2009 FINAL
UPPER CLARK FORK RIVER BASIN
RESTORATION WORK PLAN

PREPARED BY:

STATE OF MONTANA
NATURAL RESOURCE DAMAGE PROGRAM
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MAY 2010

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List of Acronyms

ADLC	Anaconda-Deer Lodge City-County Government
Advisory Council	Upper Clark Fork River Basin Remediation and Restoration Advisory Council
ARCO	Atlantic Richfield Company
B-SB	Butte-Silver Bow City-County Government
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFC	Clark Fork Coalition
CFR	Clark Fork River
CFWEP	Clark Fork Watershed Education Program
DEQ	Montana Department of Environmental Quality
DNRC	Montana Department of Natural Resources and Conservation
DOI	U.S. Department of Interior
EA	Environmental Assessment
EPA	U.S. Environmental Protection Agency
FCWUA	Flint Creek Water Users Association
FWP	Montana Fish, Wildlife and Parks
GGTU	George Grant Chapter of Trout Unlimited
MEPA	Montana Environmental Policy Act
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NRDP	Natural Resource Damage Program
NRCS	Natural Resource Conservation Service
RPPC	UCFRB Restoration Plan Procedures and Criteria
ROD	Record of Decision
TRC	Trustee Restoration Council
Tribes	Confederated Salish and Kootenai Tribes
UCFRB	Upper Clark Fork River Basin
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service

1.0 EXECUTIVE SUMMARY

1.1 Background

The State of Montana obtained approximately $130 million for restoration of injured natural resources in the Upper Clark Fork River Basin (UCFRB) through a partial settlement of its natural resource damage lawsuit against the Atlantic Richfield Company (ARCO) in 1999. In February 2000, the State released the *UCFRB Restoration Plan Procedures and Criteria* (*RPPC*) that provided the framework for expending these Restoration Funds. The document was based on input from the UCFRB Remediation and Restoration Advisory Council (Advisory Council)[1] and public comment. Rather than embarking on a prescriptive process, the State elected to establish a grant process whereby various entities could apply for Restoration Funds based on procedures and criteria set forth in the *RPPC*. The criteria are aimed at funding the best mix of projects that will restore or replace the natural resources that were injured, and/or services provided by those resources that were lost, due to releases of hazardous substances from ARCO and its predecessor's mining and mineral processing operations in the UCFRB. The State revised the *RPPC* in March 2002, January 2006, and January 2007.

The Montana Natural Resource Damage Program (NRDP) administers the UCFRB Restoration Grant process. UCFRB Restoration Grant eligibility requirements include:

Applicant Eligibility: Governmental entities, private entities, and individuals are eligible to apply for UCFRB Restoration Grants.

Project Type Eligibility: Four types of projects are eligible for funding:

- Restoration projects that will restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and/or the services lost as a result of releases of hazardous substances by ARCO or its predecessors that were the subject of the Montana v. ARCO lawsuit.

- Planning projects that involve developing future grant proposals.

- Monitoring and research projects that pertain to restoration or replacement of natural resources in the UCFRB.

- Education Projects that pertain to the restoration or replacement of natural resources in the UCFRB.

Project Location Eligibility: Only projects that would be located in the UCFRB are eligible for funding. This requirement does not apply to: (1) research or education projects, provided that the proposed research or education pertains to restoration of natural resources located in the UCFRB; and (2) a project, or a portion thereof, that would be located outside of the UCFRB, but would have the effect of restoring or significantly facilitating the restoration of natural resources or lost services of the UCFRB.

[1] The Advisory Council consists of 8 citizen volunteers representing the public and various interest groups and 5 government representatives.

As of May 2010, the State has awarded approximately $82 million for 110 grant projects since December 2000. Information on these projects can be found on the Department of Justice website at www.doj.mt.gov under "Montana Lands" or upon request from the NRDP (406-444-0205).

1.2 Work Plan Overview

This *2009 Final UCFRB Restoration Work Plan* (*Final Work Plan*) describes the State's evaluation of thirteen 2009 Restoration Grant proposals, the pubic review process associated with the pre-draft and draft versions of this document, and the Governor's final funding decisions. The *RPPC* sets forth the process that the State follows in evaluating application and making funding decisions.

Section 2.0 of this *Final Work Plan* contains a project summary, a map, and an evaluation criteria summary table for each project. Section 3.0 summarizes the project rankings and final funding decisions. The following summarizes the various phases of the application submittal and evaluation process and identifies the sections of this *Final Work Plan* that are reflective of these phases.

- In January 2009, the NRDP distributed the 2009 grant application materials and conducted educational workshops on the application process.

- In March 2009, the NRDP received thirteen grant applications for a total Restoration Fund request of $22,953,230. The total request of those applications was subsequently reduced to $16,047,580, based on agreement between the applicants and the NRDP on reduced project scopes/budgets for four proposals and additional matching funds on two proposals.

- In May 2009, the NRDP determined that 10 of the 13 applications met all minimum qualification criteria and that the other 3 applications should proceed further in the grant funding evaluation process, even though there was some uncertainty as to whether they met all minimum qualification criteria.

- The NRDP evaluated the 13 proposals according to criteria specified in the *RPPC*. Section 2 contains a project summary, a map, and a criteria summary table for each proposal. These evaluations were based on application review guidelines contained in Appendix B that were derived from the criteria set forth in the *RPPC*.

- In September and October 2009, applicants presented their proposals to the Advisory Council and Advisory Council members toured proposal sites.

- The Governor appointed Advisory Council members in September 2009.

- The NRDP received input from the Department of Interior (DOI) in May 2009 and from the Confederated Salish and Kootenai Tribes (Tribes) in November 2009 on this year's projects that is included in Appendix A.

- The NRDP presented the *October 2009 Pre-Draft Work Plan* containing the staff evaluations and pre-draft funding recommendations at its November 4, 2009 meeting. In its *Pre-Draft Work Plan*, the NRDP recommended 11 of the 13 proposals for full funding and 2 projects for partial funding, subject to certain funding conditions for some of the projects.

- At its November 4, 2009 meeting, the Advisory Council voted on its draft funding recommendations. Appendix A contains a summary of these recommendations. The Council voted to recommend 10 of the 13 proposals for full funding, subject to certain funding conditions on some of the projects. They recommended partial funding for two proposals and no funding for one proposal.

- At its November 10, 2009 meeting, the Trustee Restoration Council (TRC) considered input from staff, the Advisory Council, and the public in deciding on the draft funding recommendations. The TRC directed that public comment be solicited on draft funding recommendations for full funding of 11 of the 13 proposals, partial funding for one proposal (East Fork Fisheries Restoration), and no funding for one proposal (KT Ranch Restoration).

- The NRDP solicited public comment from November 13, 2009 through December 11, 2009 on the *Draft UCFRB Restoration Work Plan*. The NRDP received a total of 37 comments during the public comment period. The evaluation tables in Section 2 provide a summary of all the public input received both before and during the public comment period on all the grant proposals.

- At its December 16, 2009 meeting, the Advisory Council considered public comment and voted to reaffirm its draft funding recommendations on 9 of the 13 proposals. For the other 4 proposals, the voted to modify its draft funding recommendations as reflected in the meeting summary in Appendix A.

- The Trustee Restoration Council adopted the same final funding recommendations as those of the Advisory Council at its December 17, 2010 meeting.

- In May 2010, Governor Brian Schweitzer completed his funding decisions for the 2009 proposals. He approved 9 proposals for funding as requested and 3 proposals for reduced funding, for a total approved funding for $13,979,588 for 12 proposals. The Governor did not approve the KT Ranch Restoration project for funding.

- The projects and amounts approved by the Governor for funding, subject to certain conditions specified in Table 3-1, are:

Table 1-1. Approved Project Funding

Project	Approved Funding
Milltown Bridge Pier and Log Removal	$262,177
Milltown/Two Rivers Recreational Facilities and Access	$2,663,749
Silver Bow Creek Greenway*	$1,500,000
Big Hole Transmission Line – Year 3	$2,666,618
Moore Acquisition	$142,500
Peterson Ranch Conservation Easement	$334,125
Warm Springs Ponds Recreational Improvements	$82,989
Anaconda Waterline – Year 8	$1,988,478
Bird's-eye View Education Project*	$100,000
Butte Waterline – Year 9	$2,684,747
Paracini Pond Acquisition	$1,184,205
Restoring Fish in East Fork Rock Creek*	$370,000
KT Ranch Restoration	Not Funded
Total Approved Funding	**$13,979,588**

*Projects approved with reduced funding

SECTION 2.0:

Project Summaries, Maps, and Criteria Summary Tables

Clark Fork Coalition and Montana Fish, Wildlife and Parks
Bridge Pier and Log Removal near the Former Milltown Reservoir

Project Summary

The Clark Fork Coalition (CFC) and the Montana Fish, Wildlife and Parks (FWP) (co-applicants) request $262,177 in Restoration Funds to complete restoration actions on the Clark Fork and Blackfoot Rivers that involve removing abandoned railroad bridge piers from the bed of both rivers and removing additional saw logs from the Blackfoot River.

Project costs cover: 1) removal of four abandoned bridge piers in the bed and banks of the Blackfoot River approximately 1.4 miles upstream of the confluence with the Clark Fork River; 2) removal of up to four abandoned bridge piers and up to two bridge abutments on the Clark Fork River above Turah; and 3) the removal of approximately 5,000 logs from the lower 1.5 miles of the Blackfoot River (see Figures 1 and 2). The FWP would secure landowner agreements, competitively procure engineering and construction contractors, and oversee both bridge pier and log removal and the CFC will handle grant administration responsibilities. Of the $262,177 requested in Restoration Funds, $165,653 would be for bridge pier removal, $80,000 for log removal, $14,740 for FWP's management and oversight costs, and $1,784 for the Clark Fork Coalition's grant administration costs.

Figure 1

Figure 2: Blackfoot Site

Figure 2

Figure 3: Clark Fork Site

Summary of RPPC Criteria Evaluation for Bridge Pier and Log Removal near the Former Milltown Reservoir Co-applicants: Clark Fork Coalition and Montana Fish, Wildlife and Parks	
Project Summary	The Clark Fork Coalition (CFC) and the Montana Fish, Wildlife and Parks (FWP) request $262,177 in Restoration Funds to complete restoration actions on the Clark Fork and Blackfoot Rivers that involve removing abandoned railroad bridge piers from the bed of both rivers and removing additional saw logs from the Blackfoot River. Overall Application Quality: Very Good
Final Funding Decision and Funding Conditions	The Governor approved funding of this project for the requested $262,177, subject to two additional funding conditions requiring that the NRDP approve of landowner agreements and that grant activities be coordinated with DEQ's remedial action to remove the Stimson cooling pond.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: The project goals are to restore the Clark Fork and Blackfoot Rivers and increase recreational safety for boaters and other river uses in the vicinity of the former Milltown Reservoir. There are no significant uncertainties with this proposed project, which is technically sound and uses a standard construction approach. The co-applicants either have or will consult with the appropriate agencies who have been involved with the past Blackfoot River log removal. The additional log removal from the Blackfoot River would use the same approach the State successfully used on two previous log removal projects in the reservoir area in 2008. The only uncertainty involves the removal of abandoned bridge piers on the east side of the Clark Fork River for which landowner consent has yet to be obtained. If this consent is not obtained, this portion of the project will not be completed and project costs would decrease.
2. Costs:Benefits	Net Benefits: This project is considered to be of net benefit because it is a restoration project that will generate benefits to injured natural resources and public recreation at a reasonable cost of $262,177. Removal of the piers and logs will help restore the natural function of the Blackfoot and Clark Fork Rivers and improve recreational services by improving boater safety in river reaches that are expected to see increased use following the completion of the Milltown remediation and restoration activities and by adding to the aesthetic enjoyment of the rivers in a more natural condition. Given the expected major increase in recreational use on the Clark Fork and Blackfoot Rivers, the project will directly benefit generations of Montanans and visitors who recreate these rivers.
3. Cost-Effectiveness	Cost-effective: The co-applicants adequately justified the proposed alternative. Their alternatives analysis indicated that the no action alternative would not meet project goals; that removal of piers to 1 foot depth instead of the proposed 8 foot depth would cost less but not be effective in the long-term; and that diverting the river would have greater impacts than the proposed project. Project costs were developed by an engineering firm and include a contingency of 10%. The log removal cost estimate used the cost incurred by the State during the 2008 log removal. As proposed by the co-applicants, any profits from the sale of the logs would be returned to the Restoration Fund to reimburse the costs of the log removal. Any proceeds beyond the cost of removal, however, would go to the State's School Trust Fund. The only logs that are not proposed to be sold are those provided to Scott Cooney in exchange for being allowed to deck the removed logs on his property. The number of logs provided in this exchange should be approved by the NRDP, which can be accomplished through the

Summary of RPPC Criteria Evaluation for Bridge Pier and Log Removal near the Former Milltown Reservoir Co-applicants: Clark Fork Coalition and Montana Fish, Wildlife and Parks	
	recommended funding condition that the NRDP approve of landowner agreements. In 2008, the logs were sold for approximately $10/log. While this sale price would not cover all the removal costs, it offers cost-savings, thus increasing cost-effectiveness.
4. Adverse Environmental Impacts	Short Term Adverse Impacts with Mitigation: Short term impacts to surface water quality, floodplain, wetlands, aquatic species and habitat, including bull trout, are expected during construction activities. The co-applicants indicate that required permits will be obtained and that best management practices will be used to minimize the impacts. The project will provide long-term benefits to the environment by restoring the natural function of the rivers.
5. Human Health and Safety	Short Term Adverse Impacts with Mitigation: The co-applicants indicate there might be minor short-term safety hazards to floaters during the removal of the Clark Fork River piers, which are located in a river section that is not closed to the public. Mitigation may involve working outside of the floating season or a temporary closure of this river reach. This is not an issue on the Blackfoot River as the lower section of the river where log and pier removal will occur is closed until 2012 due to the Milltown Superfund action.
6. Results of Response Actions	Positive Coordinates: This project coordinates with and augments the effective Superfund actions taking place at the Milltown Dam. This project will be completed after the remedial actions are finished at Milltown. DEQ may be implementing the Stimson cooling pond removal at this time on the Blackfoot River. The NRDP recommends a funding condition requiring the co-applicants to coordinate with DEQ to eliminate any conflicts.
7. Natural Recovery Potential	Reduces the Recovery Period: The project enhances the recovery potential of injured resources and services, thereby reducing recovery time. The removal of the abandoned bridge piers from the Clark Fork and Blackfoot Rivers will help restore the natural function to these rivers. Aquatic habitat will naturally develop upon the removal of these piers. The removal of the logs from the Blackfoot River will also increase the recovery time for this river section. Woody debris in Montana rivers is a naturally occurring process that adds complexity to the river system. However, the number of logs in this river section is not a naturally occurring number, thus natural recovery period will be reduced by removing a portion of the logs.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: This project is consistent with the legal requirements. The co-applicants indicate they will apply for all applicable permits and coordinate with local entities. Any profits from the sale of logs beyond the cost of removal would go to the State's School Trust Fund.
9. Resources of Special Interest	Beneficial Impacts: There are several threatened and endangered species that use or may benefit from the use of this area in the future and the documented cultural sites will be protected with State ownership. The Tribes did not specifically comment on this project in their comments on the 2009 grant requests.[1] The DOI comments[2] did not indicate the agency's position on funding this project and questioned whether the log removal was a responsibility of the owners of the Stimson Mill, which has ceased operations.

[1] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.
[2] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.

Summary of RPPC Criteria Evaluation for Bridge Pier and Log Removal near the Former Milltown Reservoir Co-applicants: Clark Fork Coalition and Montana Fish, Wildlife and Parks	
10. Project Location	Within and Proximate: The Clark Fork abandoned bridge piers are located upstream of Turah within the UCFRB and is identified as an injured area. The abandoned bridge piers and logs located in the lower 1.5 mile section of the Blackfoot River are within the Milltown Dam area and this work directly affects the Milltown area.
11. Actual Restoration of Injured Resources	Restoration: This is a restoration project, as the actions proposed will restore the bed and banks of the Clark Fork and Blackfoot Rivers immediately adjacent to the abandoned bridge piers. The project will accelerate the recovery of adjacent areas by restoring the natural function of the rivers.
12. Service Loss/Restored & Service Restoration	Same: This project will help restore lost recreational services by removing objects that are potential hazards to river recreationalists and restore lost ecological services by restoring the natural function of the Clark Fork and Blackfoot Rivers.
13. Public Support	4 support comments: from Missoula County, Rep. Tim Furey, Friends of Two Rivers, and the Clark Fork River Technical Assistance Committee
14. Matching Funds	None
15. Public Access	Increased Access Beneficial: Montana rivers are open to the general public, so this project does not change public access. However, the removal of potential man-made hazards from the Clark Fork and Blackfoot Rivers increases the number of people that can use these resources.
16. Ecosystem Considerations	Positive: This project fits within the broad ecosystem concept in that it improves natural resource problems by removing the abandoned bridge piers and logs from the Clark Fork and Blackfoot Rivers.
17. Coordination & Integration	Coordinates/Integrates: This project coordinates with the Milltown Restoration actions being implemented by the State for the former Milltown Dam area. Some of the State's restoration actions will occur in the same timeframe, but in different areas than the activities proposed under this grant project.
18. Normal Government Functions	Outside Normal Government Functions: This project does not involve activities normally conducted by government agencies or obligations of government entities under law. While up to $14,740 in grant funds would go to FWP to reimburse its management and oversight costs, FWP would not incur such costs as part of its normal agency responsibilities and funding. The proposed work is beyond the scope of the NRD funded and directed Milltown restoration work, which completed needed log recovery work in 2008. The grant funding will result in improvements that would not otherwise occur through normal agency function or through earmarked settlement funding.

Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group, and Missoula County
Milltown/Two Rivers Recreational Facilities and Access Grant

Project Summary

Co-applicants Montana Fish, Wildlife and Parks (FWP), Milltown Superfund Redevelopment Working Group, and Missoula County request up to $2,663,749[1] in Restoration Funds to provide enhanced recreational access and facilities for public use in the area surrounding the confluence of the Blackfoot and Clark Fork Rivers. The three major objectives/project components to accomplish this goal include developing a public park that includes access, trail and user facilities for $927,530; acquiring 4 parcels of land totaling 180 acres for up to $1,080,000; and funding FWP's initial operation and maintenance (O&M) costs for five years for $656,219. Total project costs are up to $2,729,852, with $66,103 to be provided as in-kind matching funds.

In September 2009, the co-applicants, in consultation with the NRDP, reduced its original grant funding request by about $3.2 million. The budget reductions primarily resulted from: reducing the number of recreational access features, reducing contingency costs for fixed cost items, reducing the costs of the two pavilions through the use of kit designs, and changing the pedestrian bridge request from one involving design and construction to one involving design only. The NRDP's evaluation is based on this revised project scope and budget. Following is a description of the major project components as revised.

Proposed Park ($927,530 requested or 36% of total Restoration Funds requested): The major Park components proposed in the Gateway and Confluence areas, which are primarily on lands acquired by the state from NorthWestern Corporation, (see Figure 3) and associated budgets, including contingencies, are:

- Designing and constructing 11,290 feet of trail ($346,314);
- Designing and constructing other access features such as toilets, signs, benches, picnic tables, doggie stations, bike racks, site grading, gates, and revegetation ($182,302);
- Constructing two pre-fabricated pavilions, 1,000 ft^2, and one 3,925 ft^2 with a plaza in front ($198,914);
- Designing a foot pedestrian bridge on the Clark Fork River ($200,000).

These proposed recreation features would be constructed in 2010.

Proposed Land Acquisition (up to $1,080,000 requested or 40% of total Restoration Funds requested): This component involves acquiring four (4) separate parcels totaling about 180 acres shown on Figure 4 from The Nature Conservancy (TNC).[2] Parcel #1 (102 acres), referred to as

[1] This amount is $45,000 less than the September 2009 revised budget due to TNC's agreement to deduct any state land acquisition costs from the purchase price as further explained herein.

[2] TNC acquired these parcels in December 2008 from Plum Creek Lumber as part of the first phase of TNC's acquisition of some of 310,000 acres of Plum Creek's timberlands. This large acquisition is known as the "Montana Legacy Project" or the "Montana Working Forest Project." TNC, in acquiring these lands, seeks to sell the lands to public entities and conservation buyers to prevent future subdivision of these lands, protect natural resources, and preserve and promote public access and recreation, and also seeks to recoup its costs.

the "B Hill," is located directly east of the Bonner School. Parcel #3 (20 acres) is located near the bluff area where a public overlook platform is to be constructed to view the confluence of the Clark Fork and Blackfoot Rivers, (i.e., the former Milltown Dam and Reservoir site). Parcels #2 (47 acres) and #4 (11 acres) are located along the Blackfoot River near the former Stimson Lumber Mill. All the parcels would be transferred to FWP, except Parcel #1, which would be transferred to the Bonner School District, subject to certain reservations. These lands are considered high recreational use properties as well as important wildlife habitat. Parcel #1, the "B Hill" is also intended to be used as an outdoor classroom for Bonner Elementary students. The purchase price for these parcels would be up to $1,080,000 or the appraised fair market value, whichever is less.

Proposed O&M ($656,219 requested or 24% of total Restoration Funds requested): This objective involves funding support for FWP to operate and maintain the park, including its recreational facilities and the three parcels being acquired by FWP under this grant, for five years from 2010 to 2015. This budget also covers O&M needs for the bluff overlook lands to be acquired by FWP and the public viewing facilities to be funded by the Environmental Protection Agency on those lands. It does not, however, include O&M funding needs for the Parcel #1 that is slated for ownership by the Bonner School District, which plans to seek O&M funding from other sources. For the first two years, one full-time employee will conduct construction oversight. The last three years of this O&M would be for a Site Manager/Ranger and Maintenance Worker. The budget breakdown for this project component is:

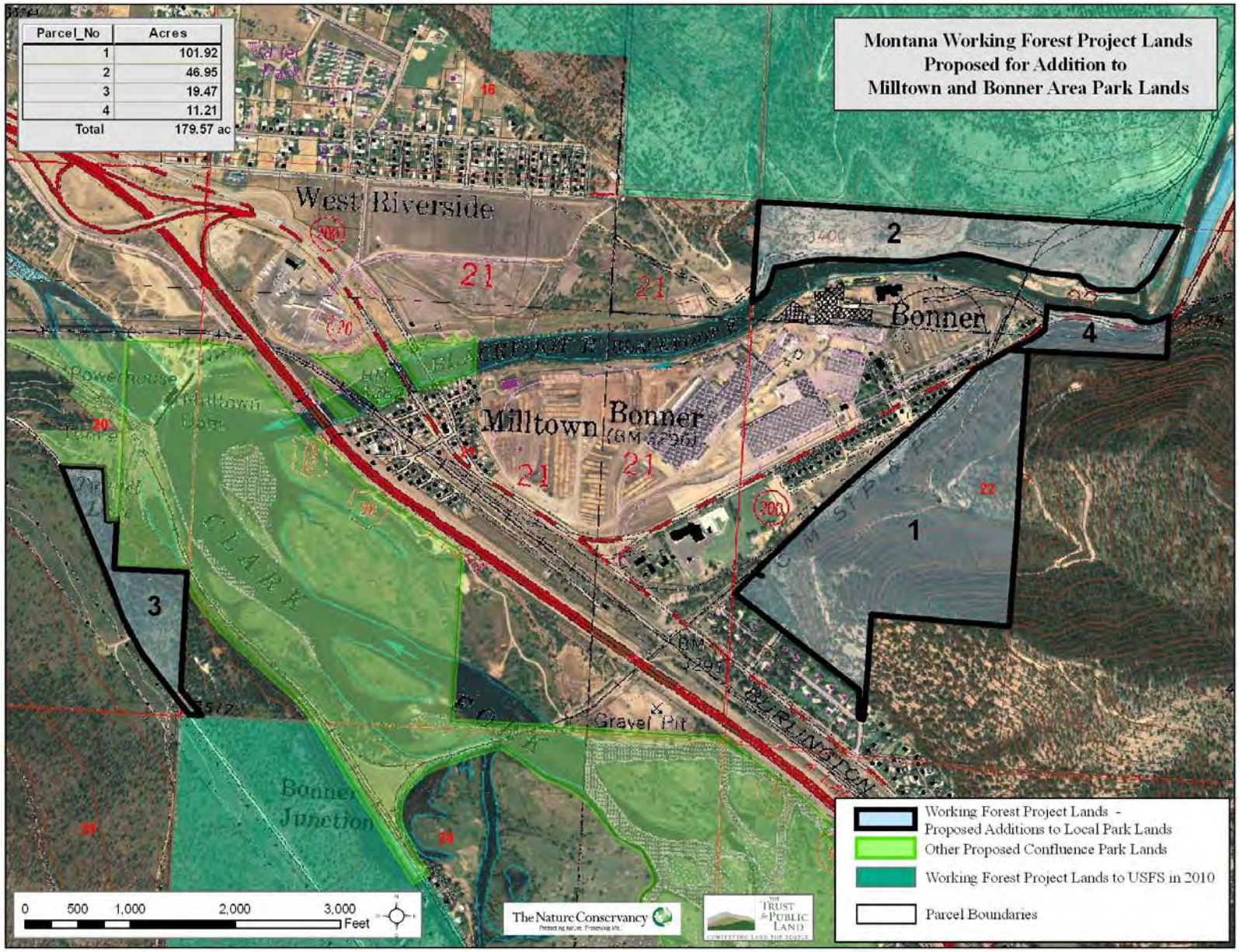
- Salaries of two full-time employees, one for five years and one for three years, including fringe ($409,191);
- Contracted services ($65,833);
- Communications ($9,557);
- Materials/supplies ($8,892);
- Travel ($31,854);
- Rent/Utilities ($8,582);
- Equipment, including two pickup trucks, utility vehicle, and power tools ($117,000); and
- Miscellaneous ($5,310)

Other Milltown Restoration Activities and Grants

The State's Milltown restoration actions are proceeding and will likely be completed in 2012. These actions, budgeted for $11.5 million, strictly involve ecological restoration components and do not include any recreational enhancements. The co-applicants plan to coordinate the proposed access features with the State's restoration actions. This application is the second application that deals with enhancing the recreational features near the former Milltown Dam, the first being a $975,000 grant for the pedestrian bridge across the Blackfoot River approved for funding in 2006. In addition, there were two other restoration grant projects previously approved in the Milltown area. One involved additional sediment removal within the remediation area for $1.5 million. The other involved an approval of the acquisition of NorthWestern Corporation's Milltown properties by the State and the transfer of $595,000 from the UCFRB Restoration Fund to the Milltown Restoration Fund to facilitate this acquisition and help pay for the State's Milltown restoration actions.

