

United States
Department of the Interior
Bureau of Land Management

Miles City Field Office

**Four ROWs for Existing
Fallon County Roads**

Categorical Exclusion
DOI-BLM-MT-C020-2013-0139-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-105811, MTM-105812,
MTM-105813, MTM-105820

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0139-CX

Proposed Action Title/Type: Four ROWs for Existing Fallon County Roads

Location of Proposed Action (w/county): Fallon County-T3-7N, R57-60E, P.M.M

Description of Proposed Action: The proposed action is to issue four Title V FLPMA rights-of-way (ROWs) across Federal, Bureau of Land Management (BLM) administered land to Fallon County to operate, maintain, and terminate the following existing roads:

- 1) Little Pine Creek Access Road – 60-foot Road ROW serial number MTM-105811;
- 2) Landfill Spur Road - 60-foot Road ROW serial number MTM-105812;
- 3) DeGrand Access Road - 60-foot Road ROW serial number MTM-105813;
- 4) Jespersion Access Road - 60-foot Road ROW serial number MTM-105820.

ROW grant MTM-105811, for Little Pine Creek Access Road, would be issued 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 other three ROW grants would be issued on BLM administered Public Domain.

These roads are used daily by public, commercial, and government vehicles and provide public access to and from commercial centers. They would be used to improve and maintain the Fallon County road infrastructure and maintain the present status quo of rural life style in Fallon County and the safety and health of the populations using the transportation system. The roads have been considered RS 2477 roads and are being converted to Title V FLPMA ROWs. The four ROW grants would be issued for the following existing graveled roads which were constructed between 1920-1960 from public road petitions, grants, easements, or resolutions:

Little Pine Creek Access Road (Serial # MTM-105811) - located on federal LU land in T7N, R57E, Section 32, E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, P.M.M. Fallon County, Montana. The Little Pine Creek Access Road ROW, MTM-105811, would be approximately 60 feet wide and 2,930 feet long consisting of 4.04 acres, more or less.

Landfill Spur Road (Serial # MTM-105812) - located in T6N, R60E, Section 10, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, P.M.M., Fallon County, Montana. The Landfill Spur Road ROW, MTM-105812, would be approximately 60 feet wide and 1,130 feet long consisting of 1.56 acres, more or less.

DeGrand Access Road (MTM-105813) - located in T5N, R60E, Section 12, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, P.M.M., Fallon County, Montana. The DeGrand Access Road ROW, MTM-105813, would be approximately 60 feet wide and 3,320 feet long consisting of 4.57 acres, more or less.

Jesperon Access Road (MTM-105820) - located in T3N, R59E, Section 2, SW $\frac{1}{4}$ SW $\frac{1}{4}$, P.M.M., Fallon County, Montana. The Jesperon Access Road ROW, MTM-105820, would be approximately 60 feet wide and 1,130 feet long consisting of 1.56 acres, more or less.

These existing roads would be maintained and reconstructed if necessary within their authorized 60-foot ROWs in conformance with the Gold Book and BLM Manual 9113 Roads which have been provided to the Fallon County Commissioners. Any work outside the 60-foot ROWs or major up-grading would require amended or new ROW grants. 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 roads are shown on the attached maps.

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. 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 would 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. Fallon 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	Rationale: <i>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 daily by public, commercial, and government vehicles and provide public access to and from commercial centers. They would be used to improve and maintain the Fallon County road infrastructure and maintain the present status quo of rural life style in Fallon County and the safety and health of the populations using the transportation system. pw 04/25/13</i>
	X	
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	Rationale: <i>Impacts would not be significant as the proposed action is to authorize existing roads under Title V FLPMA rights-of-way. There are</i>

