

DECISION MEMO
Blacktail Creek Land Exchange
Land-For-Land Exchange

U.S.D.A. Forest Service – Rocky Mountain Region
Nebraska National Forests and Grasslands – Fall River Ranger District
Fall River County, South Dakota
March 2016

It is my decision to approve a land-for-land exchange which will result in the conveyance of approximately 1797.08 acres of Federal lands to Shawn T. and Tanna J. White (also known as White Ranch), and approximately 1841.28 acres of non-Federal lands to the United States of America. A map depicting the exchange is shown in Exhibit A. Since all exchanges are required to be equal in value, a payment of \$13,000 to equalize values will be made by Shawn T. and Tanna J. White to the United States.

A. DESCRIPTION OF THE EXCHANGE PROPOSAL AND PARCELS

The exchange parcels are located approximately eighteen miles east of Oelrichs, South Dakota, along State Highway 18 and are within the Buffalo Gap National Grassland (BGNG). The BGNG has a fragmented landownership pattern and includes isolated tracts of Federal lands and private inholdings. The Federal and non-Federal lands involved in the Blacktail Creek land exchange are similar in use (primarily livestock grazing) and physical characteristics of rolling grasslands with some badland areas. Consolidation of public landownership in this area will enhance and build on current recreational uses, grazing practices, and management activities by the Forest Service and area ranchers.

The topography of this area of the Fall River Ranger District is a blend of gently rolling hills and semi-flat plains. There are some badlands on portions of the northern non-Federal Parcel 1. Elevations range from about 2,900 feet above sea level to about 3,300 feet above sea level. Ephemeral and intermittent streams drain into both the South Fork and South Branch of Blacktail Creek, which then flows into the White River.

There are two Federal parcels proposed for conveyance in this land exchange. The larger parcel is located approximately 1.5 miles east of the White Ranch headquarters. The parcel has pasture land on two sides that is owned and grazed by the Whites. This larger Federal parcel is bounded by U.S. Highway 18 on the north and Fall River County Road 3 on the east. Both of these parcels are characteristic of the gently rolling mixed grass prairie that is common to the Buffalo Gap National Grassland.

There are five non-Federal parcels included in this land exchange. Three of the parcels have National Grassland adjacent to three sides; the remaining two adjoin Federal land on two sides. Two parcels (those within Sections 10, 11, 13, and 14, T. 11 S., R. 8 E.), adjoin an area of the National Grassland that is being managed with an emphasis toward wildlife habitat. These parcels will aid in wildlife management.

The forty-acre parcel (Section 36, T. 10 S., R. 8 E.) is included in this exchange to aid the Forest in building a pasture fence along geographic features. The current Grassland boundary is located within a shale draw where fence construction is not physically feasible. Non-Federal Parcel 2 in Section 3, T. 10 S., R. 8 E., is being re-acquired. That is, the parcel had previously been part of the National Grasslands and was exchanged out of. Several exchanges since that conveyance have occurred as part of the larger landownership consolidation effort, and it now serves Forest Service range management efforts better coming back into the National Grasslands and Forest Service management. The following is a specific legal description of the parcels to be exchanged:

Black Hills Meridian, Fall River County, South Dakota

Non-Federal exchange parcels

T. 10 S., R. 8 E.,
Sec. 36, NW¹/₄NW¹/₄;
Sec. 27, W¹/₂SW¹/₄, SW¹/₄NW¹/₄.

T. 11 S., R. 8 E.,
Sec. 1, Lots 1-4, S¹/₂NE¹/₄, S¹/₂NW¹/₄;
Sec. 10, S¹/₂NE¹/₄, SE¹/₄, W¹/₂;
Sec. 11, SE¹/₄;
Sec. 13, N¹/₂;
Sec. 14, N¹/₂.

Containing 1,841.28 acres, more or less.

Federal exchange parcels

T. 10 S., R. 9 E.,
Sec. 18, SE¹/₄, and all of that portion of the NE¹/₄ lying southerly of the northerly Right-of-Way line of State HWY 18 as shown on the plat of Lot H1 for the Federal Aid Project No. 455(7) located in the N¹/₂NE¹/₄ of Section 18. Parcel contains 148.20 acres of which 8.02 acres lie under the Right-of-Way for State Highway 18.