Figure 3 – Milltown Park Graphic (Conceptual Design Plan, July 2008)

Figure 4


Parcel_No | Acres
1 | 101.92
2 | 46.95
3 | 19.47
4 | 11.21
Total | 179.57 ac
Montana Working Forest Project Lands
Proposed for Addition to
Milltown and Bonner Area Park Lands
West Riverside
Milltown
Bonner
Bonner Junction
Gravel Pit
CLARK FORK
BURLINGTON
1
2
3
4
0 500 1,000 2,000 3,000 Feet
The Nature Conservancy
The Trust for Public Land
Working Forest Project Lands - Proposed Additions to Local Park Lands
Other Proposed Confluence Park Lands
Working Forest Project Lands to USFS in 2010
Parcel Boundaries

Summary of RPPC Criteria Evaluation for Milltown / Two Rivers Recreational Facilities and Access Applicant: Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group and Missoula County	
Project Summary	Co-applicants Montana Fish, Wildlife and Parks (FWP), Milltown Superfund Redevelopment Working Group (WG), and Missoula County seek to provide enhanced recreational access and facilities for public use in the area surrounding the confluence of the Blackfoot and Clark Fork Rivers. The three major objectives/project components to accomplish this goal include developing a public park that includes access, trail and user facilities; funding FWP's operation and maintenance costs for five years; and acquiring 4 parcels of land totaling 180 acres. Total project costs are up to $2,729,852, with up to $2,663,749 requested in Restoration Funds and $66,103 to be provided as in-kind matching funds. Overall Application Quality: Good. Though well-written and complete, the conceptual nature of the original proposal led to significant uncertainties, most of which the co-applicants adequately addressed through its revised project scope and budget.
Final Funding Decision and Funding Conditions	The Governor approved funding this project for up to $2,663,749 as requested, subject to the following funding conditions specific to the proposed land acquisition and bridge design activities: 1) that the purchase price for the land acquisition is at or below the fair market value determined by an appraisal approved by the NRDP or the requested $1,080,000, whichever is less, and that the State's cost for the appraisal, survey, and title work and insurance and related matters be deducted from this purchase price; 2) that title of the lands proposed for acquisition is not subject of any restrictions, including third party mineral ownership, that would negatively affect the recreation/conservation use/value or materially encumber the title; 3) that, prior to commissioning the appraisals and surveys, TNC provide the NRDP with preliminary title commitments for each of the parcels and copies of all encumbrances and related documents cited in those commitments; 4) that the NRDP approve the appraisal and survey engagement letters and instructions prior to the commissioning of those services; 5) that the NRDP review and approve of all land transaction documents, such as title commitment, surveys, deeds, appraisals, and buy/sell agreements, prior to closing; 6) that a deed restriction and reversion in favor of the State be placed on Parcel #1, which is to be owned by the Bonner School District, to assure the property has a recreation/conservation end use in the long-term; 7) that a reservation for a trail easement on Parcel #1 be provided for in the transfer of Parcel #1 to the Bonner School District; and 8) that the NRDP review and approve the bridge design as being not inconsistent with the State's restoration of the Milltown site.
Criteria Evaluation	

Summary of RPPC Criteria Evaluation for Milltown / Two Rivers Recreational Facilities and Access Applicant: Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group and Missoula County	
1. Technical Feasibility	Reasonably Feasible (Park & O&M Components)/Potentially Feasible (Land Acquisition Components): The only significant uncertainties with the revised proposal are associated with the needed land acquisition activities. Though designs are only at the conceptual stage, the proposed recreational access features involve use of FWP standard designs (trails, toilets, signs) or pre-fabricated kits (the two pavilions) and thus are considered feasible. The proposed operation and maintenance activities are feasible and routinely conducted by FWP at other state parks in Montana. The uncertainties associated with the land acquisition activities are due to the remaining steps that need to be completed to obtain needed trail easements and to acquire the four TNC parcels. The co-applicants will need to obtain the needed trail easements for the sections of the trail under the three Blackfoot River bridges. Survey, appraisal, and title work remain to be completed, plus the acquisitions of Parcels 2, 3, and 4, which are slated for FWP ownership, require FWP Commission and Land Board approval. A deed restriction and reversion in favor of the State will be needed on Parcel 1 to assure the school district maintains it for the intended public recreation/conservation uses. The application properly outlines the needed steps to complete the acquisition of the TNC parcels and the TNC has expertise in completing such land acquisitions. Given this, and with the funding conditions specified above that are tied to the completion of this needed title, survey, and appraisal work, it appears the uncertainties associated with the land acquisition components can be resolved and project goals can be met.
2. Costs:Benefits	Net Benefit: The co-applicants indicate the Milltown area is anticipated to receive a large amount of recreational use and the establishment of trails and a park will help protect the over $110 million of remedial and restoration investments in/improvements to the Confluence area. The $927,530 proposed for park features is likely of net benefit based on these anticipated natural resource and recreational benefits. Some uncertainty exists about the level of use/benefit of the pavilion facility at the Confluence area since the development of additional nearby parking access is of conflicting public opinion and remains to be determined. Given that the existing small parking area at the end of Juniper Drive will be re-opened at the conclusion of remedy and restoration construction activities and the opportune viewing location for the pavilion, the benefits of these project components are considered at least commensurate with its cost of $134,090. The proposed land acquisition (with costs of up to $1,080,000 or fair market value, whichever is less) is also considered of net benefit because it will generate substantial benefits at a price that, while it remains to be determined, will be at or below the appraised fair market value. State acquisition of the proposed parcels provides for protection of important riparian and upland wildlife habitat, public access, trail connectivity, and diverse recreational and outdoor classroom opportunities and fits well with other public acquisitions in the area. The O&M funding for 5 years is a needed and important component for this project, the benefits of which are considered to outweigh the costs of $656,219 if the O&M activities are implemented in a phased manner based on need, as planned by FWP.
3. Cost-Effectiveness	Likely Cost-Effective: The co-applicants conducted an intensive park design process in 2007/08 that involved evaluating and obtaining public input primarily on two design options – the low intensity development scenario that is the basis of

Summary of RPPC Criteria Evaluation for Milltown / Two Rivers Recreational Facilities and Access Applicant: Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group and Missoula County	
	this proposal and a higher intensity development scenario, including the 2005 conceptual design that included an interpretive center at the confluence. The proposed low intensity approach is a more cost-effective, acceptable approach than the higher intensity designs considered, and that the no-action alternative would not meet project goals and would result in damage to restored areas from unmanaged and undirected public use. The co-applicants properly plan to design the bridge following determination of river channel characteristics below the former dam site. They appropriately deferred a funding request for bridge construction until the numerous uncertainties associated with this proposed bridge can be worked through the design process and with additional planning. The park components are considered to be of reasonable cost and soundly-based. Cost estimates for the proposed trail, kiosks, signs, vault toilets, picnic tables, and related items are based on FWP's competitive procurement at other park facilities. The pavilions will be constructed with pre-fabricated kits that provide cost-savings. The 10% contingency for both design and construction is reasonable, with design contingency appropriately deleted from fixed-cost items. The O&M unit costs appear to be cost-effective based on the use of State wages and benefits and cost estimates obtained based on competitive procurement for other state park facilities, and adequate O&M funding is a critical project component. While there is uncertainty concerning potential site usage, FWP is confident its O&M projections based on O&M needs determined at other state parks and intends to approach staffing in a phased manner.[3] The land acquisition is considered cost-effective because the price will be at or below appraised value (see criterion #20). The alternative of obtaining an easement at reduced costs does not seem feasible or preferable since TNC needs to recoup its purchase costs and would not necessarily generate the public access benefits of fee-title acquisition.
4. Adverse Environmental Impacts	Short Term Adverse Impacts with Mitigation: The park implementation will have short term impacts to surface water quality, floodplain, vegetation, aesthetics, unique natural features, and aquatic species and habitat, including bull trout. The applicant indicates that permits will be obtained and that best management practices will be used to minimize the impacts. All trails will be constructed outside the 100 year floodplain. In the short term, construction activities will impact these resources, but in the long-term, the park features should help protect the restored features of the Milltown reservoir area by helping to direct use to desired areas. Land acquisition activities can benefit area natural resources by preventing potentially detrimental land management activities. As part of the proposed design process for the bridge, an analysis of alternative designs will need to be conducted that will consider the environmental impacts of a bridge across the river. Potential adverse impacts are associated with a design that would have piers in the 100 year floodplain and thus obstacles to natural channel flows.

[3] Per phone communication between Lee Bastion of FWP and Carol Fox of the NRDP on 8/27/09.

Summary of RPPC Criteria Evaluation for Milltown / Two Rivers Recreational Facilities and Access Applicant: Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group and Missoula County	
5. Human Health and Safety	No Significant Adverse Impacts: The increased public use associated with this proposal will result in increased demand for governmental services and may result in increased effects on local residents from noise and traffic. The co-applicants have designed the project to minimize conflicts with surrounding neighborhoods and requested funding to address these increased management needs. No other adverse impacts to human health and safety or the human environment are anticipated. The project may result in beneficial impacts that include increasing access to recreational activities, increasing the local and state tax revenue, increasing employment, improving transportation network, social structure, and cultural uniqueness and diversity. As part of the bridge design process, an analysis will need to be conducted on any safety impacts associated with the bridge.
6. Results of Response Actions	Positive Coordination: This project coordinates with and augments the effective Superfund remedial actions taking place at the Milltown Dam, the majority of which will be completed in 2009. All of the proposed work would be procured and implemented subsequent to and separate from the remedial actions and would not interfere with/duplicate results of those actions.
7. Natural Recovery Potential	Potentially Reduces the Recovery Period: The proposed construction of trails and associated O&M could result in less impact to remediated and restored areas by directing activities to areas intended for use, particularly if needed enforcement activities occur to discourage illegal motorized vehicle use and vandalism.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: This project is consistent with the legal requirements. The applicant indicates it will apply for all applicable permits and coordinate with local entities. The entities that assume title to the property will need to comply with state laws relating to weed control and weed management for public acquisitions, including the provisions of 7-22-2154. Although SB164 is not applicable to this acquisition since it is being funded by funding sources other than FWP, the requirements of the recently enacted SB164 with regards to funding for maintenance of lands acquired by FWP would be met with the requested O&M funds of $659,219, if SB164 were applicable.
9. Resources of Special Interest	Minor Adverse/No Impacts: The construction of the proposed Park features may impact natural resources of special concern, such as bull trout, but these are impacts that can be mitigated, as described under criteria #4. The application indicates no construction activities will be conducted in the designated Tribal Cultural Resources Area and provides for the proper consultation with the Tribes throughout the design and construction process to avoid potential impacts to Tribal resources. The Tribes' comment letter noted support for the project and the needed consultation with the Tribes concerning discovery of undocumented or undiscovered cultural resources during construction.[4] If funded, the project grant agreement would require compliance with the State/Tribal MOU that provides for the proper inquiry and consultation with the Tribes during project implementation. The DOI supports this project,[5] noting that the project offers public use and recreational enhancements, consistent with the interests of DOI and will not negatively impact DOI properties.

[4] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.
[5] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.

Summary of RPPC Criteria Evaluation for Milltown / Two Rivers Recreational Facilities and Access Applicant: Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group and Missoula County	
10. Project Location	Within and Proximate: This project area is either within the UCFRB or within the Milltown Restoration Project area. The land acquisition of Parcel 1, the "B Hill" property, was reviewed to determine whether or not it was within the UCFRB or the Blackfoot River basin. This review indicated that drainage from the "B Hill" property flowed to the UCFRB.
11. Actual Restoration of Injured Resources	May Contribute to Restoration: This project may help protect the Milltown restoration activities being conducted by the State through adequate management of public access/use.
12. Service Loss/Restored & Service Restoration	Same/Similar: The proposed land acquisition provides for protection of key wildlife habitat and/or for additional recreational and educational opportunities considered to be equivalent to the resources and services covered in Montana v. ARCO. Most of the proposed park features will enhance natural resource-based recreational services that are the same as those covered under the lawsuit, such as hiking, biking, fishing, wildlife viewing, and boating recreational services. As intended by the co-applicants, the pavilions will be used primarily for picnicking, open-space enjoyment, and education about river restoration, which are services considered similar to those covered under Montana v. ARCO.
13. Public Support	23 Support Comments: The NRDP received 21 comments in support for funding of this proposal from Kent Watson and Associates, Glacier Country Regional Tourism Commission, Five Valleys Land Trust, MT Community Development Corporation, Hellgate Hunters and Anglers, Clark Fork Coalition, Idaho-Montana Chapter of the American Society of Landscape Architects, MFWP Foundation, Rep. Tim Furey, Missoula County Commissioners, Missoula County Parks and Recreation, National Park Service River and Trails Program, Missoula County Health Department, Missoula Bicycle/Pedestrian Advisory Board, Bonner Community Council, Friends of Two Rivers, Clark Fork River Technical Advisory Committee, and 4 area residents. Seven of these support comments for the entire proposal specifically addressed the merits of the B Hill parcel acquisition. Two other comments received from the Bonner School District #14 and the TNC specifically supported the proposed land acquisition components of the proposal. This proposal resulted from a public scoping process primarily conducted in 2007/08 that involved several open houses and design workshops on proposed park features/facilities and the co-applicants dropped some intended features as a result of concerns raised, as described under criterion #2.
14. Matching Funds	1% In-Kind Match, with possible additional match: FWP and Missoula County will provide in-kind services totaling $66,103 for the planning and oversight of the project. The co-applicants have applied for and indicated their intent to apply for additional matching funds which, if secured, may result in a reduced Restoration Fund request. The EPA is providing funds for the trail footprint (bench) beneath the I-90 bridges.

Summary of RPPC Criteria Evaluation for Milltown / Two Rivers Recreational Facilities and Access Applicant: Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group and Missoula County	
15. Public Access	Increased Access Beneficial: The Park will provide easier public access to the former Milltown reservoir and dam areas. The Milltown reservoir was generally open to the public, but established trails or access points like those proposed in this application were not available. The proposed public acquisition of TNC lands will assure public access that was historically allowed by Plum Creek, but likely would not be allowed upon sale to private entities. The increased public use associated with this proposal will result in increased demand for governmental services and may result in increased effects on local residents from noise and traffic. The co-applicants have designed the project to minimize conflicts with surrounding neighborhoods and requested funding to address these increased management needs. The proposed O&M funding will cover additional weed control needs associated with increased public use.
16. Ecosystem Considerations	Positive: This project fits within the broad ecosystem concept in that it improves natural resource problems by providing and maintaining public lands that are being remediated and restored and acquiring new public lands.
17. Coordination & Integration	Coordinates/Integrates: The proposed recreational features coordinate with the Milltown restoration actions being implemented by the State for the former Milltown Dam area. The co-applicants have coordinated with the State to ensure there is no interference. The work being completed associated with the Milltown restoration within the park area (CFR 1) will not be completed until 2012, but the park work proposed by the co-applicants is outside of the Milltown restoration project area. The project also coordinates with and augments the State's other completed or pending area land acquisitions (of NorthWestern's Milltown lands and parcels in the bluff area) and other established or planned recreational trails in the Milltown/Bonner area. A funding condition is needed requiring NRDP review and approval of the final bridge design as not being inconsistent with the State's restoration of the Milltown site. This approval would not constitute any pre-judgment of the NRDP's evaluation and funding recommendation on any subsequent funding request to construct the bridge.
18. Normal Government Functions	Outside (Land)/Augments Normal Government Functions (Park and O&M): The proposed land acquisition is not an activity a governmental entity is obligated by law to conduct or would normally conduct. The co-applicants indicate they do not have funds to develop or provide initial O&M of the proposed park facilities. While FWP has the ability to develop and manage new state parks, FWP is not required by law or currently funded through its legislatively-appropriated FY09/10 budget to develop or maintain the proposed Milltown Park. FWP considers O&M funding as a critical element needed in order for the agency to accept the responsibility for the new lands and recreational facilities in the confluence area. The application indicates that the O&M request is for an initial five-year start-up period and that the Milltown Redevelopment Group has initiated the formation of an independent, non-profit group to help long-term management and funding for the site. For some approved acquisition and recreational enhancement grant projects, the NRDP has funded initial start-up O&M activities such as fencing, road obliteration, and weed control for up to five years; however, this request is the first received for funding of staff to conduct park-specific management and maintenance activities. Given the sizeable park to be developed and its anticipated high use, the NRDP believes funding the initial O&M needs for up to five years as requested is a reasonable time frame for the co-applicants to determine what will be

Summary of RPPC Criteria Evaluation for Milltown / Two Rivers Recreational Facilities and Access Applicant: Montana Fish, Wildlife and Parks, the Milltown Superfund Redevelopment Working Group and Missoula County	
	typical annual O&M needs and best options to fund these needs in the long-term. Discussions with FWP indicated that all staff and other O&M expenditures billed to the Restoration Fund, as approved for this project, will be exclusive to the Milltown Park.[6] Given this, and given that FWP is not specifically obligated to perform the proposed O&M activities and that the requested O&M funding is to cover the initial 5-year O&M, the NRDP considers this proposal as one that augments, not replaces, normal government function.
Property Acquisition Criteria	
19. Desirability of Public Ownership	Restoration and Replacement Beneficial: These proposed land acquisitions will benefit both the restoration and replacement of injured natural resources and lost services. The lands to be acquired are considered high recreational use properties, as well as important wildlife habitat. The acquisition of Parcels #2 and #4 along the Blackfoot River will protect these areas from potentially detrimental subdivision and land management activities and enhance recreational opportunities. Acquisition of the Parcel #1 "B Hill" provides for future opportunities to expand area pedestrian trails and an outdoor classroom for Bonner Elementary. Acquisition of Parcel #3 expands the viewing opportunities at the Milltown Bluff Overlook. While the acquisition of these lands will increase the demand on governmental services and less tax revenue will be generated compared to that which would have been generated by a development scenario, the benefits of these acquisitions are considered to outweigh these detriments.
20. Price	At or Below Appraised Value: Survey, appraisal, and title work are proposed to be completed as part of this application. The co-applicants budgeted the total acquisition costs of up to $1,080,000 based on a confidential market analysis provided by a certified appraiser that estimated values of the four parcels varying from about $1,370 per acre to $13,500 per acre. Because TNC purchased the four Milltown parcels, totaling 180 acres, as part of the much larger purchase from Plum Creek Timber, the amount paid by TNC for these specific parcels is not readily quantifiable.[7] TNC has committed to a purchase price not to exceed $1,080,000 or the final appraised value, whichever is less.[8] It is further understood that the purchase price will be reduced by the costs of the appraisal, survey, and title work and insurance that the State incurs at or prior to closing. Since title, appraisal, survey, and other land acquisition due diligence tasks remain to be completed, the NRDP recommends several funding conditions that are specified above. It is the NRDP's understanding that the applicants and TNC do not object to those conditions.

[6] Per phone communication between Lee Bastion of FWP and Doug Martin on May 22, 2009, O&M staff will be working only at the Milltown Park, first overseeing and later managing the park and all O&M expenses will be exclusive to Milltown Park. Any staff time or other FWP expenditures spent on matters other than the Milltown Park shall not be billed to the Restoration Fund.

[7] Note: these parcels were part of the first phase of the Montana Legacy Project. In that phase, TNC acquired nearly 130,000 acres for about $150 million, or at an average price of about $1,150 per acre. By the time the Legacy Project is completed, TNC will have acquired nearly 310,000 acres for about $490 million, or at an average price of about $1,580 per acre. The TNC has indicated that in negotiating this large land acquisition project, they relied on market estimates for various large blocks of land that varied in estimated value.

[8] As communicated by Jim Berkey of the TNC in a 10/28/09 e-mail to Carol Fox and Robert Collins of the NRDP.

Greenway Service District
Silver Bow Creek Greenway – 2009 Grant

Project Summary

The Greenway Service District (GSD) requests $2,338,286 to restore aquatic and riparian resources and to plan, design, and install access features within the Silver Bow Creek corridor. Most of the proposed work is to be implemented concurrently with remedial work from 2010-2012. Of the total requested, $1,744,691 (75%) is for ecological and habitat improvements along Subareas 3 and 4, and $593,595 (25%) is for access features along areas throughout the entire Silver Bow Creek corridor (see Figure 5). This is the 7th grant request for a phased project that aims to restore aquatic, riparian/wetland, and upland ecosystems within, and to develop a passive recreational trail along, the entire Silver Bow Creek stream corridor in coordination with remedial actions.

In September 2009, the GSD, in consultation with the NRDP, reduced its original grant funding request by about $2.5 million, deleting both proposed ecological and access features that did not involve direct coordination with remedy or otherwise need to be implemented in the next two years. The NRDP's evaluation is based on this revised project scope and budget. Following is a description of the major revised project components.

Major Components for Proposed Ecological Enhancements ($1,744,691):
Ecological components proposed in Subarea 3 (miles 11-15 in Durant Canyon), and along Subarea 4 (miles 16-22 from Fairmont Bridge to Warm Springs Ponds), involve:

- Enhancing stream channel and stream bank construction along 5.7 miles of Silver Bow Creek by designing and constructing in-stream habitat improvements to accelerate restoration of a self-sustaining fishery. The total budget for these enhancements is about $445,000;
- Enhancing the revegetation of the remediated floodplain areas disturbed by tailings removal, including the addition of organic matter (75 acres), seeding with enhanced seed mixture (300 acres), and restoration plantings (150 acres). The revegetation enhancements will occur from Highway One north to Warm Springs Ponds. The total budget for these enhancements is about $1,300,000.

Components for Proposed Access Features ($593,595):
Access features are proposed in all four Subareas, but most will occur in Subareas 2 and 3. Major components are:

- 1.7 miles of asphalt paving for the Ramsay trail connection (about $286,000);
- Railroad bridge and crossing improvements in Subarea 3 (about $276,000); and
- Railroad crossing and signage in Subarea 4 (about $32,000).

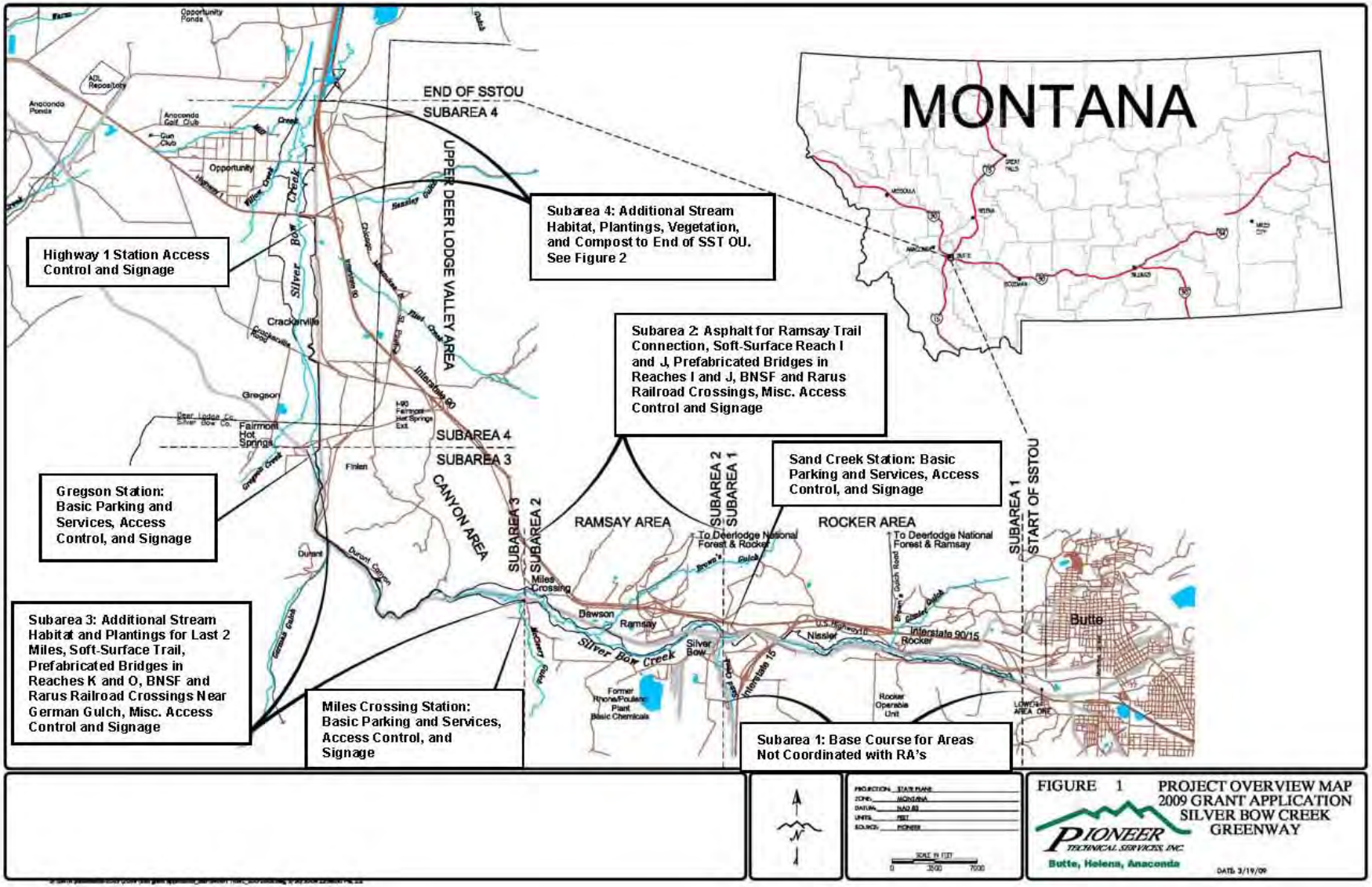
Past and Future Silver Bow Creek Greenway Grants
In the last eight years, the GSD has been awarded approximately $14.1 million in Restoration Funds through six grants for the restoration of aquatic, riparian/wetland and upland ecosystems within, and for the development of a recreational trail along, most of the 22-mile Silver Bow Creek floodplain corridor. As of July 2009, about $6.5 million, or 47% of the approved funding, has been spent, with another $1.1 million in pending invoices. Most of these expenditures were

for aquatic and floodplain habitat work conducted in tandem with remediation construction, through extensive coordination between the GSD, NRDP, and DEQ. Completion of DEQ's major remediation construction activities is expected in 2011. The majority of restoration construction work will also be completed by then, except for revegetation of the last mile of floodplain in 2012, and construction of any remaining trail access features.

In June 2009, the GSD submitted a grant amendment proposal to consolidate the six approved Greenway grants, which would provide for more flexibility and administrative feasibility in accomplishing the scope of work for these approved grants. This request will be considered by the Advisory Council and the Trustee Restoration Council in the near future. The NRDP recommends approval of this grant amendment request.

The GSD anticipates future budget needs/funding requests, beyond those covered in this year's grant request and past grants, to total $8 million for completion of the full Greenway project along the entire Silver Bow Creek corridor.

Figure 5


MONTANA
END OF SSTOU
SUBAREA 4
UPPER DEER LODGE VALLEY AREA
Subarea 4: Additional Stream Habitat, Plantings, Vegetation, and Compost to End of SST OU. See Figure 2
Highway 1 Station Access Control and Signage
Subarea 2: Asphalt for Ramsay Trail Connection, Soft-Surface Reach I and J, Prefabricated Bridges in Reaches I and J, BNSF and Rarus Railroad Crossings, Misc. Access Control and Signage
Sand Creek Station: Basic Parking and Services, Access Control, and Signage
Gregson Station: Basic Parking and Services, Access Control, and Signage
SUBAREA 4
SUBAREA 3
CANYON AREA
SUBAREA 3
SUBAREA 2
SUBAREA 2
SUBAREA 1
RAMSAY AREA
ROCKER AREA
SUBAREA 1
START OF SSTOU
Subarea 3: Additional Stream Habitat and Plantings for Last 2 Miles, Soft-Surface Trail, Prefabricated Bridges in Reaches K and O, BNSF and Rarus Railroad Crossings Near German Gulch, Misc. Access Control and Signage
Miles Crossing Station: Basic Parking and Services, Access Control, and Signage
Subarea 1: Base Course for Areas Not Coordinated with RA's
Crackerville
Gregson
Fairmont Hot Springs
Durant
Miles Crossing
Dawson
Ramsay
Silver Bow
Nissler
Rocker
Butte
Interstate 90/15
Silver Bow Creek
To Deerlodge National Forest & Rocker
To Deerlodge National Forest & Ramsay
FIGURE 1 PROJECT OVERVIEW MAP
2009 GRANT APPLICATION
SILVER BOW CREEK GREENWAY
PIONEER TECHNICAL SERVICES, INC.
Butte, Helena, Anaconda
DATE 3/19/09

Summary of RPPC Criteria Evaluation for SBC Greenway Applicant: Greenway Service District (GSD) – 2009 grant	
Project Summary	The GSD seeks $2,338,286 in Restoration Funds to restore aquatic and riparian resources and plan, design, and install access features within the Silver Bow Creek corridor. Most of the proposed work is to be implemented concurrently with remedial work from 2010 through 2012. Of the total requested, $1,744,691 (75%) is for ecological and habitat improvements and $593,595 (25%) is for access features. This is the 7th grant request for a phased project that aims to restore aquatic, riparian/wetland, and upland ecosystems within, and to develop a passive recreational trail along, the entire Silver Bow Creek stream corridor in coordination with remedial actions. Overall Application Quality: Good
Final Funding Decision and Funding Conditions	The Governor approved this project for partial funding of $1,500,000 of the requested $2,338,286, subject to no additional funding conditions. The Governor's decision was based on the expectation that the proposed work could be completed as proposed with reduced funding,[1] as explained in the 2/17/10 letter from the Governor's Chief of Staff and TRC Chair.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: The GSD will employ accepted technologies to accomplish project goals. The success of the project is contingent on coordination with DEQ's remedial design and construction activities. DEQ supports this proposal and will coordinate the effort with both remedial designs and actions. Successful coordination with DEQ to integrate restoration with remediation has occurred through Greenway grants over the past 8 years. The GSD's restoration design consultant is also the DEQ's remedial design consultant, which facilitates any remedy/restoration coordination.
2. Costs: Benefits	Net Benefits: The project will substantially benefit the injured natural resources of Silver Bow Creek and the public's use and enjoyment of those resources by enhancing fish and wildlife habitat and enhancing the ecological and recreational services associated with these restored resources. Enhancing stream channel and stream bank construction along five miles of the Creek in Subarea 4, and approximately a mile in Subarea 3, will accelerate restoration of a self-sustaining fishery in Silver Bow Creek. Restoration of both wildlife habitat and aquatic health will be enhanced by the addition of organic matter, seeds, and plants along approximately 150 acres of floodplain to be reclaimed under remedy. The proposed access features, such as railroad bridge improvements and trail development, involve key components of the planned 22 mile recreational corridor along Silver Bow Creek that will provide public access to and enjoyment of a variety of recreational opportunities in an ecologically-protective manner. Some of the access features and all of the ecological features will be implemented by remedy contractors concurrent with remedy and restoration construction, thereby achieving cost savings (see criterion #6).

[1] The rationale for the Governor's decision is provided in a 2/17/10 letter from Vivian Hammill, the Governor's Chief of Staff and Chair of the Trustee Restoration Council, to Dori Skrukrud of the Greenway Service District.

Summary of RPPC Criteria Evaluation for SBC Greenway Applicant: Greenway Service District (GSD) – 2009 grant	
3. Cost-Effectiveness	Cost-Effective: The proposed approaches for plantings, organic matter, and streambank and wetland improvements are based on similar past efforts, with adjustments for reach-specific conditions and lessons learned from past efforts. The costs for all the ecological enhancements appear to be reasonable because they are based on recent similar work that has been competitively bid and derived from information provided by the NRDP. The proposed access components are also considered to be cost-effective given the reasonableness of the costs, combined with the sound approaches. The GSD's original application considered two alternatives to the selected proposal, the no-action alternative and an alternative of delaying the project until Silver Bow Creek remedial efforts are completed. The GSD adequately addressed why both of those alternatives are inferior to the selected alternative. The no-action alternative would not meet project goals and would result in significantly less vegetation for recreational and wildlife use, decreased aquatic habitat potential, an increased recovery time to a baseline condition, and inadequate protection of remediated and restored areas. Delaying this project until remedy is completed in 2012 would be inefficient, delaying restoration of injured resources and resulting in a loss of coordination cost savings. Through its revised submittal in 2009, the GSD requested funding project components that would mostly be implemented by the DEQ remedy contractors concurrent with remedy construction. These are the components that will achieve direct cost savings through the use of combined remedy/restoration design and construction processes between 2010 and 2012. The only project request that does not involve such direct coordination is the proposed paving of 1.7 miles of trail in Subarea 1 near Ramsay for $280,000. This paving is appropriately timed for implementation next year based on coordination with other access features already approved for funding. This revised alternative provides for optimal coordination with remedy and cost savings on the most time-critical project components and is thus considered to be cost-effective.
4. Adverse Environmental Impacts	Short-term Adverse Impacts with Mitigation: DEQ's and GSD's contractors will address short-term adverse water quality impacts during the construction activities for their respective portions of the project through best management practices. Needed weed control activities in the floodplain corridor in the next few years will be addressed through the remedial actions. Long-term beneficial impacts to the environment will result from this project.
5. Human Health and Safety	No Significant Adverse Impacts: DEQ's and GSD's contractors will address potential short-term impacts to human health and safety during the construction activities for their respective portions of the project via implementation with standard safety plans. The Butte-Silver Bow and Anaconda-Deer Lodge City/County governments have created the GSD to manage the Silver Bow Creek Greenway and are willing to accept the additional governmental demands associated with the Greenway.

