

# AGRICULTURAL & GRAZING LEASE OF STATE LANDS

This lease is entered into by the State of Montana, Board of Land Commissioners and Department of Natural Resources & Conservation (Department) as lessor, and the person herein named, as the lessee.

Date this lease takes effect: March 01, 2011

Name of Lessee: DAVIS, MARY A. DAVIS SHAWN

Address or Box No.: 35 TEBAY LN

City/State/Zip: WHITEHALL MT 59759

Land Located in Jefferson County.

DESCRIPTION	Sec.	Twp.	Rge.	Acres
NE4NE4,S2NE4,N2SE4,SE4SE4	10	1N	5W	240.00
SW4	14	1N	5W	160.00

Total number of leased acres, 400 more or less belonging to Montana State University Grant.

Grazing Acres: 396 Agricultural Acres: 0 Unsuitable Acres: 4  
Other Acres 0 Hayland Acres 0 CRP Acres 0

Terms of Grazing Use and Rental Rate: Minimum

Terms of Agricultural Use and Rental Rate: Minimum

Purpose for which the land is leased: GRAZING

Term of lease: 10 years Date of expiration: February 28, 2021

**THIS LEASE HAS A CARRYING CAPACITY OF 45 ANIMAL UNIT MONTHS. THE LESSEE SHALL NOT EXCEED SUCH CARRYING CAPACITY. THE ANNUAL GRAZING RENTAL IS BASED ON THIS CARRYING CAPACITY.**

The State of Montana, in consideration of the payment of rentals as specified in this lease and the mutual agreements contained in this lease hereby leases the above-described lands to the lessee(s) named above.

The lessee(s) in consideration of the lease of the above-described lands and the mutual agreements contained in this lease hereby agrees to pay the rentals as specified in the lease and to perform all the conditions as specified in this lease, the applicable rules and the applicable statutes.

The parties to this lease mutually agree to the following terms and conditions:

- ALL GRAZING RENTALS ARE DUE BY MARCH 1 EACH YEAR AND FAILURE TO PAY BY APRIL 1 AUTOMATICALLY CANCELS THE ENTIRE LEASE. A NOTICE OF RENTAL DUE OR ANY OTHER CORRESPONDENCE OR NOTICE FROM THE LESSOR WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS REQUESTED IN WRITING, SIGNED BY THE LESSEE AND RECORDED BY THE LESSOR.
- ALL AGRICULTURAL RENTALS ARE DUE ON NOVEMBER 15 OF THE YEAR IN WHICH CROPS OR HAY ARE HARVESTED. IF THE RENTAL IS NOT PAID BY DECEMBER 31 OF THE SAME YEAR, THE ENTIRE LEASE IS CANCELED.
- CONVERSION OF CLASSIFIED GRAZING LANDS TO CROPLAND WITHOUT PRIOR APPROVAL AS REQUIRED BY LAW SUBJECTS THIS ENTIRE LEASE TO CANCELLATION.
- SUBLEASING (allowing any other person and/or their livestock to utilize the State land) WITHOUT FILING A FORM AND RECEIVING APPROVAL FROM THE DEPARTMENT MAY SUBJECT THE LEASE TO CANCELLATION. SUBLEASING ON TERMS LESS ADVANTAGEOUS TO THE SUBLESSEE THAN THE TERMS GIVEN BY THE STATE SHALL RESULT IN CANCELLATION.  
(a) SUBLEASING FOR MORE THAN TWO YEARS WILL RESULT IN LOSS OF THE PREFERENCE RIGHT.  
(b) SUBLEASING FOR MORE THAN THREE YEARS WILL RESULT IN THE LEASE BEING CANCELED. (The department's rules and applicable statutes concerning subleasing and pasturing agreements should be consulted.)
- REPORTS--Lessee is required to submit reports as requested by the Director, including seeding and production reports. Failure to submit such reports may result in cancellation of the lease.
- CULTIVATION--In the case of lands leased for agricultural purposes, the lessee hereby agrees to seed and cultivate such land in a husbandman-like manner and to strip farm if the land is subject to soil blowing. The lessee further agrees to keep the land clear of weeds and care for it in accordance with approved farm methods as determined by the state. The state shall have the right to impose reasonable restrictions on all state leases as are necessary to adequately protect the land, water, air or improvements in the area. Grain crops are to be delivered free of charge to the nearest elevator to the credit of the state of Montana on or before the fifteenth of November of each year. Other crops, including hay, are to be disposed of at the going market price unless otherwise directed. If a lessee decides to graze the stubble of harvested crops or hayland or grazes unharvested crops for haylands, he must contact the Department regarding payment for such grazing in classified agricultural lands. The Department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under Section 77-6-507, MCA or the competitive bid amount, whichever is greater. Failure or refusal to pay said rental or to notify the

department of such grazing may be cause for cancellation of the lease.

