schedules for the Mother Cow group.

Year	North	Middle	Middle South	Pine Tree	Six Section*
2021	Late	Late	Late	Late	Rest
2022	Rest	Rest	Late	Late	Late
2023	Late	Late	Rest	Rest	Late
2024	Late	Late	Late	Late	Rest
2025	Rest	Rest	Late	Late	Late
2026	Late	Late	Rest	Rest	Late
2027	Late	Late	Late	Late	Rest
2028	Rest	Rest	Late	Late	Late
2029	Late	Late	Rest	Rest	Late
2030	Late	Late	Late	Late	Rest
2031	Rest	Rest	Late	Late	Late
2032	Late	Late	Rest	Rest	Late
2033	Late	Late	Late	Late	Rest
2034	Rest	Rest	Late	Late	Late
2035	Late	Late	Rest	Rest	Late

Late = Graze 7/30 – 12/1  
 Rest = No grazing  
 \* When the Six Section Pasture is available for grazing, it will be used last in the rotation (typically October/November), when temperatures are cooler and cattle are less likely to congregate in woody draws and riparian areas.

Additional Details:

- The grazing schedules and rotations are further described and illustrated on maps in Figures 3.3, 3.4, and 3.5 as well as in Table 3.1.
- The Pass-Thru, Hay, Sheep, and Improved Pastures are the “hallway” of the ranch and may be used throughout the annual cycle at the discretion of the Landowner to facilitate movement among other pastures. The Old Sheep Pasture will typically be grazed during the month of November, but may also be used at landowner discretion to facilitate movement of livestock through the grazing system.
- This system has intentional overlap between allowed dates of use. This is to illustrate flexibility in the system to accommodate annual variation in weather and forage conditions.

### **3.4 Stocking Rate**

This grazing plan does not address stocking rate. Stocking rate will ultimately be determined by the BLM and DNRC within pastures that contain public lands. It is the responsibility of the Landowner to adhere to stocking rates set by the managing agency on leased public land. On deeded land covered by the easement, and those deeded land incorporated into state and federal allotments, the maximum stocking rate will be based on compliance with the grazing system. As long as the Landowner can graze livestock and remain in compliance with the grazing system, FWP will not be concerned about the stocking rate.

### **3.5 Salt and Mineral Management**

When salt and mineral supplements are used, they will be located away from riparian and wetland zones in a manner that will minimize impacts to these areas. Sites will also be located away from any known grouse breeding leks.

### **3.6 Range Improvements**

In order for the grazing system to function properly, the range improvements described in Table 3.2 and mapped in Figure 3.6 are essential. Proposed infrastructure improvements on BLM lands will be subject to NEPA analysis and approval by BLM. Alternatives identified during the NEPA process may result in changes to the infrastructure proposed on lands within the Coal Creek Conservation Easement.

Landowner/FWP cost share will involve two options: Option 1, FWP pays for materials through reimbursement to the Landowner and the Landowner completes the installation as in-kind cost share. Option 2, the Landowner hires contracted services and all work is split 50/50 through reimbursement to the Landowner. The total cost of range improvements is expected to be \$359,653.45. Reimbursement paid by FWP will not exceed \$179,826.73.

The Landowner and FWP will incorporate a cost-share agreement as part of the conservation easement Purchase Agreement for the improvements identified in Table 3.2. As part of this reimbursement arrangement, the Landowner agrees to comply with the following purchasing requirements (per 18-4-133, MCA). Goods and services costing up to \$5,000 may be purchased without bids. However, best buy practices would recommend documented price comparisons. For goods and services costing more than \$5,000, the Landowner must conduct a limited solicitation of at least three bids and select the most cost-effective bid. The Landowner must submit the Limited Solicitation Summary Sheet (Appendix A) as documentation along with copies of receipts when requesting reimbursement for expenses.

No employee, officer, or agent of the Landowner shall participate in the selection, award, or administration of a contract supported by state funds if a real or apparent conflict of interest would be involved. The Landowner may not purchase goods or services from any business in which he, an officer, or agent has a financial or other interest.



