





# LANDS AND REALTY-RENEWABLE ENERGY APPENDIX

## INTRODUCTION

This appendix contains in-depth information for lands and realty and renewable energy in the planning area. Information includes:

- carbon geo-sequestration,
- right-of-way (ROW) corridors,
- conveyance of federally owned mineral interests,
- information regarding land ownership adjustments,
- withdrawals, and
- wind energy program guidance and best management practices (BMPs).

## LANDS AND REALTY

### CARBON GEO-SEQUESTRATION

Applications for carbon geo-sequestration exploration and site characterization projects and long-term sequestration projects would be processed in accordance with Bureau-wide policy and direction.

Conditions of approval, BMPs, and design features used when developing oil and gas resources would be applied to authorizations for carbon geo-sequestration projects (see the *Minerals Appendix*, under *Oil and Gas, Conditions of Approval*, and *Best Management Practices* and the Bureau of Land Management (BLM) oil and gas website, [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/best\\_management\\_practices/technical\\_information.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/technical_information.html), for more information).

Stipulations for projects may be changed by application of waivers, exceptions, or modifications to protect or mitigate other resource values while allowing carbon geo-sequestration (see the *Minerals Appendix*).

### ROW CORRIDORS

Major transportation and energy corridors were considered but not analyzed in detail. Because the planning area contains a scattered or checkerboard land pattern of federal lands mixed with private and state lands, an alternative to consider corridors would not be achievable during implementation. Instead, this resource management Plan (RMP) has a BMP which states that "Whenever possible, ROWs would be constructed within or next to compatible existing ROWs, such as roads, pipelines, communication sites, and railroads." Also, the following Assumption is included in the Lands and Realty Assumptions Section of Chapter 4, "It is assumed that new Major ROWs would be located within or next to compatible existing Major ROWs, for example within or next to the Bison Pipeline ROW area (MTM-98321) and the Bridger-Butte Pipeline (MTM-018460)/WBI Grasslands Pipeline (MTM-91539) ROWs area in Carter County." Not concentrating some major ROW facilities in certain areas could reduce their vulnerability and, because they rely upon these facilities, the public's vulnerability, to potential natural disasters or terrorism.

### CONVEYANCE OF FEDERALLY OWNED MINERAL INTERESTS

Section 209(b) of the Federal Land Policy and Management Act (FLPMA) provides for the conveyance of mineral interests owned by the United States where the surface is, or will be, in non-federal ownership. There must be a finding that there are no known mineral values in the land or that the reservation of the mineral rights in the United States is interfering with or precluding appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development. Such conveyance of mineral

interests can only be made to the existing or proposed record owner of the surface upon payment of administrative costs and the fair market value of the interests being conveyed.

## **GENERAL INFORMATION PERTAINING TO LAND OWNERSHIP ADJUSTMENTS**

The Federal Land Policy and Management Act states, "The Congress declares that it is the policy of the United States that – (1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedures provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;" Sec. 102.(a)(1).

Lands are categorized for management into three categories:

- Category 1 retention lands, which will not be transferred from BLM management by any method during the life of the plan (unless the plan is amended). These lands include Congressionally designated wilderness, WSAs, and lands acquired with Land and Water Conservation Fund Act appropriations;
- Category 2 retention lands, which are available to be considered for limited disposal through all disposal authorities and methods except by sale under Section 203 of FLPMA (unless the plan is amended); and
- Category 3 disposal lands, which are available to be considered for disposal through all disposal methods, including sale.

### **METHODS OF ACQUISITION**

Acquisition of lands or interests in lands would be by such methods as exchange, purchase, donation, or public agency jurisdictional transfer.

### **METHODS OF DISPOSAL**

Disposal methods to implement land ownership adjustment actions would include the following:

- exchanges,
- sales,
- Recreation and Public Purposes Act conveyances,
- airport grants,
- public agency jurisdictional transfers,
- state grants, including Indemnity Selections
- agricultural entries, and
- Indian allotments.

Mineral patents are not considered a land ownership adjustment for the purposes of this plan.

