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MEMORANDUM

TO: Members of the UCFRB Remediation and Restoration Advisory Council

FROM: Carol Fox and Kathy Coleman, NRDP

DATE: October 10, 2013

SUBJECT: October 16, 2013 Council Meeting

The Advisory Council will meet **Wednesday, October 16, 2013** at the Elk's Lodge in Deer Lodge, starting at 1:00 pm. Attached are the agenda and backup meeting materials, along with the draft meeting summary for your last meeting in September. Below is a summary of the major agenda items.

Drummond Kiwanis Acquisition Project – Action Item

At your October 16<sup>th</sup> meeting, the Council will decide on its recommendation to the Trustee Restoration Council and Governor for funding of the Drummond Kiwanis proposed acquisition project. The project involves funding of \$85,300 from the UCFRB Restoration Fund for the acquisition of two parcels totaling about 32 acres that are located next to the Clark Fork River near Drummond and for the development of recreational trails and other public access features.

The public comment period on the NRDP's September 2013 funding recommendation document for this project will end on Friday, October 11, 2013. Attached are copies of the three support letters we have received to date, as well as copies of the 20 support letters for this project we previously received during the public comment period on the October 2012 *Draft Aquatic and Terrestrial Resources Restoration Plan*.

At your September 18, 2013 meeting, NRDP staff summarized and answered questions about this project. Some questions were answered at the meeting; other questions required follow-up. Attachment B to the September 18<sup>th</sup> draft meeting summary provides the NRDP's compiled responses to Council member's questions about this project. Attached are updated redline and clean versions of the NRDP's funding recommendation document. The redline version shows changes made as a result of input from the Advisory Council and additional information with respect to mineral rights and access, plus a few minor "clean-up" edits. The NRDP recommends the project be funded for \$85,300, subject to the specified (and updated) funding conditions.

At your October 16<sup>th</sup> meeting, NRDP staff and a representative of the Drummond Kiwanis will provide project updates. Following consideration of public comment, the Council will vote on its funding recommendation to the Trustee Restoration Council and Governor for this project. The Trustee Restoration Council will meet on Tuesday, October 29, 2013 from 1 to 3 p.m. in room 152 of the Capitol to consider their recommendations for this project and the Confluence acquisition project.

2010 Racetrack Flow Grant Project – Information Item

At your September 18, 2013 meeting, Council members requested a subsequent briefing on the 2010 Racetrack Flow Grant Project, particularly with respect to the July 2013 draft preliminary determination made by the Department of Natural Resources and Conservation (DNRC) to deny the Clark Fork Coalition's change application. Representatives of the Clark Fork Coalition and the NRDP will provide this briefing at your October 16<sup>th</sup> meeting. Tim Davis, DNRC Water Resources Division Administrator, cannot attend the October 16<sup>th</sup> meeting, but is willing to attend the Council's next meeting that is scheduled for November 20, 2013.

# UPPER CLARK FORK RIVER BASIN REMEDICATION AND RESTORATION ADVISORY COUNCIL

Wednesday, October 16, 2013  
at the Elk's Lodge in Deer Lodge  
230 Main Street (corner of Main & Cottonwood Ave.)

Bill Rossbach, Chair  
Missoula

Maureen Connor  
Vice-Chair  
Philipsburg

Kay Eccleston  
Anaconda

Roy O'Connor  
Missoula

Jim Kambich  
Butte

Jon Krutar  
Ovando

Mike McLean  
Anaconda

Mick Ringsak  
Butte

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

Joe Durglo, Chairman  
Confederated Salish & Kootenai  
Tribes

Jacqueline Lavelle  
U.S. Dept of Interior

## MEETING AGENDA

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

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|-------------|---|
| 1:00 – 1:10 | Introductions and Administrative Items  |
|             | <ul style="list-style-type: none"><li>• Past meeting summary – Action Item</li></ul>  |
| 1:10 – 1:45 | Drummond Kiwanis Acquisition Project – Action Item  |
|             | <ul style="list-style-type: none"><li>• Public Comment Summary and Updates – Carol Fox, NRDP</li><li>• Input from Project Sponsor – Chuck Johnson, Drummond Kiwanis</li><li>• Public Comment</li><li>• Advisory Council deliberations and vote</li></ul>  |
| 1:45 – 2:30 | 2010 Racetrack Flow Grant Project – Information Item  |
|             | <ul style="list-style-type: none"><li>• Project status and next steps related to DNRC change of use process<ul style="list-style-type: none"><li>- Barbara Hall and Andy Fischer, Clark Fork Coalition</li><li>- Carol Fox and Tom Mostad, NRDP</li></ul></li><li>• Advisory Council Questions and Input</li><li>• Public Input</li></ul> |
| 2:30 – 2:45 | <ul style="list-style-type: none"><li>• Additional Public Comment</li><li>• Next Meeting Logistics</li><li>• Announcements/Wrap-up</li></ul>  |



## **September 18, 2013 Advisory Council Draft Meeting Summary**

Held from 1:00 to 4:00 p.m. at the Elk's Lodge in Deer Lodge

Council members present: Maureen Connor, Kay Eccleston, Katie Garcin, Jim Kambich, Jon Krutar, Jacqueline Lavelle, Eric Mason, Roy O'Connor, Mick Ringsak, Bill Rossbach, and Laurence Siroky.

Council members absent: Mike McLean, Mary Price, and Jim Darling.

**Administrative Items:** Jim Kambich noted that he attended the 6/19/12 meeting and that the notes incorrectly indicated him as both as present and as absent. The Council approved the 6/19/13 draft meeting summary, as corrected to reflect Jim's attendance.

**Fiscal Year End Fiscal Report:** Kathy Coleman of the NRDP summarized the 2013 fiscal year end (FYE) report and reviewed the new program accounting and answered questions about both. She noted that members can request more detailed expenditure reports.

Questions covered the following issues: FYE13 interest returns; the CFWEP interest allocation; the proportionately low expenditures of resource priority funds; consultant costs and costs reimbursed by DEQ; differences between year-end and quarterly reports; program audits; the spending process for Clark Fork River Restoration Fund; and the status of Silver Bow Creek remediation. Kathy noted that projects were not approved until early 2013 and are mainly in the development phase; confirmed that the FYE has more detail than quarterly reports and serves as the NRDP's annual report; confirmed that NRDP's consultant costs in preparing the resource plans were included in expenditures; explained auditing and DEQ reimbursement processes; and agreed to provide updated interest earnings when available. Carol Fox and Katie Garcin noted the early nature of the integrated remediation and restoration for the Clark Fork River effort and that this restoration work is being done pursuant to an approved site-specific restoration plan tied to the 2008 Consent Decree. Greg Mullen indicated that the work on the last stretch of Silver Bow Creek will occur this fall, with planting to occur in 2014, and that two more years of work will occur in the Durrant Canyon section.

Roy O'Connor noted he would like to see projects getting completed. Maureen Connor noted that the report is a good resource for the public.

[**NRDP Follow-up note:** Carol Fox provided the FY13 Board of Investment earnings report to Advisory Council via 9/20/13 e-mail. The yield for the UCFRB Restoration Fund for FY13 was 4.19%, but this is considered provisional until an audit is conducted.]

**Fiscal Year End Project Status Report:** Carol Fox summarized the project section of the FYE13 report, which indicates the status of grant projects and the projects included in the *2012 Final UCFRB Aquatic and Terrestrial Resources Restoration Plans* that are being developed. She noted that members can request a more detailed presentation on any of the projects.

Questions were asked about: why the mercury study was funded by terrestrial priority funds; whether coordination with other agencies was occurring on the land acquisitions; and the reasons for the DNRC's preliminary denial decision on the Racetrack change of use application. Carol responded that the mercury study will consider ecological impacts to terrestrial resources, such

as osprey; that project sponsors are handling coordination with other agencies in their efforts to obtain matching funds; and that the water rights issues of the Racetrack project were so complex that a briefing about them would be best handled at a subsequent meeting. Roy O'Connor and Maureen Connor requested such a briefing.

