HOUSE BILL NO. 3

INTRODUCED BY O'KEEFE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALL LOCAL GOVERNMENT SEVERANCE TAX RATES TO INCLUDE AN EQUIVALENT 40-MILL TAX RATE ON OIL AND NATURAL GAS BASED ON THE 1989 PRODUCTION YEAR AND FISCAL YEAR 1990 NET PROCEEDS TAX COLLECTIONS; ESTABLISHING A BASE YEAR FOR THE DISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAXES; DISTRIBUTING LOCAL GOVERNMENT SEVERANCE TAXES TO ELIGIBLE TAXING UNITS; PROVIDING FOR A PERCENTAGE DISTRIBUTION MECHANISM FOR LOCAL GOVERNMENT SEVERANCE TAXES UNDER CERTAIN CONDITIONS; CLARIFYING THE APPLICATION OF THE LOCAL GOVERNMENT SEVERANCE TAX TO INCLUDE ALL NATURAL GAS STRIPPER WELLS; CLARIFYING THE LOCAL GOVERNMENT SEVERANCE TAX ON OIL STRIPPER WELLS; CLARIFYING THAT LOCAL PRODUCTION TAXES ON OIL, NATURAL GAS, AND COAL ARE INCLUDED IN THE GUARANTEED TAX BASE CALCULATION; CLARIFYING THE DEFINITION OF THE GUARANTEED TAX BASE; AMENDING SECTIONS 15-36-101, 15-36-112, 15-36-121, AND 20-9-366, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax -- state severance tax -- local government severance tax. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced ~~sufficient--in-quantity-to justify-the-marketing-of-the--same--must~~ shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. The state severance tax and the local government severance tax are computed ~~at-the-following rates~~ as follows:

(a) except as provided in subsections (1)(b), (1)(c), ~~and~~ (1)(d), and (1)(e), a 5% ~~of~~ state severance tax on the total gross value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of ~~8.4%~~ 11.9% on production other than interim production and new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from

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consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% ~~of~~ state severance tax on the total gross value of all natural gas produced, plus the local government severance tax of ~~15.25%~~ 24.5% on natural gas production other than interim production or new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% ~~of~~ state severance tax on the total gross value of the incremental petroleum and other mineral or crude oil produced, plus the local government severance tax of ~~4.2%~~ 5.95% on production other than interim production and new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For ~~the purpose~~ purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) except as provided in 15-36-121(2), a 3% ~~of~~ state severance tax on the total gross value of all the petroleum and other mineral or crude oil production after the first 5 barrels~~,--plus-the-local-government-severance-tax-of-4.2%-on all--production--other--than--interim--production--and---new production,~~ produced by a stripper well, as defined in 15-36-121, that produces more than 5 barrels a day during the period beginning April 1, 1989, and ending March 31, 1991~~.~~;

(e) a 5.95% local government severance tax on all petroleum and other mineral or crude oil production other than interim and new production produced by a stripper well, as defined in 15-36-121.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

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(3) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, ~~or~~ other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, ~~or~~ other mineral or crude ~~oils~~ oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, ~~or~~ other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, ~~or~~ other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, ~~or~~ other mineral or crude oil, or natural gas within this state within the meaning of this section.

(4) Every person required to pay the state or local government severance tax under this section shall pay the

tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts. (Subsection (1)(d) terminates on occurrence of contingency--sec. 7, Ch. 656, L. 1987.)"

Section 2. Section 15-36-112, MCA, is amended to read:

"15-36-112. Disposition of oil and gas state and local government severance taxes -- calculation of unit value for local government severance tax. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each ~~school-district~~ taxing unit.

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(2) For purposes of the distribution of local government severance taxes collected under ~~15-36-101~~ this chapter, the department shall determine the unit value of oil and gas for each ~~school-district~~ taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each ~~district~~ taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that ~~district~~ taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that ~~district~~ taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that ~~district~~ taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that ~~district~~ taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4)~~(a)(ii)~~;

(b) ~~Any--amount--not--allocated--to--the--county--under~~

~~subsection--(3)(a)~~ The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately

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following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total ~~units--of-production-to-obtain-the-tax-value-per unit-of-production~~ distribution determined for that period to obtain an excess or shortage percentage.

