

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

*Miles City Field Office*

**Hovermale Access Road**  
**ROW MTM-83693 Assignment**

Categorical Exclusion (CX)  
DOI-BLM-MT-C020-2013-0108-CX

*For Further Information Please Contact:*

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

BLM





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-83693

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0108-CX

Proposed Action Title/Type: Hovermale Access Road Right-of-Way MTM-83693  
Assignment

Location of Proposed Action (w/county): Powder River County–T2S, R53E, Sec. 29-30

Description of Proposed Action: The proposed action is to assign Title V FLPMA access road right-of-way (ROW) grant MTM-83693 from Daniel L. and Karen A. Hovermale to Karen A. Hovermale and Jeanie A. Hovermale. The access road crosses federal BLM administered land in the W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , Section 29 and Lots 1-3, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 30, T2S, R53E, Powder River County, Montana, P.M.M., as shown on the attached map. The ROW is 24 feet wide and approximately 8,225 feet long, consisting of 4.53 acres, more or less.

This ROW was originally issued to Daniel A. Denson on January 25, 1995, for a term of 30 years, for an existing graveled road which appears on a 1922 survey plat and which accessed his residence. On June 7, 1999, the ROW grant was assigned from Daniel A. Denson to Daniel L. and Karen A. Hovermale. On March 1, 2013, Karen A. Hovermale and Jeanie A. Hovermale applied for assignment approval of the subject ROW grant from Daniel L. and Karen A. Hovermale, who have agreed to the assignment. Karen A. Hovermale and Jeanie A. Hovermale have agreed to be bound by the terms and conditions of ROW grant MTM-83693. The ROW rental is current and paid through December 31, 2019. The original grant expires on January 24, 2025, and is renewable; however current regulations found at 43 CFR 2805.11(b)(2) provide that all grants expire on December 31 of the final year of the grant so this grant would expire on December 31, 2025 and would be renewable. No hazardous material would be used, produced, or stored in connection with the right-of-way.

The standard stipulations for cultural and/or paleontological resource protection and hazardous materials stipulation are and would be a part of the right-of-way grant, as would the standard stipulation that all activities associated with the right-of-way will be conducted within the authorized limits of the grant. The applicant shall be responsible for weed control on disturbed areas within the limits of the right-of-way and the use of pesticides shall comply with the applicable Federal and State laws. Water bars would be

constructed on disturbed areas with slopes greater than 30% [3:1] and the holder shall seed all disturbed areas using an agreed upon mix and method suitable for the location.

The right-of-way would be assigned from Daniel L. and Karen A. Hovermale to Karen A. Hovermale and Jeanie A. Hovermale 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 and map from the existing ROW grant. The right-of-way would be subject to processing and monitoring fees, as provided for by regulations found at 43 CFR 2804.14 and 2805.16 and subject to rental as provided for by regulations found at 43 CFR 2806. The ROW would be monitored for use and before renewal or closure.

**B. Land Use Plan Conformance**

Land Use Plan Name: Powder River R.A. RMP/EIS ROD, as amended

Date Approved/Amended: Approved March 15, 1985

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 Powder River Resource Area RMP/EIS ROD which was approved on March 15, 1985. On page 4 of the Record of Decision, it states that "Rights-of-way applications will continue to be approved on a case-by-case basis with appropriate stipulations. Applicants are encouraged to locate new facilities within existing rights-of-way." 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 (9) for renewals and assignments of leases, permits or rights-of way where no additional rights are conveyed beyond those granted by the original authorizations.

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.

<b>Extraordinary Circumstances</b>		
<b>The project would:</b>		
1. Have significant impacts on public health or safety.		
<b>Yes</b>	<b>No</b>	<b>Rationale:</b> <i>The project would not have significant impacts on public health and safety as it is the assignment of a Title V FLPMA Right-of-Way, which was previously approved and issued, from Daniel L. and Karen A. Hovermale to Karen A. Hovermale and Jeanie A. Hovermale . pw 3/8/13.</i>
	<b>X</b>	

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.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>Impacts would not be significant as the proposed action is the assignment of a Title V FLPMA Right-of-Way, which was previously approved and issued, from Daniel L. and Karen A. Hovermale to Karen A. Hovermale and Jeanie A .Hovermale. pw 3/8/13.</i>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>No controversial environmental effects or unresolved conflicts. pw 3/8/21</i>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. pw 3/8/12</i>
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>This action is not connected to another action that would require further environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis. pw 3/8/13</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>This action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. See CFR 1508.7. pw 3/8/13</i>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>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. No cultural resources have been recorded on or adjacent to the road. The road is historic, but has been upgraded and no longer maintains integrity of materials or design. It Is not eligible for listing on the National Register of Historic Places. The proposed action would have no effect on historic properties. DM 03/12/2013.</i>  Cultural Resource Report MT-020-13-130.

