

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

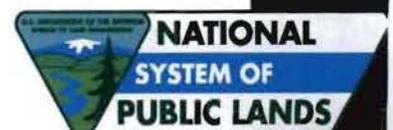
Environmental Assessment DOI-BLM-MT-CO2O-2011-0005-EA

Finding of No Significant Impact

**Nance-Brown AVF Coal Exchange
Rosebud County, Montana**

U.S. Department of the Interior
Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

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INTRODUCTION

The Bureau of Land Management, Miles City Field Office, has conducted an environmental analysis for a proposed action related to the proposed Nance-Brown Alluvial Valley Floor (AVF) Fee Coal Exchange. This proposed action would exchange ownership of approximately 3,379.55 acres of privately owned fee coal for Federal fee coal that is not leased. The privately owned fee coal lands are located in T. 4 S., R. 43 E., T. 5 S., R. 43 E., T. 5 S., R. 42 E., T. 6 S., R. 42 E., T. 6 S., R. 43 E., and the Federal coal lands in T. 1 N., R. 40 E., T. 1 S., R. 41 E. (Maps 1.1, 1.2 and 1.3). None of the Federally-owned coal underlying the "Ashenhurst Tract" is leased. All of the coal lands included in the proposed exchange are located in Rosebud County, Montana. The proposed exchange would be between the Bureau of Land Management (BLM) acting on behalf of the United States of America and Jay Nance, Brett A. Boedecker as Personal Representative for Susanne N. Boedecker, Joseph P. Hayes, Patricia Hayes Rodolph, and the Brown Cattle Company Shareholders Coal Trust (collectively Nance-Brown). Under the proposed exchange, the BLM would exchange Federal coal within the Ashenhurst Tract, near Colstrip, to equal the appraised value of the ±3,379.55 acres of private coal owned by Nance-Brown in the alluvial valley floor of the Tongue River. All of the tracts considered for exchange within the Ashenhurst Tract are split estate lands, which means that the Federally-owned coal underlies privately owned surface.

As required by the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, and 43 CFR 2201.7-1, BLM prepared an Environmental Assessment (EA) to analyze potential environmental impacts of a fee coal exchange that would transfer ownership of some or all of the Federal coal in the Ashenhurst Tract for the private coal in the Nance-Brown AVF. BLM prepared an EA for the proposed Nance Brown AVF Coal Exchange on October 6, 2010. DOI-BLM-MT-C020-2011-0005-EA. The EA analyzed the No Action Alternative and the Proposed Action Alternative. BLM invited and received some comments on the EA during the 45-day public comment period, and, after consideration of these comments, a revised EA was issued on August 24, 2011. The attached EA, which includes responses to comments received from the public, is incorporated by reference in this Finding of No Significant Impact ("FONSI") determination. In addition to the changes made after consideration of the public comments, the proposed action has been modified due to differences in value and because of the potential impacts to cultural resources on portions of the Ashenhurst Tract. The modifications made due to the cultural resources are described in #8 below. All revisions between the October 6, 2010 version and the August 24, 2011 version are shaded in grey in the attached EA.

The EA analyzed the possible environmental impacts of exchanging all or a portion of the Federal fee coal within the Ashenhurst Tract and noted that, if the exchange were approved, the actual amount of Federal coal to be exchanged would need to be equalized with the appraised values of the Nance-Brown fee coal. As a result of this equalization, Federal coal within the Ashenhurst Tract identified for potential exchange will total approximately 2,557.4 acres. As explained in more detail below, BLM has removed Section 6, T.1.S., R.41E, and it will not be exchanged. Legal descriptions of affected properties, after all adjustments have been made can be found in the Decision Record.

FINDING OF NO SIGNIFICANT IMPACT DETERMINATION:

Based upon a review of the EA and the supporting documents, BLM has determined that the project does not have a significant effect on the quality of the human environment, individually or cumulatively with other actions in the general area. The environmental effects of this project do not meet the definition of significance in either context or intensity, as defined in 40 CFR 1508.27, and do not exceed those effects described in the Powder River Resource Management Plan (1985). Therefore, an environmental impact statement is not needed. This finding is based on the context and intensity of the project as described below:

Context: The proposed Nance-Brown AVF Fee Coal Exchange is an action that would exchange ownership of two tracts in Rosebud County, Montana. Under the proposed exchange, the Federal government would acquire ownership of approximately 3,379.55 acres of fee coal currently owned by Nance-Brown in exchange for the Federal government transferring approximately 2,557.4 acres of fee coal in the Ashenhurst Tract to Nance-Brown.

