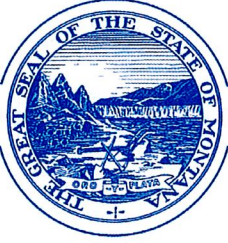


DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



STEVE BULLOCK, GOVERNOR

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STATE OF MONTANA

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December 12, 2013

Environmental Quality Council
Legislative Environmental Policy Office
State Capitol Building
1301 East 6th Avenue, Room 171
PO Box 201704
Helena, Montana 59620-1704

To the Environmental Quality Council:

In accordance with Section 75-1-314, MCA, the Department of Natural Resources and Conservation submits the attached Enforcement and Compliance Report for your review. The report contains information specific to each division in the department with enforcement and compliance responsibilities.

Should you have any questions or comments, please contact our department at (406) 444-2074.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Tubbs".

John Tubbs, Director
Department of Natural Resources and Conservation

Enclosures

**Department of Natural Resources
and Conservation
Enforcement and Compliance Report
Section 75-1-314, MCA**

**Forestry Assistance Program
Enforcement and Compliance Report
Section 75-1-314, MCA**

Montana DNRC'S forest practices regulatory programs promote information, education, and technical assistance, and ensure compliance with applicable laws to protect Montana's water quality, reduce fire risk, and promote sustainable forest management and stewardship on state and private lands in Montana.

Executive Summary

Montana's Forest Practices regulations exist to protect the state's forest, soil, and water resources. The Montana DNRC administers several laws as they pertain to Forest Practices: the Streamside Management Zone Law & Rules, the Control of Timber Slash and Debris Law & Rules, and the Montana Forestry Water Best Management Practices Program.

These regulations are essential in aiding the DNRC with fire hazard reduction, protecting riparian areas, minimizing non-point source water pollution from forest practices, and the overall promotion of effective, sustainable forest management and resource protection.

The DNRC is required to prepare a compliance report pursuant to House Bill 132, passed by the Montana Legislature in 1997, which requires Montana agencies with natural resource and environmental programs to biennially report to the Environmental Quality Council (EQC) on the status of compliance with and enforcement of Montana's natural resource and environmental laws and programs.

Key findings with this year's compliance report are:

- **The DNRC has seen a slight decrease in the number of open Hazard Reduction Agreements (HRAs), but there is more harvest activity associated with them. The HRA is designed to ensure that the fire hazard created through timber harvest – primarily forest residues (slash) left on-site – is mitigated per the guidelines of Montana's Timber Slash and Debris Law & Rules. Incidents of non-compliance – where DNRC has taken over an agreement and, thus, the responsibility for hazard mitigation, are down roughly 28% from FY12 to FY13.**
- **Over the past 15 years, violations of the Streamside Management Zone Law occurred on less than 1% of logging operations on private land. There were 4 such violations in 2013.**
- **Montana's voluntary Best Management Practices program continues to show compliance rates approaching 100% for both application and effectiveness, due largely to self-regulating by forest owners and operators as well as extensive training and outreach by DNRC and its partners.**

I. REGULATED PROGRAMS

- a. **Control of Timber Slash and Debris Law (HRA)** (76-13-401 through 415 MCA) requires a Hazard Reduction Agreement (HRA) to be in place to ensure the slash generated from any commercial timber harvest operation is treated to minimize the resulting fire hazard. Landowners, loggers, and/or other forest operators are subject to this law and must enter into a Hazard Reduction Agreement with DNRC. The HRA requires a performance bond be held by the Department until a certificate of clearance is issued.
- b. **Forestry Water Quality Best Management Practices (BMP)** (76-13-101 (2) & 76-13-420 through 76-13-424 MCA) is a non-regulatory program that uses education and monitoring to minimize soil and water effects from timber harvest and associated forest management operations. This program provides operators and landowners practical guidelines and technical assistance to protect soil and water resources while they conduct forest management operations, and enables biennial field reviews to monitor and report compliance.
- c. **Streamside Management Zone Law (SMZ)** (77-5-301 through 307 MCA) protects streams and adjacent lands during timber harvest activities. The SMZ law establishes buffers along streams where activity is regulated, yet limited timber harvesting is permitted.



II. PROMOTING COMPLIANCE, INFORMATION, EDUCATION, TECHNICAL ASSISTANCE

- a. **BMP Audits (Field Reviews):** The DNRC Forestry Division coordinates field reviews every other year on Forestry Water Quality Best Management Practices in Montana. The field reviews evaluate how well BMPs are at protecting soil and water resources. The results also represent how effective DNRC’s educational efforts are. The 2012 Field Reviews were at a 98% compliance level.
- b. **Other workshops/training:** Every year DNRC partners with the Montana Logging Association (MLA) to train logging professionals, forest landowners, and others about BMPs and SMZs. Attendance continues to be high. Completion of this class is a requirement to maintain Accredited Logging Professional (ALP) status.

