

**STATEMENT OF CHUCK KERR
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**Before the
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
On
H.R. 1158, THE MONTANA MINERAL CONVEYANCE ACT**

June 22, 2011

Chairman Young and Committee Members, I am Chuck Kerr, President and Chief Executive Officer of Great Northern Properties Limited Partnership (“GNP”). I am pleased to be here today to testify in strong support of H.R. 1158, the Montana Mineral Conveyance Act.

GNP is a privately held limited partnership that in 1992, acquired all of the former Northern Pacific Railroad (now Burlington Northern Santa Fe Railroad (“BNSF”)) land grant lands in Montana and North Dakota within the Northern Powder River Basin and Northern Lignite coal fields, respectively. GNP lands obtained in this transaction contain more than 20 billion tons of coal and lignite and are comprised of nearly 5 million acres of mineral rights and about 225,000 acres of surface ownership. This acquisition included the eight sections of mineral rights located on the Northern Cheyenne Reservation (the “Reservation”) which is the subject of H.R. 1158, the Montana Mineral Conveyance Act (the “Exchange”)(See attached Map 1). GNP’s lands are generally located on odd numbered sections within a 120 mile wide strip straddling the BNSF main line between Bismarck, ND and Billings, MT with the BLM generally owning the even numbered sections creating the infamous “checkerboard” ownership. The National Mining Association has determined that GNP is the largest owner of coal reserves in the U.S. other than the U.S. Government.

A quick bit of historical review is in order to explain to the Committee Members GNP’s role in this Exchange. Through a long series of interactions by and among the U. S. Government, the State of Montana, and the Crown Butte Mines Company to settle the New World Mine buy-out, the U. S. Government transferred all its mineral rights to the State of Montana in and to the lands depicted as Otter Creek Tracts #1, 2, and 3 on the attached Map 1. Because this transfer would have directly and materially impacted the Northern Cheyenne Tribe (the “Tribe”), another sequence of events occurred by and among the Tribe, the State of Montana, the Montana Congressional delegation, and ultimately GNP, that culminated in a formalized Settlement Agreement between the State of Montana and the Tribe. The Settlement Agreement provided that (i) the Montana State Land Board would require any lessee of the Otter Creek tracts to abide by certain terms and conditions regarding mine operations protecting and ensuring certain rights in favor of the Tribe, (ii) on-going support from the State of Montana on mitigation of impacts of these operations to the Tribe, and (iii) a separate commitment made by the Montana Congressional delegation to the Tribe to seek enactment of federal legislation providing for impact and cultural program funding and to secure the promptest possible enactment of federal legislation authorizing an acreage exchange with GNP to correct an 111 year old error made by the U. S. Government to acquire subsurface rights to the eight sections within the Reservation upon the expansion of the Reservation. In conjunction with the State of Montana Settlement Agreement, GNP and the Tribe entered into a separate agreement (“GNP-Tribe Agreement”) outlining terms and conditions to facilitate the Exchange.

The GNP-Tribe Agreement is important to understand. The substantive terms of this Agreement provide that (i) both GNP and the Tribe would cooperate to “...secure the promptest possible enactment of mutually satisfactory federal legislation ... authorizing and directing the Exchange and providing for coal development-related federal impact funding to the Tribe”, and (ii) upon enactment of the Exchange,

promptly transfer an agreed upon non-participating royalty interest to the Tribe (“Tribe NPRI”) on the off-Reservation Exchange acreage. The genesis of this NPRI lies in the underlying 1992 sale/purchase transaction between BNSF and GNP. As additional purchase compensation to BNSF, GNP agreed to pay BNSF an NPRI (“BNSF NPRI”) on certain undeveloped acreage. The 8 sections of minerals owned by GNP on the Reservation are burdened by the BNSF NPRI. In the event of the Exchange is enacted, GNP would exchange its on-Reservation mineral interests for off-Reservation mineral interests, but because the BNSF NPRI is a covenant running with the land and would not transfer in the Exchange, the BNSF NPRI would still burden the on-Reservation acreage while there would be no such burden on the off-Reservation Exchange tracts. GNP and the Tribe agreed to create a similar NPRI in favor of the Tribe on the off-Reservation Exchange acreage equal to the on-Reservation NPRI. For the off-Reservation tracts that have been selected, the Tribe NPRI would equal 40% of any royalties received by GNP. In crafting the GNP-Tribe Agreement, there was mutual agreement on the key drivers that created the framework of this Agreement.