### **Drummond Kiwanis Acquisition Project** – Informational Item

Kathy Coleman summarized the project and the NRDP's evaluation funding recommendation, which is the subject of a 30-day public comment period that ends on Friday, October 11, 2013. She read correspondence (see **Attachment A**) from Chuck Johnson, a representative of Drummond Kiwanis (Project Sponsor) that provided an update on land transaction due diligence work and expressed support for the project and the NRDP's funding recommendation document.

Council members asked questions about: potential trail locations, needed access agreements; mineral rights; water rights; the appraisal; site acreage; on-site features (flood control dike, settling pond); needed assurances associated with subsequent ownership scenarios; adjacent properties; potential PCB contamination; acceptance of funding conditions; and funding of operation and maintenance activities. Kathy answered some of these questions and indicated that some questions required further follow up, particularly those pertaining to the Environmental Assessment (EA) report that had not been reviewed yet. Bill Rossbach requested further information be provided before the Council's next meeting. **Attachment B** provides the NRDP's compiled responses to Council member's questions and concerns raised at this meeting.

### **Public Comment**

Gayle Leeper, mayor of Drummond, spoke in support of the project, noting it would be an economic boost to their community. She also relayed Chuck Johnson's appreciation for NRDP's work on the project.

Pauline Mininger of Drummond Kiwanis spoke in support of the project, noting the support of many people in the community for it.

### **Confluence Acquisition Project** – Action Item

Greg Mullen of the NRDP summarized the project basics, public comments, the NRDP's draft response to comments document, and the NRDP's funding recommendation document. Lewis Kogan of the Five Valleys Land Trust (FVLT) summarized and provided a handout on FVLT's 2013 activities on the Property and provided some clarifications regarding public access, noting the need for flexibility with public access given that there would be some construction activities on-site to reclaim the berm and build trails.

Council members asked questions about: the potential for alternate funding from the Clark Fork River Restoration Fund; the connections between the Confluence parcel and other conservation properties in the Rock Creek drainage; the possibility of a boundary adjustment and consolidation of the Confluence property with the adjacent property recently acquired by FVLT; the ownership and nature of the mineral and water rights and whether those rights could stay with the land under current and subsequent ownership scenarios; the various funding entities and

methods for the project; the mortgage release; required approvals by FVLT's Board; FVLT's intentions with regards to use or sale of the water rights; and the ability to expand parking lots.

Greg explained that Clark Fork River Restoration Funds are allocated for restoration actions specified in the *2008 Clark Fork River Restoration Plan* and that the Confluence acquisition is not within the scope of those actions. Lewis provided details about the funding loan and sources, about the mineral and water rights, and about the potential options for subsequent ownership and how FVLT would assure that the public access and natural resource benefits would be maintained under those potential options. Carol Fox noted the NRDP's funding conditions specific to the mortgage release.

With respect to the mineral estate, Lewis indicated that Five Valleys owns the mineral rights on all of the Confluence property except the 40-acre eastern portion and that a remoteness survey indicated the likelihood of mineral development on that parcel to be negligible. He indicated he would follow up regarding whether mineral title research identified who owned the mineral rights of the 40-acre parcel and whether the mineral rights included surface sand and gravel minerals.

[NRDP Follow up note: Via a 9/20/13 e-mail to NRDP staff, Lewis Kogan provided the following updated information about the mineral rights:

“After a review of the Mineral Guarantee from First American Title Company, here is what we know:

- (1) Five Valleys owns the mineral rights on all of the Confluence property except the 40-acre eastern portion, as I said at the AC meeting.
- (2) The mineral estate on the eastern 40-acres was granted to the Northern Pacific Railway Company by a 1896 land grant patent.

The title company was not able to tell us who, if anyone, is the successor in interest to the mineral estate, so we must rely here on Turner Paddock's mineral development evaluation for this portion of the property. Turner's evaluation found the likelihood of mineral development, including sand and gravel extraction, so remote as to be negligible.”]

With respect to the water rights, Lewis explained the complexities associated with the on-site irrigation ditch and its multiple users and noted that the Clark Fork Coalition is helping FVLT with an assessment of the potential for these rights to provide instream flow augmentation. Laurence Siroky recommended how to improve the ditch to reduce the temperature of the water going into the river and suggested a provision that the water rights stay with the land. Lewis indicated FVLT wanted to maintain flexibility regarding their options for the water rights pending results the Coalition's assessment, but that they would want the water rights to stay with the land unless they were sold for instream flow.

Carol noted that NRDP's funding conditions, combined with the mineral remoteness test, address all the concerns raised by Council members, except that the conditions do not specifically address having the water rights stay with the land or otherwise be restricted to instream flow uses.

### Council Comment

Bill Rossbach commented that this Confluence project was a critical keystone project to the preservation of the entire Rock Creek drainage, that it connected well with upstream acquisition, and that not many similar good acquisition opportunities existed in western Montana.

Roy O'Connor provided more background about the subdivision that was avoided by FVLT's acquisition. He spoke in favor of the acquisition, noting the project benefits to Rock Creek and the Clark Fork River, FVLT's successful negotiation of a purchase price well below the developer's asking price, and the positive aspect of nearby parcels with conservation easements.

Maureen Connor offered several comments that stressed the importance of assuring public access provisions under FVLT or subsequent ownership scenarios and having needed protections related to mineral and water rights under subsequent ownership scenarios.

Public Comment: None

Council Action: Roy O'Connor motioned to recommend approval of \$400,000 for the Confluence project, subject to NRDP funding conditions, with a clarifying condition about water rights. Jon Krutar seconded the motion. Jim Kambich noted that it was a good project. The motion passed unanimously, with Mick Ringsak abstaining.

[NRDP follow-up note: With respect to the clarifying condition about water rights, the NRDP suggests the following additional funding condition language be considered by the TRC: "That the water rights stay with the property under FVLT ownership or any subsequent ownership unless the rights are transferred to another owner for instream flow purposes."]

### Additional Comment

Kathy Coleman provided additional information about the Drummond Kiwanis appraisal and the findings of the Environmental Assessment regarding the flood control dike and nearby substations.

Maureen Connor asked about a rumor she had heard that EPA is not happy with the Silver Bow Creek remediation work and may not agree to the release of the leftover Silver Bow Creek remediation funds. Carol responded that she had not heard this. Greg indicated EPA did a 5-year review several years ago and that the review did not indicate this. He noted that there is about \$60 million left in remediation funds. Mick Ringsak commented that this rumor may be associated with the Silver Bow Creek naming lawsuit. Carol indicated the DEQ project manager could come to a meeting to further address this issue if the Council wanted more information on Silver Bow Creek remediation.

Bill Rossbach encouraged all members to attend the next TRC meeting scheduled for October 29<sup>th</sup> and commended members for their dedication to stay on the Council for another term. Mick Ringsak thanked Bill for his letter and support of Council reappointment.

Next Meeting: To be held on October 16<sup>th</sup>, with the Drummond and Racetrack projects as agenda items.

## Attachment A

Input from Chuck Johnson provided at 9/18/13 Advisory Council meeting

**From:** Charles Johnson [<mailto:crjohnsonlaw@hotmail.com>]

**Sent:** Monday, September 16, 2013 9:14 AM

**To:** Coleman, Kathleen

**Subject:** RE: meeting agenda an materials

Kathleen,

I have mailed to you a hard copy of the signed buy/sell agreement between Cy Corlett and the Drummond Kiwanis Club. I apologize for not being able to attend the September 18th council meeting. Previously, I had scheduled attendance at a legal conference in Helena for that day and am unable to reschedule that event. Hopefully, other members of the Drummond Kiwanis Club will be able to attend. Following are comments you may read to the council.

As you know, the Drummond Kiwanis Club has accomplished many of the goals towards establishing the Drummond Riverside Park. These include:

1. We have negotiated and signed an agreement with Cy Corlett to purchase the approximate 32 acre tract for \$50,000. That purchase includes water rights which may be used for irrigation.
2. We have arranged for a survey of the previously unsurveyed tract by Kadrmas, Lee and Jackson of Helena. That survey disclosed that the tract is 31.99 acres in size as compared with the 38 acre size previously estimated by the owner and Department of Revenue. Kadrmas, Lee and Jackson has prepared a preliminary Certificate of Survey.
3. We have obtained a written commitment from Northwestern Energy to grant a permanent access and utility easement into the land being purchased for the park.
4. We have obtained a Commitment for Title Insurance from First American Title Company showing that Cy Corlett has fee simple ownership of the tract which he can convey to the Drummond Kiwanis Club.

