

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



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STATE OF MONTANA

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December 30, 2021

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

Chairman Lang and 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 cursive script that reads "Amanda Kaster".

Amanda Kaster, Director  
Department of Natural Resources & Conservation

*Enclosures*

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

## Water Resources Division

### **DNRC Water Management Bureau**

#### **Montana Water Measurement Program**

The Montana Water Measurement Program was created to identify chronically dewatered watercourses. The program provides water and snowpack data, water right information, and water measurement expertise to watershed groups and user groups to improve local water resource management. 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 some renewed interest in solving dewatering problems on the lower reaches during late summer. The program continues to work with FWP and local groups to operate a gaging station near the mouth of Mill Creek, and to discuss possible solutions.

The program continues to analyze and model Georgetown Lake water supply for the benefit of Granite County, Flint Creek Dam Advisory Committee, FWP, irrigator groups, power generation, and other interested parties. Program staff have also assisted Beaverhead Conservation District staff to install and operate recording gages on the Red Rock River as part of an effort to better understand the interplay between surface and shallow groundwater resources. During the past biennium, the program has not received any water measurement installation grant applications.

### **Water Operations Bureau**

#### **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 the state by reasonable regulation and licensing of drillers and constructors of water wells and monitoring wells. Water well construction standards are set in the administrative rules and enforced to ensure compliance with water well and monitoring well construction.

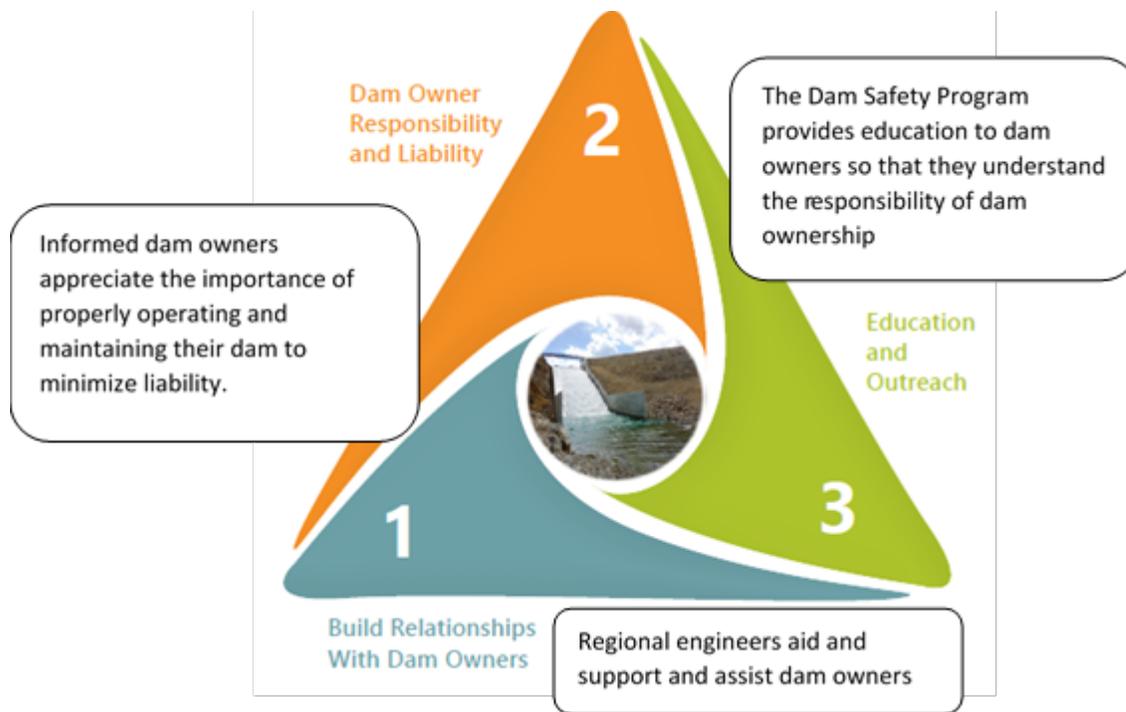
The Board directs investigations of complaints of unlicensed drillers and violations of water well construction standards submitted by the public, regulatory agencies, and other drillers. The Board holds hearings on complaints and as warranted, prescribes education, remedial action, bond forfeiture, license suspension, and license revocation to enforce state law and regulations. The program manager administers training, testing, licensing, annual training, and re-licensing of 209 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 3 complaints filed formally in written complaints and 3 complaints were verbal. Of those 3 formal complaints; 1 decision did not favor the driller; 1 complaint is scheduled for final review by the Board at its February 2, 2022, Board meeting; and 1 complaint was resolved without the Board acting. The 3 verbal complaints were resolved without the Board acting. Typically, there is voluntary compliance or correction of a construction standard based upon the findings of the field investigator. Complaints that result in some remedial action by the driller have occurred on less than 1 percent of all water wells drilled in a year.