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.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>No threatened or endangered species or habit for such exists within the project area JCH 3/12/13</i>
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>No laws are being violated by this action. pw 3/8/13</i>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>Does not have a disproportionately high and adverse effect on low income or minority populations. pw 3/8/13</i>
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>Consultation with tribes regarding Indian sacred sites must take place</i> The proposed action is to reassign an existing ROW for a road that existed for 90+ years. The action would not affect access or use of public lands. The Ethnographic Overview for SE Montana does not list any sites of concern in the vicinity of the proposed action.  DM 03/12/2013.
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).		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>The proposed action will not contribute to the introduction or spread of noxious weeds as the action is to assign an already authorized ROW from Daniel L. and Karen A. Hovermale to Karen A. Hovermale and Jeanie A. Hovermale. Further, under the authorization the applicant is responsible for weed control within the authorized area. pw 3/8/13</i>



\_\_\_\_\_  
Environmental Coordinator

\_\_\_\_\_  
Shane Findlay  
Supervisory Land Use Specialist  
Division of Non-Renewable Resources

3/20/2013

\_\_\_\_\_  
Date

\_\_\_\_\_  
3/19/2013

\_\_\_\_\_  
Date

Decision Record for Categorical Exclusion  
Hovermale Access Road Right-of-Way MTM-83693 Assignment  
DOI-BLM-MT-C020-2013-0108-CX

Decision: I have made the decision to approve the assignment of Title V FLPMA access road right-of-way (ROW) grant MTM-83693 from Daniel L. and Karen A. Hovermale to Karen A. Hovermale and Jeanie A. Hovermale. The ROW crosses federal BLM administered land in the W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , Section 29 and Lots 1-3, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 30, T2S, R53E, Powder River County, Montana, P.M.M., as shown on the attached map. The ROW is 24 feet wide and approximately 8,225 feet long, consisting of 4.53 acres, more or less. The ROW will expire on December 31, 2025 and will be renewable.

The assignment of access road ROW MTM-83693 from Daniel L. and Karen A. Hovermale to Karen A. Hovermale and Jeanie A. Hovermale is approved pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90Stat. 2776; 43 U.S.C. 1761) and will be subject to the terms and conditions in 43 CFR 2800 and to the attached stipulations and map from the existing ROW grant. The ROW is subject to processing and monitoring fees, as provided for by regulations found at 43 CFR 2804.14 and 2805.16 and subject to rental as provided for by regulations found at 43 CFR 2806. The right-of-way will be monitored for use before renewal or closure.

Rational for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (9), and none of the exceptions in 516 DM 2 apply. Further the action is in conformance with the Powder River R. A. RMP/EIS, which was approved in March 15, 1985.

I considered the proposed action and associated stipulations which will be included in the ROW 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: 3/20/2013  
(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 43CFR 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 2801.10 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:

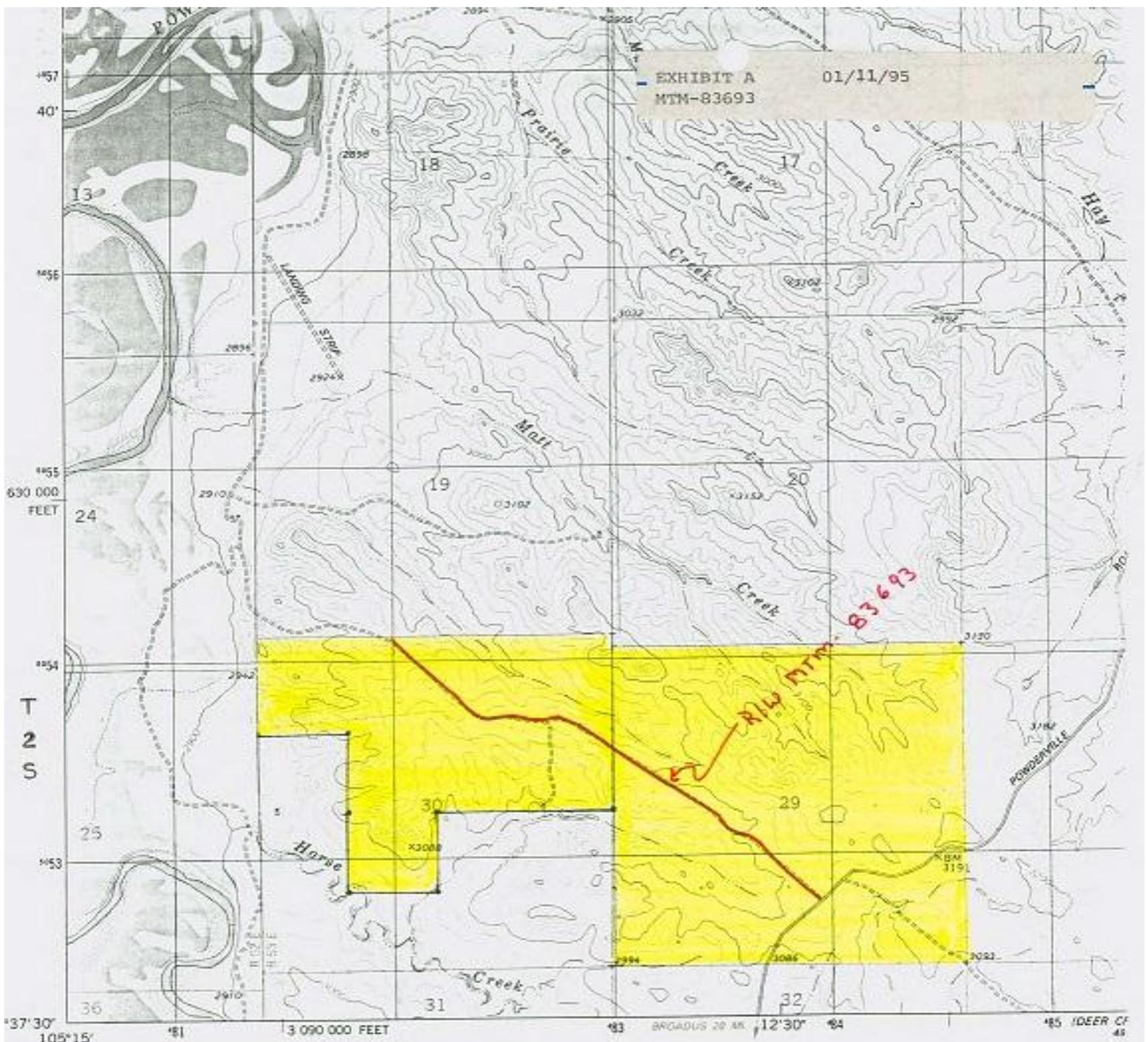
Pam Wall, Realty Specialist  
BLM – Miles City Field Office  
111 Garryowen Road  
Miles City, Montana 59301  
406-233-2846

## 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 conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
- d. 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.)
- e. Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.
- f. \*The holder shall construct waterbars on all disturbed areas with slopes greater than 30% [3:1].

- g. The holder shall seed all disturbed areas, using an agreed upon mix and method suitable for the location. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the authorizing officer upon evaluation after the next growing season.
  
- h. 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.

\* This non-standard stipulation was approved by the District Manager, which is the next higher level of Bureau line management, in 1991 for rights-of-way MTM-79096 and MTM-79119.



Mapped, edited, and published by the Geological Survey

Control by USGS and NOS/NOAA

Topography by photogrammetric methods from aerial photographs taken 1972. Field checked 1973. Map edited 1979

Projection and 10,000-foot grid ticks: Montana coordinate system, south zone (Lambert conformal conic) 1000-meter Universal Transverse Mercator grid, zone 13 1927 North American datum

Fine red dashed lines indicate selected fence lines



UTM GRID AND 1979 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET



CONTOUR INT  
DOTTED LINES REPRESENT  
NATIONAL GEODETIC DATUM

THIS MAP COMPLIES WITH THE  
FOR SALE BY U. S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR  
A FOLDER DESCRIBING TOPOGRAPHIC MAPS