

MEMORANDUM

TO: Members of the UCFRB Remediation and Restoration Advisory Council

FROM: Carol Fox, NRDP

DATE: May 14, 2014

SUBJECT: Wednesday, May 21, 2014 Council Meeting

The Advisory Council will meet **Wednesday, May 21, 2014** at the Butte Archives, starting at 1:00 p.m. Attached are the agenda and backup meeting materials, along with the draft meeting summary of your last meeting in February 2014. Below is a summary of the major agenda items.

Optional AM Tour: In addition to the meeting, there will be an optional site tour of Butte area restoration sites in the morning from 10:00 a.m. to 12:15 p.m. If you are attending the tour, please meet at the Butte Visitor's Center (located at 1000 George Street) at 9:50 a.m. on Wednesday, 5/21; we'll depart on the tour at 10:00 a.m. See the second page of the agenda for directions and more information about this tour. To help plan transport and lunch arrangements, please let me know **by noon on Tuesday, May 20, 2014** if you plan to attend the tour. A bag lunch will be provided to Council members. Members of the public are welcome to attend the tour, but will need make their own carpool and lunch arrangements.

Clark Fork Watershed Education Program FY15/16 proposal – Action Item

In 2013, Governor Schweitzer approved an amendment to the May 2012 *Final UCFRB Interim Restoration Process Plan* that provided long-term funding of the Clark Fork Watershed Education Program (CFWEP) through a \$2 million allocation from the UCFRB Restoration Fund in fiscal years (FY) 2014 and 2015. That amendment maintained the same provisions for review and approval of CFWEP's biennial budget. Those provisions require that CFWEP's budget be considered by the NRDP and Advisory Council and approved by the Trustee Restoration Council (TRC) on a biennial basis in each even-numbered year.

The total budget requested to cover CFWEP's budget for FY2015/16 is \$866,997. The attached tables provide a breakdown of the budget which includes the three components of the program (Butte Base Education Program, Missoula Base Education Program, and Bird's Eye View Education Program). Also attached is a proposed scope of work.

At the May 21st meeting, Kathy Coleman of NRDP and Rayelynn Connole of CFWEP, will provide background on the framework for CFWEP funding and summarize the FY15/16 CFWEP proposal and CFWEP's milestones achieved in the past fiscal year. Following public input, the Advisory Council will determine its recommendation to the TRC on the FY15/FY16 scope/budget proposal. The TRC will consider CFWEP's proposed budget and scope of activities for FY2015/16 at their

next meeting, scheduled to occur on Thursday, June 26th in room 137 of the Capitol, starting at 1:00 p.m.

Update on Butte Area One Restoration Plan Implementation – Informational Item

Pat Cunneen of NRDP will provide an update to the Advisory Council on the investigations and other activities being conducted to implement the *Final 2012 Butte Area One Restoration Plan*, which Governor Schweitzer approved in January 2013. Attached is summary of the restoration allocations and projects that were recommended by the Butte Natural Resource Damage Restoration Council (BNRC) and encompassed in the approved plan. This agenda item comes at the request of Council member Jim Kambich, based on his attendance at a BNRC meeting this year that focused on the Montana Bureau of Mines and Geology's recently completed investigation of the Diggings East and Northside Tailings mine waste areas. These areas are proposed for removal in the *Final 2012 Butte Area One Restoration Plan*. The morning Butte tour will include visits to these mine waste areas.

Proposed Garrity Mountain Additional Land Acquisition Project – Informational Item

At your February 2014 meeting, Greg Mullen of NRDP and Gates Watson of The Conservation Fund briefed the Council about a pending land acquisition project. Since then, the NRDP has completed its due diligence on the project and its funding recommendation document (copy attached), which is the subject of public comment until 5:00 pm on Monday, June 9, 2014. At your May 21st meeting, Greg will summarize and answer questions about this document. The Advisory Council will decide on its funding recommendation for this project at its next meeting on Wednesday, June 18, 2014. The TRC will decide on its funding recommendation for this project at its next meeting on Thursday, June 26, 2014.

Program Updates – Informational Item

At your May 21st meeting, Kathy Coleman will provide and answer questions about the fiscal report for the 3rd quarter of FY14. I will follow with a few other programmatic updates.

UPPER CLARK FORK RIVER BASIN REMEDICATION AND RESTORATION ADVISORY COUNCIL

BUTTE PM MEETING & AM TOUR AGENDA Wednesday, May 21, 2014

Bill Rossbach, Chair
Missoula

Maureen Connor
Vice-Chair
Philipsburg

Kay Eccleston
Anaconda

Roy O'Connor
Missoula

Jim Kambich
Butte

Jon Krutar
Ovando

Mick Ringsak
Butte

Jim Davison
Anaconda

Tracy Stone-Manning,
Director
Dept. of Environmental
Quality

Jeff Hagener, Director
Dept. of Fish, Wildlife and
Parks

John Tubbs, Director Dept.
of Natural Resources and
Conservation

Ron Trahan, Chairman
Confederated Salish &
Kootenai Tribes

Jacqueline Lavelle
U.S. Dept of Interior

AM Tour Option: See page 2 for information on this tour of restoration sites in the Butte Area, which starts at 9:50 a.m. at Visitor's Center, as well as directions to both the tour and meeting locations.

AFTERNOON MEETING AT BUTTE ARCHIVES

**Butte-Silver Bow Archives
17 West Quartz Street, Butte, MT**

- | | |
|-------------|--|
| 1:00 – 1:15 | Introductions and Administrative Items <ul style="list-style-type: none">• Past meeting summary – Action Item |
| 1:15 – 1:45 | Clark Fork Watershed Education Program – Action <ul style="list-style-type: none">• Summary of FY15/16 budget & scope – Kathy Coleman, NRDP & Rayelynn Connole, CFWEP• Public Comment• Council Action on FY15/16 Budget |
| 1:45 – 2:20 | Update on Butte Area One Restoration Plan -Informational <ul style="list-style-type: none">• Summary of investigations and other implementation activities – Pat Cunneen, NRDP• Questions and input from Advisory Council• Questions and input from Public |
| 2:20 – 3:00 | Garrity Mtn Addition Acquisition Project – Informational <ul style="list-style-type: none">• Summary of the Project & NRDP Funding Recommendation – Greg Mullen, NRDP, and Mark Somers, American Public Lands Exchange• Advisory Council Questions and Input• Public Questions and Input |
| 3:00 – 3:20 | Program Updates – Informational <ul style="list-style-type: none">• 3rd Quarter Fiscal Report – Kathy Coleman• Other Program Updates – Carol Fox |
| 3:20 – 3:30 | Additional Public Comment <ul style="list-style-type: none">• Next Meeting Logistics• Announcements/Wrap-up |

Note: Full Council mailing materials are posted on the NRDP website at:
<https://doj.mt.gov/lands/advisory-councils/>.

DIRECTIONS FOR THE PM ADVISORY COUNCIL MEETING

Butte Archives – 17 West Quartz Street

Exit I-90 at Montana Street, travel north on Montana Street for 1.5 miles to Granite Street, turn right onto Granite Street and travel east for 1 block, turn left onto Alaska Street and travel north for 1 block, turn right onto Quartz Street and travel east for ½ block: Archives Building will be on the north side of the street, parking available in large lot on west side of building or small lot on east side of building, handicap parking is available on the street in front of the building.

MORNING TOUR OF BUTTE AREA SITES – Optional

Directions to Butte Visitors' Center at 1000 George Street:

Exit I-90 at Montana Street, travel north on Montana Street for 0.2 miles and turn right onto George Street, travel east for 0.2 miles on George and turn right into Visitors' Center parking lot.

- 9:50 AM Meet at Butte Visitor's Center
- 10:00 AM Depart on tour
Blacktail Creek Berm, Diggings East, and Northside
Tailings mine tailings sites
- Parrot Tailings Well Sampling site
- 2010 Butte Children's Fishing Pond grant site
- Points of interest along the way
- 12:15 PM Return to Butte Visitor's Center

Note: The NRDP will provide van transport and a bag lunch for Council members. Others are welcome to attend the tour, but will need to make their own carpool arrangements.

February 19, 2014 Advisory Council Meeting Summary
Held from 1:00 to 4:00 pm at the Elks' Lodge in Deer Lodge

Council Members Present: Bill Rossbach, Maureen Conner, Kay Eccleston, Roy O'Connor, Jim Kambich, Mick Ringsak, Jim Darling, Laurence Siroky, Jacqueline Lavelle, Eric Mason

Council Members Absent: Jon Krutar, Mary Price, Katie Garcin

Maureen Conner chaired the first part of the meeting; Bill Rossbach chaired the second part.

Administrative Items: Members reviewed and unanimously approved the draft Oct. 2013 meeting summary with no changes.

Maureen provided members with an appreciation letter for Mike McLean, who has resigned from the Council due the Governor's appointment of Mike's wife as Lieutenant Governor.

January 2014 Butte-Silver Bow Groundwater Restoration Draft Plan – Action Item

Carol Fox, NRDP, provided background on the funding framework for Butte's water system improvements, on past funded projects and plans, and on public comments on this *Draft Plan* received to date.

Dave Schultz, Public Works Director, provided a summary of, and answered questions about, the *Draft Plan*. Following is a summary of the questions and responses:

- Will Butte-Silver Bow (BSB) be buying the State Land? R: BSB intends to buy the 5 acre Stodden private parcel on which the majority of the water treatment plant will be located and lease/obtain an easement for a portion of the State Land to be used for placement of the standpipe feature.
- What is the status of the 5 acre land purchase? R: All due diligence for the purchase has been completed, but closing would not occur until after the *Draft Plan* is approved.

