

## **FINDING**

### **Long Creek Lease Boundary Fencing Project Proposed by Matador Ranch**

**Township 10S; Range 8W; Sections 28, 32, 33  
Township 11S; Range 8W Section 4**

**October 10, 2008**

#### **Introduction:**

The DNRC received an improvement request from the Matador Cattle Company to place a fence along the boundary of their existing state land grazing lease between other private ownership, other state land and BLM lands leased by another ranch. The purpose of this fencing is to: 1) separate Matador Cattle Company's state leases from an adjoining producer's Bureau of Land Management (BLM) permits, state lease and private land; 2) prevent livestock owned by neighboring producers from straying onto the above-described State of Montana trust lands to prevent un-authorized grazing; and 3) prevent Matador's livestock from trespassing onto the BLM permit and state lease of the adjoining producer.

The project area includes a block of state land encompassing approximately 9930 acres which is leased for grazing by the Matador Cattle Company and Alaska Basin Grazing Association (Roger Peters, Dragging Y). Alaska Basin leases approximately 3,360 of the state acreage under leases #2517, #981 and #1340. The Matador leases the remaining approximately 6565 acres under grazing leases #10116 and #6939 (see attached map). The Matador has leased this area at least since the late 1950's. The Matador lease area was originally leased entirely under lease #6939 and portions were either sub-leased or grazed in conjunction with other producers under pasturing agreements. In 1993, due to concerns relating to sub-leasing, multiple pasturing agreements and over-grazing of some riparian areas, approximately 3400 acres were separated from lease #6939 and placed into a new lease #10116 which was then co-leased by the Matador Ranch and the adjacent Knox Ranch who had been a participant in many of the past pasturing agreements and sub-leases. At the time, an assignment of lease #10116 back to the Matador Ranch as sole lessee was also signed by the Knox Ranch and held in escrow in the event the Knox Ranch was sold. In 2001, with the sale of the Knox ranch imminent, the assignment for lease #10116 was fully executed by DNRC and assigned back to the Matador Ranch. In 2001, the Alaska Basin Grazing Association purchased the Knox property and was assigned the state leases #2517 and #1340 which originally were in the Knox family as sole lessee in addition to Lease #981 which was leased by another entity.

Since 2001, there has been dispute surrounding the grazing use of the state lands under lease #10116. Because the lands under lease #10116 had been co-leased with the Knox Ranch there were no fences separating the state lease with other state, federal and private lands managed by the Knox Ranch. The new owner, Alaska Basin, had the understanding or interest in maintaining the past co-lease and utilization of Lease #10116 which was enjoyed by the Knox Ranch. Indeed

since 2001, there have been reports of livestock owned or under management by Alaska Basin utilizing the grazing resource on the Lease #10116 which is leased and paid for by the Matador Ranch. During the same period, the Matador Ranch has reportedly been unable to utilize the grazing resource they have under lease because there is no effective means to keep their livestock from trespassing onto other state, federal or private lands. For various reasons, a co-lease or sub-lease arrangement between the Matador Ranch and Alaska Basin has not been workable as had been conducted between the Matador and Koch Ranch.

### **Alternatives Considered:**

Alt A--No Action: The DNRC would not approve construction of the fence along the lease boundaries.

Alt B--Proposed Action: To construct approximately 9 miles of barbed wire fence along the boundary of the lease currently held by the Matador Cattle Company. The fence is to be constructed to conform to BLM fencing standards (4 strand barbed wire, maximum top wire height of 42" and minimum bottom wire height of 16"). Additional requirements have been added to install smooth woven top and bottom wires on the segments along Long Creek. Gates would also be required on the north/south running fence lines in section 33 to facilitate movement of livestock of Alaska Basin Grazing Association across the state land between the BLM lands they lease.

Alt C--Exchange of Lease or Grazing Use: DNRC discussed with both the Matador Ranch and Alaska Basin Grazing Association, the option of a voluntary lease exchange involving approximately 360 acres of state land leased by Alaska Basin in Sections 21 and 22 for the portion of the Matador Lease in Sections 26, 32, 33 and 4 located along Long Creek which would reduce the miles of new fence construction by approximately 5-6 miles.

In addition, comments received on the Draft EA suggested DNRC consider other alternatives such as a sub-lease to Alaska Basin or a co-lease between Matador Ranch and Alaska Basin based on a proration of AUM's. DNRC discussed these alternatives with both parties and determined a cooperative lease between the two parties would not likely occur.