Summary of RPPC Criteria Evaluation for SBC Greenway Applicant: Greenway Service District (GSD) – 2009 grant	
6. Results of Response Actions	Positive Coordination: Project components positively coordinate with and augment remedial actions by enhancing both aquatic and terrestrial resources or providing access features that will protect remedy in the long-term by maintaining the planned recreational land use of the corridor in an ecologically protective manner.
7. Natural Recovery Potential	Reduces Recovery Period: The recovery time will be reduced by the proposed additional stream and floodplain enhancements, which will accelerate the recovery of aquatic and wildlife habitat. Trail creation will also accelerate the recovery of injured resources by properly controlling public use, thereby protecting the remediated and restored areas.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: The GSD has identified the needed permits that will be obtained for performing the work.
9. Resources of Special Interest	Beneficial Impacts: The project is expected to benefit natural resources of special interest to the Tribes and DOI, due to the improved fish and wildlife habitat it will achieve. The DOI comments on the 2009 grants note this grant is a continuing project that complements remedial actions but their comments do not indicate this agency's position with regards to project funding.[2] The Tribes' commented that this project has the potential to significantly improve Tribal resources of special interest and the potential to encounter buried cultural features and/or artifacts during excavation.[3] A database inquiry did not indicate any cultural or historic resources in the project area. If funded, the project grant agreement would require compliance with the State/Tribal MOU that provides for the proper inquiry and consultation with the Tribes during project implementation.
10. Project Location	Within Basin and Proximate: All restoration activities associated with this proposal will be conducted at or near the injured resource areas of Silver Bow Creek.
11. Actual Restoration of Injured Resources	Restoration/Other: The proposed floodplain and stream ecological enhancements constitute actual restoration. The trail and trailhead construction components contribute to restoration.
12. Service Loss/Restored & Service Restoration	Same and Similar: The project will provide some of the same services as those lost due to injuries, including ecological services that restored habitat provides to fish and wildlife, and recreational services, such as fishing and hiking and other recreational services considered to be similar to those covered under Montana v. ARCO.
13. Public Support	3 support comments: from the Butte Restoration Alliance, Project Green, and the Clark Fork River Technical Advisory Committee
14. Matching Funds	None: The GSD has no matching funds, although the cost savings obtained by coordinating with remedy for this restoration work should be substantial.

[2] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.
[3] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.

Summary of RPPC Criteria Evaluation for SBC Greenway Applicant: Greenway Service District (GSD) – 2009 grant	
15. Public Access	Increased Access Beneficial: The proposed Greenway trail will allow the public to access and recreate along Silver Bow Creek in a manner protective of restored resources. Butte-Silver Bow and Anaconda Deer-Lodge counties are willing to accept the additional governmental demands associated with this increased public access. Needed weed control activities in the floodplain corridor in the next few years will be addressed through the remedial actions.
16. Ecosystem Considerations	Positive: The project will result in improvements to the headwaters of the Clark Fork River and in benefits to multiple natural resources.
17. Coordination & Integration	Coordinates/Integrates: This project fits well with the restoration priorities set out in the Silver Bow Creek Watershed Restoration Plan, with past GSD grants, and with funded educational projects that are using Silver Bow Creek as an outdoor classroom.
18. Normal Government Functions	Outside of Normal Government Function: None of the project activities entail those that a governmental entity is obligated by law to conduct or would normally conduct.

Butte-Silver Bow Local Government
Big Hole Transmission Line Replacement – Year 3

Project Summary

Butte Silver Bow City/County (B-SB) proposes to replace 15,000 feet of dilapidated water transmission lines that carry water from the Big Hole River to Butte (see figure 6). Up to 70% of Butte's water supply comes from the Big Hole River, which is 22 miles south of Butte. The Big Hole is also Rocker's main water source. Total project costs are $3,353,667, with $2,666,618 requested in Restoration Funds and $670,733 in cash and $16,316 in-kind matching funds.

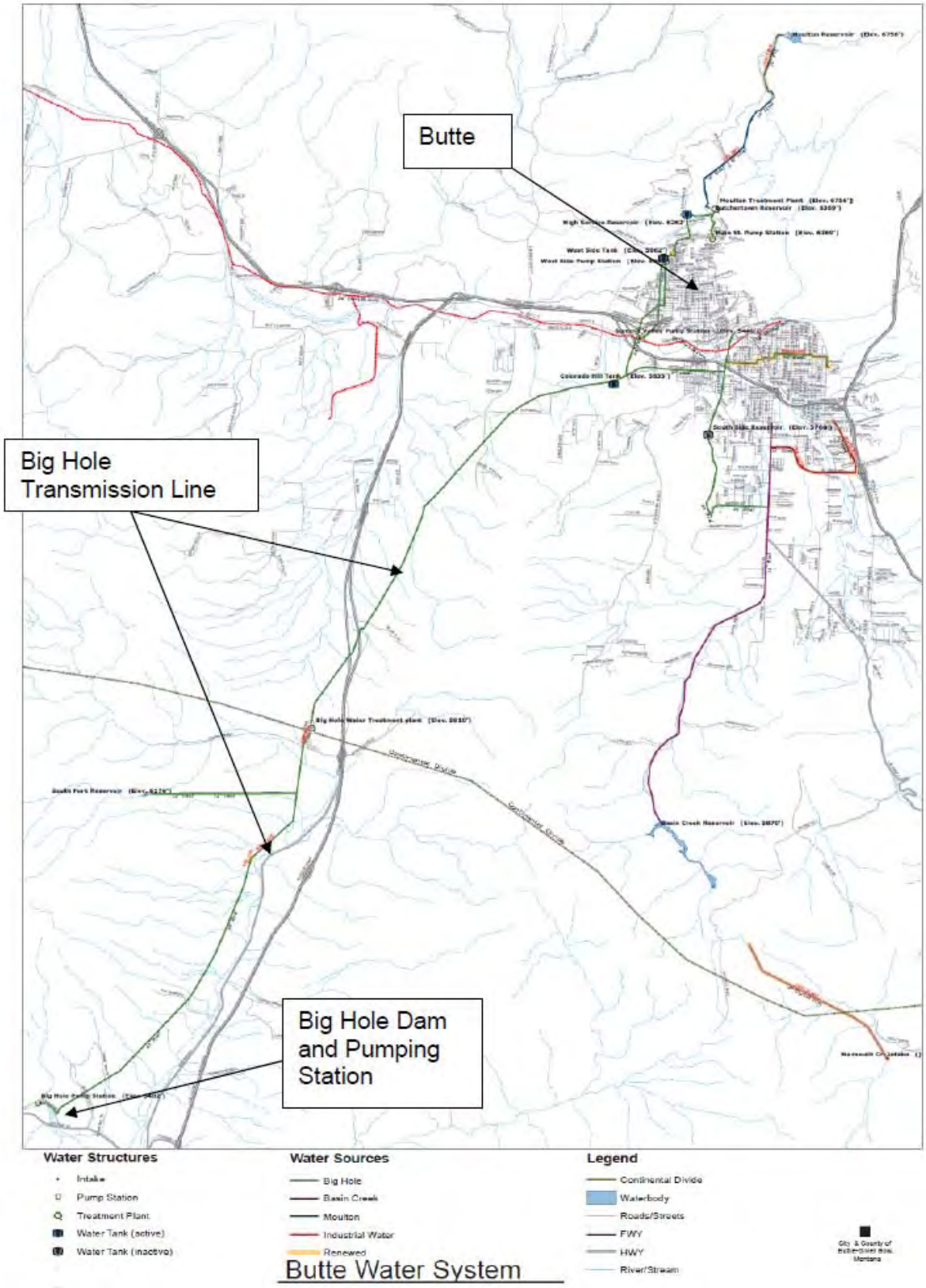
In its application, B-SB indicates an overall project goal to provide safe, reliable and affordable drinking water to Butte citizens. This is to be accomplished by replacing sections of the Big Hole transmission line that are leaking and/or lined with an unsuitable coating, by promoting water conservation, and by investigating alternative water supply sources.

Butte's bedrock aquifer is so severely injured that natural recovery will not occur for thousands of years, as concluded by the State's 1995 Restoration Determination Plan and by EPA's 1994 Record of Decision. Restoration of the bedrock aquifer is infeasible, thus the aquifer's drinking water storage, storage capacity, and transport services have been lost for thousands of years. The State's 1995 Restoration Determination Plan considered upgrading Butte's antiquated water system as a viable restoration alternative for the bedrock groundwater injuries in Butte. This proposal will enhance the water supply from an unaffected source, thus compensating the public for some of the lost use of groundwater that Butte has suffered due to the inability to tap clean bedrock groundwater in much of the City.

This proposal is for the third year of B-SB's request for Restoration Funds to replace sections of the Big Hole transmission line. The Governor approved two previous grants to replace 10,000 feet of this line for $1,644,722 and $1,650,542 in Restoration Funds in 2007 and 2008, respectively. B-SB completed the 2007 project in 2009 and expects to complete the 2008 project by May 2010. Although originally planned as a 10-year project, B-SB indicates in this year's application that it now plans on completing the entire 22 mile pipeline replacement in a 3-5 year period due to increasing problems through funding obtained from a combination of grants, federal appropriations, state loan/revolving funds, and possible rate increases and updates to service fees. This evaluation is specific only to this 3rd year request for grant funds. Based on updated information provided to the NRDP, B-SB estimates that it would take an additional $16 to $17 million to complete the entire project beyond the $3.3 million approved in two previous grants and $2.6 million requested in this years grant.[1]

[1] Rick Larson of B-SB provided these updated estimates in an 11-12-09 e-mail to Carol Fox of the NRDP: Beyond the Year 3 project, B-SB estimates it would cost $16.0 million to complete the project in an additional three years, $16.5 million in an additional 5 years, and $17.0 million in an additional 7 years.

Figure 6


Butte
Big Hole
Transmission Line
Big Hole Dam
and Pumping
Station
Water Structures
Intake
Pump Station
Treatment Plant
Water Tank (active)
Water Tank (inactive)
Water Sources
Big Hole
Basin Creek
Moulton
Industrial Water
Renewed
Legend
Continental Divide
Waterbody
Roads/Streets
FWY
HWY
River/Stream
Butte Water System

Summary of RPPC Criteria Evaluation for Big Hole Transmission Line Replacement: Year 3 Applicant: Butte Silver Bow County	
Project Summary	Butte-Silver Bow City/County (B-SB) proposes to replace 15,000 feet of corroded transmission water lines from the Big Hole River, which is the main water source for the City of Butte and community of Rocker. Total project costs are $3,353,667, with $2,666,618 requested in Restoration Funds and $670,733 in cash and $16,316 in-kind matching funds. Overall Application Quality: Good.
Final Funding Decision and Funding Conditions	The Governor approved funding this project for the requested $2,666,618, with no additional funding conditions.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: The proposed design and construction tasks are technically feasible and the selected approach is likely to achieve the stated objectives. B-SB will use county crews to replace the waterline and employ standard construction methods and materials to implement the project. B-SB has the needed experience with replacement of waterlines to complete this project and to date has completed the installation of 4,000 feet of transmission line with its own crews.
2. Costs:Benefits	Net Benefits: This project offers substantial benefits to Butte and Rocker residents. The pipeline is in need of repair, and the project would fix 13% of the total line. Replacement of the line is a high priority designated by B-SB's *2008 Water Master Plan* (see criteria #17). Benefits include improved delivery of a reliable drinking water source; reduced demand on water resources; reduced water pumping, treating, and transportation costs; reduced repair costs; and improved flows and fire protection. Given the substantial benefits and the 20% cash match, the project is considered to be of net benefit.
3. Cost-Effectiveness	Likely Cost-Effective: B-SB provided an analysis of the selected alternative by comparing costs and feasibility of utilizing different pipe sizes, or lining of the pipe. Based on an analysis provided in the application and B-SB's *2008 Water Master Plan*,[2] B-SB concluded that cost savings could be achieved by downsizing the diameter of the transmission pipe. B-SB has subsequently decided not to downsize, however, in order to meet the treatment plant's capacity and to fully use its Big Hole water right.[3] The other alternative of lining the pipe was rejected due to the length of time necessary to do this work. B-SB proposes to use its own crews for all needed labor in order to provide matching funds and have the needed controls associated with the treatment plant. Work by B-SB crews will occur in a systematic fashion starting at the southern end of the line and moving north. The southern half of the line, from Big Hole Dam to Feely treatment plant, is under higher pressures, more corrosive conditions, and has more significant leaks than the north part of the line, which is gravity fed from the Feely treatment plant to Butte. Completing this project as proposed is likely a cost-effective alternative to addressing problems with the water distribution system that are specific

[2] *Butte-Silver Bow Water System Master Plan*, prepared by Robert Peccia and Associates, July 2008 (p. 5-3).

[3] A 5/8/09 e-mail from Rick Larson, operations manager with B-SB Public Works Department to Cindy McIlveen, grants project officer for B-SB, states that B-SB will now stay with a 36 inch line and not downsize in order to utilize the full water right from the Big Hole River.

Summary of RPPC Criteria Evaluation for Big Hole Transmission Line Replacement: Year 3 Applicant: Butte Silver Bow County	
	to the Big Hole transmission lines. To cost-effectively address its broader water conservation goal, B-SB's *2008 Water Master Plan* recommends system-wide metering be conducted in conjunction with leak reduction efforts (see criterion #17).
4. Adverse Environmental Impacts	No Significant Adverse Impacts: The project will have potential minor short-term adverse impacts to aesthetics and vegetation associated with excavation impacts. B-SB will reclaim disturbed areas.
5. Human Health and Safety	No Significant Adverse Impacts: B-SB will adequately address any impacts to the human environment during construction, such as worker accidents, dust, and noise, by following safety guidelines of the Montana Public Works and Standard Specifications. The interior parts of the current transmission line are coated with a carcinogenic material, Bitumastic coal tar. This material can leach into the water supply and is not a suitable coating for potable water pipes. The current levels of leaching from the coal tar coating appears to be very low; however, EPA has placed this contaminant in a zero tolerance list for public water supplies. Therefore, removal of this antiquated pipe can benefit human health.
6. Results of Response Actions	Consistent: The project will not interfere with or duplicate the results of any known EPA Superfund action.
7. Natural Recovery Potential	No Effect on Recovery Period: This replacement project will not affect Butte's aquifer recovery time.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: B-SB has provided sufficient information on the applicable requirements needed to complete this project.
9. Resources of Special Interest	No Impact: This project is not likely to impact natural resources of special interest or concern to the Tribes or DOI. In its comments on 2009 grant projects, the DOI did not indicate any position regarding funding of this project.[4] In their comments on 2009 grant projects, the Tribes requested proper notification should undiscovered/undocumented cultural resources be encountered during project construction activities.[5] If funded, the grant agreement would require proper consultation with the Tribes in such situations.
10. Project Location	Partly Outside the Basin but Serves the Basin: About half the Big Hole transmission line is in the Basin and about half is south of the Basin boundary at the Continental Divide. Although the project is located immediately outside of the Basin, the pipeline services water users that reside in the UCFRB and it, in effect, replaces natural resources that cannot be restored in the Basin. Thus, the project is eligible for NRD funding, as provided for in the *UCFRB Restoration Plan, Procedures, and Criteria*.[6]
11. Actual Restoration of Injured Resources	No Restoration: This project replaces services of injured groundwater resources that cannot be restored and thus constitutes compensatory restoration.

[4] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.
[5] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.
[6] The *UCFRB Restoration Plan, Procedures, and Criteria* (p. 29) allows for funding of "a project, or portion thereof, that would be located outside the UCFRB but would have the effect of restoring or significantly facilitating the restoration of natural resources or lost services of the UCFRB."

Summary of RPPC Criteria Evaluation for Big Hole Transmission Line Replacement: Year 3 Applicant: Butte Silver Bow County	
12. Service Loss/Restored & Service Restoration	Same: The project replaces lost services to property owners and other members of the public in Butte who could utilize the bedrock aquifer if it was not injured.
13. Public Support	8 Support Comments: from 8 entities, including support letters from Butte Local Development Corporation, Community Development Services of Montana, B-SB Chief Executive, B-SB Health Department, B-SB Public Works, B-SB Water Utility Division, Project Green of Montana, and U.S. Senator Jon Tester's office
14. Matching Funds	20% cash match and 0.5% in-kind match: B-SB will contribute a cash match of $670,733 for construction labor and $16,316 in-kind match for administrative labor costs, with a total match of $687,049.
15. Public Access	Not Applicable
16. Ecosystem Considerations	Positive: The project will conserve water and therefore reduce power requirements for pumping and treating water, which fits within a broad ecosystem concept.
17. Coordination & Integration	Partly Coordinates/Integrates; Partly Inconsistent: The project coordinates with other B-SB water system improvement projects and B-SB's *2008 Water Master Plan*, which lists replacement of the Big Hole transmission line and replacement of the Big Hole Dam as the "Priority One Improvements" for the B-SB water system.[7] "Priority One" improvements are the most critical and should be implemented within the next 1-3 years. Replacement of the Big Hole Dam is expected to be completed by 2011 per an approved 2008 Restoration Fund grant. It should be also noted that this proposal is, however, inconsistent with the other recommendations of the *Master Plan* to address the goal of water conservation. The *Master Plan* recommends that B-SB conduct system-wide water metering, which is identified as a "Priority Three Improvement," in conjunction with water main replacement activities to conserve water, and that B-SB explore methods of encouraging flat rate customers to convert to meters. B-SB has not yet implemented these recommendations. Currently, only 45% of Butte's water service connections are metered.
18. Normal Government Functions	Within but Augments Normal Government Functions: The proposed waterline repairs are the responsibility of B-SB since the County owns the water system. The NRDP considers this project as one that augments, not replaces, normal government function because communities typically rely on a combination of grant funds and user fees to fund such projects and because the proposal is an effective way to compensate the community for the pervasive and extensive injuries to the groundwater resources underlying Butte that were covered under Montana v. ARCO. B-SB acquired the public water system in 1992. Other factors to consider in evaluating this criterion for local public water projects are the local match and ratepayer rates. B-SB is contributing 20.5% in cash matching funds. B-SB's combined water and sewer rates of $54.81 are below the Department of Commerce's target rate of $58.49.[8]

[7] Butte-Silver Bow Water System Master Plan, prepared by Robert Peccia and Associates, July 2008 (p. 7).

[8] The Department of Commerce uses this target rate to assess whether a community is adequately funding any public facility project in proportion to their financial resources. If the target rate is met, the community is eligible for state grant assistance.

Five Valleys Land Trust
Blue Eyed Nellie Wildlife Management Area – Moore Addition

Project Summary

The Five Valleys Land Trust (FVLT) seeks $142,500 in Restoration Funds to transfer the 30 acre Moore property, located 7 miles west of Anaconda adjacent to Highway 1 (see Figure 7), to Fish, Wildlife and Parks (FWP) for $125,000 and to fund FWP's initial management activities for $17,500. These start-up management activities would occur between 2010 and 2014 and entail fencing, weed control, native grass establishment, development of parking areas, and installation of interpretive signage. Total project costs are $171,800, with $29,300 in matching funds ($17,500 cash and $11,800 in-kind).[1]

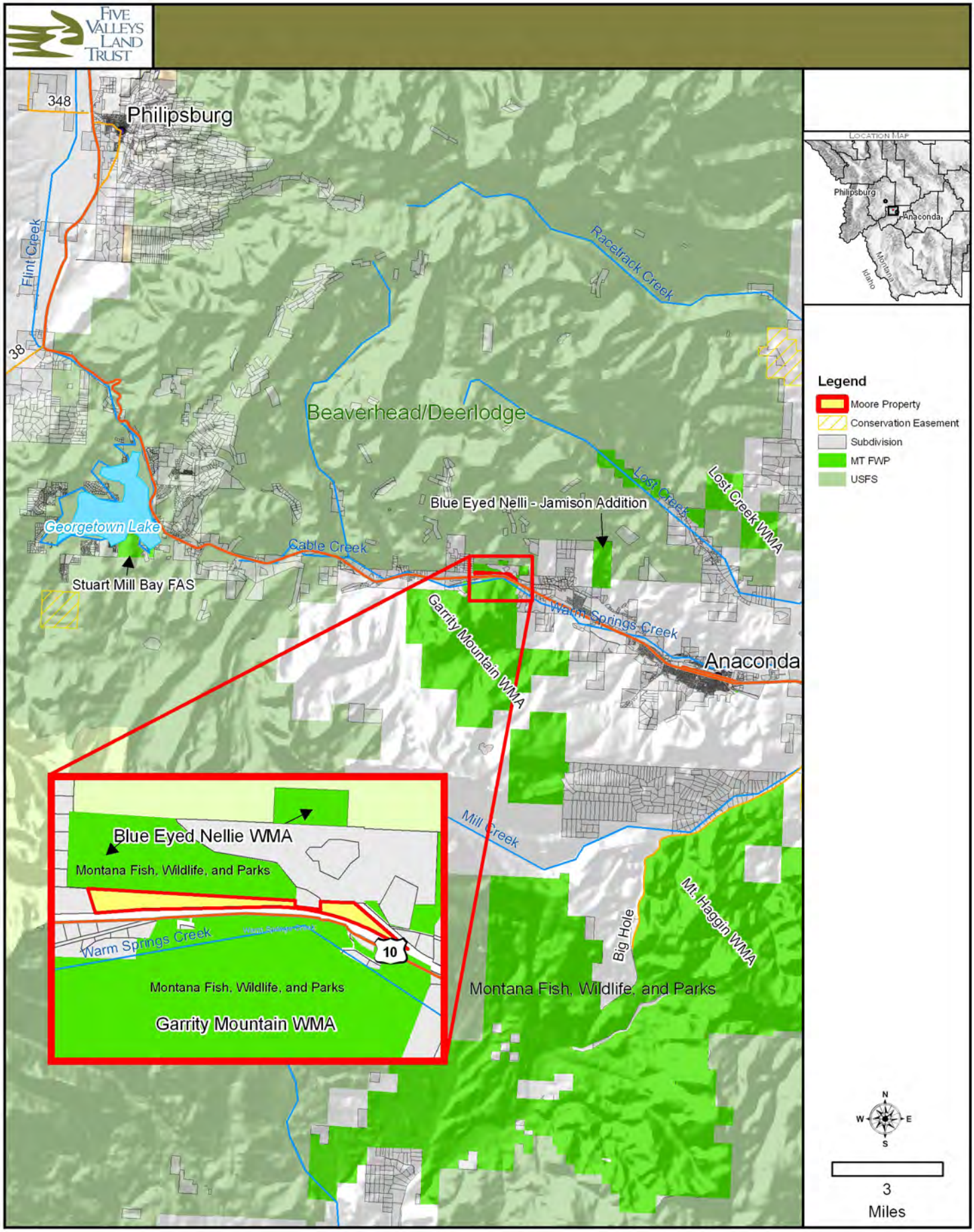
FVLT secured bridge funding and purchased the property in December 2008 for $120,000 to preclude a sale of the property for residential development. Due to the imminent sale of the property, FVLT facilitated this property purchase with the intentions of later transferring the property to FWP once public funding could be secured. FVLT subsequently secured an appraisal that valued the property at $135,000.

With grant funding secured, FWP will own and manage the property as part of the Blue-eyed Nellie Wildlife Management Area (WMA). This property provides a critical winter range and a key movement corridor between the Blue-eyed Nellie and Garrity Mountain WMAs for the Anaconda bighorn sheep herd. It is a popular wildlife viewing area. FWP has worked for the last decade to acquire winter range for bighorn sheep in this area and inclusion of this parcel will be the fourth addition of the 460-acre complex of intermountain grasslands, shrub grasslands, and aspen forests which make up the Blue-eyed Nellie WMA. A utility corridor bisects the property.

In September 2009, ARCO removed an old railroad bed composed of slag on approximately three acres of the Moore property and backfilled the removal area with 12-18 inches of cover soil. ARCO will complete revegetation activities in October 2009.

[1] The total project costs and matching funds are $7,500 more than the original application to reflect a subsequent commitment by FWP to contribute an additional $7,500 for maintenance activities, as documented in an 10/3/09 e-mail from Ray Vinkey of FWP to Carol Fox of the NRDP.

Figure 7


Five Valleys Land Trust
348
Philipsburg
Flint Creek
38
Racetrack Creek
Beaverhead/Deerlodge
Georgetown Lake
Stuart Mill Bay FAS
Cable Creek
Blue Eyed Nelli - Jamison Addition
Lost Creek
Lost Creek WMA
Warm Springs Creek
Garrity Mountain WMA
Anaconda
Mill Creek
Big Hole
Mt. Haggin WMA
Montana Fish, Wildlife, and Parks
Blue Eyed Nellie WMA
Montana Fish, Wildlife, and Parks
Warm Springs Creek
10
Montana Fish, Wildlife, and Parks
Garrity Mountain WMA
Location Map
Philipsburg
Anaconda
Montana
Idaho
Legend
Moore Property
Conservation Easement
Subdivision
MT FWP
USFS
N
W
E
S
3
Miles

Summary of RPPC Criteria Evaluation for Blue Eyed Nellie WMA, Moore Addition Applicant: Five Valleys Land Trust (FVLT)	
Project Summary	The FVLT seeks $142,500 in Restoration Funds to transfer the 30 acre Moore property, located 7 miles west of Anaconda adjacent to Highway 1, to FWP for $125,000 and to fund FWP's initial management activities for $17,500. Of this $17,500, $9,500 is for fencing needs, $3,000 for weed spraying, $1,000 for seeding, and $4,000 for parking and an interpretive sign. Total project costs are $171,800, with $29,300 in matching funds ($17,500 cash and $11,800 in-kind).
Final Funding Decision and Funding Conditions	The Governor approved funding this project for the requested funding of $142,500, subject to funding conditions requiring: 1) that the NRDP approve of land transaction documents (e.g. buy/sell agreement); 2) that NRDP conduct a CERCLA All Appropriate Inquiries prior to the State acquiring the property in order for the State to attain liability protection under CERCLA;[2] and 3) that FWP commit to complying with CERCLA Continuing Obligations after acquiring the property in order for the State to maintain liability protection under CERCLA.[3]
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: The needed appraisal and survey work have been completed and needed coordination to date with respect to remediation activities for removal of the contaminated abandoned railroad bed has occurred. Although mineral title work performed by FVLT indicates an oil and gas reservation with associated rights of access, a geological remoteness test concluded that the likelihood of commercial mineral development on the property is negligible.[4] Completion of an Environmental Assessment by FWP and approval of State Land Board would need to occur before FWP can accept the property; the FWP Commission approved the project on July 8, 2009. Although an EA decision and Land Board approval are still to be determined, given the steps that have already been completed and FVLT's expertise in conducting similar land transfers, the project has a reasonable likelihood of successful completion.

[2] The All Appropriate Inquiries (AAI) would be conducted in compliance with CERCLA regulation 40 CFR Part 312, in order for the State to qualify for CERCLA liability protection as a bona fide prospective purchaser under CERCLA §§101(40) and 107(r). The AAI would be conducted prior to the agreed upon closing date, but after the applicant has executed the buy/sell agreement and the Governor has approved the acquisition.

[3] FWP would commit, as the landowner, to comply with Continuing Obligations set forth in CERCLA §§101(40)(C – G) and §§107(q)(A) (iii – viii)), which require the owner to provide all legally required notices with respect to the discovery or release of a hazardous substance; exercise appropriate care with respect to the hazardous substances by taking reasonable steps to stop or prevent continuing or threatened future releases and exposures, and prevent or limit human and environmental exposure to previous releases; provide full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration; comply with land use restrictions and not impede the effectiveness of institutional controls; and comply with any information requests and subpoenas.

[4] The results of the geological remoteness test were provided in a November 1, 2009 memorandum from consulting geologist Turner Paddock to Greg Tollefson of FVLT.

Summary of RPPC Criteria Evaluation for Blue Eyed Nellie WMA, Moore Addition Applicant: Five Valleys Land Trust (FVLT)	
2. Costs:Benefits	Net Benefits: The Moore property would be a valuable addition to the Blue-eyed Nellie WMA. The property is critical winter range, a key movement corridor for the Anaconda bighorn sheep herd, and a popular wildlife viewing area. The local and visiting public often stop at the Moore property area to observe bighorn sheep. Public ownership, combined with the addition of three parking sites and interpretive signage, will enhance visitor use. By protecting this area from development or land use activities that may be detrimental to natural resources and providing for public access, the project will derive substantial benefits to the natural resources in this area and the public's use and enjoyment of those resources. Given this, and that the acquisition costs are below the appraised value, the project is considered to be one of net benefit.
3. Cost-Effectiveness	Cost-Effective: FVLT adequately justified the proposed alternative. FVLT considered four alternatives for accomplishing the project goals of permanently protecting wildlife habitat and increasing access to public lands: the no action alternative, other funding sources, a deferred purchase, or a conservation easement. Both the no-action alternative and a conservation easement would not provide public access. Other likely funding sources are more competitive on a state-wide basis and a later purchase would most likely result in decreased benefits at greater costs. Given that the purchase price is below the appraised price and the budget for FWP's initial maintenance costs is considered reasonable, the NRDP considers the chosen alternative to be cost-effective.
4. Adverse Environmental Impacts	No Adverse Impacts: The purchase of the Moore property presents no adverse impacts to the environment, assuming that adequate remediation occurs on the property (see criterion #6). Acquisition of the property will likely enhance the natural resources by shielding them from potential detrimental development or land management activities and by implementing the intended conservation oriented management plan for the property.
5. Human Health and Safety	No Adverse Impacts: No adverse impacts to health and safety are anticipated with this public acquisition, assuming adequate remediation occurs on the property (see criterion #6). The remediation cleanup levels are based on a recreational land use scenario, which is protective of the public recreational land uses intended by this proposal.
6. Results of Response Actions	Consistent: This project will not duplicate or interfere with results of a completed, planned, or anticipated Superfund response action. ARCO's contractors completed the removal of the contaminated abandoned railroad bed on the Moore property and revegetated disturbed areas in fall 2009. The State will be afforded liability protection under CERCLA due to the pre-draft funding conditions.
7. Natural Recovery Potential	No Effect on Recovery Period: This acquisition will not change the time frame for recovery of injured resources.

