



MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

ORIGINAL

May 25, 2012

RECEIVED

MAY 25 2012

Executive Secretary
North Dakota Public Service Commission
State Capitol Building
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION

Re: Application for Approval of Service
Area Agreement & Request for a Certificate
of Public Convenience & Necessity-
Kenmare, North Dakota
Case No. PU-12-_____
Case No. PU-12-_____

Enclosed are the original and seven copies of a joint Application made by Burke-Divide Electric Cooperative ("Burke-Divide") and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("Montana-Dakota"), for approval of a Service Area Agreement to establish service areas and to designate service locations to be served by Montana-Dakota and Burke-Divide within the City of Kenmare and the surrounding area. The City of Kenmare approved the Service Area Agreement on May 14, 2012.

Montana-Dakota also requests the Commission issue a Certificate of Public Convenience & Necessity authorizing it to extend service to locations within the Montana-Dakota service area set forth in the Agreement.

Please acknowledge receipt by stamping or initialing the duplicate copy of this letter, attached hereto, and returning the same in the enclosed self-addressed, stamped envelope.

Sincerely,

Tamie Aberle
Regulatory Affairs Manager

Attachments
cc: Dan Kuntz
Jason Brothen
Debra Hoffarth
Ken Callahan

1 **PU-12-231** Filed: 5/25/2012 Pages: 13
Application for approval of service area agreement

Montana-Dakota Utilities Co. / Burke-Divide Electric Cooperative

1 **PU-12-232** Filed: 5/25/2012 Pages: 13
**Application for approval of a certificate of public
convenience and necessity associated with the City
of Kenmare service agreement**

Montana-Dakota Utilities Co., a Division of MDU Resources
Group, Inc.
Tamie Aberle

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Kenmare Area – Service Area Agreement
Public Convenience & Necessity

Case No. PU-12-_____

**Application for Approval of a Certificate of Public Convenience & Necessity
Associated with the Kenmare Area Service Agreement**

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (“Montana-Dakota”), an electric public utility, requests that the Commission issue a Certificate of Public Convenience and Necessity to Montana-Dakota for the extension of electric distribution facilities and electric distribution service to provide electric service to customers in areas around the city of Kenmare, North Dakota as established in the service area agreement negotiated with Burke-Divide Electric Cooperative filed separately on this date.

Notices regarding this matter should be directed to:

For Montana-Dakota Utilities Co.:

Tamie Aberle
Regulatory Affairs Manager
Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, ND 58501
Telephone: (701) 222-7856
tamie.aberle@mdu.com

Daniel S. Kuntz
Associate General Counsel
MDU Resources Group, Inc.
PO Box 5650
Bismarck, ND 58502-5650
Telephone: (701) 530-1016
Dan.kuntz@mduresources.com

For Burke-Divide Electric Cooperative:

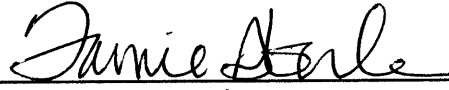
Jason Brothen
General Manager
Burke-Divide Electric Cooperative
P.O. Box 6
Columbus, ND 58727
Telephone: (701) 939.6671
jasonbrothen.gm@bdec.coop

Debra L. Hoffarth
Pringle & Herigstad, P.C.
2525 Elk Drive
P.O. Box 1000
Minot, N.D. 58702-1000
Telephone: (701) 852-0381
dhoffarth@srt.com

Dated this 25th day of May, 2012.

Respectfully submitted,

Montana-Dakota Utilities Co., a Division of MDU
Resources Group, Inc.



By: Tamie Aberle
Regulatory Affairs Manager

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Burke-Divide Electric
Cooperative/Montana-Dakota Utilities Co.
Kenmare Service Area Agreement

Case No. PU-12-_____

Application for Approval of Service Area Agreement

Burke-Divide Electric Cooperative, ("Burke-Divide"), an electric cooperative organized under N.D.C.C. Chapter 10-13, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., ("Montana-Dakota"), an electric public utility, submit this joint application for approval of a Service Area Agreement pursuant to N.D.C.C. § 49-03-06. The Service Area Agreement, which accompanies this Application, was entered into by Montana-Dakota and Burke-Divide as electric providers in compliance with the provisions of N.D.C.C. § 49-03-06 to establish service areas and to designate service locations to be served by Montana-Dakota and Burke-Divide within the City of Kenmare and the surrounding area. The Service Area Agreement complies with N.D.C.C. § 49-03-06 and is in the public interest because it will: (1) avoid misunderstanding and disagreement over areas to be served by each party, (2) accomplish the legislative intent of N.D.C.C. § 49-03-06 to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service and provide antitrust immunity to the electric providers, and (3) provide both parties with equitable participation in the provision of electric distribution service within undeveloped areas annexed to the City of Kenmare during the term of the Agreement.

