

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MILES CITY FIELD OFFICE
FINDING OF NO SIGNIFICANT IMPACT
Pumpkin Creek Ranch Land Exchange Phase 2
MT-020-2005-353**

BACKGROUND

The Bureau of Land Management (BLM) Miles City Field Office (MCFO) was presented an opportunity, with the assistance of The Conservation Fund (TCF), to consolidate land ownership in Custer County in an area located approximately 15 miles south of Miles City. The United States would acquire the non-Federal lands known as the Pumpkin Creek Ranch through an assembled land exchange which would involve disposing of smaller isolated parcels of Federal land through TCF. The BLM would convey those Federal lands by patent to the grazing permittee and/or adjacent landowners as designated by TCF. The purpose of the land exchange would be to:

1. Consolidate Federal land holdings within the Pumpkin Creek Ranch, which when acquired would offer a multitude of benefits to public land management opportunities. It would facilitate the BLM's involvement in the conservation of the Evergreen Shrubland/Perennial Graminoid Eco-Region by creating a large landscape with many habitat types; enhance management of the area for multiple use objectives and resources including livestock grazing, wildlife, rangeland and riparian, fuels/forest initiatives, Special Status Species and water (Pumpkin Creek is a perennial stream). It would also provide the public with hunting, recreational, and environmental education opportunities near Miles City. There would be an increase in management flexibility and reduced user conflicts between Federal land uses and private property, such as reducing trespass on private lands and providing access to Federal lands.
2. Dispose of Federal lands that, for the most part, have limited or no access and are difficult to manage because of the small size and/or intermingled nature of the tracts with non-Federal lands owned by numerous private parties. Disposal of the public land parcels would improve administrative efficiency and reduce the BLM's costs to manage those parcels. Several grazing allotments could be eliminated and therefore, would no longer require administration by the BLM.

The Pumpkin Creek Ranch land exchange is being consummated in two phases because of appraisal timing issues. Phase 1 closed on February 20, 2008. This is the decision for Phase 2.

FINDING OF NO SIGNIFICANT IMPACT

On the basis of the information contained in Environmental Assessment (EA) MT-020-2005-353, and all other information available to me, it is my determination that:

- (1) The implementation of the Proposed Action or alternatives will not have significant environmental impacts beyond those already addressed in the Powder River Resource Area (PRRA) Resource Management Plan (RMP) which was approved on March 15, 1985.
- (2) The Proposed Action is in conformance with the Record of Decision for the PRRA RMP, as amended; and
- (3) The Proposed Action does not constitute a major Federal action having a significant effect on the human environment.

Therefore, an environmental impact statement or a supplement to the existing environmental impact statement is not necessary and will not be prepared.

This finding is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR '1508.27), both with regard to the context and to the intensity of the impacts described in the EA.

Context

This land exchange proposal lies within the area covered by the Record of Decision (ROD) for the PRRA RMP/Environmental Impact Statement (EIS), approved March 15, 1985, as amended. The Federal lands can be disposed of by exchange (page 3 of the Record of Decision and page 42 of the PRRA RMP) and the non-Federal lands can be acquired based on meeting criteria identified in Appendix G on page 335 of the RMP. Most of the non-Federal lands are in a retention area according to the PRRA RMP. The proposed acquisition is in accordance with the PRRA RMP and is in conformance with the "Supplement to State Director Guidance for Resource Management Planning in Montana and the Dakotas" for "Land Pattern Review and Adjustment" (1984) and for "Access" (1989).

Under the Proposed Action (Preferred Alternative), which is for Phase 2 of the Pumpkin Creek Ranch Land Exchange, the BLM will convey by patent to the recipients designated by TCF, the Federal lands and interests in land, excluding minerals, described in Exhibit 1 being thirteen parcels (89S6, 89S7, 89S8, 89S9A&B, 89S10, 89S11, 89S18, 89S19, 89S21, 89S22, 89S23, and 89S79) in Carter County totaling 1,247.10 acres of surface estate. In return, TCF will convey by warranty deed to the United States the lands and interests in land described in Exhibits 2 and 3, being four parcels (O-3, O-4, O-9, and the W½ of O-10) in Custer County totaling 1,807.64 acres of surface estate and minerals as far as TCF acquired them with the non-Federal lands as identified in Exhibit 2.

Intensity

I have considered the potential intensity/severity of the impacts anticipated from the proposed action and all alternatives relative to each of the ten areas suggested for consideration by the CEQ.

- 1. Impacts that may be both beneficial and adverse.** The EA considered both potential beneficial and adverse effects. None of the environmental effects discussed in detail in the EA are considered significant, nor do the effects exceed those described in the PRRA RMP, as amended.
- 2. The degree to which the proposed action affects public health and safety.** No aspect of the proposed action would have an effect on public health and safety.
- 3. Unique characteristics of the geographic area such as proximity of historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.** The proposed action would have no effect on cultural resources on the Federal lands. BLM records indicate that for the Federal parcels selected for exchange a cultural resource inventory was completed in 1989 and reevaluated during the late 1990's and again in 2005 and 2006. One site required further work to determine National Register of Historic Places (NRHP) eligibility. This was completed in 2007. The sites on these Federal lands were either found not to be sites, were not on Federal lands, or were determined to be not eligible for listing on the NRHP. The State Historic Preservation Officer (SHPO) has concurred with this determination. The Federal tracts are small and wetland habitats associated with them are minimal and the use of these lands is not expected to change. There are no parks, prime farmlands, wild and scenic rivers, or ecologically critical areas in the planning area.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial. No unique or appreciable scientific controversy has been identified regarding the effects of the Proposed Action.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. The analysis has not shown that there would be any unique or unknown risks to the human environment.

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. This project neither establishes a precedent nor represents a decision in principle about future actions. The proposed action is consistent with actions appropriate for the area as designated by the PRRA RMP, as amended.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. The environmental analysis did not reveal any cumulative effects beyond those already analyzed in the EISs which accompanied the PRRA RMP, as amended.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or 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 historic resources. The proposed action will not adversely affect any district, site, highway, structure, or object listed or eligible for listing in the NRHP or cause loss or destruction of significant scientific, cultural, or historic resources. One cultural site on Federal land required further work to determine NRHP eligibility. This was completed in 2007. The sites on the Federal lands were either found not to be sites, were not on Federal lands, or were determined to be not eligible for listing on the NRHP. The SHPO has concurred with this determination.

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. This proposed action does not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. The disposal of Federal lands and interest in lands in exchange for the acquisition of non-Federal lands and interest in lands is authorized under Sections 205 and 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1715, et. seq.) and the regulations found at Title 43 Code of Federal Regulations Part 2200. The proposed action does not threaten to violate any Federal, State, or local law or requirements imposed for the protection of the environment.

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.

/s/ Deborah K. Johnson
Deborah K. Johnson
Acting Field Manager
Miles City Field Office

Sept. 4, 2009
Date

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MILES CITY FIELD OFFICE
RECORD OF DECISION
Pumpkin Creek Ranch Land Exchange Phase 2
MT-020-2005-353**

Serial Number: MTM-89845

State: Montana

County: Custer and Carter

Field Office: Miles City Field Office

Action: Phase 2 of Assembled, Facilitated Pumpkin Creek Ranch Land Exchange

Parties to the Exchange: The Conservation Fund (TCF) and the Bureau of Land Management (BLM)

DECISION

It is my decision to select the Proposed Action (Preferred Alternative) as described in the Pumpkin Creek Ranch Land Exchange Environmental Assessment (EA) #MT-020-2005-353, and approve Phase 2 (Final Phase) of the Pumpkin Creek Ranch land exchange proposal between the BLM and TCF. Implementation of this decision will result in the completion of the Pumpkin Creek Ranch Land Exchange.