Public Comment:

Commenter #1: Carl Hafer of Butte

Carl relayed his concerns that the proposed Basin Creek water treatment plant and Basin Creek to Colorado Hill Pump Station would negatively affect his downstream water rights used for irrigation/livestock watering on Basin Creek. Mr. Hafer provided members with a copy of his water rights abstracts, a summary table from DNRC's records of water rights for Basin Creek, and map of his property that is located about six miles downstream of the proposed water treatment plant. [Copies of these handouts are available upon request to the NRDP.] Mr. Hafer provided some historical information about these water rights. He does not want to be deprived of his water right and asked whether Butte-Silver Bow would be measuring water use to assure that they do not take more than their allowable water right. Mr. Hafer wants his concerns

reflected in the public record but understands the response he may get on this issue may not give him satisfaction.

Maureen Connor verified with Mr. Hafer that his concerns were two-fold about: 1) how/whether Butte-Silver Bow will measure its use; and 2) whether there will be sufficient water in the Creek for his water rights to be fulfilled. She noted that the priority date for his water rights were junior to Butte-Silver Bow's water rights. She asked Dave Schultz to address the Mr. Hafer's concerns.

Dave Schultz indicated Butte-Silver Bow takes the water for its water rights from above the Basin Creek dam, not below it. He indicated that the flow conditions downstream of the dam will not change as a result of the proposed improvements and that typically the spill from the reservoir ends in July. Butte-Silver Bow will not be changing the point of use or point of diversion of its water rights to accomplish the proposed improvements. The pump station involves a different path to get the water where it is needed but does not change the water quantity situation. Dave indicated Butte-Silver Bow has a flow meter at the dam and can assure it will not be taking more than its right.

Jim Kambich verified with Dave that Butte-Silver Bow is not changing the size of the piping that carries the water and would not be doing anything different that would change downstream flow conditions.

Roy O'Connor asked if the Basin Creek water rights had been adjudicated. Dave indicated yes and that it was a typical situation of having more water rights on paper than "wet" water rights.

Carl Hafer thanked the Council for consideration of his input.

Commenter #2: Jon Sesso, Butte-Silver Bow Planning Director

Jon asked for full consideration of the *Draft Plan*. The more time taken, the better the decision. This plan is based on Butte-Silver Bow's fourth master plan update and it entails a better solution because of that additional look. The County has been able to make operational improvements at the Big Hole water treatment plant that saved the County from having to make expensive improvements to that Plant. Those savings can be diverted and better spent as proposed in the 2014 *Draft Plan*. Measure twice and cut once. The *Draft Plan* involves a more effective plan of using the funding than the previous plan.

Council Discussion and Action:

Mick Ringsak thanked Butte-Silver Bow for the tremendous work that went into the *Draft Plan*.

Roy O'Connor noted his support for new and better ideas as they come along.

Jim Kambich made a motion to recommend approval. He then agreed to revise his motion to the following to take into consideration remaining comments: "We recommend approval of the Plan, subject to a contingency for Council reconsideration based on subsequent comment." Bill

Roszbach seconded the motion and noted that the Council would not necessarily have to meet should there be a comment that is not favorable to the *Draft Plan*. The motion passed unanimously.

2010 Racetrack Flow Grant Project – Information Item

Tim Davis, Water Division Administrator for the Department of Natural Resources and Conservation (DNRC), briefed Council members about the water rights change of use process in general and DNRC's July 2013 draft preliminary determination to deny the Clark Fork Coalition's Racetrack change of use application. This briefing was in follow up to the briefing by Coalition and NRDP staff at an October 2013 Council meeting. Attached is a copy of Tim's presentation. Following is a summary of the questions to and responses ("R") from Tim:

- What determines abandonment? R: 10 years of non-use, plus intent of abandonment needs to be clear.
- How is historic use determined? R: Based on pre-1973 water use.
- Can you explain why the DNRC did not treat the storage water right any differently than the direct flow water right? R: They were analyzed similarly. Storage is not a beneficial use. The beneficial use of the storage water is irrigation. We are working on a response to Don MacIntyre's legal opinion on this issue. DNRC is not changing policy in its Racetrack determination.
- Can you explain DNRC's determination about water returning to Racetrack Creek rather than Little Modesty Creek, which does not fit with the site topography? Did DNRC look at how mounding occurs on the adjacent property and its effect? R: The staff analyzed how flows move between basins to reach its determination. I'd have to defer the mounding question to Russ Levins at DNRC, who did the related modelling and can get you his analysis.
- Is the imported water aspect important? R: Yes. If we had found the water had been imported, we would have another finding. We may pursue a policy change on the imported water issue. There is conflicting case law on this issue and no statutory law specific to it. Even if it had all been imported, there still would have been increased consumption.
- Why do you have increased consumption with the conversion from flood to pivot? Is it because of evaporation? R: While the amount diverted may be decreased, plant uptake is increased. There is a better crop yield but less return flow.
- Does DNRC not consider such conversion as salvage? R: Converting from flood to sprinkler is not considered a water savings method due to this increased consumption. It does not fall under the salvage definition.

- The federal government funds a lot of conversions around here. Why are such conversions being promoted? R: We are working on how to deal with this; it's not a consideration in the change process.
- We are trying to take stored water in a high mountain dam and keep it in stream. Your analysis looks at the adverse effect of that change, correct? R: Yes. Other users relied on return flow from the irrigation practices associated with this storage right.
- What about if the project involved lining a ditch to increase flow downstream? R: Statute treats ditch loss differently. Downstream users do not have rights to water resulting from ditch loss; it is not considered as return flow from irrigation.
- Are there more requirements to meet for a change that involves instream flow vs. other changes? R: Tim reviewed the requirements for a change to instream flow. Only the consumed portion can be protected past the diversion point.
- Mike McLane of FWP commented that he was puzzled by how DNRC analyzed the consumptive use issue. R: It's a complicated issue.
- What about the consumed portion with salvage water from ditch loss? R: There is a consumptive portion to salvage water. Salvage loss is difficult to analyze.
- What is the simplest and most cost effective way to obtain instream flow in the UCFRB? R: Retirement of irrigated acreage or a split season lease. A change resulting from converting from flood to sprinkler is difficult to get through change process because you are diverting less but consuming more.
- Do you see changes in regulations coming that will make it harder or easier to accomplish a change to instream flow? R: In 2012 we made changes to more accurately address historic use and simplify the change process.
- Adjudication does not deal with water quantity in the claim? For example, could there be 10 acre feet on a water right claim, but only 4 acre feet historically used? R: Correct, unless there is an objection or DNRC submits an issue remark. The Water Court does not go through the same level of scrutiny as the change process.
- Laurence Siroky commented that many users don't measure water use; it's more a "best guess." Tim noted that new water rights require measurement devices.
- Bill Rossbach asked Barbara Hall of the Clark Fork Coalition to provide an update on their Racetrack application. Barbara indicated the Coalition intends to submit an application solely for the stored water right rather than an application of both the stored and direct flow right. The Coalition believes stored water is developed water that should be treated differently than non-developed water pursuant to statutory provisions. We will try to refute the 27% return flow analysis. We believe consumptive use is a problematic issue. There is a lot of opportunity for instream flow through the change process. There

are clarifications needed on stored water and imported water issues in general. Water savings should be looked at as a whole, not just consumption factor.

- Is the Coalition's water right 2/3 of the lake storage rights? R: Yes
- Maureen Connor asked Mike McLane of FWP to also give his opinions regarding best opportunities for instream flow. Mike responded that: the Upper Clark Fork River is highly over-appropriated; need for instream flow is clear; funding is available; and the retirement of permanent irrigated acres is the best option but not always a fit with opportunities. The Racetrack project entails a lot of complexities. He is struggling to understand DNRC's interpretation relative to storage water given the strong history of storage water being considered differently, as indicated in Don MacIntrye's legal opinion. Acquisition/leasing of the Silver Lake Water System storage right may work better given the already completed change to instream flow in place and the senior priority of that right.
- Tim Davis noted the temporary lease bill passed last session (HB37) offers a new, streamlined tool to get water instream in drought year. He explained the basis of the bill, which sunsets in 2019.
- Laurence asked Mike McLane about FWP's success with instream flow leasing and the change of use process. Mike responded that FWP has done far less of this than Trout Unlimited and the Clark Fork Coalition. The agency has not done many in the last seven years; most of their projects were done prior to DRNC applying the consumptive use rule. Some of the salvage projects that FWP successfully completed before then would likely not be approved now based on more recent DNRC change proceedings. Statewide FWP has 15 leases, with some more in the works. There was a rigorous adverse effects analysis done in the past as is done now, but the change process criteria for approval are harder to meet than in the past. DNRC is struggling with how to deal with historic use, and the change process is tougher.
- Bill Rossbach asked that the NRDP provide the DNRC change determination and the legal analysis prepared by Don MacIntrye the storage water issue be provided to Council members. [Follow up note from NRDP – This information was provided to Council members in a 2/20/14 email. Copies of these documents, as well as, DNRC's response to Don MacIntrye's legal analysis are available upon request to the NRDP.]

Program Updates – Information Item

[Copies of these Program Update presentations are available upon request to the NRDP.]

Aquatic Non-Flow Projects

Doug Martin of NRDP provided a presentation on and answered questions about work on the non-flow aquatic projects pursuant to the *2012 Aquatic and Terrestrial Resources Restoration Plans*. Following is a summary of the questions to and responses from Doug.

- What about the river safety issues associated with the I-90 bridges at Milltown? R: The Montana Department of Transportation (MDT) did not get the TIGER grant.¹ MDT is moving forward with design for new bridges so they can be prepared should funding become available in the future.
- Does the proposed fish screen and diversion work on the Kohrs Manning Ditch on Cottonwood Creek require a MEPA analysis? R: NRDP will do a Environmental Assessment checklist, as was done with similar grants projects. If the project extends onto the Grant Kohrs Ranch National Historic Site, the Park Service may conduct additional environmental analysis.
- Are you considering a siphon for that project? R: A siphon option has been considered, but the ditch owners do not like it, plus it presents potential safety issues. The NRDP prefers that still be considered as an option.