Summary of RPPC Criteria Evaluation for Blue Eyed Nellie WMA, Moore Addition Applicant: Five Valleys Land Trust (FVLT)	
8. Applicable Policies and Laws	Consistent: FVLT has conducted the necessary coordination and provided reasonable assurance that the necessary land transaction documents have been or will be executed. FWP will comply with state laws relating to weed control and weed management for public acquisitions, including the provisions of MCA § 7-22-2154. Although SB164 is not applicable to this acquisition, FWP has committed to providing further maintenance funding and would thereby meet the spirit of the recently enacted SB164.[5]
9. Resources of Special Interest	Beneficial Impact: FVLT indicated there are no documented historic, cultural, or religious sites on the property and that any such sites would likely have been damaged from previous site disturbances. The DOI comments indicate that improvement of bighorn sheep habitat is consistent with DOI interests, but do not indicate the agency's position regarding funding of the project.[6] The Tribes did not specifically comment on this project in their comments on the 2009 grant requests.[7] Given that this acquisition would provide long-term protection for wildlife habitat, it is likely to benefit resources of special interest to the Tribes and DOI.
10. Project Location	Within the Basin and Proximate: The project is within the Basin and considered proximate to injured terrestrial resources due to its location of only four miles from the injured areas of Stucky Ridge.
11. Actual Restoration of Injured Resources	No Restoration: The project does not constitute or contribute to direct restoration. It replaces injured resources.
12. Service Loss/Restored & Service Restoration	Same: The acquisition protects replacement wildlife habitat and associated recreational services that are substantially equivalent to those lost or impaired services addressed under Montana v. ARCO.
13. Public Support	14 Support Comments: from Anaconda Deer Lodge County, Montana Fish Wildlife and Parks, US Forest Service, Public Lands/Water Access Association, Anaconda Sportsmen's Club, Foundation for North American Wild Sheep, Rocky Mountain Elk Foundation (2), Clark Fork Coalition, Montana Wildlife Federation (2), Clark Fork River Technical Advisory Committee, and four area residents.
14. Matching Funds	10% Cash Match and 7% In-Kind Match: The Foundation for North American Wild Sheep donated $10,000 in cash to FVLT for this project and FWP will provide $7,500 for maintenance activities in order to meet the requirements of SB164. FVLT will donate $11,800 for its salary, closing costs, and legal fees incurred after application submittal.
15. Public Access	Increased Access Beneficial: This acquisition will ensure permanent public access to the project area, as well as other areas in the Blue-eyed Nellie WMA. FWP will address any weed problems associated with the increased access and manage public access to minimize impacts to wildlife, such as restricting access in the wintertime.

[5] 10/3/09 e-mail from Ray Vinkey of FWP to Carol Fox of the NRDP. SB164, passed by the 2009 Legislature, requires that certain FWP acquisitions include an additional 20% above the FWP purchase price to be used for maintenance.
[6] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.
[7] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.

Summary of RPPC Criteria Evaluation for Blue Eyed Nellie WMA, Moore Addition Applicant: Five Valleys Land Trust (FVLT)	
16. Ecosystem Considerations	Positive: This project fits within a broad ecosystem context because it is aimed at protecting critical sheep winter range and a wildlife migration corridor. It fits within a broad ecosystem by providing connecting habitat of the nearby Garrity and Blue-eyed Nellie WMAs and between the Flint Creek and Anaconda Pintler mountain ranges.
17. Coordination & Integration	Coordinates/Integrates: This project complements and coordinates with the nearby Blue-eyed Nellie WMA past land purchases, including the Stucky Ridge/Jamison acquisition completed in 2009 with UCFRB Restoration Funds, as well as with the Garrity Mountain WMA purchase completed in 2001 with UCFRB Restoration Funds.
18. Normal Government Functions	Outside Normal Government Function: Neither FWP nor any other governmental entity is specifically responsible for acquiring land in the UCFRB or funding for such acquisitions in the normal course of events. FWP has accomplished expansion of the Blue-eyed Nellie WMA from 6 to 460 acres in the last 5 years with $1,028,000 of Sheep Auction Funds, $120,600 of private funds, and $265,335 of UCFRB Restoration Funds for the Stucky Ridge/Jamison property.
Property Acquisition Criteria	
19. Desirability of Public Ownership	Replacement Beneficial: The 30 acres acquired through this purchase will protect critical wildlife winter range and provide access for public recreation as well as increase access to the existing portions of the Blue-eyed Nellie WMA. While the public ownership will minimally increase the demand for governmental service and involve some reduction in tax revenues compared to that which would have been generated by development, the acquisition benefits outweigh these minimal impacts. FWP will continue to pay taxes on the property; 2008 taxes were $238.
20. Price	Below Fair Market Value: The NRDP has reviewed and approved the March 2009 appraisal provided in the application. The purchase price of this property to the State is $125,000, which is $10,000 below the appraised fair market value of $135,000 ($4,550/acre). While this purchase price to the State is $5,000 more than what FVLT paid for the property in 2008, FVLT incurred land transaction costs of at least $2,250 prior to grant submittal that are not covered in this grant request and will contribute $11,800 in-kind matching funds for its land transaction costs post-grant submittal.[8]

[8] Information on FVLT's land transaction costs incurred associated with their 2008 purchase are provided on pp. 13 and 21 of the grant application and in a 4/7/09 e-mail from Greg Tollefson of FVLT to Greg Mullen of NRDP.

Five Valleys Land Trust
Peterson Ranch Conservation Easement Purchase

Project Summary

Five Valleys Land Trust (FVLT) requests $334,125[1] in Restoration Funds to secure a perpetual conservation easement on the 3,775 acre Peterson Ranch located about fives miles southwest of Drummond (Figure 8) in order to permanently protect wildlife habitat, riparian habitat, soils, native grassland vegetation, and increase public recreational opportunities. Total project costs are $1,152,279, with a proposed cash match of $445,309 (39%) and a proposed in-kind match of $372,845 (32%), for a total match of $818,154 (71%).

Of the total project costs of $1,152,279, $1,109,000 is for the conservation easement purchase price based on a preliminary appraisal; $10,000 is for easement monitoring; $19,434 is for the title, appraisal, and the baseline inventory reports; and $13,845 is for administrative costs. The $334,125 requested in Restoration Funds would cover a portion of the easement purchase, with the other activities to be funded through cash or in-kind matching funds. The $1,109,000 easement purchase price is based on a preliminary appraisal that valued the easement at 34% of the total fee title valued at $3,265,000. The requested Restoration Funds are $334,125, or 30% of this preliminary easement value, which equates to 10% of the estimated fee title value. The landowner would donate 30% towards the easement value, with the other 40% coming from federal grant funds.

The Peterson Ranch contains cultivated agricultural land, upland rangeland, small patches of conifer forest, and a variety of wetlands and woody draws associated with numerous springs and intermittent and perennial stream drainages. It consists of two non-contiguous parcels. The 3,592 acre western-most, upland parcel located in the foothills of the John Long Mountains primarily consists of open grasslands interspersed with smaller drainages. This parcel adjoins state-owned land on its northwest corner and is about 3 miles east of national forest lands. The 183 acre eastern-most, lowland parcel located within the floor of the Flint Creek Valley primarily consists of irrigated and sub-irrigated lands with interspersed wetlands. The Ranch drains south and east to Flint Creek and north and west to the Clark Fork River.

The diverse topography and range of vegetation types on the Peterson Ranch support a variety of wildlife, including elk, deer, antelope, moose, black bear, coyote, mountain lion, bobcat, numerous small mammal and bird species. Of particular significance are the Ranch's extensive, open native grassland habitat that provides critical winter range for elk and mule deer. The area FWP biologist notes that the John Long Mountains are an important area for wildlife passage throughout the UCFRB because of the ranges' central location between the Sapphires, Garnet, and Flint Creek ranges and its preponderance of native grasslands in a largely undeveloped landscape.[2] The easement property is situated in the headwaters of two perennial streams, Antelope Creek, which supports a genetically-pure population of westslope cutthroat trout, and Tigh Creek, for which fishery data is lacking.

[1] FVLT reduced its original request of $495,000 to $334,125 due to their success in obtaining an additional $160,875 in matching funds beyond the $677,279 initially proposed in match.
[2] 03/18/09 letter from Ray Vinkey of FWP to Carol Fox of NRDP.

Under this proposal, FVLT would hold and monitor the conservation easement on the Peterson Ranch in perpetuity. While the final easement terms are still being negotiated, as currently drafted for purposes of NRDP's evaluation of this project and pre-draft funding recommendation, it is assumed the easement would, in perpetuity:

- Limit subdivision to one new home on the eastern, lowland parcel with a 1-acre building envelop and one additional home on the western, upland parcel with a 3-acre building envelop. The upland range parcel could be sold separately from the lowland pasture parcel.
- Provide for public hiking access on a recreational trail (see Figure 9) for hiking, bird/wildlife viewing, and open space enjoyment purposes but not for hunting access.
- Require land management activities be conducted in a manner that would not degrade ground or surface water and wetlands or otherwise diminish the conservation values of the property.
- Prohibit commercial facilities, including feed lots, new roads, alteration of land, excavation or mineral activities.

Figure 8

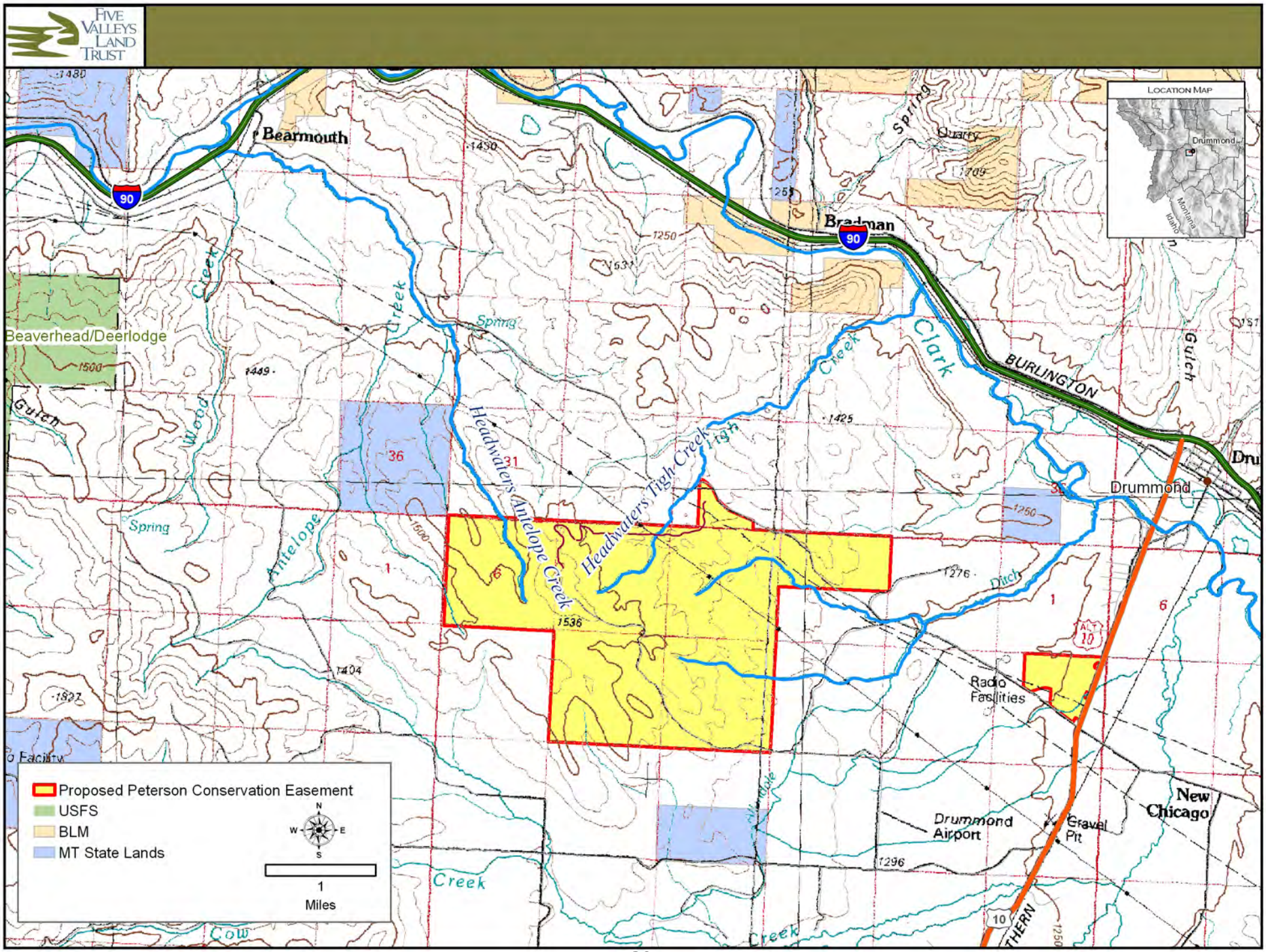
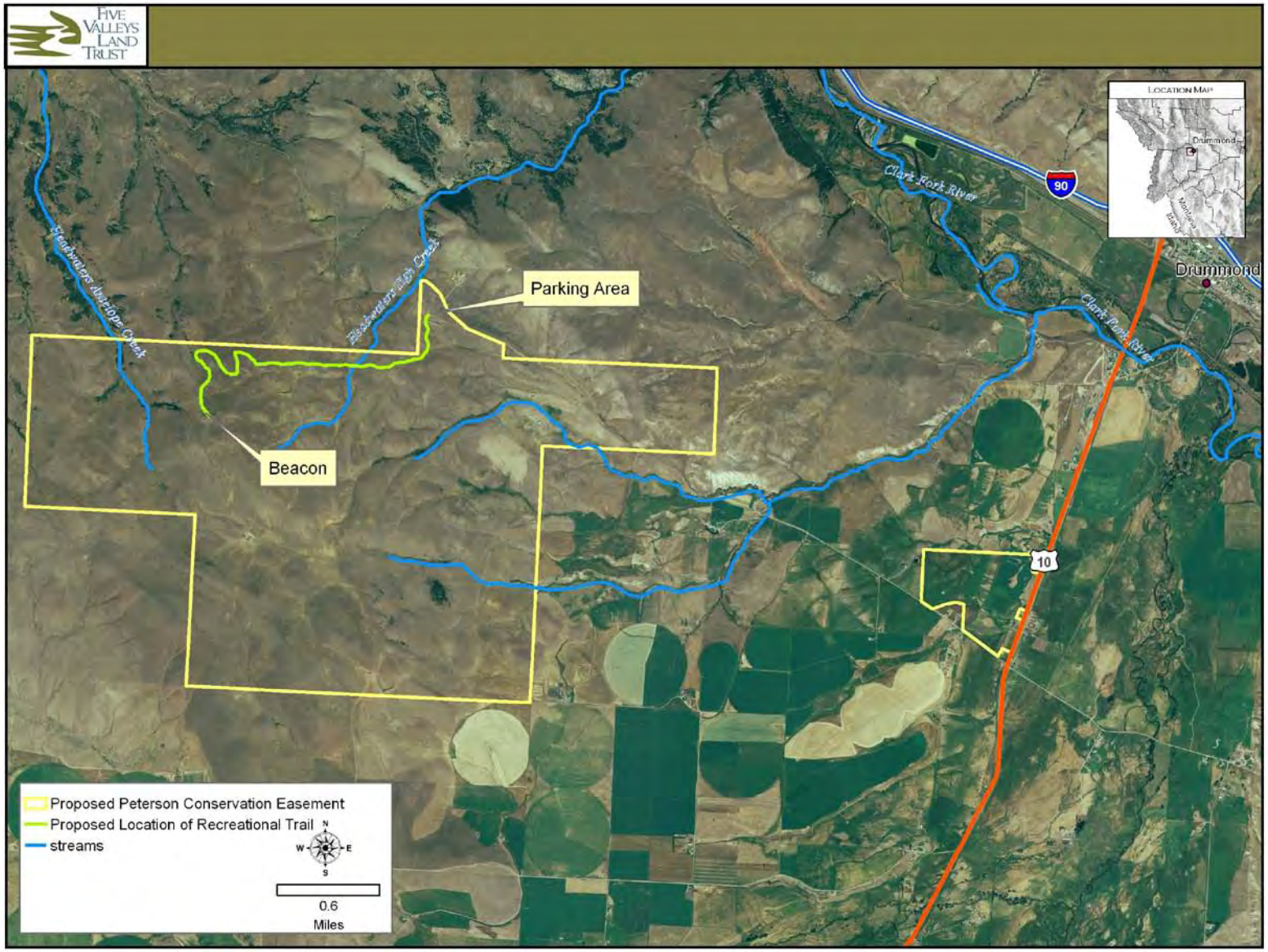

Five Valleys Land Trust
Location Map
Drummond
Montana
Idaho
Bearmouth
Bradman
90
Beaverhead/Deerlodge
Wood Creek
Spring Gulch
Quarry
Spring
Creek
Clark Fork
BURLINGTON
Gulch
Headwaters Antelope Creek
Headwaters Tigh Creek
Tigh
Antelope
Spring
Drummond
Ditch
Radio Facilities
Drummond Airport
Gravel Pit
New Chicago
Creek
Cow Creek
Proposed Peterson Conservation Easement
USFS
BLM
MT State Lands
N
W
E
S
1
Miles

Figure 9


Five Valleys Land Trust
Location Map
Drummond
Clark Fork River
90
Parking Area
Beacon
Drummond
10
Proposed Peterson Conservation Easement
Proposed Location of Recreational Trail
streams
N
W
E
S
0.6
Miles

Summary of RPPC Criteria Evaluation for Peterson Ranch Conservation Easement Purchase Applicant: Five Valleys Land Trust	
Project Summary	Five Valleys Land Trust (FVLT) requests $334,125[3] in Restoration Funds to secure a perpetual conservation easement on the 3,775 acre Peterson Ranch located about fives miles southwest of Drummond in order to permanently protect wildlife habitat, riparian habitat, soils, native grassland vegetation, and increase public recreational opportunities. Total project costs are $1,152,279, with a proposed cash match of $445,309 (39%) and a proposed in-kind match of $372,845 (32%), for a total match of $818,154 (71%). Overall application quality: Very Good. FVLT provided thorough information for all portions of the application and properly addressed the remaining steps to be completed and uncertainties associated with them.
Final Funding Decision and Funding Conditions	The Governor approved this project for up to the requested $334,125, subject to a funding condition requiring NRDP review and approval of the land transaction documents that remain to be finalized (including the buy-sell agreement, title commitment, terms of the conservation easement and deed, and final appraisal).
RPPC Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: FVLT has considerable experience in successful development and management of conservation easements. FVLT had acquired and currently manages 102 conservations easements in western Montana that encompass over 37,000 acres. Judged by the preliminary title, appraisal, and easement negotiations conducted so far by FVLT and FVLT's successful acquisition of matching funds, the proposed easement is considered reasonably feasible. A geological remoteness test indicated the likelihood of mineral development on the property to be low, and FVLT obtained an acceptable mineral guarantee. Remaining steps involve completing the baseline inventory, environmental assessment, final appraisal, easement documents, most of which have been substantially drafted as of October 2009; completing a public access management plan that would be drafted subsequent to easement closing; and obtaining review by the County Planning Board. Given these remaining steps, a funding condition is needed requiring NRDP review and approval of these remaining land transaction documents.
2. Costs:Benefits	Net Benefits: This project is considered as one that offers substantial benefits at a reasonable cost. Through the prevention of subdivision and potentially detrimental land uses, it will result in permanent protection of 3,775 acres of upland native grasslands, riparian habitat, and wetlands that provide high quality wildlife habitat; of aquatic resources in the headwaters of two small perennial tributaries to the Upper Clark Fork River; and of open space/traditional agricultural lands. It also provides for enhanced public hiking, open-space enjoyment, and bird/wildlife viewing opportunities through the designation of a non-motorized recreational trail for public use on the property. The Restoration Fund project costs of $334,125 or less are substantially below (70%) the estimated appraised value of the easement.
3. Cost-Effectiveness	Cost-Effective: The project will accomplish its goals in the least costly way compared to alternatives. FVLT considered

[3] FVLT reduced its original request of $495,000 to $334,125 due to their success in obtaining an additional $160,875 in matching funds beyond the $677,279 initially proposed in match.

Summary of RPPC Criteria Evaluation for Peterson Ranch Conservation Easement Purchase Applicant: Five Valleys Land Trust	
	no action (subdivision/development likely) and voluntary deed restrictions as alternatives to the project. Neither of these alternatives would meet project goals. While fee-title acquisition could provide for greater public access, it is not considered a viable alternative as the landowner is currently not willing to sell the property. A fee-title would provide similar natural resource protection and greater public access than the proposed easement, but it would also cost significantly more (the easement is valued at 34% of the fee title) and increase demand on governmental services. The proposed easement will provide the necessary restrictions to ensure habitat preservation and its total cost will be substantially below the appraised easement value, at a fraction of the fee-title appraised value.
4. Adverse Environmental Impacts	No Adverse Impacts: The proposed easement would protect natural resources from potentially detrimental development or land management activities. It allows some timber harvest, livestock grazing, and other land management activities, but requires them to be conducted in a manner that is protective of natural resources.
5. Human Health and Safety	No Adverse Impacts: This project does not involve any activities that would impact human health and safety. It could involve some increased demand on governmental services in the future if a government agency were to assume responsibility for coordinating public access (see criterion #15).
6. Results of Response Actions	Consistent: This is a replacement project located outside of any Superfund site boundary that will not duplicate or interfere with results of a completed, planned, or anticipated Superfund response action.
7. Natural Recovery Potential	No Effect: The project will not change the timeframe for recovery of injured resources.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: FVLT has planned for the necessary consultation with the Granite County Planning Board. The landowner will be responsible for compliance with applicable state and local weed management requirements.
9. Resources of Special Interest	Beneficial Impact: The easement will protect natural resources of special interest to the Tribes and DOI, such as native fisheries, native grasslands, and wildlife habitat. There are several sites of potential cultural and/or historical interest on the property, including Native American camp sites, old homestead sites, and a section of the historic Mullan Road. In their comments on 2009 grant projects, the Tribes requested reasonable access to the Peterson Ranch to allow Tribal staff to document and preserve Tribal knowledge of the cultural resources.[4] The landowner is willing to grant this access. The DOI commented that the project is consistent with DOI interests and a well-rounded and developed partnership effort.[5]
10. Project Location	Within Basin: The easement property is located about five miles southwest of Drummond. It is within the Basin, but not considered proximate to injured resource areas.
11. Actual Restoration of	No Restoration: This replacement project will not directly or indirectly restore injured natural resources. It will protect

[4] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP
[5] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.

Summary of RPPC Criteria Evaluation for Peterson Ranch Conservation Easement Purchase Applicant: Five Valleys Land Trust	
Injured Resources	portions of two headwater tributaries to the Clark Fork River.
12. Service Loss/Restored & Service Restoration	Substantially Similar: The proposed easement would protect replacement riparian and upland wildlife and aquatic habitat and associated ecological and recreational services that are considered substantially equivalent to those lost or impaired services covered under Montana v. ARCO.
13. Public Support	11 Support Comments: from seven entities (Rocky Mountain Elk Foundation, FWP, Raptors of the Rockies, Five Valleys Audubon (2), the U.S. Forest Service, Granite County Commission, Clark Fork Coalition) and from three area landowners.
14. Matching Funds	71% Total Match, with 39% Cash and 32% In-Kind: FVLT has obtained $445,309 (39%) in cash matching funds and applicants/landowner will provide an in-kind match of $372,845 (32%), for a total match of $818,154 (71%). If the final appraisal concludes a value higher than the preliminary appraisal, which is likely, then the percentage match will increase (see criterion #20).
15. Public Access	Increased Access Beneficial: The landowners have historically allowed members of the public to partake in non-motorized, non-hunting recreational activities on the property, such as hiking, bird-watching, and wildlife viewing on a permission basis. FVLT is concluding negotiations with the landowners on a provision in the easement document that would allow for non-motorized public access via a 2 mile recreational trail leading to a viewpoint on the western easement parcel. This term would more formally guarantee non-motorized public access to the property that would be managed by FVLT, subject to a management plan that would be finalized after closing on the easement. FVLT will initially manage the access, which will involve information signage, but not require landowner permission for access.[6]
16. Ecosystem Considerations	Positive: The proposed easement would benefit multiple natural resources and benefit wildlife movement/connectivity on a large ecosystem-scale. The Ranch provides a connection for wildlife moving between the agricultural lowlands along Flint Creek and the John Long Mountains and the Rock Creek drainage to the east. Protection of the Ranch will help to maintain large-scale habitat connectivity between the Northern Continental Divide Ecosystem to the north and the Greater Yellowstone Ecosystem to the south. The proposed easement area is within the Flint Creek/Upper Willow Creek Basin, a Tier Two Terrestrial Focus Area of moderate conservation need, as identified in FWP's *2005 Comprehensive Fish and Wildlife Conservation Strategy*.
17. Coordination & Integration	The proposed easement integrates with the USFS, FWP, and FVLT's conservation strategies that involve using easements and other land protection tools to accomplish large-scale landscape connectivity in prioritized areas of the Basin. It coordinates with previous projects funded through the NRCS to improve wetland, riparian habitat, and native grasslands habitat on the Peterson Ranch through off-stream watering and grazing management.

[6] Based on information provided by Juniper Davis of FVLT to Carol Fox of NRDP in a 9/24/09 phone conversation.

Summary of RPPC Criteria Evaluation for Peterson Ranch Conservation Easement Purchase Applicant: Five Valleys Land Trust	
18. Normal Government Functions	Outside of Normal Government Function: No governmental entity is specifically responsible for or funded for acquiring this proposed easement or any other conservation easements in the UCFRB.
Property Acquisition Criteria	
19. Desirability of Public Ownership	Replacement Beneficial: This easement will protect and enhance replacement natural resources and services as summarized under criterion #3. It will not result in any reduced tax revenues, as the land under easement will remain under private ownership.
20. Price	Substantially Below Appraised Value (subject of further review): The $1,109,000 easement purchase price is based on a preliminary appraisal that valued the easement at 34% of the total fee title valued at $3,265,000. The requested Restoration Funds are $334,125, or 30% of this preliminary easement value, which equates to 10% of the estimated fee title value. This initial appraisal will be updated upon finalization of easement terms. If the final appraisal comes in higher than the preliminary appraisal, which may occur because the public trail access provision was not considered in the initial easement valuation, FVLT will not seek a greater contribution from the NRDP than the $334,125 requested.[7] If the final appraisal comes in lower, then the Restoration Fund portion of the project would remain at 30% of the appraised easement value. The initial title work does not indicate any outstanding issues associated with the valuation of the easement; however, mineral title work remains to be completed. A funding condition is needed requiring NRDP review and approval of the final appraisal and other remaining land transaction documents.

[7] As communicated in a 7/27/09 e-mail from Juniper Davis of the FVLT to Carol Fox of the NRDP.

Montana Department of Fish, Wildlife and Parks (FWP)
Warm Springs Ponds Recreation Area Improvement Update

FWP requests $82,989 in Restoration Funds to update the conditions of latrines, signage, parking lots, picnic shelters, boat launches, and the frontage road within the Warm Springs Ponds Recreation Area located approximately 12 miles NE of Anaconda (see Figure 10). Total project costs are $86,853, with in-kind matching funds of $3,864 for management oversight. The funding breakdown for improvements is: latrines ($22,987); signage ($9,357); picnic shelters ($7,626); debris cleanup ($1,700); parking lots, roads and a boat launch ($34,460); and foot bridges ($6,100).

ARCO owns the Warm Springs Ponds and surrounding lands, which cover about 3,170 acres, for waste management purposes. FWP leased the surface as a recreational and wildlife area from 1965 to 1985. The lease was renewed in 1985 and ended in 2005. ARCO developed recreational facilities in the late 1990's for the public to use and enjoy. The condition of these facilities, particularly the latrines, has deteriorated due to the lack of maintenance and is the subject of complaints from recreating public users. The responsibility for the maintenance of these facilities has been subject of dispute between ARCO and FWP, who are currently negotiating a management plan, expected to be completed in 2009, that will address this issue and other management/responsibility issues. As currently drafted, the agreement envisions that FWP will be responsible for repairing and maintaining the existing recreational amenities and for managing area wildlife and fisheries resources and that ARCO would be responsible for weed control and for providing funding to FWP to conduct these day-to-day management activities for five years. The requested funding would make necessary capital improvements which would not be provided by ARCO via this pending management agreement. Thus, FWP would need to secure other funding sources for any capital improvements to the recreation area, such as those requested in this grant proposal.

In June 2008, the Trustee Restoration Council approved funding of $14,600 in Restoration Funds to provide clean useable sanitary facilities for the recreating public on a one-time basis for one year at the Warm Springs Ponds recreation area. That grant funded installation of one new latrine, closure of two latrines that could not be repaired, and interim caretaker services to maintain existing latrines until July 2009.