Sec. 17, SW¹/₄, SE¹/₄, and all of that portion of the N¹/₂ lying southerly of the northerly Right-of-Way line of State HWY 18 as shown on the plats of Lot H1 located in the N¹/₂NE¹/₄ of Section 17. Parcel contains 208.88 acres of which 19.06 acres lie under the Right-of-Way for Highway 18.

Sec. 19, NE¹/₄.

Sec. 20, W¹/₂NW¹/₄, W¹/₂NE¹/₄, E¹/₂NW¹/₄, E¹/₂NE¹/₄, N¹/₂SW¹/₄, N¹/₂SE¹/₄.

T. 11 S., R. 9 E.
Sec. 18, SW¹/₄, W¹/₂NW¹/₄, W¹/₂SE¹/₄.

Containing 1,797.08 acres, more or less.

The exchange parcels are approximately depicted on the attached map (Exhibit A) and are more specifically described on plats and a record-of-survey contained in the project record. White Ranch and the USA each hold surface and subsurface rights to their respective parcels, excepting that Fall River County holds the mineral rights for gravel in the NW¹/₄ of Section 10 and NW¹/₄ of Section 13, T. 11 S., R. 8 E., BHM. The other outstanding rights are described in Exhibit B. Neither the Federal nor non-Federal party are reserving any rights.

B. THE DECISION

The Federal and non-Federal lands were appraised and a report dated December 23, 2015, approved the values for the Federal land Parcels at \$969,000.00 and the non-Federal lands at \$956,000.00. In order to equalize the value of the exchange, a cash equalization payment not to exceed \$13,000.00 is necessary by the non-Federal party.

This action is categorically excluded from documentation in an environmental impact statement ("EIS") or an environmental assessment ("EA"). The applicable category of actions is identified in Forest Service Handbook ("FSH") 1909.15, Ch. 30, sec. 32.12(7); 36 CFR 220.6(d)(7) as:

- Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same.

This category of actions is applicable because, as described herein, this exchange is proposed to consolidate land ownership patterns and not to facilitate any existing or proposed project. The Forest Service intends to manage the acquired lands in the same manner as the adjacent Grasslands, primarily for grazing and recreation purposes. The Whites propose to continue ranching operations on the Federal lands they acquire. In this regard, resulting land uses will remain essentially the same.

Further, and as described in the balance of this document and the project record, I find that there are no extraordinary circumstances that would warrant additional further analysis or documentation in an EA or EIS.

C. PURPOSE AND NEED OF THE DECISION

Forest Service Manual 5430.2 states that objectives of the land exchange program are to:

- utilize land exchanges to implement forest land and resource management plans,
- optimize National Forest System landownership patterns,
- further resource protection and use, and
- meet the present and future needs of the American people.

This land exchange is the result of an effort to attain more efficient and effective management of Federal lands. Acquisition of the non-Federal land will consolidate a core area of this region in the Buffalo Gap National Grassland. Consolidation of the land ownership will allow the Forest Service to better manage the Grasslands in this area particularly with regard to range management. Conveyance of Federal land will unify the White Ranch holdings allowing for efficient private land management.

The exchange satisfies the *Nebraska National Forests and Grasslands Land and Resources Management Plan, 2001 as amended in 2009* ("LRMP"). The following management direction pertains to adjustments: **Lands** - The forest is directed in the LMRP, 1-26, to acquire lands with important or unique resources, such as water frontage, wetlands and flood plains, and to acquire lands within or around existing blocks of ownership of at least 2,000 acres. This acquisition will result in a consolidated landownership pattern where large blocks of Federal land exist, and will result in a net gain of approximately seven acres of wetlands.

D. BASIS FOR CATEGORICALLY EXCLUDING THIS DECISION

I find that there are no extraordinary circumstances that would warrant further analysis and documentation in an EA or EIS. I took into account resource conditions identified in agency procedures that should be considered in determining whether extraordinary circumstances might exist.

Threatened, Endangered, and Proposed Species and Critical Habitat: The exchange would not affect threatened, endangered, or proposed species, or critical habitat for any such species based on the wildlife report dated August 19, 2015.