**Legend**

- +— Fence - Existing
- +— Fence - Needed
- ⬡ Well - Existing
- ⬡ Well - Needed
- Tank - Existing
- Tank - Needed
- ⬇ Dam - Existing
- ⬇ Dam - Repair Needed
- ◆ Spring - Existing
- ⋯ Pipeline - Existing
- ⋯ Pipeline - Needed
- Reseeding area

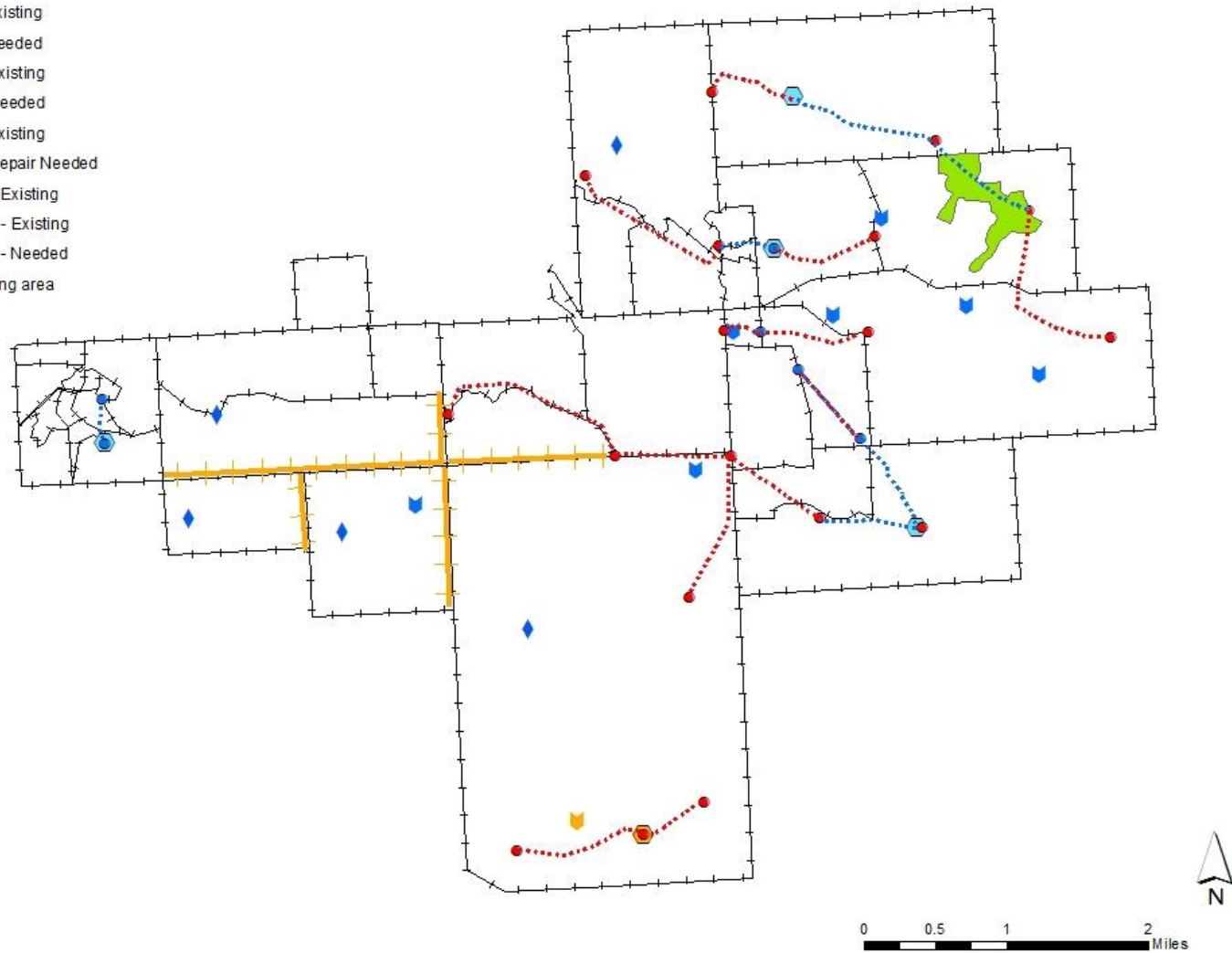


Figure 3.6. Map of improvements needed for grazing system development on the Coal Creek Conservation Easement.