(ii) ~~The--tax--value--per--unit--of--production--must-be multiplied-by-the-units-of-production-in-that-taxable-period in-each-school-district-that-had-production-in-that--period, and--this--amount--must--be--added-to-or-subtracted-from-the distribution--to--each--respective---district~~ The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) The county treasurer shall distribute the money received under subsection ~~(3)(a)~~ (4) to the taxing ~~jurisdictions~~ units that levied mills in fiscal year 1990

against calendar year 1988 production ~~during-fiscal-year 1989~~ in the same manner that all other property tax proceeds were distributed during fiscal year ~~1989~~ 1990 in the taxing ~~jurisdiction~~ unit, except that no distribution may be made to a municipal taxing ~~jurisdiction~~ unit."

Section 3. Section 15-36-121, MCA, is amended to read:

"**15-36-121. Exemption from state severance tax -- imposition of local government severance tax.** (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All new production, as defined in 15-23-601, from a well during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system is exempt from all of the state severance tax imposed by 15-36-101, provided the notification was made after March 31, 1987, and before July 1, 1991.

(3) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed

as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 12.25%. Everything over 30,000 cubic feet of gas produced is taxed at 1.59% plus a local government severance tax of ~~7.625%~~ 12.25%.

(4) The first 5 barrels of average daily production from a stripper well are exempt from all of the state severance tax imposed by 15-36-101, ~~except~~ but not from the local government severance tax.

(5) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels per day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.

(6) Notwithstanding the provisions of subsections (2) through (4), all reporting requirements under the state

severance tax remain in effect. (Subsections (2) and (4) terminate on occurrence of contingency--sec. 7, Ch. 656, L. 1987.)"

Section 4. Section 20-9-366, MCA, is amended to read:

"20-9-366. (Effective July 1, 1990) Definitions. As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County mill value per elementary ANB" or "county mill value per high school ANB" means the sum of the current taxable valuation of all property in the county plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) and the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of ~~nontax~~ nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of ~~nontax~~ nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and

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thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000~~, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts~~.

(2) "District mill value per ANB" means the current taxable valuation of all property in the district plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) and the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of ~~nontax~~ nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of ~~nontax~~ nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by

the number of mills levied by the district in the previous year, multiplied by 1,000~~, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount~~.

(3) "Guaranteed overschedule general fund budget" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 135% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the current taxable valuation of all property in the state plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) and the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of ~~nontax~~ nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of ~~nontax~~ nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000~~, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts~~."

NEW SECTION. Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. **Effective date.** [This act] is effective on passage and approval.

NEW SECTION. Section 7. **Retroactive applicability.** [Sections 1 and 3] apply retroactively, within the meaning of 1-2-109, to all local government severance taxes on oil and natural gas produced after December 31, 1988.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB003, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising all local government severance tax rates to include an equivalent 40-mill tax rate on oil and natural gas based on 1989 production year and fiscal year 1990 net proceeds tax collections; establishing a base year for the distribution of local government severance taxes; distributing local government severance taxes to eligible taxing units; providing for a percentage distribution mechanism for local government severance taxes under certain conditions; clarifying the application of the local government severance tax to include all natural gas stripper wells; clarifying that local government severance taxes on oil stripper wells; clarifying that local government severance taxes on oil, natural gas, and coal are included in the guaranteed tax base calculation; clarifying the definition of the guaranteed tax base; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. For purposes of comparing fund information, the total taxable value of all property will be $1,491,091,000 in fiscal year 1991.(Office of Budget and Program Planning).
2. The taxable value of oil and gas production for FY90 is $190,369,986. A 40 mill tax on oil and gas net proceeds in fiscal year 1990 would have raised $7,615,000.
3. Current law Local Government Severance Tax revenue on 1989 production to be received in fiscal year 1991 is estimated to be $27,662,000.
4. The proposed legislation is estimated to produce $43,713,000 based on 1989 production for fiscal year 1991.
5. The average mill levy for 1988 oil and gas net proceeds is 188.85 mills. The average mill levy for local schools and county government is 137.85 mills.
6. The proposed legislation adjusts the method of guaranteed tax base (GTB) calculation to comply with current administrative rule promulgated by the Office of Public Instruction, except new and interim production revenues are not included in the rules. The inclusion of new and interim production taxes may affect the amount of GTB aid paid to the various districts, but the impact on total GTB payments should be minimal.

FISCAL IMPACT:
The proposal would have increased revenues on 1987 production by approximately $15.405 million. The net proceeds system produced revenues of $40.385 million on 1987 oil and gas production. The proposal would have generated $55.790 million on that production.