Wetlands, Municipal Watersheds, and Floodplains: The Federal exchange parcels contain 10.75 acres of wetlands and 0.41 acres of riparian while the non-Federal lands contain 17.75 acres of wetlands and 0.37 miles of riparian. This will be an overall gain of 6.99 acres of wetlands.

The level of flood risk is indicated on flood maps by a letter A, B, C, D and X based on flood hazard (FEMA 2015). The areas that contain the parcels associated with the Blacktail Creek Land Exchange have been designated as "Zone D". This designation is used for areas where there are possible but undetermined flood hazards, as no analysis of flood hazards has been conducted (FEMA 2015). Therefore, floodplains will not be analyzed or discussed further for this project. The hydrologist determined that the proposed exchange was in compliance with Executive Orders 11988 and 11990 on August 26, 2013.

Congressionally or Specially Designated Areas (Wilderness, Wilderness Study Areas, National Recreation Areas, Inventoried Roadless Areas, Research Natural Areas): The exchange parcels are not within and do not abut such areas.

Cultural/Heritage Resources and Traditional Cultural Properties: Class III cultural resource inventories were conducted on the Federal and non-Federal exchange parcels. The Nebraska National Forests and Grasslands concluded that no historic properties in or eligible for listing in the National Register of Historic Places would be affected by the land exchange. Under the Programmatic Agreement with the State of South Dakota, the project received concurrence to proceed on August 4, 2015.

Neither the Federal nor the non-Federal exchange parcels contain known traditional cultural properties. Consultation with area Native American Tribes and Nations was conducted prior to the land exchange Agreement to Initiate being executed and during the public scoping as described in the Public Involvement Section G. No traditional cultural properties on or adjacent to the parcels were revealed, nor were any issues raised or objections made to the exchange.

E. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

Considering the project record, and in concluding that there are no extraordinary circumstances warranting further analysis in documentation in an EA or EIS, I additionally took into account the following:

Current and Future Land Use. This exchange is pursued to consolidate land ownership patterns and not to facilitate any existing or proposed project. A review of heritage, minerals, range, recreation, special uses, timber, and transportation programs (all as noted in this document) reveals that uses of the exchange parcels will remain essentially the same following the land exchange.

Hazardous Materials. An *All Appropriate Inquiry* was completed for both the Federal and non-Federal Parcels. A review of the exchange parcels and surrounding lands showed no indication of the release of any hazardous substances, pollutants, contaminants, petroleum and petroleum products, or controlled substances on, at, in, or to the exchange parcels.

Management Efficiency. The exchange will increase efficiency by obviating the need for management of a Federal parcel bounded primarily by private property. Conveyance of the Federal inholding and the non-Federal exchange parcel will also have the effect of creating a land ownership pattern under which all lands within the Lone Butte core area are public except for one small inholding in Section 15, T. 11 S., R. 8. E., B.H.M. Lands east of County Road 3 will be public lands. The landowner in the NE $\frac{1}{4}$ of Section 15, also has the grazing permit for the Federal lands in Sections 15 and 22, and the private land is grazed along with these Federal lands as part of the permit. There are no plans for development and the permittee has access as part of their grazing authorization.

Minerals. A mineral potential report has been prepared for the Federal and non-Federal exchange parcels. The subject parcels generally have a low potential for locatable, leasable, and salable mineral resources. All parcels involved in the exchange are in an area of low potential for oil and gas, uranium, sand and gravel, with the exception of NFP-5, which has a moderate potential for sand and gravel. With the low potential for the presence of locatable, leasable, and salable mineral resources associated with the parcels, there is no indicated potential for the development of these resources in the foreseeable future. No mineral reservation is necessary to protect the public interest and the exchange will not create a split estate. There are no minerals claims, leases, permits, or operations on the exchange parcels. Fall River County holds an outstanding mineral reservation for gravel in the NW $\frac{1}{4}$ of Section 10, NW $\frac{1}{4}$ of Section 13, T. 11 S., R. 8 E., B.H.M.