7. **FEDERAL FARM PROGRAM COMPLIANCE**--If a lessee or licensee has his lease or license canceled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payment or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a cropshare, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose of receiving the state's share of the federal farm payments.
8. **IMPROVEMENTS**--The lessee may place a reasonable amount of improvements upon the lands under this lease upon approval of an improvement permit by the Department. A report of proposed improvements, containing such information as the Director may request concerning the cost of the improvements, their suitability for the uses ordinarily made of the land, and their character whether fixed or movable, shall be submitted to the Director before installation thereof on the premises. Failure to obtain approval prior to placement of the improvement may result in such improvements not being recognized by the Department for purposes of reimbursement of such improvements. In addition, placing improvements on state lands without receiving prior approval, may result in cancellation of the lease.
9. **LIENS ON BUILDINGS AND CROPS**--The state shall have a lien upon all buildings, structures, fences and all other improvements, whether movable or not, and also upon all crops growing upon the land for any rentals due the Department.
10. **COMPENSATION FOR IMPROVEMENTS**--(a) If the land under this lease is sold or exchanged to a party other than the present lessee, or is leased to another party while the present lessee owns improvements lawfully remaining thereon, on which the state has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements. If any of the improvements consist of approved breaking (meaning the original plowing of the land) and one year's crop has been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two or more crops have been raised on the land after the breaking thereof, the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators so appointed. The former lessee must initiate arbitration within 60 days of notification from the Department that there is a new lessee or purchaser. Failure to initiate this process within this time period results in all improvements becoming property of the state. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements as ascertained and fixed shall be binding upon both parties; provided, however, that if either party is dissatisfied with the valuation so fixed he may within ten (10) days appeal from their decision to the Director who shall thereupon cause his agent to examine such improvements and whose decision shall be final. The Director shall charge and collect the actual cost of such reexamination to the owner and new lessee or purchaser in such proportion as in his judgment may be demanded.  
(b) Upon the termination of a lease, the Department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.  
(c) Summer fallowing (necessary cultivation done after the last crop grown) seeding, and growing crops on the land, which have not been harvested prior to March 1 next succeeding the date of sale or at the time of change of lessee, shall be considered as improvements. Their value shall be determined in the same manner as other improvements and shall be taken over by the purchaser or new lessee and paid for by him as other improvements.
11. **ASSIGNMENT OF LEASE**--If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on the forms provided for that purpose by the Director, but no such assignment shall be binding on the state unless the assignment is filed with the Director, approved by him, and the appropriate assignment fees submitted for such assignment. An assignment which is signed by both parties shall be conclusive proof that all payments for improvements have been paid to the assignor by the assignee. The leasehold interest herein may only be transferred to any other party by a properly executed assignment which must be approved by the Director prior to such transfer becoming effective. Until an assignment becomes effective, the Department will consider the lessee listed above to be the lessee for all purposes. There may be no consideration given for the assignment of a lease other than the value of the improvements, if any.
12. **RENEWAL LEASE**--If all rentals due under this lease have been paid, the lessee shall upon making proper application to the Director be entitled to have this lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten years; and if there is no other applicant then offering to lease the land, the lease shall be issued at the minimum rental as determined under statutes then in effect. If there are two or more persons desiring to lease the same tract, the former lessee shall have the preference right to the lease to the extent that he may take the lease at the highest bid made by any other applicant. However, subleasing may cause loss of this renewal right. The department's rules concerning subleasing should be consulted. The lessee desiring to renew the lease must make application to the Department prior to January 28 of the year of expiration. Failure to do so will result in the lease becoming an unleased tract upon expiration, with the loss of the preference right and subject to competitive bidding.
13. **CANCELLATION OF LEASE BY THE STATE**--The Director shall have the power and authority in his discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, for overgrazing or any other misuse of the state lands involved, and for any other cause which in the judgement of the Director makes the cancellation of the lease necessary in order to do justice to all parties concerned, and to protect the interest of the state. Such cancellation shall not entitle the lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the state. Lease cancellation for these causes is subject to appeal as provided in Section 77-6-211, MCA.
14. **LANDS MAY BE SOLD**--The Board of Land Commissioners may in their discretion exchange the lands under this lease for other lands, offer the lands under this lease for sale at any regular public sale of state lands held in the county where the land is situated upon the same terms and in the same manner as land not under lease, subject, however, to the rights of the lessee to compensation for improvements as herein provided; and subject also to the provision that the new owner will not be given possession by the state prior to March 1 next succeeding the date of exchange or sale unless the lease expires prior to that date, except through special agreement with the lessee.
15. **RESERVATION**--The state reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:  
(a) **MINERAL AND TIMBER RESERVATION**--All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining or other commercial purposes and all timber and trees are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals or nonminerals mentioned above from any mine or any quarry, pit or diggings situated on said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, sell, remove, use or destroy any such timber dead or alive, or standing or fallen trees without the appropriate permit, license or lease.  
(b) **ADDITIONAL RESERVATIONS**--The state reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed or to be constructed by the United States Government in furtherance of the reclamation of arid lands. The state also reserves the right of granting rights-of-way on the above-described land for other purposes. The state also reserves to itself and its representatives and other lessees or permittees the right to enter upon the lands embraced by this lease for the purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto and for any other management or administrative purposes; it also reserves to itself and its permittees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other nonminerals. The state reserves the right to grant licenses, permits or leases for any alternative uses on state lands.
16. **NOXIOUS WEEDS AND PESTS**--The lessee agrees, at his own expense and cost, to keep the land free from noxious weeds, and if noxious weeds are present, then chemical application or other appropriate weed control measures must occur in time to prevent seed-set according to state law and to exterminate pests to the extent as required by the Department. In the event the land described in this lease shall be included in a weed control and weed seed extermination district, the lessee shall be required to comply with the provisions of Section 77-6-114, MCA, which provides as follows. "It shall be the duty of the Board in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of County Commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the County Treasurer in the same manner as regular personal property taxes are collected." Failure to comply with this