### **Issues, Concerns and Public Comment:**

Adjacent landowners, interested parties, resource specialists and lessees were contacted during the beginning of the analysis process to identify concerns they may have related to the proposed project. A Draft EA was prepared and sent to interested parties for comment. A summary of the comments received and the DNRC response is attached to the Final EA. Some of the primary concerns identified through the process are as follows:

- 1) Isolation of the BLM grazing allotment: There was concern the proposed fence, if constructed through sections 4, 26, 32 and 33 would isolate the BLM grazing allotment on the west and east sides of the state land and affect management of the BLM grazing resource by the permittee.

- 2) Trailing impacts: There was concern wildlife and livestock travelling along the constructed fence would create a compacted, de-vegetated trail along the fence line creating soil erosion and water quality impacts.
- 3) Impacts to wildlife movement: There was concern the proposed fence would create a barrier to wildlife passage and increase mortality to a variety of species due to those species getting hung up on the fence wires.
- 4) Water quality impacts to Long Creek: Long Creek supports a population of Westslope Cutthroat Trout which is considered an important fisheries resource. There was concern constructing the fence in a narrow corridor along Long Creek would increase sedimentation and concentration of livestock in riparian areas and thereby impacting cutthroat trout habitat.

**Decision:**

I have carefully reviewed the EA, comments received, file history and discussed alternatives with the lessees and adjacent landowners. I have decided to implement a modified version of Alternative C, which will enact a partial and equitable exchange of grazing resources on state land held under lease by The Matador Cattle Company and The Alaska Basin Grazing Association. I have selected this alternative because I believe it is in the best long term interest of the trust resources. Specifically, my decision is as follows:

- 1) Remove approximately 420 acres of state land in SE1/4 of Section 21 and S1/2 of Section 22, Township 10S-Range 8W, currently under grazing lease #2517 held by Alaska Basin Grazing Association. This area is the portion of state land lying south and east of the existing fence line in sections 21 and 22.
- 2) Add the approximately 420 acres of state land which were removed from lease #2517 to Lease #10116 which is currently held by Matador Cattle Company.
- 3) Remove approximately 416 acres of state land in NESW, SESW Section 28, NENW, SENW, NESW, SESW, NWSW Section 33, NESE Section 32, Township 10S-Range 8W and NENE Section 4, Township 11S-R8W currently under grazing lease #10116 held by Matador Cattle Company. This area is a string of 40 acre parcels of state land which is adjacent to BLM lands under lease by the Alaska Basin Grazing Association.
- 4) Add the approximately 416 acres of state land which were removed from lease #10116 to lease #2517 which is currently held the Alaska Basin Grazing Association.
- 5) Issue a Land Use License to the Matador Cattle Company allowing use of the area removed from lease #10116 and added to Lease #2517 for the purpose of moving cattle from lands leased by the Matador in T10S-R8W to their leased and deeded lands located in T10S-R8W and back again. The license shall restrict the period of use to a two week period in the spring and fall. Specific terms of the Land Use License will be determined at a later date upon consultation with both the Matador Cattle Company and Alaska Basin Grazing Association.

- 6) Authorize construction of the proposed fence by the Matador Cattle Company along the newly configured lease boundary of Lease #10116 which will tie into existing fence lines. The fence construction shall conform to BLM fence standards as discussed in the EA.
- 7) Adjust the authorized AUM's and lease payments for lease #2517 and #10116 as appropriate for the acreage removed or added based on the average acreage per AUM of the affected parcels of state land.

Based on the information provided in the EA, review of comments and discussions with resource specialists, I conclude significant impacts would not occur as a result of implementing the selected alternative. Therefore preparation of an Environmental Impact Statement for the proposed project is not required. I base this conclusion on the following:

- A) The selected alternative would assign the ¼ mile wide string of 40 acre state land parcels to the same lessee which holds the lease on adjacent BLM lands. This will eliminate the concern voiced by the BLM relating to the segregation of their allotment and allow the BLM lessee the ability to graze the state lands under the same management plan as their BLM lease.
- B) Minor compaction of soil along a fence line commonly occurs if livestock or wildlife trail along the fence in search of paths to the other side. The compaction can be more pronounced when new fences are constructed and may decrease over time as livestock and wildlife adjust to the new fence location. More substantial and direct impacts to soil and water resources when livestock or wildlife use is confined or concentrated in an area particularly if riparian areas are involved. Fences are frequently used to fence livestock out of riparian areas to protect the water resources. In these areas trailing impacts are common as livestock attempt to reach the riparian vegetation and water source within the confines of the fence but vegetation surrounding the riparian area provides adequate filtration. The trailing impacts are a common, minor and acceptable impact associated with fences throughout the state.