BMP/SMZ	2009	2010	2011	2012	2013
# Workshops	5	5	5	5	4
# Participants	142	179	182	158	184

- c. **Alternative Practices:** The SMZ law allows for activities that are prohibited by the SMZ law, but meet the intent of the law. Requests for Alternative Practices ("Alternative" to management standards stated in 77-5-303(1) MCA) are given site visits, technical review, and MEPA review. If a request is granted, the Alternative Practice contains mitigation to protect the SMZ.

	2009	2010	2011	2012	2013
Alternative Practices Approved	13	9	23	40	22

III. THE REGULATED COMMUNITY – COMPLIANCE

- a. The regulated community under the **Control of Slash and Debris (HRA) Law**

- i. The regulated community under the Hazard Reduction Act includes anyone clearing rights of way (except temporary logging roads), cutting forest products, building haul roads, and/or carrying out timber stand improvement activities on private lands. Purchasers of such forest products are also part of the regulated community in that they must ensure the entities they are purchasing forest products from have complied with hazard reduction regulations.



- ii. HRA Agreement Summary

Active Fire Hazard Reduction Agreements

	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
Open HRAs	3429	3134	2696	2324	1896	1638	1407	1441

Purchasers Listed on HRAs

	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
# of Mills Reporting	49	78	62	60	50	43	42	48

IV. THE REGULATED COMMUNITY – NON-COMPLIANCE

a. **HRA:** The measure of hazard reduction non-compliance is the number of agreements the Department must take over because the responsible party has not complied with the terms of the HRA.

i. Number and description of non-compliance:

I. Individual HRAs:

	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY13
HRAs taken over by State of MT	51	19	31	30	25	14	14	10

II. Mills: No formal mill audits were conducted during FY 2009, 2010, or 2011.

b. **BMP:** Forestry BMP compliance is monitored every 2 years by conducting field reviews on 45 sites across Federal, State, Industry and Non-industrial private lands. Forest practices are rated for the Application and Effectiveness of BMPs. Results over 10 cycles show progressive improvement to consistently high scores. Field Reviews were conducted again in 2012.

Comparison of BMP Audit Results

Category	1992	1994	1996	1998	2000	2002	2004	2006	2008	2010	2012
Application	87%	91%	92%	94%	96%	96%	97%	96%	97%	97%	98%
Effectiveness	90%	93%	94%	96%	98%	97%	99%	97%	97%	98%	99%

c. **SMZ:** Non-compliance is enforced with either a Warning or a Repair Order, depending on the severity of the violation.

Number of SMZ Violations

FY	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Warnings	2	10	15	9	8	6	2	4	2	3	6	3
Orders	1	0	2	3	3	5	2	1	4	1	4	0

Over the past 12 years, the number of SMZ violations/warnings has averaged less than 1% of all logging operations covered by an HRA agreement.

**Board of Oil and Gas Conservation
Oil and Gas Conservation Division
Enforcement and Compliance Report
Section 75-1-314, MCA**

PROGRAM DESCRIPTION

The Board of Oil and Gas Conservation (Board) is composed of seven members appointed by the Governor for four-year terms, and the Board is attached to the Department of Natural Resources and Conservation (DNRC) for administrative purposes. The Board enforces oil and gas conservation statutes (Title 82, Chapter 11, MCA) and has rulemaking authority (Title 36, Chapter 22, ARM).

The Oil and Gas Conservation Division (Division) is the attachment to DNRC and serves as the staff for the Board. The Division's 17.0 FTE are located across the state: at the headquarters in Billings; an administrative office in Helena; and field offices in Shelby, Plentywood, Sidney and Miles City.

COMPLIANCE ASSISTANCE AND EDUCATION ACTIVITIES

Members of the Board include industry members and land and mineral owners who participate in various organizations and societies, which provide opportunities for outreach activity to the regulated community. Industry members participate in professional societies such as the Society of Exploration Geophysicists, American Institute of Petroleum Geologists, Montana Petroleum Association and the Northern Montana Oil & Gas Association. Land and mineral owner members typically participate in the two active land and mineral owner associations in the state: the Northeastern Montana Land & Mineral Owners Association and the Montana Land & Mineral Owners Association.

The Board's four professional staff members also participate in similar organizations and societies. Field inspectors perform routine visits to well sites and provide information and advice to operators about regulatory and/or compliance requirements.

REGULATED COMMUNITY

There are approximately 300 active oil and gas operators in Montana. They operate over 4700 oil wells and 6200 gas wells.

In **2011**, approximately 4 percent of operators (12) had significant non-compliance issues brought before the Board. Three operators (Bensun Energy, LLC; Mountain Pacific General, Inc., and Native American Energy Group, Inc.) had the same and/or other issues carryover from 2010. Each order issued is the result of a hearing before the Board. Numerous orders issued for a particular operator indicates the Board and operator continued their attempt(s) to resolve the matter multiple times.

In **2012**, only 2 percent of operators (7) had significant non-compliance issues brought before the Board, and three of those operators were still dealing with issues from 2011 or earlier.

