

HISTORIC RIGHTS OF WAY

The Historic Rights of Way statute (§77-1-130) went into effect October 1, 2001 as a temporary authorization to address trespass use of state trust land prior to 1997. The statute specifically directs the application process for county government, private individuals and utility operators whose roads and facilities have not been previously legally cited. Originally designed to sunset on October 1, 2006, the statute was extended by the Legislature in 2005, 2011 and 2015 to allow potential applicants more time to apply. Currently, the statute will expire on October 1, 2021.

The statute also provides deviations from the standard easement process so as to encourage compliance, as well as simplify the process for Department staff. These departures include three major components of the existing standard easement process:

- Survey completed by a licensed surveyor or professional engineer is not required;
- Settlement of damages with the state surface lessee is not required;
- The Department is not required to analyze historic use under the Montana Environmental Policy Act (MEPA)

In the effort to promote compliance with the statute, the Department has:

- conducted informational meetings and training sessions for the Montana Cooperatives Association members and placed informational articles within their publications;
- attended district and annual meetings and made presentations to the membership of the Montana Association of Counties (MACo), as well as the Montana Association of County Road Supervisors (MACRS). In addition, the Department meets periodically with individual county commissioners

Since 2002 the Historic Right of Way statute has facilitated the following in regards to County roads:

- 649 county road easements issued
- \$775,000 collected in trust revenue
- County participation – see attached spreadsheet

COUNTY ROAD FIGURES AS OF DECEMBER, 2014

	Granted under Historic ROW	App. Received In Process	Processed - No Payment (not issued)	Existing ROW's Prior to Historic ROW Statute*	Compensation Paid to Trusts Per Historic ROW Grants
Beaverhead	60			7	\$119,896
Big Horn				7	
Blaine	16	33	17	33	\$53,956
Broadwater	1				\$3,880
Carbon				11	
Carter	30			3	\$8,292
Cascade	13				
Chouteau				13	
Custer				4	
Daniels				253	
Dawson	49		1	12	\$37,065
Deer Lodge	NO ROW'S ISSUED ON STATE TRUST LAND				
Fallon	77			19	\$26,615
Fergus	37	2		9	\$70,302
Flathead	3		3	37	\$33,903
Gallatin				12	
Garfield				2	
Glacier				2	
Golden Valley	9			1	\$13,844
Granite				7	
Hill			8	61	
Jefferson				6	
Judith Basin	7			15	\$41,610
Lake				1	
Lewis & Clark	1				\$12,960
Liberty	2			22	\$9,765
Lincoln				3	
Madison	1			6	\$2,029
McCone	11	27		26	\$5,453
Meagher				1	
Mineral				6	
Missoula			1	6	
Musselshell	1			7	\$1,280
Park				3	
Petroleum	1				\$561
Phillips		42	29	34	

Pondera	2	14		17	\$1,032
Powder River	NO ROW'S ISSUED ON STATE TRUST LAND				
Powell	4			1	\$26,635
Prairie	53	1		7	\$23,463
Ravalli				1	
Richland	79			32	\$33,928
Roosevelt	22			9	\$18,161
Rosebud	6			4	\$16,020
Sanders				25	
Sheridan				20	
Silver Bow	NO ROW'S ISSUED ON STATE TRUST LAND				
Stillwater				25	
Sweet Grass				3	
Teton	2		2	14	\$2,710
Toole	42	4		51	\$58,261
Treasure	NO ROW'S ISSUED ON STATE TRUST LAND				
Valley	85	2		215	\$52,444
Wheatland				5	
Wibaux	NO ROW'S ISSUED ON STATE TRUST LAND				
Yellowstone	35			36	\$101,563
					\$775,628
*It is believed that quite a few of the roads granted under these earlier easements were never constructed in the location provided in the easement.					