### **RETENTION, DISPOSAL, AND ACQUISITION (INCLUDING ACCESS) CRITERIA**

The retention and disposal lands identified in the Big Dry and Powder River RMPs, as amended (BLM 1985c and 1996) are carried forward into this plan. There are approximately 83,000 acres of Category 1 land and 2.6 million acres of Category 2 lands which are identified for retention and 83,000 acres of Category 3 land identified as available for disposal in the planning area as shown on Map 14. These acreage figures are approximate and it should not be inferred that they reflect exact or precise acres. Land ownership adjustments would be considered in accordance with applicable laws and regulations on a case-by-case basis based on retention, acquisition, and disposal criteria, which can be found below. Disposal of individual tracts within Category 2 lands may occur when significant public benefits result. All land or mineral ownership adjustments and access actions would be based on a willing buyer and willing seller basis unless law, regulation, court order, or Congressional action required otherwise.

**LAND EXCHANGES**

This type of real estate transaction is typically processed under the authority of FLPMA and involves the discretionary, voluntary exchange of lands or interest in lands between the federal government and a nonfederal party. It is required that:

- the federal and non-federal lands involved be located in the same state;
- the federal and non-federal lands be of equal value, or in certain circumstances, approximately equal in value; and
- exchanges be completed only after a finding that the public interest would be well served.

In considering whether an exchange is in the public interest, consideration is given to the opportunity to:

- achieve better management of federal lands;
- meet the needs of state and local residents and their economies; and
- secure important objectives, including but not limited to, protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands or interests in lands; consolidation of split estate; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs.

In making the public interest determination, there needs to be a finding that:

- 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, and
- the intended use of the conveyed federal lands will not significantly conflict with established management objectives on adjacent federal lands and Indian trust lands.

**COMPARISON TO OTHER METHODS OF DISPOSAL OR ACQUISITION INCLUDING ACCESS**

To help assure the integrity of state and local tax bases, land exchange would be the first priority for both acquisition and for the conveyance into nonfederal ownership of those parcels identified for disposal, except under the circumstances described below.

- Land sale may be considered where there is a competitive market situation and multiple entities are interested in a parcel of land.
- A disposal method other than exchange may be considered where one of the following situations applies:
  - for resolving inadvertent unauthorized use or occupancy;
  - for providing for community expansion and development;
  - for meeting obligations completing state selections; and
  - for creating facilities or service for public health, safety, and welfare.

***Sales***

Sales of public lands are authorized under section 203 of FLPMA and made at not less than fair market value. Public lands determined suitable for sale are offered only on the initiative of the BLM. Such sales have to meet at least one of the FLPMA sales criteria described below.

- Section 203(a)(1): such tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another federal department or agency;

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- Section 203(a)(2): such tract was acquired for a specific purpose and the tract is no longer required for that or any other federal purpose; or
- Section 203(a)(3): disposal of such tract will serve important public objectives (including but not limited to, expansion of communities and economic development) that cannot be achieved prudently or feasibly on land other than public land and that outweigh other public objectives and values (including, but not limited to, recreation and scenic values) which would be served by maintaining such tract in federal ownership.

The preferred method of sale of public lands is by competitive bidding at public auction. However, modified competitive bidding may be used to protect on-going uses, to assure compatibility of the possible uses with adjacent lands, or to avoid dislocation of existing users. Direct sale may be used when the public lands offered for sale are; 1) completely surrounded by lands in one ownership, 2) with no public access, 3) where the lands are needed by state or local governments or non-profit corporations, or 4) where necessary to protect existing equities in the lands or resolve inadvertent unauthorized use or occupancy.

### *Direct Purchases*

Direct purchases would generally be limited to cases where no practical alternatives exist and high public values would be obtained. Such actions would need to meet the acquisition criteria for the particular alternative being considered.

### **LAND PATTERN REVIEW CRITERIA**

The public lands subject to these criteria are those lands, minerals, or interests in land administered by BLM. Criteria are presented to assist in categorizing the public lands for retention or disposal. Criteria are also provided to facilitate the selection of lands to be received in exchanges or other types of acquisition. The criteria range from specific to general and are designed to provide direction for statewide consistency while allowing the manager flexibility in identifying circumstances that dictate the category in which lands can be placed. All land or mineral ownership adjustments and access actions would be based on a willing buyer and willing seller basis unless law, regulation, court order, or Congressional action required otherwise.