NON-COMPLIANCES
Calendar Year 2011

Order Number	Operator	Violation	Penalty	Status
59-2011	United States Energy Corp.	Failure to file production reports	\$100 penalty – paid future late report penalty amount increased to \$50/mo/report	Closed
122-2011	Milan R. Ayers	Refusal to sign change of operator for farm tap gas well	Transfer well from Ayers bond to Sheble Ranch Inc bond. Done.	Closed
123-2011 178-2011 256-2011	Mountain Pacific General, Inc.	Failure to plug Fossum #10-8 well; Outstanding fine; Plan to return idle wells to production; Increase bond to \$250,000	Plugged Fossum #10-8. Paid outstanding fine of \$4900. Plan to plug 3 more wells; Suspended increase to bond.	Continued
124-2011 165-2011 257-2011 378-2011 481-2011	Brent Zimmerman	Failure to file production reports; Failure to appear; Compliance & clean up issues Heringer 11-21 well; Failure to appear and fail to pay fine;	\$500 fine for failure to file; \$80 penalty. Fines paid. Plan for future compliance required. Additional \$1000 fine – fail to appear; Schedule bond forfeiture hearing; Must pay \$1000 and issues resolved;	Continued
176-2011 255-2011	North American Technical Trading Company, Inc.	Need to plug four wells shut-in for over one year: Fugere 4-19; Fugere 1; Gendreau 1-24 and Saturn State 1	Ordered to plug Failed to plug or appear. Bond Forfeiture hearing scheduled	Continued
177-2011 3-A-2011 376-2011	Bensun Energy, LLC	Need to plug two wells: BN 11-11 and BN 12-11; Request for rehearing on new \$5000 fine	\$5000 fine imposed from Order 2-A-2010; \$5000 additional imposed from 177-2011 for failure to plug	Continued
179-2011	K2 America Corporation	Failure to plug three wells: North Fork #5, Big Knife #2, North Fork #3	None. Wells plugged	Closed

1-A-2011	Slawson Exploration Company, Inc.	Drilled Squadron 1-15-14H well without permit	\$5000 fine – paid	Closed
258-2011	MSC Exploration LP	Failure to provide plug plan for JV-P Lockman 1 well	Bond forfeited	Closed
259-2011	Southside Oil & Gas LTD	Failure to file production reports	\$40 fine – paid	Closed
379-2011 482-2011	Athena Energy, LLC	Failure to file production reports; Failure to appear	\$560 fine Schedule bond forfeiture hearing	Continued

Calendar Year 2012

Order Number	Operator	Violation	Penalty	Status
78-2012	Athena Energy, LLC	Failure to file production reports; Failure to appear; Failure to plug wells	Bond forfeited	Closed
79-2012	Energy Equity Company	Failure to plug Walker 44-2 well	Well plugged	Closed
301-2012 365-2012	Native American Energy Group, Inc.	Failure to address clean-up issues at 3 wells: S. Wright 5-35 Beery 2 Beery 22-24 Why \$1000 fine should not be doubled.	\$1000 fine; doubled if clean up not done by 8/12 hearing; Board clean up sites and bill NAEGI for costs; Schedule bond forfeiture hearing	Continued
302-2012 367-2012	Brent Zimmerman	Failure to clean-up Heringer 11-21 well site; Failure to appear	\$2000 fine for failure to appear again and failure to clean up well site; Schedule hearing for bond forfeit Bond forfeited.	Closed
364-2012	Mountain Pacific General, Inc.	Failure to plug 3 more wells: Ostrem 2-23; Tiber 30-2-8-4 and Tiber 30-2-18-1; and implementation of bond increase to \$250,000	3 wells plugged; One year extension (to August 2013) to implement bond increase; Plug plan for 4 wells in next year by Oct 2012	Continued
366-2012	G/S Producing, Inc.	Failure to comply with Section 82-10-503 re: surface owner notice	All parties try to work out issues and return Oct 12 Matter resolved.	Closed
531-2012	McOil Montana One, LLC	Failure to file production reports	\$340 fine paid	Closed

ENFORCEMENT EFFORTS

Field non-compliance issues are generally initiated by inspectors at the location with the operator or the operator's agent. Most non-compliance issues are resolved there. If not, the chief field inspector becomes involved and makes further attempts to achieve compliance. When all attempts have been deemed unsuccessful, the matter is considered a significant non-compliance issue, taken to the Board, and docketed as a "Show-Cause" hearing.

Production reporting non-compliance is identified by administrative staff and multiple attempts to resolve the matter are made prior to docketing those for Show-Cause hearings before the Board.

The Board is the final authority for enforcement actions. Decisions made by the Board may be appealed to District Court.

The Board recently hired a compliance officer. The officer will assess inspector, operator and Board compliance. The officer will then work with such individuals to facilitate changes to practices, rules and policies to provide consistency in the handling of violations and application of penalties.