The Ashenhurst Tract is located adjacent to an active surface coal mine southwest of Colstrip. The tracts are located immediately south of Area C South of the Rosebud Mine operated by Western Energy Company and west of Area B of the Big Sky Mine, which was operated by the Big Sky Coal Company. Area C South is an active mining area of the Rosebud Mine. Area B of the Big Sky Mine last produced coal in 2003 and is undergoing final reclamation. Attached map 2 identifies all existing and reclaimed coal mines that are located in the vicinity. These mines are operated by Western Energy Company or Big Sky Mine Company. The Ashenhurst Tract is a part of a checkerboard coal ownership pattern consisting of private and Federal coal.

The Nance-Brown Tract is located in the Tongue River valley, starting at Birney and running approximately 12 miles north along the river. The Nance-Brown Tract consists of private coal that lies in the valley of the Tongue River and is currently unminable under section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This proposed exchange only affects the lands within the boundaries of the affected tracts and does not have international, national, regional, or state-wide importance.

Intensity: The following discussion is organized around the Eleven Significance Criteria described in 40 CFR 1508.27 and incorporated into BLM's Critical Elements of the Human Environment list (H-1790-1), and supplemental Instruction Memorandum, Acts, regulations and Executive Orders. The following have been considered in evaluating intensity for this proposal.

1. Impacts may be both beneficial and adverse.

The beneficial effects of the exchange of coal ownership include the completion BLM's statutory mandate to effectuate an exchange for the owners of AVF fee coal lands precluded from mining under section 510(b)(5) of SMCRA. In addition, the United States would acquire title to approximate 3,379.55 acres of AVF coal, which will ensure Federal development of the coal in the event that the law or technology changes to allow the coal to be legally mined.

Adverse effects from exchanging ownership of the coal include the loss of revenue to the Federal government and state/local governments from the possible future coal development of the

Ashenhurst Tract and potential impacts to the owners of the surface estate overlying the current Federal coal. If the Ashenhurst Tract was developed, BLM would also lose the ability to decide whether to lease the coal or lease the coal with stipulations related to environmental, cultural resources, or other concerns.

In conjunction with the EA, BLM developed a Reasonably Foreseeable Development (RFD) scenario to assist in analyzing the possible impacts of mining of coal in the Ashenhurst Tract and surrounding area. Potential adverse effects from mining, whether conducted privately or under Federal lease, include impacts to soils, topography, invasive species, wildlife habitat, hydrology, climate change, air quality, livestock grazing, social and economic conditions. These impacts are generally temporary and will only exist until reclamation occurs. If applicable and developed as a Federal resource, stipulations may be applied to the Federal lease to help minimize impacts to resources if a coal application was submitted. No Federal stipulations could be attached if it were developed as a private coal resource.

2. The degree to which the selected alternative will affect public health or safety.

The exchange only changes ownership of the coal resources and does not authorize mining related activities. Thus, the selected alternative will not affect public health or safety. Mining would not occur on the exchanged lands until a mining permit is approved by the Montana Department of Environmental Quality (MTDEQ). As permits are issued only after consideration of public health and safety, if the coal is eventually mined, it is not anticipated affect public health or safety.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.

There are no park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas in the areas within the Ashenhurst Tract. There potentially could be prime farm land and wetlands present on the Nance-Brown Tract. BLM completed a Class III (Intensive) Cultural Resource Inventory for historic and cultural resources in 2010 on the Ashenhurst Tract. The survey identified 18 cultural sites that could potentially be eligible for the National Register of Historic Places.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

BLM held a scoping meeting for the EA on April 22, 2010. Twenty individuals attended that meeting and approximately five individuals gave verbal comments. In addition, after the October 6, 2010 EA was released, BLM took comments for 45 days. Three letters with comments on the EA and the public interest factors were received during that time. A public meeting was held on October 19, 2010, to take input on the public interest factors. Sixteen individuals attended, and three provided verbal comments.