The Proposed Action analyzed 100 parcels of Federal land and 25 parcels of non-Federal land. In Phase 1, which closed on February 20, 2008, 43 parcels (CF1-CF22, CL1-CL13, CLY1, CLY2, H1, H2, PPLU1-PPLU3, and PPWU1) of Federal land in Custer County totaling 14,325.83 acres were exchanged for 22 parcels (O-1, O-2, O-5 through O-8, the E½ of O-10, and O-11 through O-25) of non-Federal land, also in Custer County, totaling 12,229.15 acres. A portion of Federal parcel #CF16 was not exchanged because it had a National Register of Historic Places eligible site (a prehistoric campsite and historic material scatter) on it and was therefore retained. The site was buffered by an area which was also retained under Federal ownership. The patentee of parcel #CF16 donated a permanent non-exclusive easement to the BLM for access to the eligible cultural site. The exchange will not include 44 parcels (#89S1-5, 89S12-17, #89S20, #89S31-49, #89S67-70, #89S71A & B, #89S72-78) of Federal land identified in the Notice of Exchange Proposal because of resource concerns, because the proposed patentee was no longer interested, there was no access available to the tracts for disposal to someone else, or they were not needed to achieve an equal value exchange to acquire all of the non-Federal lands. The Federal lands for this Phase 2 are BLM-administered lands in Carter County, on which a cultural survey was completed in 1989 and therefore are referred to as "89 Survey" Federal lands.

In this second phase of the exchange, the BLM will convey, by patent to the grazing permittee and/or adjacent landowners as designated by TCF, the Federal lands and interests in land, excluding minerals, described in Exhibit 1, being thirteen parcels (89S6, 89S7, 89S8, 89S9A&B, 89S10, 89S11, 89S18, 89S19, 89S21, 89S22, 89S23, and 89S79) totaling 1,247.10 acres of surface estate. TCF will convey by warranty deed to the United States the lands and interests in land described in Exhibits 2 and 3, being four parcels (O-3, O-4, O-9, and the W½ of O-10) totaling 1,807.64 acres of surface estate and minerals as far as TCF acquired them with the non-Federal lands as identified in Exhibit 2 (an undivided 50% of all minerals was retained in a previous transaction on approximately 1,167.64 acres of non-Federal lands). Legal access to the acquired Phase 2 lands will be provided from the Tongue River Road through the exchange and from the adjoining lands acquired in Phase 1 of the exchange. The conveyances are subject to the reservations and exclusions listed on the attachments. Associated water rights (seven on Federal

lands; five on non-Federal lands) will be conveyed with the subject lands as shown in Exhibits 1 and 2; the value of these rights were factored into the appraisals.

The land exchange will be completed on an equal value basis. The market value of the lands being exchanged has been determined by appraisals prepared by a qualified appraiser. The appraisals have been completed in compliance with the BLM regulations and in accordance with the Uniform Appraisal Standards for Federal Land Acquisition published by the Department of Justice and the Uniform Standards of Professional Appraisal Practice. A qualified review appraiser has reviewed the appraisals to ensure that they are logical, consistent, and meet Federal standards. The value of the Federal lands and interests in land in Phase 2 is \$364,103 and the value of the non-Federal lands and interests in land is \$392,000 for a difference of \$27,897 less in value for the Federal lands. A ledger account was established to track the \$21,578 value difference of Federal lands over non-Federal lands from Phase 1, which was within 25 percent of the Federal land value. With the excess Federal value from the ledger from Phase 1, the total Federal value for the entire exchange is \$6,319 less than the non-Federal appraised value. The values are being equalized at this final phase of the exchange and the ledger will be closed. Pursuant to 43 CFR 2201.6(c), TCF has agreed to waive the cash equalization payment in the amount of \$6,319, which is less than 1% of the value of the lands being exchanged out of Federal ownership.

The two-year grazing notices were sent to the grazing permittees on October 7, 2005, and a copy of the NOEP was sent to them on October 6, 2005. The grazing waivers were signed for 11 of the tracts and not signed for the other two; however they are not needed, as the permittees are the recipients designated by TCF to receive the patents for the subject Federal lands. Grazing permit fees will be adjusted on a prorated basis upon closing. All patents will include a reservation to the United States for a right-of-way for ditches and canals under the authority of the Act of August 30, 1890, and a reservation to the United States of all the minerals, with the right to itself, its lessees and permittees to explore for, drill for, mine, extract, remove and dispose of all the minerals owned by, acquired by, or otherwise to vest in the United States, including, without limitation, necessary access and exit rights to build and maintain necessary improvements thereupon for the full enjoyment thereof. Patents may be issued subject to existing rights such as rights-of-way. TCF will attempt to have existing rights-of-way converted, if applicable, to private easements to become effective upon closing. If for some reason a conversion to private easements cannot occur, then the patents will be issued subject to the rights-of-way. There are no documented rights-of-way on the non-Federal lands. Federal tract 89S7 in the E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 26, T. 3 N., R. 57 E., will carry with it the following patent restriction identified in Executive Order 11988: "The land may not be used for residential buildings; public service installations needing high protection; permanent memorial cemeteries; and similar type use and structures below the 100-year flood level."

I have determined that the public interest will be well served by the exchange of lands in Phase 2. I have concluded that the exchange is in conformance with the approved land use plan and that the exchange will not result in significant environmental impacts as stated in the FONSI. A comprehensive multiple use management plan will be initiated following the completion of the exchange. The plan will address wildlife, recreation, riparian, fisheries, travel management, and grazing management in accordance with the resource management plan. Environmental education opportunities could also be considered. This plan will be analyzed within a separate environmental assessment and be in accordance with all applicable laws, regulations, and the applicable RMP.

In the absence of any protests, the decision to exchange the Federal lands for the non-Federal lands will become the final determination of the Department of the Interior.

ALTERNATIVES

In addition to the selected alternative, the EA considered one other alternative. Alternative 2 is the "No Action" alternative, and would carry out no management activities at this time.

RATIONALE FOR THE SELECTION

The purpose of this land exchange is to enable the BLM to consolidate Federal land ownership in an area located approximately 15 miles south of Miles City which is currently in a checkerboard pattern. With the assistance of TCF, acquisition of approximately 14,037 acres (12,229.15 acres in Phase 1 and 1,807.64 acres in Phase 2) of the Pumpkin Creek Ranch will create a block of Federal land consisting of approximately 20,556 acres (19,475 acres within the ranch boundary and 1,081 acres of adjacent Federal land which will become accessible) for public use (dispersed recreation) and enhanced management of the BLM's resource programs. The completion of Phase 1 of the exchange on February 20, 2008, created a block of Federal land consisting of approximately 18,308 acres (17,227 acres within the ranch boundary and 1,081 acres of adjacent Federal land); the remaining 1,807.64 acres of non-Federal lands are proposed to be acquired in this Phase 2 and 440 acres of current Federal lands will become part of this large block. Access will be provided to the BLM from the Tongue River Road through the non-Federal land acquired in Phase 2 and by lands acquired in Phase 1. Approximately 1,920 acres of State land are now also accessible to the public due to this exchange. The ranch is accessible from Montana Highway 59 (the Broadus Highway) and Road 332 (the Tongue River Road).

