

NORTHERN ROCKIES LAND USE AGREEMENT GUIDANCE

Points to Consider

- Use of Cadastral tools to determine ownership is a must.
 - For example, the States of Montana and Idaho have Trust lands that may be under lease, but the State retains ownership. The States' may require a Letter of Authorization (LOA) or an LUA depending on agency ownership and the circumstances. Any LOAs/LUAs must be done through the appropriate State agency and not the lessee. Procurement Officials should contact the local area State office as a starting point.
- Land values differ greatly across the geographic area. Contacting local acquisition, realty or land management staff in determining fair and reasonable rates is expected. When looking at a LOA/LUA with State or Local Government (City, County), review local Cooperative agreements for guidance.
 - Reference the SIIBM Appendix B tool box for examples of what may or may not need a LUA.
 - LUA rates for Government owned property (tax payer funded property) should be fair and reasonable to cover operating costs and restoration. They should not be for profit.
- LUAs for use of airports needs to be clearly defined. Air Operations and/or local unit aviation staff should provide clarification of how incident use differs from regular commercial use. If there is no difference, a commercial pay agreement may be more appropriate; if incident needs go beyond commercial use, then a LUA may be appropriate. Not all airports have established commercial rates; work with identified aviation point of contact to help determine fair and reasonable rates.
- The relationships the wildland fire agencies have established with local land owners is highly valued here in the Northern Rockies. Maintaining these relationships takes everyone working together. Establishing agreements on a "per-use" basis is highly discouraged. These agreements are difficult, if not impossible to track. Landowners expect the incident to know what they're doing; they expect the incident to track use. When use is not tracked or not done consistently, it tends to be detrimental to the landowner. The preferred method is a daily rate, which may be less than the per-use rate, but over the course of the incident, will average out.
- The preferred method of compensation for restoration is for the rate to exclude restoration. The landowner is responsible for completing any restoration and compensation is negotiated separately between landowner and contracting officer.
- Procurement Officials are expected to explain the terms and conditions of the LUAs with the landowner at time of negotiation and signature.
- Minimum and Maximum rates. Careful consideration must be given to each. Caution needs to be given to minimum rates; the Federal government cannot pay for goods or services not received. Maximum rates need to be in line with what is fair and reasonable for the duration of the incident. Setting maximum rates on long duration fires could result in multiple modifications to the agreements. This may be problematic for both Procurement Officials and land owners to accomplish in a timely manner. Consider weekly and monthly rates as an alternative.

Category / Agency	Dip/Draft Sites Non-Commercial/Municipality Water Sources	State Trust or Endowment Lands	Lands owned by Other State Agencies	Schools/ Fairgrounds
NPS	Potable water sources are typically provided by the NPS from on-site hydrants. No agreements are needed but volume pumped from the hydrants should be calculated for an internal water-use recording, and state reporting process. Dip/Draft sites are also frequently available inside the park boundaries. Helitack personnel should track volume withdrawn. If private dip sites are used, LUA for access only, not for gallons of water withdrawn.	<p>MT or ID Trust or Endowment Lands - contact local area State office for information. A Letter of Authorization (LOA) or LUA may need to be done. These agreements are usually done by the local State official with authority.</p> <p>Click on hyperlink for further details:</p> <p>MT DNRC State Trust Lands</p>	<p>Work with local area State office for contact information or may work directly with ownership Agency.</p> <p>LUA may be required; pricing should be based on operating costs and restoration.</p>	If Govt. owned; pricing should reflect operating costs and restoration.
USFWS	USFWS retain all rights, which includes water, whenever a permit is issued for grazing on USFWS lands. Any agreement written to an individual to utilize their private property follows MT State code for water use and emergency fire suppression.	<p>MT or ID Trust or Endowment Lands - contact local area State office for information. A Letter of Authorization (LOA) or LUA may need to be done. These agreements are usually done by the local State official with authority.</p> <p>Click on hyperlink for further details:</p> <p>MT DNRC State Trust Lands</p>	<p>Work with local area State office for contact information or may work directly with ownership Agency.</p> <p>LUA may be required; pricing should be based on operating costs and restoration.</p>	If Govt. owned; pricing should reflect operating costs and restoration.

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BLM	<p>BLM follows all state and local laws for water use. LUAs may not be written solely for use of irrigation water (i.e. on a price per gallon basis). The BLM DOES NOT pay for non-commercial (irrigation) water, but rather contracts for use of private land to access irrigation water. Temporary use of irrigation water for emergency fire suppression doesn't require a permit or prior approval from the State. Use must cease when the water is no longer required to meet the emergency. The agreement must be written to include access to dip/draft site, diversion of water and specify that rate includes use of water. Compensation rate cannot be based on units of use of water; i.e. per gallon, flow/pump rate, or daily rate for water.</p>	<p>MT or ID Trust or Endowment Lands - contact local area State office for information. A Letter of Authorization (LOA) or LUA may need to be done. These agreements are usually done by the local State official with authority.</p> <p>Click on hyperlink for further details:</p> <p>MT DNRC State Trust Lands</p>	<p>Work with local area State office for contact information or may work directly with ownership Agency.</p> <p>LUA may be required; pricing should be based on operating costs and restoration.</p>	<p>If Govt. owned; pricing should reflect operating costs and restoration only.</p>
FS	<p>FS follows all state and local laws for water use. LUAs may not be written solely for use of irrigation water (i.e. on a price per gallon basis). The FS DOES NOT pay for non-commercial (irrigation) water, but rather contracts for use of private land to access irrigation water. Temporary use of irrigation water for emergency fire suppression doesn't require a permit or prior approval from the State. Use must cease when the water is no longer required to meet the emergency. The agreement must be written to include access to dip/draft site, diversion of water and specify that rate includes use of water. Compensation rate cannot be based on units of use of water; i.e. per gallon, flow/pump rate, or daily rate for water.</p>	<p>MT or ID Trust or Endowment Lands - contact local area State office for information. A Letter of Authorization (LOA) or LUA may need to be done. These agreements are usually done by the local State official with authority.</p> <p>Click on hyperlink for further details:</p> <p>MT DNRC State Trust Lands</p>	<p>Work with local area State office for contact information or may work directly with ownership Agency.</p> <p>LUA may be required; pricing should be based on operating costs and restoration.</p>	<p>If Govt. owned; pricing should reflect operating costs and restoration.</p>