General comments received on the EA concerned the potential impacts mining the Ashenhurst Tract may have on wildlife, ground water, surface water, and the quality of life in a predominately rural area. Most comments on the EA concerned the potential effect of the

exchange on the private surface owners that overlay and surround the Federal coal within the Ashenhurst Tract.

Based on the number and content of the comments received from the public, the effects on the quality of the human environment are not considered highly controversial. No unique or appreciable scientific controversy has been identified regarding the effects of the Proposed Action, excluding section 6 of the Ashenhurst Tract.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

No highly uncertain or unknown risks to the human environment were identified during the analysis of the Proposed Action.

The exchange of coal ownership will not have any direct effects on natural resources or to the physical human environment. However, the change in ownership may impact the private surface owners with land over the identified Federal coal tracts within the Ashenhurst Tract. SMCRA section 714 gives qualified surface owners of split estate lands overlying Federal coal certain protections in the Federal leasing process. Specifically, the BLM regulations that implement section 714 of SMCRA require the submission of evidence of written surface owner consent to enter and commence mining from a qualified surface owner when lands are considered for lease. 30 CFR 3427.2. However, if the Federal coal estate is transferred to a private owner through exchange, the Federal leasing regulations would not apply and the surface owner would have only the protections guaranteed by state law. See Mont. Admin. R. 17.24.303(1)(o)(i). Thus, if the exchange is consummated and the surface owners would have been considered qualified in the Federal leasing context as defined by SMCRA and the regulations, they would lose the ability to refuse their consent to a Federal coal lease for the coal underlying the Ashenhurst Tract. The loss of this refusal ability in the Federal coal leasing context may adversely impact the value of the surface property in their negotiations with the coal lessee to obtain surface use consent.

Another direct impact from the change of ownership would be BLM's loss of the ability to decide whether to lease the coal or to attach stipulations onto a Federal lease. It is unknown if the coal would have ultimately be leased as Federal coal or whether any stipulations would have been attached. However, based on the EA, BLM does not believe that there are any resources on the surface over the Federal coal tracts that would be exchanged that warrant protection by a Federal lease stipulation other than the standard stipulations attached to all Federal leases. Yet, if the coal remained in Federal ownership and if resources are identified in the future that warrant protection, lease stipulations would be applied to the Federal lease to reduce impacts if a coal application was submitted.

Although BLM does not have enough information to know if and how an operator may choose to develop the coal in the Ashenhurst Tract, BLM created a RFD scenario to analyze the potential impacts of coal development. Even if any actual mining plan varied from the RFD, the possible effects on the human environment would likely be similar to the impacts described in the EA because the effects of surface mining would be similar, regardless of the timing or placement of the actual mine.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Over the years, BLM has completed exchanges of leased Federal AVF coal that had also been precluded from being mined under section 510(b)(5) of SMCRA for previously unleased Federal leases of non-AVF coal. However, this is the first exchange of non-Federal AVF fee coal for unleased Federal fee coal. Although this action may create a precedent for future AVF fee coal exchanges, given the unique statutes, regulations, and circumstances of AVF fee coal exchanges, we do not believe that selection of the Proposed Action will create a precedent for all land exchanges generally. Even within the small subset of AVF fee coal exchanges, the precedential value of this exchange is likely limited because of the distinctive characteristics of this exchange, i.e., the long history and litigation. Thus, we do not believe that this action will establish a precedent for future BLM actions with significant effects nor represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

No individually or cumulatively significant impacts were identified for the modified Proposed Action. The selected alternative only exchanges the ownership of the identified coal tracts and does not authorize mining related activities.

Appendix A of the EA, explains the potential RFD scenario. The RFD scenario identifies a potential mining plan that shows the coal mining expansion into the Ashenhurst Tract. Potential impacts, not only of the change of ownership but also mining using the RFD scenario, are disclosed in Chapter 4 of the EA. Even with the analysis of the potential effects of mining, no individually or cumulatively significant impacts were identified for the modified Proposed Action.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The proposed coal exchange will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places (NRHP), nor will it cause loss or destruction of significant scientific, cultural, or historical resources.