- A. Retention: The BLM's long-term objectives for retention areas are to retain and manage the public lands. Specific objectives are to consolidate public land with public access and important resource values into units the BLM can effectively manage. Although the underlying philosophy is long-term public ownership, individual tracts or parcels in the retention areas may be disposed of or repositioned through exchange when significant management efficiency, greater public values, or other objectives would be met and the public interest better served. Retention criteria follow.
1. Areas of national environmental significance, including but not limited to:
    - wilderness and wilderness study areas (WSAs),
    - wild and scenic rivers,
    - national and historic trails,
    - national conservation areas,
    - wetlands and riparian areas under Executive Order 11990 (May 24, 1977),
    - other Congressionally designated areas,
    - wild horse management areas, and
    - areas of critical environmental concern.
  2. Areas of national economic significance including, but not limited to:
    - designated Mineral Resource Areas where disposal of the surface would unnecessarily interfere with the logical development of the mineral estate, e.g., surface minerals, coal, phosphate, known geologic structures, and others; and
    - public lands containing strategic minerals needed for national defense.
  3. Public lands used in support of national defense, including but not limited to National Guard maneuver areas.

4. Areas where management is cost-effective or lands containing other important characteristics and public values that can best be managed in public ownership by BLM, including but not limited to:
    - key tracts along rivers and lakes,
    - community watersheds and/or flood-plains,
    - wildlife priority areas (including greater sage-grouse), and
    - important hunting or fishing areas.
  5. Lands with a combination of broad multiple use values that dictate they should be retained in public ownership and managed by the BLM.
  6. Areas where future plans will lead to further consolidation and improvement of land patterns and reduce the costs of management.
  7. Areas that the general public and state and local governments consider suitable for permanent public ownership.
  8. Public lands withdrawn by the BLM or other federal agency for which the purpose of the withdrawal remains valid and the resource uses can be managed by the BLM concurrently.
  9. Public lands that contribute significantly to the stability of the local economy by virtue of federal ownership.
  10. Public lands that provide public access and contain previously mentioned public values which, when considered together, warrant their retention.
- B. Lands considered for disposal are lands identified for potential removal from public ownership through sale or exchange, or transfer to federal, state, county, or local public entities. The public land in the disposal areas consists of many small tracts or parcels that are widely scattered, possess limited resource values, and are difficult to manage. Although the BLM's objective is to dispose of these types of public land in the disposal area, tracts would be retained if the environmental analyses show resource values worth retaining. In addition to land internally identified for disposal, the BLM will respond to proposals from the public. Exchanges or acquisitions may be considered to acquire desirable tracts within the disposal areas or add to existing public lands within these areas meeting the long-term management objective criteria. Disposal actions would be processed in accordance with Title II of FLPMA of October 21, 1976 based upon the criteria described below.
1. Lands of limited public value.
  2. Widely scattered parcels that are difficult for the BLM to manage with anything beyond minimal custodial administration and are not suitable for management by another Federal department or agency.
  3. Lands with high public values proper for management by other federal agencies or state or local governments.
  4. Lands around expanding communities and lands available for community expansion.
  5. Lands where disposal would aid in aggregating or repositioning other public lands or public land resource values to facilitate national, state, and local objectives.
  6. Lands acquired for a specific federal purpose that are no longer required for that or any other federal purpose.
  7. Lands with long term unauthorized use problems and lands not required for specific public purposes.
  8. Lands where disposal would increase the range of economic opportunities provided to the general public.
  9. Lands designated for agricultural, commercial, or industrial development as the highest value or most appropriate long-term use.
  10. Lands involved in BLM and United States Forest Service jurisdictional transfers, state indemnity selections, or ongoing exchanges will continue as initiated.
- C. Acquisition Criteria: used to evaluate proposals that would result in the transfer of lands or minerals, or interests in lands, including access, to the BLM through exchange, purchase, donation, or other transactions.

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1. These criteria help to assure that any BLM decision to acquire a tract of land provides significant public benefits.
2. The criteria range from “general” standards, against which to evaluate all proposals, to “specific” guidelines covering the selected or prioritized program areas.
3. These standards are designed to provide consistent direction, while allowing the line manager flexibility to meet local, state, and national needs.