Figure 10

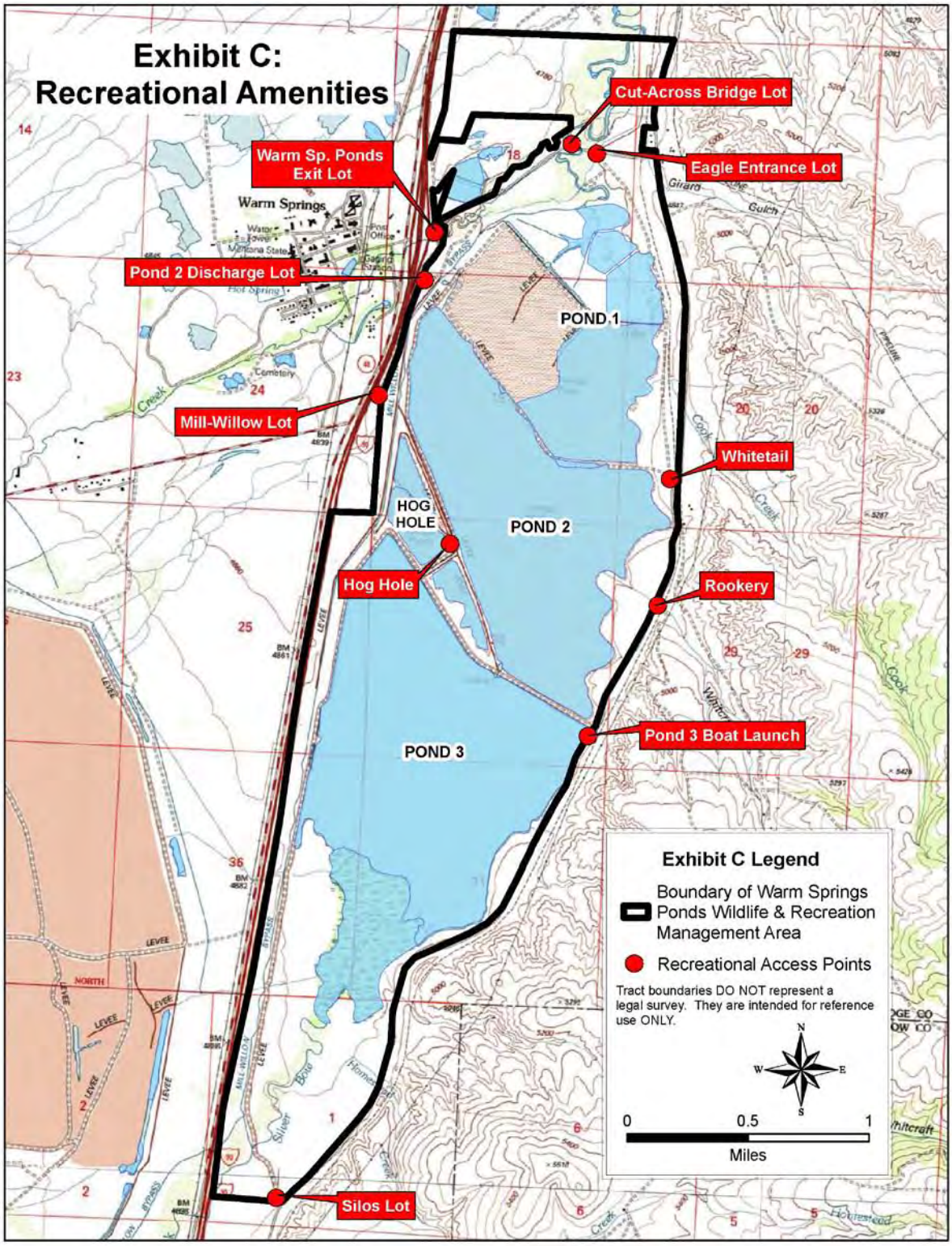


Exhibit C:
Recreational Amenities
Cut-Across Bridge Lot
Eagle Entrance Lot
Warm Sp. Ponds Exit Lot
Warm Springs
Pond 2 Discharge Lot
POND 1
Mill-Willow Lot
Whitetail
HOG HOLE
POND 2
Hog Hole
Rookery
POND 3
Pond 3 Boat Launch
Silos Lot
Exhibit C Legend
Boundary of Warm Springs Ponds Wildlife & Recreation Management Area
Recreational Access Points
Tract boundaries DO NOT represent a legal survey. They are intended for reference use ONLY.
N
W
E
S
0
0.5
1
Miles

Summary of RPPC Criteria Evaluation for the Warm Springs Ponds Recreation Area Improvements Update Applicant: Montana Fish, Wildlife, and Parks (FWP)	
Project Summary	FWP requests $82,989 in Restoration Funds to update the conditions of latrines, signage, parking lots, picnic shelters, boat launches, and the frontage road within the Warm Springs Ponds Recreation Area approximately 12 miles northeast of Anaconda. Total project costs are $86,853 with $3,864 in-kind matching funds for management oversight. Application Quality: Fair. Some of the criteria narratives had insufficient information.
Final Funding Decision and Funding Conditions	The Governor approved funding of this project for the requested $86,853, with no additional funding conditions.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: FWP proposes to accomplish the project goal of providing useable sanitary services and improving recreational facilities by removing three deteriorated wooden latrines and replacing them with two new concrete structures; improving information kiosks, signage, boat launch areas, parking lots; and replacing gravel on a 0.7 mile reach of the frontage road. FWP has expertise with similar tasks at state-owned and managed recreational sites statewide. There are no uncertainties associated with the feasibility of this project.
2. Costs:Benefits	Net Benefits: The project will provide improved sanitary and recreational services for the public at reasonable cost. Although no data is available regarding visitor days, conservative estimates put numbers in the thousands per year. The current condition of the facilities has been the cause of 30-40 compliant calls over the last few years.[1] Life expectancy of the proposed improvements is 20-25 years, which would equate to $3,824 per year.
3. Cost-Effectiveness	Cost-effective: FWP has proposed a cost-effective approach that will take care of immediate maintenance needs at the Warm Spring Ponds site. The personnel and contracted services costs associated with this proposal are reasonable, as are the costs for the materials and the latrines. The budget was primarily derived from competitively-bid term contracts for other State-maintained recreational facilities. The alternative of no action would result in continued unacceptable sanitary conditions for the recreating public, as well as deteriorating recreational facilities. The alternative of conducting improvements to a lesser degree would not meet project goals as only minimal improvements are proposed. An alternative that would involve improvements to a greater degree, such as developing new facilities, would be unacceptable because it could interfere with pending final remedy decisions.
4. Adverse Environmental Impacts	No Adverse Impacts
5. Human Health and	No Adverse Impacts: A negative impact would occur without the proposed improvements to sanitary facilities.

[1] Email from Rory Zarling to Kathy Coleman dated May 8, 2009.

Summary of RPPC Criteria Evaluation for the Warm Springs Ponds Recreation Area Improvements Update Applicant: Montana Fish, Wildlife, and Parks (FWP)	
Safety	
6. Results of Response Actions	Consistent: The Warm Springs Ponds are subject of two interim Record of Decisions. Once the Silver Bow Creek remediation is completed (expected to occur in 2012), the EPA is expected to initiate a process by which a final Record of Decision will be issued. The funding of this proposal should not directly interfere with the final remedy since this proposal only involves limited improvement to existing facilities, although continued public use of this area may influence the remedy decision-making process. Through the 2008 Consent Decree for the Clark Fork River, the most northern 270 acres of the Warm Springs Ponds recreational area will be conveyed to the State of Montana, acting through DEQ, in the near future. Upon conveyance, it is likely that a portion of the property would not be subject to the provisions of FWP's management agreement with ARCO for the Warm Springs Ponds.
7. Natural Recovery Potential	No Effect
8. Applicable Policies and Laws	Consistent: If funding is approved, FWP will obtain the needed permit from the county for the removal and installation of the latrines.
9. Resources of Special Interest	No impact: No adverse impacts to resources of special interest to the Tribes or DOI are expected since the proposal involves improvements to already existing facilities. The DOI comments indicate the agency does not anticipate negative impact to DOI properties, but do not indicate the agency's position regarding funding of the project.[2] The Tribes did not specifically comment on this project in their comments on the 2009 grant requests.[3]
10. Project Location	Within Basin and Proximate: The Warm Springs Ponds is part of the injured Silver Bow Creek/Clark Fork River floodplain corridor.
11. Actual Restoration of Injured Resources	No Restoration
12. Service Loss/Restored & Service Restoration	Similar: The facilities to be improved through this proposal serve the recreational public that uses the Warm Springs Ponds site for fishing, wildlife viewing, hiking, and waterfowl hunting, all of which are recreational services covered under Montana v. ARCO.
13. Public Support	2 Support Comments: from the Clark Fork River Technical Assistance Committee (2) and an area resident

[2] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.
[3] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.

Summary of RPPC Criteria Evaluation for the Warm Springs Ponds Recreation Area Improvements Update Applicant: Montana Fish, Wildlife, and Parks (FWP)	
14. Matching Funds	4% in-kind match: FWP will donate $3,864 on in-kind labor for management oversight activities.
15. Public Access	Beneficial: This proposal will benefit the public access by improving sanitary and recreational facility conditions for the recreating public that uses the site.
16. Ecosystem Considerations	Not relevant
17. Coordination & Integration	Coordinates: The project coordinates with the on-going Silver Bow Creek Greenway project that will provide a publicly-owned, passive recreational trail corridor along the Silver Bow Creek floodplain between Butte and Warm Springs Ponds.
18. Normal Government Functions	Within but Augments Normal Government Function: The improvements proposed under this grant are beyond the routine day-to-day maintenance responsibilities that are subject of a draft management agreement currently being negotiated between ARCO and FWP.[4] If consummated, under that agreement FWP would agree to maintain the recreational amenities such as trails, picnic tables, information kiosks, boat launch areas and latrines in exchange for public access to this recreational area, and ARCO would agree to annually fund FWP's routine, day-to-day maintenance costs of these facilities and continue with other maintenance at the site, including weed spraying. FWP is not routinely funded through the legislatively-approved budget to maintain/improve recreational facilities at the Warm Springs Ponds site. At current funding levels, FWP is having trouble operating and maintaining existing State Parks and Fishing Access Sites, for which FWP is clearly responsible.

[4] This agreement is expected to be finalized by the end of 2009.

Anaconda-Deer Lodge County
West Third Street Water Main Replacements – Year 8

Project Summary

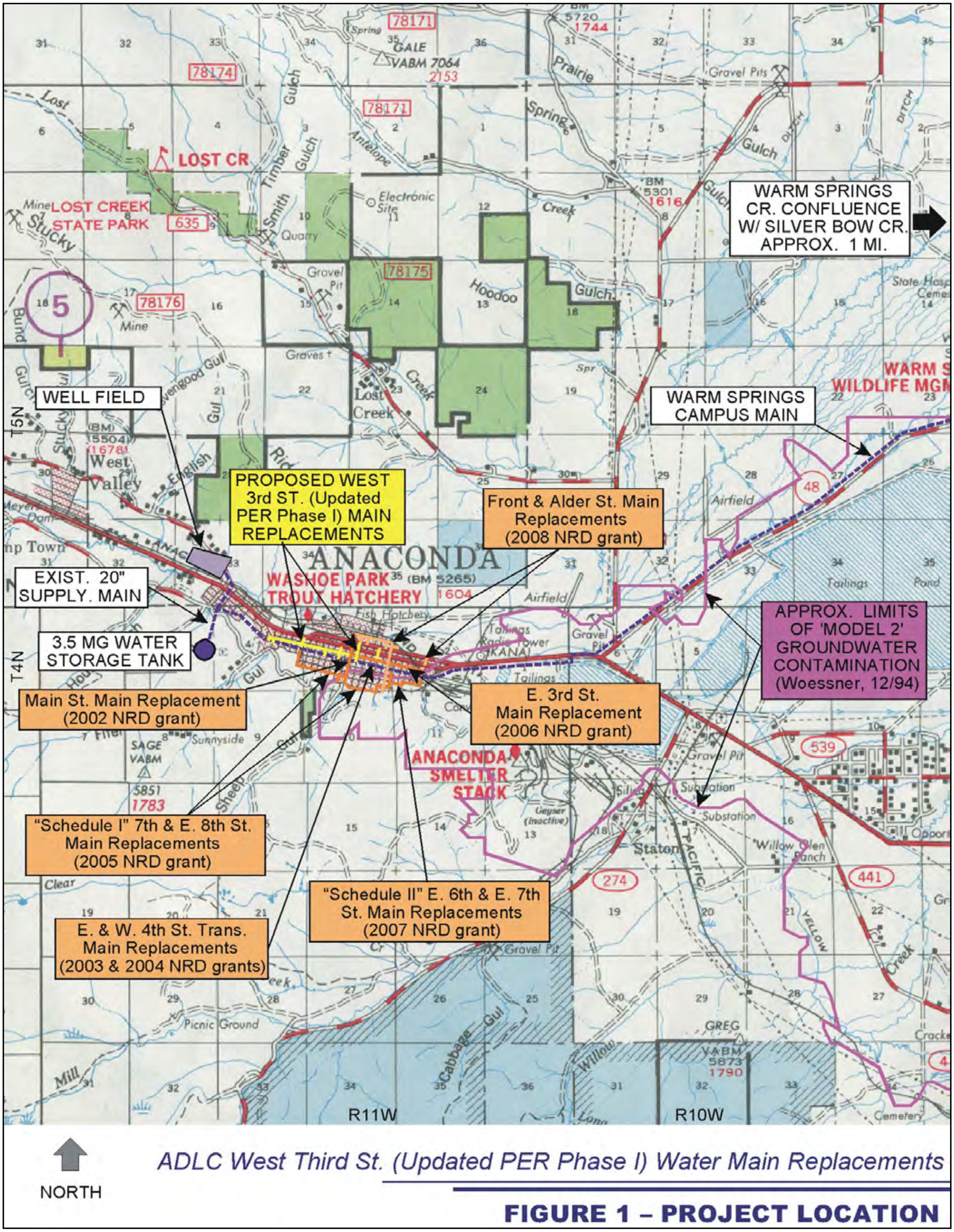
Anaconda-Deer Lodge City County's (ADLC) goal is to extend Anaconda's existing municipal water supply through conservation as a surrogate for the community's lost opportunity to develop additional groundwater resources. To accomplish this, ADLC proposes to replace 8,800 feet of leaking, century old, waterlines on West Third Street and other nearby streets in the City of Anaconda. ADLC projects savings of up to 352,000 gallons of water per day. The total cost is $2,206,030, with $1,988,478 requested in Restoration Funds and $206,481 in cash and $11,071 in-kind matching funds.

Anaconda is located adjacent or partially within the 40 square miles of groundwater contamination associated with the Anaconda Regional Water, Waste, and Soils Operable Unit. Groundwater resources are somewhat limited because the upper portion of the alluvial groundwater aquifer east of Anaconda is contaminated with metals associated with past mining activities at levels above water quality standards. The 1995 State of Montana Anaconda Groundwater Injury Assessment Report supports this claim of groundwater contamination east of Anaconda. Also, the 1998 Anaconda Regional Water, Waste, and Soils Operable Unit Record of Decision indicates about 30 square miles of contaminated bedrock groundwater to the north and south of the City.

This request is the eighth year of what ADLC has indicated will be continued multi-year funding requests to replace the waterline system, with $9,652,780[1] in Restoration Funds approved and/or spent for 48,157 feet of waterline replacement. Anaconda has completed six of its funded grant projects and is currently implementing the 7th year project. Currently, 1.88 million gallons per day of water leaks from about 39,655 feet of water main that still need to be replaced, which is likely to cost over $7 million.[2] ADLC has not indicated what portion of those future costs would be sought in Restoration Funds.

[1] The actual amount of Restoration Funds spent (~$8.9 million total), is approximately $1.3 million less than the requested amount due to several reductions in scope by ADLC over the years.
[2] Page 12, ADLC Restoration Fund Grant Application, March 2009.

Figure 11


WARM SPRINGS CR. CONFLUENCE W/ SILVER BOW CR. APPROX. 1 MI.
LOST CR
LOST CREEK STATE PARK
WELL FIELD
WARM SPRINGS CAMPUS MAIN
PROPOSED WEST 3rd ST. (Updated PER Phase I) MAIN REPLACEMENTS
Front & Alder St. Main Replacements (2008 NRD grant)
ANACONDA
WASHOE PARK TROUT HATCHERY
EXIST. 20" SUPPLY. MAIN
3.5 MG WATER STORAGE TANK
APPROX. LIMITS OF 'MODEL 2' GROUNDWATER CONTAMINATION (Woessner, 12/94)
Main St. Main Replacement (2002 NRD grant)
E. 3rd St. Main Replacement (2006 NRD grant)
ANACONDA SMELTER STACK
"Schedule I" 7th & E. 8th St. Main Replacements (2005 NRD grant)
"Schedule II" E. 6th & E. 7th St. Main Replacements (2007 NRD grant)
E. & W. 4th St. Trans. Main Replacements (2003 & 2004 NRD grants)
T5N
T4N
R11W
R10W
NORTH
ADLC West Third St. (Updated PER Phase I) Water Main Replacements
FIGURE 1 – PROJECT LOCATION

Summary of RPPC Criteria Evaluation for West Third Street Water Distribution Replacement – 2009 Applicant: Anaconda Deer Lodge County (ADLC)	
Project Summary	Anaconda-Deer Lodge City County (ADLC) proposes to replace about 8,800 feet of leaking, century old waterlines in West Third and other nearby streets in the City of Anaconda that serve 227 users. The total cost is $2,206,030, with $1,988,478 requested in Restoration Funds and $206,481 in cash and $11,071 in-kind matching funds. Overall Application Quality: Good; the application is complete and accurate.
Final Funding Decision and Funding Conditions	The Governor approved funding of the project for the requested $1,988,478, with no additional funding conditions.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: This proposal involves the replacement of dilapidated waterline, using competitive bidding process for construction contractors and standard engineering practices conforming to Montana Public Works Standards and DEQ requirements. ADLC proposes the same level of effort and approach used to complete past NRDP-funded water main projects since 2002. ADLC has successfully completed 73,700 feet of water main replacement projects since 1994 with both Restoration Grant Funds and non-grant funds and is capable of continuing this activity.
2. Costs:Benefits	Commensurate Benefits: ADLC estimates the proposed 8,800 feet of waterline replacement will save about 352,000 gallons of water loss per day, at a cost per lineal foot that is similar to past year's projects. However, their predicted leakage rates are just general estimates and not accurate since leaks are not evenly distributed throughout the system. In addition, ADLC lacks specific water utilization records because only 12% of the ADLC water service connections are metered. This makes determining water use versus water leakage difficult. ADLC's goal of water conservation as a benefit of the project is thus not well quantified. Also, the recently completed Computer Modeling Study[3] notes that significant leakage of 56% of treated water still occurs, despite the 73,700 feet of completed water main replacement. This indicates that past water main replacement projects have not resulted in as much leakage reduction as predicted. Nonetheless, the project will offer some benefits to the Anaconda public by reducing water treatment, property damage, and repair costs associated with leaks, reducing the need to seek additional water supplies, and offering greater fire protection in the areas of water main replacement. The project also constitutes compensatory restoration for extensive injuries to the aquifers surrounding Anaconda.

[3] The *March 2009 Preliminary Engineering Report Modeling Study Amendment* (Computer Modeling Study) prepared by Dowl HKM for ADLC and funded by Restoration Funds in 2007, reports system leakage rate is 1.88 million gallons per day (mgd), which is 686 million gallons per year. As indicated in a 10/01/09 e-mail from Alden Beard to Carol Fox of the NRDP, this study indicated 0.3 mgd leakage reduction occurred as a result of 41% of old pipes being replaced, which is 14% of the total estimated leakage of 2.183 mgd indicated in 2004 PER.

Summary of RPPC Criteria Evaluation for West Third Street Water Distribution Replacement – 2009 Applicant: Anaconda Deer Lodge County (ADLC)	
3. Cost-Effectiveness	Likely Cost-Effective/Uncertain: ADLC's preferred alternative is to conduct water main replacement without water metering, even though system-wide water metering can result in water savings from 30% to 50% for similar size communities when it is accompanied by volumetric pricing structure to encourage conservation.[4] The 2004 Preliminary Engineering Report (PER) and the 2009 Computer Modeling Study both recommend that water metering and water main replacement be done simultaneously. In late 2007, the Governor approved a Restoration Fund grant to ADLC to conduct a metering education and system-wide metering evaluation that has not yet been completed. A companion metering rate study to encourage metering was planned for ADLC in 2008 but was not completed. In this proposal, ADLC once again commits to conduct a rate study, with system-wide metering anticipated to follow completion of these studies sometime in the future.[5] ADLC has demonstrated by past work that the selected alternative to replace water mains is likely cost-effective for improving water delivery and especially for fire protection; however, it appears that the alternative has uncertain cost-effectiveness for water conservation compared to water metering.[6] The best alternative is for combining efforts to obtain system-wide metering with efforts to replace water mains.
4. Adverse Environmental Impacts	No Significant Adverse Impacts: Replacing waterline will not cause significant adverse impacts to the environment. Some undefined amount of water conservation is an environmental benefit that may result.
5. Human Health and Safety	No Significant Adverse Impacts: ADLC has proposed mitigation measures to alleviate adverse impacts associated with construction activities, such as dust and noise. The project can have beneficial impacts to human health and safety by improving fire protection, reducing road hazards, and there may be some increase in the availability of water otherwise lost to leakage.
6. Results of Response Actions	Consistent: The project will not interfere with or duplicate the results of any known EPA Superfund actions.
7. Natural Recovery Potential	No Effect on the Recovery Period: This replacement project will not affect the groundwater recovery period.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: ADLC indicates they will submit the required drawings to DEQ for review, coordinate with DEQ/EPA if contamination is encountered, and follow Montana Public Works Specifications. ADLC currently has an "Interim Development Permit System" that outlines the procedure to dispose of wastes encountered during construction and this disposal would not be funded with Restoration Funds.
9. Resources of Special Interest	No Impact: The project is not likely to adversely impact natural resources of special interest to these entities. In its comments on 2009 grant projects, the DOI did not indicate any position regarding funding of this project.[7] In their

[4] Kate Miller, TSEF Program MT Dept. of Commerce, via personal communication with Tom Mostad, NRDP Staff April 28, 2009.
[5] ADLC executed a contract for Anaconda's metered water rate study in August 2009.
[6] Assuming it costs $1,000/meter for installing 2,267 the remaining unmetered services and also assuming a 30% water savings through metering, the cost would be $6.41 per gallon saved. ADLC estimates the cost of $6.27 per gallon of water saved for water main replacement which is slightly less costly than metering. However, if the water savings as 50% as a result of metering, the cost would be $3.85 per gallon saved, which would mean metering is much less costly than waterline replacement. Assumptions and calculations made by Tom Mostad, NRDP Staff.
[7] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.

Summary of RPPC Criteria Evaluation for West Third Street Water Distribution Replacement – 2009 Applicant: Anaconda Deer Lodge County (ADLC)	
	comments on 2009 grant projects, the Tribes requested proper notification should undiscovered/undocumented cultural resources be encountered during project construction activities.[8] If funded, the grant agreement would require proper consultation with the Tribes in such situations.
10. Project Location	Within Basin and Proximate: The project will occur in Anaconda, which is within and adjacent to injured groundwater resource areas.
11. Actual Restoration of Injured Resources	No Restoration: This project replaces drinking water services lost in the area as a result of contamination where cleanup is infeasible and thus constitutes compensatory restoration.
12. Service Loss/Restored & Service Restoration	Same: This project replaces services lost. Injured groundwater resources somewhat limit ADLC's potential sources for water development, thus making conservation of existing sources an effective means of enhancing its water resources.
13. Public Support	54 Support Comments: from the Anaconda Local Development Corporation, ADLC Planning Board, Community Hospital of Anaconda, Morrison Maierle, ADLC Health Department, ADLC Water Department, Copper Village Museum and Art Center, Southwest Montana Federal Credit Union, and 46 residents
14. Matching Funds	9.4% Cash & 0.5% In-kind: ADLC proposes a cash match of $206,481 and $11,071 of in-kind match.
15. Public Access	Not Applicable
16. Ecosystem Considerations	Positive Impacts: The proposal may conserve water, which reduces water treatment and energy requirements for pumping and treating, however, the amount of water savings is uncertain.
17. Coordination & Integration	Partly Coordinates/Integrates; Partly Inconsistent: This project coordinates with a portion of the ADLC's 2004 Preliminary Engineering Report and the 2009 PER amendment, which proposes replacement of waterlines on a priority basis, and also with other funded ADLC waterline projects. This proposal is, however, inconsistent with the recommendations of the PER that water metering be conducted with water main replacement.
18. Normal Government Functions	Augments Normal Government Functions: Waterline installations and repairs are part of ADLC's responsibilities, because the county owns the water distribution system. The NRDP considers this project as one that augments, not replaces, normal government function, because communities typically rely on grant funds to assist in funding such work and also because the replacement of severely leaking waterlines is an effective way to compensate the community for the pervasive and extensive injuries to the Anaconda area groundwater resources that were covered under Montana v. ARCO. ADLC acquired the public water system in the mid-1990's. Other factors to consider in evaluating this criterion for local public water projects are the local match and ratepayer rates. ADLC is contributing about 10% in matching funds. ADLC has increased their annual water rates by 12 percent, 12 percent, and 11 percent for three consecutive years from January 2006 through January 2008. However, ADLC's current combined water and sewer rate of $36.76 is still below the Department of Commerce's combined target rate of $50.42.

[8] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.

University of Montana
Bird's Eye View of the UCFRB

The University of Montana, Division of Biological Services proposes to develop, implement, and maintain a place-based summer educational program for K-12 students and adults that revolves around the uniqueness of bird communities associated with riparian ecosystems and how birds can be used to expose the effects of past mining on the ecological integrity of the riparian corridor.

The project involves a collaborative partnership between the Avian Science Center at the University of Montana (ASC), the Clark Fork Watershed Education Program (CFWEP), Montana Natural History Center (MNHC), and Raptor View Research Institute (RVRI) to achieve their overall goal of providing place-based learning opportunities through bird-focused summer camp programs and teacher training. The basic project consists of a songbird-banding and an osprey-watch summer program that provides educational opportunities for summer camp children, teachers, policy-makers, and the public at large. The songbird banding stations will involve 8 banding days distributed every 10 days in each of two locations (Grant-Kohrs and Rock Creek). The osprey banding activity will occur during the fledging period and generally involve more than one group of participants in a day. Figure 16 indicates locations of banding stations and osprey nests. Summer camps will include those to be offered by a variety of clubs in the upper part of the Basin that the CFWEP will coordinate and also those to be offered by the MNHC in the lower part of the Basin. The teachers will be recruited to participate in 2-day workshops (one for 6 teachers from the upper basin coordinated by CFWEP and one for 6 teachers from the lower basin coordinated by MNHC).

As originally proposed, the total project cost over five years would be $788,689, with $577,159 requested in Restoration Funds and $211,530 to be provided as cash match. Through the NRDP's evaluation process, however, the NRDP and the applicant identified areas where the scope and the budget of this project could be reduced to better reflect the objectives of a limited summer program that would extend the goals of the currently funded CFWEP program, rather than create a new education program.[1] The reduction involved cutting the five-year program to a two-year program, eliminating an associated geospatial web-based curriculum component, and reducing overall costs. The revised Restoration Fund budget totals $172,946 over two years, with $74,362 proposed as match ($43,832 in-kind; $30,530 cash), for a total project cost of $247,308. The NRDP's evaluation of this proposal is based on this revised budget.

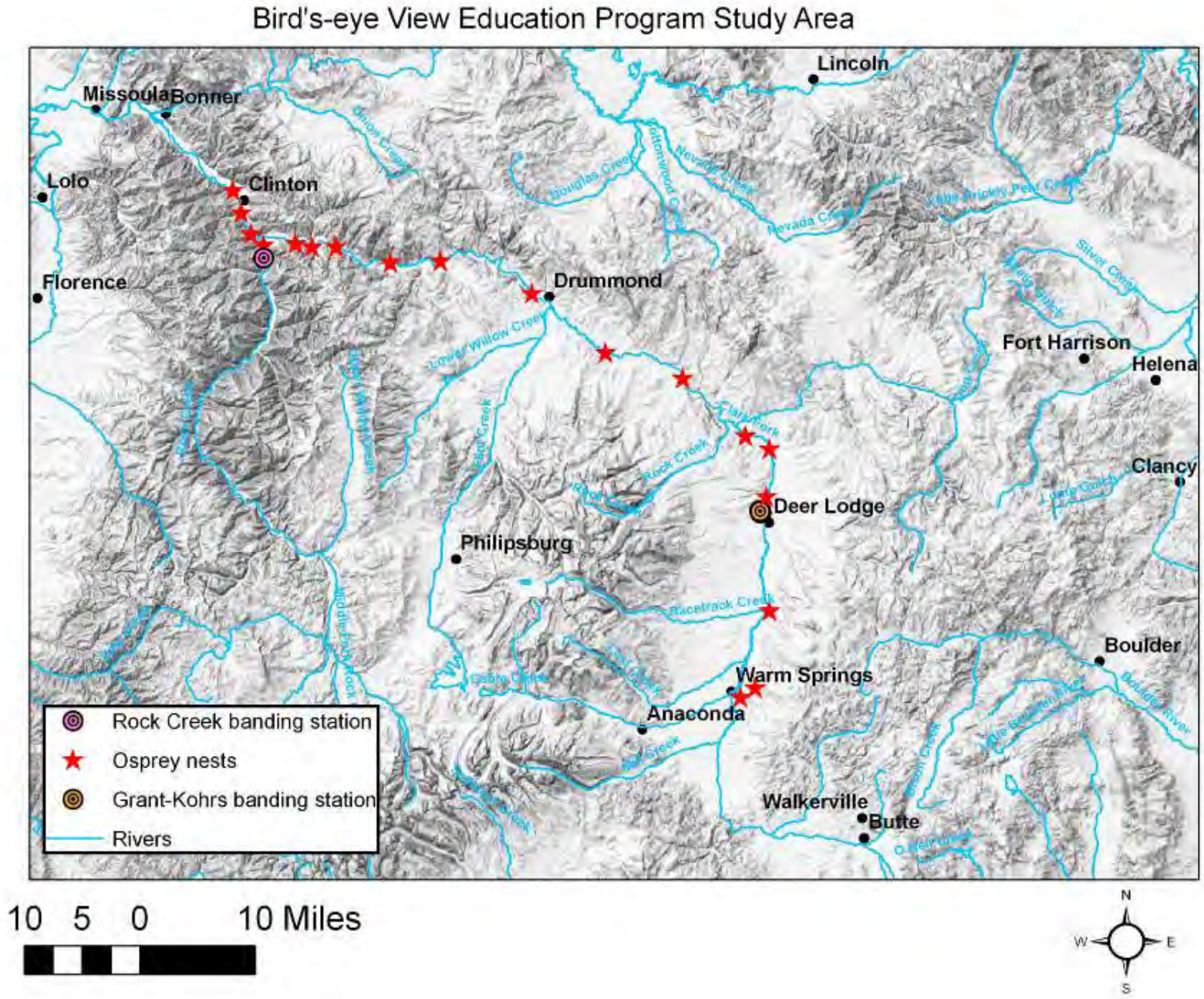
Both a bird-banding and an osprey education project have been funded in the past for $25,000 each in 2006/07 and 2008, respectively. The 2006/07 bird-banding project provided six birding field trips; four banding stations (one in 2006 and three in 2007); stipends for seven teachers to attend banding stations; and internships for five students. In total, the pilot project had 37 participants in 2006 and 490 in 2007. The osprey project conducted sixteen nest visits and had a total of 314 participants. During these nest visits, the applicant was able to band chicks and

[1]The applicant provided this reduced scope and budget via a 7/20/09 e-mail from Kristina Smucker to Kathy Coleman of the NRDP.

obtain blood and feather samples from 23 birds. These birds were analyzed for a suite of metals, including arsenic and mercury.

In 2007, Governor Schweitzer approved switching the base-level educational program provided through the CFWEP from the grants process to contracted services. The CFWEP's scope and budget are subject of approval of the Trustee Restoration Council annually, with consideration by the UCFRB Advisory Council and the NRDP Education Evaluation Committee. MT Tech administers this base-level program, which primarily involves four classroom sessions and a full day field trip for students in the 5th through 8th grade level at up to 25 elementary and middle schools in the Upper Clark Fork Basin. Since this proposal involves educational activities that go beyond those provided as part of the contracted base-level program, it is being considered through the grants process. If this project is funded and is successful in meeting its goals and objectives, the NRDP will consider recommending it as a summer component of the CFWEP.