The United States will acquire the non-Federal lands through an assembled land exchange which will involve disposing of smaller isolated parcels of Federal land through TCF. The BLM will convey the Federal lands, by patent, to the grazing permittee and/or adjacent landowners as designated by TCF. The land exchange will:

1. Consolidate the Federal land holdings within the Pumpkin Creek Ranch, which, when acquired, will offer a multitude of benefits to public land management opportunities. It will facilitate the BLM's involvement in the conservation of the Evergreen Shrubland/Perennial Graminoid Eco-Region by creating a large landscape with many habitat types; enhance management of the area for multiple use objectives and resources including livestock grazing, wildlife, rangeland and riparian, fuels/forest initiatives, Special Status Species and water (Pumpkin Creek is a perennial stream). It will also provide the public with hunting, recreational, and environmental education opportunities near Miles City. Long term public benefits will include increased management flexibility and reduce user conflicts between Federal land uses and private property, such as reducing trespass on private lands
2. Dispose of Federal lands that have limited or no access and are difficult to manage because of the small size and/or intermingled nature of the tracts with non-Federal lands owned by several private parties. Disposal of the Federal land parcels will improve administrative efficiency and reduce the BLM's costs to manage those parcels. Eight grazing allotments and five grazing files and two right-of-way files will be eliminated and therefore, will no longer require administration by the BLM. As a result of Phase 1 of the land exchange, net public revenue from taxes and Payments in Lieu of Taxes (PILT) to Custer County decreased by approximately \$1,363, and, as a result of Phase 2, will increase by approximately \$2,567 for a total net increase of approximately \$1,200 annually. As the result of Phase 2 of the land exchange, net public revenue from taxes and PILT to Carter County would increase by approximately \$550 annually.

Public Interest Determination: It has been determined that the public interest will be well served by consummation of Phase 2 of this land exchange as provided for in regulations at 43 CFR 2200.0-6(b).

This exchange will provide the opportunity to achieve better resource management on Federal lands and meet the needs of State and local residents and their economies and provide enhancement of recreation opportunities and public access.

Phase 2 of the exchange allows the BLM to dispose of 13 scattered, isolated parcels of Federal land, many of which contain minimal resource values. The isolated nature of these parcels makes them difficult and expensive to manage, and future use of them by their private landowners will have no effect on management objectives on adjacent Indian Trust Lands as there are no adjacent Indian Trust Lands. The land exchange will not result in any undue or unnecessary environmental degradation.

The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired. The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands. Three small parcels [89S23 (40 acres), portion of 89S18 (80 acres), and 89S19 (120 acres) (for a total of 240 acres)] are adjacent to National Forest lands. The District Ranger for the Custer National Forest was consulted about these Federal tracts next to the National Forest lands. The Custer National Forest had no concerns with the possible disposal of these tracts. The environmental impacts of the land exchange for the non-Federal and Federal lands were analyzed in EA #MT-020-2005-353. The following summarizes the impact of this Phase 2 of the land exchange on the natural resources and uses specific to the 1,247.10 acres of Federal land and the 1,807.64 acres of non-Federal land to be exchanged:

Access: The public will gain access to a net 1,564.5 acres of Federal land in Phase 2 of the Pumpkin Creek Ranch Exchange. Access will be gained on 1,968 acres of non-Federal land and associated Federal lands, and access will be lost to three Federal tracts [89S19, 89S23, 89S79] and a portion of one other [89S18], consisting of a total of 403.14 acres in Carter County.

Two of these tracts [89S23 (40 acres) 89S79 (163.14 acres)], consisting of 203.14 acres, have access available by vehicle on a county road. Parcel 89S23 is bordered on the south by National Forest land but, the Prairie Dale County Road separates it from the National Forest lands. In addition, Parcel 89S23 has a house next to it on the east and a set of buildings (ranch headquarters) to the north east of it. Parcel 89S79 has the Breeding County Road on the south side and a set of buildings (ranch headquarters) right next to it on the north side. The pasture this tract is located in is used by the permittee in the winter season due to its proximity to their buildings, and there have been issues with feeding cattle on this Federal tract. Tract 89S19 (120 acres) and a portion of tract 89S18 (80 acres) totaling 200 acres have access available through National Forest lands. There is a set of buildings (ranch headquarters) to the west of tract 89S19 and a house is being built immediately to the west of the tract in a newly created subdivision. A portion of tract 89S18 is next to National Forest land with Highway 323 to the south and west of it, but it is not accessible by the highway. Neither of these tracts [89S18 and 89S19] have vehicle access available.

Public access, both gained and lost through the land exchange, was an important issue in Phase 1. The public also raised it as an issue for this Phase 2 decision. In general, public access is also an important issue in Montana as well as United States as a whole. The importance of public access for hunting was also established by President Bush's Executive Order #13443 ("Facilitation of Hunting Heritage and Wildlife Conservation"). Thus, the BLM gave careful consideration to the public access components for this Phase 2 of the land exchange. There are no laws, statutes, regulations, policies, etc. (including FLPMA and Executive Order 13443) which prohibit the disposal of lands that have public access in a land exchange, or that even require that there be a net gain of publicly accessible land. However, what is

required is that the BLM consider the loss and gain of publicly accessible land as one of the many factors that need to be considered, and then make a decision that is in the public interest.

The loss and gain of publicly accessible land was considered in making this decision. This decision is in the public interest from a public access viewpoint and the decision meets the intent of Executive Order 13443. Phase 2 of this exchange will result in a gain of 1,968 acres of publicly accessible land, and a loss of 403.14 acres of publicly accessible land, for a net gain of 1,564.5 of publicly accessible land. In addition, the acquired publicly accessible land will be a consolidated 1,968-acre block, which will be more usable, safe and manageable for public access than the four scattered tracts that comprise the 403.14 acres that are being lost to public access. Those four tracts are all less than 165 acres in size, and the close proximity of buildings to some of these tracts creates a safety issue in relation to public hunting on those tracts. Between the two phases of the exchange, the public will gain access to a total of approximately 18,996 acres of Federal land. The entire exchange would create a contiguous block of Federal land consisting of approximately 20,556 acres, with a net increase of approximately 13,919 acres of accessible Federal land. The public also gained access to 1,920 acres of State land in Phase 1. Access to and within this newly created block of Federal land is by State Highway 59 (Broadus Highway) and by the Tongue River Road (S-332).

Vegetative Resources: There will be a net gain of approximately 561 acres of land under Federal ownership/management in Phase 2, with a total net loss of approximately 1,536 acres in the entire exchange. No adverse impacts to the vegetative resources are expected to occur with the disposal of the Federal land parcels since, for the most part, land use is not expected to change. Land use on a portion of one 120-acre Federal tract, of which a portion has been previously farmed, could change since it is next to a newly created subdivision. The use on the southern end of the tract, next to National Forest land, is not expected to change. Acquisition of the non-Federal lands will create a large block of land with improved management opportunities, which will focus on conservation of the Shrubland/Perennial Graminoid Steppe Eco-Region within the Northern Great Plains.