### *General Criteria*

All proposals will be evaluated to determine if the selected lands will:

1. Facilitate access to areas retained for long-term public use.
2. Be primarily focused in the retention areas.
3. Facilitate national, state, and local BLM priorities or mission statement needs.
4. Place emphasis where BLM land use or activity plans are completed. Proposals must facilitate implementation or be consistent with these plans.
5. Stabilize or enhance local economics or values.
6. Meet long-term goals instead of short-term gains.
7. Be of sufficient size to improve use of adjoining public lands or, if isolated, large enough in scale to allow the identified potential public land use.
8. Allow more diverse or more intensive use or a change in uses to better fulfill the BLM’s mission.
9. Maintain or enhance important and recognized public land values. Especially noteworthy are identified, designated, special, or high interest value areas.
10. Enhance the opportunity for new or emerging public land uses or values.
11. Contribute to a wide spectrum of uses or a large number of public land users.
12. Facilitate management practices, uses, scale of operations or degrees of management intensity that are viable under economic program efficiency standards.
13. Enhance designated ACECs.
14. Secure for the public significant water-related land interest, which would include lakeshore, riverfront, stream, or pond sites.
15. Secure important riparian or wetland areas.
16. Avoid acquisition of cultivated lands, buildings and other improvements, unless such acquisition is clearly necessary to attain a specific resource goal.

### *Cultural Resources*

Any cultural site to be acquired should meet the following evaluation standards:

1. contain high research values;
2. be of moderate scarcity; and
3. possess some unique values, such as association with an important historic person or high aesthetic value.

### *Minerals*

1. Consolidation of mineral estates.
2. Acquisition in response to a federal project need, as in the case of a dam project. Criteria for this type of acquisition would generally include:
  - the development of a federal project that precludes the mineral estate owner from exercising development rights, or
  - the exercise of the mineral estate owner’s right of development that would materially interfere with the federal project.

***Recreation***

Acquire land with the following significant values:

1. national values, such as Congressionally designated areas, rivers, or trails;
2. state values that enhance recreation trails and waterways or interstate, state, and multi-county use; or
3. local values for extensive use, such as hunting and fishing or off-highway vehicle (OHV) and snowmobile use.

***Wilderness***

Acquire inholdings within WSAs and within the boundaries of Congressionally designated wilderness areas under BLM administration.

***Wildlife Habitat Management***

Areas for acquisition would be lands of any size with significant wildlife values as defined below:

1. Priority, special status, or sensitive species (including federally listed species, federal candidate species, and state-listed species of special concern);
2. Fisheries;
3. Big game (including important habitat such as crucial winter areas, fawning, calving, and security areas);
4. Upland game birds, migratory birds, and waterfowl (including crucial breeding, nesting, resting, roosting, feeding, and wintering habitat areas of complexes);
5. Raptors (including existing and potential nesting areas for sensitive species or significant nesting complexes for non-sensitive species); and
6. Non-game, including crucial habitat complexes.

**WITHDRAWALS**

A withdrawal is a management tool in the real estate tool box used to implement resource management planning prescriptions or as a means to transfer administrative jurisdiction from one federal agency to another. A withdrawal creates a title encumbrance on the land restricting an agency's ability to manage its lands under multiple use management principles. The restrictions generally segregate the lands from some or all the public land laws and some or all of the mining and mineral leasing laws for a specific period of time, generally 20 years for post FLPMA withdrawals.

There are four major categories of formal withdrawals:

1. Administrative - Made by the President, the Secretary of the Interior, or other authorized officer of the Executive branch of the Federal government. Examples include Executive Orders, Presidential Proclamations, Secretarial Orders, Public Land Orders, Departmental Orders, U.S. Geological Survey Orders, BLM Orders, etc. Currently, only the public land order signed by the Secretary or Assistant Secretary of the Interior is used for administrative withdrawals. However, the President still has authority to make emergency withdrawals.
2. Presidential Proclamations - Made by the President pursuant to the authority under the Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431). The President may use the authority to designate historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.
3. Congressional - Legislative actions by Congress in the form of public laws (Acts of Congress). Examples are Wilderness designations, National Parks, Wild and Scenic River designations, etc.
4. Federal Power Act or Federal Energy Regulatory Commission Withdrawals - Established under the authority of the Federal Power Act of June 10, 1920. Such withdrawals are automatically created upon filing an application for hydroelectric power development with the Federal Energy Regulatory Commission, formerly the Federal Power Commission.