W. David Darby DATE 5/21/90
W. DAVID DARBY, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

Mark O'Keefe DATE 5/21/90
MARK O'KEEFE, PRIMARY SPONSOR

Fiscal Note for HB0003 ,as introduced
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Revenue Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Local Gov. Sev. Tax	$ 0	$ 0	$ 0	$ 27,662,000	$ 43,712,000	$ 16,050,000

Fund Information:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
University Levy	0	0	0	879,000	1,389,000	510,000
School Equalization	0	0	0	6,592,000	10,416,000	3,824,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The proposal will increase revenues to the counties and local schools by $11,716,000.

1989 PRODUCTION-ESTIMATED LGST COUNTY IMPACT
NO 30 MCF EXEMPTION

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MAY 19, 1990	OIL RATE	GAS RATES
REGULAR NON-ROYALTY	11.90%	24.50%
STRIPPER NON-ROYALTY	5.95%	12.25%
REGULAR ROYALTY	11.90%	24.50%
STRIPPER ROYALTY	5.95%	12.25%

COUNTY	1989 BARRELLS	PROPOSED LGST OIL DISTRIBUTION	GAS MCF	PROPOSED LGST GAS DISTRIBUTION	PROPOSED LGST TOTAL DISTRIBUTION	TOTAL FINAL DISTRIBUTION	PROPOSED LGST MINUS CURRENT LAW
BIG HORN	60,732	$37,305	0	$0	$37,305	$29,568	$7,737
BLAINE	159,324	$192,498	6,985,406	$2,758,573	$2,951,071	$1,880,158	$1,070,913
CARBON	581,151	$1,413,046	903,376	$350,368	$1,763,414	$1,200,669	$562,745
CARTER	5,946	$0	0	$0	$0	$0	$0
CHOUTEAU	0	$0	963,658	$296,973	$296,973	$158,278	$138,695
CUSTER	0	$0	68,765	$67,988	$67,988	$26,384	$41,604
DANIELS	2,756	$0	0	$0	$0	$0	$0
DAWSON	242,300	$672,567	17,944	$794	$673,362	$465,660	$207,702
FALLON	4,489,599	$8,638,870	1,010,626	$346,797	$8,985,668	$6,100,626	$2,885,042
FERGUS	0	$0	39,730	$14,247	$14,247	$10,644	$3,603
GARFIELD	40,650	$75,064	0	$0	$75,064	$53,019	$22,045
GLACIER	947,925	$2,118,704	2,878,041	$1,116,302	$3,235,006	$1,908,307	$1,326,699
GOLDEN VALLEY	3,704	$720	47,500	$14,030	$14,749	$9,359	$5,390
HILL	1,241	$1,309	4,234,994	$2,384,051	$2,385,360	$1,582,344	$803,017
LIBERTY	183,249	$454,871	1,755,061	$467,907	$922,778	$467,218	$455,560
MCCONE	44,011	$130,689	0	$0	$130,689	$90,214	$40,475
MUSSELSHELL	600,253	$1,251,076	0	$0	$1,251,076	$877,669	$373,407
PETROLEUM	61,593	$133,875	0	$0	$133,875	$93,706	$40,168
PHILLIPS	0	$0	5,371,046	$2,273,745	$2,273,745	$410,600	$1,863,144
PONDERA	251,557	$631,269	361,064	$81,414	$712,683	$448,451	$264,232
POWDER RIVER	661,445	$1,473,440	0	$0	$1,473,440	$1,030,012	$443,429
PRAIRIE	53,540	$64,231	190	$74	$64,305	$46,857	$17,447
RICHLAND	2,694,375	$4,516,429	1,151,357	$136,258	$4,652,687	$3,254,948	$1,397,739
ROOSEVELT	1,419,430	$3,111,549	383,856	$29,576	$3,141,125	$2,184,629	$956,496
ROSEBUD	533,156	$411,916	0	$0	$411,916	$315,391	$96,524
SHERIDAN	1,984,285	$3,740,307	669,273	$72,031	$3,812,338	$2,662,781	$1,149,558
STILLWATER	0	$0	295,575	$139,457	$139,457	$45,827	$93,630
TETON	111,675	$172,473	55,408	$1,645	$174,118	$123,325	$50,793
TOOLE	584,052	$858,877	5,022,346	$1,226,539	$2,085,416	$1,010,020	$1,075,396
VALLEY	294,874	$170,617	366,388	$203,168	$373,786	$141,273	$232,513
WIBAUX	899,469	$1,354,449	42,061	$12,093	$1,366,542	$969,989	$396,553
YELLOWSTONE	42,081	$92,658	0	$0	$92,658	$64,564	$28,094
	16,954,373	$31,718,810	32,623,665	$11,994,029	$43,712,839	$27,662,491	$16,050,348

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