TREND INFORMATION

No trends have been identified.

**Trust Land Management Division
Enforcement and Compliance Report
75-1-314, MCA**

DIVISION OVERVIEW

The Trust Land Management Division of DNRC manages approximately 5.1 million surface acres and 6.2 million subsurface acres of state land for 12 trust beneficiaries. We pride ourselves on being good neighbors and good stewards. Our stated Mission is *to manage the State of Montana's trust land resources to produce revenue for the trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land.*

The Trust Land Management Division (TLMD) is not a regulatory body, but rather enters into leases and contracts with entities that purchase the use of various natural resources such as forest and agricultural products through timber sales and agriculture/grazing leases, respectively. The Division is organized into four bureaus, each with a specific resource focus.

FOREST MANAGEMENT BUREAU

Regulated Community

As stated in the introduction, we do not have a regulated community per se, but rather entities with which we hold contracts and permits. At any one time, the bureau has approximately 50 active timber sale contracts. The program sells approximately 57.6 million board feet (MMbf) of timber annually and approximately 90 to 95 percent of the Program's volume is authorized via timber sale contracts. Timber sale contracts represent agreements for volume over 100 thousand board feet (Mbf) green timber or 500 Mbf salvage timber while timber permits represent agreements under those volume amounts.

Non-compliances

Each timber sale and permit is administered by Trust Lands staff members that regularly visit sites and complete comprehensive inspections of operator activities using inspection monitoring forms or other quality assurances provided for in the specified contract.

Similar to other land management agencies, Trust Land Forest Management Program activities must comply with regulations overseen by other regulatory agencies or divisions including Montana Department of Environmental Quality, Montana Fish Wildlife and Parks, and Montana DNRC Forestry Division. Forest Management Program Administrative Officers inspect compliance not only with Program stipulations and specifications, but also with regulations enforced by the above-mentioned regulatory agencies.

Over the past two years, 4 violations of the Streamside Management Zone (SMZ) Law enforced by the DNRC Forestry Division have occurred on forested state trust lands. For each of those occurrences, the Forest Management Program issued written warnings to purchasers. Forestry Division personnel inspected each of those sites and concluded that no follow-up action was required of the operator on 3 of the 4 sites. On the remaining site, the Forestry Division required a number of actions of the operator to repair damage in the SMZ. Both Forestry Division staff and the Trust Lands Division personnel ensured compliance with those stipulations.

Over the past two years, no timber sale contracts, timber permits, or forest management related procurement contracts have been terminated because of non-compliance with rules or regulations.

Enforcement Efforts

There are no instances of unresolved non-compliances.

MINERALS MANAGEMENT BUREAU

Regulated Community

The regulated community of the Minerals Management Bureau is composed of those with whom we have mineral leases. This regulated community is a subset of those reported on by other agencies such as the Board of Oil and Gas Conservation (BOGC) and the Department of Environmental Quality (DEQ). The State School Trust owns 6.2 million acres of mineral estate lands. However, mineral production occurs on only a small fraction, currently 245,000 acres. These are managed through the issuance of mineral leases, primarily for oil, gas, and coal. There are currently 679 producing leases for oil and gas and 4 producing leases for coal. The regulatory agencies mentioned above inspect and take enforcement actions on state-owned lands in the same manner as for private and/or federal lands that are under their regulatory jurisdiction. TLMD staff members also inspect state trust lands with active operations, though our role is that of a “landowner” and not in a strict regulatory capacity. TLMD Mineral Management activity is summarized below.

Oil and Gas

New Wells

New activity encompasses both wells and related infrastructure. In fiscal years 2012 and 2013, there were 14 and 17 new wells on state trust lands, respectively. All of these were inspected by both BOGC and TLMD field staff.

Existing Wells

As of March 2013, there were 259 oil and 395 gas wells producing on state trust lands. There were also 57 active water injection wells. These wells are located within 7 TLMD field office management areas across central and eastern Montana. BOGC staff inspects wells as appropriate pursuant to their regulatory oversight authority. TLMD staff inspects these wells on a periodic basis, primarily in conjunction with their surface lease management inspections. The number inspected varies with their surface inspection schedule. Wells are also targeted for TLMD staff inspection based on information gathered during routine inspections and/or information provided by BOGC inspectors. Common examples of possible enforcement actions arising from TLMD inspections are weed control, reclamation status, or revegetation success.

Coal

New Operations – None

Existing Operations

Ongoing surface mining operations are being conducted on four state leases. These operations are closely monitored by the DEQ Coal Bureau’s field staff. DEQ staff contacts TLMD whenever a change in operational status occurs. TLMD staff typically inspects operations as needed in conjunction with DEQ staff when operations on state lands advance into final reclamation activities. Because DEQ regulatory authority encompasses all lands disturbed by coal operations, no enforcement actions by TLMD staff are required.