### **DAM SAFETY REGULATORY PROGRAM:**

The Dam Safety Program (DSP) is designed to ensure that dams with potential for loss of life downstream are operated and maintained in a safe manner. A dam with potential for loss of life downstream is classified as a “*high hazard*” dam. This classification reflects what is located downstream of the dam and is not a description of the dam condition. Primary regulatory responsibilities include issuing *Operation Permits* and *Construction Permits* on high hazard dams and conducting downstream dam *Hazard Classifications* to determine if a dam has loss of life potential. When the DSP issues an *Operation Permit*, it is an assurance to the public that the dam poses an acceptable level of risk. Secondary regulatory responsibilities include assistance to owners with program compliance and responding to complaints on non-high hazard dams. Permitted dam owners include irrigation districts, private irrigation companies, cities, counties, State of Montana, and private individuals. Dams under federal jurisdiction are exempt from regulation. There are two key documents available that further describe Dam Safety Regulation in Montana:

1. ***DAMS IN MONTANA***: DISCUSSES THE DISTRIBUTION, OWNERSHIP AND OVERSIGHT OF DAMS.  
<http://dnrc.mt.gov/divisions/water/operations/docs/dam-safety/publications/DamsinMontana12282018.pdf>
2. ***Intro to the Montana dam Safety Program***: Provides an overview of the Dam Safety Program laws, rules, responsibilities, staff AND compliance approach  
<http://dnrc.mt.gov/divisions/water/operations/docs/dam-safety/publications/dsp-brochure-4-22-2021-web2.pdf>



**Three Part Approach to Compliance**

**Compliance Tools**

The DSP also utilizes a *Compliance Tracking Program* that keeps track of all permitting deadlines. Weekly automated reminders are sent to staff.

*Technical Notes* are Montana specific documents that provide engineers guidance for their evaluations of dams. <http://dnrc.mt.gov/divisions/water/operations/dam-safety/technical-notes> . The DSP recently added guidance for conducting a seismic analysis of dams and guidance for navigating the design review projects for dam construction.

The *Dam Safety Program Website* is being restructured to provide detailed, organized information to dam owners, engineers and the public on topics such as constructing a new dam, repairing an existing dam, permitting an existing dam, filing a compliant and much more. <http://dnrc.mt.gov/divisions/water/operations/dam-safety>

A contractor was hired to develop a variety of *Funding Resources* for dam owners to understand and pursue funding opportunities, both state and federal, that can be used to help pay for the costs of dam rehabilitation. <http://dnrc.mt.gov/divisions/water/operations/dam-safety/funding-resources> . The high expense associated with dam maintenance and rehabilitation are obstacles to dams meeting standards.

**Non-compliance with Annual Requirements**

Dam owners are required by their *Operation Permit* to complete an annual “owners” inspection. It is often a challenge to get these completed, often requiring multiple reminders from dam safety staff. The

DSP has found the best compliance tool is for local regional engineers to remind dam owners their inspection is due soon (or overdue). For 2021, there is 68 percent compliance, noting that dam owners have one month remaining in 2021 to submit their reports.

Administrative rules also require that Emergency Action Plans (EAPs) be updated annually. Many dam owners fail to meet this requirement. In the past, the DSP had a dedicated staff member compensated with a grant from FEMA to assist owners meet this requirement. Due to decreases in the grant award, the DSP could no longer fund that position. Regional engineers have many other duties besides dam safety and do not have time to take on this additional responsibility. The DSP has subsequently changed their procedure. At Operation Permit renewal time, the dam owner is required to have an updated EAP. The other years, the responsibility to meet this rule lies with the dam owner. For 2021, there is 64 percent compliance with Emergency Action Plan annual updates, noting that dam owners have one month remaining in 2021 to comply.

The DSP frequently reminds owners that there could be liability associated with failure to meet annual requirements, should something unforeseen happen to the dam. The DSP actively tracks annual requirement compliance but does not have the resources currently to take enforcement action against dam owners that fail to comply.