Prime Range, Farm, and Forest Land: U.S.D.A. Departmental Regulation 9500-3 provides that the Department shall avoid unwarranted conversion of farm, range, and forest lands. The regulation notes that, each year, large amounts of such lands are converted to other uses and that continued conversion of the Nation's farmlands, forest lands, and rangelands may impair the ability of the United States to produce sufficient food, fiber, and wood to meet domestic needs and the demands of export markets.

As a preliminary matter, the exchange parcels do not contain prime farm, range, or forest lands. Further, and as noted previously, this exchange is pursued to consolidate land ownership patterns

and not to facilitate any existing or proposed project. In this regard, subsequent land uses will remain essentially the same on both the Federal and non-Federal Parcels, avoiding any conversion. Finally, although the exchange parcels do currently experience modest grazing levels, those levels will remain essentially the same. In all of these respects, the present exchange has no capacity to jeopardize the United States of America's land base such that it would no longer produce adequate supplies, at reasonable production costs, of high-quality food, fiber, wood, and other agricultural products.

Range: Pioneer Grazing Association was sent a two year notification letter on April 10, 2015, along with a grazing waiver and elected to sign the waiver for that area under their permit that would be exchanged to the non-Federal party. Following is a discussion of the impacts on permitted range allotments within the land exchange area.

Bennett Allotment

All private land would be converted to Federal lands and the allowance for private land would become zero and the Federal Animal Unit Months (AUMs) would increase by 28 AUMs.

	Current			After Exchange		
Federal	193	c/c	5/16-9/30	199	c/c	5/16-9/30
Private	6	c/c	5/16-9/30	N/A		

Heiser Allotment

The assumption at this point is that non-Federal Parcel #2 will be made part of the Heiser Allotment. The permit numbers below have been derived based on the South Pasture being eliminated and the non-Federal Parcel #2 being made part of the Heiser Allotment. As a result there would be a net increase of 54 permitted AUMs in the permit for the Heiser Allotment.

The estimated AUMs for non-Federal Parcel #2 was based on a cursory inspection of the parcel on April 30, 2015. A condition rating of good was assigned, giving the parcel an estimated 0.37 AUM/acre capacity. It is suggested that at least one transect be conducted on the parcel to justify this condition rating.

	Current			After Exchange		
Federal	129	c/c	5/21-10/15	140	c/c	5/21-10/15
Private	N/A			N/A		

Tobin-Orhmesher Allotment

All private land would be converted to Federal lands. Allowance for private land would be eliminated and the Federal AUMs would increase by 413 AUMs.

	Current			After Exchange		
Federal	110	c/c	6/1-10/2	210	c/c	6/1-10/2
Private	100	c/c	6/1-10/2	N/A		

South White Ranch Allotment

All Federal lands within the Fink Pasture would be converted to private lands. Allowance for Federal and private lands within the Fink Pasture would be eliminated, resulting in a decrease of 413 permitted AUMs.

	Current			After Exchange		
Federal	171	c/c	5/16-10/31	99	c/c	5/16-11/1
Private	11	c/c	5/16-10/31	N/A		

Recreation. The recreation use in this area is related primarily to hunting and some OHV use on approved routes. Federal Parcels 1 and 2 would no longer be available for public use. With the consolidation of lands involving non-Federal parcels, there will be better access to Blacktail Reservoir and use of a larger block of National Grasslands without trespassing on private lands which has routinely occurred in the past.

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*) provides that qualified tenants occupying the non-Federal Exchange Parcel may be entitled to relocation benefits (see also 36 C.F.R. 24.2). The parcel is not occupied by tenants.

Special Uses. The Federal parcels have three special use authorizations. Golden West Telecommunications, Black Hills Electric Co-operative, and the Fall River Water Users Association, all hold special use permits authorizing occupancy of the Grasslands. At closing, the permittees will be granted replacement authorizations by the non-Federal party, for occupancy of the private lands. Forest Service special use permits will be amended or terminated to eliminate areas conveyed in the land exchange.

F. FOREST PLAN COMPLIANCE

Land Ownership Adjustment direction in the Forest's Land and Resource Management Plan ("LRMP") provides, in relevant part:

Consider opportunities to acquire lands that:

- Would reduce conflicts between Forest Service and private landowner objectives.
- Are within or around existing blocks of public ownership of at least 2,000 acres.
- Include floodplain or wetlands.
- As part of the land acquisition process determine prescription allocations.

