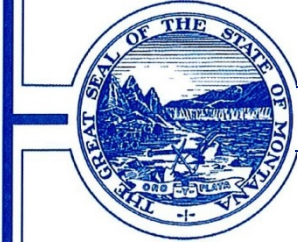


DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



STEVE BULLOCK, GOVERNOR

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— STATE OF MONTANA —

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February 2, 2016

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 6 such violations in 2015.**
- **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 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 2014 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	2011	2012	2013	2014	2015
# Workshops	5	5	4	4	4
# Participants	182	158	184	160	108

- 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.

	2010	2011	2012	2013	2014	2015
Alternative Practices Approved	9	23	40	22	25	21

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	FY12	FY13	FY14	FY15
Open HRAs	3429	3134	2696	2324	1896	1638	1407	1441	1,568	1,615

Purchasers Listed on HRAs

	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY12	FY13	FY14	FY15
# of Mills Reporting	49	78	62	60	50	43	42	48	42	43

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	FY12	FY13	FY14	FY15
HRAs taken over	5	1	3	3	2	1	1	1	0	4
	1	9	1	0	5	4	4	0		

II. Mills: No formal mill audits were conducted during FY 2013, 2014, or 2015.

b. **BMP:** Forestry BMP compliance is monitored every 2 years by conducting field reviews on 45 sites across Federal, State, Industrial 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	2014
Application	87%	91%	92%	94%	96%	96%	97%	96%	97%	97%	98%	97%
Effectiveness	90%	93%	94%	96%	98%	97%	99%	97%	97%	98%	99%	98%

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	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Warning	2	10	15	9	8	6	2	4	2	3	6	3	6	4	
Orders	1	0	2	3	3	5	2	1	4	1	4	0	1	2	

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 to act and enforce the Board's oil and gas conservation statutes (Title 82, Chapter 11, MCA) and when necessary, rule-making authority (Title 36, Chapter 22, ARM). The Board is attached to the Department of Natural Resources and Conservation (DNRC) for administrative purposes.

The Oil and Gas Conservation Division (Division) is the attachment to DNRC and serves as the staff for the Board. The Division is responsible for the prevention of resource waste through regulation of oil and gas exploration and production. It is made up of 24.50 FTE located across the state: at the headquarters in Billings; an administrative office in Helena; and field offices in Shelby, Plentywood, Sidney and Miles City.

PROMOTING COMPLIANCE, INFORMATION, EDUCATION, TECHNICAL ASSISTANCE

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 participate in annual safety training.

The entire field inspection process was re-evaluated when the field inspection manual was created to provide transparency to the oil and gas inspection program and a consistency in field inspections and enforcement processes.

Field inspectors perform routine visits to well sites, provide information and advice to operators about regulatory and/or compliance requirements, listen to and look at surface owner concerns, investigate complaints, etc.

The compliance officer monitors all compliance activity regardless of source through final resolution, including any necessary board action.

There has been an increase in show-cause hearings as a result of the newly implemented procedures.

REGULATED COMMUNITY

There are approximately 300 active oil and gas operators in Montana. They operate over 5,600 oil wells and 5,000 gas wells.

In **2013**, only two operators had significant non-compliance issues brought before the Board.

In **2014**, approximately four percent of operators (12) had significant non-compliance issues brought before the Board. One operator, Summer Night Oil Company, LLC, had the same and/or other issues carryover from 2013. In the tables below, 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.

Calendar Year 2013

Order Number	Operator	Violation	Penalty	Status
94-2013	Kykuit Resources, LLC	Failure to file production reports and failure to pay fine.	\$420 fine paid.	Closed
510-2013	Summer Night Oil Company, LLC	Failure to file production reports.	\$500 fine for failure to appear; \$140 fine for failure to file.	Continued

Calendar Year 2014

Order Number	Operator	Violation	Penalty	Status
213-2014 341-2014	Bensun Energy, LLC	Failure to remediate well site and tank battery violations; Failure to file production and injection reports.	\$120 fine paid .	Closed
339-2014 365-2014	Hawley Hydrocarbon , Merrill & Carol Hawley	Failure to remediate violations at Copley Haber 1 Well.	\$5000 fine; Compliance achieved; Fine reduced to \$2,500. Fine paid.	Closed
336-2014 362-2014	K2 America Corporation	Failure to file production reports and failure to pay fine.	\$220 fine for failure to file; \$1000 fine for failure to appear; schedule for plugging plan in 2015.	Continued
212-2014	Kelly Oil & Gas LLC	Failure to pay annual injection and failure to pay injection fee.	\$600 injection well fee for 3 wells (\$200/well), \$300 fine for 3 wells (\$100/well); \$1000 fine for failure to appear, totaling \$1,900.	Continued
337-2014 363-2014	P&P Industries LLC 1	Failure to file injection reports and failure to pay injection fee; Failure to appear. Why it shouldn't immediately plug its Indian Mound 1 Well.	\$1000 fine for failure to appear.	Continued
168-2014 217-2014 277-2014 340-2014	Produced Water Solutions, Inc.	Failure to file production reports and failure to pay fine; Failure to appear; Failure to plug wells.	\$1000 fine for failure to appear; \$120 fine for failure to file; Bond forfeited.	Closed
91-2014	R & A Oil, Inc.	Re-enter and properly re-plug the Bailee #1.	Need to pursue matter with both parties present.	Dismissed