#### **Non-compliance with Five Year Inspection requirements**

Three dams in Sweetgrass County failed to get the five-year inspection completed on time. The DSP provided frequent reminders starting one year in advance. Failure to get the inspection complete on time resulted in the lapse of the Operation Permit. The inspection was eventually completed (tardy by approximately one month). The DSP also experienced problems getting the inspection report submitted. When the inspection report was ultimately submitted, it was rejected for being incomplete and not complying with administrative rules. The DSP is continuing to work with the owners and the engineers to obtain a satisfactory inspection report. The dams are over 100 years old and have several age-related deficiencies. It is important the inspection report address the problems at the dam and provide both short term and long-term solutions to protect the downstream public.

History has proven the key to safe dams are proper inspections. The Dam Safety Program has been struggling with the quality of inspection reports received from many of the non-state-owned dams. A two-year plan for improving inspection report quality was initiated in July 2021. The first step is to assess downstream hazards. A contractor has been hired using FEMA grant funds and work is underway to map the risk below permitted dams in a credible dam failure scenario. The next step to be initiated in the spring of 2022 will be to develop clear, consistent, and comprehensive guidelines to assure quality inspections commensurate with the risk downstream. An administrative rule change may be necessary in the future. Communication with dam owners and engineers is part of the effort. A survey and informational bulletin are scheduled for January 2022.

#### **Non-Compliance with Permit Conditions**

Permit conditions are issued during the operation permitting process when a dam has a potential problem that can impact the overall safety of the structure. Conditions can include implementing a reservoir level restriction, requiring an exercise of an emergency action plan, conducting additional

analysis, or monitoring, or completing a repair. Failure to complete a permit condition can result in revocation of the Operation Permit. Revocation of an Operation Permit can result in the reservoir being drained or restricted, notification of the downstream public and/or a civil penalty.

One dam is not in compliance with a current permit condition requiring investigation of a problem gate. However, the owner has been persistent in trying to find a solution, including use of divers without success. They are currently assessing bringing a national expert to assist.

**Non-Compliance with Standards**

There are 5 non-permitted high-hazard dams (Table 1). All but one is privately owned. These dams have deficiencies that prevent the DSP from issuing an *Operation Permit*. These dams are all making progress to address deficiencies. In the interim, the DSP asks the dam owners to conduct inspections, develop emergency action plans and take other actions to prevent dam failure. Table 2 summarizes permitted dams with engineering analysis, investigations, or rehabilitation underway or planned. Where necessary, the DSP works with the dam owners to implement risk reduction measures while efforts to rehabilitate or investigate the dam are underway. Risk reduction measures include reservoir level restrictions, additional monitoring requirements and emergency planning exercises with affected communities.

**Table 1. Summary of High Hazard dams with Operation Permits Pending**

Dam	County	Activities
Moulton Dam	Butte - Silver Bow County	Plans underway to replace the spillway and add additional drainage downstream. Construction planned for 2022.
Jordan Dam	Park	Design have been submitted for review to address outlet deficiencies and upstream face deterioration. Owners are operating reservoir at a reduced level. Permit Pending upon construction completion
Davis Dam	Powell	Only house downstream is schedule for removal, dam will no longer be classified as high hazard.
Jackson Dam	Madison	A construction permit has been issued. Rehabilitation is on hold while owner is pursuing funding. Reservoir is maintained empty. An Operation Permit will be issued upon construction completion. rehabilitation.

Kistner Hardy Dam	Gallatin	Newly classified as high hazard. Currently pursuing requirements with the intent to get an Operation Permit soon.
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**Table 2.** Summary of Permitted High Hazard dams with engineering design, investigation, and rehabilitation underway or planned.

<b>Dam</b>	<b>County</b>	<b>Activities</b>
Lower Willow Creek Dam	Granite	Feasibility Analysis underway to determine best means to rehabilitate a deteriorated drain. Permitted with Conditions.
Powell Dam	Powell	Funding for additional drainage and other stabilization actions has been obtained. Initiated plans to hire an engineer and begin design. Construction in 2022 or 2023. Permitted with Conditions.
Eureka Dam	Teton	Partial funding for addition of a stability berm has been obtained. Investigating other funding options to move forward. Permitted with Conditions.
Willow Creek Dam	Madison	A feasibility analysis to investigate alternatives and issues associated with spillway replacement will begin soon. A reservoir level restriction is in place to prevent a high depth of water over spillway. Permitted with Conditions.
Kootenai Development Impoundment Dam	Lincoln	Evaluation of embankment seepage continues. Construction of a replacement spillway is underway. This dam is on a superfund site and under multiple agency review. Permitted with Conditions.
Basin #1	Butte Silver Bow	Initiating design for repair of deteriorated concrete on upper section of the dam. Construction planned for 2022. Permitted with Conditions.