Wetland/Riparian Areas: Phase 2 will have a minimal effect on riparian and wetland habitats. Riparian and wetland habitats associated with the non-Federal land are limited. Three of the four non-Federal tracts have intermittent streams associated with them, two with reservoirs. Riparian and wetland habitats associated with the Federal lands are minimal due to the limited acreages of the tracts, which range in size from 40 to 200 acres. Five of the 13 Federal parcels have some riparian/wetland habitat associated with them in the form of ephemeral and intermittent streams and two reservoirs. The non-Federal and Federal lands consist of habitats associated with ephemeral and intermittent streams. The majority of the habitats within the ephemeral and intermittent streams are pools within a pool channel system where water flows from pool to pool during spring snow melt and after heavy precipitation events. The pools that retain water for at least 30 consecutive days typically have riparian vegetation associated with them; species that may be present include, but are not limited to prairie cordgrass, various species of sedges and rushes, and emergent aquatic vegetation. Some of the existing livestock reservoirs create shallow water wetlands that are dominated by cattails, softstem bulrush, hardstem bulrush and other sedge and rush species. The land being acquired by the United States in Phase 2 will become part of a large contiguous block of land created by Phase 1, providing for comprehensive riparian habitat management, allowing for improved resource conditions. Approximately 9.2 stream miles of riparian and wetlands habitat, primarily on Pumpkin Creek, were acquired by the United States in Phase 1 of the exchange.

Rangeland Resources: There will be a net gain of approximately 108 Animal Unit Months (AUMs) [389 AUMs on the non-Federal lands; 281 AUMs on the Federal lands] under Federal administration in Phase 2 and a total net gain of 754 AUMs between Phase 1 and 2. Since the prospective recipients of the Federal land parcels, which are all Section 3 custodial lands, are the current livestock permittees, there are no adverse impacts to their grazing operations. Conveyance of the Federal lands will

result in a loss of 281 AUMs. Eight grazing allotments will be eliminated since no Federal land would remain after the exchange. There would be an administrative cost savings to the BLM with the elimination of the eight allotments and closure of five permittee case files at an estimated \$2,600 per casefile per year. Between Phase 1 and 2, thirteen grazing allotments and eight grazing casefiles would be eliminated from BLM administration. Range improvement projects of record on the Federal parcels will be turned over to the new landowners and the project files closed.

Acquiring the non-Federal land, in addition to the existing Federal land in the area, consolidates ownership and creates a larger block of grazing land with improved management opportunities and an estimated additional 389 AUMs available for Federal administration. Grazing allocation and use will be determined upon completion and approval of the management plan for the area. Existing range improvements on the non-Federal lands will be documented and project files established.

Water Resources/Water Rights/Floodplains: There will be a net loss of two Federal water rights. Land use is not expected to change in the areas of the water resources and rights; therefore, this loss will not create an adverse effect. Water resources associated with stock reservoirs, a pipeline from a spring, and a well will leave Federal ownership. Seven water rights will be transferred with the associated Federal lands in accordance with the BLM and State regulations. Four water rights associated with two reservoirs comprising 29.2 acre feet; two water rights associated with 1 well at 8 gallons per minute (GPM) with 12.34 acre feet for wildlife and .56 acre feet for stock; and one water right associated with a pipeline tank from a developed spring at 5 GPM with 2.79 acre feet for stock will be transferred to the new land owners.

Water resources and rights on the non-Federal lands consist of reservoirs, wells, and instream rights. Water rights will be transferred with the associated non-Federal lands in accordance with the BLM and State regulations. Four stock water rights associated with two reservoirs and two wells, at 10 GPM each, totaling 554.88 acre feet and 216 cubic feet per second (cfs), and one water right for irrigation purposes which totals 9.75 acre-feet will be acquired by the BLM with the non-Federal lands. The BLM will acquire the range improvements, which are considered “constructed assets”, but no Asset Acquisition Business Plan (AABP) will be required as these “Stewardship Assets” are excluded from the policy requiring the completion of an AABP prior to their acquisition.

The floodplain of the East Fork of O’Fallon Creek below the elevation of 3,125 feet on Federal tract 89S7 in the E½NE¼, Section 26, T. 3 N., R. 57 E., will carry with it the following patent restriction identified in Executive Order 11988: “The land may not be used for residential buildings; public service installations needing high protection; permanent memorial cemeteries; and similar type use and structures below the 100-year flood level.”

Wildlife, Fisheries: Phase 2 of the exchange will result in approximately 561 acres more of Federally-administered land, with a total for the entire exchange of approximately 1,536 acres less of Federally-administered land, however, the proposed action is not expected to cause adverse impacts to aquatic and wildlife species, populations, or habitat since land use, for the most part, is not expected to change after the lands are exchanged. Land use on a portion of one 120-acre Federal tract, of which a portion has been previously farmed, could change since it is next to a newly created subdivision. The use on the southern end of the tract, next to National Forest land is not expected to change. Overall impact to wildlife habitats and aquatic species on the non-Federal lands will be positive as the consolidation of the Federal lands will allow the Federal government to manage livestock grazing, recreation, and other activities in a manner to improve and/or enhance wildlife and aquatic species habitat conditions. Very little riparian and wetland will be involved in Phase 2 of the exchange. In the entire exchange, the BLM will have acquired approximately 9.2 miles of riparian and wetlands habitat, the majority of which are associated with Pumpkin Creek which is important to numerous wildlife species, especially migratory

birds and other game and non-game species. Approximately 0.5 mile of riparian and wetland habitat was disposed of with Federal tract H2 in Phase 1 of the exchange for a net gain of 8.75 miles of Federally-administered riparian and wetland habitat.

T&E Species: The proposed exchange will have no effect on Federally-listed, proposed or candidate wildlife or plant species.

As a result of Phase 1 there was a net increase of approximately 1,977.52 acres of bald eagle habitat under Federal administration. One active bald eagle nest on non-Federal tract O-20 came under Federal administration and one active bald eagle nest on Federal parcel H2 left Federal management, with protective patent restrictions. A biological assessment was completed for the bald eagles. The U.S. Fish and Wildlife Service (F&WS) has the enforcement authority over the bald eagles. The bald eagle was removed from the list of threatened and endangered species in 2007, but still receives protection under the Gold and Bald Eagle Protection Act and the Migratory Bird Treaty Act. No other threatened, endangered, or species proposed for listing are known to occur on the subject Federal lands.

Bald eagles migrate through the subject area in the spring, fall, and winter time periods. Conversion to Federal ownership will potentially improve important habitats, especially Pumpkin Creek which is an important habitat for bald eagles. No threatened, endangered, or species proposed for listing are known to inhabit the non-Federal lands.

Special Status Species: *Special Status Species Determination of Impacts:* The proposed action is not expected to cause adverse impacts to special status species, populations, or habitat on the Federal lands since land use, for the most part, is not expected to change. Land use on a portion of one 120-acre federal tract, of which a portion has been previously farmed, could change since it is next to a newly created subdivision. The use on the southern end of the tract, next to National Forest land is not expected to change. Selection of the preferred alternative will not remove any important or substantial habitat or individuals within the populations, which might lead to the need to list any BLM Designated Sensitive Species under the Endangered Species Act.

Current use of the remaining Federal lands, which includes livestock grazing, is expected to continue. Management of the Federal lands is not expected to change, other than the part of one tract which has already been previously disturbed by farming and already has buildings around it; therefore, the proposed disposal of these lands is not expected to cause an adverse impact to Special Status Species or BLM Sensitive species.

