United States

Department of the Interior

Bureau of Land Management

BLM

Miles City Field Office

Prairie County Lisk Creek Road ROWs MTM104718 & MTM104719

Categorical Exclusion (CX)
DOI-BLM-MT-C020-2013-0030-CX

For Further Information Please Contact:

Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301
406-233-2800

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

CATEGORICAL EXCLUSION REVIEW AND APPROVAL

A. Background

BLM Office: Miles City Field Office Serial/Case File No: MTM-104718 & MTM-104719

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0030-CX

Proposed Action Title/Type: Prairie County – Lisk Creek Road MTM-104718 and Lisk Creek East Spur Road MTM-104719 Rights-of-Way for Existing Roads

Location of Proposed Action (w/county): Prairie County–T15-16N, R47E

Description of Proposed Action: The proposed action is to issue Title V FLPMA right-of-way (ROW) grants to Prairie County to operate, maintain, and terminate the existing Lisk Creek Road (serial number MTM-104718) and Lisk Creek East Spur Road (serial number MTM-104719) across federal, Land Utilization (LU) Project Lands, which were purchased by the Federal Government and administered under Title III of the Bankhead-Jones Farm Tenant Act and subsequently transferred by various Executive Orders between 1949 and 1960 from jurisdiction of the U.S. Department of Agriculture to the U.S. Department of the Interior, now administered by the Bureau of Land Management.

The Lisk Creek Road (MTM-104718) was constructed prior to 1960 and is located in T15N, R47E, Section 5, SW¼SW¼NW¼, N½SW¼, SE¼SW¼, SW¼SW¼SE¼; Section 6, Lot 1, SE¼NE¼ and T16N, R47E, Section 17, W½W½W½; Section 19, E½E½NE¼; Section 31, E½E½E½; Section 32, W½W½W½, P.M.M., Prairie County, Montana. The portion of the Lisk Creek Road (ROW MTM-104718), which crosses T15N, R47E, Sections 5 and 6 is considered to be a "Primitive Road" and would be approximately 18 feet wide and 7,017 feet long, consisting of 2.90 acres, more or less. The remainder of the Lisk Creek Road ROW MTM-104718 would be considered a "Resource Road" and would be approximately 60 feet wide and 13, 494 feet long consisting of 18.59 acres, more or less for a total of 21.49 acres.

On the "Primitive" portion of the road in T15N, R47E, Sections 5 and 6, no surface disturbance would be allowed. If that portion of the road needs maintenance, Prairie County will apply for approval of the necessary work prior to any surface disturbing maintenance. The remainder of the existing Lisk Creek Road in T16N, R47E, Sections 17, 19, 31 and 32 would be maintained and reconstructed if necessary within the authorized 60-foot wide ROW in conformance with the Gold Book and BLM Manual 9113 Roads which have been provided to the Prairie County Commissioners. Any work outside the 60-foot ROW or major up-grading would require an amended or new ROW grant. The proposed road is and would be a single lane Primitive/Resource Road as

described in the "Gold Book" on pages 23 through 25. The road is shown in the attached photos and on the attached map.

The Lisk Creek East Spur Road (MTM-104719) was established prior to 1960 and is located in T15N, R47E, Section 5, Lots 1 through 4, Section 6, Lot 1 and T16N, R47E, Section 32, S½S½SW¼, SW¼SW¼SE¼, P.M.M., Prairie County, Montana. The Lisk Creek East Spur Road is an existing two-track trail and would be considered to be a "Primitive Road" as described in the "Gold Book" on pages 23 through 25. The ROW would be approximately 18 feet wide and 5,573 feet long, consisting of 2.30 acres, more or less. No surface disturbance would be allowed on this "Primitive" road. If the road requires maintenance, Prairie County will need to apply for approval of the necessary work prior to any surface disturbing maintenance or construction. The road is shown in the attached photo and on the attached map.

No hazardous material would be used, produced, or stored in connection with the proposed ROWs. The ROWs would be issued for a term of 30 years and be renewable.

The standard stipulations for cultural and/or paleontological resource protection and hazardous materials stipulation would be made a part of the ROW grants. As would the standard Civil Rights stipulation and standard stipulation that all activities associated with the ROWs would be conducted within the authorized limits of the grants and Prairie County will not initiate any construction or other surface disturbing activities on Lisk Creek East Spur Road (ROW grant MTM-104719) or on the portion of Lisk Creek Road (ROW grant MTM-104718) within Sections 5 and 6 of T15N, R47E without prior approval by the authorized officer.

