

# **NRDP Funding Recommendation For Purchase of the Clark Fork River Ranch January 2019**

## **Background and Project Summary**

The Montana Natural Resource Damage Program (NRDP) is working with the Montana Department of Environmental Quality (DEQ); Montana Fish, Wildlife & Parks (FWP); and a local landowner to purchase the 2,650-acre Clark Fork River Ranch (CFRR) which includes five river miles of the Clark Fork River and associated floodplain. This project will secure public access for hunting, fishing, and other recreation activities and provide the State the ability to implement essential remediation and restoration actions on the property. The ranch is owned by Broken Circle Ranch Company, Inc. This project partially implements the *Revised Restoration Plan for the Clark Fork River Aquatic and Riparian Resources* (NRDP 2008) (CFR Restoration Plan) and Sections 3.2.1 and 4.1.1 of the *Upper Clark Fork River Basin (UCFRB) Aquatic & Terrestrial Resources Restoration Plans* (2016) (UCFRB Restoration Plans).

The CFRR property is comprised of a mixture of intermountain grassland, riparian shrub communities, riparian meadow, non-native pasture, and irrigated lands. The project is located in Powell County approximately three miles south of Deer Lodge. The property can be accessed via the Interstate 90 Frontage Road south of Deer Lodge to Sager Lane, then east to the Eastside Road. Approximately five miles of the Clark Fork River, the property's primary feature, is included within the western edge of the property (see map). The majority of the Clark Fork River floodplain will be remediated and restored by DEQ and NRDP in the future. The uplands to the east of the Clark Fork River are primarily native intermountain grasslands that provide habitat for a variety of game and non-game species. The property includes the Valiton Ditch which is a significant irrigation canal for several pivots on the ranch. The CFRR is undeveloped (no buildings on the property) providing rangeland and diverse riparian habitat for wildlife and a variety of public recreation opportunities.

The CFR Restoration Plan sets out the restoration actions planned to augment and coordinate with the remedial actions DEQ started implementing in 2012. The CFR Restoration Plan's restoration actions such as remediation coordination, flow augmentation, riparian and aquatic habitat restoration, and land acquisition will be partially fulfilled with the acquisition of the CFRR.

The UCFRB Restoration Plans goals would also be met with the acquisition of this property because the CFR riparian area is a Priority 1 terrestrial area, a terrestrial injured resource area where the State made claims. The project is also located within the dewatered reach of the Clark Fork River designated in the UCFRB Restoration Plans as a Group 1 area where implementation of flow projects is a priority. The upland areas of this project are located within a Priority 4 area; however, the biological assessment of this project ranks the upland portions as diverse wildlife habitat and supports substantial, documented use by a variety of wildlife species.

Overall, this project presents the opportunity for meeting the goals of both restoration plans.

This project will be funded by a combination of the CFR Restoration Plan fund (52%) and the UCFRB Restoration Fund (48%). As indicated in the UCFRB Restoration Plans:

- Funding for individual projects within aquatic and/or terrestrial priority areas will be based on cost-effectiveness and cost benefits.
- Each project involving property and or water rights acquisitions will require a subsequent approval of the proposed transaction by the Trustee, once fully developed in accordance with the UCFRB Restoration Plans, following consideration of input from the public, the Advisory Council, and the Trustee Restoration Council.

This document provides the NRDP funding evaluation and recommendations that will be the subject of a 30-day public comment period beginning on January 10, 2019 and ending on February 9, 2019. The two indicated councils will consider the NRDP's recommendation and public comment in making their final recommendation to the Governor, who will make the final funding decision.

Based on an appraisal commissioned by NRDP, the value of the CFRR is five million dollars. Restoration funds to purchase the ranch will be allocated with a combination of two funding sources; 1) CFR Restoration Plan funds allocation of \$2.6 million and, 2) the UCFRB Restoration Funds allocation of \$2.4 million (terrestrial \$1.4 M and aquatic flow \$1 M).

### **NRDP Funding Recommendations Summary**

The NRDP recommends funding of this project for \$5 million, subject to the following funding conditions;

- That the NRDP review and approve of the remaining land transaction documents; and
- That the agreement between the State and landowner is successfully executed.<sup>1</sup>

### **Land Acquisition Due Diligence Summary**

Some of the needed land transaction due diligence has been completed to date, including an appraisal. The NRDP has found the appraisal to be acceptable.