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Withdrawals must accomplish one or more of the following:

- transfer total or partial jurisdiction of Federal land between Federal agencies,
- close (segregate) Federal land to operation of all or some of the public land laws and/or mineral laws, or
- dedicate Federal land to a specific public purpose.

### ***INTERNATIONAL BOUNDARY***

This withdrawal affects 158 acres of surface and mineral estate within Daniels County and 135 acres within Sheridan County. The purpose of the withdrawal is to establish a buffer zone between the United States and Canada. The withdrawal segregates the lands from all forms of entry, including mineral entry, although they are open to lease under the 1920 Mineral Leasing Act (BLM 1996).

### ***MEDICINE LAKE NATIONAL WILDLIFE REFUGE***

This withdrawal affects 22,742 acres of subsurface minerals, which includes 994 surface acres of public lands within Sheridan County. In Roosevelt County, 1,766 acres of subsurface minerals, including 40 acres of public surface acres, are withdrawn. This withdrawal established the Medicine Lake National Wildlife Refuge for the purpose of waterfowl protection. These lands are segregated from all forms of entry, including mineral entry, although they are open to leasing under the 1920 Mineral Leasing Act (BLM 1996).

### ***FOX LAKE GAME MANAGEMENT AREA***

This withdrawal affects 160 acres in Richland County. The lands are primarily used as wetlands habitat, and these lands are closed to entry, including location under the General Mining Law of 1872, and to oil and gas leasing pursuant to the classification agreement of February 5, 1965 (BLM 1996).

### ***BUREAU OF SPORTS FISHERIES AND WILDLIFE WATERFOWL PRODUCTION AREA***

This withdrawal affects 26 acres of subsurface minerals and public surface. The land is situated in the extreme northeast corner of Montana, within the Prairie Potholes region. The withdrawal segregates the lands from all forms of entry, including mineral entry, although they are open to leasing under the 1920 Mineral Leasing Act (BLM 1996).

### ***CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE***

In total, 290,222 acres of public lands are withdrawn in Garfield and McCone counties for refuge purposes (BLM 1996). Federal minerals underlying the private surface are subject to the conditions of the withdrawal. The withdrawal segregates the lands from all forms of entry, including mineral entry. Mineral leasing is restricted only to cases involving drainage and does not permit surface occupancy. Of these lands withdrawn, 206,976 acres are also included in the Corps of Engineers withdrawal for the Fort Peck Dam (BLM 1996).

### ***UNITED STATES ARMY CORPS OF ENGINEERS, FORT PECK DAM***

Public lands totaling 210,732 acres are withdrawn for the United States Army Corps of Engineers. Of these, 206,976 acres overlap the Charles M. Russell National Wildlife Refuge withdrawal. This withdrawal segregates the land from entry with the exception of restricted mineral entry for metalliferous mining. A majority of the land in this withdrawal was recommended for relinquishment, with those lands used for the operation of the dam and hydroelectric facilities, consisting of 3,756 acres, to remain under the effect of the withdrawal (BLM 1996).

### ***FORT UNION TRADING POST NATIONAL HISTORIC SITE***

This withdrawal of 62 acres was to the National Park Service for this historic site established by an Act of Congress on June 20, 1966, and modified by an Act of Congress on November 20, 1978 (BLM 2010g).

***FORT KEOGH LIVESTOCK EXPERIMENT STATION***

This station was established by an Act of Congress in 1924. Prior to dedication of these lands for livestock research, the lands were reserved as a waterfowl refuge, pre-dated by a military reserve. The lands are withdrawn from all forms of entry, including mineral entry. Mineral leasing is allowed under the terms of the withdrawal. Because the withdrawal was invoked by Congress, revocation can only occur by an Act of Congress. No revocation or modification of this withdrawal has been proposed. The withdrawal affects a total of 55,765 acres of land within the planning area (BLM 1985c, 1996, and 2010g).