Glen Lake	Lincoln	Deterioration of upstream face of dam reported to be caused by recreational boating use on the reservoir. Voluntary reservoir level restriction in place. Investigating funding options.
Cataract Dam	Madison	Collapsed drainpipe and seepage problems. Reservoir level restriction in place. Dam owners currently pursuing possible funding sources for rehabilitation.

**STATE FLOODPLAIN PROGRAM:**

The primary objective of the Floodplain Mapping Program is to develop and implement a comprehensive mapping plan of the state’s rivers, waterbodies, and drain ways for the delineation of designation of floodplains and floodways, as prescribed in Montana Annotated Code (MCA) 76-5-201.

The DNRC’s floodplain mapping section has been partnering with FEMA and interested stakeholders to accomplish its mission of identifying and mapping flood hazards to alleviate flooding threats to life and health and reduce private and public economic losses. It is currently estimated that roughly 14,600 miles of the state’s 73,000 miles of rivers and streams have regulatory mapped floodplains. At this time, roughly 55 percent of the state’s mapping portfolio is currently being updated. Twenty-four (24) counties and two (2) reservations have had their paper Flood Insurance Rate Maps (FIRM) converted to a modernized digital format. Modernizations for thirteen (13) additional counties are underway along with several river corridor floodplain study updates.

The Floodplain Management Community Assistance Program (CAP) is tasked with reviewing and approving local proposed floodplain regulations to assure minimum state and federal standards are met. CAP is also tasked with reviewing community administrative and enforcement procedures for continued compliance with local regulations. The National Flood Insurance Program (NFIP) provides CAP program funding for community oversight, outreach activities, training events, technical reviews, and administrative assistance to 137 local governments. Participating NFIP communities have adopted and are regulating building and development within the Special Flood Hazard Area (SFHA) and/or the Regulated Flood Hazard Area (RFHA) as prescribed in local regulations.

Program staff conduct approximately 65 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 ten years because of community failure to adopt local ordinances reflecting updated SFHAs on new FIRMs. The Town of Brockton and the Town of Browning have been formally disincorporated and removed from the Montana active communities participating in the NFIP. CAP is also working on how to address floodplain compliance for state-owned and state-managed properties in the Special Flood Hazard Areas (SFHA).

## **Trust Land Management Division Enforcement and Compliance Report**

### **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 and revenue focus.

### **Forest Management Bureau**

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 500 thousand board feet (Mbf) of green or 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 complete comprehensive inspections of operator activities using inspection monitoring forms or other quality assurances provided for in the specified contract.

Like 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 was reported on forested state trust lands. The reported violation occurred on

DNRC's Stryker Basin timber sale on the Stillwater unit of the northwestern land office. In this situation, the purchaser felled trees associated with right-of-way clearing for a temporary road. It was quickly acknowledged that the road was in the wrong location and felling was stopped. Tree retention within the SMZ was maintained, but equipment was operated within the SMZ. This violation was self-reported to DNRC Forestry Division by the Trust Lands forest officer. No mitigation measures were required, and the minor violation resulted in no fines.

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.

## **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, Department of Fish Wildlife and Parks, 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 13,603 acres of trust land classified as "Other'," in addition to Land Use Licensing secondary uses on other land classifications. Land classified as "Other" is defined as all trust land that is not agricultural, grazing, or forest land. There are two leasing programs for activity on land classified as "Other:" the residential leasing program and the commercial leasing program.

### **Residential Leasing Program (Cabin Site and Home Site Leases)**

Residential leases are typically issued for 15-year terms. As of November 10, 2021, there are currently 565 lots that are designated for residential leasing. Of the 565 lots, seven have never been leased, 10 are inactive, and 57 have previously been leased but have been cancelled for non-payment. The resulting vacancy rate is 13.1 percent.

The Department is actively selling cabin sites through the Land Banking program in accordance with MCA 77-2-308. As cabin sites are sold, the number of lots in the leasing program is reduced, and the vacancy rate fluctuates. Because this is an ongoing program, these inventory numbers often change from month to month.