In Phase 2 of the exchange, there will be a net increase of approximately 160 acres of black-tailed prairie dog (a BLM Sensitive Species) towns under Federal management. There will be a total net increase of approximately 800 acres of black-tailed prairie dog towns under Federal management as a result of the entire exchange. There is potential to improve this habitat for black-tailed prairie dogs and associated species as they will be under Federal management and within a large block.

Consolidation of Federal lands will allow for management of one large block of land and lends itself to improve various habitat conditions, especially the riparian area which includes Pumpkin Creek. One sage-grouse strutting ground on parcel O-16, which was acquired in Phase 1, and other important sagebrush habitats could be enhanced by Federal management of those habitats. This could also improve habitat for BLM Sensitive Species and the F&WS's Birds of Conservation Concern, such as burrowing owls and numerous other migratory bird species. Restoration of riparian and potential habitat for plant species of special concern may occur under Federal management. The consolidation of the mineral estate is not expected to cause adverse impacts to sage-grouse from oil and gas development, as the oil and gas occurrence and development potential is considered moderate in this area. There are currently no

authorized oil and gas leases on the adjoining Federal minerals in the area. There may be additional protective measures applied to Federal mineral development than are currently applied under private ownership, but future analyses would occur prior to any development approval. Additionally, the BLM will hold or acquire at least a partial interest in all minerals in the area near the sage-grouse strutting ground and therefore, will be involved in any mineral leasing. This would include assessing impacts to sage-grouse and sagebrush habitats.

There are no known populations of plant Species of Special Concern documented on any of the Federal parcels. There are no BLM Sensitive or Watch plant species known to occur on the non-Federal lands. There is potential for plant species of special concern to exist on some of the non-Federal lands. Acquisition of these lands can facilitate the restoration of riparian and potential habitat for plant Species of Special Concern.

Cultural Resources: The proposed action would have no effect on cultural resources on the Federal lands. BLM records indicate that for the Federal parcels selected for exchange a cultural resource inventory was completed in 1989 and reevaluated during the late 1990's and again in 2005 and 2006. One site required further work to determine NHRP eligibility. This was completed in 2007. The sites on these Federal lands were either found not to be sites, not on Federal lands, or were determined to be not eligible for listing on the NRHP. The SHPO has concurred with this determination. If cultural resources exist on the non-Federal lands, they will be managed by the BLM after they are transferred to Federal ownership.

Native American Religious Concerns: The Native American Tribes in the area were sent certified copies of the Notice of Exchange Proposal (the mailing list can be found in Appendix 1 of the EA). One letter was received from a Tribal Historic Preservation Office regarding the notice, requesting information about the existence of cultural resources found within the tracts of land to be exchanged. The BLM sent a response to the Tribe on April 6, 2007, with a comment period ending on April 20, 2007. The BLM did not hear back from the Tribe. No other tribal requests have been received throughout the BLM's outreach efforts. Another letter was sent to the Tribes in May of 2009 updating them on the status of the exchange.

Mineral Resources: There are no mineral-related factors which will preclude this exchange. Conveyance of the lands is not expected to impede mineral exploration and development potential. Disposal of the Federal parcels will create a split-estate situation since the mineral estates will not be exchanged. The non-Federal minerals will be conveyed to the United States, but only to the extent that TCF owns them (an undivided 50% of all minerals were retained in a previous transaction on approximately 1,168 acres of the non-Federal lands in Phase 2 and on a total of approximately 3,908 acres for the entire exchange). The BLM does not expect the split-estate on the acquired lands to cause management problems or concerns in the future given the low probability of occurrence and potential for development of the locatable and saleable minerals. Although there is moderate potential for occurrence and development of oil and gas resources, and moderate to low potential for occurrence and development of coal resources, the exchange of lands is not expected to cause adverse impact to development and management of minerals and surface use. Both the Federal and non-Federal parcels are considered to have similar mineral development potential. Leasing or permitting for speculative development can continue on the parcels subsequent to an exchange. The Leasable Mineral and Surface Interference Report indicates that the exercise of surface rights will not interfere unreasonably with operations under the Mineral Leasing Act.

The Federal minerals will be reserved in the patents issued for the Federal land parcels. There are no oil and gas leases of record on the Federal lands. All of the tracts have a moderate occurrence potential for oil and gas.

Recreation Resources: As a result of Phase 2 of the exchange, there will be a net increase of approximately 1,564.5 acres of publicly-accessible Federal land available for recreational use by the public. Between the two phases of the exchange a block of Federal land consisting of 20,556 acres will be created, with a net increase of 18,996 acres of accessible Federal land. The public also gained access to 1,920 acres of State land in Phase 1.

Recreation resources and recreational uses and use patterns will not be greatly affected on the majority of the land to be transferred out of Federal ownership, nine parcels and part of another one consisting of 843.96 acres, because the general public presently cannot access the lands. There will be a loss of recreational opportunities, primarily hunting, on three accessible tracts [89S19, 89S23, 89S79] and a portion of one other accessible tract [89S18] of Federal land [all of which are less than 165 acres each], consisting of a total of 403.14 acres. The four tracts have legal access by foot or horse; two are along county roads. It is often difficult for the general public to be able to determine exactly where these isolated tracts of Federal lands are located, therefore, at times resulting in their trespassing onto adjoining private lands. Trespass problems and conflicts on private lands associated with public use of these small tracts of Federal land will be reduced.

Acquisition of the non-Federal lands will consolidate ownership of Federal lands and enhance the recreation resources and recreational use and use patterns on the adjoining Federal lands by ease of access to and within. There is high potential for dispersed recreation opportunities to occur on the newly-created block of 20,556 acres of Federal land, including, but not limited to wildlife viewing, hunting and shooting, hiking, picnicking, photography, camping, horseback riding, cross country skiing, snowshoeing, and environmental education opportunities. The potential for all of these activities, and how they will be managed, will be addressed in the management plan to be prepared for the Phase 1 and 2 lands.

Visual Resource Management: There will be a net loss of approximately 440 acres of Class II and a gain of approximately 1,000 acres of Class III Federal lands in Phase 2. Visual resources are not likely to be impacted by this exchange because land use, for the most part, is not expected to change. Land use on a portion of one Class II 120-acre tract, of which a portion has been farmed in the past, could change since it is next to a newly created subdivision; however the use of the southern end of the tract next to the Forest is not expected to change.

Land Status/Use Authorizations/Encumbrances/Unauthorized Use: 1,247.10 acres of Federal (Section 3, Taylor Grazing Act lands) land will be disposed of and 1,807.64 acres of non-Federal lands will be acquired, resulting in a net gain of 560.54 acres of Federally-administered land in Phase 2 and a total net loss of 1,536.14 Federal acres for the entire exchange. Not all of the grazing waivers, which were sent to the grazing permittees with the two-year grazing notices on October 7, 2005, were signed but they are not needed as the permittees are the recipients designated by TCF to receive the patents for the subject Federal lands and the two years have expired. Grazing fees will be adjusted upon closing. Eight allotments will be eliminated and five permittee grazing casefiles will be closed, resulting in an estimated reduced annual administrative cost in the amount of \$13,000 (\$2,600 per casefile) to the government. Range improvement projects of record on the Federal parcels will be turned over to the new landowners and the project files will be closed. Patents will include reservations for ditches and canals and all minerals and will be issued subject to existing rights such as rights-of-way, if they are not converted to private easements. TCF will attempt to have existing rights-of-way converted, if applicable, to private easements to become effective upon closing. If for some reason a conversion to private easements cannot occur, then the patents will be issued subject to the rights-of-way. Right-of-way files will be adjusted to reflect the action taken and two right-of-way files will be closed. The patent for Tract 89S7 will contain the appropriate floodplain patent restriction. Water rights will be conveyed with the Federal lands. Trespass problems and conflicts on private lands associated with public use of the Federal lands will be reduced. There are no known unauthorized uses on the Federal tracts.