In short, we have accomplished many of the goals for acquisition of the property and obtaining a public access easement to insure the public will have access to this important piece of property. Kathleen Coleman's Cost/Benefit analysis on pages 3 and 4 of her NRDP Funding Recommendation Summary is well done and sets out the cost effectiveness and public support for this project. Drummond Kiwanis Club respectfully requests that you approve the funding request for acquisition and development of this park project. Thank you for your consideration.

Chuck Johnson  
Treasurer, Drummond Kiwanis Club  
P.O. Box 70  
Hall, MT 59837



## **Attachment B. Responses to Questions on Drummond Project**

Several questions were asked at the 9/18/13 Advisory Council meeting about the Drummond Riverside Park Project. Some of these questions were answered at the time; others needed additional follow up. Below is a summary of the questions and NRDP responses. Some of these responses were supplemented by information from Chuck Johnson of the Drummond Kiwanis (Project Sponsor) to Kathy Coleman of NRDP via e-mail correspondence dated 9/19/2013.

1. On the map, the trail appears to be outside the project boundary?

NRDP Response: The trail will be confined within the project boundary.

2. Is there an agreement with the Montana Department of Transportation (MDOT) to provide for access under the Montana Highway 1 Bridge?

Chuck Johnson Response: "I have had several discussions with MDOT personnel about obtaining an encroachment permit. I have not filled out a written application yet. Obtaining a permit will not be a quick process. Of course, Drummond Kiwanis Club does not have any standing to ask for a permit at this point. Corletts obviously had permission for crossing under the railroad bridge on Highway 1. MDOT put a water main through the fill so that Corletts could transport irrigation water from the East side to the West side of Highway 1 and graded a roadway between two bridge supports at least 50 feet from the river itself so that Corletts could drive from one side of Highway 1 to the other. I am surprised that MDOT cannot find written verification of the permission but they say that matters of that sort were handled more informally at the time Highway 1 was constructed."

NRDP Response: NRDP believes this is an important issue that needs to be resolved; therefore, we have added a funding condition regarding access to the western parcel. Since the permit application has to be completed by the owner of the property, NRDP has agreed to go forward with recommending the purchase and will continue to work with the Kiwanis and MDOT on obtaining this permit. At a minimum, public access to the western parcel (T-1) is available pursuant to Montana Stream Access Law provisions.

3. The cadastral shows a different owner than NorthWestern Energy (NWE) on the parcel in which the Kiwanis is seeking an easement.

Chuck Johnson Response: "According to the preliminary certificate of survey and NWE, NWE owns the land where the entrance roadway (flood control dike) is located. NWE has agreed by email communication that they will give Kiwanis an easement on the existing roadway. As I advised you, cadastral is not always accurate as to ownership."

NRDP Response: The preliminary title work completed in May 2013 indicated the lack of legal vehicular access, but no other significant problems. The Drummond Kiwanis intends to obtain an option agreement with the NWE prior to closing that will provide for legal vehicular access. A land management representative for NWE has indicated the Corporation's willingness

to execute such an option agreement. This easement is an important part of the project and has been listed as a funding condition.

4. Was the appraisal price on 38 acres or 31.99?

NRDP Response: 31.99 acres.

5. Would hunting be allowed?

NRDP Response: This determination would be addressed in the Management Plan, which will be prepared in consultation with FWP.

6. Who owns the mineral rights and will the mineral rights stay with the land under the ownership of the Kiwanis or subsequent entities?

NRDP Response: The mineral guarantee commissioned by the NRDP indicates that there are no mineral exclusions of record except for the one contained in the original U.S. patent. Based on further legal research by NRDP counsel, this exclusion does not have the effect of reserving minerals in the United States because the Property was never determined by United States Department of Interior to be “mineral lands.” Based on the mineral guarantee and this legal research, the mineral rights appear not to be severed from the land and to be owned by the current landowner, who has agreed to transfer the mineral rights to the Kiwanis. The NRDP’s funding agreement will have a provision in its funding agreement that Kiwanis or any subsequent owner will not sever the existing mineral rights tied to the land.

7. Do the mineral rights include sand and gravel?

Chuck Johnson Response: “Cy Corlett has stated to me that neither he nor his family have sold any gravel removal rights to a third party.”

NRDP Response: Yes. There is no separate ownership indicated in the mineral guarantee for the surface sand and gravel mineral resources.

8. Do the water rights go with the parcel?

Chuck Johnson Response: “The water rights for irrigation owned by Cy Corlett are to be transferred to Kiwanis along with all underground mainline at the time of closing. We do not anticipate putting sprinkler irrigation on any of the park at this time. We prefer a natural park environment. There may be a need for a small amount of water sometime in the future but that is not in our present plan.”

NRDP Response: Yes, as stated in the NRDP funding recommendation, the current owner of the Property will convey all water rights associated with the Property. The NRDP’s funding agreement will have a provision that the Kiwanis or any subsequent owner will not sever the water rights from the land. The NRDP’s funding recommendation also states the following about the water rights: “There are two water rights associated with the Property based on DNRC

water rights records:<sup>1</sup> An irrigation water right for flood irrigation with a maximum flow rate of 612 gallons per minute and a stock water right with maximum flow rate of 40 gallons per minute. Given the 1937 priority date of these rights, they are unlikely to offer any resource benefits in terms of potential instream flow augmentation.”

9. What happens if the Kiwanis stops paying taxes on the property?

NRDP Response: As with any delinquent property taxes, it would be turned over to the County. NRDP has added this as a situation to be addressed.

10. What is the purpose of the flood control dike, who constructed it, and will it be left in place?

Chuck Johnson Response: The flood control dike to which you referred was, in fact, a flood control dike that was established by the Milwaukee Railroad from the location of the concrete bridge on Old Highway 10A for about 1/8 of a mile downstream. It was placed there by the railroad after the 1908 flood which had cut the channel on the south side of the railroad grade. Obviously, the intent of the dike is to keep the Clark Fork River in its existing channel. The entrance roadway to the property is on the top of the dike and is approximately level with the railroad bed and the Highway 10A surface. It is part of our plan to put a minimum 2 inch lift of gravel on the top of this entrance roadway.

NRDP Response: The Environmental Assessment (EA) addressed the flood control dike by stating the following: “Two areas have been built above the grade of the Site; a flood control dike at the east corner of the Site, and the right-of-way of Montana Highway 1, which splits the Site in half. The flood control dike is approximately four feet higher than the surrounding ground and is used as access into the Site. Although the origin of material used to construct the dike is unknown, it does not appear to be tailings. The dike supports vegetation and is not considered to an environmental concern.”

11. Is there a potential polychlorinated biphenyl (PCB) problem with the transformers?

NRDP Response: The EA addressed the potential for PCBs on Site by stating the following: “Overhead electric borders a portion of the Site on the north and enters the Site from the east with several power poles situated on the flood control dike. The power line terminates a short distance into the Site where two pole-mounted transformers were observed. The transformers appeared to be in good condition with no evidence of leakage or weepage. Labeling indicating whether the transformers had been tested for polychlorinated biphenyls (PCBs) was not present. Transformers on the Site do not represent an environmental concern.”

With regards to PCBs on adjacent properties, the EA stated the following based on an interview with Steve Rozinka of NWE: “Mr. Rozinka is with NorthWestern Energy and supervisor of the electrical substations in Drummond. There are two substations adjoining the Site on the north of the former right-of-way of the Milwaukee Railroad. The Drummond Auto substation was constructed in 1991 and has a capacity of 13.44 MVA. The Drummond City substation was

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<sup>1</sup> The DRNC claim number for these water rights are 76G 9752 00 and 46G 9752 00.

constructed in 1957 and has a capacity of 6.25 MVA. Mr. Rozinka indicated that neither substation has transformers with PCB-containing oil. He also stated that there have been no accidents with the substations or instances of flooding that have impacted the substations.”