Montana-Dakota and Burke-Divide request the Public Service Commission, after Notice as provided in N.D.C.C. § 49-03-06(4), approve the Service Area Agreement after finding the Agreement in Compliance with N.D.C.C. § 49-03-06 and in the public interest.

Notices regarding this matter should be directed to:

For Montana-Dakota Utilities Co.:

Tamie Aberle
Regulatory Affairs Manager
Montana-Dakota Utilities Co.
400 North Fourth Street
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Telephone: (701) 222-7856
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For Burke-Divide Electric Cooperative:

Jason Brothen
General Manager
Burke-Divide Electric Cooperative
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Telephone: (701) 939.6671
jasonbrothen.gm@bdec.coop

Debra L. Hoffarth
Pringle & Herigstad, P.C.
2525 Elk Drive
P.O. Box 1000
Minot, N.D. 58702-1000
Telephone: (701) 852-0381
dhoffarth@srt.com

Dated this 25th day of May, 2012.

Respectfully submitted,

Montana-Dakota Utilities Co., a Division of
MDU Resources Group, Inc.



By: Tamie Aberle
Regulatory Affairs Manager

Burke-Divide Electric Cooperative, Inc.



By: Jason Brothen
General Manager

SERVICE AREA AGREEMENT

This Service Area Agreement ("Agreement") is entered into by and between MONTANA-DAKOTA UTILITIES, INC., ("MDU") and BURKE-DIVIDE ELECTRIC COOPERATIVE, INC., ("Burke-Divide") pursuant to Section 49-03-06 of the North Dakota Century Code to encourage harmony and operational efficiency in the provision of electric distribution service in the area within and around the City of Kenmare, located in Ward County, North Dakota, described herein; to promote safety and discourage unreasonable duplication of electric facilities; to assure adequate and reliable electric service for all consumers within the area of this Agreement; and to provide both parties with equitable participation in the provision of electric distribution service within undeveloped or unserved areas of Kenmare, North Dakota, during the term of this Agreement.

RECITALS

In 2005, the North Dakota Legislature enacted 2005 North Dakota Session Laws Ch. 394, codified as North Dakota Century Code Section 49-03-06, to authorize "service area agreements" among "electric providers." MDU and Burke-Divide are "electric providers" as defined under N.D.C.C. § 49-03-01.5.

MDU and Burke-Divide desire to enter into a Service Area Agreement in compliance with the provisions of N.D.C.C. § 49-03-06 to establish service areas and to designate Service Locations to be served by MDU and by Burke-Divide within Ward County, North Dakota, in and around Kenmare in Kenmare Township, and this Agreement shall supersede any prior agreements between the parties, whether oral or written.

AGREEMENT

In an earnest and sincere effort to avoid misunderstanding and disagreement over areas to be served by each party, to accomplish the legislative intent of N.D.C.C. § 49-03-06 to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service, and to provide both parties with equitable participation in the provision of electric distribution service within undeveloped areas in Ward County, North Dakota, during the term of this Agreement, MDU and Burke-Divide agree to the following:

1. Burke-Divide should provide electric service in the service areas and to the Service Locations as further stipulated and identified in this Agreement.
2. MDU should provide electric service in the service areas and to the Service Locations as further stipulated and identified in this Agreement.
3. The parties will avoid unreasonable duplication of facilities in order to provide electric service for all consumers efficiently and economically.

4. The service area of Burke-Divide will be that area illustrated in red on the attached map (Exhibit A) that is incorporated by reference as integral to this Agreement. All Service Locations in Burke-Divide's service area are designated to be served by Burke-Divide, except as otherwise provided in this Agreement or in any amendment to this Agreement. MDU will continue to provide electric service to Service Locations set forth in Exhibit B it is presently serving within Burke-Divide's service area (herein "Encroaching Service Locations") and will provide electric service to new Service Locations within Burke-Divide's service area only under conditions further stipulated in this Agreement.