Table 3.2: List of improvements needed for grazing system development on the Coal Creek Conservation Easement.

Improvement	Rate	Quantity	Cost
Fence- barbed – difficult/rough terrain <sup>1</sup>	\$3 per ft	26,400 ft	\$79,200.00
Kattle Keeper water gap fencing template from <a href="https://kattlekeepersystems.com/products">https://kattlekeepersystems.com/products</a> <sup>2</sup>	\$120 per ea	10 ea	\$1,200.00
Pipe for Kattle Keeper template <sup>2</sup>	\$1.20 per ft	4,000 ft	\$4,800.00
Well (approximately 400') and Solar Pump <sup>2</sup>	\$24,000 per ea	1 ea	\$24,000.00
Livestock pipeline frost free <sup>1</sup>	\$2.45 per ft	62,621 ft	\$153,421.45
Water tank - rubber, 2,000 gal and installation <sup>2</sup>	\$1,650 per ea	20 ea	\$33,000.00
Water Pumps (1.5 HP, 230 volt), Control Boxes (1.5 HP) and associated electrical installation work <sup>2</sup>	\$8,500 per ea	2 ea	\$17,000.00
Repair for breached stock dam in Six Section Pasture <sup>2</sup>	\$4,000 per ea	1 Ea	\$4,000.00
Introduced perennial seeding <sup>1</sup>	\$92.40 per ac	130 ac	\$12,012.00
Coal Creek Crossings <sup>3</sup>	Variable per ea	10 ea	\$31,020.00
		<b>Total</b>	<b>\$359,653.45</b>
		<b>50% Cost Share Contribution from FWP Not to Exceed</b>	<b>\$179,826.73</b>

<sup>1</sup>Cost estimate based on the FWP Habitat Bureau 2018-19 Cost-list

<sup>2</sup>Cost estimate based on verbal or written estimate obtained by Landowner

<sup>3</sup>Cost estimate based on written estimate produced by FWP Design and Construction

As improvements are completed, FWP will reimburse the Landowner based on original or copies of original receipts for materials and services upon FWP inspection of completed work.

Unless unforeseen circumstances prevent completion, improvements described in Table 3.2 should be completed within 3 years (Year 2022) from the signing of the CE. At that time, the grazing systems should be fully operational. In the meantime, during the infrastructure construction years that would include the grazing seasons of 2020, 2021, and 2022, the grazing systems will be followed when and wherever possible as improvements are completed. However, full compliance with the grazing schedules will not be required during this construction period

### 3.7 How the Grazing Plan Addresses Fish and Wildlife Objectives

The overall objective of this grazing system is to maintain and enhance the quality and vigor of native vegetation on land incorporated into the Easements. Pastures designated for summer grazing follow a three-pasture rest-rotation grazing system which provides season-long and year-long rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively. These periods of rest allow plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the “late summer” pasture following seed-ripe, hoof action tramples mature seeds into the soil, and can provide microsites that capture moisture and facilitate seedling establishment. The following year’s rest treatment allows these seedlings to develop strong root systems and grow before growing-season livestock grazing commences again the following spring. This rest-rotation approach is intended to support the health of perennial species by allowing them to recover

following grazing. The abundance and health of highly palatable “ice cream” plants is improved relative to grazing regimes that do not incorporate regular growing season rest, because the more palatable plants are the first to be grazed by livestock, thereby reducing their vigor and survival, and giving less palatable species a competitive advantage.

The grazing system will help increase vegetative diversity and ensure an adequate quantity and quality of forage is available for wildlife using upland and riparian habitats. For example, high quality, early spring forage will be available for wild ungulates the spring following the post seed-ripe treatment. These pastures can be critical for antelope and deer coming out of a negative energy balance from winter, as they get ready to fawn. Residual vegetation associated with yearlong rest provides valuable cover for ground nesting and ground brooding birds, including sage and sharp-tailed grouse, as well as cover for small mammals, fawning cover for ungulates, and hiding cover for a variety of wildlife. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures. Grazing systems can contribute to songbird diversity because different species of songbird prefer different vegetation structures and heights offered by the various grazing treatments. Woody draws throughout eastern Montana are in decline, oftentimes due to grazing regimes that do not offer sufficient rest and allow woody species to reproduce or grow above the browse line. Rest provided by the grazing system will support recruitment and growth of woody species that provide critical nutrition in the form of browse and mast production, as well as hiding and thermal cover for a variety of wildlife.