The environmental site assessment commissioned by NRDP and completed in January 2019 concluded the property does not have a recognized environmental condition that would require additional assessment. The appraisal, commissioned by the NRDP and completed in October of 2018, concluded a fair market value of \$5 million for the Clark Fork River Ranch. A mineral guarantee commissioned by NRDP also completed in January of 2019, indicated there is a low potential for economic metallic mineral occurrence or oil and gas development on the property due to the lack of past or current development and mineral bearing formations. The water rights that will come with the land will be proportioned by closing and are expected to be significant. The review of the title commitment and other documents, such as the certificate of survey, public comment, consideration of the UCFRB Advisory Council and Trustee Restoration Council and Governor approval of the purchase are still to be completed.

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<sup>1</sup> The expected Purchase and Sale Agreement would be between the State of Montana, acting by and through the Department of Justice Natural Resource Damage Program and the landowner.

## **CFRR Overview**

The current property owner of the CFRR is Broken Circle Ranch Company, Inc. The NRDP proposes to purchase the ranch for the full market value of \$5 million. The ranch will then be held in State ownership by NRDP or DEQ until remedial and restoration actions are complete. A few years after remediation and restoration are complete the final disposition of the property will be decided as to which state entity or entities are most appropriate to hold title or if some or all of the property will be sold on the open market with a conservation easement to protect the goals of the two restoration plans.

The property contains diverse wildlife habitat and supports substantial documented use by a variety of wildlife species. Approximately 62 percent of the property is representative of the highest crucial habitat rank indicating that the majority of the property contains important wildlife resources such as food, water, and cover; provides important habitat corridors and connectivity; and likely provides habitat for species of concern. The entire property is mapped as winter ranch for pronghorn antelope and moose. An FWP nongame biologist stated, “The wetland and riparian habitats on the property are considered biodiversity hotspots and represent some of the most important and imperiled habitat types in Montana. The range of habitat conditions found on the CFRR is particularly unique relative to other portions of the UCFRB. The combination of flowing and open waters, emergent wetlands, oxbow pools, side channels, groundwater springs, and willow thickets provide resources for a wide range of species, such as songbirds, amphibians, reptiles, raptors, fish, and small mammals, during multiple life stages.” Additionally, these current wetland attributes of the CFRR will be significantly enhanced after the State completes the remedial and restoration actions and the floodplain has a chance to recover. Public value for the property would likely be high and would include fishing, hunting, hiking, and other outdoor activities. The CFRR does not currently allow public access for hunting and fishing; with this acquisition, access will be available for the first time.

## **Remedy and Restoration on the Property**

Having this property in State ownership will be an important cost savings for remedial and restoration actions. Some of the cost savings will be from:

- 1) On-site borrow soils could be obtained from the property;
- 2) No payments necessary for disruption of ranch operations;
- 3) Allowing for grazing on this property by livestock from other ranches that will be undergoing remedy/restoration will result in avoided costs not necessary to compensate downstream or upstream ranchers; and
- 4) Time and cost savings by not needing to coordinate remedy/restoration project components with private landowner needs.

The CFRR is located within Phases 10 and 11 of the remediation and restoration of the Clark Fork River Operable Unit where cleanup activities are expected to start in the near future. The five river miles and its floodplain contain an estimated 700,000 cubic yards of heavy metals and arsenic with low pH soils. The primary objective of the cleanup will be to excavate the tailings-impacted soils from streambanks and the floodplain, haul these materials and place them in the Opportunity Ponds, backfill excavations with non-impacted floodplain materials, reconstruct portions of the streambanks, and revegetate the area with thousands of riparian trees and shrubs. This

remediated/restored floodplain is not expected to function as an un-impacted area. Even though much of the impacted soils are slated to be removed, the backfilled soils are susceptible to disturbances because the new floodplain post-remedial actions are not equivalent to the deep alluvial soil typically found in a non-contaminated floodplain. The timeframe for the recovery of the floodplain will be significant and the floodplain will remain sensitive to disturbances to the riparian vegetation for some time.