5. The service area of MDU will be that area illustrated in yellow on the attached map (Exhibit A). All Service Locations in MDU's service area are designated to be served by MDU, except as otherwise provided in this Agreement or in any amendment to this Agreement. Burke-Divide will continue to provide electric service to Service Locations it is presently serving within MDU's service area as set forth in Exhibit B (herein "Encroaching Service Locations") and will provide electric service to new Service Locations within MDU's service area only under conditions further stipulated in this Agreement. "Encroaching Service Locations" for purposes of this Agreement shall mean only those structures, facilities, or improvements on a parcel of real property to which electric service is currently being provided. An Encroaching Service Location includes expansions, improvements, or additions to the structures, facilities, and other improvements on the property made by an existing consumer at that location after the date of this Agreement. An Encroaching Service Location does not include any upgrade from a single-phase family/farm use to a three-phase commercial/industrial or three-phase high density residential (18 or more units) use; nor does it include replacement of single-phase commercial/industrial use with a three-phase commercial/industrial use. For purposes of paragraphs 4 and 5 of this Agreement, Encroaching Service Locations shall be as set forth in Exhibit B attached hereto.

6. Except as otherwise provided in paragraphs 4 and 5 of this Agreement or in any amendment to this Agreement, MDU shall not provide retail electric service in Burke-Divide's service area and Burke-Divide shall not provide retail electric service in MDU's service area. The parties agree that each shall receive a Limited Franchise from the City of Kenmare to provide service as provided in this Agreement.

7. This Agreement shall apply only to the areas described in this Agreement and shown on Exhibits A and B that are incorporated by reference as integral to this Agreement. The provision of electric distribution service outside the geographic scope of this Agreement shall be governed by applicable law, any future amendments extending the scope of this Agreement, or new service area agreements that may be made between the parties.

8. If either party to this Agreement is requested to provide electric service to a Service Location in the other party's service area, such service may be supplied on either a temporary or permanent basis only with the written consent of the other party,

provided that such individual exception shall not in any way alter the basic intentions of the parties, that each shall not provide electric service to any Service Location in the other party's service area.

9. If a transfer or exchange of Service Locations can be agreed upon by both parties, such a transfer or exchange can be made. The parties may negotiate to exchange or sell and purchase equipment, plant, or facilities located in one another's service areas.

10. If either party terminates service to a Service Location in the other party's service area, and facilities are not acquired by the other party, such facilities may be abandoned or removed by the party that owns the facilities at its expense.

11. Notwithstanding the generality of other provisions of this Agreement, it is specifically agreed that Burke-Divide will continue to serve any Encroaching Service Locations already served by Burke-Divide in MDU's service area as outlined in Exhibit B to this Agreement and MDU will continue to serve any Encroaching Service Locations already served by MDU in Burke-Divide's service areas as outlined in Exhibit B to this Agreement.

12. This Agreement does not affect Burke-Divide's or MDU's rights to construct transmission line facilities or to maintain existing transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves.

13. This Agreement shall be void in its entirety if not approved by the North Dakota Public Service Commission and the Kenmare City Council. This Service Area Agreement is also subject to the continuing jurisdiction of the North Dakota Public Service Commission to settle Service Location disputes arising under the Agreement. Upon execution of the Agreement, it shall be promptly filed with the North Dakota Public Service Commission and the Kenmare City Council. Both parties will file written statements with and appear, as may be necessary, before the North Dakota Public Service Commission and the Kenmare City Council supporting unconditional approval of this Agreement.

14. The term of this Agreement shall commence upon the last to occur of the following events (the "Effective Date"):

- The execution of this Agreement by both Parties;
- The approval of this Agreement by the City of Kenmare, North Dakota; and
- The approval of this Agreement by the North Dakota Public Service Commission.

15. This Agreement shall continue in effect for 10 years from the Effective Date of the franchises issued by the City of Kenmare as provided in paragraph 16. Thereafter, this Agreement shall automatically renew for successive five-year terms unless either

Party provides written notice to the other Party of its intention to terminate this Agreement at least 180 days prior to the end of the initial or any extended term. This Agreement may be terminated at any time by the mutual written agreement of the Parties.