In these regards, the exchange is consistent with the LRMP.

Future Land Use:

The non-Federal land being acquired is currently being used for grazing of livestock by the White Ranch. The parcels located in Sections 10, 11, 13, and 14, are being grazed under a management plan along with adjoining Federal land as part of the Torbin-Ormesher Allotment. These parcels will continue to be grazed under the current allotment management plan focusing on wildlife habitat. The land will provide recreational opportunity to the public on a large contiguous block of national grassland while reducing trespass on private land. The current Federal boundary in Section 36 cannot be fenced due to the roughness of the terrain. Periodically, cattle from both the Federal land and the private land have found ways to cross over. This parcel would be added to the Bennett Allotment and managed under the 6.1 Management Area Direction (MAD). The previously optional 120 acre parcel is currently grazed under permit to the Horsehead Creek LLP, under a management plan along with adjoining Federal land as part of the Bennett Allotment. This parcel will continue to be grazed under the current allotment management plan focusing on the rangeland with broad resource emphasis (6.1 MAD).

G. PUBLIC INVOLVEMENT

This action has been continuously listed in the Nebraska National Forests and Grasslands Schedule of Proposed Actions ("SOPA") since April 2015 and has been posted continuously on the Nebraska National Forests and Grasslands public website since that time. Notice of the proposed exchange was published in the newspaper of record (*The Rapid City Journal*) for four consecutive weeks, beginning on April 10, 2015, and ending on May 1, 2015. On April 10, 2015, scoping letters were mailed to adjacent property owners, to other potentially interested parties, and to various County, State, and Federal agencies. Notice was also provided to the Congressional delegation for the State of South Dakota. No communications were received in response to these letters and scoping efforts.

H. CASH EQUALIZATION

Cash equalization is permissible so long as it does not exceed 25 percent of the value of the Federal exchange parcels, and after making all reasonable efforts to equalize values by adding or deleting lands (36 CFR 254.12).

In this instance, cash equalization in an amount not to exceed \$13,000.00, is less than 1.3 percent of the value of the Federal exchange parcels. Additionally, and as noted in the project record, reasonable efforts were made to adjust exchange parcel configurations to obviate the need for a cash equalization payment. Existing and desired land-ownership patterns, and environmental concerns, ultimately resulted in exchange parcel configurations which limited, but did not eliminate, the need for cash equalization.

I. PUBLIC INTEREST DETERMINATION

For the reasons described above, the proposed exchange will consolidate landownership management, result in a gain of wetlands, and facilitate better range management for the Forest Service and private landowner. Furthermore, (i) the resource values and the public objectives served by the non-Federal exchange parcel to be acquired appear to equal or exceed the resource values and the public objectives served by the Federal exchange parcel being conveyed; and, (ii) the intended use of the Federal

conveyance parcel will not substantially conflict with established management objectives on adjacent Federal lands. (36 CFR 254.3(b)(2).)

J. ADMINISTRATIVE REVIEW AND APPEAL

The Agricultural Act of 2014 (Farm Bill), Title VIII, Section 8006, repealed the authority for the Forest Service appeal process, and provided that categorically excluded actions are not subject to the objection process. This decision is not subject to a higher level of administrative review. For additional information on the Forest Service administrative review process, please contact Cindy Hockelberg at 605-673-9238, or chockelberg@fs.fed.us.

K. IMPLEMENTATION


Implementation of this decision may begin upon execution of this document.

L. CONTACT PERSON

Contact the following person for further information regarding this decision:

Cindy Hockelberg
Nebraska National Forests and Grasslands
1019 North 5th Street
Custer, SD 57730
chockelberg@fs.fed.us
605-673-9238

M. AUTHORIZED OFFICER SIGNATURE AND DATE

By: 
KEVIN W. ATCHLEY
Forest Supervisor
Nebraska National Forests and Grasslands
USDA Forest Service

03/24/2016
Date

EXHIBIT A

Map approximately depicting exchange configuration.