12. Is there a settling pond?

NRDP Response: Yes. The EA addressed this pond by stating the following: “At the time of the Site visit, a plastic-lined settling pond was located at the southeast corner of the west portion of the Site. The settling pond was constructed by the MDOT and is temporary in nature. Wastewater from concrete drilling on the highway bridge is directed to the settling pond via a hose. The pond will be pumped dry and reclaimed when the construction project is complete. The temporary settling pond on the Site does not represent an environmental concern.”

13. Is the Project Sponsor in agreement with the funding conditions including O&M?

NRDP Response: Yes. The Drummond Kiwanis has accepted all conditions and agreed to provide needed O&M.

**Public Comments on the  
Drummond Kiwanis  
Acquisition Project**



## Coleman, Kathleen

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**From:** Charles Johnson <crjohnsonlaw@hotmail.com>  
**Sent:** Monday, September 16, 2013 9:14 AM  
**To:** Coleman, Kathleen  
**Subject:** RE: meeting agenda an materials

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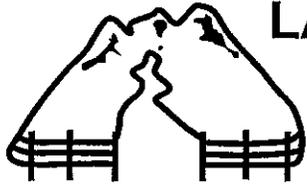
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2. We have arranged for a survey of the previously unsurveyed tract by Kadrmas, Lee and Jackson of Helena. That survey disclosed that the tract is 31.99 acres in size as compared with the 38 acre size previously estimated by the owner and Department of Revenue. Kadrmas, Lee and Jackson has prepared a preliminary Certificate of Survey.
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4. We have obtained a Commitment for Title Insurance from First American Title Company showing that Cy Corlett has fee simple ownership of the tract which he can convey to the Drummond Kiwanis Club.

In short, we have accomplished many of the goals for acquisition of the property and obtaining a public access easement to insure the public will have access to this important piece of property. Kathleen Coleman's Cost/Benefit analysis on pages 3 and 4 of her NRDP Funding Recommendation Summary is well done and sets out the cost effectiveness and public support for this project. Drummond Kiwanis Club respectfully requests that you approve the funding request for acquisition and development of this park project. Thank you for your consideration.

Chuck Johnson  
Treasurer, Drummond Kiwanis Club  
P.O. Box 70  
Hall, MT 59837  
Telephone: 406.288.5000  
Fax: 406.288.5001

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**PUBLIC  
LANDS / WATER  
ACCESS  
ASSOCIATION, INC.**

Post Office Box 2 ■ Ramsay, Montana 59748-0002

To Whom It May Concern: 18 Sept. 2013

Our group, as well as Anzconda Sportsmen and Skyline Sportsmen, favor any acquisition that improves public access and recreational opportunities.

We believe that \$35,300 is a fair price for this parcel along the Clark Fork River.

Your consideration of our comments will be greatly appreciated.

Sincerely,  
Tony Schoonen  
Director



**THE  
PUBLIC LANDS  
ACCESS  
ASSOCIATION INC.**

Tony E. Schoonen Sr.  
3609 Willoughby Ave.  
Butte, MT 59701

## Coleman, Kathleen

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**From:** Tim Anderson <tanderson@blackfoot.net>  
**Sent:** Thursday, October 10, 2013 11:00 AM  
**To:** Natural Resource Damage Program  
**Subject:** DRUMMOND

It would be a great addition to a community that needs anything for a better image. A bike path from Drummond to Hall would be a better use....

Thanks, Tim



# **Attachment 1**

**of the**

## **Final Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans**

### **Drummond Riverside Park Public Comments**



**From:** Susan Wolff [<mailto:susan@wolffdesigns.com>]  
**Sent:** Monday, October 15, 2012 12:11 AM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park Project

To Whom It May Concern:

Let this email serve as public testimony in support of the Drummond Riverside Park Project. Having grown up in Granite County, primarily in the Hall and Drummond areas in the 1950s and 1960s, the community of Drummond was vibrant, economically viable, with multiple opportunities for recreation for residents of all age levels. Once Interstate 90 was completed resulting in local residents traveling more frequently to Missoula for retail and entertainment opportunities and fewer tourists exiting the freeway in Drummond for services, meals, and lodging, the community has suffered economic deprivation.

The Drummond Kiwanis Club has submitted a proposal for funding of the Drummond Riverside Park Project as a means of attracting tourists and "locals" to the community. The park will provide a trail system along the Clark Fork of the Columbia and access for streamside fishing. The eco-system of the park will remain in its natural state providing opportunities to observe local birds, wildlife, and aquatic species while providing opportunities for physical exercise in an ever-changing environment. Montana has limited public access for stream-side fishing. The Drummond Riverside Park will change that and be an attractive place to fish because of the confluence of the Flint Creek with the Clark Fork located here. The new park will expand and enhance opportunities now available with the existing park across the river near the Rodeo grounds. The existing park has picnic areas, an RV park, and a softball field.

Drummond is the gateway to Montana Scenic Highway 1. Funding of the proposed Drummond Riverside Park Project will strengthen the economy of the entire county and region. The cost benefit ratio of the requested funds is positive and sustainable after this initial investment.

In closing, I ask that this proposal be funded. Thank you for the opportunity to provide this public testimony.

Sincerely,

*Susan J. Wolff*

Dr. Susan J. Wolff  
Wolff Designs  
PO Box 6967  
Great Falls, Montana 59406  
541-400-0681 cell

[susan@wolffdesigns.com](mailto:susan@wolffdesigns.com)  
[www.wolffdesigns.com](http://www.wolffdesigns.com)

*"journey to a creative place...dreams  
give our imagination a place to  
sit and think".  
maryanne radmacher*

**RECEIVED**

OCT 17 2012

NATURAL RESOURCE  
DAMAGE PROGRAMJason Davis  
P.O. Box 286  
Drummond, MT, 59832

To: Natural Resource Damage Program

This is a note letting you know I am in favor of the Drummond Riverside Park Project. I feel this project would be beneficial to the Clark Fork, to the community, and it is a good fit for the type of projects you are looking for. I also feel it would bring business to the local restaurants, store, and gas stations. The walking paths and nature viewing could also benefit the school as a natural way for students to view birds, plants, and other wildlife.

Thank you  
Jason Davis

**From:** Todd Fickler [<mailto:tfickler@montana.com>]  
**Sent:** Wednesday, October 17, 2012 2:53 PM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park Project

I feel the Drummond Riverside Park project is a very worth while project meeting many attributes that the damage program was designed for. The proposed park would provide a unique opportunity for people and the natural species that in habit this area. Wildlife that I have seen on this property in my life time of living in Drummond are; ducks, geese, blue herons, osprey, eagles, deer, beaver, musk rats, and on a few occasions fox, moose, coyotes and bears. By placing this area in a park we can insure that wildlife continues to occupy this space unharmed. The walking trail proposed will allow people to cohabitant with the wildlife and enjoy the beauty that nature has to offer. There are many unique features to this property that aspire to this project. It is located next to the Clark Fork River within walking distance from the town of Drummond and the Drummond City Park. At the Drummond City Park there is a sheltered area with picnic tables, barbecue pit, boat launch and a port potty. The proximity of the city park ties in well with this project. It allows some amenities to be available that just would not be acceptable for the proposed project yet there is a definite separation between the two. The proposed site would also be viewed by those traveling the Highway 1 scenic route between Drummond and Philipsburg. This alone would help serve to draw people to the park and also to show what was accomplished in this restoration effort. I don't see where any future changes from adjacent land owners could have much affect on the proposed property and this includes the view of the landscape beyond the proposed parks borders. I personally think this could be a very neat thing to do. I hope that this project can be carried to the next level. I appreciate the opportunity to voice my opinion and I THANK EVERYONE who has taken the time to consider this project.

**Todd E. Fickler**  
**President, Fickler Oil Company, Inc.**  
[tfickler@montana.com](mailto:tfickler@montana.com)  
**Ph (406) 846-3970**  
**Fax (406) 846-3819**

From: Pete & Karen [<mailto:drm3591@blackfoot.net>]  
Sent: Monday, October 22, 2012 4:41 PM  
To: Natural Resource Damage Program  
Subject: Comment on Upper Clark Fork River Basin Project

I am a resident of Drummond, Montana voicing support for the proposed Riverside park. When approached by the landowner about the possibility of the Kiwanis Club acquiring the land, the Club had the foresight to realize its potential, have an appraisal, and look into applying for a grant to take advantage of monies being disbursed by the Department of Environmental Protection for remedial clean up and restoration of locations adversely affected by years of upstream mining and smelting activities by ARCO.