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MT - DNRC	LUAs are done for access only; the State does not pay for water.	<p>MT or ID Trust or Endowment Lands - contact local area State office for information. A Letter of Authorization (LOA) or LUA may need to be done. These agreements are usually done by the local State official with authority.</p> <p>Click on hyperlink for further details:</p> <p>MT DNRC State Trust Lands</p>	<p>Work with local area State office for contact information or may work directly with ownership Agency.</p> <p>LUA may be required; pricing should be based on operating costs and restoration.</p>	If Govt. owned; pricing should reflect operating costs and restoration.
ID - IDL	LUAs are done for access only; the State doesn't not pay for water.	Trust/Endowment lands must be treated as private; LUAs are required.	<p>Work with local area State office for contact information or may work directly with ownership Agency.</p> <p>LUA may be required; pricing should be based on operating costs and restoration.</p>	If Govt. owned; pricing should reflect operating costs and restoration.
ND	<p>The N.D. State Water Commission (SWC) requires a temporary water permit is obtained any time surface or ground water is used during an emergency response (North Dakota Century Code 61-04-02.1 and North Dakota Administrative Code 89-03-01-10). To obtain a temporary water permit, contact the SWC at (701) 328-2754. If unable to reach the SWC, contact the NDDDES Duty Officer via State Radio at (701) 328-9921 for assistance. <i>Note: Filing fees may be waived for Emergency Use, including firefighting, as noted in NDAC 89-03-01-10.2. The temporary water permit process is not intended to delay any response and fire suppression should be a priority.</i></p>	<p>ND School Trust Lands – contact the Department of ND Trust Lands for more information. LUAs are required. Treat trust lands as private.</p> <p>Click on web hyperlink for further details: ND Trust Lands</p>	Work directly with ownership agency. LUAs may be required; pricing should be based on operating costs and restoration.	If government owned; pricing should reflect operating costs and restoration.

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SD	LUAs are done for access only; do not pay for water. Depending on the situation, replacement of water, for example, a stock pond may be required as part of restoration. If questions arise, seek counsel from local representative.	No Endowment or Trust lands	Restrictions apply, follow the LUA checklist in the SIIBM. If questions arise, seek counsel from local representative.	Schools and other governmentally-owned facilities should be compensated for operating costs only, since these facilities are funded by the taxpayers through tax revenues.
BIA Jurisdictional Lands	BIA Jurisdictional Lands fall into several categories.	<i>BIA Rocky Mountain Region</i> (Montana reservations, excluding Flathead) Contact: Amanda Boatright, 406-247-7949 (o) or 406-696-5069 (c) <i>BIA Northwest Region</i> (Idaho panhandle reservations, including Flathead) Contact: Regina Hoffmann, 503-231-6800 (o) or 503-679-5725 (c) <i>BIA Great Plains Region</i> (North Dakota and South Dakota reservations) Contact: Diane Cartney, 605-226-7621 (o) or 605-380-1567 (c)		

MT DNRC State Trust Lands

This document is for providing general guidance relating to the use of MT DNRC Trust Lands for fire purposes such as an ICP/camp/dip site, etc.

- 1) Identify lands as state trust lands via the Montana Cadastral (if a site has not already been identified by the Line Officer / local DNRC office.)
- 2) Lands identified as other state agency lands must be addressed by the appropriate person within that agency. DNRC office staff may be able to assist with contact information within their own management areas.
- 3) Contact the appropriate DNRC Area or Unit office. DNRC office information can be found at: <http://dnrc.mt.gov/divisions/trust/docs/trust-lands-forestry-offices-1.pdf>
- 4) Local DNRC office determines suitability of site for proposed purpose.
- 5) Local DNRC office to contact lessee of record to identify any areas of issue for proposed use.
 - a. Is land being farmed currently? Loss of Crop? *CRP lands may not be used.*
 - b. Is land currently carrying livestock? Livestock to be moved as needed?
- 6) If the answer to 5 is No on both accounts, Letter of Agreement (LOA) with the DNRC can be completed for use.
 - a. The agreement is to be completed by the DNRC office. Contact the DNRC Real Estate Management group in Helena for the assigned LOA number and the appropriate form to use.
 - b. If this is considered a mutually beneficial use there is no fee involved.
 - c. Ensure appropriate language is included in the LOA such as any needed restoration or weed mitigation.
- 7) If the answer to 5 above is Yes on either account, or a fee is involved at any time, a Land Use Agreement (LUA) with the DNRC will be needed.
 - a. There may be situations where it is in the best interest of the state to charge a fee for the use of the state land.
 - b. The Unit or Area office may need to work with the lessee to calculate crop loss value or any needed value regarding livestock relocation. This may result in a settlement of damages to the lessee of record.
 - c. Ensure appropriate language is included in the LUA such as any needed restoration or weed mitigation.
- 8) If water is to be used in the course of the incident, any LOA or LUA is to be set up for “access to the water source only” and the use is to cease as soon as possible. Water is not to be sold unless the appropriate Water Right is produced/verified which provides for the sale of the water.