Other Minerals

There are currently 51 gravel permits on state trust land. These operations are closely monitored by DEQ Opencut Bureau field staff. DEQ staff contacts TLMD if issues arise during operations

and when site closure and reclamation is commenced. TLMD field staff visit all gravel permit areas prior to commencement of operations and during reclamation. Some gravel operations are longer term, and TLMD site visits during operations are conducted on a periodic basis as needed.

Current Plans

TLMD is currently developing a risk-based inspection program for oil and gas operations on state trust lands. This program will provide a framework for more efficient and effective site inspections by TLMD staff related to non-regulated surface impacts due to oil and gas operations.

AGRICULTURE AND GRAZING PROGRAM

Regulated Community

As said in the introduction, we do not have a regulated community per se, but rather entities with which we have leases. The program is responsible for managing the agriculture and grazing resources on approximately 4.6 million acres of trust lands statewide. Currently there are 8,770 leases covering 4 million acres of grazing lands and 575,000 acres of agricultural lands, which includes cropland, hayland and lands enrolled into the Conservation Reserve Program (CRP). In addition, the program manages 225 grazing licenses on classified forest lands covering nearly 168,000 acres.

Leases are typically issued for ten-year terms. As required by law (§77-6-101 and §77-6-201, MCA), leases are inspected once during the lease term, normally the year prior to expiration. Any management issues identified during the lease inspection are addressed through a shortened term for the new lease, special lease conditions or lease non-renewal.

In **FY12**, 915 leases with 1,241 tracts covering 434,000 acres were inspected for lease renewal. Of those leases, 37 were renewed with 5 year terms and 84 had special lease conditions to address identified issues. The most common special lease conditions required development and implementation of either a cropland, grazing land, or weed management plan.

In **FY13**, 950 leases with 1,410 tracts covering 502,000 acres were inspected for lease renewal. Of those leases, 28 were renewed with 5 year terms and 75 had special lease conditions to address identified issues. Two leases were not renewed. As with FY12 leases, the most common special lease conditions required development and implementation of cropland, grazing land, or a weed management plan.

RECREATIONAL USE PROGRAM

Recreational use on trust lands is permitted by purchasing either a conservation license or a state land general recreational use license. In FY13, nearly 450,000 conservation licenses and 6,635 general recreational use licenses were sold. Additionally, outfitting is authorized under Special Recreational Use Licenses. Currently, there are 150 outfitting licenses containing 1,159 tracts on approximately 550,000 acres.

Enforcement of recreational use laws is conducted by Department of Fish, Wildlife & Parks Game Wardens. Criminal violations are handled directly by the warden through the county court system. Civil violations are sent to DNRC to process.

In **FY12**, 10 civil violations were issued and fines totaling \$685.00 were collected.
In **FY13**, 8 civil violations were issued and fines totaling \$830.00 were collected.

REAL ESTATE MANAGEMENT BUREAU

Regulated Community

As said in the introduction, we do not have a regulated community per se, but rather entities with which we have leases, easements, and licenses for various uses such as residential and commercial. Other entities responsible for regulating these uses include local government, the Department of Environmental Quality (DEQ), and any other agency responsible for development of land uses and the related impacts.

Property Management Section

This section oversees surface leasing on the 25,944 acres of trust land classified as “Other.” This classification of land is characterized as all trust land that is not Agriculture, Grazing, or Forest land. There are two programs that govern leasing activity on land classified as “other”: the Residential Leasing Program and the Commercial Leasing Program.

I. Residential Leasing Program (Cabin Site and Home Site Leases)

Leases are typically issued for 15 year terms. There are currently 782 lots that are designated for residential leasing. Of the 782, 15 lots have never been leased, and 87 have previously been leased but have been cancelled for non-payment. The resulting vacancy rate is 11.3%.

Compliance – Lease Payment

If lease invoices are not paid, the lease is cancelled. A letter is mailed to the former lessee informing them that the lease has been cancelled for non-payment and offering them a notice and opportunity for a hearing. This letter also offers an opportunity to reinstate the lease for a \$500 fee if paid within 30 days.

In **FY12**, 20 residential lease sites were cancelled for non-payment.

In **FY13**, 24 residential lease sites were cancelled for non-payment.

Compliance – Physical Review

Leases receive a physical inspection every 5 years to ensure lease compliance. The inspections are done in person on the lease site. A standard physical inspection form is completed by staff in the field and submitted to the Real Estate Management Bureau (REMB) for record. Any management issues discovered in the physical inspection are addressed by field staff, typically through a letter to the lessee outlining any violations and establishing time frames for correction. If a leaseholder has continued lease violations, the Department may also choose to renew the lease for a shorter term or not to renew the lease at all. The shorter lease term allows time for a lessee to correct violations and show improvement in the management of the lease before cancellation.

In **FY12** and **FY13**, no residential leases were cancelled for lease infractions.

In **FY12**, one lease expired and was renewed for only a 2-year term due to previous lease violations.