Fences, gates, culverts, cattleguards, and brace panels shall be reconstructed, if necessary, to appropriate Bureau standards and/or specifications as determined by the authorized officer and all operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices. The applicant will be responsible for weed control on disturbed areas within the limits of the ROWs and for coordinating with parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and other ROW holders].

Ninety days prior to termination of the ROWs, the holder shall contact the authorized officer to arrange a joint inspection of the ROWs and to agree on an acceptable termination (and rehabilitation) plan. The ROWs would be granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and to the attached stipulations. Prairie County is exempt from paying processing and monitoring fees, and rental as provided for by regulations found at 43 CFR 2804.16 and 2806.14, respectively. The ROWs would be monitored for use and before renewal or closure.

B. Land Use Plan Conformance

Land Use Plan Name: Big Dry R. A. RMP/EIS ROD
Date Approved/Amended: Approved in April of 1996

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): This proposed action is in conformance with the Big Dry Resource Area RMP/EIS ROD which was approved in April of 1996. On page 10 of the Record of Decision, it states that "In areas where rights-of-way are allowed, stipulations from the BLM Manual 2800 will be used to protect resource values." The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5

C: Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9E (16) for issuance of rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

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

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	**No** **X**	**Rationale:** *The projects would not have significant impacts on public health and safety as these are existing roads which are being put under Title V FLPMA Rights-of-Way. The roads would be used to improve and maintain the Prairie County road infrastructure and the safety and health of the populations using the transportation system.* *pw 11/2/12*
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	**No** **X**	**Rationale:** *Impacts would not be significant as the proposed action is to authorize existing roads under Title V FLPMA rights-of-way. There are no Areas of Critical Environmental Concern, Wilderness Study Areas, Monuments, and other areas with special designation involved with this proposal. Surface disturbance under the proposed action would not occur in a floodplain or wetland area. The act of authorizing these existing roads would not affect migratory birds, as the roads are already and will continue to be used whether the ROW grants are issued or not. They will be used under Title V FLPMA ROWs rather than of leaving them to be considered RS2477 roads. pw 11/2/12*

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
Yes	**No** **X**	**Rationale:** *No controversial environmental effects or unresolved conflicts. pw 11/2/12*
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	**No** **X**	**Rationale:** *No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. pw 11/2/12*
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
Yes	**No** **X**	**Rationale:** *This action is not connected to another action with potentially significant environmental effects nor will it set a precedent for future actions that would normally require environmental analysis. If it is determined that maintenance is required for Safety purposes on the Lisk Creek East Spur Road or the portion of the Lisk Creek Road located in T15N, R47E, Sections 5 and 6, an analysis would be completed at that time addressing what disturbance, if any, would be allowed. pw 11/2/12*
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	**No** **X**	**Rationale:** *This action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. pw 11/2/12*
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
Yes	**No** **X**	**Rationale:** *Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.* The road is Section 5 and 6 has been examined. It crosses through the Sheep Mountain Recreation Complex in Section 5and 6, T15N, R47E. The complex consists of a prehistoric component and structures and artifacts related to a 1930's Recreation Center constructed by the Department of Agriculture's Resettlement Administration in 1938. The complex includes a tennis court, swimming hole, rock spillway, foundation of the recreation center building, bridge remains, foundation of a caretaker's house, scattered historic artifacts, and the foundation for a windmill. The complex is eligible for listing on the National Register of Historic Places under Criterion A of 36 CFR 60.4 It is eligible for its association with government programs to mitigate the effects of the Great Depression on rural populations by offering recreational opportunities. No upgrading of the road would be allowed from the Cattleguard in Section 5 to the gate in Section 6 where the road leaves the Lisk Creek Drainage. The remaining portions of the road are in crested wheatgrass fields and are not expected to yield significant cultural materials (See BLM Cultural Resources Report MT-020-13-104). DM 02/07/13