This appears to me to be a project that, as well as remediation and preservation of the wetlands and the floodplain along this section of the Clark Fork River, will provide the means for creation of a park with the possibility of providing recreational amenities for local persons as well as tourists looking for an attractive spot to pull off the road and take advantage of what western Montana has to offer—wildlife viewing, fishing access, and trails for walking or biking.

I hope for an enthusiastic response from town and community members in helping this project move forward.

Count me in!

Karen DesRosier  
PO Box 285  
Drummond, MT 59832

(406) 288-3591

RECEIVED

OCT 24 2012

NATURAL RESOURCE  
DAMAGE PROGRAM

Jim Davis  
542 Frontage Road  
Drummond, Mt 59832  
406 288-3898 c 406 239-4453  
[jimmy@blackfoot.net](mailto:jimmy@blackfoot.net)

10/21/12

NRDP

PO Box 201425

Helena, MT 59620

Re: Drummond Riverside Park Project (NRDP restoration project)

Dear Committee Members:

I have been told that the Drummond Kiwanis have applied for NRDP funds, \$96,000 to procure and develop a 38 acre park. I urge your committee to allocate the requested funds to the Drummond Kiwanis Club for the Riverside Park, as it is the best project of all proposed projects to the NRDP.

~~The~~ Riverside Park project cost very little compared to the rest of the NRDP proposals. Anglers, Duck Hunters, Jaygeers, Nature lovers, from Missoula to Helena, From Butte to Drummond would be able to stop and enjoy this proposed Riverside Park. This would bring a little more commerce to our local businesses which Drummond really needs.

Thanks you for considering to fund Drummond's Riverside Park Project.

Jim Davis

**TOWN OF DRUMMOND**

114 A STREET

P.O. 195

DRUMMOND, MONTANA 59832

**COUNCIL MEMBERS:**

JUNE BOWLS, CARY McLURE

MIKE O'DELL, SAM WEAVER

**MAYOR:**

GAIL LEEPER

**CLERK:**

FRANKIE JONES

Montana's Natural Resource Damage Program Administrators:

The Town of Drummond is pleased to support the Drummond Kiwanis Club with the Drummond Riverside Park Project. The abstract proposed brings great enthusiasm to our community.

We believe the goal of this project is not only to share the health benefits of mind and body to our natural resources but would potentially boost our economy. The proposed walking path, wildlife viewing and fishing are a pleasing attribute to all who boarder our community.

The Drummond Kiwanis play such an important role in our community by their unceasing volunteerism. They have been superior to work with in the projects the Town of Drummond has accomplished with them. This project will require a strong network of caring and capable individuals. I believe we have that network in our community.

We look forward in working with the Drummond Kiwanis, County Commissioners, and Fish Wildlife and Parks to make this project a success for Drummond and the surrounding regions.

Sincerely,

Gail Leeper Mayor – Drummond Town Council

From: Lisa Jesse [<mailto:ljessedhs@blackfoot.net>]  
Sent: Thursday, October 25, 2012 9:30 AM  
To: Natural Resource Damage Program  
Subject: Drummond Riverside Park

To Whom it may concern:

I would like to voice my support on the Drummond Riverside Park project. I feel this would be a great asset to our small community. We all love the great outdoors here in Montana, and this would allow us to teach our children the benefits of exercise and enjoying nature. Anything we can do to help our small community would be great. I hope you will support us in this project.

Thank you,

Lisa Jesse  
School Secretary  
Drummond Public Schools  
PO Box 349/108 W. Edwards  
Drummond, MT 59832  
406-288-3281 (W)  
406-288-3299 (F)

**From:** Donn Livoni [<mailto:dlivonidhs@blackfoot.net>]  
**Sent:** Thursday, October 25, 2012 9:33 AM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park

The Drummond School District is in full support of the proposed Riverside Park. It would be an excellent addition to the community and provide learning opportunities for our students.

**Donn Livoni**  
Superintendent  
Drummond School District  
PO Box 349  
Drummond, MT 59832  
406 288-3281 ext. 222

**Coleman, Kathleen**

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**From:** Cari Verlanic <cverlanic@blackfoot.net>  
**Sent:** Thursday, October 25, 2012 10:56 AM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park

To Whom It May Concern:

I would like you to know that I fully support and would utilize a walking trail in Drummond, Montana. I think anytime you have an opportunity to improve and enhance your community it is beneficial to all community members-young and old!

Thank-you,  
Cari Verlanic

**Coleman, Kathleen**

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**From:** Krista Johnson <kristalynne@hotmail.com>  
**Sent:** Thursday, October 25, 2012 11:36 AM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park

Dear Natural Resource Damage Program:

I am writing to voice my full support for the Drummond Riverside Park project. By funding this proposal, you will greatly help preserve the natural beauty of the Clark Fork River and its habitat while contributing to a community that would benefit greatly.

The environment around Drummond is a hidden gem. While driving around the area, you often see raptors, deer, elk, heron, pelicans and other wildlife. The water is perfect for fishing, but lacks many access points for both locals and visitors to enjoy the sport. At present, the area has no large areas that are preserved for pedestrian activity.

Creating a riverside park will help the community in so many ways. It will allow people to stop and observe the rich wildlife in the area. It will bring fishermen away from crowded fishing access sites and into our small community. New income from visitors will help to support our local economy. In addition, it will create a place for local people to walk in a beautiful, safe and natural setting. Like so many other communities in Montana, a number of our residents suffer from diabetes and heart problems. Creating a safe trail for walking, away from the highway, will improve the health and fitness of the people in our communities.

I am extremely pleased by this proposal. The Drummond area has been hit hard in the recession, and there has not been enough money available to improve the town. This park is an opportunity to enrich visitors' lives, augment our rural landscape and increase the health and happiness of our citizens. This investment in protecting Montana's natural resources would be money well spent and appreciated.

Sincerely,  
Krista Johnson

Krista Johnson  
[kristalynne@hotmail.com](mailto:kristalynne@hotmail.com) | 406.691.1459  
Visit [www.KristaLynneJohnson.com](http://www.KristaLynneJohnson.com).

**Coleman, Kathleen**

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**From:** Tena Popken <tpopkendhs@blackfoot.net>  
**Sent:** Thursday, October 25, 2012 11:49 AM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park

To Whom it May Concern:

I am a resident of Drummond, Montana. I have heard that the Kiwanas is currently trying to get funding to create a Riverside Park with walking trails, picnic area, fishing access, bathroom facilities, etc. I feel that this would be a huge benefit for our community. I know that I would personally use the walking trails several times a week. I have often told people that I wish our community had something like this.

Thank you,

Tena Popken

**Coleman, Kathleen**

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**From:** lhash@blackfoot.net  
**Sent:** Thursday, October 25, 2012 12:08 PM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Walking Park

We would like to express my support for the Drummond Walking Park in Drummond Montana. It would be a great benefit to the community.

Thank you,

Lynn and Kirk Hash  
840 Drummond Frontage Road  
Drummond, Montana 59832

**Coleman, Kathleen**

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**From:** Jamie Parke <jparkedhs@blackfoot.net>  
**Sent:** Thursday, October 25, 2012 3:48 PM  
**To:** Natural Resource Damage Program  
**Subject:** Potential walking trail park in Drummond

To whom it my concern:

I am writing this e-mail in support for the possible walking trail park in Drummond, MT. What a great addition for the community to enjoy our beautiful surrounding. I believe it would also boost the local economy through drawing in people from the surrounding cities. Thank you for your consideration of this new walking trail park.