***BELLTOWER TOWNSITE***

Located in Carter County, the 80-acre Belltower Townsite withdrawal was created by Executive Order 2147 on March 16, 1915 (BLM 2010g).

***LOWER YELLOWSTONE PROJECT (BUREAU OF RECLAMATION)***

This withdrawal affects approximately 51,872 acres of public land in Richland and Dawson counties. The lands lie along the Yellowstone River, from the area of Glendive, Montana, to the mouth of the Yellowstone River in western North Dakota. Several withdrawal actions were enacted between 1903 and 1969 for the project and a majority of these lands were second-form withdrawals, which allowed homestead entry subject to specific conditions. All lands were subsequently open to mineral leasing following passage of the Mineral Leasing Act of 1920. About 860 acres of this withdrawal were recommended for revocation (BLM 1996 and 2010g).

***FORT BUFORD PROJECT (BUREAU OF RECLAMATION)***

This withdrawal affects 914 acres of lands along the Yellowstone River in Dawson and Richland counties. This withdrawal was recommended for revocation (BLM 1996). The withdrawal segregated the lands from all forms of entry, including mineral entry, but left the land open to mineral leasing.

***PUBLIC WATER RESERVE 107 (MCCONE COUNTY)***

This withdrawal includes 238 acres of public lands for water reserves in McCone County (BLM 1996). Two hundred acres of the overall total lies within the Charles M. Russell National Wildlife Refuge boundary. This withdrawal was recommended for revocation since reservations of local water sources are no longer needed to protect public interests. Furthermore, this action opens 37 acres to public land laws, while the remaining 200 acres are subject to the conditions of the Charles M. Russell National Wildlife Refuge withdrawal.

***MILK RIVER PROJECT (BUREAU OF RECLAMATION)***

This withdrawal affects 37 acres in McCone County for the Bureau of Reclamation's Milk River Project (BLM 1996). This withdrawal was combined for review with the Milk River Project in the Lewistown District. Withdrawal on two parcels is in effect along the Missouri River in McCone County for the projects. The withdrawals segregate the lands from entry, including mineral entry under the General Mining Law, although the lands remain open for leasing under the 1920 Mineral Leasing Act. This withdrawal was recommended for revocation.

***BUFFALO RAPIDS PROJECT***

A total of approximately 305 acres is withdrawn for the Bureau of Reclamation in Prairie and Dawson counties for the Buffalo Rapids Project. This was a first form withdrawal, which closes the lands to all forms of entry, although mineral leasing is allowed. This withdrawal was recommended for revocation because there are no physical improvements. Relinquishment opens these lands to operation under existing statutes (BLM 1996 and 2010g).

### ***POWER SITES***

Primarily located in the Moorhead area, approximately 2,777 acres have been withdrawn by classification for power site purposes. These sites are expected to be revoked. The Moorhead Reservoir Withdrawal, consisting of approximately 2,700 acres was revoked in 1982.

### ***TONGUE RIVER RESERVOIR***

A total of 160 acres were withdrawn from settlement, location, sale, or entry by Executive Order 7960 for Reservoir Site Reserve No. 20 on August 22, 1938. Forty acres of these lands have been transferred out of BLM administration, and revocation has been recommended for the remaining lands (BLM 2010g).

### ***BIA-NORTHERN CHEYENNE TRUST-WATER RIGHTS SETTLEMENT***

Jurisdiction of 320 acres in Big Horn County near the Tongue River Reservoir was transferred to the BIA in Trust for the Northern Cheyenne Tribe as part of the Northern Cheyenne Water Settlement Act (106 Statute 1186) in 1994 (BLM 2010g).

### ***BIA-CROW TRUST-CROW BOUNDARY SETTLEMENT***

Jurisdiction of approximately 9,873 acres of minerals or surface in Big Horn County, within the Miles City and Billings field offices, was transferred to the BIA in Trust for the Crow Tribe as part of the Crow Boundary Settlement Act in 1995 (BLM 2010g).

## **RENEWABLE ENERGY**

Information on renewable energy can be found on BLM's web page at <http://www.blm.gov/wo/st/en/prog/energy.html> and the Department of Energy National Renewable Energy Laboratory site at <http://www.nrel.gov>. The Department of Energy's National Renewable Energy Laboratory maps and information would be used when considering and evaluating wind and solar project proposals and applications.