Legal Compliance Issues

In the 2011 Legislative Session, Senate Bill 409 (SB409) was introduced to create a different lease fee calculation. SB409 provided several different methods for establishing a lease fee. In spring of 2012, Judge Jeffrey Sherlock issued a temporary injunction to stop SB409 from being implemented. The future of both SB409 and Alternative 3B methods are pending the outcome of the Montrust III court case.

II. Commercial Leasing Program

Leases are issued for up to 99 years based on a Request for Proposal Process. Lease rental terms are negotiated between field, bureau, and legal staff to establish attainable rental fees that provide full market value for the beneficiaries. The lease fee may not be less than the amount described in 77-1-905.

Compliance – Lease Payment

If lease invoices are not paid, the lease is cancelled. A letter is mailed to the former lessee informing them that the lease has been cancelled for non-payment, and offering them a notice and opportunity for a hearing; this letter also offers an opportunity to reinstate the lease for a \$500 fee, if paid within 30 days, unless their lease document provides for alternative recourse for non-payment.

In **FY12**, 1 commercial lease site was cancelled for non-payment.

In **FY13**, 2 commercial lease sites were cancelled for non-payment.

Compliance – Physical Review

Unless the commercial lease document specifies a different physical review schedule, commercial leases receive a physical inspection every 5 years to ensure lease compliance. The inspections are done in person on the lease site. A standard physical inspection form is completed by staff in the field, and submitted to the REMB for record. Any management issues discovered in the physical inspection are address by field staff, typically through a letter to the lessee outlining any violations and establishing time frames to correct. Depending on the scale of the violation, the Department may cancel the lease, or choose to renew the lease for a shorter-term, or not to renew the lease at all. The lease document itself may also provide for remedies for violations.

In **FY12** and **FY13**, no commercial leases were cancelled for lease violations.

RIGHTS OF WAY/EASEMENTS

Upon approval by the State Board of Land Commissioners (Board) the Department has authority to process, issue, and reciprocate easements across State Trust lands for a variety of uses pursuant to §77-1-130, MCA (Historic Rights of Way), §77-1-617, MCA (Reciprocal Access), and §77-2-101, MCA. Legal documents issued contain special provisions and conditions for use including but not limited to reclamation after initial construction is completed, weed control, road maintenance, and compliance with any other permits that may be required from other state or federal agencies. Easements are also subject to a reversionary clause in which they may be terminated if the legal easement holder has not utilized the easement for its granted use with a period of five years.

In **FY12** and **FY13**, the Board approved and the Department granted 521 easements for a variety of uses including but not limited to private access roads, county public roads, state

highway projects, new utility installations, new water, oil, and gas pipelines, and existing (historic) utility lines. Prior to receiving approval from the Board, Department staff inspected and prepared environmental analysis documents associated with new installations and construction. Existing (historic) structures are excluded from environmental analysis by statute.

Easements are located across the State and are periodically inspected by local field office staff in conjunction with their surface lease management inspections or timber sale related activities. Easements are also reviewed based on receipt of requests for assignment of rights associated with easements. Common examples of possible enforcement actions resulting from these inspections are related to reclamation and re-seeding of a buried utility facility and weed control taking place on access roads.

In **FY12** and **FY13**, no easement holders were found to be in violation of any conditions or provisions of their legal document, therefore no enforcement actions were undertaken. In **FY12**, two easements issued for the purpose of a rail line were formally terminated due to non use. The facilities associated with these easements had been removed and reclaimed many years prior. Official termination provided a clear title to the State land so that it could be sold.

**Water Resources Division
Enforcement and Compliance Report
75-1-314, MCA**

MONTANA WATER MEASUREMENT PROGRAM

The **Montana Water Measurement program** was created with the responsibility of identifying chronically dewatered watercourses. The program provides water data, water right information, and water measurement expertise to watershed groups and user groups to improve local management of water resources. The program seeks to reduce adverse impacts to beneficial uses, such as agricultural, municipal, fisheries and recreational uses, and reduce conflicts between competing uses.

The Musselshell River and Mill Creek, a tributary of the Yellowstone River, are the two watercourses regulated. Compliance and enforcement efforts in the Musselshell Basin have improved with the creation of the “Musselshell River Distribution Project” and involvement of the District Court. As a result, compliance is close to 100 percent.

In Mill Creek, installation of measuring devices reached 90 percent compliance in 2001, and there is currently a high level of interest in water measurement in this watershed.

The program continues to work with the Mill Creek Subcommittee, Trout Unlimited, Montana Fish, Wildlife, and Parks, and local interests to investigate solutions to low stream flows. We have installed and are operating a gauging network in Mill Creek as well as collecting baseline flow data and irrigation diversion information for use in this effort. The program continues a cooperative water measurement effort on the Wise River.

BOARD OF WATER WELL CONTRACTORS

The **Board of Water Well Contractors program** is designed to reduce and minimize the waste and contamination of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring of wells. Water well construction standards are set in the administrative rules and enforced to ensure competency in the drilling and monitoring of water wells.