In addition to benefits to native vegetation and wildlife, the grazing system can contribute to overall ecosystem health and water quality. Residual cover can reduce runoff and erosion, thereby contributing to moisture retention, improved water quality, and enhanced soil health. Improved plant species diversity leads to improved health and diversity of pollinator and native insect populations. Finally, the grazing system will contribute to high-quality hunting, trapping, and wildlife watching experiences for the public. The grazing system contributes to productive rangelands, healthy ecosystems, and diverse wildlife populations, with both intrinsic and aesthetic value. Finally, the grazing system serves as an example of how livestock production and conservation are highly compatible, because the quality and quantity of vegetation for livestock production should be maintained or improved long-term through the grazing prescription.

#### **4. MANAGEMENT OF CULTIVATED AND PRIOR CULTIVATED LAND**

**Objective:** *Allow the Landowner to manage cultivated land (as shown in the baseline report) to benefit their agricultural operation and wildlife habitat, without degrading habitat in adjacent portions of the Land.*

**Strategy:** Within the Home Pasture Set (Figure 3.2), flexibility is needed in cultivated land (approximately 255 acres) to sustain a financially viable agricultural operation. The Landowner shall have flexibility to plant any crop of their choosing, including native or tame grass, cover crops, hay/forage mixes, or traditional crops, and to utilize generally-accepted agricultural practices, such as chemical fallow, on an as-needed basis. However, the planting of invasive non-native plants that have the potential to degrade habitat in surrounding lands is prohibited. Cultivated land within the Home Pasture Set may be cropped, hayed, grazed, used for grassland restoration or conservation, or any combination of these activities.

Outside of the Home Pasture Set, the Landowner will maintain a minimum of 2/3 of the approximately 1750 total cultivated acres, in grass cover at any given time. This equates to approximately 1,167 acres in grass cover. These areas may be hayed, grazed, used for grassland restoration or conservation, or any combination of these activities. A maximum 1/3 of cultivated acres (approximately 583 acres) may be cropped, fallow, or cover other than grass cover at any given time. The intent of allowing up to 1/3 of this land to be in cover other than grass is twofold. First, given their cultivation history, these areas may need to be periodically rehabilitated, replanted, or managed to control weeds. Second, flexibility will allow the Landowner to adapt to changing agricultural practices and commodity prices to benefit the agricultural operation and/or wildlife. Due to their proximity to native rangelands, seed mixes planted in cultivated land outside of the Home Pasture Set must have prior approval of FWP. Grass cover seed mixes may include forbs and broadleaf plants (e.g., alfalfa). However, the planting of invasive non-native plants that would have the potential to degrade habitat in surrounding lands is prohibited. Seed mixes that contain aggressive non-native grasses such as crested wheatgrass or brome species are not likely to be approved. It may occasionally be necessary or beneficial to maintain less than 2/3 of cultivated land outside of the Home Pasture Set in grass cover, this is allowed with prior approval of FWP.

**Objective:** *Protect nesting birds whose populations are in significant decline within prior cultivated land per section II.C.15 in the ALE Conservation Easement and II.C.16 in the FWP Conservation Easement.*

**Strategy:** On the approximately 75.5 acres of ‘prior cultivated’ land (depicted in the baseline report), under the ALE easement that has been converted to grassland, Grantors are allowed to hay, mow or harvest those acres as needed without prior approval as long as FWP has made the determination that ground nesting bird species ranked as G1 S1, “at high risk because of extremely limited and/or rapidly declining number range and/or habitat” (Montana Natural Heritage Program) are not present and/or nesting. Should FWP determine that ground nesting bird species ranked as G1 S1 are present and/or nesting, haying, mowing or harvesting will be delayed until an appropriate date as determined by FWP.

## 5. WEED MANAGEMENT

**Objective:** *Prevent noxious weeds from degrading the conservation and agricultural values of the Land.*

**Strategy:** The Landowner is responsible for managing noxious weeds in compliance with state law and best management practices, implementing an integrated management philosophy to meet weed control goals. Control may include a combination of chemical, mechanical and biological controls as appropriate to meet conservation goals. The conservation easement supports use of these techniques in a manner that minimizes impacts to native vegetation.