Terrestrial Projects

Greg Mullen of NRDP, Gates Watson of The Conservation Fund, and Ray Vinkey of FWP provided a presentation on and answered questions about the proposed Garrity Mountain Land pursuant to the *2012 Aquatic and Terrestrial Resources Restoration Plans*. Following is a summary of the questions to and responses from presenters.

- Will the acquisition by the State reduce the counties' tax revenue? R: No, FWP pays taxes on lands its owns at the same tax rate of other owners.
- What is The Conservation Fund's purchase price? R: \$1.28 million, which is \$50,000 less than the appraisal value. Closing will occur at the end of March.
- Does The Conservation Fund have an agreement with NRDP? R: Yes, a letter of agreement.
- Will the water rights be retired? R: Yes; a change of use to instream flow can be pursued.

Updates on Flow and Recreation Projects and Fiscal Report

Carol Fox provided a presentation on and answered questions about the status of the flow and recreation projects being developed pursuant to the *2012 Aquatic and Terrestrial Resources Restoration Plans* and the 2nd quarter FY14 report. There were no questions on these topics.

There was no additional public comment. Following discussions related to the scheduling of the TRC meeting on the *Draft Butte Groundwater Plan* and next Council meeting, Bill Rossbach adjourned the meeting.

¹ Transportation Investment Generating Economic Recovery discretionary grant: <http://www.dot.gov/tiger>

WATER RIGHTS AND CHANGES
NRDP – FEBRUARY 19TH, 2014
 Tim Davis
 Water Resources Division Administrator
 Montana Department of Natural Resources and Conservation

WATER RIGHTS 101

What is a water right?

Article IX of the Montana Constitution:
 any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses

"water right" means the right to use water

"Appropriate" means: to divert, impound, or withdraw... (85-2-102, MCA)



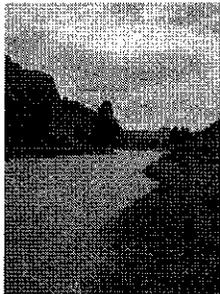
Basic Principles of MT Water Law

Doctrine of Prior Appropriation
 First in time first in right
 Limited to beneficial use—includes storage rights
 Limited to historic use (no expansion)
 Use it or lose it
 Existing water users have the right to unchanged stream conditions
 No adverse effect
 No waste



Elements of a Water Right

- Priority Date
- Source
- Period of Diversion
- Diversion rate (CFS or GPM)
- Volume (acre-feet/year)
- Place of Use
- Purpose of Use
- Period of Use



Change of Appropriation Water Rights

- Point of Diversion
- Place of Use
- Purpose of Use
- Place of or Add Storage



Application to Change a Water Right

- Must prove criteria by a preponderance of evidence
- Historic use/historic consumptive use – Return Flow Analysis

Criteria

- No adverse effect to senior or junior appropriators – No increase in consumption
- Adequate means of diversion
- Beneficial use
- Possessory interest



Racetrack Preliminary Determination to Deny

- Return flow analysis showed that a large portion of the water would have returned to the Racetrack Creek
- Application contained no adverse effect analysis on potentially effected water right holders
- Proposed to continue to irrigate the entire claimed place of use even after two of six water rights were sold and changed

Racetrack Preliminary Determination to Deny

- Increase in historically irrigated acres (821.59 vs. 749.59 acres)
- Increased consumption (over 200 acre feet of increased consumption)
- Required the Department to effectively change four water rights that were not part of the change application – those rights remaining in irrigation

Racetrack Preliminary Determination to Deny

- Application was not a salvage application – conversion to sprinkler is not a water saving method
- Application did not comply with the instream flow change requirements under MCA 85-2-407 and 408

Timdavis@mt.gov 406-444-6605



Attachment A: Scope of Work—NRD Program Contract 2014-16

SECTION A-1. CFWEP.ORG PROGRAM/OVERVIEW:

The Contractor will continue to revise and build on an established curriculum as required to keep content relevant and accurate in conjunction with ongoing remediation and restoration, under the guidance of local technical and education experts, to continue its Track I programming that includes four classroom sessions and a full day field trip for students in the 5th through 8th grade level in 18 districts at up to 25 elementary and middle schools in the Upper Clark Fork Basin. The counties/districts affected are:

- Deer Lodge (Anaconda)
- Granite (Philipsburg, Hall, Drummond)
- Lewis and Clark (Lincoln School)
- Powell (Deer Lodge, Garrison, Gold Creek, Avon, Elliston)
- Silver Bow (Butte, Butte Central, Ramsay)
- Missoula (Bonner, Clinton)

Total (5-8th grade) enrollment within the Basin is estimated at over 2,300, based on 2010-11 data from the Montana Office of Public Instruction. Students will be reached through standard CFWEP base-level programming (10 hours of class/field) and/or additional programming in specific target schools. Target school teachers will be served with focused professional development training in base-level curriculum in an effort to: 1) increase contact hours with target school students and; 2) increase the number of students reached with base-level education content; and 3) decrease CFWEP staff time required for in-class presentations.

Tasks/Milestones to be completed under Section A-1 Scope of Work include:

1. The Contractor will continue to assure neutrality by guaranteeing that all materials produced or disseminated remain fact based and do not advocate or promote any particular political or social viewpoint.
2. The Contractor will continue to provide direct and indirect services in the classroom and field to the following target middle and elementary schools, teachers and students, grades 5-8: Butte elementary schools (6 public and 4 private) and/or East Middle School (Butte); Butte Central, Ramsay, Anaconda (Lincoln and Fred Moodry), Deer Lodge (O.E. Speer and E.F. Duvall), Garrison, Gold Creek, Drummond, Hall, Philipsburg, Potomac, Ovando, Lincoln, Helmville, Avon and Elliston.
3. The Contractor will assure sustainability by relying upon the NRDP contracted services to account for no more than 50% of the total program budget.
4. The Contractor will serve at least 2,000 target grade students in the Basin with base-level program activities and curriculum (This number is based on recent basin enrollment of students in grade 5-8 of ~2,300[Office of Public Instruction, 2010-11]).
5. The Contractor will recruit a minimum of 10 area scientists to serve the program's target schools as classroom presenters, student mentors, or field trip leaders.

6. The Contractor will ensure that all target school districts (see above) have signed and updated MOUs and are implementing measures to have its teachers deliver a portion of the CFWEP base-level science curriculum in the classroom for the 2014-16 school years. This milestone aims to increase the amount of teacher implementation and sustainability of curriculum in target school classrooms.
7. The Contractor will work with target school districts to provide professional development workshops on teaching of base-level curriculum as needed for up to 25 target grade/school (grades 5-9) teachers.
8. The Contractor will ensure that at least three public and/or non-school-related groups will take an active participation or service learning role in an Upper Clark Fork restoration project by the end of the contract period under the direction and/or coordination of the Contractor.
9. The Contractor will share program activities and accomplishments of the program; relevant and timely basin restoration news and updates; and make available educational materials/curriculum in electronic and on-line format, with educators and the public via its website, and through presentations and posters at events such as the Montana Educators Association annual meeting, the annual Montana Water Summit (Montana Watercourse/Project WET), the annual conference of the Montana Environmental Education Association, and other appropriate educational/other applicable conferences.
10. The Contractor, working with the education and technical assistance of teachers, scientists, tribal parties and agency personnel (e.g. NRDP, DEQ, EPA), will continue to update, review, revise and improve Cfwep.org resources and curriculum.
11. The Contractor will continue to engage with tribal education parties (Salish and Kootenai) to insure tribal education components in both the science and social studies resources are accurate and up-to-date and that tribal teachers have access to and are aware of the resources and the professional development offered.
12. The Contractor will coordinate and oversee the subcontract for Cfwep.Org-Missoula programming, including the Bird's Eye View summer education program and the Milltown Education Program. Oversight will include coordination of scheduling to the maximum extent practicable to ensure that area students and schools are reached through programming efforts.

SECTION A-2. CFWEP.ORG—MISSOULA/MILLTOWN PROGRAM/OVERVIEW

This component includes continuation of classroom and field program implementation of the Milltown Education Program (MEP)/CFWEP curriculum (grades 5-8) in classrooms at seven (7) Missoula schools (1) Bonner school, and (1) Clinton school. This component also includes coordination of the Bird's Eye View Education Program activities.

In an effort to increase the number of Milltown target schools/teachers using the CFWEP--Missoula curriculum in the classroom, the Contractor will train up to 20 teachers annually in implementation of Milltown/CFWEP materials as needed at a Missoula-based teacher professional development workshop

Tasks to be completed Section A-2 Scope of Work include:

1. The Contractor will continue to ensure all existing Cfwep.Org—Missoula curriculum and activities are coordinated and consistent with Cfwep.Org curriculum and with the ongoing remediation and restoration at the Milltown and Upper Clark Fork Superfund sites.
2. The Contractor will serve seven (7) Missoula, (1) Bonner school, and (1) Clinton school with Cfwep.Org—Missoula curriculum and activities.
3. The Contractor will coordinate closely with University of Montana faculty and staff to oversee the work of University of Montana graduate/undergraduate student employees who implement classroom and field components of the MDEP.
4. The Contractor will provide one professional development training workshop for up to 20 teachers in the Missoula area to teach MEP curriculum and activities.
5. The Contractor will ensure the recruitment of area scientists to serve as classroom presenters, field trip leaders or student mentors to the MEP target schools.

SECTION A-2. BIRD’S-EYE VIEW EDUCATION PROGRAM/OVERVIEW

This component includes continuation of a summer program operated by the Avian Science Center and partners at the University of Montana. The Bird’s-Eye View Education Program is a long-term, multi-partner, place-based program in the Upper Clark Fork River Basin (UCFRB). This program will provide experiential education opportunities outside the school year that use birds as a tool to learn about past mining effects in the UCFRB and to re-connect children and adults with their local river environment. Specifically, we will operate at least two songbird banding stations and offer fieldtrips to osprey nest locations.