Sincerely,

*Jamie Parke*

Drummond Public Schools  
Business Manager/District Clerk  
P.O. Box 349/108 West Edwards  
Drummond, MT. 59832  
406-288-3281 (W)  
406-288-3299 (F)

**Coleman, Kathleen**

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**From:** Shelley Johnson <shelleyreidjohnson@gmail.com>  
**Sent:** Thursday, October 25, 2012 4:13 PM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park

The proposal by the Drummond Kiwanis Group and the Drummond Town Council to create a Riverside Park area along the Clark Fork River south of Drummond is a plan that I fully support.

This would allow for the public to have a nice area for recreation, walking, bird watching, picnicing and fishing access to name just a few activities. The site is in an area that is close enough to town and is easily accessible to those wishing to take advantage of the park area. It would provide opportunities for all ages to benefit by its existence and would be a draw for travelers and other residents of the state. It is a large enough area that many activities could be happening at the same time with plenty of room for all to partake.

Recreational access is always needed, and this is a great location for developing such a site.

Thank you for your consideration.

Sincerely,

Shelley Reid Johnson

**Coleman, Kathleen**

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**From:** Petersonangus <petersonangus@aol.com>  
**Sent:** Thursday, October 25, 2012 8:37 PM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Park

This letter is in support for funding the Drummond Riverside Park. The project, proposed by Drummond Kiwanis, would greatly enhance our community and provide benefit to the local schools, as well as protecting important wildlife habitat.

Sue and Randy Peterson  
Box 427  
Drummond, MT 59832

**Coleman, Kathleen**

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**From:** Tim Anderson <tanderson@blackfoot.net>  
**Sent:** Friday, October 26, 2012 7:45 AM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond

To All Whom It Concerns:

Drummond Riverside Park:

As of now there really isn't a place to walk except the street. Our sidewalks are great and if you wanted to do any walking you would do it out on a road somewhere. A simple upgrade to our community would be so uplifting, please consider our small community for this project...

Thanks, Tim Anderson

Drummond Teacher/Citizen

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**From:** Connie Jones <cjones@blackfoot.net>  
**Sent:** Friday, October 26, 2012 8:37 AM  
**To:** Natural Resource Damage Program  
**Subject:** Support for proposed park

This letter is in support of the proposed park at Drummond. This community has long needed such a facility and it will definitely be used. Our community has a good mix of youth, young adults and older adults interested in the walking/biking trails and would be a much safer place than walking along Hwy 1, as is currently done.  
Thank you.

Connie Jones  
Drummond

**From:** Jodi Oberweiser <librarydhs@blackfoot.net>  
**Sent:** Friday, October 26, 2012 3:04 PM  
**To:** Natural Resource Damage Program  
**Subject:** Drummond Riverside Project

To whom it may concern:

I am writing with enthusiastic support for the Drummond Riverside Project. While the economy has taken its toll on so many communities, I think Drummond has been hit especially hard. Our town maintenance personnel work very hard yet, I still see much that can be done to improve our community. With the improvement to the Drummond Riverside area, I can only imagine that it would spur others to make small changes in other parts of the town. I have lived in Drummond for 27 years and have noticed a new sense of pride brewing among people in our community. After looking "for sale" signs and empty buildings for so many months, it is nice to see that real estate is moving and people are inhabiting these homes again.

With new focus on health and outdoor activities a walking/nature path is especially interesting to me. As a person who tries to stay fit, I regularly walk the same dirt road near my house but would certainly enjoy a more beautiful route. Preserving the natural look of the park is also important to me. As a teacher in our local school, I can think of numerous occasions when our faculty and students could take part in outdoor curriculum in our "backyard" rather than having to visit other communities for nature walks, river studies, and science class observations. It is a thrill to think that you are considering our needs for your project and I hope you will realize how much it will be used and appreciated by the people of Drummond as well as our guests and visitors.

Sincerely,

Jodi Oberweiser

*"What a school thinks about its LIBRARY is a measure of what it feels about EDUCATION." - Harold Howe*

Jodi Oberweiser  
Drummond School Community Library  
124 First St.  
P.O. Box 349  
Drummond, MT 59832  
[librarydhs@blackfoot.net](mailto:librarydhs@blackfoot.net)

(406)288-3700

Comment Received After the Comment Period Deadline

RECEIVED 125

OCT 31 2012

NATURAL RESOURCE  
DAMAGE PROGRAM

**Drummond**  
CHAMBER OF COMMERCE

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PO Box 364 | DRUMMOND, MT 59832 | 406-288-3553  
[www.drummondmontana.com](http://www.drummondmontana.com)

October 24, 2012

Natural Resource Damage Program  
Montana Department of Justice  
P.O. Box 201425  
Helena, MT 59620-1425

To whom it may concern:

We are writing in support of the proposed restoration plan for the Upper Clark Fork River Basin. If adopted, the proposed plan would go a long way toward remedying the ecological damage of decades ago that still haunts us today.

The Drummond Chamber of Commerce appreciates the thoughtful work of the many people who have contributed to the proposed plan for the Upper Clark Fork River Basin. We are particularly pleased to see that a proposal submitted by the Drummond Kiwanis Club has been included in the draft plan. The modest amount of money requested to purchase and restore flood plain property for a nature park is reasonable, fair and overdue. For too long, too little has been done for the small communities between Butte and Milltown.

The plan proposed by the Kiwanis Club would preserve the natural floodplain, including natural wetlands, and would provide a new recreational opportunity for the region. In spite of having a river run through our community, residents and visitors have only one public access point to the Clark Fork. The Drummond Riverside Park project would add a second.

If approved, everyone should feel satisfied that the money invested in Drummond would be spent on fish and wildlife — as was the intent of the NRDP lawsuit. By adopting this plan, you will leave an important legacy of clean water, healthy flowing rivers, and new opportunities for fishing, hunting and other recreational opportunities. We urge you to do just that.

Sincerely,

Members of the Drummond Community Chamber of Commerce

Comment Received After the Comment Period Deadline

NOV 13 2012

NATURAL RESOURCE  
DAMAGE PROGRAM

To whom it may concern:

I think the Kwanis Riverside Park is a great project. It is good for the community of Drummond and Granite County. The park will be good tourist area to enjoy because of the wild life and the river.

I believe it is about time Granite County is not left out, in the clean-up projects funding.

The Park will help the safety of joggers and runners, that now use the highways to exercise. It will also be a great educational tool for all ages.

The park will benefit wildlife; by being preserved for further generations to come.

I hope you will consider this park as a project for the future.

Sincerely  
Ron Hetch

**NRDP Evaluation and Funding Recommendation**  
**Drummond Riverside Park**  
**September October 10, 2013**

**Background and Project Summary**

In June 2012, the Drummond Kiwanis Club submitted a restoration concept abstract (Attachment A) for ~~partial~~ funding of up to \$100,000 from the Natural Resource Damage Program (NRDP) for acquisition of a 3831.99 acre “Property” located next to the Clark Fork River near Drummond and development of recreational trails and other public access features. The State included this project as a potential land acquisition project to be considered for further review and a subsequent funding decision in the December 2012 *Final Upper Clark Fork River Basin (UCFRB) Aquatic and Terrestrial Resources Restoration Plans (“Final Restoration Plans”)*. A map depicting the Property and surrounding area is provided in Attachment B. Through its ownership and management of the Property, the Drummond Kiwanis seeks to preserve the natural floodplain of the Clark Fork River, including natural wetlands, and provide for public recreation access.

This project is being considered for funding as a proposed restoration action for both the Clark Fork main-stem aquatic priority area and terrestrial priority landscape area, with a 50%/50% terrestrial/aquatic funding split.<sup>1</sup> As indicated in the *Final Restoration Plans*:<sup>2</sup>

- 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’s funding evaluation and recommendation that will be the subject of a 30-day public comment period that ~~will begin~~ began on **Thursday, September 12, 2013** and will end on **Friday, October 11, 2013**. 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.

A buy/sell agreement ~~is being~~ has been executed between the Drummond Kiwanis Club and the owner of said Property, Cy Corlett in the amount of \$50,000, which is the appraised value of the Property. The Drummond Kiwanis Club intends to own the Property and construct an entrance roadway, parking area, natural trail, and signage using an additional \$35,300 (details of this budget provided in Attachment A) in restoration funding for a total project cost of \$85,300. If the project is approved by the Governor, a land use agreement will be included in the final funding contract between NRDP and Drummond Kiwanis Club. This agreement will provide, among other things, public access and use of the Property.