Figure 12


Bird's-eye View Education Program Study Area
Missoula
Bonner
Lolo
Clinton
Florence
Lincoln
Drummond
Fort Harrison
Helena
Clancy
Deer Lodge
Philipsburg
Boulder
Warm Springs
Anaconda
Walkerville
Butte
Rock Creek banding station
Osprey nests
Grant-Kohrs banding station
Rivers
10 5 0 10 Miles
N
W
E
S

Summary of RPPC Criteria Evaluation for the Bird's Eye View of the UCFRB (as revised) Applicant: University of Montana	
Project Summary	The University of Montana, Division of Biological Services proposes to develop, implement, and maintain a place-based summer educational opportunity for K-12 students and adults that revolves around the uniqueness of bird communities associated with riparian ecosystems and how birds can be used to expose the effects of past mining on the ecological integrity of the riparian corridor. As revised by the applicant and NRDP, total project costs are $247,308 with $172,946 requested in Restoration Funds and $74,362 in matching funds ($43,832 in-kind; $30,530 cash). Application Quality: Fair
Final Funding Decision and Funding Conditions	The Governor approved funding this project for the partial funding of $100,000 total, with no additional funding conditions.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible Methods/Uncertain Outcome: The project employs proven and accepted methods to educate children and adults in the field of bird banding and osprey awareness. The ASC and RVRI have successfully facilitated similar projects, including two NRDP-funded small grants. The project's potential to meet its goals is enhanced by the applicant's collaborative partnership involving the ASC, CFWEP, MNHC and the RVRI that enables coordination of the proposed field activities with already existing education programs in the Basin. One uncertainty associated with this project is whether it will serve the applicant's projected number of participants of over 800 participants per year. Some uncertainty exists as to whether the applicant will meet this goal based on results of the two previously-funded summer education projects.[2] While the original project had a duration of five years, the revised project is two years, which allows the needed time to develop and evaluate the success of the program without locking into additional years of funding and reduces the risk associated with this uncertainty.

[2] According to their final reports, the Bird's-eye View Pilot Program had 37 participants and 490 participants during the summers of 2006 and 2007, respectively, and the Osprey Awareness Program had a total of 314 participants during the summer of 2008. Participation in 2006 was low due to a forest fire closure at one of the banding stations. The applicant expects higher participation due to better funding and increased coordination with CFWEP.

Summary of RPPC Criteria Evaluation for the Bird's Eye View of the UCFRB (as revised) Applicant: University of Montana	
2. Costs:Benefits	Potential Net Benefits: The direct benefits of this project include providing children and adults with a place-based opportunity to understand how riparian areas were injured and are being restored and how birds are associated with the riparian ecosystem. This program offers a unique opportunity for participants to get an up close, "hands on" lesson on song birds and osprey and their habitat. The indirect benefit of this project is that such education can increase the likelihood that the UCFRB's future residents will be engaged in restoration and be responsible stewards for the watershed. How project costs compare to these benefits greatly depends on the number of project participants, which has some uncertainty (see criterion #1). The applicant estimates that, over a two year period, the program will reach up to 1,600 participants and provide training for up to 24 teachers. Using this estimate, and considering only the Restoration Fund costs, the cost per participant of this proposed program is $108, which the NRDP considers reasonable (see criterion #3). Assuming this anticipated level of participation is met, the project is considered to be one of net benefit.
3. Cost-Effectiveness	Potentially Cost-Effective: The project goal is to develop and implement a place-based, bird-focused summer education program. Based on a limited alternatives analysis, the applicant judged that the alternatives of no action, a one year project, fewer camps, or funding one year at a time, dependent on success of the program, would not adequately meet project goals. Through its evaluation process, the NRDP recommended, and the applicant consented to, a more limited summer program similar to the pilot programs conducted in 2006/07 and 2008 that would extend the goals of the currently funded CFWEP program rather than create a new education program. While the estimated $108 cost per participant for the revised proposal is higher than in the pilot projects, the applicant found that the amount requested for these pilot projects was insufficient for running a quality program and required a much greater match than originally planned, and adequately justified to the NRDP why further reductions would jeopardize delivery of a quality educational opportunity.[3] Although cost information available for comparable programs to that proposed is lacking, the $108 per participant is reasonable based on the average cost $120 per participant for CFWEP. While CFWEP is a more extensive course (four days in the classroom and one day in the field), the logistics and thus costs for planning and implementing a field activity focused program are typically greater compared to a classroom-focused program. Funding a more limited version of the originally-proposed five year program over two years is a preferable approach and potentially cost-effective, if target participation levels are met.

[3] **Ibid**

Summary of RPPC Criteria Evaluation for the Bird's Eye View of the UCFRB (as revised) Applicant: University of Montana	
4. Adverse Environmental Impacts	No Significant Adverse Impacts: Efforts will be made to locate banding stations in areas where vegetation can withstand human visitors. Mist nets used to capture birds will be placed in natural openings that require minimal pruning of vegetation. The applicant will follow applicable regulations and established handling methods to minimize harm to the birds.
5. Human Health and Safety	No Adverse Impacts: Bird banding and osprey nest locations will be selected to optimize access for ease and safety purposes. The applicant will be required to assure that program participants will not be exposed to unacceptable levels of contamination or unsafe conditions.
6. Results of Response Actions	Positive Coordination: The timing of this project fits well with the schedule for Silver Bow Creek and Clark Fork River remediation and restoration efforts, will not interfere with those efforts, and can lead to better stewardship of natural resources than would otherwise occur without such educational efforts.
7. Natural Recovery Potential	No Effect on Recovery Period
8. Applicable Policies and Laws	Consistent: All applicable federal, state and university permits have been secured. The applicant has committed to comply with all state and federal laws and regulations pertinent to song bird and osprey banding. The applicant intends on obtaining access for all banding and field trip locations and has secured National Park permits for activities at Grant Kohrs and a US Forest Service permit for activities at Rock Creek.
9. Resources of Special Interest	Beneficial Impact: Since the project could enhance stewardship of natural resources in the UCFRB, it could benefit resources of special concern to the Tribes and DOI. In their comments on the 2009 grant projects, the Tribes requested that Tribal students be actively recruited for participation in this program. If funded, the project grant agreement would require this recruitment.[4] The DOI indicated that the National Park Service goals for resource education are served well by this project.[5]
10. Project Location	Within the Basin and Proximate: All activities associated with this project will occur within the UCFRB and pertain to natural resources that were subject of Montana v. ARCO.
11. Actual Restoration of Injured Resources	No Direct Restoration: This project will indirectly benefit restoration of injured resources by promoting stewardship of those resources through education.
12. Service Loss/Restored & Service Restoration	Similar: This project will restore or replace lost or impaired services of Montana citizens. Bird watching was included as a lost or impaired service in Montana v. ARCO. Avian populations were projected to be substantially reduced due to habitat elimination. The partial settlement in Montana v. ARCO resolved claims for the services that unimpaired resources provide the public simply by virtue of their existence. This grant focuses on the

[4] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.
[5] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.

Summary of RPPC Criteria Evaluation for the Bird's Eye View of the UCFRB (as revised) Applicant: University of Montana	
	restoration of lost services through public education about the injured or lost natural resources and by enhancing stewardship of restored resources.
13. Public Support	2 Support Comments: from the CFWEP and the MNHC.
14. Matching Funds	44% Match (25% in-kind) (18% cash): $43,832 will be provided as in-kind match through waiver in-direct charges. $30,530 will be provided in cash for salaries and benefits.
15. Public Access	Not relevant
16. Ecosystem Considerations	Positive: This project will further the knowledge of both children and adults about birds, riparian habitat, ecosystem concepts, and stewardship of natural resources.
17. Coordination & Integration	Coordinates/Integrates: This project will integrate existing educational materials on bird banding and riparian habitat and incorporate information on mining activities and injuries to wildlife and habitat along the UCFRB. This information will be incorporated as lesson plans into the CFWEP Education Portal. The applicant indicates that they will coordinate with CFWEP and the budget provides funding to CFWEP to assist in organizing field trips in the upper Basin. If successful, NRDP will consider recommending that this program be incorporated into CFWEP as a summer component after this two year project.
18. Normal Government Functions	Outside Normal Government Function: The project does not involve activities normally conducted by government agencies or obligations of governmental entities. These activities would not be undertaken in the Basin without grant funding.
MONITORING AND RESEARCH CRITERIA	
21. Overall Scientific Program	Coordinates: The data collection component of this project will augment and not duplicate any on-going scientific work in the Basin. The bird banding data will be included within the Monitoring Avian Productivity and Survivorship (MAPS) program administered by the Institute for Bird Populations. Blood and feather samples will be collected from the osprey chicks.
22. Assistance with Restoration Planning	Minor Benefit: The program would provide data through the banding documentation of the restoration and recovery of injured resources. This data would augment a growing database that could be used to evaluate the health of the riparian areas within the UCFRB and evaluate the success of restoration efforts, if such data collection in restored areas were to be continued over multiple years. The osprey data may provide the State information to assist in improving the productivity and health of the aquatic and terrestrial resources in the UCFRB; however, there are limitations to the proposed research that lend uncertainty in predicting the value of this research to the State's restoration efforts.

Butte-Silver Bow Local Government
Drinking Water Infrastructure Replacement – Year 9

Project Summary

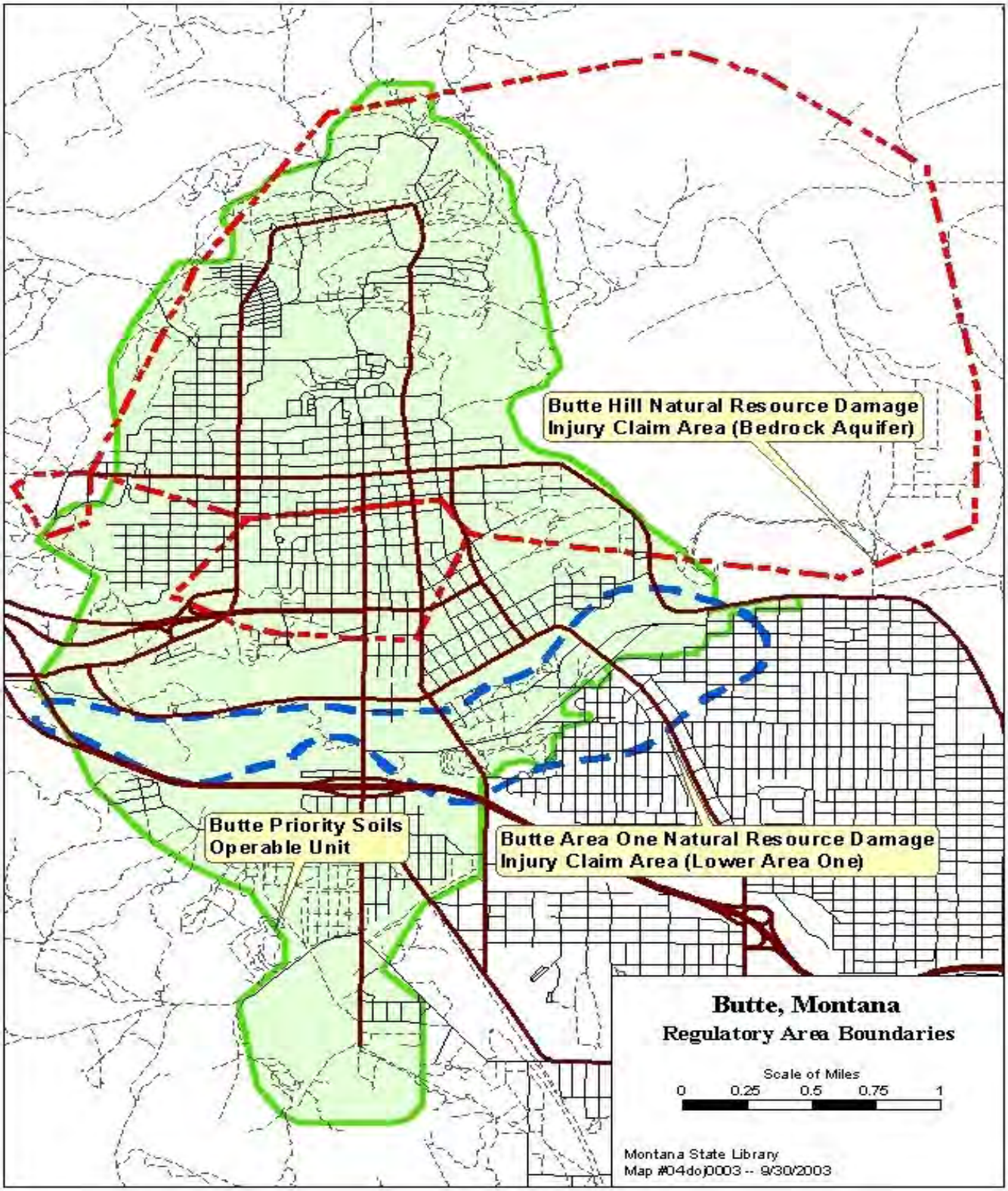
Butte-Silver Bow City-County's (B-SB) main goal for this proposal is to provide safe, reliable and affordable drinking water to Butte citizens, to be accomplished by replacing leaking water mains, promoting water conservation, and investigating alternatives to supplement surface water drinking sources. In this grant, B-SB proposes to replace 18,152 feet of waterline in 2010 at a total cost of $3,182,415, with $2,684,747 requested in Restoration Funds and $477,362 in cash and $20,306 in-kind matching funds.

Butte's bedrock aquifer is contaminated throughout a seven square mile area of the City and these distribution lines overlay that aquifer. This aquifer is so severely injured that natural recovery will not occur for thousands of years, as concluded by the State's 1995 Restoration Determination Plan and by EPA's 1994 Record of Decision. Restoration of the bedrock aquifer is infeasible, thus the aquifer's drinking water, storage capacity, and transport services have been lost for thousands of years. The State's 1995 Restoration Determination Plan considered upgrading Butte's antiquated water system as a viable restoration alternative for the bedrock groundwater injuries in Butte. This proposal will enhance the water supply from an unaffected source, thus compensating the public for some of the lost use of groundwater that Butte has suffered due to the inability to tap clean bedrock groundwater in much of the City.

This proposal is Year 9 of an intended 15-year funding request to the NRDP by B-SB for waterline replacement. Governors have approved funding for year 1 through year 8 totaling $12,911,791 to replace 136,900 feet of waterline. B-SB has completed the year 1 through year 7 projects and replaced about 114,957 feet of waterline and will implement the year 8 project in 2009. If all 15 years of the plan are implemented, B-SB estimates the cost to the Restoration Fund to be about $30 million; however, there are indications that the costs could be higher.[1] This evaluation does not address that long-term plan in depth and if B-SB seeks further funding beyond this year's proposal, it will need to do so through a separate application(s).

[1] Butte-Silver Bow Water Main Replacement Update, November 6, 2007, submitted to the Trustee Restoration Council by B-SB.

Figure 13


Butte Hill Natural Resource Damage
Injury Claim Area (Bedrock Aquifer)
Butte Priority Soils
Operable Unit
Butte Area One Natural Resource Damage
Injury Claim Area (Lower Area One)
Butte, Montana
Regulatory Area Boundaries
Scale of Miles
0 0.25 0.5 0.75 1
Montana State Library
Map #04doj0003 -- 9/30/2003

Summary of RPPC Criteria Evaluation for Butte Waterline Applicant: Butte-Silver Bow City County Government (B-SB) – Year 9	
Project Summary	Butte-Silver Bow City-County (B-SB) proposes to replace 18,152 feet of inadequate water distribution lines in the city of Butte that serve approximately 290 households/businesses. Total project costs are $3,182,415, with $2,684,747 requested in Restoration Funds and $477,362 in cash and $20,306 in-kind matching funds. Overall Application Quality: Good
Final Funding Decision and Funding Conditions	The Governor approved funding this project for the requested $2,684,747, with no additional funding conditions.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: The project will replace leaking waterlines via competitive bidding using standard engineering practices that conform to Montana Public Works Standards and DEQ requirements. B-SB has successfully conducted similar work over the last decade in Butte.
2. Costs:Benefits	Commensurate Benefits: This proposal will benefit and compensate a large public for some of the lost use of groundwater that Butte has suffered due to the inability to use bedrock groundwater in much of the City. Benefits include improved fire protection; reduced pumping, treatment, repair, and property damage costs that result from reduced leakage; a reduced potential for the distribution system becoming contaminated through leaky and failing pipes. However, the amount of water conservation as a result of the proposal is undetermined. Since an engineer's estimate in 1990, B-SB has not attempted to quantify the amount of leakage versus the amount of consumption for their water system, which makes it difficult to establish water conservation as a significant benefit.
3. Cost-Effectiveness	Likely Cost-Effective/Uncertain: B-SB provided a reasonable alternative analysis for meeting B-SB's specific goal of replacing deteriorated, undersized water mains, though the goal of conserving water is not well defined. Currently, 45% of B-SB water service connections are metered. While B-SB's *2008 Water Master Plan* recommends that system-wide water metering should be done with water replacement activities to conserve water by as much as 30%,[2] the alternative for system-wide water metering was not evaluated in the application. B-SB was approved for a volunteer metering and public awareness grant in 2008, but currently is just getting this project started.[3] Overall, there is insufficient information on leakage rates versus water use to determine the actual rate of water savings if system-wide metering were to be implemented. All issues considered, the selected alternative is likely cost-effective for improving the water system but uncertain for accomplishing the broader water conservation goal, since the water quantity conserved is still undefined. However, even though

[2] Butte-Silver Bow Water System Master Plan; Robert Peccia and Associates, July 2008, pages 4, 2-40, and 5-19.

[3] The grant agreement for this project was executed in August 2009. An 11/3/09 e-mail from Rick Larson of B-SB to Carol Fox of the NRDP indicates that B-SB has started the process to purchase meters for installation starting in 2010 and started the process to hire a metering outreach coordinator.

Summary of RPPC Criteria Evaluation for Butte Waterline Applicant: Butte-Silver Bow City County Government (B-SB) – Year 9	
	the amount of water that could be conserved has not been defined, it is likely that B-SB has not evaluated or selected the best alternative for conserving water, which is for system-wide metering and water main replacement to occur at the same time.
4. Adverse Environmental Impacts	No Significant Adverse Impacts: B-SB has adequately recognized and planned for potentially short-term adverse impacts that are typically associated with construction activities.
5. Human Health and Safety	No Significant Adverse Impacts: B-SB plans to implement adequate safety measures during construction. The project can have beneficial impacts to human health and safety by improving fire protection, reducing road hazards caused by leaking water and ice, and increasing the availability of water otherwise lost to leakage.
6. Results of Response Actions	Consistent: The project will not interfere with or duplicate the results of any known EPA Superfund actions.
7. Natural Recovery Potential	No Effect on Recovery Period: This replacement project will not affect the bedrock aquifer's recovery period.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: The applicant identified and adequately planned for necessary permits.
9. Resources of Special Interest	No Impact: The project is not likely to impact these resources of special interest to the Tribes or DOI, since work will occur on already constructed and paved streets. In its comments on 2009 grant projects, the DOI did not indicate any position regarding funding of this project.[4] In their comments on 2009 grant projects, the Tribes requested proper notification should undiscovered/undocumented cultural resources be encountered during project construction activities.[5] If funded, the grant agreement would require proper consultation with the Tribes in such situations.
10. Project Location	Within Basin and Proximate: Most of the project overlies the injured Butte Hill groundwater resource.
11. Actual Restoration of Injured Resources	No Restoration: The project replaces services of injured groundwater resources that cannot be restored and thus constitutes compensatory restoration.
12. Service Loss/Service Restored	Same: This proposal replaces lost services to property owners and other members of the public in Butte that could use the bedrock aquifer if it was not injured.
13. Public Support	8 Support Comments: from United States Senator Jon Tester, B-SB Chief Executive, B-SB Water Utility Division, B-SB Water Treatment Manager, B-SB Director of Public Health, Butte Local Development Corporation, Community Development Services of Montana, and Project Green of Montana
14. Matching Funds	15% Cash Match & 0.6% In-kind Match: B-SB will contribute $477,362 cash for construction costs and $20,306 for in-kind for oversight labor.

[4] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.
[5] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.

Summary of RPPC Criteria Evaluation for Butte Waterline Applicant: Butte-Silver Bow City County Government (B-SB) – Year 9	
15. Public Access	Not Applicable
16. Ecosystem Considerations	Positive: Conserving water and reducing power needs for pumping and treating water fits within a broad ecosystem concept.
17. Coordination & Integration	Partly Coordinates/Integrates; Partly Inconsistent: This proposal coordinates with other Butte waterline replacement projects and the Big Hole transmission line, and if funded, will conserve some undetermined amount of water and/or reduce maintenance and improve the delivery of drinking water. However, B-SB currently does not have a rate structure that encourages water conservation or metering, which is inconsistent with the *B-SB 2008 Master Plan*. That plan recommends that B-SB explore methods of encouraging flat rate customers to convert to meters and notes that water rates for both flat rate and metered customers have not changed for the past 13 years.[6]
18. Normal Government Functions	Augments Normal Government Functions: Waterline system installation and repairs are part of B-SB's responsibilities, since the county owns the water distribution system. The NRDP considers this project as one that augments, not replaces, normal government function because communities typically rely on a combination of grant funds and user fees to fund such projects, and because the proposal is an effective way to compensate the community for the pervasive and extensive injuries to the groundwater resources underlying Butte that were covered under Montana v. ARCO. B-SB acquired the public water system in 1992. Other factors to consider in evaluating this criterion for local public water projects are the local match and ratepayer rates. B-SB is contributing about 16% in cash matching funds. B-SB's combined water and sewer rates of $54.81 are below the Department of Commerce's target rate of $58.49.[7]

[6] *Butte-Silver Bow Water Master Plan;* Robert Peccia and Associates; Pages 6-22 & 6-30.

[7] The Department of Commerce uses this target rate to assess whether a community is adequately funding any public facility project in proportion to their financial resources. If the target rate is met, the community is eligible for state grant assistance.[7]

George Grant Chapter of Trout Unlimited
Paracini Pond Property Acquisition

Project Summary

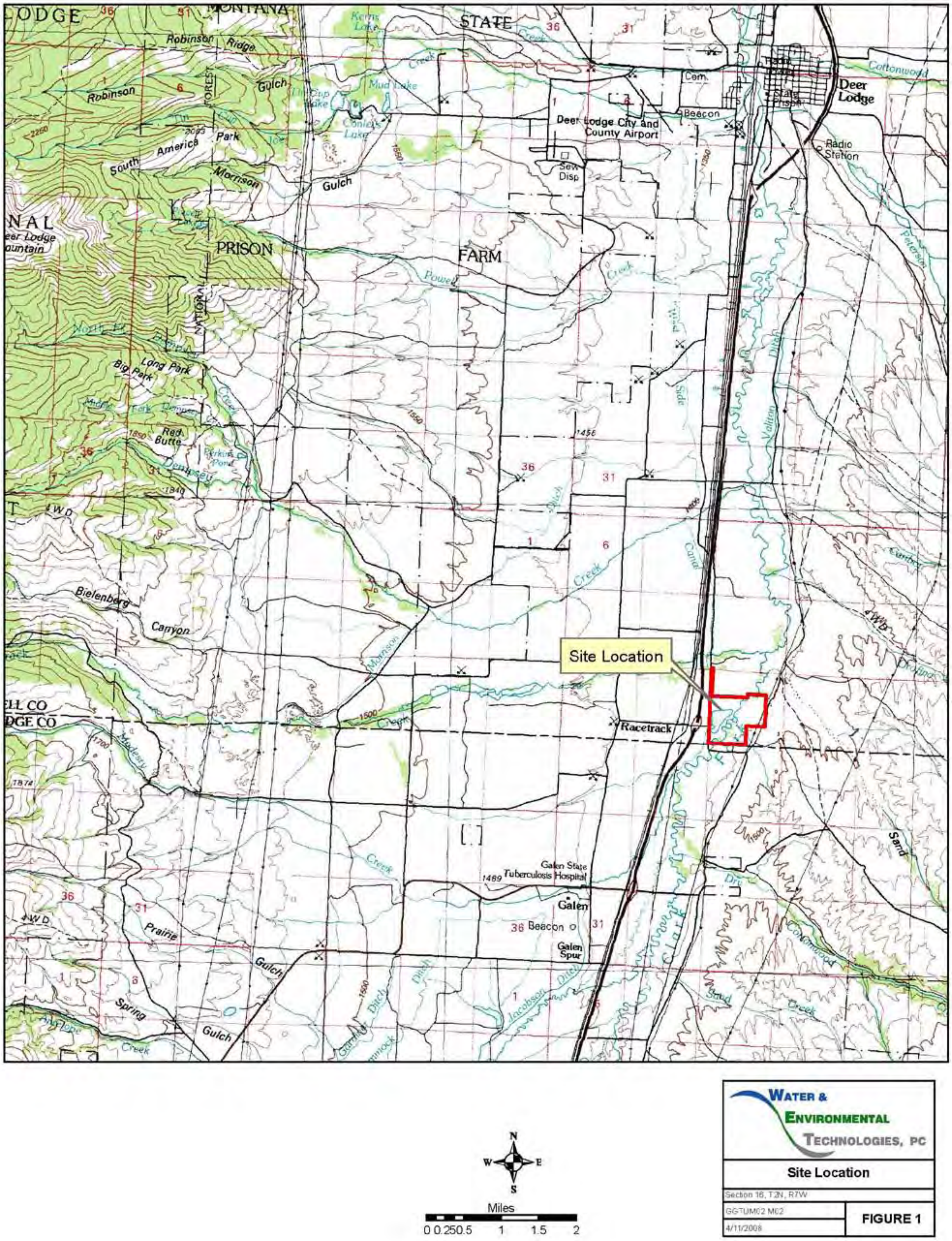
George Grant Chapter of Montana Trout Unlimited (GGTU) is proposing to provide natural resource-based recreational access and opportunities through the State acquisition of the 272 acre Paracini Pond property located about 9 miles south of Deer Lodge near the Racetrack Exit of Interstate 90 (see Figure 14). The property, which includes a 30 acre pond and about 6,000 feet of the Clark Fork River, will be subject of remedial actions and possible restoration actions to be conducted and funded separately pursuant to the 2008 Clark Fork River Consent Decree. GGTU reduced their original Restoration Fund request of $1,190,955 to $1,184,205, associated with a reduction in their level of effort for grant administration. GGTU is offering $6,000 as in-kind matching funds, for a total project cost of $1,190,205. Of this amount, $1,156,000 is for acquisition of the property, which is the appraised fair market value, and $34,205 is for administrative costs.

In its application, GGTU leaves the decision as to which state agency holds title to the property to be worked out later by the state executive branch. The area is projected to provide public camping and fishing access on the pond as well as the river. Given this intended land use, the property would most likely come under ownership and management of FWP, following completion of remediation and restoration activities under DEQ ownership and management. The acquisition of the property could be considered as a replacement equivalent of natural resources injured and services lost as a result of releases of hazardous substances.

This proposal results from GGTU's Project Development Grant (PDG) approved in 2008 to plan this acquisition. Completed PDG tasks include title and appraisal work and water rights research. Remaining PDG tasks include: development of a debris removal/cleanup plan to address the abandoned trailers, out-buildings, farm machinery, junk cars, and rip-rap on the riverbank that exist on the property; continuing the landowner negotiations for the sale of the property; and, if needed, completing a property boundary survey.

The Paracini Pond is believed to have been created during the construction of the I-90 Racetrack Exit in the late 1960's and resulted from groundwater infiltration into the gravel pit that was used for borrow to build the exit. Anecdotal information indicates that the Pond was historically stocked with fish and supported a good rainbow trout fishery. Large populations of waterfowl use the Pond during fall and spring migrations and the property provides habitat for deer and antelope. The property is easily accessible from a paved county road approximately ½ mile from the Racetrack Exit.

Figure 14


Site Location
Deer Lodge
Deer Lodge City and County Airport
PRISON
FARM
STATE
Racetrack
Galen State Tuberculosis Hospital
Galen
Beacon
Radio Station
N
S
W
E
Miles
0 0.25 0.5 1 1.5 2
WATER & ENVIRONMENTAL TECHNOLOGIES, PC
Site Location
Section 16, T2N, R7W
GGTUM02 M02
4/11/2008
FIGURE 1

Summary of RPPC Criteria Evaluation Applicant: George Grant Chapter of Trout Unlimited	
CRITERIA **Application Quality**	George Grant Chapter of Montana Trout Unlimited (GGTU) proposes to complete State acquisition of the 272 acre Paracini Pond property, which includes a 30 acre pond and about 6,000 feet of the Clark Fork River and is located about 9 miles south of Deer Lodge near the Racetrack Exit of Interstate 90. Total project costs are $1,190,205, with $1,184,205 requested in Restoration Funds and $6,000 in-kind matching funds.[1] Application Quality: Fair
Governor's Final Funding Decision and Funding Conditions	The Governor approved this project for the requested $1,184,205, subject to two funding conditions: 1) that the NRDP approve all pending land transaction documents (e.g. buy/sell agreement) prior to closing; and 2) that the NRDP conduct a CERCLA All Appropriate Inquiries prior to the State acquiring the property in order for the State to attain liability protection under CERCLA.[2] The Governor did not approve of a funding condition that had been recommended by the Trustee Restoration Council and Advisory Council that would have allowed for potential partial acquisition project to be considered separate from the grant process if negotiations on a full acquisition project failed.
1. Technical Feasibility	Uncertain Feasibility: Most of the proposed tasks that are typical for this kind of project, such as an appraisal, a preliminary title commitment, and a survey, have already been completed or are on-going as a part of the PDG. The title work conducted does not indicate any unacceptable conditions and the mineral rights are owned by the surface owner. The water rights research indicated that, while there are three irrigation water rights appurtenant to the property, they do not include a water right for the Pond. Thus, a possibility exists that future changes in site hydrology could impact water levels in the Pond. Other tasks to be conducted under this proposal to complete the acquisition are: complete the buy/sell agreement and the closing of the property; coordinate with FWP, DEQ, and NRDP to facilitate the property transfer; give public tours of the property; and complete tasks associated with administration of the grant. In terms of strictly acquiring the property, the only significant uncertainty involves the willingness of the landowner to agree to the buy/sell terms offered by the GGTU/NRDP. The landowner has not met the deadlines set by the NRDP and GGTU for completion of the buy/sell agreement, which lends great uncertainty to the feasibility of this acquisition. Although not included in the proposal, a Phase I environmental property assessment is also needed prior to acquisition to assess whether there are any potential contamination problems beyond those that will be addressed under the planned remedial actions. This assessment would be conducted by the NRDP as part of its CERCLA All Appropriate Inquiry due diligence. In addition, removal/cleanup of site debris and the

[1] GGTU voluntarily reduced their originally proposed budget of $1,190,955 by $6,750 by reducing the amount of project coordination, accounting, reporting, and project oversight than was originally proposed.