BLM has inventoried and analyzed the historic and cultural resources of the Ashenhurst Tract. Specifically, BLM completed a Class III Cultural Resource Inventory to identify districts, sites, or other properties eligible for inclusion on the NRHP within the Ashenhurst Tract. A total of 48 newly recorded and eight previously recorded prehistoric and historic sites and 55 occurrences of isolated cultural materials are reported from the Ashenhurst Tracts. The inventory identified 34 sites that could potentially be eligible for the NRHP.

BLM has determined that the proposed exchange of Federal coal in the Ashenhurst Tract would have no adverse effect to historic properties per 36 CFR 800.5(b). BLM's determination is based on the proposed exchange's lack of surface disturbing activities. Only the underlying coal would be exchanged and currently there are no known surface disturbing actions as a result of the

exchange that would adversely affect the qualities of sites that make them potentially eligible for listing on the NRHP. Additionally, should coal development take place in any of the sections exchanged, Montana state permitting law provides sufficient protection and mitigation measures to safeguard sites potentially eligible for listing on the NRHP. For example, whether developed as Federal or private coal, a proposed coal mine applicant would be required to comply with section 17.24.304(1)(b) of the Administrative Rules of Montana. Specifically, this requirement covers the listing, location, and description of all archaeological, historical, ethnological, and cultural resources and values of the proposed mine plan and adjacent area. Sites listed on, eligible for, or potentially eligible for listing on the NRHP must be so identified under this provision. The MTDEQ may then require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on NRHP through collecting of additional information, conducting field investigations, or other appropriate analyses. If significant cultural resources would be adversely impacted by the proposed operations, the mine plan would need to identify measures to minimize or prevent the impacts and provide the timing and tracking of the measures relative to the disturbance schedule (Administrative Rules of Montana 17.24.318).

In addition, BLM has removed Section 6, T.1.S., R.41E from the Proposed Action, and it will not be exchanged because it is not necessary to equalize value and because of the cultural resources located on this tract. For instance, this section contains site types that are important to Native American Groups with historic ties to the area. Of the 48 newly identified cultural properties, twelve of them are found in Section 6. Likewise, of the eight previously recorded cultural properties, two are located on Section 6. In contrast, of the 36 newly and six previously recorded sites reported from the four remaining sections, only a total of 18 of the sites are recommended as eligible for listing on the NRHP. (The remaining sites and isolates are recommended as not eligible for listing on the NRHP.). By retaining the Federal coal under Section 6, T1S, R41E, before any coal development could occur, BLM could attach stipulations to the coal lease requiring avoidance or mitigation of historic properties in addition to those that may attach during Montana's permitting process.

BLM believes that the Montana permitting requirements and the removal of Section 6 from the exchange are sufficient to ensure historic properties would not be adversely affected as result of the coal exchange.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

The wildlife survey conducted in 2010 revealed that there are no endangered or threatened species or their habitat known to exist within or adjacent to the Ashenhurst Tract.

10. Whether the action threatens a violation of a Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment, where non-Federal requirements are consistent with Federal requirements.

The Proposed Action does not violate any Federal, state, tribal, or local environmental protection laws. Furthermore, the exchange is authorized by SMCRA and is consistent with applicable land management plans, policies, and programs.

11. President's Energy Policy: as put forth in Executive Order 1312, decisions made by the Bureau of Land Management will take into consideration adverse impacts on the President's Energy Policy.

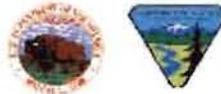
This project, as proposed, will have no impact on this policy as development of the coal could take place either Federally or privately.