8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	**No** **X**	**Rationale:** There is no habitat for threatened, endangered or candidate species in the project area. *dct 01/18/2013*
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	**No** **X**	**Rationale:** *No laws are being violated by this action. pw 11/2/12*
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	**No** **X**	**Rationale:** *Does not have a disproportionately high and adverse effect on low income or minority populations. pw 11/2/12*
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Yes	**No** **X**	**Rationale:** *Consultation with tribes regarding Indian sacred sites must take place* Issuing the ROW would not limit access to public lands nor would it impact traditional uses of public lands. The Ethnographic Overview of Southeast Montana does not list any sites of concern to Native American groups in the locations covered by the proposed right of way. DM 02/07/13
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		
Yes	**No** **X**	**Rationale:** *The proposed action will not contribute to the introduction or spread of noxious weeds as existing roads are being authorized under Title V FLPMA rights-of-way. Further, under the authorizations the applicant is responsible for weed control within the authorized area. pw 11/2/12*

Guy Stickney 1-28-13
Engineer Date

Shane Findlay 2-7-13
Supervisory Land Use Specialist Date
Division of Non-Renewable Resources

2/7/2013
Environmental Coordinator Date

Decision: I have made the decision to issue Title V FLPMA rights-of-way (ROWs) to Prairie County to operate, maintain, and terminate the existing Lisk Creek Road (serial number MTM-104718) and Lisk Creek East Spur Road (serial number MTM-104719) across federal, LU lands.

The Lisk Creek Road was constructed prior to 1960 and is located in T15N, R47E, Section 5, SW¼SW¼NW¼, N½SW¼, SE¼SW¼, SW¼SW¼SE¼; Section 6, Lot 1, SE¼NE¼ and T16N, R47E, Section 17, W½W½W½; Section 19, E½E½NE¼; Section 31, E½E½E½; Section 32, W½W½W½, P.M.M., Prairie County, Montana. The portion of the Lisk Creek Road ROW MTM-104718, which crosses T15N, R47E, Sections 5 and 6 is considered to be a "Primitive Road" and would be approximately 18 feet wide and 7,017 feet long, consisting of 2.90 acres, more or less. The remainder of the Lisk Creek Road ROW MTM-104718 would be considered a "Resource Road" and would be approximately 60 feet wide and 13,494 feet long consisting of 18.59 acres, more or less for a total of 21.49 acres. In the "Primitive" portion of the road in T15N, R47E, Sections 5 and 6, no surface disturbance would be allowed. If that portion of the road needs maintenance, Prairie County will apply for approval of the necessary work prior to any surface disturbing maintenance. The remainder of the existing Lisk Creek Road in T16N, R47E, Sections 17, 19, 31 and 32 would be maintained and reconstructed if necessary within the authorized 60-foot wide ROW in conformance with the Gold Book and BLM Manual 9113 Roads which have been provided to the Prairie County Commissioners. Any work outside the 60-foot ROW or major up-grading would require an amended or new ROW grant. The proposed road is and would be a single lane Primitive/Resource Road as described in the "Gold Book" on pages 23 through 25. The road is shown in the attached photos and on the attached map. The ROW will be issued for a term of 30 years and be renewable and will be subject to the attached stipulations.

The Lisk Creek East Spur Road is an existing two-track trail and will be considered to be a "Primitive Road" as described in the "Gold Book" on pages 23 through 25. The ROW will be approximately 18 feet wide and 5,573 feet long, consisting of 2.30 acres, more or less. No surface disturbance will be allowed on this "Primitive" road. If the road requires maintenance, Prairie County will need to apply for approval of the necessary work prior to any surface disturbing maintenance or construction. The road is shown in the attached photo and on the attached map.

Rational for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (16), and none of the exceptions in 516 DM 2 apply. Further the action is in conformance with the Big Dry RMP/EIS, which was approved in April of 1996.

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

D: Signature

Authorizing Official: _____ Date: 2/7/2013
(Signature)

Name: Todd D. Yeager

Title: Field Manager – Miles City Field Office

Administrative Review or Appeal Opportunities

A BLM decision to issue a ROW may be appealed under regulations in 43 CFR 2801.10 in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the "full force and effect" of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2881.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

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

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

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

Pam Wall, Realty Specialist
BLM – Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301
406-233-2846

STIPULATIONS:

a. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

b. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

c. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way (applies to MTM-104719) within Sections 5 and 6 of T15N, R47E, (applies to MTM-104718) without the prior written authorization of the authorized officer. Such authorization shall be a written notice to proceed issued by the authorized officer. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.

d. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.

e. Fences, gates, culverts, cattleguards, and brace panels shall be reconstructed to appropriate Bureau standards and/or specifications as determined by the authorized officer.

f. All operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices as stated in BLM Manual 9113- Road Standards and in accordance with the "Gold Book" requirements for roads.

g. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within the limits imposed in the grant stipulations).

h. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.