Tasks to be completed Section A-3 Scope of Work include:

1. The Contractor will secure the necessary permits for banding activities: federal, state, and University banding and animal handling permits; National Park and US Forest Service permits.
2. The Contractor will hire and train two field technicians and two high school interns. We will prepare sites for bird banding operations.
3. The Contractor will coordinate closely with CFWEP staff to update curriculum and assessment materials as needed, and to conduct an assessment and evaluate program success.
4. The Contractor will serve a minimum of 600 participants through field education events: a minimum of 16 songbird banding days and six (6) osprey banding days. Specifically, the osprey banding outreach efforts will reach students in
 - a. Butte/Anaconda
 - b. Missoula/Milltown/Clinton—coordinated with Montana Natural History Center
 - c. Deer Lodge
 - d. Drummond

5. The Contractor will enter bird banding data and run proofing routines; submit data to Bird Banding Lab and MAPS. Conduct blood and feather lab analyses from samples collected during contract period.
6. The Contractor will coordinate closely with CFWEP to share program activities and accomplishments of the BEVEP program; and make available data and educational materials/curriculum via its own website and/or the Cfwep.org website, and through presentations and posters at events such as the Montana Educators Association annual meeting, the annual Montana Water Summit (Montana Watercourse/Project WET), the annual conference of the Montana Environmental Education Association, and other appropriate or applicable educational/scientific conferences.

All of the tasks described herein (Scope of Work A-1-3) will be completed within the July 1, 2014 to June 30, 2016 fiscal time period. The parties involved (Montana Tech/Cfwep.Org and Montana Department of Justice-NRDP) may revisit and revise as necessary this Scope of Work prior to the July 1, 2015 beginning of the second year of services described herein. Quarterly progress reports and invoices will be submitted to the Program Sponsor during the fiscal time period for reimbursement in an amount **not to exceed \$886,668** as specified in Attachment B, Contracted Services Budget.

Expense Category	Expense	Notes	Projected Butte CFWEP Expenses 7/1/14 - 6/30/15	Projected Butte CFWEP Expenses 7/1/15 - 6/30/16	Projected Missoula CFWEP Expenses 7/1/14 - 6/30/15	Projected Missoula CFWEP Expenses 7/1/15 - 6/30/16
Salary & Wages						
	Program Director	55% FTE	\$ 30,025	\$ 30,925		
	Field Coordinator	70% FTE	\$ 26,720	\$ 27,522		
	Program Coordinator	50% FTE	\$ 15,926	\$ 16,404		
	Communications Coordinator	40% FTE	\$ 17,259	\$ 17,776		
	Curriculum Coordinator	18% FTE	\$ 8,052	\$ 8,293		
	Institute Director	5% FTE	\$ 3,525	\$ 3,630		
	Institute Budget Coordinator	20% FTE	\$ 6,916	\$ 7,124		
	Student Assistants (2 students 20 hrs/wk)	\$9/hr x 40 hours/week for 9 months	\$ 12,960	\$ 12,960		
	Student Assistants (1 student 40 hrs/wk)	\$9/hr x 40 hours/week for 3 months	\$ 5,040	\$ 5,040		
	Total		\$ 126,422	\$ 129,675		
Fringe Benefits						
	Contracted Professional	46%	\$ 46,693	\$ 48,093		
	Classified Staff	57%	\$ 3,942	\$ 4,061		
	Students AY	3%	\$ 389	\$ 389		
	Students Summer	10%	\$ 504	\$ 504		
	Total		\$ 51,528	\$ 53,047		
Contracted Services						
	Contract to Missoula CFWEP				\$ 162,838	\$ 168,510
	School district busing for fieldtrips	\$250/bus x 35 fieldtrips	\$ 8,750	\$ 8,750		
	Substitute teachers	\$100/day x 35 fieldtrips	\$ 3,500	\$ 3,500		
	Printing		\$ 3,000	\$ 3,000		
	Total		\$ 15,250.00	\$ 15,250.00	\$ 162,838	\$ 168,510
Supplies & Materials						
	Field Monitoring supplies	upgrade, repair, purchase	\$ 5,000	\$ 5,000		
	Workshop supplies		\$ 1,250	\$ 1,250		
	Referene materials		\$ 250	\$ 250		
	Office supplies		\$ 2,000	\$ 2,000		
	Total		\$ 8,500	\$ 8,500		
Commuications						
	Postage and mailings		\$ 500	\$ 500		
	Media/advertising		\$ 1,000	\$ 1,000		
	Long-distance telephone		\$ 500	\$ 500		
	Total		\$ 2,000	\$ 2,000		
Travel						
	School administration/partnership visits	4.5 per month x 150 miles/trip x 12 months	\$ 4,941	\$ 4,941		
	Overnight accommodations	8 nights @ \$90/night	\$ 720	\$ 720		
	Workshops/classroomms/fieldtrips	25 field trips x 2 vehicles x 75 miles/trip	\$ 2,288	\$ 2,288		
	Personnel per diem for field trips	25 field trips x 2 people x \$11 day	\$ 550	\$ 550		\$23/per day
	Total		\$ 8,499	\$ 8,499		

Expense Category	Expense	Notes	Projected Butte CFWEP Expenses 7/1/14 - 6/30/15	Projected Butte CFWEP Expenses 7/1/15 - 6/30/16	Projected Missoula CFWEP Expenses 7/1/14 - 6/30/15	Projected Missoula CFWEP Expenses 7/1/15 - 6/30/16
Other/Miscellaneous						
	Webiste		\$ 200	\$ 200		
	Conference Registrations	MEA-MFT, MEEA, etc.	\$ 1,500	\$ 1,500		
	Total		\$ 1,700	\$ 1,700		
Total Direct Costs - Butte CFWEP			\$ 213,898	\$ 218,670		
Total Direct Costs - Missoula CFWEP					\$ 162,838	\$ 168,510
Indirect Costs		20% of direct costs	\$ 42,780	\$ 43,734		
Indirect Costs		5% of direct costs	\$ 8,142	\$ 8,426		
TOTAL			\$ 264,820	\$ 270,829	\$ 162,838	\$ 168,510

Total Budget 14-15 \$ 427,657
Total Budget 15-16 \$ 439,340

Missoula Programs

<i>Expense Category</i>	Expense	Notes	07/01/14- 06/30/15	07/01/15- 06/30/16
1. Salaries & Wages				
Greene, PI	.615 FTE		\$ 5,852	\$ 6,027
Fylling, Program Manger, UM	3.5 months		\$ 10,619	\$ 10,938
Guscio, Program Manager, UM	12 months		\$ 33,276	\$ 34,274
Young, Lab Technician, UM	1.125 months		\$ 2,700	\$ 2,781
Roriguez, Coordinator, UM	2 months		\$ 5,426	\$ 5,589
Field Techician, Master Bander, UM	1 month		\$ 2,713	\$ 2,794
1 Field Technicians, UM	3 months		\$ 7,281	\$ 7,499
Student Educators, UM	10 students, 50 hours @ \$10	\$10.30 2nd YR	\$ 5,000	\$ 5,150
1 Student Interns	1.5 months ea		\$ 2,081	\$ 2,143
Total			\$ 74,947	\$ 77,196
2. Fringe Benefits				
PI	25% salary		\$ 1,463	\$ 1,507
Program Manager/Lab Technician	31.5% salary + health		\$ 29,424	\$ 31,211
Coordinator/Field Technician	29% salary + health		\$ 9,794	\$ 10,414
Students	13% salary		\$ 920	\$ 948
Total			\$ 41,601	\$ 44,080
3. Contracted Services				
Montana Natural History Center			\$ 1,000	\$ 1,000
Raptor View Research		\$50/hour x 50 hours	\$ 2,500	\$ 2,500
<i>Dave Taylor Roofing</i>		bucket truck rental	\$ 4,500	\$ 4,500
Total			\$8,000	\$8,000
4. Supplies & Materials				
Field and laboratory supplies	Summer Program		\$ 1,000	\$ 1,000
Field and laboratory supplies	Academic Year		\$ 1,500	\$ 1,500
Field webcam and set up			\$ 2,500	\$ 2,500
Total			\$ 5,000	\$ 5,000
5. Communications				
Postage			\$ 500	\$ 500
Phone			\$ 400	\$ 400.00
Total			\$ 900	\$ 900

6. Travel

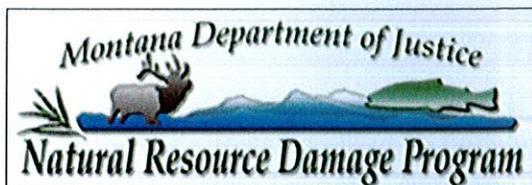
In-state motor pool mileage	Travel to osprey nests, banding stations/Summer & AY	\$	5,250	\$	5,250
Total		\$	5,250	\$	5,250

7. Rent and Utilities

8. Equipment

9. Miscellaneous

Total Direct costs		\$	135,698	\$	140,425
UM Indirect Costs	20% of Total Direct Costs	\$	27,140	\$	28,085
TOTAL COST					
Subcontract		\$	162,838	\$	168,510



FINAL 2012 BUTTE AREA ONE RESTORATION PLAN SUMMARY

May 2014

In January 2013, Governor Schweitzer approved the *Final 2012 Butte Area One Restoration Plan*.¹ The following table indicates the funding allocations to various restoration project categories that were recommended by the Butte Natural Resource Damage Restoration Council (BNRC) and encompassed in the approved plan. Work underway or planned for each of the restoration categories as of May 2014 is further summarized in the bullets that follow the table.