338-2014 364-2014	Robinson Oil Company	Failure to file production reports and failure to pay fine; Failure to appear.	\$1000 fine for failure to appear; \$460 fine for failure to file; Reports filed; fines dismissed .	Closed
90-2014 169-2014	Summer Night Oil Company, LLC	Failure to provide plug plan for Anderson 27-1 and Anderson 27-2.	Schedule bond forfeiture hearing; Bond forfeited.	Closed
167-2014 216-2014 276-2014 361-2014	Wexco Exploration, LLC	Failure to file production reports and failure to pay fine; Failure to appear; Failure to plug wells; Failure to file correct production reports.	\$1000 fine for failure to appear; \$120 fine for failure to file; Reports NOT filed; fines received; Incorrect reports filed; Another \$1000 fine for failure to appear. Fine paid.	Continued
214-2014	Windy Butte Reclamation Facility, LLC	Failure to file injection reports and failure to pay injection fee.	\$240 fine paid	Closed
215-2014	XOIL Inc.	Failure to file production reports and failure to pay fine.	\$1000 fine for failure to appear - paid; \$140 fine for failure to file – 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 compliance officer becomes involved and makes further attempts to achieve compliance by contacting operator representatives and setting final deadlines. When all attempts have been deemed unsuccessful, the matter is considered a significant non-compliance issue. At this time, the matter is taken to the Board and docketed as a “Show-Cause” hearing.

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. Compliance prior to the hearing will get the docket dismissed.

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

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.

Real Estate Management Bureau

Regulated Community

As noted in the introduction, the Real Estate Management Bureau does not have a regulated community per se, but rather manages a portfolio of 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, and any other agency responsible for the development of land uses and the resultant 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 defined as all trust land that is not agricultural, grazing, or forest land. There are two programs that manage 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)

Residential Leases are typically issued for 15 year terms. **There are currently 772 lots**

that are designated for residential leasing. Of the 772 lots, 13 have never been leased, and 93 have previously been leased but have been cancelled for non-payment. The resulting vacancy rate is 12%.

Compliance – Lease Payment

If Lease invoices are not paid, the Lease is cancelled. A notice letter is mailed to the lessee informing them that the Lease has been cancelled for non-payment and offering the lessee an opportunity to have a hearing. This letter also offers the lessee an opportunity to reinstate the

Lease for a \$500.00 fee, if paid within 30 days. In **FY14**, 8 residential Leases were cancelled for non-payment. In **FY15**, 6 residential Leases were cancelled for non-payment.

Compliance – Physical Review

All properties under residential 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. Any management issues discovered during the physical inspection are addressed by field staff, typically through a letter to the lessee outlining violations and establishing time frames for correction. If a lessee has repeated Lease violations, the Real Estate Management Bureau may also elect to renew the Lease for a shorter term or not to renew the Lease at all. The shorter Lease term allows time for the lessee to correct violations and show improvement in the management of the Lease before cancellation. In **FY14** and **FY15**, no residential leases were cancelled for Lease violations.

Legal Compliance Issues

In the 2011 Legislative Session, Senate Bill 409 (SB409) was introduced to create an alternate method for calculating Lease fees. However, SB409 became the subject of litigation, and in the spring of 2012, a District Court issued a temporary injunction to stop SB409 from being implemented. The litigation was settled in the fall of 2015, which resulted in a new method for calculating Lease fees defined by the Settlement Agreement. This new method is currently being codified through revisions to the Administrative Rules of Montana, as they pertain to the calculation of residential Lease fees.

II. Commercial Leasing Program

Commercial Leases are issued for up to 99 years and are issued based on a Request for Proposal Process. **There are currently 141 active commercial Leases.** Lease terms are negotiated between field, Bureau, and legal staff to establish Lease fees that provide full market value to the trust beneficiaries. The Lease fee may not be less than the amount described in Section 77-1-905 of the Montana Code Annotated (MCA).

Compliance – Lease Payment

If Lease fees are not paid, the Lease is cancelled. A notice letter is mailed to the lessee, informing them that the Lease has been cancelled for non-payment, and offering the lessee an opportunity to have a hearing. This letter also offers an opportunity to reinstate the Lease for a \$500.00 fee, if paid within 30 days, unless the Lease itself provides for an alternative recourse for non-payment. In **FY14** and **FY15**, 0 commercial Lease were cancelled for non-payment.