### **Non-Compliance – Lease Payment**

If a lease invoice is not paid after 30 days delinquency, the lease is cancelled. A notice of cancellation is mailed to the lessee via certified mail informing them that the lease has been cancelled for non-payment. The notice of cancellation provides the lessee an opportunity to request a hearing, and the

option to reinstate the lease for a \$500 fee, plus outstanding rent, if paid within 30 days. In FY20, 18 residential leases were cancelled for non-payment. In FY21, nine residential leases were cancelled for nonpayment.

### **Non-Compliance – Physical Review**

All 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 lease is expiring that has had repeated lease violations, the lease may not be renewed, or may be renewed for a shorter term than the typical 15-year renewal. The shorter lease term allows time for the lessee to correct violations and show improvement in the management of the lease before cancellation. In FY20 and FY21, there was one lease cancelled for non-compliance, and an appeals/settlement process is underway.

### **Enforcement – Improvements Assumption**

Improvements upon an active residential lease are owned by the lessee. When a residential lease is cancelled, the former lessee retains ownership of the improvements under certain conditions. All residential leases provide conditions for the improvements upon cancellation, which include retained ownership for a period for the former lessee to attempt to sell the improvements to an incoming lessee, after which the State assumes ownership of the improvements on behalf of the trust beneficiary of the underlying land. Leases issued prior to 2010 provide for a two-year period. All leases issued after 2010 provide for a three-year period.

In addition to lease language, Administrative Rules of Montana (ARM) for the cabin site leasing program provide that the former lessee has a limited right to remove the improvements or be compensated for the improvements by a new lessee. Improvements that are not removed or sold in accordance with the ARM result in trust assumption and ownership of all improvements. The ability to remove or seek compensation for improvements is only available if the former lessee has continued to pay all taxes and any other applicable assessments and is limited to a period of up to three years after the date of cancellation or abandonment. If after three years there is no new lessee and the improvements have not been removed, the department will provide written notice to the former lessee granting 60 days for removal of remaining improvements and an opportunity to request a hearing. After that time, the improvements will become the property of the trust.

In FY20 and FY21, the Bureau sent four notices of state assumption to former lessees. Each of the lease sites included a cabin or home structure. In most instances, the remaining improvements had been unattended and unmaintained for over three years.

There was no objection to the improvements assumption process by the four former lessees who received the notice of state assumption. The improvements were assumed by the State and documentation was recorded with the applicable County. Since the assumption, two of the assumed improvements were subsequently demolished by the department due to the dilapidated nature of the structures and concern for human safety.

### **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 126 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 MCA.

### **Non-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. No commercial leases were cancelled for non-payment in FY20 or FY21.

### **Non-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. No commercial leases were cancelled for lease violations in FY20 or FY21.

### **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 FY20 and FY21, the Land Board approved and DNRC granted 373 easements for a variety of uses, including but not limited to, public recreation trails and fishing access sites, 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 FY20 and FY21, 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.

### **Agriculture and Grazing 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. The program is responsible for managing the agriculture and grazing resources on approximately 4.7 million acres of trust lands statewide. Currently there are 8,900 leases covering 4.1 million acres of grazing lands and 589,000 acres of agricultural lands, which includes cropland, hayland and lands enrolled into the Conservation Reserve Program (CRP). In addition, the program manages 196 grazing licenses on classified forest lands covering nearly 156,000 acres. Leases are typically issued for ten-year terms.

### **Non-compliance – Physical Review**

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.

### **Non-compliance – Enforcement**

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 FY20, 931 leases with 1,338 tracts covering 507,605 acres were inspected for lease renewal. Of those leases, 8 were renewed with 5-year terms, 59 had special lease conditions to address identified issues, and one lease was not renewed due to continual management issues. The most common special lease conditions required development and implementation of either a cropland, grazing land, or weed management plan. In FY21, 904 leases with 1,350 tracts covering 502,677 acres were inspected for lease renewal. Of those leases, 8 were renewed with 5-year terms and 25 had special lease conditions to address identified issues. As with FY20 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 FY20, 526,455 Conservation Licenses and 18,163 general recreational use licenses were sold. In FY21, 585,081 conservation licenses and 20,804 general recreational use

licenses. Additional recreational uses such as, trapping, commercial, and concentrated recreational uses, including outfitting, are authorized under Special Recreational Use Licenses (SRUL). Currently, there are 85 active SRULs for trapping on trust land, and 178 active SRULs for commercial and concentrate recreation across the state. Enforcement of recreational use law and rules 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. If a civil violation results in a penalty, the collected payment is distributed to the general fund.