	X	<i>no Areas of Critical Environmental Concern, Wilderness Study Areas, Monuments, and other areas with special designation involved with this proposal. 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 a Title V FLPMA ROW rather than of leaving them to be considered RS2477 roads. pw 04/25/13</i>
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: <i>No controversial environmental effects or unresolved conflicts. pw 04/25/13</i>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	No X	Rationale: <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. pw 04/25/13</i>
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: <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 04/25/13</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No X	Rationale: <i>This action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. pw 04/25/13</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.		
Yes	No X	Rationale: <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.</i> A review of BLM and SHPO Cultural Resource Records databases indicates that no cultural resource sites have been recorded on public lands that would be impacted by the proposed ROWS. The proposed action meets the inventory exemption criteria found in BLM's Montana/Dakotas Cultural Resources Handbook H-8110-1, Appendix One, Realty # 9. No cultural resource values considered eligible for the National Register of Historic Places would likely be impacted by this undertaking (see report number: MT-020-13-176). DM 05/03/13

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. <i>dct 04/26/13</i>
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: <i>No laws are being violated by this action. pw 04/25/13</i>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	No X	Rationale: <i>Does not have a disproportionately high and adverse effect on low income or minority populations. pw 04/25/13</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).		
Yes	No X	Rationale: <i>Consultation with tribes regarding Indian sacred sites must take place</i> The proposed action is to issue ROWs for existing roads. Issuing the ROWS would not impact access or uses of public lands. Review of the Ethnographic Overview of Southeast Montana does not indicate any sites or areas of concern to tribes near the proposed ROWs. DM 05/03/13
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: <i>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 04/25/13</i>

GS
Engineer

4-26-13
Date

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

5/8/13
Date


Abby Anderson
Environmental Coordinator

5/10/2013
Date

Decision Record for Categorical Exclusion
Prairie County – Four ROWs for Existing Fallon County Roads
DOI-BLM-MT-C020-2013-0139-CX

Decision: I have made the decision to issue four 60-foot wide, Title V FLPMA rights-of-way (ROWs) to Fallon County to operate, maintain, and terminate the following existing roads across federal, BLM administered lands:

Little Pine Creek Access Road (Serial # MTM-105811) - located on federal LU land in T7N, R57E, Section 32, E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, P.M.M. Fallon County, Montana. The Little Pine Creek Access Road ROW, MTM-105811, will be approximately 60 feet wide and 2,930 feet long consisting of 4.04 acres, more or less.

Landfill Spur Road (Serial # MTM-105812) - located in T6N, R60E, Section 10, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, P.M.M., Fallon County, Montana. The Landfill Spur Road ROW, MTM-105812, will be approximately 60 feet wide and 1,130 feet long consisting of 1.56 acres, more or less.

DeGrand Access Road (MTM-105813) - located in T5N, R60E, Section 12, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, P.M.M., Fallon County, Montana. The DeGrand Access Road ROW, MTM-105813, will be approximately 60 feet wide and 3,320 feet long consisting of 4.57 acres, more or less.

Jespersion Access Road (MTM-105820) - located in T3N, R59E, Section 2, SW $\frac{1}{4}$ SW $\frac{1}{4}$, P.M.M., Fallon County, Montana. The Jespersion Access Road ROW, MTM-105820, will be approximately 60 feet wide and 1,130 feet long consisting of 1.56 acres, more or less.

The roads are shown on the attached maps. The ROWs will be issued for a term of 30 years and be renewable and will be subject to the attached stipulations.

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 rights-of-way 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: _____
(Signature)