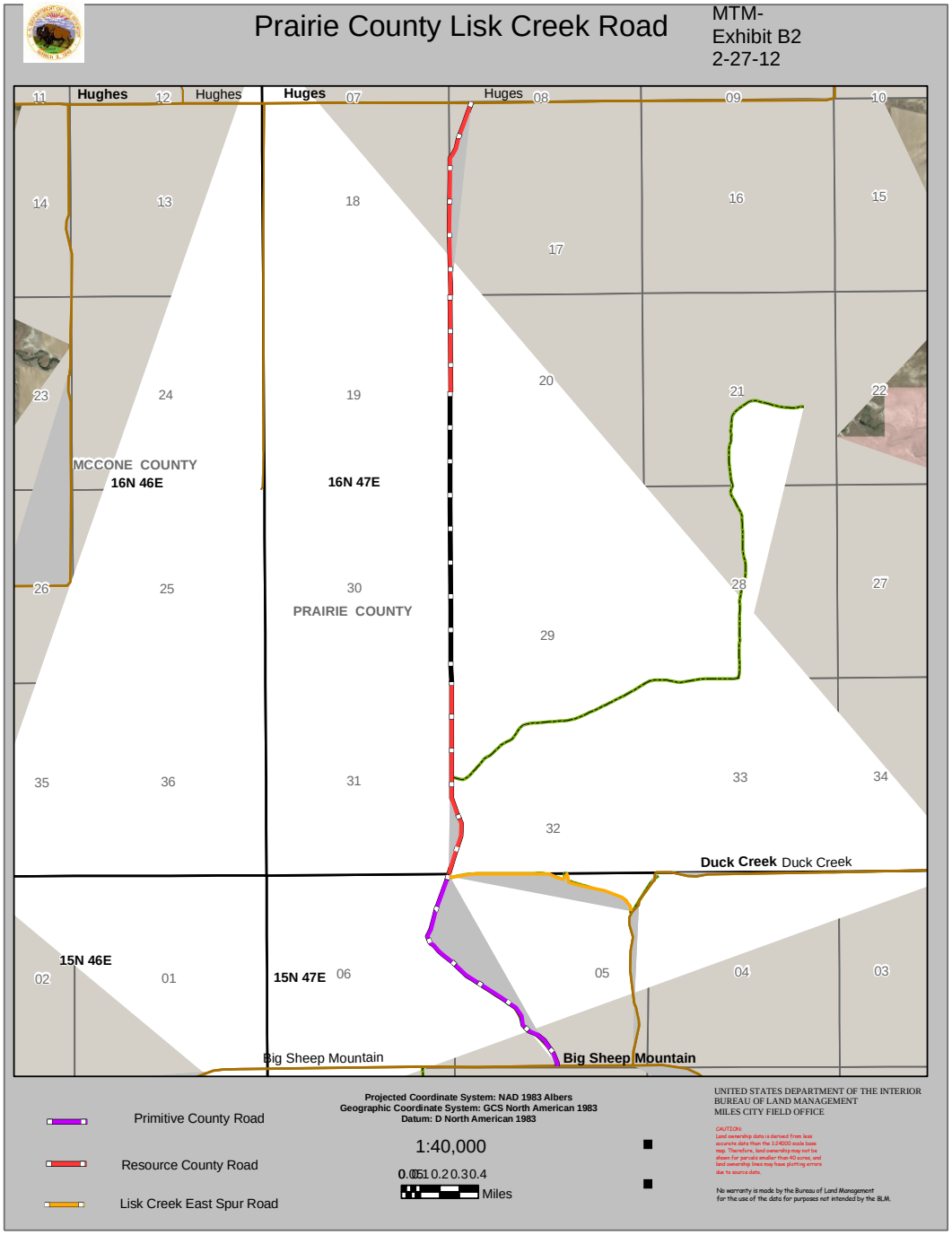
i. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

j. *The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and other right-of-way holders].

k. Ninety days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree on an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, and/or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

* This non-standard stipulation was approved by the District Manager, which is the next higher level of Bureau line management, for right-of-way MTM-83461, on September 28, 1994

Lisk Creek Road ROW MTM-104718 – T15N, R47E, Sections 5 & 6
T16N, R47E. Sections 17, 19, 31, 32
Lisk Creek East Spur Road ROW MTM-104719 – T15N, R47E, Sections 5 & 6
T16N, R47E. Section 32