BNRC Restoration Recommendation Cost Summary

<i>Project Category</i>	Category Allocation (\$)
<i>1) Restoration of the Upper Silver Bow Creek Corridor</i>	10,000,000
<i>2) Mine Waste Area Restoration/Revegetation</i>	6,000,000
<i>3) Stream Restoration</i>	4,000,000
<i>4) Municipal Water System Improvements</i>	10,000,000
<i>5) Storm Water</i>	0
<i>6) Recreation</i>	1,000,000
<i>7) Small/Miscellaneous projects</i>	1,000,000
<i>Grand Total</i>	32,000,000

1) \$10 million (M) is allocated for mine waste removal restorations actions in the upper Silver Bow Corridor that would improve injured surface and groundwater resources in Butte Area One. Areas targeted for removal are the Parrot Tailings, Diggings East, and Northside Tailings. Because the estimated cost for such removal is \$30M, contributions from other funding sources are being pursued through the ongoing Butte Priority Soils Operable Unit Consent Decree negotiations. Such work would be subject of a more definite restoration plan to be developed by the BNRC and Natural Resource Damage Program (NRDP) and subject of public review before an approval decision by the Governor. Funded work to date has focused on needed investigations of mine wastes and related surface/groundwater interactions.

¹ This plan is available from the NRDP website at: <https://doj.mt.gov/lands/lawsuit-history-and-settlements/>

- 2) \$6M is allocated for revegetation of waste areas on the Butte Hill and in Butte Area One that will improve injured surface water resources. Funded projects to date include Butte-Silver Bow's tree planting project and MT Tech's forb and shrub planting project. Planning for other planting projects is underway.
- 3) \$4M is allocated for stream restoration and riparian habitat improvements in the Upper Silver Bow Creek corridor, in sections of Blacktail Creek, and its smaller tributaries and a related surface water beneficial use study. In summer 2013, a high resolution Light Detection And Ranging (LiDAR) aerial survey of Butte Area One and Blacktail Creek (from I-90 bridge over Santa Claus Lane to the Nine Mile) was conducted to gather topographical data that can be used for stream restoration projects.
- 4) \$10M is allocated for construction of the new Basin Water Treatment Plant. A contract for this work was executed in 2013, and construction design and planning work is underway. Construction of the plant is scheduled for completion in 2016.
- 5) \$1M is allocated for recreation projects in the Upper Silver Bow Creek corridor. Recreation project funding decisions are deferred until the restoration plan for the corridor is completed (see bullet #1).
- 6) The BNRC determined that storm water issues should be addressed by the actions associated with the Butte Priority Soils Operable Unit remedy that will be mandated by the Environmental Protection Agency and implemented by BP/ARCO; therefore, no restoration dollars were dedicated to this category.
- 7) \$1M is allocated for small restoration projects of \$100,000 or less. The BNRC's proposed funding process involving annual solicitation of and funding decisions on project proposals is now undergoing public review. If approved by the Governor, the process would begin in fall 2014.

For more information about implementation of the *Final 2012 Butte Area One Restoration Plan*, contact Pat Cunneen of the Butte Natural Resource Damage Program at 533-6882 or pcunneen@mt.gov.

NRDP Funding Recommendation Garry Mountain Addition Land Purchase May 2014

Background and Project Summary

In June of 2012 the Anaconda Sportsmen's Club submitted a restoration concept abstract (Attachment A) to NRDP for consideration of using natural resource damage funds for purchasing the 640 acre Garry Mountain Addition (hereafter referred to as "Property") located two miles west of Anaconda. A map depicting the Property and surrounding area is provided in Attachment B. The State included this project as a potential land acquisition project to be considered for further review and subsequent funding decision in the December 2012 *Final Upper Clark Fork River Basin (UCFRB) Aquatic and Terrestrial Resources Restoration Plans ("Final Restoration Plans")*. If purchased by the State, the Property would be included as part of Fish Wildlife, and Park's adjoining Garry Mountain Wildlife Management Area (Garry WMA) and protected for fish and wildlife habitat and recreation opportunities for the general public.

The *Final Restoration Plans* identify this acquisition project as a proposed restoration action within the Anaconda Terrestrial Priority Landscape area, to be funded with Terrestrial Priority Account of the UCFRB Restoration Fund. As indicated in the *Final Restoration Plans*:

- Funding of individual projects within aquatic priority areas and terrestrial priority landscapes will be based on cost-effectiveness and cost:benefit, rather than on concept proposal estimates; and
- Each project involving property and or water rights acquisitions will require a subsequent approval of the proposed transaction, once fully developed in accordance with the plans, by the Trustee following consideration of input from the public, Advisory Council, and Trustee Restoration Council.

This document provides the NRDP funding evaluation and recommendation that will be the subject of a 30-day public comment period that will begin on Friday, May 9, 2014 and end on Monday, June 9, 2014. The two indicated councils will consider the NRDP's recommendation and public comment in making their funding recommendation to the Governor, who will make the final funding decision.¹

The current property owner, The Conservation Fund (TCF), purchased the property on March 20, 2014 to provide bridge funding during the time period thereafter until the State determined whether acquisition of the property would be in its best interest and was approved. The Property was listed for sale on the open market and under threat of being acquired, managed, and developed in a manner that may have conflicted with its public and natural resource values. Based on an appraisal commissioned by NRDP, the appraised value is \$1.38 million. FWP has committed

¹ The Advisory Council will consider this project at a meeting on June 18, 2014. The Trustee Restoration Council will consider this project at a meeting on June 26, 2014. For more information on this meetings, go to <https://doj.mt.gov/lands/advisory-councils/>.

\$50,000 as matching funds towards the Property purchase and TCF has applied to the Montana Fish and Wildlife Conservation Trust for \$50,000 in additional matching funds.

NRDP Funding Recommendations Summary

The NRDP recommends funding of this project for \$1.28 million, subject to the following funding conditions:

- that the NRDP review and approve of remaining land transaction documents;
- that the acquisition be approved by the FWP Commission and State Land Board; and
- that a Buy/Sell agreement between the TCF and the State be successfully executed.²

If the \$50,000 pending from the Fish and Wildlife Conservation Trust match is not committed, the NRDP recommends an additional \$50,000 in natural resource damage funds go towards project funding.

Land Acquisition Due Diligence Summary

Most of the needed land transaction due diligence has been completed to date. This includes an appraisal, environmental property assessment, mineral and water rights evaluations, the warranty deed, and title insurance commitment/guarantee. The NRDP has found all these land transaction documents to be acceptable.

The environmental property assessment commissioned by TCF and completed in February 2014 concluded that the Property does not appear to present an environmental liability. The title work completed by TCF prior to its acquisition of the Property did not indicate any unacceptable encumbrances on the Property. The appraisal of the Property commissioned by the State and completed in June 2013 concluded a fair market value of \$1.38 million for 640 acres, or \$2,150/acre.

A mineral guarantee commissioned by TCF and completed in March 2014 indicated that mineral rights come with the northern half of the Property, but are severed from the southern part. A geological assessment of the mineral development potential completed in March 2014 concluded that the risk of any commercial mineral development of the Property to be extremely remote. The owner(s) of those severed mineral rights remain to be determined. If State acquisition is approved, FWP may pursue acquisition of the severed mineral rights from the owner(s).

Through the March 2014 land transaction, TCF obtained ownership of the three water rights associated with this Property:

² The expected closing of the Buy/Sell agreement would be between The Conservation Fund and the State of Montana, acting by and through the Department of Justice Natural Resource Damage Program. The warranty deed would be between The Conservation Fund and the State of Montana, acting by and through the Department of Fish, Wildlife and Parks.

- 1) A surface water right on Grays Gulch of 1 cfs (cubic feet per second) for irrigation that has a priority date of April, 1899;
- 2) A surface water right on Grays Gulch of 1.88 cfs for irrigation that has a priority date of April, 1889; and
- 3) A surface water right on Ice House Gulch of 1.25 cfs for irrigation that has a priority date of June, 1894.

There is a co-owner of the water right who bought a separate parcel from a previous owner of the Property. The general abstract for the three water rights states: "Ownership update processed to add new owners. The water right may be split into separate water rights upon request of the owners." If State acquisition is approved, FWP may pursue a change of use process through DNRC to convert these irrigation water rights to in-stream flow.

In October 2013, the FWP Commission approved FWP to proceed with conducting needed due diligence and negotiations so that this Project could be considered for FWP's acquisition. FWP anticipates completing a Draft Environmental Assessment in June 2014. Following consideration of public comment on the draft EA, the FWP Commission will consider project approval. If approved by the Commission, the State Land Board will next consider project approval.

Summary of Relationship Between TCF and State and Funding Sources

In May 2013, TCF and the State, acting through NRDP and FWP, agreed to work together via a non-binding letter of intent agreement, to determine whether public ownership of the Property could be recommended and accomplished.³ TCF agreed to pursue its acquisition of the Property from American Bank and then work with the State to complete the NRDP process and sell the Property to the State, if funding is approved by the Governor. TCF and the State worked together on this acquisition because the Property was listed on the open market and at risk of being sold. TCF's purchase allowed the State the time to go through its land acquisition process, including public scoping, without risk of a private sale.

TCF acquired the Property on March 20, 2014 at a purchase price of \$1,330,000, which is \$50,000 less than the appraised value of \$1,380,000. TCF bought the Property with \$1,280,000 of TCF funds and \$50,000 from TCF's partner, the Rocky Mountain Elk Foundation. The owner at that time, American Bank, had agreed to a bargain sale of \$50,000 less than the appraised value.

The State will purchase the Property from TCF at the appraised value of \$1,380,000. The anticipated funding for State's purchase price is \$1,280,000 in natural resource damage funds, \$50,000 from FWP Habitat Montana (confirmed) and \$50,000 of funding from the Montana Fish and Wildlife Conservation Trust (pending). The \$100,000 difference between TCF's out of pocket purchase cost of \$1,280,000, and the \$1,380,000 sale price to the State will be used to cover TCF's direct, indirect, and overhead expenses. This \$100,000 amounts to about 7% of the appraised value. TCF's involvement as a partner has saved the State both time and money. For

³"Letter of Intent to Work Together on a Potential Acquisition of Real Property" from Gates Watson of the TCF to Carol Fox of the NRDP and Darlene Edge of FWP, dated May 9, 2013.

example, TCF coordinated and paid for a hazardous materials inspection of the Property, which also met the State's needs. TCF also took the lead in seeking the \$50,000 from Montana Fish and Wildlife Conservation Trust which will reduce the State's costs to \$1,330,000. Assuming approval of the pending \$50,000 in matching funds from the Montana Fish and Wildlife Conservation Trust, the expenditure from the Terrestrial Priority Account of the UCFRB Restoration Fund for this acquisition project would be \$1,280,000.