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<sup>1</sup> See pages 5-4 and 5-5, and Table 6-1 of the *Final Restoration Plans*.

<sup>2</sup> See page 6-2 of the *Final Restoration Plans*.

## NRDP Funding Recommendation Summary

The NRDP recommends this project be funded for a total of \$85,300, subject to the following funding conditions and subsequent NRDP approvals.

- 1) A mineral guarantee and title commitment will need to be approved by NRDP.
- 2) Recordation and NRDP approval of a property survey as well as subsequent NRDP approval of a revision to the title report to reflect the survey's Property description.
- 3) NRDP approval of an option agreement between the Kiwanis Club and NorthWestern Corporation providing vehicular access through NorthWestern land to the Property, which will be drafted and exercised upon closing.
- ~~3)4)~~ Drummond Kiwanis will seek to obtain a permit from the Montana Department of Transportation to allow pedestrian access to Tract T-1.
- ~~4)5)~~ A Land Use Agreement is to be included in the funding contract between the Kiwanis Club and the NRDP. Terms of this agreement, among other things, will include public use of the property.
- ~~5)6)~~ A Management Plan will also be developed and agreed upon which will detail the required maintenance on the Property, such as weed control. Pursuant to a funding condition in the 2012 *Final Restoration Plans*, FWP would be involved in development of this management plan.
- ~~6)7)~~ A funding contract provision will preclude the Kiwanis Club from selling the Property to anyone other than a public or non-profit entity, and any such sale must be approved by the State, provide for the continuance of the same public land use, and provide for the water and mineral rights to stay with the land.
- ~~7)8)~~ A funding contract provision will also provide for the possibility that the Kiwanis Club may cease to exist, ~~or become bankrupt, or be delinquent in taxes, in the future.~~
- ~~8)9)~~ That the funding and land use agreements are recorded at closing.

If the Governor approves the project funding, these conditions in the above-described agreements would be finalized prior to transmittal of funds. The NRDP and Drummond Kiwanis Club have discussed these conditions and the Drummond Kiwanis has indicated general acceptance. The planned schedule for completion of the funding agreement is by the end of 2013, although the Parties will make a good faith effort to complete the funding and management agreements before then.

## Land Acquisition Due Diligence Summary

All the needed land transaction due diligence required by the NRDP is complete or in the process of completion. A survey, title work (warranty deed, preliminary title insurance commitment), an appraisal, and a buy/sell agreement between the landowner and Drummond Kiwanis Club have

been completed and all found acceptable by the NRDP. An environmental property assessment ~~is underway has been completed and determined that no further assessment is needed.~~ A Mineral Right Guarantee has been completed ~~and ishas been -being-~~ reviewed by NRDP. ~~Based on this guarantee and after further legal research by the NRDP, it appears that the mineral rights are not severed from the land and are owned by the current landowner, who has agreed to transfer the rights to the Kiwanis. There is a possibility that the United States Government retains the mineral rights. If there is an issue with any outstanding due diligence documents, the funding recommendation may change.~~

Preliminary title work completed in May 2013 indicated the lack of legal vehicular access but no other significant problems. A summary appraisal report of the Property concluded a fair market value of \$50,000 for 31.99 acres, or \$1,563/acre. The appraisal, which was completed in May 2013, considered the lack of legal vehicular access to the Property. The Drummond Kiwanis intends to obtain an option agreement with the NorthWestern Corporation prior to closing that will provide for legal vehicular access. A land management representative for NorthWestern has indicated the corporations' willingness to execute such an option agreement.

The current owner of the Property will convey ~~any mineral rights and~~ water rights ~~that he owns, which are~~ associated with the Property, ~~to the Kiwanis.~~ There are two water rights associated with the Property based on DNRC water rights records:<sup>3</sup> An irrigation water right for flood irrigation with a maximum flow rate of 612 gallons per minute and a stock water right with maximum flow rate of 40 gallons per minute. Given the 1937 priority date of these rights, they are unlikely to offer any resource benefits in terms of potential instream flow augmentation.

~~If the mineral rights evaluation indicates the current landowner owns the mineral rights, then these rights will also be conveyed to Drummond Kiwanis upon closing.~~

## **Project Evaluation**

**Public Access:** This acquisition is expected to provide permanent public access to the entire Property, under management guidelines designed to protect the Property's natural resources. The Drummond Kiwanis is currently seeking to obtain an option from NorthWestern that can be exercised upon closing, which will provide public access to the Property. This access is an integral part of this project.

- ✓ After legal access is obtained to the property, an entrance roadway and parking area will be constructed.
- ✓ A single trail inside the circumference of the Property with several side trails is contemplated.
- ✓ Riverbank fishing access to the Clark Fork River will be available.
- ✓ The site will also provide wildlife viewing opportunities.

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<sup>3</sup> The DRNC claim number for these water rights are 76G 9752 00 and 46G 9752 00.

- ✓ Protection of riparian habitat and over ½ mile of access of the Clark Fork River will be available.

**Costs:Benefit Relationship:** The Drummond Kiwanis abstract (Attachment A) and FWP’s resource evaluation (Attachment B) describe the natural resource and public recreational benefits of this project including natural wetlands and river bank fishing access. The Kiwanis goal’s is to create a riverside park for protection of natural resources and public enjoyment near the Town of Drummond. The project would provide significant value to the fisheries of the Clark Fork River through the protection of over a mile of river and riparian habitat. Numerous wildlife species have been observed on or near the site, including raptors such as bald eagles, song birds, white-tailed deer, beaver, geese and blue herons. Its proximity to Drummond and the presence of a great blue heron rookery make it a good site for wildlife viewing. An Osprey nest is located on a pole along the abandoned rail bed to the north of the Property. In addition, the wetlands adjoining the Property enhance the value of the site and provides home to many species.

The location of a FWP Fishing Access Site immediately across the river and upstream from this Property would provide additional access, particularly during higher flow conditions by allowing anglers access to the stream bank. Given these benefits and the reasonable purchase price of \$50,000, 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 its abstract (Attachment A), the Drummond Kiwanis adequately justifies the reasons for and benefits that would be obtained through this purchase. The Kiwanis state that this purchase “would provide for river bank fishing access on the Clark Fork River including natural wetlands and serve as a recreational amenity for the community of Drummond and surrounding region.” The Drummond Kiwanis has committed to the funding conditions set forth above and that, with the purchase the Property, the area will be protected from development and provide for public access. The NRDP believes with these conditions being met, this acquisition will cost-effectively accomplish the project goals.

## **Public Support**

The NRDP received twenty (20) comment letters expressing general support for funding and development of the Drummond Riverside Park during the public comment period in fall 2012 on the *Draft Upper Clark Fork River Basin (UCFRB) Aquatic and Terrestrial Resources*.

Following the conclusion of the 30-day public comment period on this document, the NRDP will provide the public comment and the NRDP’s draft response to public comment document to the Advisory Council and Trustee Restoration Council before these councils determine their funding recommendations on this project.

**Conclusion:** Subject to the funding conditions described above, the NRDP recommends \$85,300 be used to fund the Drummond Kiwanis for the Property acquisition (\$50,000) and development of recreational access features (\$35,300), with project costs to be split 50/50 between the Aquatic Priority Account and Terrestrial Priority Account, subject to the specified funding conditions herein (see p. 2). While the specifics and timing of the funding, land use, and management agreements remain to be determined, the NRDP believes finalization could occur by December 31, 2013.

# NRDP Evaluation and Funding Recommendation

## Drummond Riverside Park

### October 10, 2013

#### Background and Project Summary

In June 2012, the Drummond Kiwanis Club submitted a restoration concept abstract (Attachment A) for funding of up to \$100,000 from the Natural Resource Damage Program (NRDP) for acquisition of a 31.99 acre “Property” located next to the Clark Fork River near Drummond and development of recreational trails and other public access features. The State included this project as a potential land acquisition project to be considered for further review and a subsequent funding decision in the December 2012 *Final Upper Clark Fork River Basin (UCFRB) Aquatic and Terrestrial Resources Restoration Plans (“Final Restoration Plans”)*. A map depicting the Property and surrounding area is provided in Attachment B. Through its ownership and management of the Property, the Drummond Kiwanis seeks to preserve the natural floodplain of the Clark Fork River, including natural wetlands, and provide for public recreation access.