provision when directed to do so by the Department may result in cancellation of the entire lease.

17. **FIRE PREVENTION AND SUPPRESSION**--The lessee assumes all responsibility for carrying on at his own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the land. The lessee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user, except that he or she shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority or both, as circumstances dictate.
18. **UNLAWFUL USE OF LANDS OR PREMISES**--If any part of the lands or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this state or the United States, such unlawful use shall in the discretion of the Board of Land Commissioners constitute sufficient reason for the cancellation of the lease. The lessee shall not utilize or allow to be utilized any state land under the lease for purposes other than the purpose for which it is granted.
19. **SURRENDER OF THE PREMISES UPON TERMINATION OF THE LEASE**--The lessee shall upon the expiration, cancellation, or termination of this lease peaceably yield up and surrender the possession of the land to the state of Montana or its agents or to subsequent lessees or grantees.
20. **INCREASED RENTAL**--If the Montana Legislature or the Board of Land Commissioners raises the rentals on state grazing or agriculture lands during the term of this lease, the lessee agrees to pay such increased rental for the years after such increase becomes effective. Also, the state reserves the right to determine the grazing capacity of said lands annually or from time to time as the Director in his discretion shall determine necessary and increase or decrease the rental thereon accordingly. In the event the Director should increase or decrease the carrying capacity of said lands, the lessee agrees to pay an increased or decreased rental based upon the Director's determination, and to adjust livestock numbers accordingly.
21. **INDEMNIFICATION**--The lessee agrees to save harmless and indemnify the State of Montana for any losses to the state occasioned by the levy of any penalties, fines, charges or assessments made against the above lands or crops grown upon the lands, by the U.S. Government because of any violation of or noncompliance with, any federal farm program or other acts by the lessee.
22. **LAWS AND RULES**--The lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted.
23. **MULTIPLE-USE MANAGEMENT**--Pursuant to the obligations imposed by law, to administer state lands under a multiple-use management concept, the state reserves the right to dispose of any and all interests in the above-described land, subject, however to such interests granted to the lessee under the terms of this lease. The lessee may not close the land under lease at any time to the public for general recreational use," as defined in A.R.M. 36.25.145, without advanced written permission of the Department. Permission to close lands categorically closed under A.R.M. 36.25.150 is hereby granted and no further permission is required.
24. **LEASE WITHDRAWAL**--All or any portion of the land under lease may be withdrawn from this lease by the state. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the Board of Land Commissioners.
25. **SPECIAL CONDITIONS**--
  - The lessees shall clean up and remove the fallen down corral and all of the old fence posts and wire from sections 10 & 14 by October 1, 2013.
  - Grazing is not allowed until a grazing management plan is approved by the department in writing. This plan shall incorporate varying the season of use, account for the appropriate number of AUMs, and be implemented as specified in the plan.

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has hereunto

APR 20 2011

set his hand and affixed the seal of the said Board of Land Commissioners this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*Mary A. Davis*  
*Mary A. Davis*

LESSEE SIGNATURE

*35 Tebay Lane*

ADDRESS OR BOX NO.

*Whitehall* *MT* *59759*  
CITY STATE ZIP CODE

**MARY SEXTON**

DIRECTOR, DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

by: *Stephanie Kellogg*