Conveyance of the non-Federal lands will be subject to existing rights of record. Existing county roads and utility lines on the acquired non-Federal lands will be documented by rights-of-way. There are no documented rights-of-way on the non-Federal lands. Existing range improvements will be documented and project files will be established for them. Water rights will be conveyed with the non-Federal lands.

Existing and Potential Land Uses: 1,247.10 acres of Federal (Section 3, Taylor Grazing Act lands) land will be disposed of and 1,807.64 acres of non-Federal lands will be acquired, resulting in a net gain of 560.54 acres of Federally-administered land in Phase 2 and a total net loss of 1,536.14 Federal acres for the entire exchange. Once conveyed, the Federal lands will continue to be used for grazing and hunting if allowed by the private land owners. Land use on a portion of one 120-acre tract (Parcel 89S19), of which a portion has been farmed in the past, could change since it is next to a newly created subdivision; however the use of the southern end of the tract next to National Forest lands is not expected to change. The potential for trespass, due to the current condition of the small and intermingled nature of the Federal tracts, will be reduced.

The foreseeable use of the newly created block of Federal lands will be addressed within a comprehensive multiple use management plan, which will be initiated following the completion of the land exchange. The plan will address wildlife, recreation, riparian, travel management, fisheries, environmental education, and grazing management in accordance with the resource management plan. The potential for all of these activities, and how they will be managed, will be addressed in the management plan to be prepared for the Phase 1 and 2 lands.

Socio-Economic: Livestock grazing will continue on the disposed Federal lands, because the BLM grazing permittees will acquire the lands. If grazing continues on the lands acquired by the United States, there will be a net increase of approximately 108 Federal AUMs in Phase 2 and 754 Federal AUMS in the total exchange. Net change in annual revenues to the Federal government from livestock grazing permits will be increased by an estimated \$146 in Phase 2 and \$1,018 in the entire exchange; grazing revenues to State and county governments will be increased by about \$18 in Phase 2 and \$127 in the entire exchange. Estimated annual administrative costs to the BLM will be reduced by about \$13,000 in Phase 2 because five grazing permits/case files will be closed and by about \$20,800 for the entire exchange because eight grazing permits/case files will be closed. It is estimated that as a result of Phase 2 of the exchange the net public revenue from taxes and PILT (based on 2008 PILT data) to Custer County will increase by approximately \$2,567 and as a result of the entire exchange Custer County will have an estimated total net increase of approximately \$1,200 annually. It is estimated that as a result of Phase 2 and the entire exchange the net public revenue from taxes and PILT (based on 2008 PILT data) to Carter County will increase by approximately \$550.

Equal Value Requirements:

The Federal lands in Carter County were appraised as 13 separate parcels by Luther Appraisal Services, Inc. (report dated October 10, 2008, with a date of valuation of July 1, 2008) with appraisal review and approval by Gary L. Lay, ARA, Appraisal Services Directorate, Rocky Mountain Region on November 13, 2008, as follows:

Phase 2 Federal Lands – 13 parcels encompassing 1,247.10 acres = \$364,103

Parcel 89S6	200.00 Acres	\$ 37,000
Parcel 89S7	160.00 Acres	\$ 30,720
Parcel 89S8	120.00 Acres	\$ 23,040

Parcel 89S8	40.00 Acres	\$ 7,680
Parcel 89S9A&B	120.00 Acres	\$ 23,040
Parcel 89S10	40.00 Acres	\$ 7,680
Parcel 89S11	40.00 Acres	\$ 7,680
Parcel 89S18	120.00 Acres	\$ 60,000
Parcel 89S19	120.00 Acres	\$ 66,000
Parcel 89S21	40.00 Acres	\$ 7,400
Parcel 89S22	43.96 Acres	\$ 8,133
Parcel 89S23	40.00 Acres	\$ 27,000
Parcel 89S79	<u>163.14 Acres</u>	<u>\$ 58,730</u>

13 Parcels of Federal Land 1,247.10 Acres \$ 364,103

The non-Federal lands were appraised as one parcel by Luther Appraisal Services, Inc. (report dated September 10, 2008, with a date of valuation of July 1, 2008) with appraisal review and approval by Gary L. Lay, ARA, Appraisal Services Directorate, Rocky Mountain Region, on November 7, 2008, as follows:

Phase 2 Non-Federal Lands – 4 parcels encompassing 1,807.64 acres = \$392,000

4 Parcels [O-3, O-4, O-9, W½ of O-10] of Rangeland = 1,807.64 acres = \$392,000

Updated real estate market information provided by the appraiser and consultation with the Appraisal Service Directorate in July 2009 indicates the appraised values identified above continue to be valid for the purposes of this exchange.

The appraised value of the Phase 2 Federal lands is \$27,897 less than the non-Federal lands. With the excess Federal value from the ledger from Phase 1 of \$21,578 (which was within 25 percent of the Federal land value), the total Federal value is \$6,319 less than the non-Federal appraised value for the entire exchange. Pursuant to 43 CFR 2201.6(c), TCF has agreed to waive the cash equalization payment in the amount of \$6,319, which is less than 1% of the value of the lands being exchanged out of Federal ownership. Such payments may be waived if they do not exceed 3 percent of the value of the Federal lands being exchanged, or \$15,000, whichever is less.

TCF's waiver of this payment will serve the public interest as it will expedite the processing of Phase 2, eliminating the need for additional disposal tracts to equalize the \$6,319 difference. The exchange must be completed timely. The value of the Phase 2 exchange has been equalized as close as possible using the recent appraisals and dropping some tracts of Federal land. Due to resource and access concerns, the BLM cannot utilize the other Federal land tracts with recent appraisals to equalize the exchange value. To bring the value closer, additional appraisals would be required, extending the timeframe of Phase 2 processing and increasing the likelihood of participants dropping out of the exchange because of additional appraisal costs and loss of secured funds.

The Proposed Action will not cause disproportionately high or adverse effects on human health or environmental effects on low-income or minority populations as provided under Environmental Justice considerations. Economic impacts will not be noticed within the local economy.

Forest Resources: The proposed action will result in the disposal of approximately 110 acres of commercial forest on the Federal lands. The non-Federal lands to be acquired have no forested lands, resulting in a total decrease of approximately 110 acres of commercial forested Federal land. The majority of this forested Federal land would only be legally accessible for harvest through Forest Service lands. The value of the merchantable timber was considered in the appraisal of the lands.

Invasive, Non-native Species: Four Federal parcels (89S18, 89S19, 89S23, and 89S79) which have been identified with noxious weeds present and eight Federal tracts with noxious weeds potentially or probable on the tracts (89S7, 89S8, 89S9A, 89S9B, 89S10, 89S11, 89S21, 89S22) would be disposed of. The number of acres of weeds on these tracts is unknown. The respective new land owners would be responsible for controlling any weeds on their newly acquired lands. The only known noxious weed that is currently within the non-Federal lands is Canada thistle (*Cirsium arvense*), but is not in quantities to be considered infestations or sources for problem weed areas.