## 6. WILDLIFE FRIENDLY FENCES

**Objective:** *Section II.C.5.b. of the ALE Easement and Section II.C.6.d.ii. of the FWP Easement (Landowner’s Rights – Man-made Structures – Fences) states that “Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement*

*or migration on or through the Land must be “wildlife friendly” as provided in the Management Plan.” For the purposes of this management plan, the term “wildlife friendly” does not refer to a specific fence design but rather a broader objective of providing for wildlife passage without inhibiting the ability of the fence to contain livestock.*

**Strategy:** Designs for wildlife friendly fences are constantly evolving with new research and testing of new designs. Paige 2012<sup>4</sup> provides a good overview of current wildlife friendly designs. With prior notice to FWP, when a fence is proposed to be constructed or replaced, the Landowner and FWP wildlife biologist will jointly design a fence that takes into account the wildlife species present, habitat, and landscape features. The FWP wildlife biologist can provide input on the proposed fence route and may be able to suggest modifications that would benefit wildlife (for example, re-routing a fence that would pass near or through a grouse lek) with little impact to the overall length of fence, difficulty of fencing, or resulting pasture sizes. The design may specify wire spacing (to allow passage over and under fences and minimize entanglement), or markers to improve visibility. Oftentimes it is not necessary for the entire fence to allow ideal passage. Fence modifications at specific crossing spots likely to be heavily traveled by wildlife may provide excellent wildlife passage (Paige 2012<sup>1</sup>). The default design will be a fence of not more than 4 strands of barbed wire with the height of the top wire set at 42 inches or lower and the height of the lowest wire set 18 inches from the ground or higher. Due to the nature of fencing on uneven ground, there may be places where the top wire is higher, or bottom wire is lower than specifications, this is expected so long as the majority of the fence conforms to height requirements.

Fence requirements in the Easements apply only to internal fences and those external fences that the Landowner is responsible for maintaining. It does not obligate adjacent landowners to wildlife friendly fence designs. In cases where the default fence design is inadequate to exclude livestock belonging to adjacent landowners, it may be necessary to modify this standard to adequately exclude those livestock. In this case, provisions such as seasonal lay-downs, open gates, or other fence modifications may be utilized to improve wildlife passage.

Internal gates except those along public roadways will be left open whenever they are not needed to contain livestock. For internal gates along public roadways, FWP may provide (through a separate agreement) seasonal gates to be used when livestock are not present in the pasture that would prevent vehicular trespass but allow excellent wildlife passage (e.g., cable/padlock gates). External gates will be left open whenever possible and agreeable to adjacent landowners.

Per Section II.C.1 of both conservation easements, sheep and goats are allowed on the Land until the Land transfers to any subsequent Landowner after the date of this CE, or if the Landowner at the time the Easement is granted converts ownership to a Revocable Trust with Landowner as the sole beneficiary, the Revocable Trust will be allowed to graze sheep and goats until it transfers to any subsequent Landowner. Until sheep and goats are no longer pastured on the Land, the Landowner may construct new and replace existing woven wire fences in the Home Place Pasture Set and Sheep Pasture (Figure 3.2).

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<sup>4</sup> Paige, C. 2012. A Landowner’s Guide to Wildlife Friendly Fences. Second Edition. Private Land Technical Assistance Program, Montana Fish, Wildlife & Parks, Helena, MT. 56 pp

## 7. PUBLIC ACCESS

**Objective:** *Utilize public hunting for the dual purpose of providing public hunting opportunity and managing game populations on the Land.*

**Strategy:** At the time this management plan was put into effect, the Land provided year-round habitat and season-long hunting opportunity for mule deer, white-tailed deer, pronghorn, sharp-tailed grouse, and wild turkeys. Pheasants and Hungarian Partridge may occur on portions of the property, and elk are occasionally found on the property. The Land is within sage grouse and bighorn sheep general range but use of the Land by those species is presently unknown and likely limited. The game species present and the abundance of those species may change through time due to changing distributions of wildlife in the region, variable weather conditions, and changing habitat conditions on the Land and the broader landscape. The Landowner will provide hunter access for all legal species and sex of game animals for the duration of all Fish and Wildlife Commission-approved seasons. If both FWP and the Landowner mutually agree that hunting limitations are warranted for a certain species and/or sex of game animal, then the Department may limit hunting opportunity for that species and/or sex of game animal. Wild game populations fluctuate over time and may exceed management objectives. If public hunting during normal commission-approved hunting seasons is insufficient to prevent game damage issues, additional game damage assistance and prescribed hunts may be provided on an “as needed” basis, upon agreement of both FWP and the Landowner.