Date: 5/13/2013

Name: _____

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

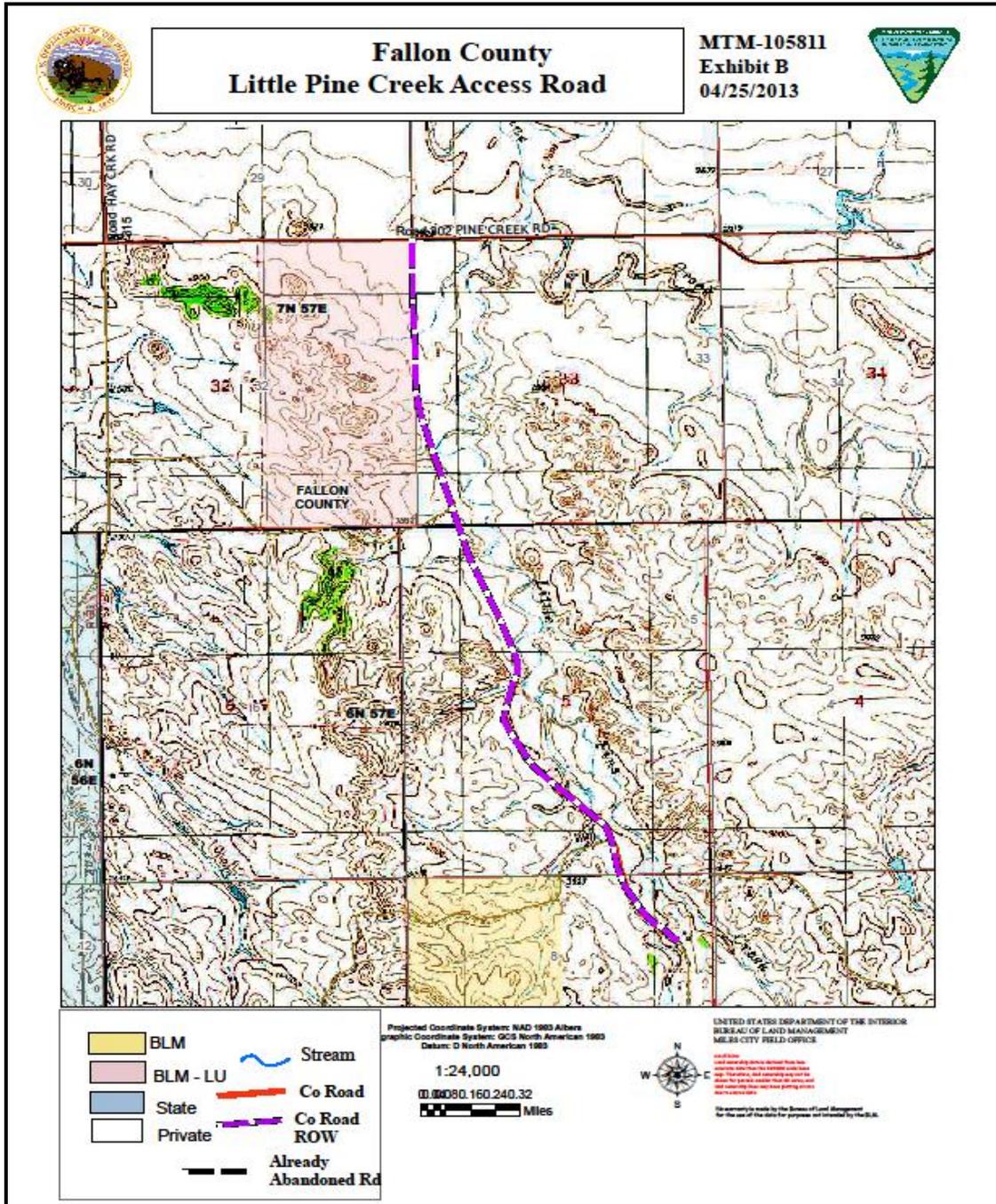
STIPULATIONS:

- 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 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. Fences, gates, culverts, cattleguards, and brace panels shall be reconstructed to appropriate Bureau standards and/or specifications as determined by the authorized officer.
- e. 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 [http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm_programs/energy/oil_and_gas/operations/gold_book.Par.10040.File.dat/9113.pdf] and in accordance with the “Gold Book” [http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/gold_book.html] requirements for roads.
- f. 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).