The most important driver was the fact that this Exchange was a settlement that would resolve a 111 year old issue between the Tribe and the U. S. Government and not a typical land exchange. As a settlement, it was expected no costly and time consuming appraisals or additional studies would be required. The Tribe is not capable of paying for these studies and GNP has no obligation or desire to do so. Because of the unique economic partnership that could potentially exist between GNP and the Tribe, both parties would be mutually aligned in the future development of the Exchange tracts.

The second driver was the provision of a revenue source to the Tribe on the off-Reservation Exchange tracts via the NPRI vehicle previously described. Another important driver was, and still is, timing. The Tribe is in desperate need of revenue. Inasmuch as the Tribe and GNP were potentially going to be economic partners, priority was given to picking off-Reservation tracts that could yield cash flow as soon as possible.

Lastly, a major driver to both the Tribe and GNP, was the fact that enactment of the Exchange would yield tremendous intangible value by allowing each party to unilaterally develop its own resources. Currently, GNP’s ownership of the On-Reservation Exchange Tracts precludes the Tribe from developing its own resources without the involvement of GNP. Likewise, GNP would not be able to develop its on-Reservation Tracts without the Tribe. The Exchange would allow the Tribe to control its own timing and destiny with regard to future coal development on the Reservation.

As shown on the attached Map 1, GNP has substantial coal holdings in close proximity to the Northern Cheyenne Reservation. GNP is committed to honor its agreements and obligations to the Northern Cheyenne to resolve this matter. It is extremely important to GNP that we not only live up to our commitments, but to be a good neighbor and potentially an economic partner with the Northern Cheyenne. GNP works very hard to cultivate long lasting relationships that provide mutual alignment of the parties during the relationship and we believe this Exchange personifies that type of relationship.

Keeping in mind GNP’s objectives of finding suitable exchange tracts that would provide the best chance for potential revenues to both the Tribe and GNP and aid the development of GNP’s current ownership, GNP and the Tribe consulted and cooperated with each other in the current selection of the off-Reservation exchange tracts. Several different attempts have been made in this selection process yielding the current slate of nominated tracts. Upon execution of the GNP-Tribe Agreement, tracts were selected in areas that, at that time, were likely to lead to rapid development. This selection has subsequently been modified because one selected area is being abandon by the current mine operator and the other area is close to an area recently designated a wilderness study area. With the re-engagement of the parties to move forward on the Exchange, a mutual reassessment of the Exchange tracts was

conducted and a new group of tracts selected. The second group of Exchange tracts targeted three geographically diverse areas. The Tribe, to insure buy-off from all potential stake-holders, sought approval from a local environmental advocacy group, the Northern Plains Resource Council (the "NPRC"). The NPRC protested two of the three selections based on surface ownership issues. Once again, a re-selection process was undertaken, this time, giving consideration to the NPRC surface ownership concerns, culminating in the current selection.

The current selection of the 3 sections in the Bridge Creek area as shown on the attached Map 1 will meet the Exchange criteria agreed to between GNP and the Tribe, address the concerns expressed by the NPRC, but will also provide intangible benefits by being in an area known to the Tribe and in which if ever developed, could provide for Tribal employment and control/protection opportunities given its proximity to the Reservation.