FWP estimates that it will need approximately \$80,000 for initial operation and management to construct the primitive parking lot, weed control, and fencing needs. Funding for this work will come from the WMA habitat enhancement allocation in the *Final Restoration Plan*.

Project Evaluation

Public Access: Purchase of the Property will expand on and improve public access to the eastern portion of the Garrity WMA. The two existing access points closest to the subject Property provide insufficient access to this portion of the Garrity WMA. Both existing access points are not on the Garrity WMA lands and in locations that make them difficult for the public to find and use. Accessing the Garrity WMA through 'Stump Town' area requires driving past some homes to a parking area located on DNRC lands that accommodates 1 or 2 vehicles. The second existing access point requires crossing about ½ mile of the adjoining Hearst Lake Property, a private property that is under long-term lease to Anaconda Deer Lodge County. If State acquisition is approved, FWP plans to install a small gravel parking lot off Stump Town Road that would be located on the Property, accessed via county road, and accommodate approximately four vehicles (see proposed location on Attachment B).

The Property is immediately west of Anaconda and will provide considerable recreational opportunities for hunters, hikers, horsemen, fishermen, wildlife watchers, and other users. FWP estimates that about 250 fishing days and 750 hunting days may be added by the addition of this Property to the Garrity WMA. Given the proximity to Anaconda, hunting success will be maximized with walk-in access only. To protect wildlife during critical time periods closures to public use and travel management will be necessary and managed by FWP.

Costs:Benefit Relationship: FWP's resource evaluation (Attachment C) describes the natural resource and public recreational benefits of this project. If approved for State ownership, this Property will add 640 additional acres to the existing 9,475 acre Garrity WMA, which was purchased with natural resource damage funds in 2000/01 for \$5.8 million. This addition would complement and protect the existing State investment by conserving high quality wildlife habitat for many species and precluding development. This habitat is of especially high quality for both winter range and calving habitat, and conservation of the Property will help maintain connectivity for wildlife migration over an expansive area of nearby public lands managed for natural resource conservation. Expected recreational activities include wildlife watching, hiking, walking, hunting, and horseback riding, all of which will be directly accessible near the Anaconda city limits.

Three specific habitats (winter elk range, aspen, and riparian) will be protected from development by this acquisition:

- 1) Big game winter range for elk will be protected. Elk are increasingly wintering on the Property because it is at a lower elevation as compared with the Garrity WMA as a whole, and because it supports high quality grasslands (225 acres) and aspen stands. These grassland areas are designated as Priority 1 lands for restoration and replacement projects in the UCFRB, as outlined in the *Final Restoration Plans*. Herds of up to 200 elk have been observed wintering on the Property, with significant use also occurring during spring and fall. The Property is particularly valuable as an addition to the Garrity WMA because wintering elk have shifted east from the mountain itself and onto the proposed addition (“the Property”).
- 2) This Property has approximately 300 acres of aspen stands, which are relatively rare in the UCFRB and provide habitat for species such as moose, white-tailed deer, black bear, ruffed grouse, song birds, small mammals, bats, and raptors.
- 3) Grays and Ice House gulches pass through the Property, harboring stands of woody riparian vegetation and some wetlands. These perennial streams may support a modest cold water fishery. (FWP has not yet surveyed the Property so the presence and distribution of fish is unknown.) All riparian and aspen habitats are designated as Priority 1 lands for restoration and replacement projects in the UCFRB, as outlined in the *Final Restoration Plans*.

Given these substantial natural resource and recreational benefits the project offers, and that matching funds are available, the NRDP considers the project to have a favorable cost:benefit relationship.

Cost-Effectiveness: The *Final Restoration Plans* indicate that the NRDP will use a cost-effectiveness evaluation to judge whether a project accomplishes its goals in the least costly way possible, or if there is a better alternative. In FWP’s Resource Evaluation (Attachment C), FWP adequately justifies the reasons for and benefits of this Property. As stated therein: “The addition of 640 acres to the east of Garrity WMA will protect highly utilized elk winter range and calving habitat, conserve multiple priority habitats, and associated species, and provide significant public recreational opportunities, all within sight of Anaconda. The value of Garrity WMA to wildlife and the community will be enhanced by the purchase. The juxtaposition of native grasslands, aspen groves, riparian habitat, and ponds make the property an especially valuable site for wildlife.” Adding such quality wildlife habitat to an existing WMA is a cost-effective way to synergistically enhance the benefits of existing conservation lands. Because of the significant benefits that this project offers as described herein, this acquisition will cost-effectively accomplish the project goal of enhancing the wildlife resource habitat and increasing the public access to the Garrity WMA.

Public Support: As indicated in their abstract submitted in 2012 (Attachment A), the Anaconda Sportsmen’s Club strongly supports adding this Property to the Garrity WMA. 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 determine their funding recommendations.

RECEIVED

JUN 18 2012

Natural Resource Damage Program
1301 East Lockett
PO Box 201425
Helena, MT 59620-1425

NATURAL RESOURCE
DAMAGE PROGRAM

Please accept these comments on behalf of the Anaconda Sportsmen's Club as our Restoration Concept Abstract.

Our club has represented the interests of outdoor recreationist, mostly hunters and fishers, in the Anaconda area for more than 60 years. From the initiation of legal proceedings which produced the NRD funds from ARCO we were active supporters and provided legislative testimony to support funding of the lawsuit. Our members provided testimonials to quantify the actual losses in wildlife and riparian resources as well as associated recreation. These losses were the majority of documented losses for which monetary compensation was received to provide funding for what is now the NRD Program.

It has been our expectation that the recently adopted Framework for allocating the remaining fund balance would protect and insure appropriate funds for the various Restoration Plans. Specifically we expect the estimated \$43.3 million for aquatic resources and \$18.4 million for terrestrial resources will be available for identified priority areas. Funding is not sufficient to obtain all priority projects but we expect to work with FWP and conservation organizations to pursue those projects as opportunities are identified and available.

While we don't have the resources to develop actual projects we support the Priority area projects as proposed. These represent our initial Restoration Concept Abstract. In addition to those listed we would ask for fishing access sites on the Clark Fork River, especially above Drummond. We can't identify specific sites or a quantity of sites but it is important that sufficient public access is provided so the public can enjoy the benefits of a restored river system. This will require negotiation with private parties to find willing sellers as fee title or easements in appropriate locations.

In addition we have supported the development of a reservoir in the Fifer Gulch area on the Southwest corner of Anaconda for the purposes of an urban fishery designed for youth. These lands are under long term lease by Deer Lodge county from Mountain Lion Corporation (Dennis Washington).

For Terrestrial Restoration plans we submit the Big Easy, a large block of wildlife habitat east of the Warm Springs Ponds. Negotiations with the owner were suspended this past year when it was determined there were too many risks to presenting a project for this year. We would like to pursue this opportunity again.

In addition there is a 600 acre property know as the Brickley lands as well as the Hearst Lake property owned by Mountain Lion Corporation, noted above. Both are adjacent to

the Watershed lands owned by FWP in the Hearst Lake drainage. This is valuable winter range for our local elk herd and we support protecting these wildlife values and providing additional access to adjacent public lands. Protecting both of these habitats is critical to achieving the full wildlife and recreational values of the public lands in the larger Watershed landscape.

We recommend the Letica property, 11,000 acres between Lost Creek State Park and the Racetrack drainage. This property is critical habitat for a number of wildlife species including Bighorn sheep, Mule deer, and a large number of elk. Again these lands are vital to maintaining wildlife values on existing public landscape.

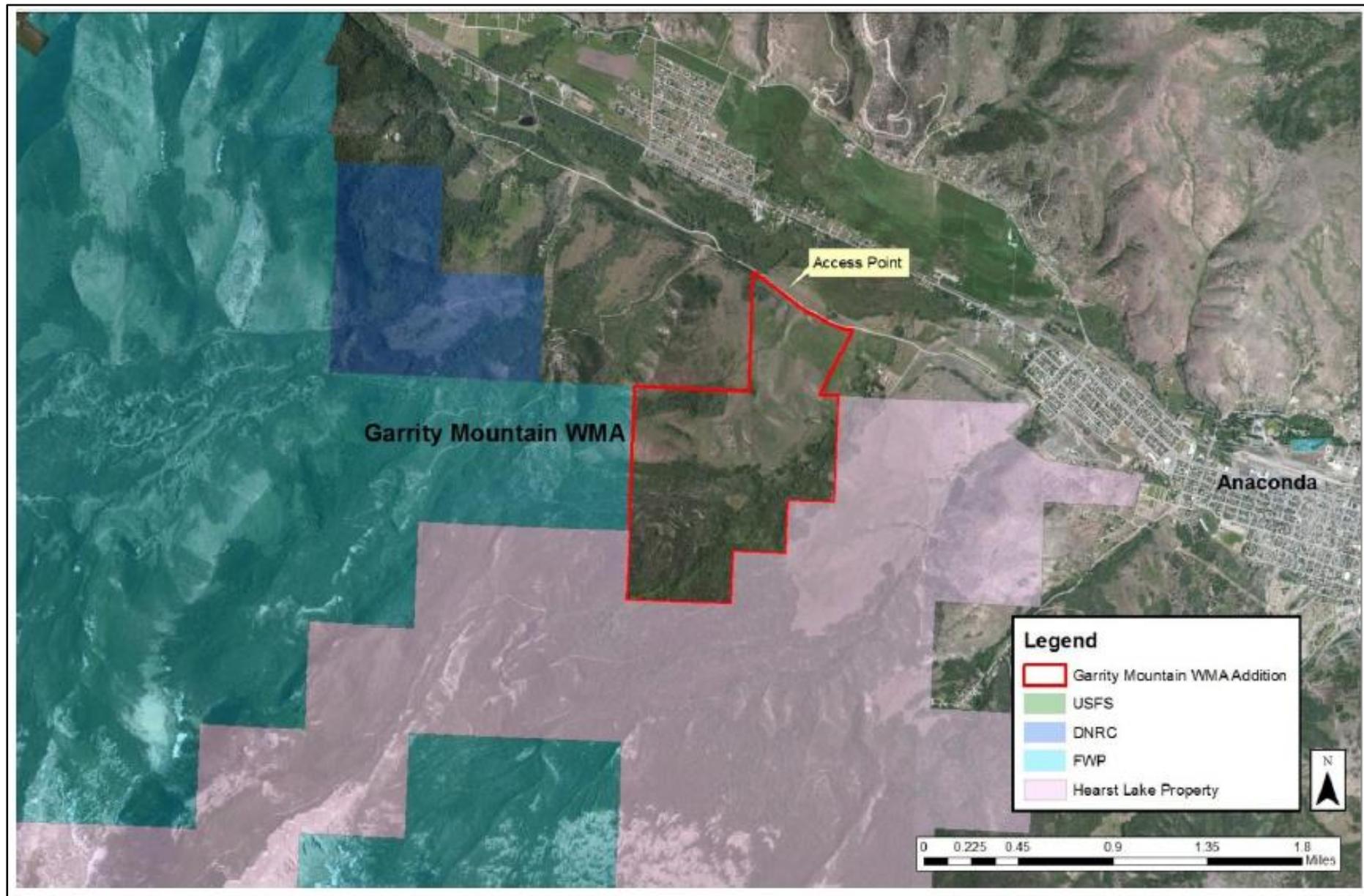
We appreciate the opportunity to develop these additional proposals as well as work with appropriate parties to move the existing priority projects forward. We don't have a preference for fee title purchase or easements. Our preference is to replace and enhance habitats and access depleted by the activities which were the basis of the NRD lawsuit. Our expectation is that the remaining funds will be used to provide the best restoration opportunities with the greatest long term benefit for the public in the damaged Clark Fork watershed.