In FY20, 10 civil violations were assessed a penalty and \$985 were collected.

In FY21, 13 civil violations were assessed a penalty and \$940 were collected.

## **Minerals Management Bureau**

The State School Trust owns 6.2 million acres of mineral estate lands. However, mineral production occurs only on a small fraction, currently 234,500 acres. These are managed through the issuance of mineral leases, primarily for oil, gas, and coal. Producing leases currently total 608 for oil and gas, and 6 for coal. All operations on these leases are regulated by the Board of Oil and Gas Conservation (BOGC) and the Department of Environmental Quality (DEQ). They 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 also inspect state trust lands with active operations, though our role is that of a "landowner" and not in a strict regulatory capacity. TLMD activity is summarized below:

### **Oil and Gas**

#### **New Wells**

New activity encompasses both wells and related infrastructure. In fiscal year 2020 and 2021, there were 5 new wells drilled on state trust lands.

#### **Existing Wells**

As of November 2021, there were 237 oil and 382 gas wells producing on state trust lands. There were also 58 active water injection wells (9 disposal and 49 enhanced recovery). These wells are located within 6 TLMD field office management areas across central and eastern

Montana. BOGC staff inspect wells as appropriate pursuant to their regulatory oversight authority. TLMD staff inspect 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 six 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 inspect operations as needed in conjunction with DEQ staff when operations on state lands advance into final reclamation activities. Because DEQ regulatory encompasses all lands disturbed by coal operations, no enforcement actions by TLMD staff are required.

## **Other Minerals**

There are currently 49 gravel permits on state trust land. These operations are closely monitored by DEQ Opencut Section 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

Over the last three years TLMD has implemented and improved upon a field well inspection application used on electronic tablets that aid field staff in digitally filling out, submitting, and tracking oil and gas well inspections as part of the continually developing risk-based inspection program for oil and gas operations on state trust lands. This application has been successful in providing a framework for more efficient and effective site inspections by TLMD staff. Between fiscal years 2020 and 2021, field staff have filled out 644 field inspection forms for oil and gas wells. Eventually, all TLMD oil and gas wells will have been inspected and will be on a regular inspection cycle. Currently these digital inspection forms can be viewed by TLMD managers or field staff to recall a specific inspection for any of the inspected wells. Given the success of the oil and gas inspection application, a similar version was created, and is being tested for the inspection of TLMD gravel operations. With the rollout of a new TLMD data management system, it is the hope of the Minerals Management Bureau, MMB, to be able to easily pull up inspection statistics and status reports on any of the oil, gas, or gravel operations occurring on state lands.

During the 2021 field season, the MMB has incorporated the use of a drone to inspect state gravel pits. The average time required for a single person to survey a gravel pit using a drone is approximately 15-20 minutes compared to 4 or more hours with a 2-person survey crew using traditional survey methods. The MMB estimates that it saves approximately 8 man-hours on average per pit survey by utilizing drone surveys. Drone surveys have allowed the MMB to more accurately audit volumes of gravel mined and topsoil retained for reclamation on state pits at a much higher frequency. 39 gravel pits were inspected by utilizing a drone during the 2021 field season and the remaining 10 gravel pits, along with topography of future pits will be surveyed in the 2022 field season.

## **Board of Oil and Gas Conservation Oil and Gas Conservation Division Enforcement and Compliance Report**

### **COMPLIANCE ASSISTANCE AND EDUCATION ACTIVITIES**

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 has 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 Division is made up of 19.5 FTE. Eight of these FTEs are directly involved with inspection and enforcement activities including a chief field inspector, 6 field inspectors, and a compliance coordinator.

Field inspectors perform routine visits to well sites to confirm compliance, provide information and advice to operators and landowners about regulatory requirements, investigate complaints, witness mechanical integrity tests and the plugging of wells, and supervise the plugging and abandonment of orphan wells.

Field staff conducted over 12,000 field inspections during FY20-21, including approximately 8,000 random inspections. The goal of inspections is to attain and maintain compliance with the rules and requirements. This is achieved by communicating with the operator what actions are necessary to prevent or correct violations. All violations and compliance issues not resolved under established schedules are addressed by the Board through show-cause hearings. There are several attempts to resolve the matter prior to the matter being taken to the Board and docketed as a "Show-Cause" hearing.