The five (5) sections selected in the Bull Mountains Area (see attached Map 2) were chosen in cooperation with GNP, the Tribe and Signal Peak Energy, the current operators of the Bull Mountains underground mine. Signal Peak is expanding their current mine permit area and is experiencing timing issues that may curtail current mining operations. The nominated Exchange Acreage in the Bull Mountains area is subject to an on-going Lease By Application ("LBA") process being managed by the Bureau of Land Management. It is unknown when the process will be completed, which is a major issue for Signal Peak, and the lease process is currently being challenged by various environmental groups. The LBA lease process is likely to undergo additional challenges in federal district courts given recent precedence to similar proceedings in Wyoming. The Exchange would likely alleviate the timing problems and allow Signal Peak to continue its mine operations uninterrupted keeping nearly 300 miners employed in good paying jobs.

As Congress reviews this legislation, timing and probability of development need to be taken into consideration. At Bull Mountains, the first royalty cash flow from the Exchange Tracts will likely occur in 2015 and will not be a steady cash flow. A small amount of Exchange Tract coal will be mined in 2015 (~5%), ~ 20% in 2017-2018, with the remainder (~75%) in 2022 -2024. In other words, the majority of the Bull Mountains cash flow WILL NOT occur in the next 10 years.

At Bridge Creek, IF IT IS EVER MINED, optimistically, first production could take place in 15 years. There are no current plans to mine Bridge Creek and development is almost solely dependent on the development of Otter Creek. First production at Otter Creek is likely 7-10 years away which will provide the necessary transportation infrastructure for the area, including Bridge Creek. The take-away here is that there is no immediate and significant cash flow out of any of the Exchange tracts and there is a high probability that Bridge Creek may never be mined. As a real life example, GNP bought its 5 million mineral acres and 20 billion tons of coal from BNSF in 1992. There are 60 identified developable and mineable areas on GNP lands and since the purchase in 1992, not one ton of our 20 billion tons has been developed!! As I am sure the Members of this Committee may have noticed, any new coal development faces many challenges. GHG issues, regulatory uncertainty, lack of transportation infrastructure and strong environmental opposition are just a few of the hurdles we face in opening up new coal reserves.