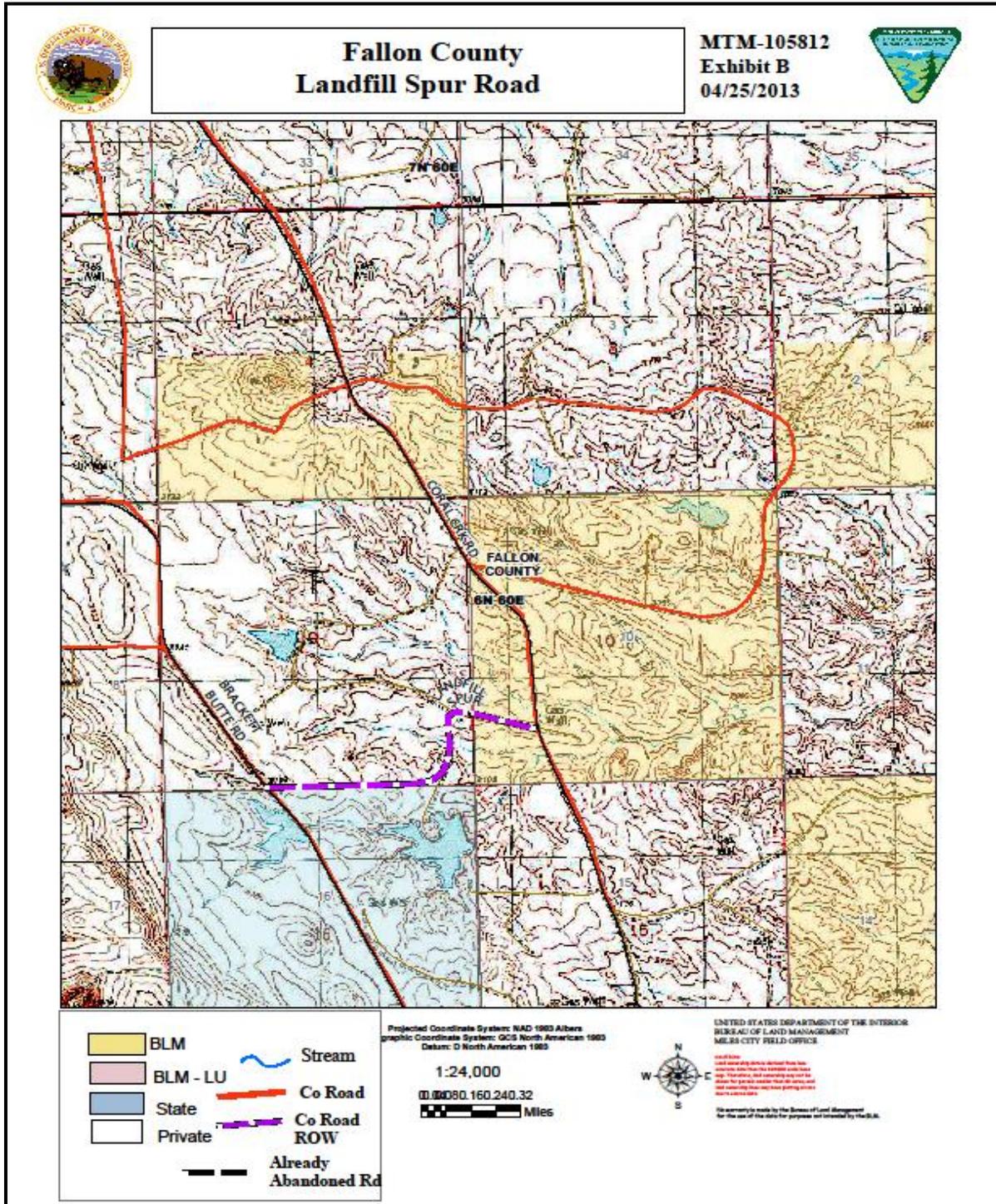
- g. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
- h. In the event that the public land underlying the right-of-way (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.
- i. *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].
- j. 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