### **REGULATED COMMUNITY**

The program regulates approximately 360 oil, gas, injection, and domestic gas well operators or owners in Montana who operate approximately 13,000 wells, including 5,000 gas wells, 6,400 oil wells, 220 gas storage wells, and 1,241 injection wells.

The oil and gas division estimates that 96 percent of the regulated community is in compliance with Board rules.

## NONCOMPLIANCE

Compliance issues are commonly identified through field inspections but can also be discovered through office compliance reviews and concerns expressed by land or mineral owners.

Most non-compliance issues in the field are resolved there. If not, the violation is referred to the compliance officer who makes further attempts to achieve compliance by contacting operator representatives and setting final deadlines. When all other attempts have been deemed unsuccessful, the matter is referred to the Board and docketed as a “Show-Cause” hearing. The following table is an overview of the number of field inspections conducted and the number of violations during FY2020 and FY2021.

Table 1:

Year	Number of Field Inspections	Violations	Percent of Non-Compliance
2020	6,678	299	11%
2021	5,420	371	15%
<b>Total</b>	<b>12,098</b>	<b>670</b>	<b>13%</b>

Through the reported period, weeds, site housekeeping, and signage represent approximately 88 percent of the recorded violations. Other violations include spills or releases, and improper production or injection equipment or facilities.

Compliance issues originating in the office primarily involve reporting deficiencies. The Board has authorized the application of administrative penalties for delinquent reporting, and if the violations remain unresolved at the administrative level, a show-cause hearing is scheduled.

The Board may issue civil penalties up to a maximum administrative penalty of \$125,000 (Sections 82-11-147 and 82-11-149, MCA). Penalties are automatically applied only in the case of delinquent reporting. All other penalties are established through the hearing process and can be either a fine for the violation or a daily fine that accrues until compliance is achieved. The Board is the final authority for enforcement actions, and orders issued by the Board may be appealed to District Court.

## ENFORCEMENT EFFORTS

Any compliance issue that is the subject of a show-cause docket may result in multiple hearings and orders to meet either Board or statutory requirements. An operator’s overall compliance may also be monitored once the initial issue is resolved by continuing the docket to future hearings.

The following table is an overview of compliance issues brought before the Board and number of cases that were closed or are ongoing.

Table 2:

Compliance Issue	Number of Cases	Closed	Ongoing
Reporting violation	20	17	3
Inactive well review	7	7	0
Reclamation / "Housekeeping"	7	7	0
Mechanical integrity	4	4	0
Landowner Concern	2	1	1
Required report	1	1	0
<b>Total</b>	<b>41</b>	<b>37</b>	<b>4</b>

The main compliance violation during this period is reporting. A monthly injection or production report must be filed on all unplugged wells. Of the 98 violation notices mailed to operators regarding delinquent reporting, 20 resulted in Board referral.

Of the 670 field violations listed in Table 1, 604 were closed and 66 are ongoing. Thirteen cases originating from field inspections were referred to the Board. Many actions, including well abandonment or reclamation activities, are dependent upon the time of year (weather), crop schedules, seasonal use restrictions, or contractor availability. As a result, incident or violation resolution may take more than one year to achieve.

During FY20-21, \$45,805 in penalties were collected, primarily for delinquent monthly reports, reclamation / "housekeeping" violations, and penalties for failure to appear at a show cause hearing. Any penalties collected go to the general fund.

## TREND INFORMATION

The most significant trend is the continuing loss of industry services within the state. Lack of drilling and workover rigs and a shortage of workers impacts both exploration and production activities and increases the time necessary to achieve compliance. Availability of industry personnel during the pandemic have contributed to an increase in some categories of violations over the past two fiscal years.

The lack of services has also had an impact on the Board's plugging and reclamation projects with a reduced number of companies responding to bid requests and increased costs for mobilization as services come from a greater distance.

## Forestry Division Enforcement and Compliance Report

### Division Overview:

The mission of the Forestry Division is to ensure the sustainability of Montana forests, rural lands, and communities through cooperative wildland fire protection, sound forest management practices, and promotion of a viable forest-based economy.

Specifically, the division's forest practices regulatory program provides information, education, and technical assistance, while promoting compliance with applicable laws meant to protect Montana's water quality, reduce fire risk, and promote sustainable forest management and stewardship on state and private lands.