This project is being considered for funding as a proposed restoration action for both the Clark Fork main-stem aquatic priority area and terrestrial priority landscape area, with a 50%/50% terrestrial/aquatic funding split.<sup>1</sup> As indicated in the *Final Restoration Plans*:<sup>2</sup>

- 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’s funding evaluation and recommendation that will be the subject of a 30-day public comment period that began on **Thursday, September 12, 2013** and will end on **Friday, October 11, 2013**. 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.

A buy/sell agreement has been executed between the Drummond Kiwanis Club and the owner of said Property, Cy Corlett in the amount of \$50,000, which is the appraised value of the Property. The Drummond Kiwanis Club intends to own the Property and construct an entrance roadway, parking area, natural trail, and signage using an additional \$35,300 (details of this budget provided in Attachment A) in restoration funding for a total project cost of \$85,300. If the project is approved by the Governor, a land use agreement will be included in the final funding contract between NRDP and Drummond Kiwanis Club. This agreement will provide, among other things, public access and use of the Property.

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<sup>1</sup> See pages 5-4 and 5-5, and Table 6-1 of the *Final Restoration Plans*.

<sup>2</sup> See page 6-2 of the *Final Restoration Plans*.

## **NRDP Funding Recommendation Summary**

The NRDP recommends this project be funded for a total of \$85,300, subject to the following funding conditions and subsequent NRDP approvals.

- 1) A mineral guarantee and title commitment will need to be approved by NRDP.
- 2) Recordation and NRDP approval of a property survey as well as subsequent NRDP approval of a revision to the title report to reflect the survey's Property description.
- 3) NRDP approval of an option agreement between the Kiwanis Club and NorthWestern Corporation providing vehicular access through NorthWestern land to the Property, which will be drafted and exercised upon closing.
- 4) Drummond Kiwanis will seek to obtain a permit from the Montana Department of Transportation to allow pedestrian access to Tract T-1.
- 5) A Land Use Agreement is to be included in the funding contract between the Kiwanis Club and the NRDP. Terms of this agreement, among other things, will include public use of the property.
- 6) A Management Plan will also be developed and agreed upon which will detail the required maintenance on the Property, such as weed control. Pursuant to a funding condition in the 2012 *Final Restoration Plans*, FWP would be involved in development of this management plan.
- 7) A funding contract provision will preclude the Kiwanis Club from selling the Property to anyone other than a public or non-profit entity, and any such sale must be approved by the State, provide for the continuance of the same public land use, and provide for the water and mineral rights to stay with the land.
- 8) A funding contract provision will also provide for the possibility that the Kiwanis Club may cease to exist, become bankrupt, or be delinquent in taxes.
- 9) That the funding and land use agreements are recorded at closing.

If the Governor approves the project funding, these conditions in the above-described agreements would be finalized prior to transmittal of funds. The NRDP and Drummond Kiwanis Club have discussed these conditions and the Drummond Kiwanis has indicated general acceptance. The planned schedule for completion of the funding agreement is by the end of 2013, although the Parties will make a good faith effort to complete the funding and management agreements before then.

## **Land Acquisition Due Diligence Summary**

All the needed land transaction due diligence required by the NRDP is complete or in the process of completion. A survey, title work (warranty deed, preliminary title insurance commitment), an appraisal, and a buy/sell agreement between the landowner and Drummond Kiwanis Club have

been completed and all found acceptable by the NRDP. An environmental property assessment has been completed and determined that no further assessment is needed. A Mineral Right Guarantee has been completed has been reviewed by NRDP. Based on this guarantee and after further legal research by the NRDP, it appears that the mineral rights are not severed from the land and are owned by the current landowner, who has agreed to transfer the rights to the Kiwanis.

Preliminary title work completed in May 2013 indicated the lack of legal vehicular access but no other significant problems. A summary appraisal report of the Property concluded a fair market value of \$50,000 for 31.99 acres, or \$1,563/acre. The appraisal, which was completed in May 2013, considered the lack of legal vehicular access to the Property. The Drummond Kiwanis intends to obtain an option agreement with the NorthWestern Corporation prior to closing that will provide for legal vehicular access. A land management representative for NorthWestern has indicated the corporations' willingness to execute such an option agreement.

The current owner of the Property will convey any mineral rights and water rights that he owns, which are associated with the Property, to the Kiwanis. There are two water rights associated with the Property based on DNRC water rights records:<sup>3</sup> An irrigation water right for flood irrigation with a maximum flow rate of 612 gallons per minute and a stock water right with maximum flow rate of 40 gallons per minute. Given the 1937 priority date of these rights, they are unlikely to offer any resource benefits in terms of potential instream flow augmentation.

### **Project Evaluation**

**Public Access:** This acquisition is expected to provide permanent public access to the entire Property, under management guidelines designed to protect the Property's natural resources. The Drummond Kiwanis is currently seeking to obtain an option from NorthWestern that can be exercised upon closing, which will provide public access to the Property. This access is an integral part of this project.

- ✓ After legal access is obtained to the property, an entrance roadway and parking area will be constructed.
- ✓ A single trail inside the circumference of the Property with several side trails is contemplated.
- ✓ Riverbank fishing access to the Clark Fork River will be available.
- ✓ The site will also provide wildlife viewing opportunities.
- ✓ Protection of riparian habitat and over ½ mile of access of the Clark Fork River will be available.

**Costs:Benefit Relationship:** The Drummond Kiwanis abstract (Attachment A) and FWP's resource evaluation (Attachment B) describe the natural resource and public recreational benefits of this project including natural wetlands and river bank fishing access. The Kiwanis goal's is to create a riverside park for protection of natural resources and public enjoyment near the Town of

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<sup>3</sup> The DRNC claim number for these water rights are 76G 9752 00 and 46G 9752 00.

Drummond. The project would provide significant value to the fisheries of the Clark Fork River through the protection of over a mile of river and riparian habitat. Numerous wildlife species have been observed on or near the site, including raptors such as bald eagles, song birds, white-tailed deer, beaver, geese and blue herons. Its proximity to Drummond and the presence of a great blue heron rookery make it a good site for wildlife viewing. An Osprey nest is located on a pole along the abandoned rail bed to the north of the Property. In addition, the wetlands adjoining the Property enhance the value of the site and provides home to many species.

The location of a FWP Fishing Access Site immediately across the river and upstream from this Property would provide additional access, particularly during higher flow conditions by allowing anglers access to the stream bank. Given these benefits and the reasonable purchase price of \$50,000, 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 its abstract (Attachment A), the Drummond Kiwanis adequately justifies the reasons for and benefits that would be obtained through this purchase. The Kiwanis state that this purchase “would provide for river bank fishing access on the Clark Fork River including natural wetlands and serve as a recreational amenity for the community of Drummond and surrounding region.” The Drummond Kiwanis has committed to the funding conditions set forth above and that, with the purchase the Property, the area will be protected from development and provide for public access. The NRDP believes with these conditions being met, this acquisition will cost-effectively accomplish the project goals.

### **Public Support**

The NRDP received twenty (20) comment letters expressing general support for funding and development of the Drummond Riverside Park during the public comment period in fall 2012 on the *Draft Upper Clark Fork River Basin (UCFRB) Aquatic and Terrestrial Resources*.

Following the conclusion of the 30-day public comment period on this document, the NRDP will provide the public comment and the NRDP’s draft response to public comment document to the Advisory Council and Trustee Restoration Council before these councils determine their funding recommendations on this project.

**Conclusion:** Subject to the funding conditions described above, the NRDP recommends \$85,300 be used to fund the Drummond Kiwanis for the Property acquisition (\$50,000) and development of recreational access features (\$35,300), with project costs to be split 50/50 between the Aquatic Priority Account and Terrestrial Priority Account, subject to the specified funding conditions herein (see p. 2). While the specifics and timing of the funding, land use, and management agreements remain to be determined, the NRDP believes finalization could occur by December 31, 2013.