The Board directs investigations of complaints of unlicensed drillers and violations of water well construction standards submitted by the public, regulatory agencies, and other drillers. The Board holds hearings on complaints and, as warranted, prescribes education, remedial action, fines, bond forfeiture, license suspension, and license revocation to enforce state law and regulations. The program manager administers training, testing, licensing, and annual training and re-licensing of 244 Water Well Drillers, Monitoring Well Constructors, Water Well Contractors, and Inactive Licenses in Montana.

Complaints to the Board are analyzed and field investigated. There were 8 complaints of which 6 were filed formally in a written complaint and 2 were verbal complaint calls. Of those 5 formal complaints; 1 decision of the Board favored the complainant; 1 decision favored the driller; 1 complaint the driller resolved the complaint without the Board taking action; 1 complaint was a money issue which the Board does not have jurisdiction and 1 complaint was driller vs. driller. 2 complaints were settled without Board action. Drillers resolved the 2 verbal complaints without Board action. Typically there is voluntary compliance or correction of a construction standard based on the finding of the field investigator. Complaints that result in some remedial action by the driller have occurred on less than 1% of all water wells drilled in a year.

DAM SAFETY REGULATORY PROGRAM

The **Dam Safety Regulatory program** is designed to ensure that dams in Montana are operated and maintained in a safe manner. Primary regulatory responsibilities include: issuing operation permits; construction permits; and, conducting downstream dam hazard evaluations. Secondary regulatory responsibilities include: updating emergency action plans and responding to complaints on non-permitted dams. Permitted dam owners include irrigation districts, private irrigation companies, cities, counties, State of Montana, and private individuals. Federal dams are exempt from regulation. For more detailed information, please refer our web site at http://dnrc.mt.gov/wrd/water_op/dam_safety/default.asp.

The Dam Safety Program uses education and outreach to promote safe dams and compliance. The Dam Safety Program works with the Montana Association of Dam and Canal Systems to host annual dam owner workshops targeted towards permitted dams. A program is underway in cooperation with the Montana Watercourse of Montana State University to provide education to rural non-permitted dam owners on proper dam operation and maintenance.

Non-compliance with permitting requirements: Two reservoirs in Sweet Grass County are behind on conditions placed on their operation permit. Enforcement efforts are underway to assure operation permit conditions are met.

Non-compliance with standards: A municipal water supply dam in Lincoln County is out of compliance with spillway and seismic standards. Plans to rebuild the dam are near complete with construction planned for spring of 2014.

Rehabilitation is planned or underway to bring the following dams in compliance with dam design standards or to address dam deficiencies:

Dam	County	Activities
Upper Baker Dam	Fallon	Engineering and permitting near complete – Construction fall 2013 –winter 2014
Kerns Lake Dam	Powell	Construction near complete
Ruby Dam	Madison	Phase II construction underway
Flower Creek Dam	Lincoln	Engineering and permitting near complete – construction to begin Spring 2014
Kootenai Development Impoundment Dam	Lincoln	Alternative evaluation for removal/stabilization is underway.

The Dam Safety Program utilizes a compliance tracking program that keeps track of all permitting deadlines. Weekly automated reminders are sent to staff.

FLOODPLAIN MANAGEMENT PROGRAM

The **Floodplain Management Program** includes reviewing and approving local proposed regulations to assure minimum state and federal standards are met, providing training to local floodplain administrators and reviewing community administrative and enforcement procedures for continued compliance with their regulations. The National Flood Insurance Program (NFIP) provides funding for community oversight, outreach activities, training events, technical reviews and administrative assistance to 134 local governments. Approximately 95% of the local governments have adopted and are regulating building and construction in the Special Flood Hazard Area (SFHA) and/or the Regulated Flood Hazard Area (RFHA) as prescribed in their local regulations.

The State NFIP coordinator conducts approximately 25 formal community audits annually to verify compliance with the NFIP and state minimum requirements. The Floodplain Management Program has the authority to take over local floodplain permitting if a local government cannot or is unwilling to perform its required floodplain administration and regulation duties. Historically, effective collaboration between the state and the community has resolved deficiencies. Also, FEMA has the authority to put communities on probation or sanction for failure to implement and enforce local regulations. Probation causes flood insurance rates to go up. If a community is sanctioned, federally backed flood insurance is no longer available. Disaster and federally backed grant assistance may be significantly reduced or unavailable for sanctioned communities, as well. Such action by FEMA would result in the inability of banks or other lending institutions to sell home mortgages on the secondary market.

The City of Thompson Falls and the Town of Grass Range were sanctioned in the past five years because of community failure to adopt local flood plain management ordinances. Grass Range is currently in the process of joining the NFIP.