The selected alternative will eliminate the need to construct a lease boundary fence in the narrow corridor along Long Creek where the potential for livestock concentration may be greatest and the majority of concerns from resource managers were expressed. However, with no fence construction in Long Creek, livestock may continue to use the riparian areas as they have done in the past and

- C) Barbed wire fencing is the most commonly used tool throughout the state for management of livestock and consequently millions of miles of fence have been constructed and maintained for many years. Certainly there are documented instances of wildlife fatalities (as well as livestock fatalities) associated with fence encounters but there is no indication wildlife populations are threatened or substantially impacted by the

construction of the type of fence associated with this proposal. The fencing standards proposed in this project have been designed to meet the livestock management needs and minimize impacts to wildlife. Wildlife species in the vicinity of this project are accustomed to the many miles of existing fencing in this vicinity and have the ability to adapt to new fence locations. Site specific circumstances such as slope steepness may affect the ability of some wildlife to cross a fence at a given location however, the varied terrain and fence design standards will allow for wildlife to cross over and under the fence strands at suitable locations and allow for movement between ownerships.

- D) Comments received on the proposed fence project identified a concern relating to the Westslope Cutthroat Trout population in Long Creek. The selected alternative will not substantially change current grazing use in the Long Creek Drainage since the proposed fence along the Creek will not be constructed. Concentration of livestock in the riparian area and associated overutilization of vegetation and bank trampling is the primary concern regarding water quality and impact to fisheries in Long Creek. Livestock will continue to have the ability to graze in the drainage bottom as has been documented in the past. Continued monitoring by DFWP fishery biologists, DNRC Land Use Specialists and BLM Resource Managers will determine if additional future measures need to be taken to provide protection of Cutthroat Trout habitat.
- E) Federal and state statutes and rules prohibit unauthorized use of grazing resources on federal, state and private ownerships. Livestock owners must have the ability to keep their livestock on their leased or deeded lands or keep the livestock of other owners off of their leased or deeded lands in order to utilize the grazing resource, control livestock numbers, prevent over grazing and trespass issues. Fencing is the most common and efficient tool for implementing livestock control and is used extensively throughout the state.
- F) Construction of the fencing is a considered a removable improvement. Changes in lease terms, management activities or environmental conditions can lead to the removal of the fence in the future. Consequently, there is no long term, irreversible commitment of resources associated with this proposal.

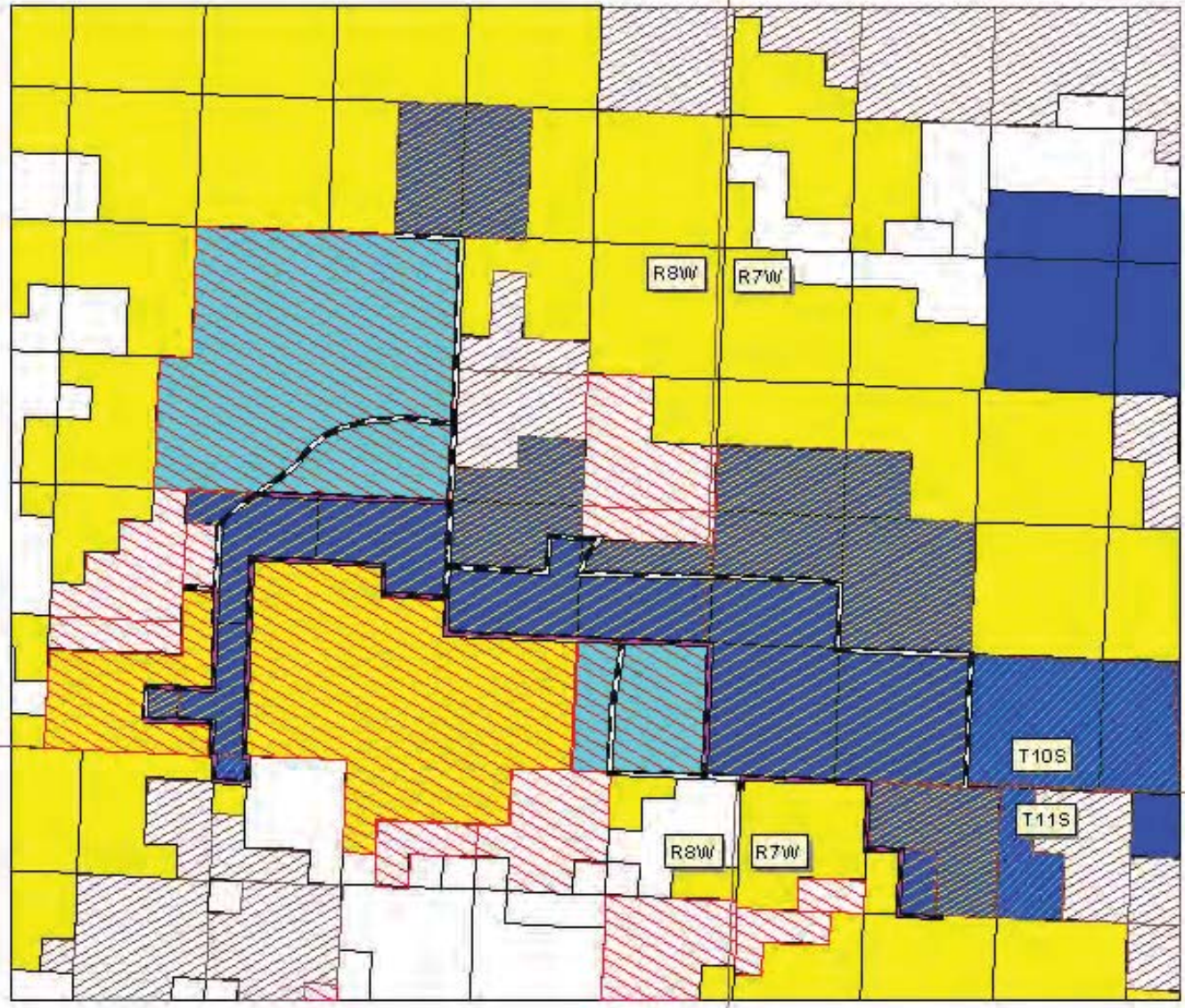
Upon execution, this Finding becomes part of the Final Environmental Assessment for the Long Creek Fence Project proposed on state lands by the Matador Cattle Company.