SIGNATURE OF THE AUTHORIZED OFFICER

Approved By: Deborah K. Johnson Morford Date Aug. 24, 2011
Deborah K. Johnson Morford
Field Manager, Miles City Field Office

Map 1

Nance Brown Coal AVF Exchange



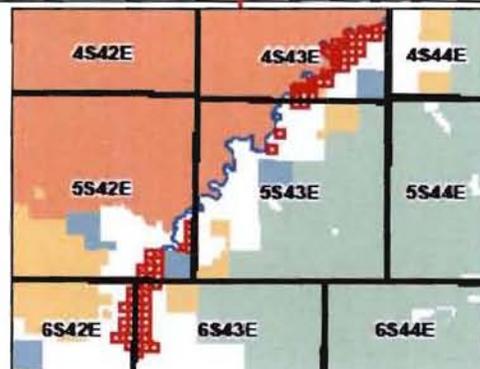
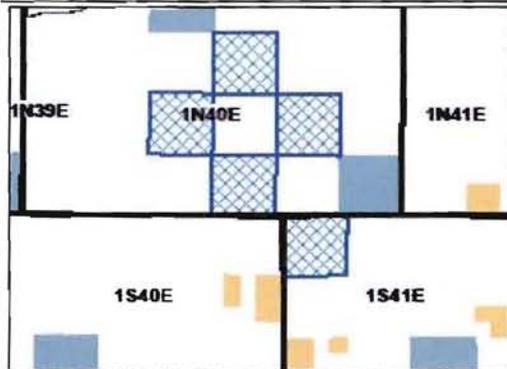
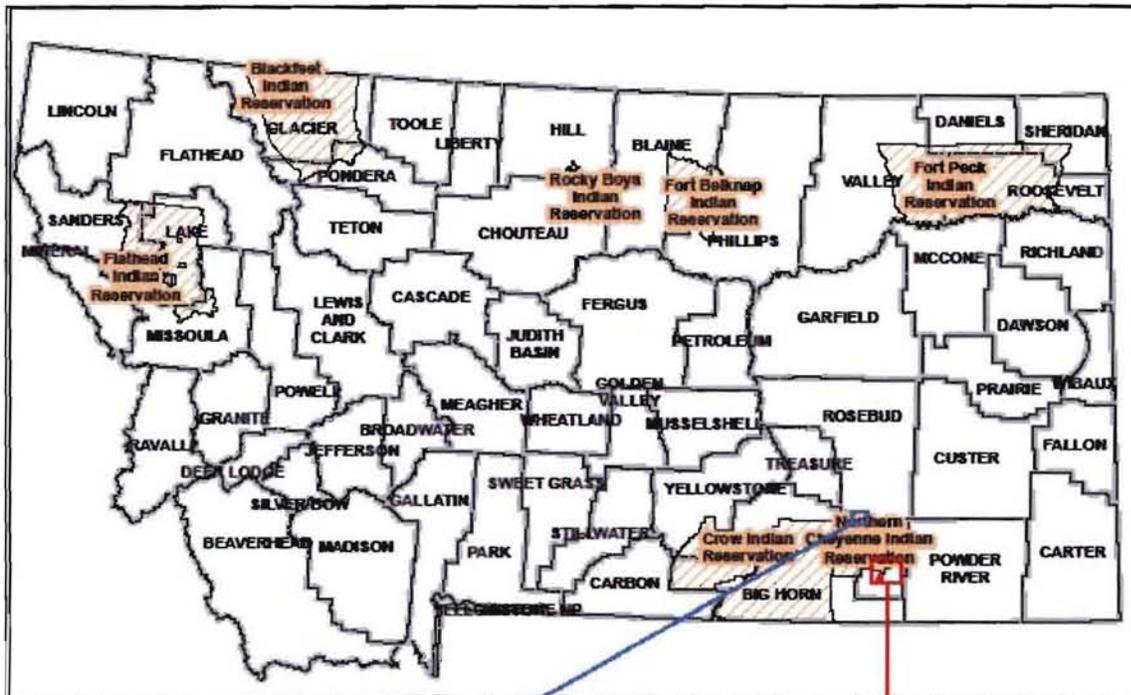
- ▣ NanceBrown Non Federal Tracts
- ▣ Ashenhurst Federal Tracts

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Projected Coordinate System: NAD 1983 Albers
Geographic Coordinate System: GCS North American 1983
Datum: North American 1983