Lisk Creek Road ROW MTM-104718 – T15N, R47E, Section 6, looking South from the NE¼NE¼NE¼

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Section 5, looking NW toward the former site of the Hall
from near the Big Sheep Mountain Road

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, about the middle of Sections 5 and 6

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Sections 5 and 6
Dropping down into Lisk Creek

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Sections 5 and 6
Dropping down into Lisk Creek

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Sections 5 and 6
In bottom of Lisk Creek

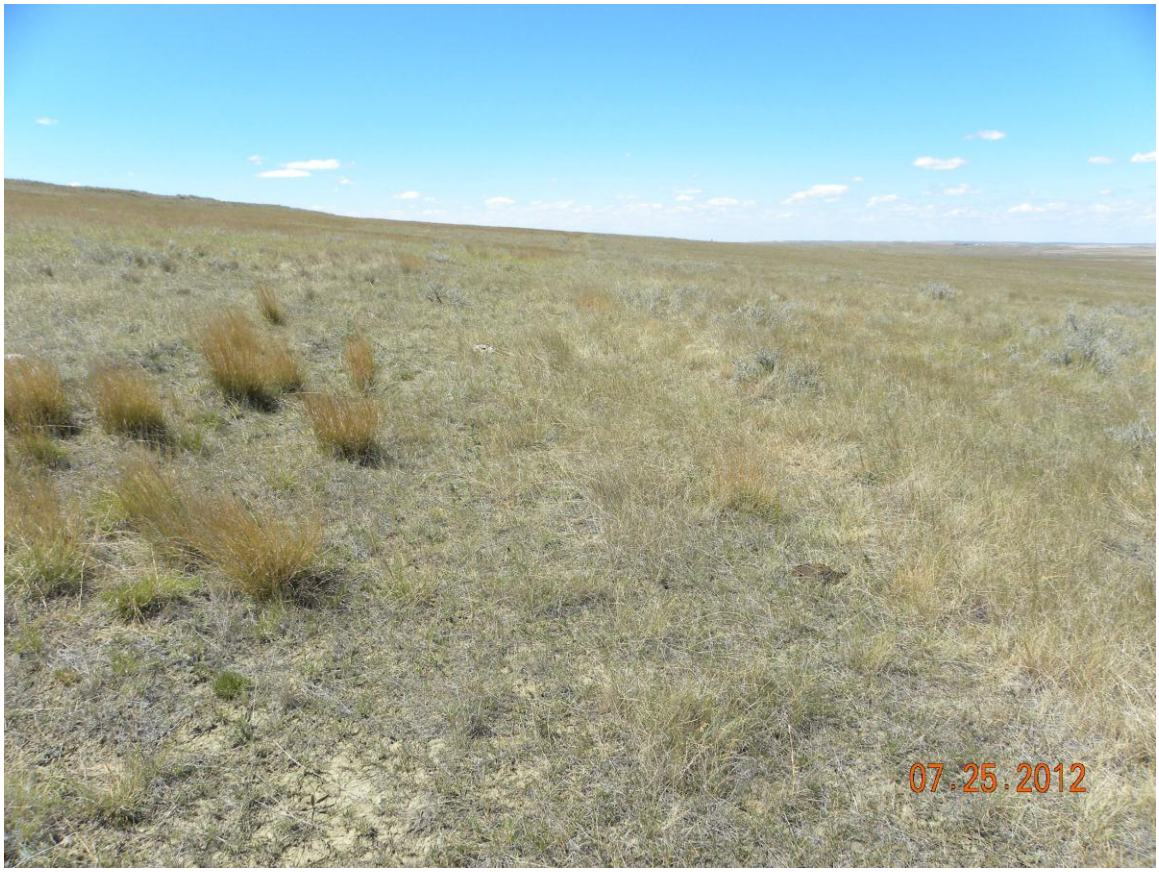
Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Sections 5 and 6
In bottom of Lisk Creek

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Sections 5 and 6
In Bottom of Lisk Creek

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Sections 5 and 6
In Bottom of Lisk Creek

Lisk Creek Road ROW MTM-104718 –
T15N, R47E, Sections 5 and 6
In Bottom of Lisk Creek

Lisk Creek Road ROW MTM-104718 –
T15N, R47E
Looking South toward Lisk Creek from the NE¼, Section 6



Lisk Creek East Spur Road ROW MTM-104719 looking NW from the Duck Creek Road in T15N, R47E, Section 5, NE¼NE¼