Additionally, natural resource benefits that will be achieved from the State's ability to implement remedy and restoration actions on a State-owned parcel include, but are not limited to:

- 1) Creation of additional acreage and diversity of wetlands;
- 2) Greater ability to adjust the amount of clean backfill soil necessary to enhance floodplain connectivity;
- 3) Use water from Valiton Ditch more efficiently to benefit aquatic life in this critically dewatered section of the CFR;
- 4) Protect in perpetuity public recreation benefits (fishing, hunting, picnicking) on the property with over five miles of river and 1,200 acres of upland habitat;
- 5) Eliminate future subdivisions that could fragment habitat and impact wildlife movements in and around the property;
- 6) Protect grasslands for wildlife benefits;
- 7) Protect remedy and restoration in a Priority 1 part of the upper Clark Fork River;
- 8) Enhance wildlife habitat; and
- 9) Enhance fisheries habitat.

The benefits of State ownership of this property will not only be realized in the short-term while millions of dollars of State remediation and restoration funds are being expended, but also will be realized in perpetuity due to the property being placed in State ownership or under a perpetual conservation easement.

## **Project Evaluation**

*Public Access:* Given the proximity to Interstate 90, permanent opportunities for hunters, hikers, fishermen, wildlife watchers, river floaters, and other users will be maximized. Access to the property is via the Interstate 90 Frontage Road south out of Deer Lodge to Sager Lane, then east to Eastside Road and north on Eastside Road. The upland areas of the property are accessed via Boulder Road which borders the eastern end of the property. The property is not enrolled in the Block Management program for hunting and the current landowners only allow limited access for hunting and fishing. Acquisition by the State will open the area to public access for hunting, fishing, wildlife watching, river floating, and other lost uses.

*Cost-Benefit Relationship:* NRDP contracted Westech Inc. to prepare a Resource Evaluation Report that describes the natural resource and public recreational benefits of this project. The property's primary feature is 5.1 miles of the Clark Fork River where remedy and restoration actions will be taking place. The protection of the Clark Fork River corridor where approximately \$10 million are anticipated to be invested cleaning up the mining-impacted areas is a high cost-benefit. CFRR has water rights associated with the property that NRDP will use to improve Clark Fork River instream flow within and downstream of the dewatered reach of the