The DNRC administers two laws related to forest practices, the Streamside Management Zone Law & Rules (SMZs) and the Control of Timber Slash and Debris Law & Rules. The DNRC also oversees the voluntary Montana Forestry Best Management Practices (BMP) program. These regulations and monitoring activities are intended to reduce wildfire hazards, protect riparian areas, and minimize non-point source water pollution from forest practices.

### I. REGULATED AND MONITORED PROGRAMS

a. **Control of Timber Slash and Debris Law** (76-13-401-415, 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 wildland fire hazard. Landowners, loggers, and/or other forest operators are subject to this law, under which they must enter into a Hazard Reduction Agreement with DNRC and pay a performance bond, to be held by the DNRC until a certificate of clearance is issued, confirming the hazard is mitigated.

b. **Streamside Management Zone Law**



(77-5-301-307, MCA):

Streamside Management Zone Law (SMZ) 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.

**c. Forestry Best Management Practices (BMP)**

(76-13-101(2) & 76-13-420-424, MCA):

This is a non-regulatory program that utilizes 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.

**I. PROMOTING COMPLIANCE, EDUCATION AND TECHNICAL ASSISTANCE**

**a. SMZ and BMP Field Reviews:**

The Forestry Division conducts field reviews to evaluate how well the SMZ Law and BMPs are being implemented and how effectively they are protecting soil and water resources. The results also represent the effectiveness of DNRCs educational efforts. The 2018 field reviews were at a compliance level of 98 percent for effectively implementing BMPs and 98 percent for effectively implementing the SMZ Law and Rules. This is an extremely high level demonstrating that protection of resources is important to everyone in the industry. The 2020 field reviews were canceled due to the pandemic, but the next cycle of reviews will be conducted in the spring of 2022.

**b. Workshops and Training:**

Every year, the DNRC partners with the Montana Logging Association (MLA) to train logging professionals, forest landowners and others about BMPs and SMZs. Attendance continues to be excellent, and completion of this class is a requirement to maintain Accredited Logging Professional (ALP) status.

BMP/SMZ	2017	2018	2019	2020	2021
# Workshops	4	4	4	4	6
# Participants	140	141	161	79	176

**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 required mitigation measures and appropriate sideboards to protect the SMZ and the stream.

	2017	2018	2019	2020	2021
Alternative Practices Approved	19	19	12	15	17

## II. COMPLIANCE

### a. Control of Slash and Debris Law:

The regulated community under the Control of Slash and Debris Law includes anyone clearing rights of way, cutting forest products, building forest roads, and/or carrying out timber stand improvement activities on private lands. Purchasers of forest products are also part of the regulated community in that they must ensure the entities from which they are purchasing forest products have a Hazard Reduction Agreement and are complying with hazard reduction regulations.

#### Active Fire Hazard Reduction Agreements

	FY17	FY18	FY19	FY20	FY21
Open HRAs	2,020	2,031	2,063	1,972	2,025

#### Mill Reporting

	FY17	FY18	FY19	FY20	FY21
# of Mills Reporting	44	53	51	55	49

### b. BMPs:

Forestry BMP compliance is monitored every 2 years by conducting field reviews on 45 randomly selected timber sale sites across federal lands, state lands, and industrial and non-industrial private lands. Forest practices are rated for the application and effectiveness of BMPs. Results over the last five cycles show consistently high compliance scores. Field reviews will be conducted again in the spring of 2022.

#### Comparison of BMP Audit Results

Category	2010	2012	2014	2016	2018
Application	97%	98%	97%	98%	97%
Effectiveness	98%	99%	98%	99%	98%

**c. SMZs:**

Non-compliance is enforced with either a warning or a repair order (penalty), depending on the severity of the violation. Since the law’s adoption, the number of SMZ violations/warnings has averaged well under 1 percent for all logging operations covered by an HRA agreement.

**Number of SMZ Violations**

	2017	2018	2019	2020	2021
<b>Warning</b>	2	6	8	1	2
<b>Orders</b>	1	1	2	3	2

**IV: NON-COMPLIANCE**

**a. HRA:**

The measure of hazard reduction non-compliance is the number of agreements that revert to the department due to the failure of the responsible party to comply with the terms of the HRA.

	FY17	FY18	FY19	FY20	FY21
HRA Reversions	6	2	11	5	3