**Objective:** *Minimize the potential for conflict between public access and ranching operations, and between public access and wildlife management goals.*

**Strategy:** Per Section I.F. in the ALE Conservation Easement and I.G. in the FWP Conservation Easement and II.B.5 of each Easement, the Landowner will be required to provide public recreational access for hunting. The Easements require that the Landowner provide a minimum 600 hunter days annually if demand exists. The Landowner is not required to allow other recreational activities in conjunction with or separate from hunting (public access for trapping is covered in Chapter 8 herein). Dogs used for legal hunting will be allowed on the Land and must be under control at all times. At times when fire danger is great, or for other legitimate reasons, the Landowner may temporarily close all or a portion of the Land to public access with prior written approval from FWP.

**Objective:** *Provide the public a reasonable, efficient, and effective method to gain access to the Land for hunting, while simultaneously allowing the Landowner to put reasonable limits in place to minimize the burden of allowing public access, provide for public safety, and minimize crowding.*

**Strategy:** The Landowner can manage permission for the public to access the Land using one of four options: unlimited walk-in access with no permission required, sign-in boxes, permission administered from the Landowner (in person, via telephone, text, social media, or email), or permission administered by FWP personnel. If permission is administered by the Landowner, the Landowner may specify certain days or times of day which they will be available to provide permission and/or communicate with the public, provided that such limitations are reasonable. Hunters may be required to sign in and provide pertinent information to identify them such as: name, telephone, address, vehicle license plate number. Hunters with permission must be allowed on the Land a minimum of three hours before and three hours

after legal shooting hours to accommodate prime hunting hours. Hunters tracking or retrieving harvested big game have access to the Land at all hours, provided that they have permission to access the Land on that particular day. The use of game carts by hunters to retrieve downed game must be allowed.

To provide for public safety and minimize crowding, the Landowner may manage the number of individuals and/or parties on the Land at any given time but may not restrict public access to fewer than three parties or 12 hunters per day (not counting immediate family members or employees) unless the minimum number of hunter-days have been met. The Landowner may divide the ranch into two or more subunits and assign individuals or parties a subunit. The Landowner may establish no shooting zones within 500 yards of Residential Development Areas described in Section II.c.6 and shown in Exhibit D of the FWP Conservation Easement, and within pastures occupied by livestock in the Home Pasture Set (Figure 3.2), which is used extensively during the fall hunting seasons for weaning, shipping and feeding, and during spring turkey season for calving and lambing.

The Landowner may limit public access to walk-in only from county roads and designated routes shown in Figure 7.1. The Landowner may restrict vehicle access on designated routes when wet or muddy, or when impassible during periods of heavy snow. The Landowner may close designated roads that are in need of maintenance (e.g., washouts or deteriorated creek crossings) but must notify FWP of the closure as soon as practical. Public vehicular access along the Designated Routes depicted in Figure 7.1 is dependent upon the completion of planned improvements to 10 Coal Creek crossings. Should the crossings not be improved and/or subsequently deteriorate or wash out, vehicular access will be limited to that point where the route becomes inaccessible by vehicle. The Landowner may provide more leniency than the ranch rules on a case-by-case basis. For example, they may allow elderly or handicapped hunters to hunt out of a UTV, or may allow motorized game retrieval from a trail.

Additional rules may include the following:

- Watch for livestock and leave all gates as you find them.
- No smoking. No fires. Be careful about fire hazards.
- No littering. Pack everything out that you bring in with you.
- Other rules mutually agreed upon by FWP and the Landowner.