That the intent of the Parties is to equitably share the growth of new Service Locations within undeveloped areas that are annexed to the City. Not less than 210 days prior to the end of the initial or any extended term, either party can request to adjust the service areas within this service area agreement effective at the end of the initial term, or any extended term, and if an agreement can't be reached, that either party can terminate the agreement as set forth above or request that a mediator be appointed to settle the dispute as set forth in paragraph 18 of this Agreement.

16. Substantially concurrent with the filing of this Agreement with the City of Kenmare, the parties shall request the City of Kenmare to issue new 10-year electric utility franchises to each party authorizing service in the service areas and Service Locations provided in this Agreement, as such areas are within or may be annexed to the City of Kenmare, and otherwise consistent with the terms of this Agreement in substantially in the form attached hereto. Neither Party will interfere with nor object to the term nor scope of the other Party's franchise with the City of Kenmare as it may pertain to provision of electric distribution service within the other Party's service area consistent with the terms of this Agreement. Nothing in this provision is intended to prohibit either Party from objecting to the terms and conditions of the other Party's franchise which could unreasonably damage or harm the objecting Party's operations or the objecting Party's service area as designated in the Agreement.

17. Burke-Divide will not object to the issuance of a Certificate or individual Certificates of Public Convenience and Necessity to Montana-Dakota by the North Dakota Public Service Commission for electric distribution service within the Montana-Dakota Service Area as outlined in this Agreement. Burke-Divide shall receive notice of all Certificates of Public Convenience and Necessity requested by Montana-Dakota for electric distribution pursuant to this Agreement.

18. It is realized that this Agreement will not cover all situations which may arise, but if followed in good faith by both parties, it will serve as a guide to future developments and growth for both parties. The parties shall meet on an annual basis to review the operation of this Agreement and the parties' respective growth in electric service in their respective areas since the effective date of this Agreement. The parties shall meet as needed to determine and designate the service area or service areas within which each new area proposed for annexation outside the red and yellow shaded areas on the attached map should be included. This designation should be provided to the City of Kenmare and the respective service areas adjusted accordingly.

If the parties are unable to agree upon a service area adjustment as provided in this paragraph, a party may request the dispute be submitted to mediation with a mediator

mutually agreeable to the parties. If the Parties are unable to resolve the dispute through mediation, the Party requesting an adjustment may request the dispute be resolved by the Kenmare City Council after hearing before the Kenmare City Council or a hearing officer appointed by the Kenmare City Council to present a recommended resolution to the City Council. The costs and expenses of any mediation or arbitration shall be borne equally by the parties.

19. The parties may cross boundaries of this Agreement only upon written agreement of the parties or lacking that agreement upon approval of the North Dakota Public Service Commission.

20. The failure of either Party at any time to require strict performance of any condition of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by either Party of a breach of any such condition shall not constitute a waiver of any subsequent breach thereof, nor nullify the validity of such condition.

BURKE-DIVIDE ELECTRIC
COOPERATIVE

MONTANA-DAKOTA UTILITIES, CO.,
a Division of MDU Resources Group,
Inc. DK

By: David R. Smith
Its President
Date: 4/25/12

By: D. R. Huber
Its President + CEO
Date: 4/23/2012

ATTEST:

L. B. Juel
Secretary

Date: 4/25/12

ATTEST:

Secretary

Date: _____

CONSENT

The City of Kenmare, North Dakota consents to this Agreement between the Parties and agrees that each of the Parties may provide service within their respective service territories identified herein which are now or in the future located in the City of Kenmare, North Dakota, to the full extent authorized by their respective franchise agreements with the City of Kenmare, North Dakota, as they may be established, extended, or renewed.

The undersigned certifies that this Agreement was approved by the City of Kenmare, North Dakota at a meeting held on the 14th day of May, 2012.

CITY OF KENMARE, NORTH DAKOTA

By: Bogert Ness
Its: Mayor

ATTACHMENT A to Service Area Agreement
executed between Montana-Dakota Utilities
Co. and Burke-Divide Electric Cooperative as
of the 23rd day of April 2012.

Montana-Dakota Utilities Co.
A Division of MDU Resources Group, Inc.