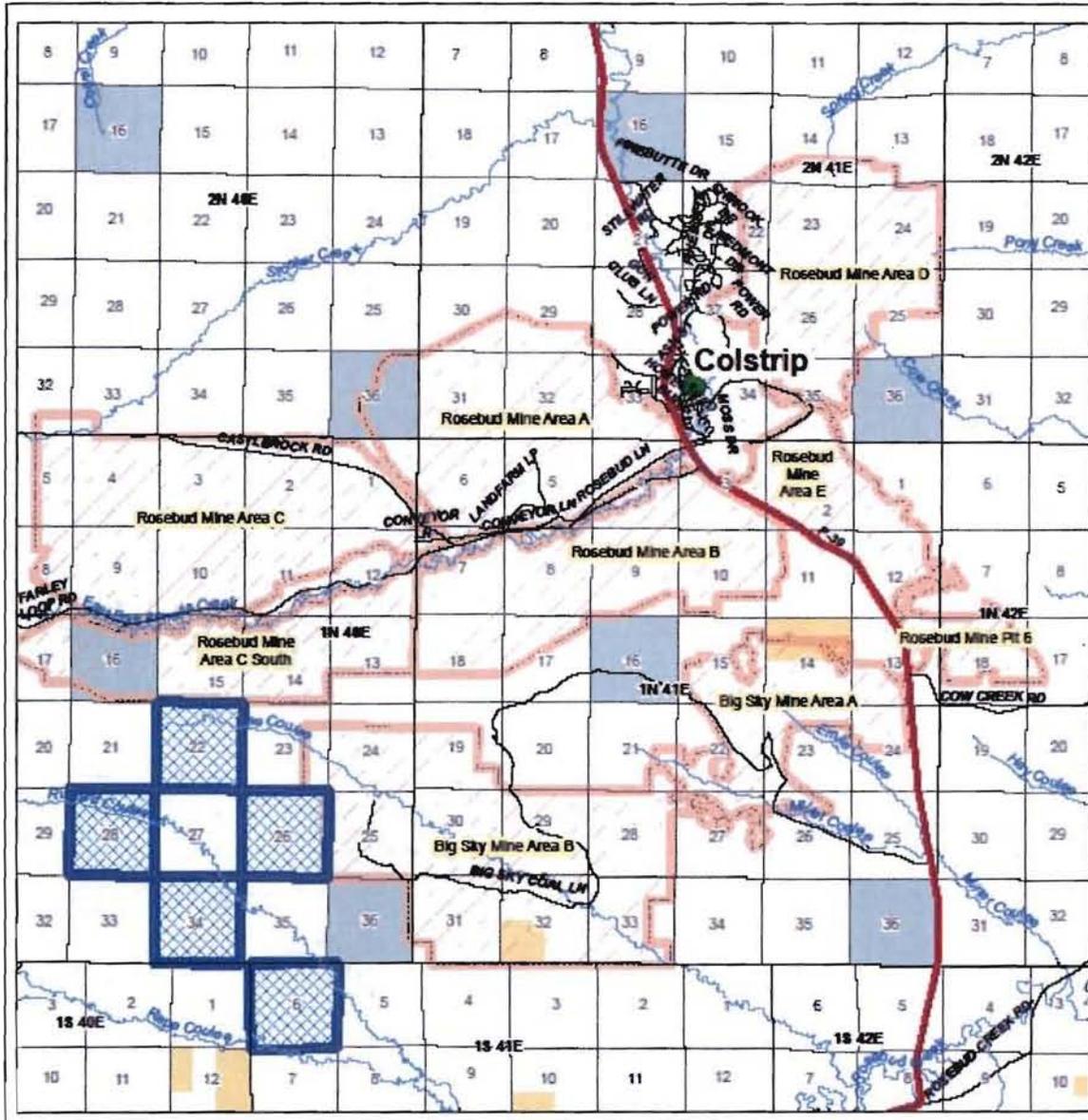
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Map 2

Ashenhurst Tract

- Cities and Towns
- Ashenhurst AWP Tracts
- Bases of Land Management Surface
- Private Surface
- State of Montana Surface
- Coal Permit Boundaries
- City and County Roads
- Primary Roads
- Rivers



Date: 2008

 AWP Period: 2008

 Surface Management Date: 2008

 Collection Date: 2008

 Project: 2008

 Worksheet: 2008

 State of Montana

1:100,000



Prepared/Consultation: 2008 08/20/08

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 Date: 2008 08/20/08

UNITED STATES DEPARTMENT OF THE INTERIOR

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