We look forward to working with the NRD staff and advisory councils to develop these projects.



Anaconda Sportsmen's Club
2 Cherry St.
Anaconda MT. 59711

Attachment B. Garrity Mountain WMA and Addition Property (Potential New Access Point listed below)



Attachment C

Terrestrial Resource Evaluation Garrity Mountain Wildlife Management Area Addition

Date: April 15, 2014

Prepared by: Ray Vinkey and Kristi DuBois, FWP wildlife biologists

Property name: Garrity Mountain Wildlife Management Area Addition

Project Sponsor: Montana Fish, Wildlife & Parks

Location: 2 miles west of Anaconda, Montana (Figure 1)

Portions of Gray's and Ice House gulches at:

Township 5 North, 11 west, section 32

Township 4 North, 11 west, section 6

Acreage: 640 acres **Elevation:** 5440 to 6400 feet (Figure 2)

Landownership: Nonprofit organization – The Conservation Fund

Project description and cost: Fee-title acquisition of 640 acres of critical elk winter range, including intermountain grasslands, aspen stands, and riparian areas which provide high quality habitat for multiple game and nongame species (Figure 3). The appraised value of the land is \$1.38 million. As proposed the Natural Resource Damage Programs' Terrestrial Resource Fund would pay \$1,280,000, Montana Fish, Wildlife & Parks' Habitat Montana Fund would pay \$50,000, and the Montana Fish & Wildlife Conservation Fund would pay \$50,000. Project costs for due-diligence and administration are paid by the Conservation Fund and NRDP.

Consistent with a memorandum of understanding with NRDP, the Conservation Fund (TCF) has purchased the property from a Bozeman bank for disposition to Montana Fish, Wildlife & Parks. Significant due diligence has been completed by TCFs' partner American Lands and NRDP. The FWP Commission has approved this project to proceed.

The Garrity addition would complement the existing WMA by adding lower elevation winter range as well as 300 acres of aspen forest and riparian habitats along with two creeks and three ponds. The purchase would preclude the subdivision of the property that could occur under private ownership.

Figure 1. Locality Map of Garrity WMA Addition.

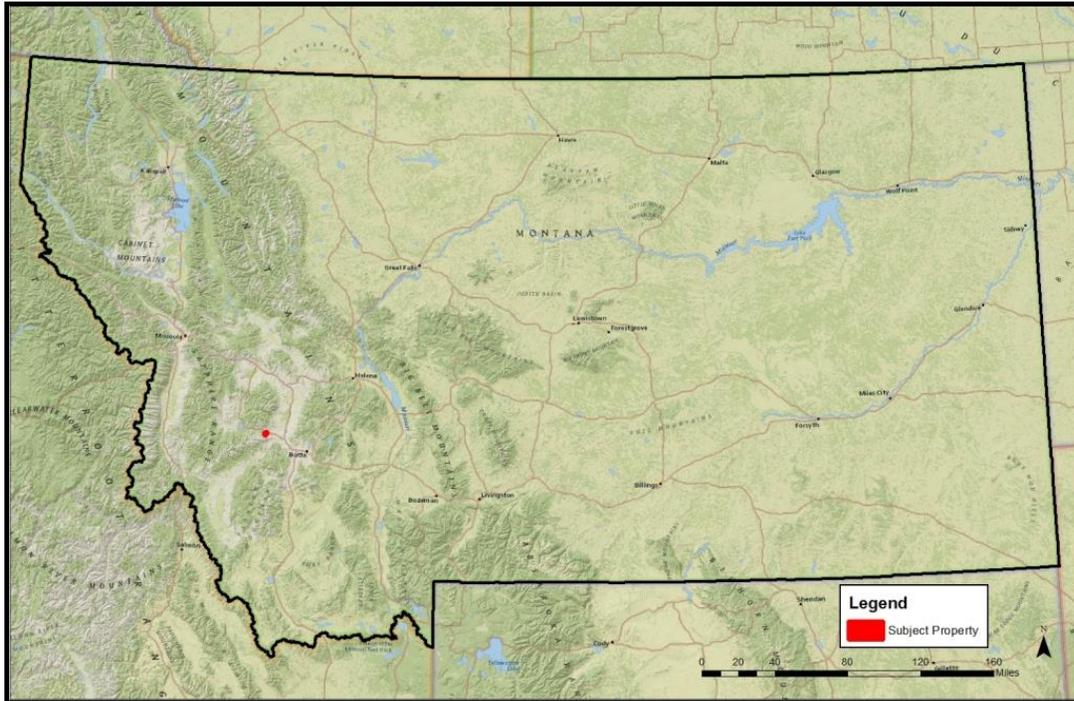


Figure 2. Topographic map of Garrity WMA Addition.

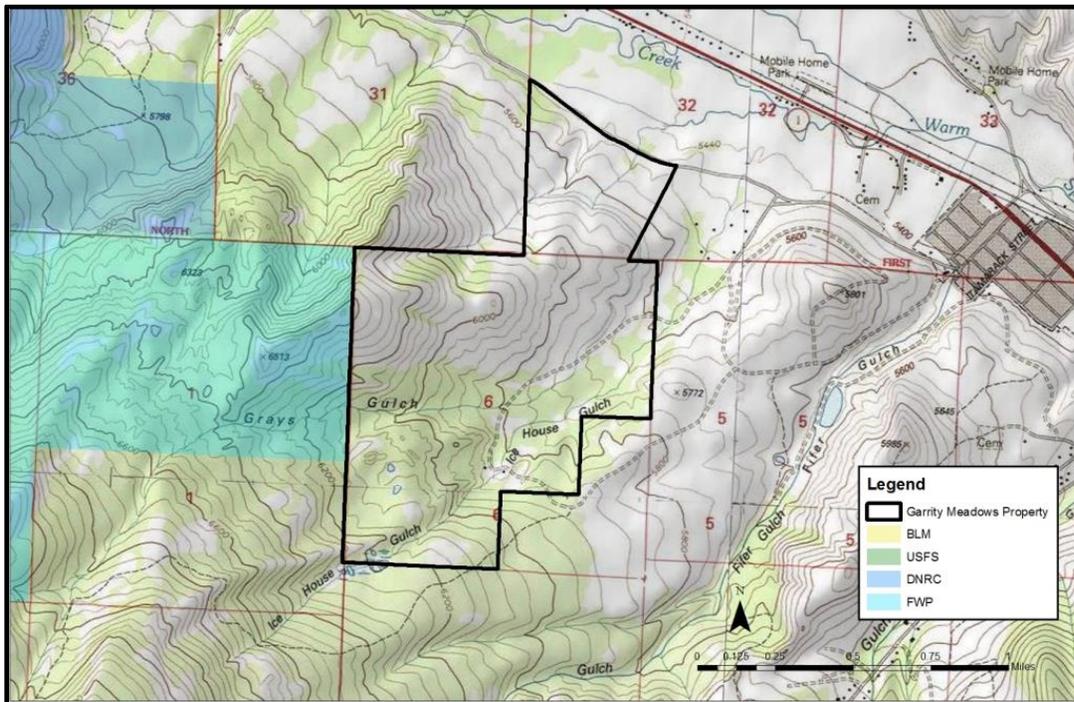
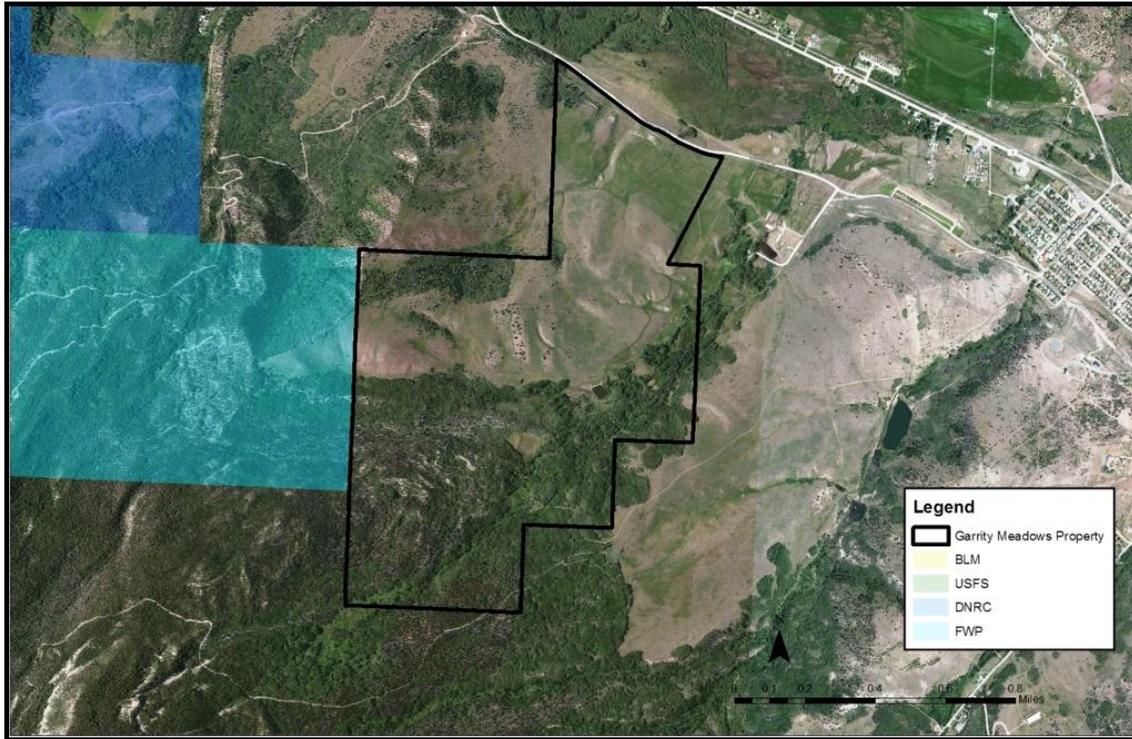