Compliance – Physical Review

Unless the commercial Lease 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 Real Estate Management Bureau. 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 to correct such violations. Depending on the scale of the violations, the Real Estate Management Bureau may cancel the lease, or elect to renew the lease for a shorter-term, or not to renew the lease at all. The Lease itself may also provide for remedies for Lease violations. In **FY14** and **FY15**, 0 commercial Leases were cancelled for Lease violations.

RIGHTS OF WAY/EASEMENTS

Upon approval by the State Board of Land Commissioners (the Land Board) the Department of Natural Resources and Conservation (DNRC) 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 by DNRC 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 by other State or federal agencies. Easements are also subject to a

reversionary clause, under which they may be terminated if the legal easement holder has not utilized the easement for its granted use within a period of 5 years.

In **FY14** and **FY15**, the Land Board approved and DNRC **granted 568 easements** for a variety of uses, including but not limited to, public recreation trails, state parks, private access roads, county public roads, state highway projects, new utility installations, new water, oil, and gas pipelines, and existing (historic) private access roads and utility lines. Prior to receiving approval from the Land Board, DNRC staff inspected and prepared environmental analysis documents associated with new installations and construction. Existing (historic) structures are excluded from environmental analysis by statute.

Compliance – Physical Review

Easements located across State land 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 upon receipt of requests for assignment of rights associated with easements. Common examples of possible enforcement actions resulting from these inspections are reclamation and re-seeding of a buried utility facility and weed control measures on access roads.

Compliance – Enforcement

In **FY14** and **FY15**, no easement holders were found to be in violation of any conditions or provisions of their legal easement document, and therefore no enforcement actions were undertaken.

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 56.9 million board feet (MMbf) of timber annually and approximately 90 to 95 percent of the Program's volume is under contract 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, permit, and procurement contract is administered by Trust Lands staff members who regularly visit sites and completes 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, one violation of the Streamside Management Zone (SMZ) Law enforced by the DNRC Forestry Division has occurred on forested state trust lands. This violation occurred due to a Trust Land forester misinterpretation of the SMZ law and thus enforcing it incorrectly. The Program self-reported this violation to the Forestry Division. Forestry Division forest officers investigated and reported on the violation. Trust Land Management Division has committed to having a refresher SMZ class for all foresters.

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.

Agriculture and Grazing 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. The program is responsible for managing the agriculture and grazing resources on approximately 4.6 million acres of trust lands statewide. Currently there are 8,729 leases covering 4 million acres of grazing lands and 572,000 acres of agricultural lands, which includes cropland, hayland and lands enrolled into the Conservation Reserve Program (CRP). In addition, the program manages 217 grazing licenses on classified forest lands covering nearly 163,000 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 **FY14**, 953 leases with 1,453 tracts covering 475,000 acres were inspected for lease renewal. Of those leases, 27 were renewed with 5 year terms and 61 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. One lease was not renewed.

In **FY15**, 864 leases with 1,273 tracts covering 429,000 acres were inspected for lease renewal. Of those leases, 21 were renewed with 5 year terms and 42 had special lease conditions to address identified issues. As with FY14 leases, the most common special lease conditions required development and implementation of cropland, grazing land, or a weed management plan. Also in FY15, one lease was not renewed because of management problems.

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 FY14, nearly 445,000 conservation licenses and 5,844 general recreational use licenses were sold. In FY15, 498,556 conservation licenses and 6,558 general recreational use licenses. Additionally, outfitting is authorized under Special Recreational Use Licenses. Currently, there are 149 outfitting licenses containing 1,163 tracts on approximately 552,500 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 **FY14**, 5 civil violations were issued and fines totaling \$420.00 were collected.

In **FY15**, 8 civil violations were issued and fines totaling \$800.00 were collected.

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 198,300 acres. These are managed through the issuance of mineral leases, primarily for oil, gas, and coal. There are currently 673 producing leases for oil and gas and 7 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 2014 and 2015, there were 30 and 13 new wells completed into state trust lands, respectively. All wells drilled on state minerals were inspected by both BOGC and TLMD field staff.

Existing Wells

As of December 2015, there were 268 oil and 398 gas wells producing on state trust lands. There were also 66 active water injection wells. These wells are located within 6 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 – No new leases have been issued.

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 44 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 currently has in place a risk-based inspection program for oil and gas operations on state trust lands. This program provides a framework for more efficient and effective site inspections by TLMD staff related to non-regulated surface impacts due to oil and gas operations. The inspection program is modified and improved as needed.

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

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. The Department has not taken any complaints to the district court since 2011.

The **Montana Water Measurement program** was created to identify 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 agriculture, 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 formally regulated by the program. 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 nearly 100 percent.