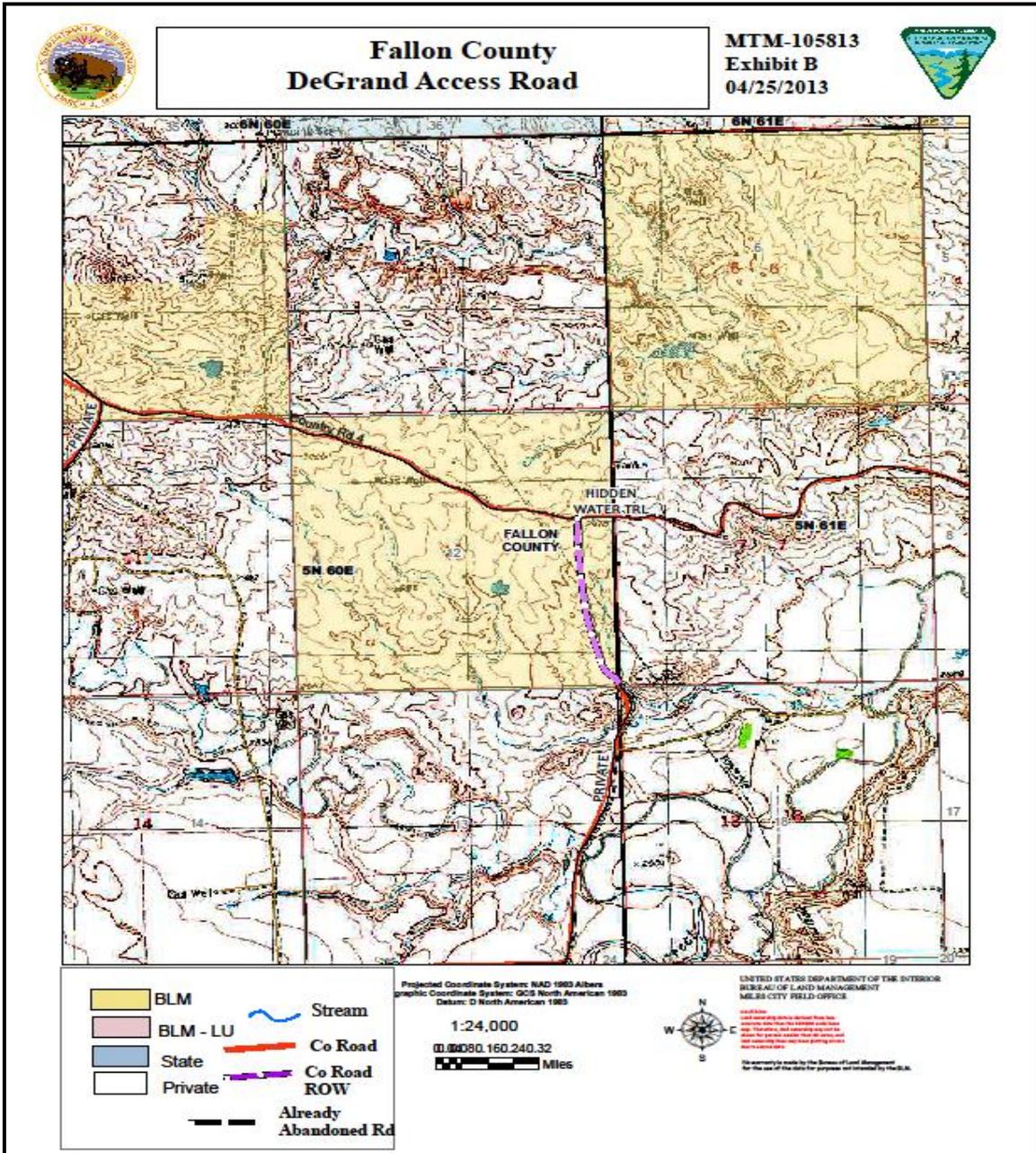
Little Pine Creek Access Road ROW MTM-105811 – T7N, R57E, Section 32, E $\frac{1}{2}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$



Landfill Spur Road ROW MTM-105812 – T6N, R60E, Section 10, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$



DeGrand Access Road ROW MTM-105813 – T5N, R60E, Section 12, SE¼/NE¼, E½/SE



Jesperson Access Resource Road ROW MTM-105820 – T3N, R59E, Section 2, SW¼SW¼