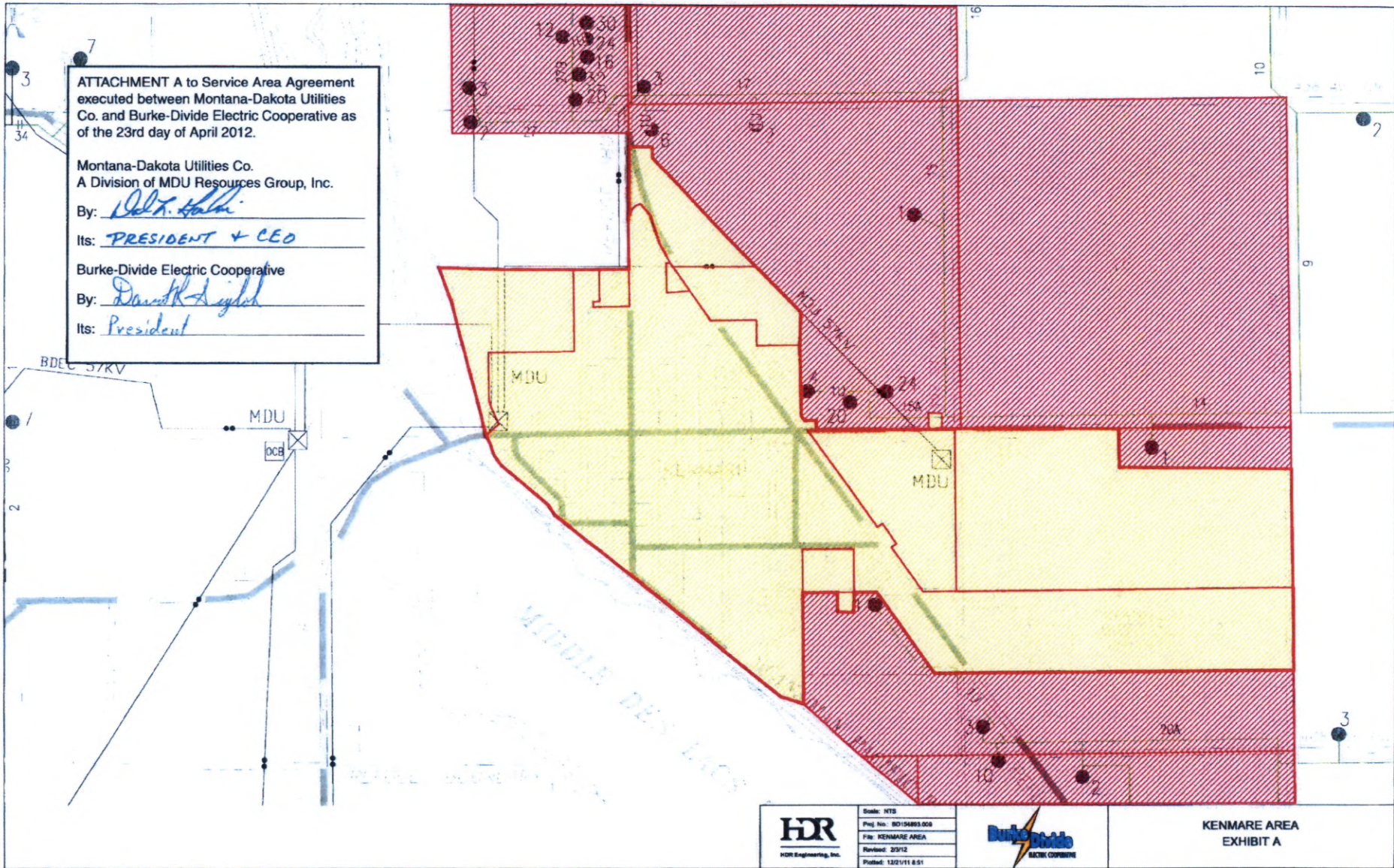
By: *Del T. Galin*

Its: PRESIDENT + CEO

Burke-Divide Electric Cooperative

By: *Dan K. Light*

Its: President



Scale: NTS
Proj No: 00154893.000
File: KENMARE AREA
Revised: 05/12
Plotted: 12/21/11 8:51



KENMARE AREA
EXHIBIT A

EXHIBIT B

**MONTANA-DAKOTA ENCROACHING SERVICE LOCATIONS IN BURKE-DIVIDE
SERVICIE AREA:**

None

**BURKE-DIVIDE ENCROACHING SERVICE LOCATIONS IN MONTANA-DAKOTA
SERVICE AREA:**

Service to 42201 492nd St. NW- (current customer is Brice Boughton)