BLM continues to issue updated policies and guidance on renewable energy development including a suite of instruction memorandums in 2011 (WO IM Nos. 2011-059, 060, and 061).

Requests for solar energy project ROWs would be processed according to Washington Office (WO) direction, currently provided via Instruction Memorandum (IM) 2011-003 (BLM 2010d). General guidance outlined in the Record of Decision for Solar Energy Development in Six States, dated October 12, 2012, would also be used as applicable for processing solar ROW applications (for more information see <http://solareis.anl.gov/>).

Maps of Potential Wind Development Areas depicting areas in Wind Class 4 and above with few or no known resource restrictions in which ROW applications for wind energy projects could be considered can be found for each alternative in Volume IV.

## **BLM WIND ENERGY PROGRAM POLICIES AND BMPS**

The BLM has established a number of policies, provided below, and BMPS (see the BMP Appendix) regarding the development of wind energy resources on BLM-administered public lands.

*<The following policies are from Attachment 1 of BLM WO IM No. 2009-043, December 19, 2008.>*

The policies and BMPS are applicable to all wind energy development projects on BLM-administered public lands. The policies address the administration of wind energy development activities, and the BMPS identify required mitigation measures that will be incorporated into project-specific Plans of Development (PODs) and right-of-way (ROW) authorization stipulations. Additional mitigation measures will be applied to individual projects, in the form of stipulations in the ROW authorization as appropriate, to address site-specific and species-specific issues.

*Policies*

- The BLM will not issue ROW authorizations for wind energy development on lands on which wind energy development is incompatible with specific resource values. Lands excluded from wind energy site monitoring and testing and development include designated areas that are part of the National Landscape Conservation System (NLCS) (e.g., Wilderness Areas, Wilderness Study Areas, National Monuments, National Conservation Areas, Wild and Scenic Rivers, and National Historic and Scenic Trails). (Wind energy development is permitted in one NCA, the California Desert Conservation Area, in accordance with the provisions of the California Desert Conservation Area Plan 1980, as amended.) Additional areas may be excluded from wind energy development based resource impacts that cannot be mitigated and/or conflict with existing multiple-use activities or land use plans. Areas of Critical Environmental Concern (ACEC) are not universally excluded from wind energy site monitoring and testing or wind energy development, but will be managed consistent with the management prescriptions for the individual ACEC.
- To the extent possible, wind energy projects shall be developed in a manner that will not prevent other land uses, including minerals extraction, livestock grazing, recreational use, and other ROW uses.
- Entities seeking to develop a wind energy project on BLM-administered lands shall consult with appropriate Federal, State, and local agencies regarding specific projects as early in the planning process as appropriate to ensure that all potential construction, operation, and decommissioning issues and concerns are identified and adequately addressed.
- The BLM will initiate government-to-government consultation with Indian tribal governments whose interests might be directly and substantially affected by activities on BLM-administered lands as early in the planning process as appropriate to ensure that construction, operation, and decommissioning issues and concerns are identified and adequately addressed.
- Entities seeking to develop a wind energy project on BLM-administered lands shall consult with the U.S. Department of Defense (DOD), in conjunction with BLM Washington Office and Field Office staff, regarding the location of wind power projects and turbine siting as early in the planning process as appropriate. This consultation shall occur concurrently at both the installation/field level and the Pentagon/BLM Washington Office level. The consultation process is outlined in an interagency protocol agreement.
- The BLM will consult with the U.S. Fish and Wildlife Service (USFWS) as required by Section 7 of the Endangered Species Act of 1973 (ESA). The specific consultation requirements will be determined on a project-by-project basis.
- The BLM will consult with the State Historic Preservation Office (SHPO) as required by Section 106 of the National Historic Preservation Act of 1966 (NHPA). The specific consultation requirements will be determined on a project-by-project basis. If programmatic section 106 consultations have been conducted and are adequate to cover a proposed project, additional consultation may not be needed.
- Existing land use plans will be amended, as appropriate, to (1) adopt provisions of the BLM's Wind Energy Development Program, (2) identify land considered available for wind energy development, and (3) identify land that will not be available for wind energy development.
- The level of environmental analysis to be required under the National Environmental Policy Act (NEPA) for individual wind power projects will be determined at the field office level. For many projects, it may be determined that a tiered environmental assessment (EA) is appropriate in lieu of an Environmental Impact Statement (EIS). To the extent that the Programmatic EIS (PEIS) addresses anticipated issues and concerns associated with an individual project, including potential cumulative impacts, the BLM will tier based on the decisions embedded in the PEIS and limit the scope of additional project-specific NEPA analyses. The site-specific NEPA analyses will include analyses of project site configuration and micrositing considerations, monitoring program requirements, and appropriate mitigation measures. In particular, the mitigation measures discussed in chapter 5 of the PEIS may be consulted in determining site-specific requirements. Public involvement will be incorporated into all wind energy development projects to ensure that all concerns and issues are identified and adequately addressed. In general, the scope of the NEPA analyses will be limited to the proposed action on BLM-administered