[2] The All Appropriate Inquiries (AAI) would be conducted in compliance with CERCLA regulation 40 CFR Part 312, in order for the State to qualify for CERCLA liability protection as a bona fide prospective purchaser under CERCLA §§101(40) and 107(r). The AAI would be conducted prior to the agreed upon closing date, but after the applicant has executed the buy/sell agreement and the Governor has approved the acquisition.

Summary of RPPC Criteria Evaluation Applicant: George Grant Chapter of Trout Unlimited	
	construction of a fishing access and camping site amenities would need to be completed for this property to reach the intended end use of the property as a public fishing access and camping site. Funding for these tasks, however, is not covered under this grant proposal and would thus have to be subject of future funding requests. The debris removal/cleanup plan, which was funded to be developed under the PDG but has not been completed, should give valuable information about the other tasks and funding that will be needed to cleanup the site. GGTU has successfully acquired the property as a part of the 2005 German Gulch Restoration Grant and is capable of continuing these types of activities, most of which will be contracted, even though GGTU has not completed some tasks that were to be done under the PDG.
2. Costs:Benefits	Net Benefits: Public acquisition of the Paracini Pond property will enhance natural resource-based public recreation, including both river and pond fishing opportunities; secure opportunities for restoration that may not otherwise occur under private ownership; and provide for the facilitation and long-term protection of restoration and remediation activities for the 6,000 foot reach of the Clark Fork River on the property. The property would include water rights that may be valuable if they could be converted to instream flow. Currently, no other public fishing access sites exist on about 26 miles of the Clark Fork River between Warms Springs Ponds and Deer Lodge.[3] These substantial benefits would be augmented if future funding is secured to remove debris and develop the property into a public fishing access and camping for the pond area as well as the Clark Fork River after remediation of the property. The NRDP estimates these additional costs to be $105,000 or more.[4] These additional activities do not have to be done in conjunction with the purchase of the site, but they are costs that will probably need to be incurred to allow the public to fully benefit from the project. There will also be other costs associated with the remediation and the restoration of the property, but these will be funded by DEQ with Clark Fork Remediation Funds and by NRDP with Clark Fork Restoration Funds, respectively, and not grant funds. Even without these additional recreational site improvements, the substantial benefits to be obtained from the public acquisition alone exceed the project costs that involve purchase of the property at the appraised fair market value of $1,156,000, administrative costs of $34,205.[5]

[3] Through provisions of the Clark Fork River Consent Decree, ARCO will transfer 48 acres of its lands that include a portion of the Clark Fork River located about halfway between Warms Springs Ponds and Deer Lodge. The lands could potentially be used as a public fishing access site following conclusion of remediation and restoration activities.

[4] The cost of $105,000 is a combined estimation of $90,000 for development of fishing access and $15,000 for site demolition. Tom Mostad of NRDP made these estimates, with some assistance from an FWP Engineer. The true cost of the amenities will depend greatly upon the level of development of the area. The demolition cost would great, depending on the findings in the site assessment.

[5] $28,205 of the $34,205 in administration costs are proposed as Restoration Fund expenses.

Summary of RPPC Criteria Evaluation Applicant: George Grant Chapter of Trout Unlimited	
3. Cost-Effectiveness	Likely Cost-Effective: None of the alternatives offered by GGTU were fully explained or adequately investigated. In the PDG, GGTU explored several different alternatives for the purchase, including acquiring all or only a portion of the property. However, in consultation with the NRDP, GGTU chose to pursue purchasing the entire property, which is the best alternative for the resources of the area compared to a partial purchase. This alternative will allow restoration to occur on all applicable portions of the property and link this property with other state land to the east. Though all of the alternatives were not discussed adequately, the project is likely cost-effective and the best alternative was selected.
4. Adverse Environmental Impacts	No Adverse/Short-Term Adverse Impacts with Mitigation: The acquisition itself does not pose any adverse impacts to the environment. It could potentially involve removing more hazardous substances than would occur without this project, which would have positive impacts. The intended subsequent removal/cleanup of site debris and recreational site development of the property would involve some construction activities, such as the installation of a parking lot, boat launch, restrooms, or other recreational amenities. These activities may have short-term impacts to the environment that could be mitigated through best-management practices, but will have positive impacts in the long-term.
5. Human Health and Safety	No Adverse/Short- and Long-Term Adverse Impacts with Mitigation: The impacts to human health and safety are similar to those described under environmental impacts (criterion #4). There are also potential long-term negative impacts on local homeowners, such as increased noise, dust, and traffic, and an increased drowning hazard to the general public because of the increased access to the water on the property. Adequate management will probably mitigate these potential negative impacts through signage and maintenance.
6. Results of Response Actions	Consistent: Preliminary discussions between NRDP, DEQ, and FWP have indicated that DEQ would initially receive the property and would hold title until the remediation and restoration activities are completed and that DEQ will allow public access to the full extent it can without interfering with those activities. In this way, the project will not interfere or duplicate the results of any known EPA Superfund actions and will likely coordinate with the remediation of the Clark Fork River. GGTU has expressed concerns that the delay between the time of the purchase and the remediation and revegetation of the property will be lengthy and would like to investigate ways to expedite this process. In any case, any activities that would negatively interfere with future Superfund activities would not be allowed. The State would be afforded liability protection under CERCLA due to the pre-draft funding condition.
7. Natural Recovery Potential	May Reduce Recovery Period: This project could reduce the recovery period of the Clark Fork River by ensuring that restoration activities will occur on the property and providing for the protection of those activities.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: No permits will be needed for this project. The State agency that assumes title to the property will need to comply with state laws relating to weed control and weed management for public acquisitions, including the provisions of 7-22-2154. If the land is transferred to FWP in the future, approval of the FWP Commission and State Land Board is required.

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9. Resources of Special Interest	No Impacts: A database search did not indicate any documented cultural or historical sites on the property. There will be some ground disturbance associated with the restoration and remediation of the site and additional disturbance may occur if the property is developed as a fishing access site. The Tribes did not specifically comment on this project in their comments on the 2009 grant requests.[6] The DOI commented that, with public ownership, the Westside Ditch that runs through the property could become an attractive nuisance to the public; that this ditch may be eligible for listing on the National Register of Historic Places; and that acquisitions of such high monetary value should require a second appraisal.[7]
10. Project Location	Within Basin and Proximate: The project study area is within and adjacent to the Clark Fork River injured resource area.
11. Actual Restoration of Injured Resources	May Contribute to Restoration: This proposal may contribute to restoration activities by guaranteeing access to the property.
12. Service Loss/Restored & Service Restoration	Same: This acquisition would provide for public access to the Clark Fork River for natural resource-based recreational opportunities and for protection and enhancement of riparian and upland habitat and associated ecological services that are the same as lost recreational and habitat services addressed under Montana v. ARCO.
13. Public Support	11 Support Comments; 1 opposition comment: The NRDP received from the Clark Fork Coalition (2 letters), Clark Fork River Technical Advisory Committee (2 letters), FWP, Montana Trout Unlimited, Powell County Planning Department, and six area resident and one opposition letter from one area resident.
14. Matching Funds	No Cash Match, 0.5% In-kind Match: GGTU proposes in-kind match of $6,000 towards the title transfer and long-term management planning of the property.
15. Public Access	Increased Access Beneficial: GGTU seeks to facilitate the transfer of the property to a public entity for use as a state-owned fishing and recreational site. In the absence of other public acquisitions in the area, this site could provide the only public fishing access site on the Clark Fork River between Warms Springs Ponds and Deer Lodge. This increase in public access could provide for services lost that were covered in the lawsuit and a positive attraction to the area. However, with increased access there could be negative effects on local homeowners such as noise, dust from traffic, and an increased demand for governmental services. Overall, the NRDP believes the proposal will have a positive public benefit compared to these negative effects of the project.
16. Ecosystem Considerations	Positive: The acquisition will assist the ability of the State to conduct restoration and remediation of the Clark Fork River through the property and likely result in other natural resource improvements to the property.
17. Coordination & Integration	Coordinates/Integrates: The acquisition may coordinate and could integrate well with restoration activities on the Clark Fork River.

[6] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.
[7] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.

Summary of RPPC Criteria Evaluation Applicant: George Grant Chapter of Trout Unlimited	
18. Normal Government Functions	Outside of Normal Government Function: The proposed acquisition is not an activity a governmental entity is obliged by law to conduct or would normally conduct.
Property Acquisition Criteria	
19. Desirability of Public Ownership	Restoration and Replacement Beneficial: If approved, the property would guarantee that restoration activities would be conducted and that the area will be protected to best benefit the natural resources of the property. Acquisition would also replace fishing and water sport activities lost due to the release of hazardous substances. While the public ownership will increase the demand for governmental services and involve some reduction in tax revenues compared to that which would have been generated by development, the acquisition benefits are considered to outweigh these impacts. FWP pays taxes on the land it owns, but DEQ does not.
20. Price	At Fair Market Value: The price of the property of $1,156,000, or $4,250 per acre, is the fair market value determined by a certified appraiser and the price agreed to in principle by the landowner. There are no outstanding issues with the appraisal of the property, which was reviewed and approved by the NRDP as part of the PDG.

Department of Natural Resources and Conservation
Restoring Fish in East Fork Rock Creek

Project Summary

The Montana Department of Conservation and Natural Resources (DNRC) requests $1,365,000[1] to improve the East Fork Rock Creek fishery by: 1) designing and installing a fish screen to prevent fish from entering the Flint Creek Main Canal; and 2) allowing an additional 5 cfs of water to pass by the canal diversion structure to augment instream flows in a chronically dewatered reach of the creek. As part of the installation of the fish screen, DNRC requests funding to replace this large irrigation diversion structure, which is deteriorating due to age and also cannot be retrofitted to include a fish screen.[2] Project planning commenced in 2009, with project design planned for completion in early 2010 and construction planned for completion in late 2010. The total project costs are estimated to be $1,855,027, with $415,000 and $75,027 proposed as cash and as in-kind matching funds, respectively. Of the total costs of $1,855,027, $165,000 (9%) is for design (requested Restoration Funds), $1,600,000 (86%) is for construction ($1,200,000 requested in Restoration Funds; $400,000 to be provided in matching funds), and $90,027 is for project planning, management, and oversight (to be provided in matching funds).

The Flint Creek Main Canal is part of the State-owned Flint Creek Water Project that consists of the East Fork Reservoir and Dam, the East Fork Siphon, and four other canals supplied by the Main Canal (see Figure 17). The reservoir, dam, and diversion structure for the canal are located on U.S. Forest Service (USFS) property approximately 15 miles southwest of Philipsburg. The canal has a maximum capacity of 200 cfs and moves water from the East Fork Reservoir to the Flint Creek Valley for irrigation use by 46 ranches. The State contracts with the Flint Creek Water Users Association (FCWUA) to manage the Flint Creek Water Project.

The installation of a fish screen on the Main Canal was a condition of the USFS's special use permit issued to State in 1936, but this condition has never been met. DNRC indicates that the USFS required this fish screen as a funding condition in the award of federal grant funds for replacement of the East Fork Siphon, which was completed in 2008. The FCWUA has agreed to provide the 5 cfs of contracted reservoir water to augment instream flows downstream of the dam as part of the federal grant agreement to replace the siphon and to conduct long-term operation and maintenance activities on the fish screen.

East Fork Rock Creek is a tributary to the Middle Fork Rock Creek and is approximately 18 miles total in length. About 8.5 miles from its origin, it enters the East Fork Reservoir. It supports populations of bull trout, westslope cutthroat trout, brown trout, brook trout, and mountain whitefish. Fishery habitat and populations above the reservoir are considered to be

[1] In September 2009, DNRC reduced its original Restoration Fund request of $1,665,000 to $1,365,000 due to their success in obtaining an additional $300,000 in matching funds beyond the initial matching funds proposed in its application.

[2] It is not clear in DNRC's grant application that a new diversion structure is needed in order to install a fish screen. DNRC's June 2009 application for FRIMA funding indicates that the existing diversion is deteriorating due to age and requires replacement.

excellent, with a dominance of bull and westslope cutthroat trout. An adfluvial bull trout population currently resides in the reservoir and uses upstream reaches for spawning and rearing habitat. Westslope cutthroat trout, rainbow trout, and brook trout are also present in the reservoir, which is stocked by FWP. Below the reservoir, brook and brown trout populations are dominant and the habitat quality is generally poor.

During the summer irrigation season, the majority of the creek flow (95%) is diverted into the Flint Creek Main Canal, located about 0.3 miles below the East Fork dam, and ultimately into the East Fork siphon, resulting in fish loss. Limited FWP electrofishing surveys conducted in 2007 and 2008 after the irrigation season indicated that hundreds of trout are entrained annually in the diversion canal.[3] However, given that the volume of flow diverted of about 150 cfs into the canal during irrigation season and the duration of that season from May to October, it is likely that trout numbering in the thousands are entrained into the canal annually.[4] The reach directly below the canal diversion is chronically dewatered but regains flow through groundwater inputs, which provide a moderate amount of summer and winter stream flow in downstream reaches, although instream flows in these reaches are still less than desirable.

The mainstem of Rock Creek is designated a blue ribbon trout stream and the entire Rock Creek drainage is designated bull trout critical habitat. The U.S. Fish and Wildlife Service (USFWS) considers the East Fork to be an important spawning and rearing stream for recovery of the Rock Creek bull trout core area.

[3] In an October 2007 FWP electro-fishing survey, 163 trout (35 brook trout, 108 westslope cutthroat trout, 19 rainbow trout, and 1 bull trout) were found in the canal. In an October 2008 FWP electro-fishing survey, 208 trout (176 brook trout, 22 westslope cutthroat trout, 6 brown trout, and 4 rainbow trout) were found in the canal.

[4]This estimate of fish loss is based on input from FWP area fisheries biologist Brad Liermann and FWP regional fisheries manager Pat Saffel.

Figure 15

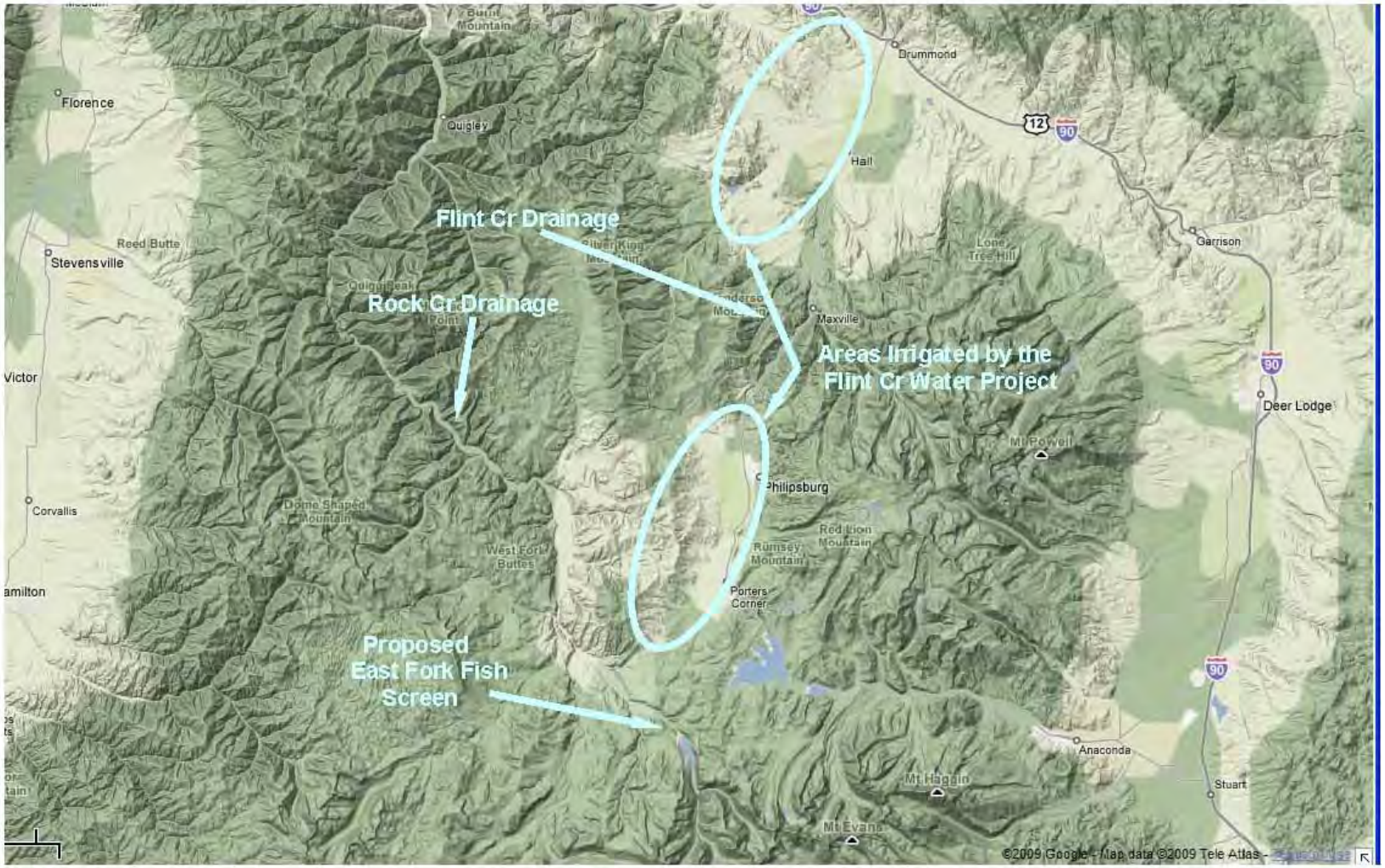


Figure 2: Project General Location Map – Drainage Locations and Irrigated Areas of Flint Cr Water Project

Summary of RPPC Criteria Evaluation for Restoring Fish in East Fork Rock Creek Applicant: Montana DNRC-State Water Projects Bureau	
Project Summary	The Montana Department of Natural Resources and Conservation (DNRC) seeks to improve the fisheries of the East Fork Rock Creek by: 1) designing and installing a fish screen to prevent fish from entering the Flint Creek Main Canal Diversion; and 2) allowing an additional 5 cfs of water to pass by this canal diversion to augment in-stream flows in a chronically dewatered reach of the creek. Total project costs are $1,855,027, with $1,365,000 requested in Restoration funds and $415,000 and $75,027 proposed as cash and as in-kind matching funds, respectively. Overall Application Quality: Good, however, the conceptual nature of the proposal lead to uncertainties.
Final Funding Decision and Funding Conditions	The Governor approved partial funding of this project for $370,000, subject to the following funding condition: "Given that the FCWUA has pledged via letter to perform regular upkeep and maintenance of the fish screen once it is installed, this commitment shall be formalized in an enforceable agreement with DNRC." The $370,000 would cover the costs of the project design and the fish screen components of the project that would restore natural resources, as further explained herein.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: The proposed project is technically feasible and, although there are some uncertainties that remain to be resolved due to the conceptual nature of the project, it is likely to achieve its goals of preventing fish loss to the Flint Creek Main Canal and enhancing flows to East Fork Rock Creek. DNRC proposes to install a new diversion structure that has a fish screen with a design life of 50 to 75 years. The actual type of fish screen to be installed will be determined during the design phase of this project. A contracted engineering firm working for DNRC will complete the project design. Fish screens have been successfully used to prevent fish entrainment, including screens that have handled flows as high as those of this project; however, there are numerous pros and cons and site-specific design challenges to various types of screens, and the screens need to be frequently maintained. Fish screen design needs to include analysis of: fish behavioral response to hydraulic conditions, weather conditions (ice, wind, flooding, etc.), river stage-discharge relationships, seasonal operations, sediment and debris problems, resident fish populations, potential for creating predation opportunity, and other pertinent information.[5] Due to the difficult nature of this analysis, some fish screens have not functioned properly. One such project, the German Gulch project, which was partially funded with Restoration Funds, has experienced some design and installation problems that have compromised the fish screen's effectiveness. DNRC's Water Project Bureau will competitively bid the installation of the fish screen and oversee the project and has expertise in managing the design and construction of large water projects statewide. FWP

[5] National Marine Fisheries Service, Southwest Region, Fish Screening Criteria for Anadromous Salmonids, January 1997.

Summary of RPPC Criteria Evaluation for Restoring Fish in East Fork Rock Creek Applicant: Montana DNRC-State Water Projects Bureau	
	has experience with a number of different types of fish screens, and DNRC will consult with FWP to assure that the fish screen design is suitable for the size and kinds of fish to be screened. The conceptual design and associated costs are based on screening for fingerling-sized fish. The FCWUA has pledged via letter to perform regular upkeep and maintenance of the fish screen once it is installed. This commitment should be formalized in an enforceable agreement with DNRC, if this project is funded. Via joint agreement with the Natural Resource Conservation Service (NRCS), the FCWUA has already agreed to a minimum by-pass flow of 5 cfs at the canal diversion and DNRC will monitor flows to ensure that the agreed-upon 5 cfs is maintained instream. The flow needed for proper function of the fish screen depends on the type and design of the screen, which have yet to be determined. Although it is uncertain at this conceptual phase of the project whether or not this 5 cfs by-pass flow will be adequate to prevent fish loss to the canal, it is likely that DNRC can reach the needed agreements with the FCWUA if additional by-pass flow is needed.
2. Costs:Benefits	Uncertain Benefits as Proposed; Commensurate Benefits as Recommended by the TRC: By enhancing fish passage and instream flows, this project will directly benefit the fishery of the East Fork Rock Creek, a tributary that supports native and non-native trout present and is considered by the USFWS to be an important spawning and rearing stream for recovery of the Rock Creek bull trout core area. Improvements to the fishery will also result in increased public fishing opportunities in the drainage and downstream. Fish previously lost down the diversion canal will remain within their native drainage. As explained in the project summary, it is likely that trout numbering in the thousands are entrained into the canal annually. Although the East Fork Dam prohibits some adult trout from returning to their spawning areas due to the barrier created by the dam, trout can migrate to spawn in other locations and recent sampling by FWP indicates some evidence of spawning occurring below the dam.[6] The 5 cfs by-pass flow regime will definitely improve flows to a chronically dewatered stream reach. Although data was not provided that indicates this flow would be sufficient to meet minimum fishery flow needs, with the planned 5 cfs by-pass flow regime, flow conditions below the canal diversion would be adequate for fish migration.[7] From the available limited fishery data, it appears that the fishery and fishing benefits of this project could be substantial. Other project benefits also include allowing DNRC to meet the legal requirements of its USFS permit and indirectly allowing the 46 ranches in the Flint Creek watershed who use this irrigation water to continue to operate and maintain the beneficial open spaces currently existing in this valley. There is significant uncertainty regarding project costs because of the conceptual natural of the proposal, as explained under cost-effectiveness. The estimated cost of $1.855 million is a rough estimate that appears to be on the high end,

[6] In October 2009, FWP area biologist Brad Liermann observed two redds below the dam that appear to offer some evidence that bull trout may spawn below the dam if they return to spawn and can't get back to the reservoir.

[7] Input from FWP area biologist Brad Liermann at the 10/28/09 Advisory Council meeting.

Summary of RPPC Criteria Evaluation for Restoring Fish in East Fork Rock Creek Applicant: Montana DNRC-State Water Projects Bureau	
	particularly in light of its inclusion of a 20% contingency. Without the greater certainty to project costs that would be accomplished through the proposed design effort, it is difficult to judge the cost:benefit relationship for this project. For reasons explained under the normal government function criterion (#18) and the service lost/service restored criterion (#12), and because there remains some uncertainty with regards to the magnitude of the fishery benefits, this project is recommended for partial funding of $370,000. This is the estimated cost of the project design and fish screen components, which are the project components most linked to fishery benefits and the restoration of natural resources. When considered with this recommended partial funding contribution from the Restoration Fund of $370,000, the project is considered to offer at least commensurate benefits.
3. Cost-Effectiveness	Potentially Cost-Effective: DNRC provided a limited analysis of alternatives and rough cost estimates in its application since the fish screen design is conceptual at this time and the agency is seeking grant funds to conduct a detailed analysis of alternatives, design the project, and determine exact construction costs. Given that the fish screen is a legal requirement, DNRC does not consider the no action alternative to be possible. DNRC believes its estimates are sound, as they are based on a Bureau of Reclamation guidance document for developing cost estimates for fish screens that was developed from a study of costs of fish screens conducted in Washington and Oregon, plus the estimated costs include a 20% contingency. DNRC proposes to design and build this fish screen using the State procurement process that has shown to be a cost-effective process to complete construction projects. While information at this conceptual stage of the project is insufficient to judge cost-effectiveness, DNRC's planned approach will likely result in the selection of a cost-effective design for the required fish screen to meet its goal of preventing fish loss to the Flint Creek Main Canal. With regards to the cost-effectiveness of the project achieving its goal of enhancing flows, the 5 cfs flow guarantee to the East Fork Rock Creek is not relevant since the FCWUA has already agreed to this and, thus, there are no costs associated with this aspect of the project.
4. Adverse Environmental Impacts	Short Term Adverse Impacts with Mitigation: Surface water quality and aquatic species, including the threatened bull trout, may be impacted in the short-term during the project construction activities. State and federal stream permitting requirements applicable to this project will require mitigation to reduce such impacts. These short term impacts are considered acceptable due to the long term natural resource benefits of this project. A detailed NEPA/MEPA process required for this project will provide further evaluation of this project, including a further evaluation of alternatives and of potential environmental impacts.
5. Human Health and Safety	No Adverse Impacts: The implementation of this project will have no adverse impact on human health and safety. There are positive impacts to the human environment associated with this project since it will help maintain irrigation water for ranches in the Flint Creek Valley.
6. Results of Response Actions	Not applicable

Summary of RPPC Criteria Evaluation for Restoring Fish in East Fork Rock Creek Applicant: Montana DNRC-State Water Projects Bureau	
7. Natural Recovery Potential	No Effect on Recovery Period: The implementation of this replacement project will not have any likely significant effects on the recovery of fish to the Clark Fork River. The project will have positive effects for the East Fork Rock Creek and Rock Creek fishery by keeping fish from being lost down the irrigation diversion and improving the water flows in the East Fork Rock Creek.
8. Applicable Policies and Laws	Consistent/Sufficient Information Provided: This project is consistent with the legal requirements. The applicant is knowledgeable of the appropriate requirements and indicates it will apply for all applicable permits and coordinate with local entities.
9. Resources of Special Interest	Beneficial Impact: This project will benefit native trout species, such as bull trout, that are of special interest to the Tribes and DOI. The DOI commented that no DOI properties are affected by this project and fisheries restoration is consistent with DOI interests.[8] The USFWS fisheries biologist indicates that East Fork Rock Creek is an important spawning and rearing stream for recovery of the Rock Creek bull trout core area and that installation of a fish screen at the Flint Creek Main Canal Diversion is an important step in recovering the Rock Creek core area designed in the USFWS draft Bull Trout Recovery Plan.[9] The USFWS will be involved in the environmental review process for this project since it involves the threatened bull trout and work on federal lands. The Tribes' commented that their potential support for partial funding of this project does not imply quantification or a waiver of the Tribes' reserved water rights claims that are currently subject of formal negotiation with the State of Montana.[10]
10. Project Location	Within and Proximate: This project is located within the UCFRB.
11. Actual Restoration of Injured Resources	No Restoration: This is a replacement project that is not likely to significantly accomplish or contribute to the restoration of the injured Clark Fork River fishery. Projects such as this one that will improve the spawning habitat of tributary streams in the Basin may augment remediation and restoration efforts aimed at improving the water quality and aquatic life of the Clark Fork River.
12. Service Loss/Restored & Service Restoration	Same/Similar: By improving the fishery in a tributary to Rock Creek, this project can improve fishing opportunities considered similar or equivalent to the fishing recreational services covered under Montana v. ARCO. The project costs as requested include project design costs, estimated at $165,000, and project implementation costs for the installation of a fish screen and the replacement of the existing diversion structure, which is deteriorating due to age and in addition, is not high enough to be retrofitted with a fish screen. It is unknown how much of the construction costs are strictly attributable to the fish screen component vs. diversion repairs that would be needed, regardless of the fish screen, due to the aging condition of the diversion structure. Pursuant to a request of the NRDP, DNRC provided an estimated breakdown of the

[8] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.
[9] March 12, 2009 e-mail from Mark Wilson, USFWS fisheries biologist to Kevin Smith of the DNRC.
[10] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.