In Mill Creek, there is still a high level of interest in measurement of diversions and stream flows. The program continues to work with the Mill Creek Subcommittee, FWP, and local interests to investigate solutions to critically low August stream flows. We are operating a gaging station near the mouth of Mill Creek to collect seasonal flow data.

The program has recently concentrated efforts in the Wise River basin. Working with the Big Hole Watershed Committee, the program has installed a gaging network on Wise River, including a satellite-telemetered real-time gage near the mouth. The program also participated in a water use study in the watershed, and is currently helping to create a Wise River Drought Management Plan.

The program continues to analyze and model Georgetown Lake annual water supply for the benefit of Granite County, Flint Creek Dam Advisory Committee, FWP, irrigator groups, and other interested parties.

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, 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 230 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 5 complaints of which 2 were filed formally in a written complaint and 3 were verbal complaint calls. Of those 2 formal complaints; 1 decision of the Board favored the complainant; 1 decision favored the driller. The 3 verbal complaints were resolved without the Board taking 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 (DSP)** 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/divisions/water/operations/dam-safety>

The DSP uses education and outreach to promote safe dams and compliance. The DSP works with the Montana Association of Dam and Canal Systems (MADCS) to host annual dam owner workshops targeted towards permitted dams. Key recent efforts to promote compliance include:

1. Publication of document on "[Liability of Dam Ownership.](#)" Dam owners that understand their legal responsibility under state law and potential liability consequences tend to comply with all regulations voluntarily.
2. Development of Program Compliance Manual. Following recent problems with a few permitted dam owners missing submittal deadlines, program staff developed a multi-pronged approach to achieving compliance, including improved reporting forms, improved guidance on inspection requirements and a tiered approach for staff to use when deadlines are not followed.

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

Non-compliance with permitting requirements: A municipal owner of an empty flood control dam in Missoula County allowed their operation permit to lapse. This dam has since been subsequently permitted.

Two private irrigation companies failed to submit the five year inspection report in time, in spite of repeated reminders from staff. Staff worked with both companies to bring them into compliance.

Non-compliance with standards: There are four non-permitted privately owned small dams recently classified as high hazard and are thus subject to operation permit requirements. However, these dams have deficiencies that prevent the DSP from issuing an operation permit. When the DSP issues an operation permit, it is an assurance to the public that the dam meets appropriate standards. While these dam owners work to secure the funding necessary to rehabilitate the dams, the DSP asks the dam owners to conduct inspections, develop emergency action plans and take other actions to prevent dam failure.

There are two permitted dams that are not in compliance with current standards. Construction is either planned or underway to address the deficiencies.

There is one permitted high hazard dam where the initial engineering analysis shows the dam to not be in compliance with the State’s spillway standard. A more detailed analysis to verify spillway capacity is planned for the winter/spring of 2016. Table 1 provides a summary of dams that are not in compliance with dam design standards

Table 1. Summary of dams requiring rehabilitation or additional engineering analysis

Dam	County	Activities
Surprise Creek Dam	Judith Basin	The dam owner is working to secure funding to replace deteriorating outlet works
Lakeside Dam	Yellowstone	The homeowners association has hired an engineering firm to inspect the dam and develop
Jordan Dam	Park	The dam owner has hired an engineering firm to inspect the dam and develop a repair plan.
Davis Dam	Powell	The dam owner is working to address deficiencies
Kerns Lake Dam	Powell	Construction near complete (on hold for the past 2 years), reservoir empty
Kootenai Development Impoundment Dam	Lincoln	Alternative evaluation and data collection for removal/stabilization is underway. This dam is on a superfund site and under multiple agency review.
Beaver Creek Dam	Hill	A more detailed analysis of spillway capacity is planned for 2016. Further actions will depend on the result of this analysis.

FLOODPLAIN MANAGEMENT – COMMUNITY ASSISTANCE PROGRAM

The **Floodplain Management Community Assistance Program (CAP)** is tasked with reviewing and approving local proposed regulations to assure minimum state and federal standards are met, formally delineating floodplains and floodways, and reviewing community administrative and enforcement procedures for continued compliance with local regulations. The National Flood Insurance Program (NFIP) provides funding for community oversight, outreach activities, training events, technical reviews and administrative assistance to 135 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 local regulations.

The State NFIP coordinator conducts approximately 25 formal community audits annually to verify compliance with the NFIP and state minimum standards. Each participating

community is also contacted annually to verify community information and needs. FEMA administers the NFIP and has the authority to put communities on probation or sanction for failure to implement and enforce local regulations. If a community is sanctioned, federally backed flood insurance is no longer available to residents within the community. Disaster and federally backed grant assistance may be significantly reduced or unavailable for sanctioned communities. 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 by FEMA in the past five years because of community failure to adopt local ordinances reflecting updated SFHAs. Grass Range is still in the process of joining the NFIP.