Solid or Hazardous Wastes: Both parties to the land exchange have indicated in the Agreement to Initiate a Land Exchange that to the best of their knowledge, no known or suspected release, storage or disposal of hazardous substances has occurred on the Federal or non-Federal lands involved in the exchange. Environmental site assessments have been conducted on the non-Federal and Federal lands; the reports indicated that there is no evidence of potential recognized environmental conditions, as defined in the ASTM standard. These assessments will be updated, in conformance with the regulations under 40 CFR Part 312, prior to closing.

CONSULTATION AND COORDINATION

Summary of Public Involvement: A Notice of Exchange Proposal (NOEP) was signed on October 4, 2005, identifying all the lands involved in the exchange. The NOEP was published once a week for four consecutive weeks in the Miles City Star and Ekalaka Eagle, beginning on October 7, 2005. The NOEP was mailed to various Federal, State, and County agencies, adjoining land owners, environmental groups, sportsman's groups, individuals and other interested organizations and parties.

Informational meetings were held with the Custer County Commissioners and Carter County Commissioners. The Custer County Commissioners support the exchange as long as it does not cause the county to lose PILT or tax revenue. It is estimated that as a result of Phase 2 of the exchange the net public revenue from taxes and PILT to Custer County will increase by approximately \$2,567 and as a result of the entire exchange Custer County will have a total net increase of approximately \$1,200 annually. The Carter County Commissioners did not identify any concerns with the proposed exchange. It is estimated that as a result of Phase 2 and the entire exchange the net public revenue from taxes and PILT to Carter County will increase by approximately \$550. The Resource Advisory Council has been briefed on the exchange various times and they toured the Pumpkin Creek Ranch in the spring of 2007. The BLM met with the Montana Fish, Wildlife, and Parks on November 6, 2006, to address their concerns and explain the need to use certain lands, and had a follow-up meeting on March 21, 2007, regarding going with a phased exchange. The BLM also met with the Montana Department of Natural Resources and Conservation, Eastern Land Office, to discuss the exchange. An informal open house was held in Miles City on May 1, 2008, to initiate preliminary scoping for the interim management plan for the Pumpkin Creek Ranch. Informational meetings were held in Ekalaka on February 3, 2009, which 13 people attended, and in Miles City on February 4, 2009, which 12 people attended, to update the public on Phase 2 of the exchange. The Carter and Custer County Commissioners were updated on the status of the exchange in January and March 2009, respectively.

The EA was made available online via the MCFO NEPA log and on the MCFO homepage.

Comments and Issues Raised by the Public:

Fourteen comment letters were received in response to the publication of the NOEP. Eleven supported the exchange (five of them expressed concern about future management of the Pumpkin Creek Ranch once it is acquired), one was concerned about disposing of accessible Federal land, one was concerned

about sage and sharp-tailed grouse protections, and one from a Tribal Historic Preservation Office requested information on cultural resources on the Federal lands. The BLM sent a response to the Tribe on April 6, 2007, with a comment period ending on April 20, 2007. The letter communicated the findings in the land exchange for cultural resources and asked if the Tribe had concerns over the land exchange, and asked for concurrence in the plans for mitigating impacts to the eligible sites which would be transferred out of Federal ownership. The BLM did not hear back from the Tribe. No other tribal requests have been received throughout the BLM's outreach efforts. Another letter was sent to the Tribes in May 2009 regarding Phase 2 lands. The remaining issues were addressed in the Phase 1 decision.

Seven timely protest letters, one late protest, and ten letters of support were received as the result of the issuance of the Phase 1 decision. The protests were concerned with disposing of Federal land which had access. The Montana State Director signed the seven decisions dismissing the seven protests on November 30, 2007; no timely appeals were filed with the Interior Board of Land Appeals. Phase 1 was officially completed on February 20, 2008.

Three comment forms were received as the result of public information meetings held in Ekalaka and Miles City in February 2009. One was from a person who was on the 89 Survey list but not currently being considered but wanted to let the BLM know they want to acquire the Federal land within their allotment; one from a person who is currently being considered to acquire a tract of Federal land in Phase 2 and wants to acquire the tract and supported disposing of the smaller scattered tracts of Federal land and inquired about the feasibility of the BLM administering these small scattered tracts; and one supporting the completion of this phase of the exchange so we can go forward on habitat proposals on the Pumpkin Creek Ranch.

Two e-mails were received as the result of the news release for the February 2009, Ekalaka and Miles City public information meetings. One disapproved of exchanging any public land that has access to it and the other asked BLM to consider not exchanging lands that currently have public access, that from a hunting standpoint and habitat being equal: one section of accessible lands will provide much more opportunity to harvest big game/acre than large tracts of accessible public lands. One letter was also received as the result of the news release strongly opposing the exchanging and/or disposal of any public land that has public access including any public land that can be accessed at the corners from other accessible public land (corner crossing). A land exchange involves tradeoffs, in which many factors need to be considered and many questions answered such as: What are the resource values on the Federal lands slated for disposal? Is anyone interested in obtaining those Federal lands to begin with? What are the costs associated with retaining those Federal lands? The BLM then makes a decision based on an analysis of those tradeoffs. In the case of public access, the BLM believes that although access will be lost to three Federal tracts and a portion of one other, all of which are less than 165 acres each, consisting of a total of 403.14 acres, the tradeoff is acceptable in that the public will gain access, for not only hunting but other recreational uses, to a net 1,564.5 acres of Federal land in Phase 2 and to approximately 18,996 acres of publicly-accessible and contiguous lands in the entire exchange. Additionally the BLM dropped a number of parcels from land exchange consideration because the public access values of those parcels outweighed the rationale for disposal. Those dropped parcels were not discussed in detail in this decision, as they were not part of the lands being considered for conveyance in this land exchange, but it further demonstrates the BLM's commitment to public access. A "corner crossing access" law that allows access at one corner point between two parcels does not exist in Montana. Consideration of a law that does not exist but might be enacted in a future legislative session is very speculative in nature. However, even if such a law existed, a large block of consolidated land is preferable for management and for public access, as compared to a checker board pattern with corner crossings.

IMPLEMENTATION

Implementation of this decision to complete Phase 2 of this exchange will occur only upon expiration of the 45-day protest period and Governor's 60-day review period, initiated by publication of the Notice of Decision, and after the resolution of any protests.

ADMINISTRATIVE REVIEW OPPORTUNITIES

When the decision to approve or disapprove this exchange is made, the authorized officer will publish a notice of the availability of the decision, pursuant to 43 CFR 2201.7-1, in newspapers of general circulation and it will be mailed to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, individuals who requested notification or filed written objections, and others as appropriate. The notice will provide for a 45-day protest period from the date of publication. The notice will include the date of the decision, a concise description of the decision, the name and title of the deciding official, directions for obtaining a copy of the decision, and the date of the beginning of the protest period. The Governor is given a 60-day notice of the decision prior to conveyance. A right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR Part 4.