Signed: /s/ Garry Williams  
Garry Williams  
Area Manager, Central Land Office

Date: 10/10/08



**Matador Ranch Fencing Proposal**  
Beaverhead County MT



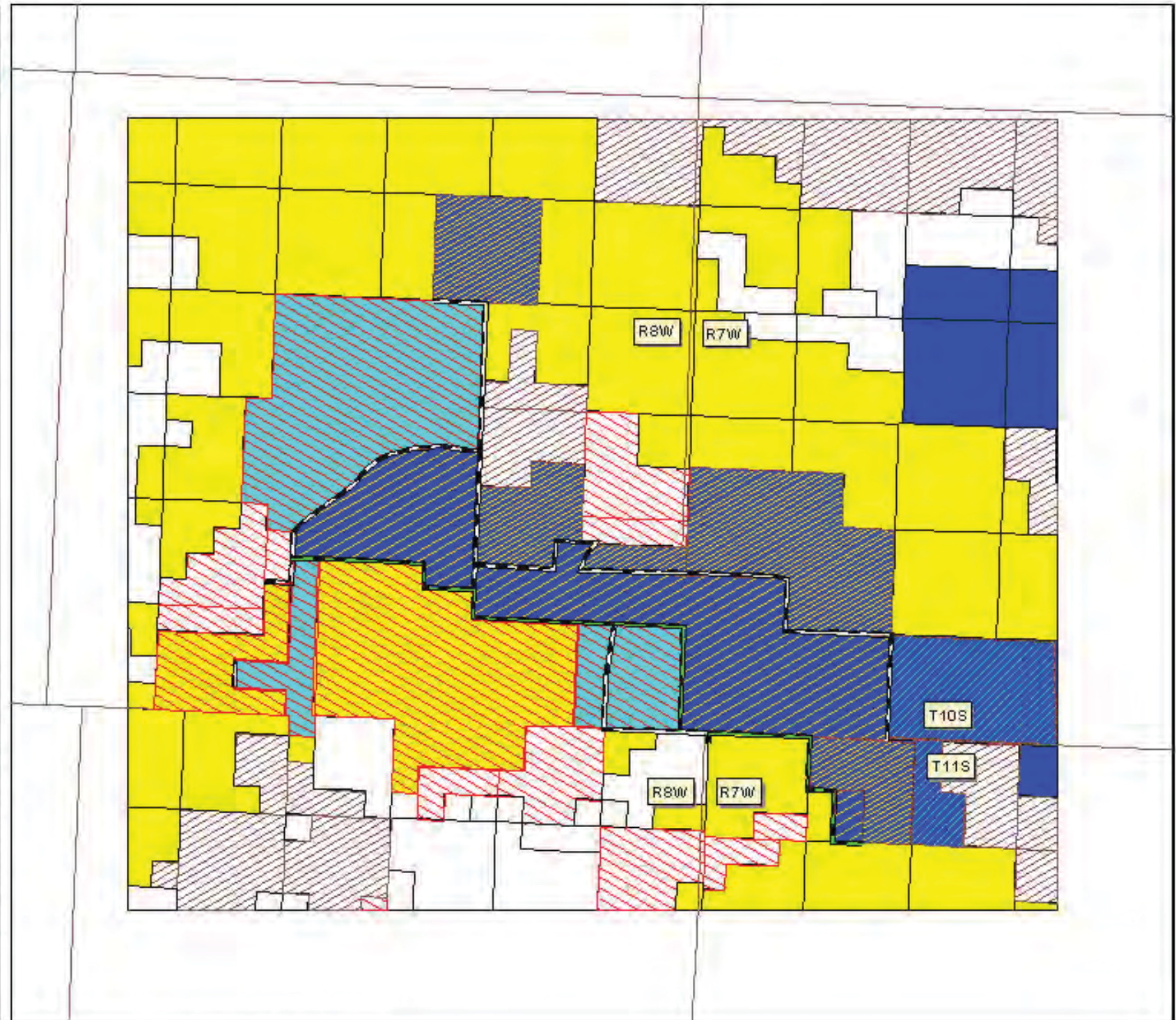
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Central Land Office  
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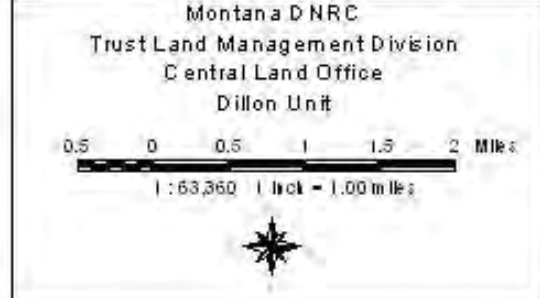
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**Matador Ranch Fencing Approved**  
Beaverhead County MT