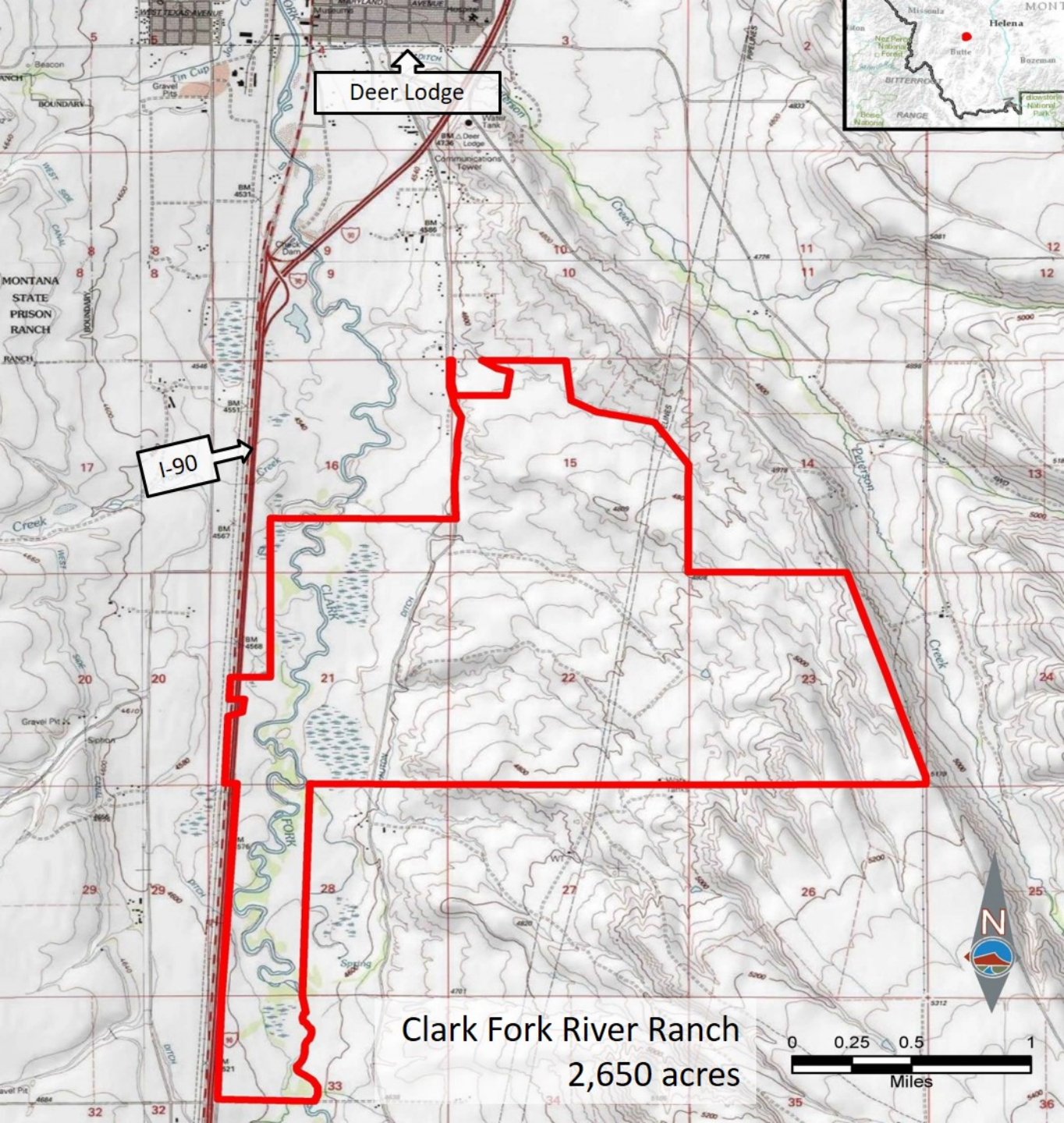
river. In addition, having this river corridor available for public use will be a benefit that Montana citizens can enjoy in perpetuity.

The combined 1,200 acres of uplands areas are primarily native intermountain grasslands that provide habitat for a variety of game and non-game species. This area will become available to hunting in perpetuity. All of the property is important big game winter range, primarily for pronghorn antelope and moose. Numerous other mammal and bird species have been documented on, or near, the property in the Montana Natural Heritage Program database, which are listed in the Resource Evaluation document. Protecting the property fits well with the restoration plan's goals discussed above by conserving native habitats, retaining and enhancing native grasslands, enhancing riparian area condition and integrity, and providing for wildlife related recreation.

It is a State goal that there will be long-term protection of the newly remediated and restored river that will accomplish the aquatic and terrestrial goals set out in the Restoration Plans and the CFR Restoration Plan. This protection will be memorialized by placing the property in public ownership or a permanent conservation easement. Additional benefit to the project will be the significant water rights that will be secured, some of which may be changed from irrigation to instream flow to enhance aquatic habitat. Given the substantial natural resource and recreational benefits the project offers, along with contributions from three funding allocations (CFR Restoration Plan Fund, terrestrial and aquatic flow allocations), the NRDP considers the project to have a favorable cost benefit relationship.

Cost-Effectiveness: By placing this property in public ownership, the State's significant remedial and restoration obligations will be accomplished in a cost-effective way by the reasons outlined above in the "Remedy and Restoration on the Property" section of this document. Public value would likely be high and would include fishing, hunting, hiking, and other outdoor activities. Protecting the property would safeguard the vast remedial and restoration expenditures in a cost-effective way for future generations to enjoy. Because of the significant benefits as described herein, this project will cost-effectively accomplish the Restoration Plans and the CFR Restoration Plan goals of protecting the remediated and restored corridor and increase public access to the Clark Fork River and surrounding uplands.

Public Support: Following the conclusion of a 30-day public comment period on this proposal, the NRDP will provide the public comment and the NRDP's draft response to public comment to the Advisory Council and Trustee Restoration Council before these councils make their funding recommendations.



Deer Lodge

I-90

Clark Fork River Ranch  
2,650 acres