Signature of the Authorized Officer:

/s/ Deborah K. Johnson
Deborah K. Johnson
Acting Field Manager
Miles City Field Office

Sept. 4, 2009
Date

Exhibit 1

**PHASE 2 - FEDERAL DISPOSAL TRACTS
PUMPKIN CREEK RANCH LAND EXCHANGE**

Parcel # Legal Description	County/ Permittee (Base Prop. Lessor)	Acreage	Valid Existing Rights R/W = Right-of-Way WR = Water Right	Patent Reservations and/or Restrictions
89S6 T3N,R57E, S.21,SENE,SESW, E2SE,SWSE	CARTER/ CASTLEBERRY INC	200.00		Reservation for Ditches and Canals and of all minerals.
89S7 T3N,R57E, S.26,E2NE, SWNE,NESE	CARTER/ CASTLEBERRY INC.	160.00	WR - 42L 80265 00 (SWSENE) WR - 42L 80266 00 (SWSENE)	Reservation for Ditches and Canals and of all minerals.
89S8 T3N,R58E, S.29,NWNW, SENE,E2SW	CARTER/ H MEHLING/ CASTLEBERRY INC.	160.00	WR - 42L 80268 00 (SWNESW) WR - 42L 80267 00 (SWNESW) WR - 42L 121120 00 (SWNESW) (Held by Castleberry) WR - 42L 80608 00 (SWNESW)	Reservation for Ditches and Canals and of all minerals.
89S9A T3N,R58E, S.20,SWSE	CARTER/ MEHLING, H	40.00		Reservation for Ditches and Canals and of all minerals.
89S9B T3N,R58E, S.20,E2NE	CARTER/ MEHLING, H	80.00		Reservation for Ditches and Canals and of all minerals.
89S10 T3N,R58E, S.21,NWNW	CARTER/ MEHLING, H	40.00		Reservation for Ditches and Canals and of all minerals.
89S11 T3N,R58E, S.21,NESE	CARTER/ MEHLING, H	40.00		Reservation for Ditches and Canals and of all minerals.
89S18 T1N,R58E, S.10,NWNE, SENE,NENW	CARTER/ A. CARLISE	120.00	R/W M-010833 SE Electric NENW (No Expiration); R/W M- 57064 SE Electric NENW (Expires 07/31/2014)	Reservation for Ditches and Canals and of all minerals.
89S19 T1N,R59E, S.18,SWNE,W2SE	CARTER/ J. HARKINS	120.00	R/W M-93040 Jerry Harkins Road N½SW¼SE¼ (Expires 12/31/2033)	Reservation for Ditches and Canals and of all minerals.
89S21 T1N,R59E, S.14,NWSE	CARTER/ HARMON CREEK LLC	40.00		Reservation for Ditches and Canals and of all minerals.

Parcel # Legal Description	County/ Permittee (Base Prop. Lessor)	Acreage	Valid Existing Rights R/W = Right-of-Way WR = Water Right	Patent Reservations and/or Restrictions
89S22 T1N,R59E, S.15,L 1	CARTER/ HARMON CREEK LLC	43.96		Reservation for Ditches and Canals and of all minerals.
89S23 T1N,R59E, S.20,SENW	CARTER/ HARMON CREEK LLC	40.00	R/W M-38059 Mid Rivers (No Expiration); R/W MTM-96433 Carter Co. Prairie Dale Road (Expiration 12/31/2036)	Reservation for Ditches and Canals and of all minerals.
89S79 T1N,R59E, S.32, L 1&2, SWNE,SENW	CARTER/ J & R McCABE	163.14	R/W MTM-57064 SE Electric Lt 2, SWNE, SENW (Expires 7/31/2014); R/W MTM-96431 Carter Co Breeding Rd Lt 1 & 2 (Expires 12/31/2036). WR - 39E 60792 00 (SWNE) WR - 39E 60793 00 (SWNE)	Reservation for Ditches and Canals and of all minerals.
	TOTAL FEDERAL ACRES (All in Carter County)	1,247.10		

Exhibit 2

**PHASE 2 – NON-FEDERAL ACQUISITION TRACTS
PUMPKIN CREEK RANCH LAND EXCHANGE**

Water Rights for Non-Federal Lands for the Pumpkin Creek Land Exchange					
Principal Meridian Montana – Custer County	Parcel	Approx. Acres	Water Right #/ (Source)	Volume/Type/ Use/Means Of Diversion	Action on water right:
T5N, R48E, Sec. 8, NW¼ less that portion lying West of the “Tongue River Road”, W½NE¼, SE¼NE¼, NW¼SE¼, (Less Lot 1 of the Dry Creek minor Subdivision in the NE¼NW¼, Section 8, T5N, R48E, according to Certificate of Survey, filed for record April 26, 2007, as Document No. 138092 in Envelope No. 461 B of the plat cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana)	O-3	207.64	42C 180224 00 (SWNWNE)	9.75 AcFt Irrig 6.5 Ac/ Surface (Dry Creek)/ Flood Irrigation/Dike	BLM Acquire Water Right Claim – Continue Irrigation Use
T5N, R48E, Sec. 9, All	O-4	640.00	42C 180204 00 (N2SWSE)	528 AcFt/Surface Res (UnNamed Trib Dry Creek)/ Direct From Source	BLM Acquire Water Right Claim - Continue Stock Use
T5N, R48E, Sec. 17, All	O-9	640.00	42C 180207 00 (SWNESW)	13.44 AcFt 10 GPM/ Groundwater/Stock/Well	BLM Acquire Water Right Claim - Continue Stock Use
			42C 180212 00 (SWNWSE)	216 cfs/Surface Res (UnNamed Trib Dry Creek)/ Stock/Direct From Source	BLM Acquire Water Right Claim - Continue Stock Use
T5N, R48E, Sec. 21, W½	O-10	320.00	42C 180209 00 (NENENW)	13.44 AcFt 10 GPM/ Groundwater/Stock/ Well	BLM Acquire Water Right Claim - Continue Stock Use
Total Non-Federal Acres (All in Custer County)		1,807.64			

Exhibit 3

**PHASE 2 – NON-FEDERAL ACQUISITION TRACT ENCUMBRANCES
PUMPKIN CREEK RANCH LAND EXCHANGE**

Principal Meridian Montana – Custer County	Parcel	Approx. Acres	ENCUMBRANCE
T5N, R48E, Sec. 8, NW¼ less that portion lying West of the “Tongue River Road”, W½NE¼, SE¼NE¼, NW¼SE¼, (Less Lot 1 of the Dry Creek minor Subdivision in the NE¼NW¼, Section 8, T5N, R48E, according to Certificate of Survey, filed for record April 26, 2007, as Document No. 138092 in Envelope No. 461 B of the plat cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana)(207.64 ac.) (all non-Federal minerals with undivided 50% previously retained)	O-3	207.64	<p>- Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under the property together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use.</p> <p>- The Tongue River Road which is a County road.</p>
T5N, R48E, Sec. 9, All (640 ac.) (all non-Federal minerals)	O-4	640.00	
T5N, R48E, Sec. 17, All (640 ac.) (all non-Federal minerals with undivided 50% previously retained)	O-9	640.00	<p>- Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under all of Section 17, together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use.</p>
T5N, R48E, Sec. 21, W½ (320 ac.) (all non-Federal minerals with undivided 50% previously retained)	O-10	320.00	<p>- Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under the W½, Section 21, together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use.</p>
Total Non-Federal Acres (All in Custer County)		1,807.64	