FLOODPLAIN MAPPING PROGRAM

The **Floodplain Mapping Program** objective is to work to achieve compliance with the requirement per 76-5-201, MCA for the department to initiate a comprehensive program for the delineation of designated floodplains and designated floodways for each water course or drain way in the state. DNRC's floodplain mapping unit has been partnering with FEMA and interested stakeholders to accomplish its mission of identifying and mapping flood risk in order to alleviate flooding threats to life and health and reduce private and public economic losses. It is currently estimated that roughly 10,000 miles of the state's 100,000 miles of rivers and streams have regulatory mapped floodplains since 1971. A current list of active mapping projects is listed below:

Project Name	Year Project Initiated	Project Cost
Missoula Countywide	2005	\$650,000
Yellowstone Countywide	2006	\$410,000
Ravalli Countywide	2008	\$555,000
Broadwater Countywide	2010	\$244,000
Stillwater Countywide	2010	\$280,000
Sweet Grass Countywide	2010	\$280,000
Flathead Re-Studies	2011	\$475,000
Granite Countywide	2011	\$497,000
Bozeman Creek Re-Study	2012	\$300,000
Big Hole River Study	2012	\$125,000

DNRC Water Rights Enforcement Litigation under §§85-2-114, -122, MCA

The Department has statewide jurisdiction for enforcement of the Water Use Act under §§85-2-114, -122, MCA including if a person is wasting water, using water unlawfully, and preventing water from moving to another person having a prior right to use the water. The Department strives to work with individuals to bring them voluntarily into compliance with the Water Use Act.

1. The Department investigates non-compliance upon receiving a complaint. The complaints are almost always filed by other water users who are adversely affected by the activity of the alleged violator.
2. Upon receipt of a complaint, the Department will investigate the water use and meet with the water user. The findings of the investigation are shared with both the person filing the complaint and with the alleged violator.
3. If the water user is not in compliance with the Water Use Act, the Department will suggest options to the water user to come into compliance. The vast majority of complaints are resolved informally without court action.
4. The Department has historically held in abeyance taking the alleged violator to district court for enforcement if the water user has filed an application for a permit for a new water use or change in existing water right, until such time as the Department issued a decision on the application.
5. The Department only considers court action (injunction or fines) if the violator refuses to come into compliance voluntarily, or is unsuccessful in obtaining a water right but continues to violate statute.

The Department has only taken three complaints to the district court out of the hundreds of complaints we have received over the last ten years including the complaint against Mr. Bouma. In the two cases cited below other than Bouma, the Department settled with the violator and agreed to forego penalties in return for them coming into compliance with the law. An additional action filed by the Gallatin County Attorney was also successful in resolving an unauthorized use of water.

DNRC v. Neal Bouma, and Harold Poulsen. CDV-10-1043, Cascade County

There are three dams located in succession on an unnamed tributary of the Sun River, clustered in a relatively small area, in the Upper Missouri River Basin closure, §§85-2-342 and -343, MCA. DNRC received a water use complaint on May 21, 2009, from another appropriator on the source that identified the dams as unpermitted and impounding water. DNRC confirmed that there is no water right authorizing the impoundment or storage of water for any purpose or beneficial use for any of the three dams. DNRC actively sought to work with Mr. Bouma and his predecessor, Mr. Poulsen, to bring them into voluntary compliance with the Water Use Act. It was only after the last permit application was denied and attempts to work with Mr. Bouma to remove the illegal dams failed that DNRC pursued judicial enforcement. The District Court directed Mr. Bouma to complete removal of the dams and restoration of the stream flow within 9 months from the date judgment is entered. The Judgment further required Mr. Bouma to pay a per diem penalty under §85-2-122(1), MCA, at the daily rate of \$50 beginning December 23, 2011, until such time as Mr. Bouma fully complied with the Court's Order. The dams were removed consistent with the Court's Order February 23, 2013.

DNRC v. Catlin Ranch, LP. DV-08-30, Meagher County

Catlin Ranch irrigated 232 acres of non-historically irrigated land in addition to 212 historically claimed irrigated land when it erected a 450 acre center pivot system and began using it in 2001. After several multiple-party complaints regarding the expanded irrigation acreage, DNRC filed suit in December, 2008. The case was resolved with less than a week remaining before trial by Catlin Ranch reducing the pivot to historically claimed acreage. DNRC agreed to waive seeking penalties as part of the agreement and judgment. The case took over 3 years to resolve. After the case was settled, Catlin Ranch applied for a change application which was approved by DNRC.

DNRC v. Bar C, Inc. DV-29-11-73, Madison County

Bar C, Inc. drilled a well and put the groundwater to beneficial use on 202 acres of newly broken out land under 4 new center pivots. After DNRC had issued its cease and desist directives, Bar C, Inc. continued to irrigate without any water right authorizing use of groundwater or a water right that was appurtenant to historically irrigated acreage. DNRC filed suit in 2011 requesting injunctive relief and penalties. The case was resolved by consent decree signed by the District Court with Bar C, Inc. agreeing to seek a permit and not to use the well. DNRC waived the penalty provisions as part of the agreement. After the case was settled, Bar C filed a change and a permit application.