To ensure that the spirit of the public access requirements provided for in the Easements are being upheld, FWP may place signs delineating Conservation Easement boundaries and/or rules, and require that the Landowner document hunter days provided. If the Landowner fails to provide public access as specified by the Easements and this Management Plan, FWP has the authority to manage public hunting access on the Land.



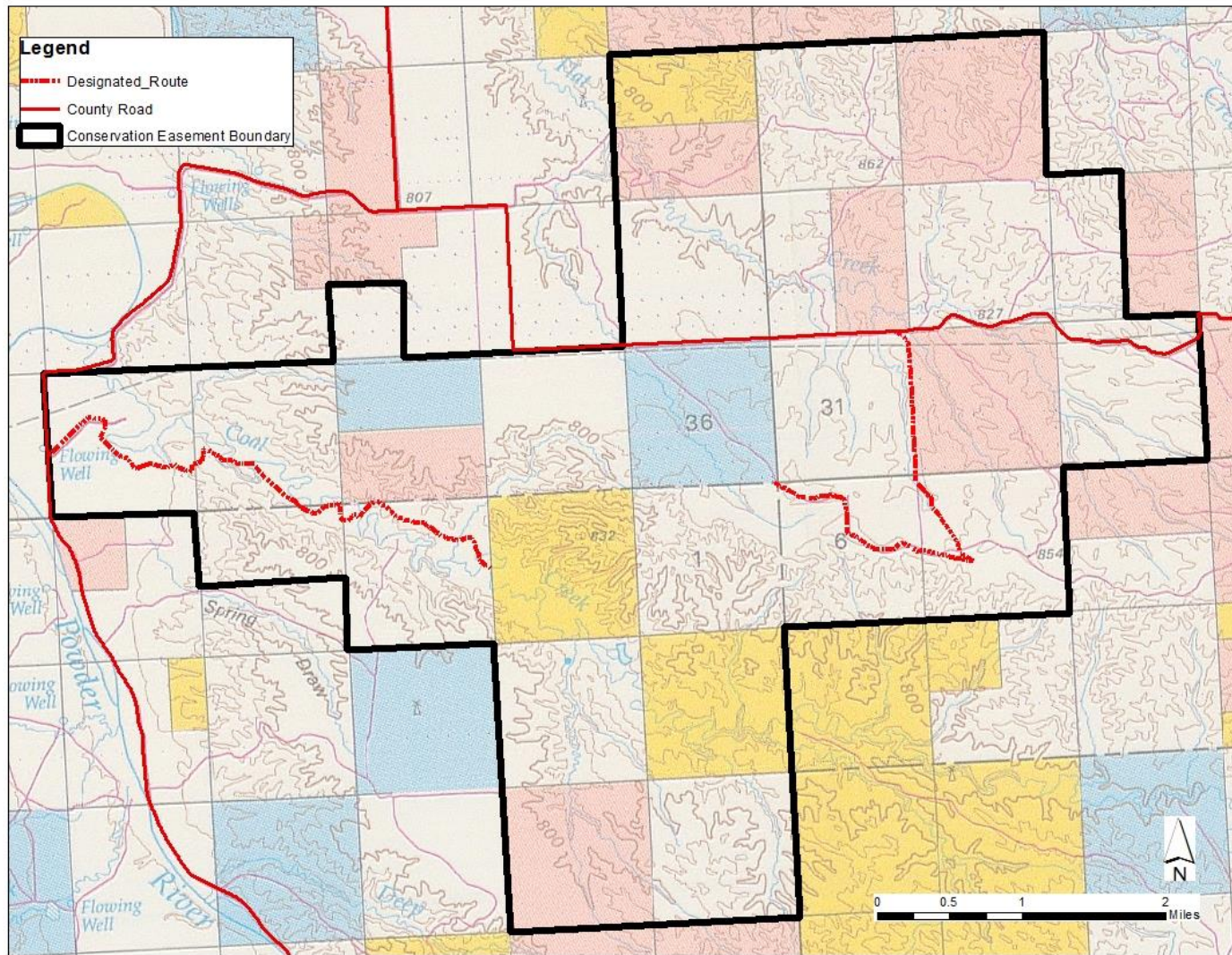


Figure 7.1. Designated routes within the Coal Creek Conservation Easement and adjoining BLM lands not encumbered by easement. Designated routes may not be used when wet or muddy and may be impassible during periods of heavy snow or when runoff events make vehicular creek crossings impossible. Parking is allowed anywhere immediately adjacent along designated routes or county roads, provided that vehicles can safely maneuver out of lanes of travel and park without obstructing traffic or gates.