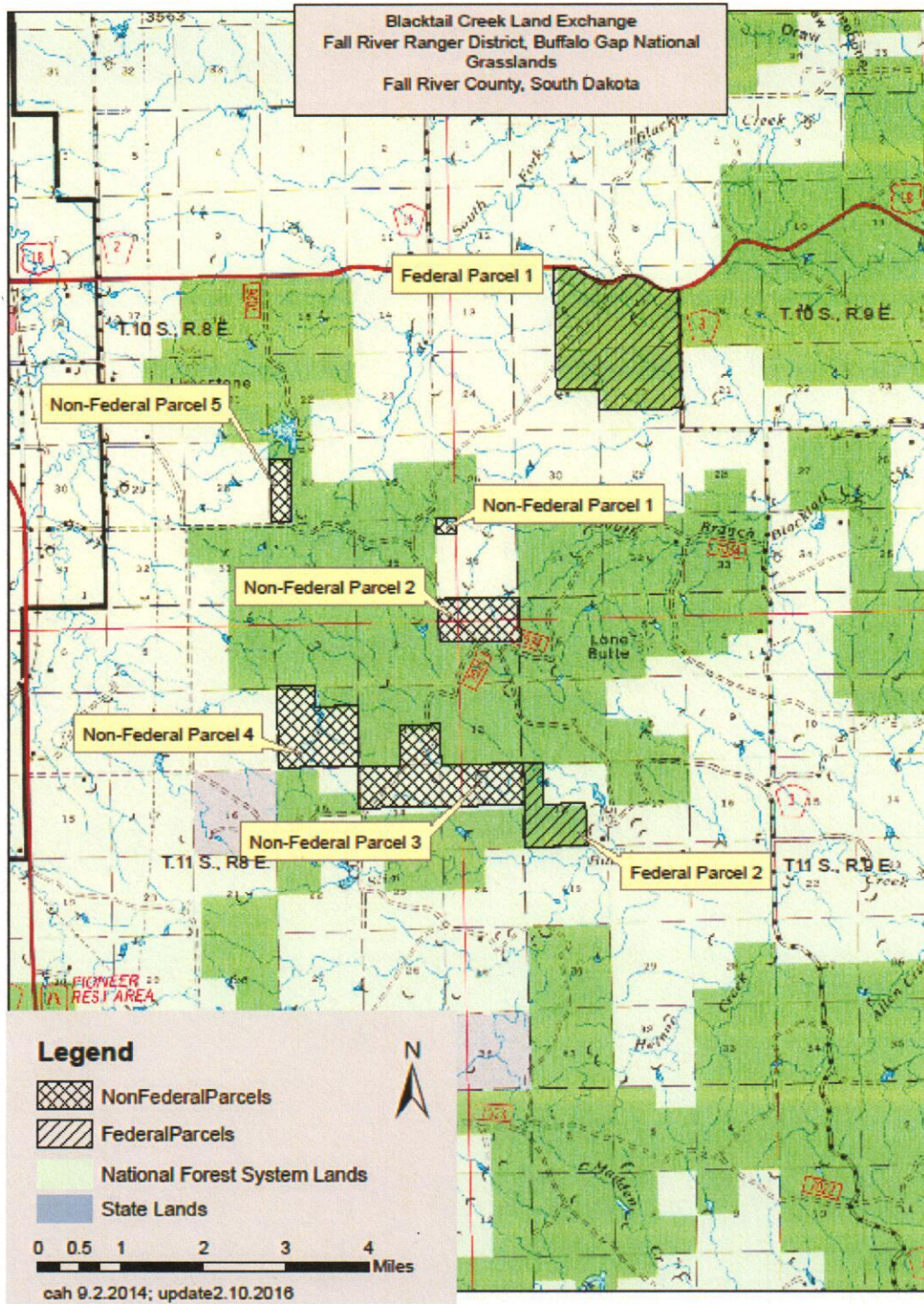


Exhibit B

Non-Federal Outstanding Rights

1. Reservations as contained in Patent dated 9-17-29, filed 6-11-31 at 10:00 A.M., recorded in Book 9 of Patents, Page 393.
2. Reservations as contained in County Deeds as recorded on 11-13-45 at 2:00 P.M., recorded in Book 58 Deeds, Pages 474 & 475. "Fall River County hereby reserves the right of way to any established road or highway across the NW¹/₄ Sec. 10, NW¹/₄ Sec. 13 & SW¹/₄ Sec. 22, all in T. 11 S., R. 8 E., B.H.M., also reserving the right of any gravel on said land for County purposes."
3. Putnam Group Pipeline Well and Pipeline Contract, Agreement and Easement dated 1-2-1980, filed 1-9-80 at 1:15 PM, recorded in Book 87 Misc., Pages 548-561.
4. Putnam Group Pipeline Well and Pipeline Contract, Agreement and Easement dated 1-2-1980, filed 3-7-1990 at 2:55 PM, recorded in Book 125 Misc., Pages 66-81.
5. Reservations and exceptions contained in Exchange Deed, dated 4/12/1991, recorded 4/17/1991, in Book 102 of Deeds, Page 445-452.

Federal Land Outstanding Rights

1. Regarding T. 10 S., R. 9 E., Sec. 20, N1/2S1/2: Reserving unto Gary H. Fishko and Sandra K. Fishko, husband and wife, their heirs or assigns, the right to enter upon the above described lands, except T. 10 S., R. 9 E., Sec. 20, N1/2SW/14, and to prospect for, mine, and remove all minerals therefrom, subject to the regulations of the Secretary of Agriculture (36 CFR 251.15).
2. Vested Drainage Right Easement dated 6-29-92, filed 6-29-92 at 10:00 a.m., recorded in Book 131 Misc., Page 43. Covers: Land from which the water is drained – S1/2 Sec. 20, T. 10 S., R. 9 E., B.H.M., Arnold P. Hald, Claimant.
3. Minerals are outstanding on the following Federal parcels: Sec. 17, SE1/4, Sec. 10, N1/2SE1/4.
4. Deed of Highway Right of Way for State Highway 18, dated December 31, 1952, issued by the United States of America through the Regional Director, Soil Conservation Service, to the State of South Dakota.