public lands; however, if access to proposed development on adjacent non-BLM-administered lands is entirely dependent on obtaining ROW access across BLM-administered public lands and there are no alternatives to that access, the NEPA analysis for the proposed ROW may need to assess the environmental effects from that proposed development. The BLM's analyses of ROW access projects may tier based on the PEIS to the extent that the proposed project falls within the scope of the PEIS analyses.

- Site-specific environmental analyses will tier from the PEIS and identify and assess any cumulative impacts that are beyond the scope of the cumulative impacts addressed in the PEIS.
- The Categorical Exclusion (CX) applicable to the issuance of short-term ROWs or land use authorizations may be applicable to some site monitoring and testing activities. The relevant CX, established in the BLM NEPA Handbook, H-1790-1, Appendix 4, Section E. 19 (January 30, 2008), encompasses "issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition." The CX for "nondestructive data collection, inventory, study, research, and monitoring activities" may also be applicable to wind energy site testing and monitoring activities.
- The BLM will require financial bonds for all wind energy development projects on BLM-administered public lands to ensure compliance with the terms and conditions of the rights-of-way authorization and the requirements of applicable regulatory requirements, including reclamation costs. The amount of the required bond will be determined during the rights-of-way authorization process on the basis of site-specific and project-specific factors. A minimum bond will be required for site monitoring and testing authorizations.
- Entities seeking to develop a wind energy project on BLM-administered public lands shall develop a project-specific Plan of Development (POD) that incorporates all BMPs and, as appropriate, the requirements of other existing and relevant BLM mitigation guidance, including the BLM's offsite mitigation guidance. Additional mitigation measures will be incorporated into the POD and into the ROW authorization as project stipulations, as needed, to address site-specific and species-specific issues. The POD will include a site plan showing the locations of turbines, roads, power lines, other infrastructure, and other areas of short- and long-term disturbance.
- The BLM will incorporate management goals and objectives specific to habitat conservation for species of concern (e.g., sage-grouse, raptors, bats), as appropriate, into the POD for proposed wind energy projects.
- The BLM will consider the visual resource values of the public lands involved in proposed wind energy development projects, consistent with BLM Visual Resource Management (VRM) policies and guidance. The BLM will work with the ROW applicant to incorporate visual design considerations into the planning and design of the project to minimize potential visual impacts of the proposal and to meet the VRM objectives of the area.
- Operators of wind power facilities on BLM-administered public lands shall consult with the BLM and other appropriate Federal, State, and local agencies regarding any planned upgrades or changes to the wind facility design or operation. Proposed changes of this nature may require additional environmental analysis and/or revision of the POD.
- The BLM's Wind Energy Development Program will incorporate adaptive management strategies to ensure that potential adverse impacts of wind energy development are avoided if possible, minimized, or mitigated to acceptable levels. The programmatic policies and BMPs will be updated and revised as new data regarding the impacts of wind power projects become available. At the project level, operators will be required to develop monitoring programs to evaluate the environmental conditions at the site through all phases of development, establish metrics against which monitoring observations can be measured, identify potential mitigation measures, and establish protocols for incorporating monitoring observations and additional mitigation measures into standard operating procedures and project-specific stipulations.

**<End of Attachment 1 from BLM IM No. 2009-043>**