Figure 3. Aerial map of proposed Garrity WMA Addition.



Wildlife Habitat onsite: (Are there targeted habitats for conservation? Any unique habitats?)

The property is composed of intermountain grasslands and meadows (225 acres), aspen and riparian (300 acres), several ponds, 2 streams, and formerly irrigated pastureland (115 acres). Inclusions of lodge pole pine and Douglas fir are found in the uplands. Native intermountain grasslands and riparian habitats are targeted for conservation by FWP in the *Comprehensive Fish & Wildlife Conservation Plan* (2006) as well as by NRDP in the *Upper Clark Fork River Basin—Terrestrial Wildlife Resource Prioritization* (2011) and *Final Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans* (Restoration Plan, 2012). All riparian and aspen habitats are Priority 1 for restoration and replacement projects in the UCFRB.

The juxtaposition of native grasslands, aspen groves, riparian habitat, and ponds make the property an especially valuable site for wildlife. The addition is especially valuable because almost half of it is aspen and riparian, and much of the remainder is foothill grasslands. Aspen stands are relatively rare in the Upper Clark Fork and provide wildlife values in excess of their footprint on the landscape. There is an extensive aspen stand onsite which provides habitat for elk, moose, white-tailed deer, black bear, ruffed grouse, song birds, small mammals, and bats (Figure 4).

Aspen stands are a favored habitat for elk calving and native grasslands onsite provide critical elk winter range. Ponds provide breeding and nesting habitats for waterfowl as well as foraging habitat for bats and birds.

Figure 4. Aspen stand on the Garrity Mountain WMA Addition.



(Mark Sommer photo)

Wildlife onsite: *(What species are present, any Species of Concern or Endangered Species Act species? Are there targeted species for restoration: waterfowl, aquatic mammals, amphibians, grassland birds, insectivorous birds, birds of prey, bats?)*

Over 150 wildlife species (48 mammals, 97 birds, 4 amphibians, and 2 reptiles) have been verified in the Anaconda area in habitats similar to those found on the property. Aspen and riparian habitat, wetlands, forest, and native grasslands onsite provide important seasonal ranges for elk, moose, mule deer, and white-tailed deer.

The proposed addition adjoins the eastern portion of the Garrity WMA and would protect critical elk winter range in HD 214. The elk herd is stable to declining in number and their distribution has shifted eastward from Garrity Mountain to the proposed addition and the Hearst Lake property owned by Mountain Lion LLC.

In recent years more elk have wintered on the proposed addition, and adjoining private lands, than on Garrity WMA itself. The addition would accommodate this shift in elk distribution and

assure that the WMA retains its integrity by precluding subdivision of this adjoining parcel. FWP's ability to manage the WMA would be improved.

During an aerial survey on March 24, 2014, 190 elk were observed wintering on the property. This was 69% of all elk in the eastern portion (Georgetown Lake to Mill Creek) of HD 214. Significant use also occurs during the spring and fall. The property has exceptional winter range and is also used during calving. Elk are frequently observed by residents, were observed during all field visits, and have been recorded during aerial surveys (Figure 5).

Figure 5. Elk observed on field visit to Garrity Mountain WMA addition.



(Mark Sommer photo)

The area supports diverse populations of (or habitat for) a suite of other managed species, including mule deer, white-tailed deer, moose, black bear, mountain lion, bobcat, wolf, beaver, muskrat, mink, dusky grouse, and ruffed grouse.

Species of Concern and Potential SOC likely present on the property (either foraging or breeding) include dwarf shrew, Preble's shrew, hoary bat, silver-haired bat, fringed myotis, porcupine, western toad, western screech-owl, great gray owl, golden eagle, northern goshawk, peregrine falcon, veery, great blue heron, Cassin's finch, Clark's nutcracker, evening grosbeak, rufous hummingbird, brown creeper, green-tailed towhee, gray-crowned rosy-finch, pileated woodpecker, and Lewis's woodpecker. The property has not been surveyed for small mammals,

reptiles and amphibians, bats, or songbirds, although some bat and songbird surveys have been conducted in similar habitats nearby.

Targeted species for restoration likely to use the property include waterfowl, herons, raptors, amphibians, woodpeckers, insectivorous birds, bats, and burrowing mammals.

Fisheries habitat and resources onsite: Evaluation pending spring 2014.

Geographic relationship to other lands: (*Public, protected, developed, connectivity*)

The proposed addition adjoins Garrity Mountain Wildlife Management area (9,475 acres) to west, is ½ mile southeast of 480 acres Department of Natural Resources land, 2 miles south of Stucky Ridge WMA (296 acres), and 5 miles north of Mt. Haggin WMA (58,188 acres).

Thousands of acres of the Beaverhead National Forest in the Flint Creek Mountain Range to the north and the Anaconda-Pintler Range to the south the define this landscape. The addition is part of a landscape of extensive lands held by Beaverhead National Forest and Montana Fish, Wildlife & Parks. Anaconda-Deerlodge County leases an adjoining 4,734 acre parcel. Overall a high level of connectivity and protected lands characterize this area, but developed lands in the corridor west of Anaconda are a pinch point for wildlife movement. Conservation of this parcel will help to maintain connectivity across the area.

Development Status: (*What is the development potential?*)

In the immediate term there is no development potential for this parcel since it has been purchased by TCF as a bridge party for FWP. If FWP can not secure the parcel TCF will ultimately need to dispose of the property to another buyer. Nearby properties have been subdivided or are on the market for sale and if the property is not conveyed to FWP the most likely long-term outcome would be development of home-sites on the pasture along the county road and recreational homes in the uplands or near the pond.

Enhancement opportunities:

FWP may work to reinvigorate the aspen stands and riparian areas would benefit from fencing in some areas. Aspen stands would be improved by encouraging regeneration using either fire or thinning as a tool. Unnecessary fencing could also be removed to eliminate entanglement or collision hazards for wildlife. Spot treatment of weeds will be necessary.

Public access and recreation: (*What will be provided? Are there risks?*)

The addition is immediately west of Anaconda and would provide considerable recreational opportunities. Hunters, hikers, horsemen, fishermen, wildlife watchers, and others use the

adjoining Hearst Lake property and these user groups could also recreate here. Hunters are interested in obtaining access to Garrity WMA closer to town and the addition would provide it.

The Garrity WMA addition would provide deer and elk hunting opportunity. Its potential to support a fishery is unknown at this time. Since the property is 2 miles west of Anaconda and off a county road, we would expect significant public use. Predicting hunting and fishing days is difficult, but an estimate would be 250 fishing days and 750 hunting days. The project also increases opportunities for hiking and wildlife viewing in the Anaconda area. Given the proximity to town, hunting success will be maximized with walk-in access only. To protect wildlife during critical times closures to public use and travel management will be necessary.

Who are the partners? The Conservation Fund, American Lands, Rocky Mountain Elk Foundation, Montana Fish and Wildlife Conservation Fund, Montana Fish, Wildlife & Parks, and Natural Resource Damage Program are the partners in this project.

Who will manage the land? The Garrity WMA addition would be managed as a part of, and consistent with existing management of the WMA. Staff already dedicated to work on Region 2 WMAs will be responsible for the addition and no additional FTE will be necessary.

Other unique factors to consider: Purchase of this property would help to protect impressive views of Mount Haggin and an undeveloped view-shed near Garrity Mountain. The proposed addition lies at the headwaters of the Upper Clark Fork and drains into Warm Spings Creek which is a Priority 1 stream in the Restoration Plan. The value of Garrity WMA to wildlife and the community will be enhanced by the purchase. There is strong public support for purchase of this property by Anaconda Sportsmens' Club & others.

Summary: The addition of 640 acres to the east of Garrity WMA will protect highly utilized elk winter range and calving habitat, conserve multiple priority habitats, and associated species, and provide significant public recreational opportunities all within sight of Anaconda. The value of Garrity WMA to wildlife and the community will be enhanced by the purchase.