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Dillon Unit



**DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
Central Land Office**



BRIAN SCHWEITZER, GOVERNOR

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8001 NORTH MONTANA AVENUE  
HELENA, MONTANA 59602-9388

October 31, 2008

Dear Interested Party

Errors occurred in the Final Environmental Assessment and decision for the boundary fencing project requested by the Matador Ranch for the state lands located in Long Creek vicinity of Beaverhead County. Please make the following changes to your copies of the decision notice dated October 15, 2008:

Page 3      Decision:  
I have carefully reviewed the EA, the comments received, the lease history and discussed possible alternatives with the lessees and adjacent landowners. I have decided to implement a modified version of Alternative C, to reconfigure Leases Nos. 10116 and 2517 under the equitable authority found in Section 77-1-203(1)(a) and (b), MCA, which directs that:

Page 4      Land Board has an equitable duty to reconfigure these leases under Section 77-1-202, MCA to: ". . .adjust the use to conform to changing needs and conditions . . ." so that there can be ". . . harmonious and coordinated management . . ." of these grazing resources ". . . without impairment of the productivity of the land". This partial and equitable exchange of AUMs on state land held under lease by The Matador Cattle Company and The Alaska Basin Grazing Association is also necessary in this instance to conform to the general direction in 77-6-105(1),

In addition, I have received a request to clarify and provide documentation of the impact on lease terms of the decision relating to the effect of AUM's resulting from the reconfiguration of the respective leases. Following is the estimated AUM's associated with the acreages removed and added to the respective leases as a result of the decision issued on October 15, 2008:

Estimated AUM's associated with acreage removed from Alaska Basin Lease #2517 and added to Matador Ranch Lease #10116:

Section 21	55 acres	17 AUM's	(.28 AUM's/acre)
Section 22	360 acres	76 AUM's	(.21 AUM's/acre)
<b>TOTAL</b>	<b>420 acres</b>	<b>93 AUM's</b>	

Estimated AUM's associated with acreage removed from Matador Lease #10116 and added to Alaska basin Lease #2517:

Section 28	144 Acres	44 AUM's	(.31 AUM's/acre)
Section 32	40 Acres	10 AUM's	(.25 AUM's/acre)
Section 33	200 Acres	66 AUM's	(.33AUM's/acre)
Section 4	32 acres	9 AUM's	(.28 AUM's/acre)
<b>TOTAL</b>	<b>416 acres</b>	<b>129 AUM's</b>	



Since this information may affect your decision regarding a challenge in a contested case hearing before the Department under the Montana Administrative Procedures Act, I have extended the date to contact me to **November 7, 2008**.

Sincerely,

Garry Williams  
Area Manager  
Central Land Office