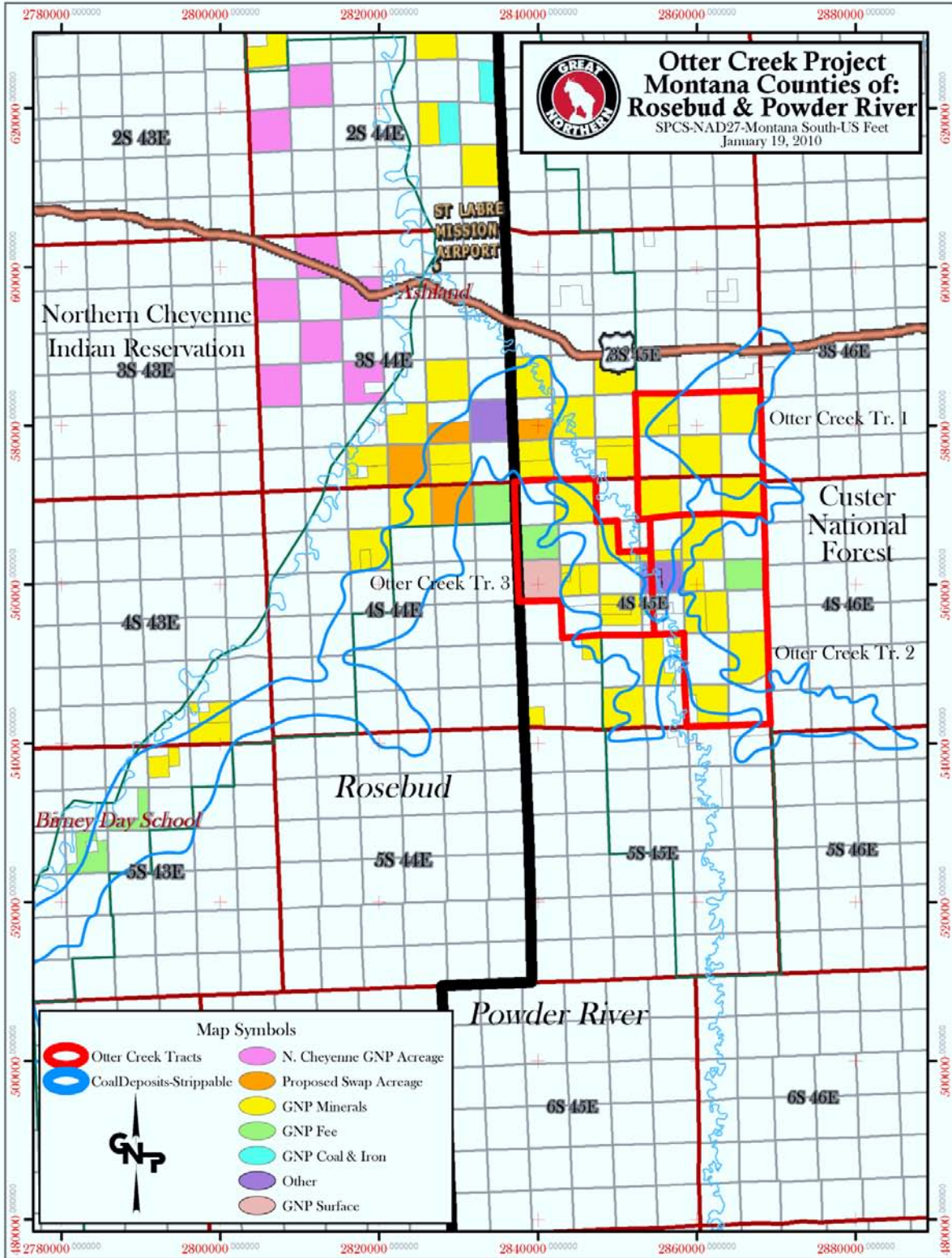
GNP is participating in this Exchange primarily because we want to establish a long lasting relationship with the Tribe, it is the right thing to do and, it may help the development of some of our resources in the future...maybe. This Exchange is all about the Tribe. GNP is under no obligation to participate in this Exchange and while GNP may some derive some economic benefit from this Exchange, the bigger value is the relationship we will have built with the Tribe and the satisfaction of our (and others) commitment to resolve this issue. In the State of Montana Settlement Agreement and as part of the commitment made by the Montana Congressional Delegation, the Tribe was to receive impact funding

given all of the coal development that may take place in the future. Given the legislative environment, the Tribe has elected not to pursue impact funding in the Exchange yet needs financial assistance. The Exchange, if enacted, not only remedies a long standing dispute between the U. S. Government and the Tribe, but also provides a means for the Tribe to realize revenue paid to them by private industry, potentially in lieu of federal impact funding.

At the end of the day, GNP's primary role in this legislation is to be a facilitator. I believe GNP's role as a facilitator in the enactment of H.R. 1158 is a win-win on numerous fronts. First, the enactment fulfills an obligation by the U. S. Government to correct an error that has gone on for 111 years. The enactment consolidates the ownership of mineral estate on the Northern Cheyenne Reservation allowing the Tribe to control the development of its resources in its sole discretion. It satisfies the obligation of the State of Montana in the Settlement Agreement to assist in the exchange. The enactment provides relief to Signal Peak in allowing uninterrupted mining operations. The enactment would provide a much needed income stream to the Northern Cheyenne from non-Reservation private sources, and not from the U.S. Government. And lastly, the enactment fulfills GNP's obligations contained in the Agreement between GNP and the Tribe, potentially helps GNP in the development of some of its other resources, and hopefully solidifies a deep, long lasting cordial relationship between GNP and the Tribe.

In closing, I want to thank you Chairman Young and Committee Members for your consideration of H.R. 1158, the Montana Mineral Conveyance Act. As expressed in my testimony, I believe the enactment of H.R. 1158 provides a win-win scenario for the U. S. Government, the Tribe, the State of Montana, Signal Peak and GNP and is in the best interest for all concerned.

MAP 1



MAP 2