## 8. NUISANCE WILDLIFE AND TRAPPING

**Objective:** *Allow the Landowner to manage nuisance wildlife species.*

**Strategy:** The Landowner will not be required to limit the take of unregulated wildlife species, provided that control measures used comply with all applicable laws. At the present time unregulated species include coyotes, badgers, skunks, raccoons, foxes, and rodents (including prairie dogs), among others. The Landowner may limit hunting of these species to one or a few members of the public. Hunting for unregulated species does not count toward the minimum hunter-days required by the Conservation Easements.

The Landowner must allow a minimum of one member of the public to trap on the Land during established trapping seasons. They may select the individual that is allowed to trap on the Land and may retain that individual for as long as they wish. Trapping does not count toward the minimum hunter-days required by the Conservation Easements. The Landowner may require a minimum setback up to 100 yards from roads and trails, and 1 mile from homes, buildings and corrals. They may prohibit trapping in pastures with livestock. They may require notification when the individual(s) will be on the Land, of trap locations, and animals caught. The trapper(s) may be required to follow the same access rules as other members of the public described in Chapter 7 of this Management Plan.

## 9. WASTE DISPOSAL

**Objective:** *Allow the Landowner to dispose of personal household rubbish and other non-toxic materials per section II.D.15 (Waste Disposal) of each Conservation Easement.*

**Strategy:** The Easements allow for a single landfill for personal use by the Landowner. The location of this landfill is an area that was originally excavated to build a dike in the NWSW Section 32 T10N R51E and shown in the Baseline Report. The total footprint of deposited debris shall not exceed 10,000 square feet at any given time. When any area of the existing pit is full, the Landowner shall use dike soil to fill back to the original grade of the Land. The Landowner shall be responsible for the reclamation of the landfill site, including control of weeds.

The landowner hauls most of the trash off of the property, this landfill will primarily be used for organic debris and items that can be composted and/or burned. If items are disposed of that pose an entanglement risk to wildlife, the Landowner will take measures to discourage wildlife from entering the area such as surrounding the landfill pit with standard livestock panels.

Downed limbs from roadways, fields, and pastures within the Home Pasture Site may be piled and burned on-site on an as-needed basis.

## **10. MONITORING**

Annual monitoring will be completed on all Conservation Easement land. This assessment will be conducted by FWP or a designated third party and will involve meeting with the Landowner and completing field reviews to assess Management Plan effectiveness and to review Landowner compliance with the terms of each Conservation Easement. The Landowner is encouraged to thoroughly familiarize themselves with the Management Plan including the grazing system schedule, the terms in the Deeds of Conservation Easement, and to contact FWP with any questions or concerns in order to avoid non-compliance.

*Appendix A*

## LIMITED SOLICITATION SUMMARY SHEET

Cooperator: \_\_\_\_\_

Agreement Name: \_\_\_\_\_

<b>PRODUCT or WORK DESCRIPTION (if applicable):</b>	<b>BRAND/MODEL (if applicable):</b>		
	<b>VENDOR #1</b>	<b>VENDOR #2</b>	<b>VENDOR #3</b>
<b>VENDOR NAME</b> <b>CONTACT PERSON</b> <b>PHONE/FAX #</b> <b>DATE(s) CONTACTED*</b>			
<b>QUOTE PRICE</b>			
<b>AWARDED TO^</b>			

\*Three attempts to contact can be considered a quote price of “no response” and no additional attempts are required.

^Work should be awarded to the most cost-effective option that can provide the work/supplies required. Items such as shipping charges and travel distances should be included in determination of the most cost-effective option.

**Final Management Plan Approved By:**

\_\_\_\_\_  
Glen French, landowner

\_\_\_\_\_  
Date

\_\_\_\_\_  
John Ensign, FWP Region 7 Wildlife Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brad Schmitz, FWP Region 7 Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ken McDonald, FWP Wildlife Division Administrator

\_\_\_\_\_  
Date