Exhibit B

Non-Federal Outstanding Rights

1. Reservations as contained in Patent dated 9-17-29, filed 6-11-31 at 10:00 A.M., recorded in Book 9 of Patents, Page 393.
2. Reservations as contained in County Deeds as recorded on 11-13-45 at 2:00 P.M., recorded in Book 58 Deeds, Pages 474 & 475. "Fall River County hereby reserves the right of way to any established road or highway across the NW $\frac{1}{4}$ Sec. 10, NW $\frac{1}{4}$ Sec. 13 & SW $\frac{1}{4}$ Sec. 22, all in T. 11 S., R. 8 E., B.H.M., also reserving the right of any gravel on said land for County purposes."
3. Putnam Group Pipeline Well and Pipeline Contract, Agreement and Easement dated 1-2-1980, filed 1-9-80 at 1:15 PM, recorded in Book 87 Misc., Pages 548-561.
4. Putnam Group Pipeline Well and Pipeline Contract, Agreement and Easement dated 1-2-1980, filed 3-7-1990 at 2:55 PM, recorded in Book 125 Misc., Pages 66-81.
5. Reservations and exceptions contained in Exchange Deed, dated 4/12/1991, recorded 4/17/1991, in Book 102 of Deeds, Page 445-452.

Federal Land Outstanding Rights

1. Regarding T. 10 S., R. 9 E., Sec. 20, N1/2S1/2: Reserving unto Gary H. Fishko and Sandra K. Fishko, husband and wife, their heirs or assigns, the right to enter upon the above described lands, except T. 10 S., R. 9 E., Sec. 20, N1/2SW/14, and to prospect for, mine, and remove all minerals therefrom, subject to the regulations of the Secretary of Agriculture (36 CFR 251.15).
2. Vested Drainage Right Easement dated 6-29-92, filed 6-29-92 at 10:00 a.m., recorded in Book 131 Misc., Page 43. Covers: Land from which the water is drained – S1/2 Sec. 20, T. 10 S., R. 9 E., B.H.M., Arnold P. Hald, Claimant.
3. Minerals are outstanding on the following Federal parcels: Sec. 17, SE1/4, Sec. 10, N1/2SE1/4.
4. Deed of Highway Right of Way for State Highway 18, dated December 31, 1952, issued by the United States of America through the Regional Director, Soil Conservation Service, to the State of South Dakota.