Summary of RPPC Criteria Evaluation for Restoring Fish in East Fork Rock Creek Applicant: Montana DNRC-State Water Projects Bureau	
	project costs that indicated the components of the fish screen device have an estimated cost of about $150,000, with the caveat that this breakdown was a very rough estimate since the final design has not been completed.[11] Although there are other project costs directly attributable to the installation and construction of this fish screen, these costs cannot be readily estimated due to the conceptual level of the project. The NRDP believes that the project components that best meet the legal threshold of restoring or replacing services substantially equivalent to those covered under Montana v. ARCO are the design and fish screen components of the project. These are the components that the TRC's recommended funding of $370,000 is intended to address.[12]
13. Public Support	8 Support Comments: from the NRCS, USFWS, Flint Creek Water Users Association, Granite County Commission and four area residents.
14. Matching Funds	22% Cash and 4% In-Kind, plus possible additional match: DNRC will contribute an in-kind match of $75,027 (4%) for staff time working on project planning, bidding, oversight, and management. DNRC has obtained $300,000 of cash match from the USFWS through the Fish Restoration Irrigation Mitigation Act and $15,000 in DNRC planning grant funds and intends to apply for $100,000 from FWP's Future Fisheries Program. In addition to these matching funds, the water users have committed to conduct long-term operation and maintenance of the fish screen. DNRC estimates these costs to be $2,500 per year.
15. Public Access	No Access Change: This project takes place on public land; no new access will be created.
16. Ecosystem Considerations	Positive: This project fits within the broad ecosystem concept in that it will improve multiple natural resource problems, improve fishery populations, and help maintain the irrigation water supply to ranches in the Flint Creek watershed, thereby reducing the likelihood of potentially detrimental subdivision development activities.
17. Coordination & Integration	Coordinates/Integrates: This project coordinates and integrates with the 2008 East Fork Siphon project. It integrates with the USFWS draft Bull Trout Recovery Plan, which indicates installation of a fish screen at the Flint Creek Main Canal Diversion is an important step in recovering the Rock Creek core area. East Fork Rock Creek has been assessed as part of the FWP/NRDP on-going tributary prioritization project and future restoration projects in this watershed are a potential.
18. Normal Government Functions	Augments Normal Government Functions: This proposal involves improvements to a portion of a state-owned irrigation water project that are required by a USFS special use permit issued to the State for the East Fork Dam and Reservoir and also required as a condition of approval for the award of federal grant funds to replace the East Fork Siphon in 2007/08. While DNRC is specifically responsible for the proposed improvements, the NRDP views this proposal as one that augments, but does not replace normal government function, because DNRC typically relies on a combination of legislatively-appropriated funds, various grant funds, and fees collected from water users based on an ability-to-pay

[11] September 8, 2009 e-mail from Charles Atkins of DNRC to Doug Martin of NRDP.

[12] $370,000 covers the estimated costs of project design and fish screen components, with an added 18% contingency.

Summary of RPPC Criteria Evaluation for Restoring Fish in East Fork Rock Creek Applicant: Montana DNRC-State Water Projects Bureau	
	analysis to fund projects such as this one. In this respect, the project is not dissimilar to the Butte and Anaconda water system projects funded with Restoration Funds: the counties rely on a combination of grant funds and users fees to fund these improvements. Specific to the funding of this project, DNRC indicates: 1) that because the majority of the legislatively-approved funding for water projects are earmarked for repairs to high-hazard dams that represent a potential threat to the public, canal repairs and rehabilitations have been funded in the past 10 years almost completely by grant funds; and 2) that the water users have outstanding loans for previous rehabilitation projects to the East Fork Reservoir and Flint Creek canals such that they cannot afford to pay for this project as well. DNRC conducted an ability-to-pay analysis to determine how much rehabilitation work the water users can afford and indicated that the water users are making payments according to this analysis. The NRDP believes that DNRC has provided adequate justification as to why funding assistance from grant funds such as the Restoration Fund would result in implementation of a restoration project that would not otherwise occur through normal agency function. However, the requested funding is for actions that have been legally required of DNRC for a considerable length of time (since 1936). Given this, the NRDP recommends that, as a matter of policy, Restoration Funds should not constitute the majority of the funding for this project. The TRC's recommended partial funding of $370,000 constitutes about 20% of the estimated total project costs and, as such, would be consistent with this recommendation. While DNRC has applied for grant funds for this fish screen,[13] the NRDP believes that DNRC should also pursue additional administrative and legislative funding for this project, which the agency has recently indicated its intent to do.[14]

[13] DNRC applied for FRIMA and UCFRB Restoration Funds in 2009 and indicated its intent to apply for FWP Future Fisheries grant funds. DNRC applied for FRIMA grant funding for a fish screen in 2002, but the grant was not approved for funding.

[14] Although not indicated in the application, at the 10/28/09 Advisory Council meeting, Kevin Smith, State Water Projects Bureau Chief, indicated that the agency plans to seek funding for the project through the legislative funding process.

Fay Management, Inc.
KT Ranch Restoration Project

Project Summary

Fay Management, Inc. seeks funds to enhance fish, wildlife, and water quality resources by improving in-stream and riparian conditions on the 197 acre K-T Ranch located about 2.5 miles south of Drummond (see Figure 15). There are several wetlands and creeks that run through the ranch property, including about one mile of Flint Creek. Fay Management, Inc., who manages the ranch, proposes to restore portions of Flint Creek and three spring-fed tributaries and their associated wetlands on the KT Ranch that have been degraded by historic land management practices. They anticipate that restoring these degraded stream reaches will also improve the Clark Fork River fishery through additional recruitment.

The applicant requests $163,132[1] in Restoration Funds to complete the following tasks: reconstructing a headgate; narrowing over-wide channels; re-contouring actively eroding streambanks; stabilizing sensitive banks; installing large woody debris and habitat structures; revegetating riparian corridors on about 2,200 feet total of Flint Creek and about 6,000 feet total of the spring creek tributaries; and providing for some educational opportunities for local school children. The proposed total project budget is $485,456, with $272,744 proposed as cash and $49,580 proposed as in-kind matching funds, respectively. Of the $163,132 requested in Restoration Funds, $68,772 is for work on the spring creeks and $94,360 is for work on Flint Creek.

Flint Creek is an important tributary to the Clark Fork River that provides significant flow (a mean flow of about 140 cfs) to the Clark Fork River at Drummond. Flint Creek is an important recreational fishery and an important tributary for fish recruitment to the Clark Fork River. In 2007, FWP conducted fish population and riparian habitat surveys of the upper reaches and tributaries to Flint Creek. The fish surveys indicated that the majority of the fish are brown trout, though there are some other trout species present. The habitat surveys determined that some areas have problems with high cattle utilization, a lack of riparian vegetation, and warm water. The NRDP anticipates that a fair amount of restoration opportunities will be identified in the Flint Creek Basin in the future with further investigation as a part of the State's tributary prioritization process. Although this effort is not complete, a limited, qualitative assessment of fishery habitat in eight tributaries to the Upper Clark Fork River conducted by the state in 2008 indicates that fishery restoration efforts would be worthwhile in the lower 2.5 miles of Flint Creek, which includes the proposed project area.[2]

[1] In August 2009, the applicant revised the project scope in the original application by excluding the proposed channel relocation activities upstream of the Yellowstone Pipeline and revising proposed streambank stabilization and vegetation methods based on input from state permitting agencies. This resulted in a budget reduction of $51,122. The NRDP's evaluation is based on the revised project scope and budget.

[2] *Qualitative Assessment of Habitat in Eight Tributaries to the Upper Clark Fork River*, prepared by Dennis Workman for the NRDP and FWP, June 2009.

Figure 16

Map 2. The community of Drummond, MT, is the closet town to the proposed project site off of Interstate 90. The KT Ranch is approximately 2.5 miles south of Drummond in the Flint Creek Valley.

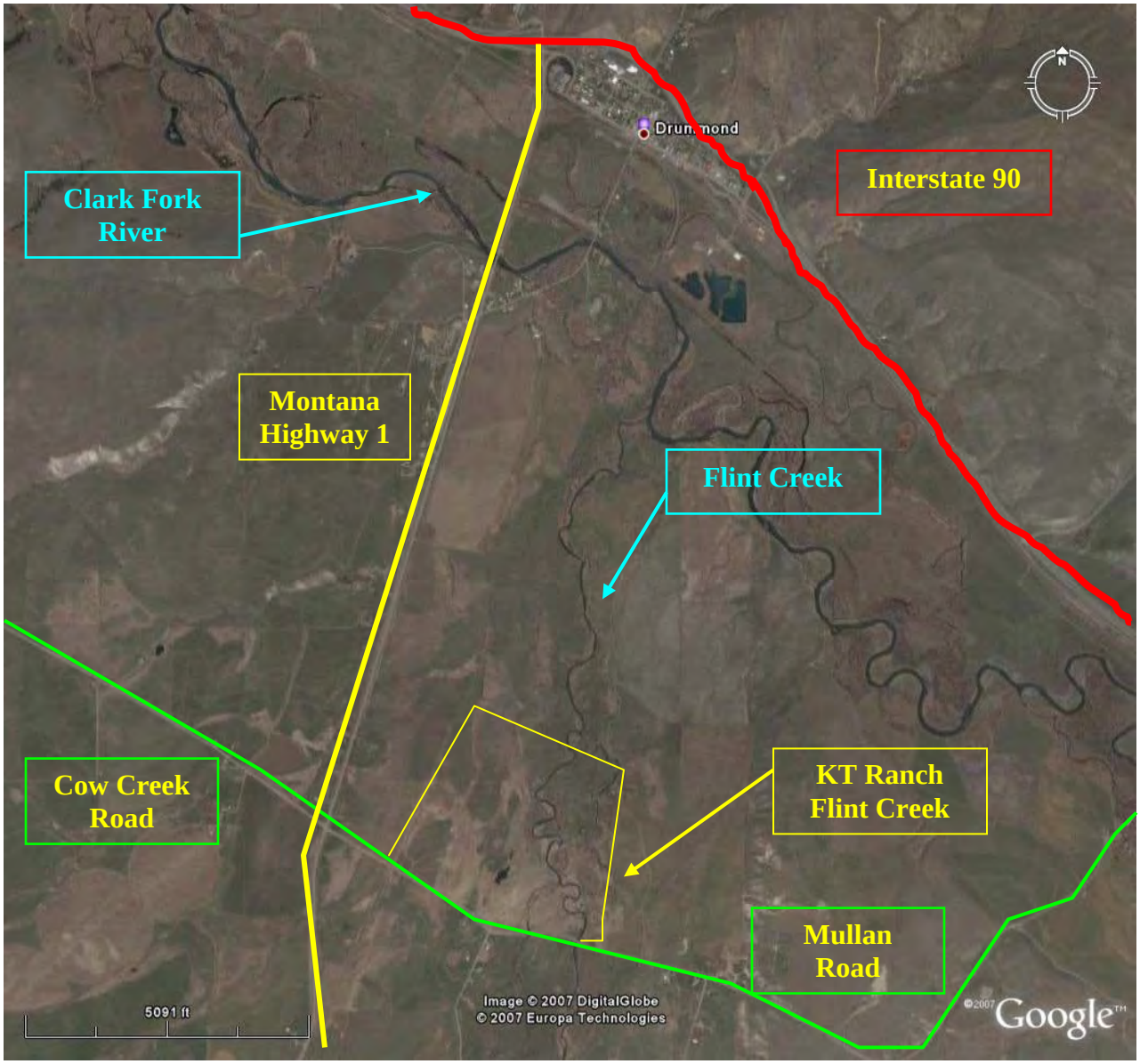
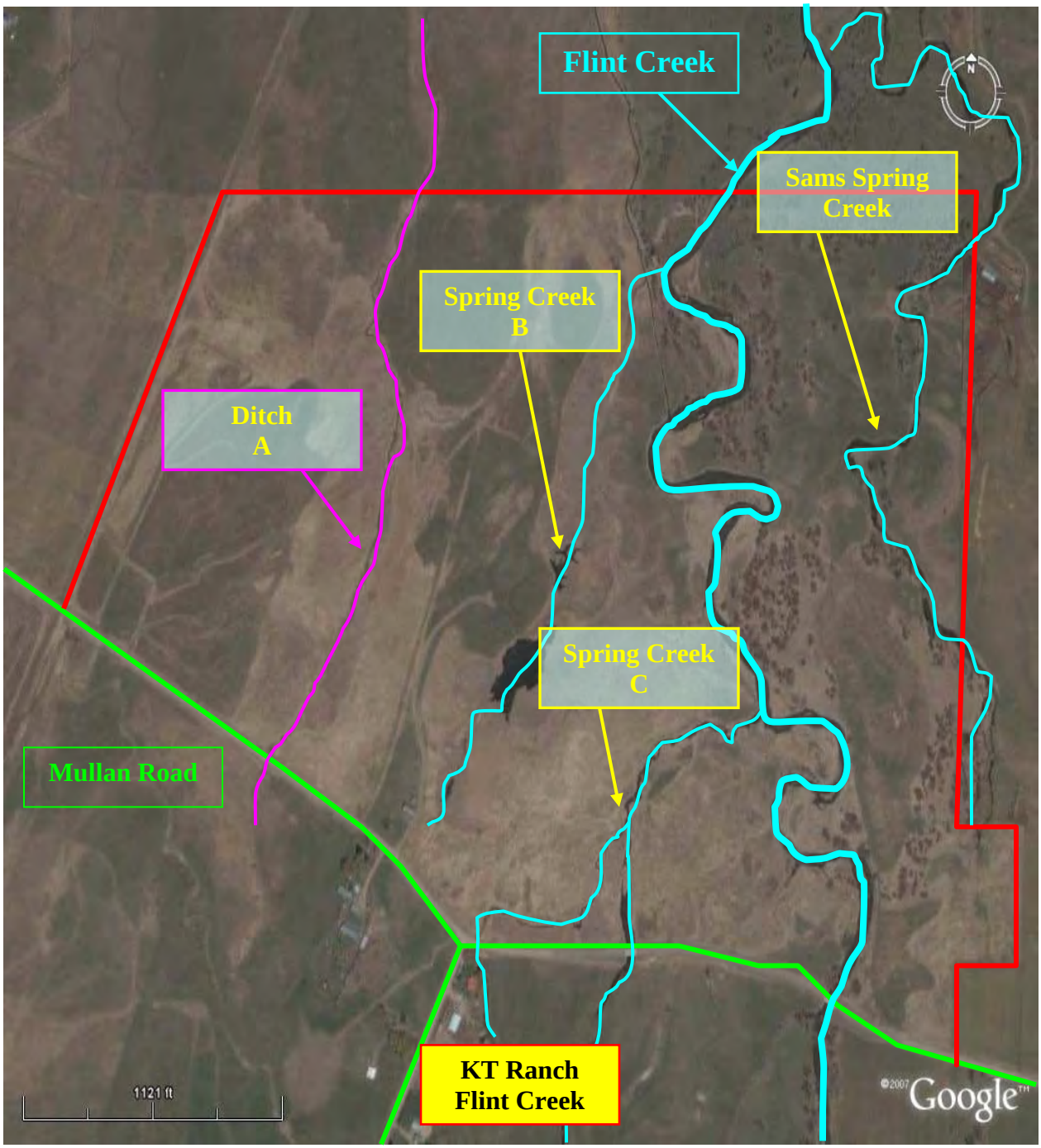


Figure 17

Map 3. The KT Ranch lies south of Drummond east of Montana Highway 1 on Mullan Road. This aerial view shows the ranch's property boundaries, Flint Creek, and the location of the three channels that have been identified and labeled as "spring creeks" for this document.



Summary of RPPC Criteria Evaluation for KT Ranch Restoration Project Applicant: Fay Management, Inc.	
Project Summary	Fay Management, Inc. requests $163,132 in Restoration Funds to enhance water quality and fish and wildlife resources by improving in-stream and riparian conditions on degraded sections of Flint Creek and of three spring creek tributaries to Flint Creek that are located on the 197-acre K-T Ranch located about 2.5 miles south of Drummond. The proposed total project budget is $485,456, with $272,744 proposed as cash matching funds and $49,580 proposed as in-kind matching funds. Application Quality: Good. The application included a detailed design, which allowed for an in-depth evaluation. The applicant also provided further information on its qualifications.
Final Funding Decision and Funding Conditions	The Governor did not approve funding for this project.
Criteria Evaluation	
1. Technical Feasibility	Reasonably Feasible: All of the proposed tasks are reasonably feasible. The applicant assessed the aquatic, riparian, and wetland conditions on the KT Ranch property. The proposed activities are accepted technology for repairing stream bank instability and channels that are excessively wide by reducing sedimentation and improving channel function and are thus likely to achieve project objectives. There are no uncertainties associated with the feasibility and effectiveness of the proposed berm removal, fencing, and riparian management activities. Although the proposed bank reconstruction has some risk of failure, these activities are similar to other bank stabilization activities, and the associated risks are reduced through the other proposed activities such as revegetation, fencing, and grazing management that increase the likelihood of success. The applicant has the needed qualifications to implement the project.[3] The landowner has expressed an interest in pursuing a conservation easement on the KT Ranch, which may further help ensure long-term effectiveness.[4]
2. Costs:Benefits	Net Cost: The project will likely result in some improvement to fishery resources of Flint Creek and associated fishing opportunities. Flint Creek is an important recreational fishery and tributary for fish recruitment to the Clark Fork River. Like many other stream restoration projects, however, it is difficult to quantify or assess the magnitude of the benefits gained to the fish populations by proposed revegetation, streambank, and channel work because the fish populations often change through time and are affected by many other parameters, such as yearly flow and water temperature variation, as well as fish movement. While the project reach is one that has been identified by the state as warranting

[3] Although information on the qualifications of the applicant was insufficient in the application as noted in the NRDP's minimum qualification determination, the applicant provided additional information demonstrating adequate qualifications to implement the project.

[4] Information provided in a 10/20/09 e-mail from Eric Reiland of Alpine Creek Restoration to Carol Fox of the NRDP.

Summary of RPPC Criteria Evaluation for KT Ranch Restoration Project Applicant: Fay Management, Inc.	
	fishery restoration work, this project, as proposed, involves an unnecessary amount of streambank stabilization, channel work and revegetation activities.[5] Consequently, the cost of many of the proposed activities are considered to exceed the benefits that would be derived from them, especially since the benefits do not include public access. The project benefits would have been greatly increased, likely to net benefits, if the addition of public access was included as a part of this project. In its October 2009 *Pre-Draft Work Plan*, the NRDP recommended partial funding of $58,282 for those project components that would derive the majority of the fishery benefits. Those components involved the removal of the existing berms from the floodplain, which would include revegetation of disturbed areas, fencing of the stream areas, and associated grazing management activities. The Trustee Restoration Council decided to not recommend any project funding, however, based primarily on input from Advisory Council members that this project did not merit funding without public access benefits and more surety that the improvements would be maintained in the long-term, such as through a conservation easement.
3. Cost-Effectiveness	Not Cost-Effective The applicant compared alternatives involving no action, land use practices only, complete stream reconstruction, and various combinations of partial/selective reconstruction activities to justify the original proposed design alternative. In the revised proposal, the applicant reduced the cost and eliminated some activities, including the proposed channel relocation upstream of the Yellowstone Pipeline, and changed the proposed type of bank stabilization. While this revised design alternative is an improvement over the original design alternative, due to the elimination of the more risky proposed channel relocation efforts, it is still not considered the best alternative for reaching the goals of the project due to the high cost of the streambank work and planned revegetation activities.[6] A more cost-effective alternative would be one that involves some reduced amount of streambank stabilization, at a reasonable cost, in addition to the berm removal, fencing, and grazing management activities. The NRDP did not pursue this alternative, however, since it would have involved a significant staff effort to rework the design and the application, which is beyond the grant evaluation process.
4. Adverse Environmental Impacts	Short-Term Adverse Impacts with Mitigation: The application adequately addresses potential short-term adverse impacts that will likely occur from construction activities, such as short-term turbidity increases. Mitigation measures will be required through permits for these activities to address these short-term impacts and the applicant adequately identifies and plans for proper mitigation measures.

[5] For example, the proposal includes over 41,000 springs and plantings to be placed on Flint Creek on a total of 3,000 feet of bank, which equates to over 13 plants/sprigs per foot of steambank, which is excessive. Based on a site visit, NRDP and FWP staff do not believe that all of the proposed 3,000 feet of bank treatment is warranted.

[6] The proposed price $89/ft of bank stabilization is high compared to the Silver Bow Creek and Milltown bank stabilization costs, which were $40/ft to $65/ft, respectively. However, it is possible that, with the required competitive bidding, the final cost would be less than the estimated amount on these types of activities.

Summary of RPPC Criteria Evaluation for KT Ranch Restoration Project Applicant: Fay Management, Inc.	
5. Human Health and Safety	No Adverse Impacts: Tasks which involve heavy construction equipment, such as stream work and berm removal, are expected to be safe as long as proper personal protective equipment and safe construction practices are utilized.
6. Results of Response Actions	Not Applicable: This proposal is not part of, nor does it involve coordination with, a Superfund action.
7. Natural Recovery Potential	May Reduce the Recovery Period: Flint Creek is a tributary of the Clark Fork River, therefore, restoration in this reach of the tributary could, to a very limited degree, enhance water quality and trout populations in the Clark Fork River, though the benefits are not likely to be measurable.
8. Applicable Policies and Laws	Consistent: The applicant identified and adequately planned for necessary permits. Although the application did not indicate that the project would be competitively bid, the applicant subsequently committed to complying with the State's contracting and procurement laws.[7]
9. Resources of Special Interest	Potentially Beneficial: This project can potentially benefit natural resources of special interest to the Tribes and DOI, such as native trout. The applicant conducted on-site reconnaissance of historical/cultural sites, submitted a cultural and historical resource database search, and plans for proper coordination if such resources are found to be located in the project area. The Tribes did not specifically comment on this project in their comments on the 2009 grant requests.[8] The DOI commented that no DOI properties are affected by this project and fisheries restoration is consistent with DOI interests.[9]
10. Project Location	Within the Basin: The K-T Ranch is located 2.5 miles south of Drummond and the confluence of Flint Creek with the Clark Fork River.
11. Actual Restoration of Injured Resources	May Contribute to Restoration: Improvements to fishery habitat in Flint Creek resulting from this project may contribute to trout recruitment to the Clark Fork River, though it would be difficult to measure its contribution.
12. Service Loss/Restored & Service Restoration	Same/Substantially Similar: The implementation of restoration activities on Flint Creek and its tributaries will enhance resources and area recreational services that are considered to be substantially similar to the injured resources and recreational services covered under Montana v. ARCO, such as fishing.
13. Public Support	22 Letters of Support: from the West Slope Chapter of Trout Unlimited, Montana Troutaholic Outfitters, the property landowner, and 19 individuals.

[7] Information provided in a 5/21/09 e-mail from Eric Reiland of Alpine Creek Restoration to Carol Fox of the NRDP indicates that Fay Management conducted a bidding procedure that resulted in the selection of Alpine Creek Restoration to collect data, design, and conduct permitting activities and that Fay Management would conduct a competitive procurement process for project implementation.

[8] November 3, 2009 letter from Chairman James Steele, Jr. of the Confederated Salish and Kootenai Tribes to Carol Fox of the NRDP.

[9] May 4, 2009 letter from Laura Rotegard of the DOI to Carol Fox of NRDP.

Summary of RPPC Criteria Evaluation for KT Ranch Restoration Project Applicant: Fay Management, Inc.	
14. Matching Funds	56% Cash Match; 10% In-Kind: As proposed, the applicant/landowner would contribute $166,104 in cash matching funds and seek $106,640 from the MFWP Future Fisheries Program for a total of $272,744 cash match and the applicant would provide $49,580 as in-kind matching funds, for a total match of $322,324. In January 2009, the Future Fisheries Program awarded $30,875 for proposed work on the spring creeks. The Future Fisheries Program decision on the proposed work for Flint Creek is pending.
15. Public Access	No Access Change: The project does not involve any enhanced public access. Access to Flint Creek can be and is obtained via the stream access law from a county bridge on the north end of the project area. There is room for a few vehicles to park on the county right-of-way near the bridge. The public does not, however, have any reasonable access to the spring creek portion of this proposal. Public fishing access sites on Flint Creek are lacking since the nearest fishing access site is on the Clark Fork at Drummond 2.5 miles away and there are no state-managed public fishing access sites on all of Flint Creek. The landowner requires permission to hunt on the property. In follow-up to an inquiry by the NRDP, the landowner is not willing to allow a public parking area for recreational access on the KT Ranch property.[10] If public access were allowed, the project benefits would be greatly enhanced.
16. Ecosystem Considerations	Positive: The project will benefit multiple natural resources and the applicant provides adequate justification on why work can be effective on the proposed stream reaches despite the existence of upgradient degraded stream reaches.
17. Coordination & Integration	Coordinates/Integrates: The applicant plans to coordinate with CFWEP and local schools to provide for school trips before, during, and after site restoration activities, though specific details on this task were not provided. DEQ is developing a Total Maximum Daily Load (TMDL) analysis for Flint Creek that will include sediment, nutrient, and metals TMDL for the lower portion of Flint Creek. This project shares a common goal with DEQ's TMDL effort to improve water quality of Flint Creek. Although the state's tributary prioritization effort is not complete, based on available assessment work, the proposed project area is one that warrants restoration work.[11]
18. Normal Government Functions	Outside: This project involves stream restoration activities on private lands for which conservation districts, NRCS, FWP, conservations or the landowner might normally seek grant funds. No government entity is specifically responsible for the proposed project activities, nor does any government entity receive funding for such activities in the normal course of events.

[10] The landowner's position on public access is communicated via a 5/21/09 e-mail from Eric Reiland of Alpine Restoration to Carol Fox of the NRDP.

[11] *Qualitative Assessment of Habitat in Eight Tributaries to the Upper Clark Fork River*, prepared by Dennis Workman for the NRDP and FWP, June 2009; available from the NRDP website at http://doj.mt.gov/lands/naturalresource/restorationroadmap.asp.

SECTION 3.0:

Overall Project Ranking & Funding Recommendations

3.0 PROJECT RANKING and DRAFT FUNDING RECOMMENDATIONS

This section summarizes the Governor's final funding decisions and specific funding conditions.

This section also indicates the NRDP's overall ranking of projects. The project ranking is based on the criteria evaluations summarized in the individual project evaluations tables contained in Section 2. The *RPPC* does not rank criteria in terms of importance, noting that "each criterion as applied to individual projects will vary in its importance depending on the nature of the project and unique issues it raises." A project does not need to meet all of Stage 1 and Stage 2 criteria in order to be considered worth funding. A project may rank poorly compared to others for a particular criterion, but that criterion may be inapplicable or relatively unimportant for that type of project. Or, the merits of a project based on some number of criteria may significantly outweigh its deficiencies noted for a particular criterion or multiple criteria. The adequacy and quality of an application affects how well the NRDP judges that a project meets certain *RPPC* criteria and, consequently, affects the project's overall ranking as well.

The application guidelines provided in Appendix B offer different categorizations for projects on how well they meet or address a particular criterion that the NRDP uses in evaluating and ranking projects. For example, for the technical feasibility criterion, projects are categorized as reasonably feasible, potentially feasible, uncertain feasibility, and not feasible. There are three criteria that dominate the ranking process: cost:benefit relationship, cost-effectiveness, and technical feasibility. Generally, projects that do poorly for one or more of these three criteria will rank lower relative to projects that do well for these three criteria. In considering costs, the NRDP evaluates the project both from the perspective of total costs and costs to the Restoration Funds. There are five criteria that give preference to projects that restore injured natural resources and lost services over projects that replace injured natural resources and lost services. Thus, a restoration project will typically rank higher than a replacement project unless the restoration project has deficiencies from a cost:benefit, cost-effectiveness, or technical feasibility aspect, or for some other criteria deemed important to the project. Two other criterion that can typically greatly influence ranking are the extent to which a project augments normal government function (the greater it augments, the lower its ranking) and the extent to which a project offers matching funds (the greater the match contribution, the higher the ranking). Matching funds are more of a factor with replacement projects than restoration projects because of multiple criteria that give preference to restoration projects over replacement projects, especially in a competitive year when grant cycle requests exceed the funding cap.

In March 2009, the NRDP received 13 grants proposals for a total funding request of $22.9 million. Subsequently, applicants for six of the proposals reduced their project requests. Two applicants reduced their requests due to success in obtaining additional matching funds. Other applicants reduced the scope and budget of their proposals in consideration of the NRDP's input on project components that had some significant uncertainties or components that could be postponed for funding consideration in a subsequent year, given that requests greatly exceeded available funding. The criteria evaluations and funding decisions for those proposals are based on the revised requests. With these changes, the total Restoration Fund request for all 13 projects was reduced by approximately $6.8 million, leaving the requested Restoration Funds at $16.1 million.

The NRDP ranked projects into the five broad categories specified below. These broad categories are slightly modified from the NRDP's ranking in the *Pre-Draft Work Plan* based on the Governor's final funding decisions. No additional ranking process was applied, thus the projects are listed in alphabetic order by project within each broad category.

1. Highly Ranked Projects Approved for Full Funding: Milltown Bridge Pier/Log Removal, Milltown Recreational Facilities and Access, and Silver Bow Creek Greenway

Ranking Rationale: These three projects are considered to be of net benefit and offer the greatest benefit to injured natural resources and associated lost services of the proposed projects. They thus rank better than the other projects for the multiple criteria that give priority to restoration of injured natural resources.

Of these three projects, the Greenway project offers the most substantial restoration benefits, with the majority (75%) of the project budget to be spent on ecological habitat and habitat improvements along 5.7 miles of Silver Bow Creek in direct coordination with remedy, thereby obtaining significant costs savings. The proposed access features involve key components of the planned 22 mile recreational corridor along Silver Bow Creek that will provide public access to and enjoyment of a variety of recreational opportunities in an ecologically-protective manner.

The Pier/Log Removal project involves direct restoration activities. The removal of the logs and piers will help restore the natural function of the Blackfoot and Clark Fork Rivers. It will also improve recreational services by improving boater safety in river reaches anticipated to have increased use following completion of remediation and restoration activities.

Although the Milltown Recreational Facilities and Access project is primarily a recreational service replacement project that will not directly restore injured natural resources, the proposed recreational access features will help protect the remediated and restored floodplain, similar to the Greenway project. The proposed public park that includes access, trail and user facilities, combined with the associated initial 5-year operation and maintenance activities, will provide quality recreational and open-space enjoyment opportunities to an anticipated large number of people that will frequent the Confluence Area and assure public use occurs in an ecologically-protective manner. It will also acquire about 180 acres of lands at the confluence area that are likely to be of high recreational use value, provide wildlife habitat, offer outdoor classroom opportunities for area school children, and integrate well with the other planned state acquisitions in the confluence area.

While all three projects are considered reasonably feasible, the Milltown Recreation project has more uncertainties and thus, funding conditions, associated with the many steps of the land acquisition component that remain to be completed (title, appraisal, survey work) than the other two projects. The Greenway and Pier/Log Removal project budgets are based on sound cost information derived from similar projects that were recently competitively-bid and implemented and thus are considered cost-effective. Although more conceptual in its design phase than the other two projects, the Milltown Recreation project is considered likely cost-effective based on FWP's experience with similar park projects state-wide and based on land acquisition costs at or below appraised fair market value.

The Greenway and Pier/Log Removal projects are considered outside of normal government function. The Milltown Recreational project is considered to acceptably augment normal government function since FWP is not required nor currently funded to develop or maintain the proposed recreational facilities.

The Milltown Recreational project has limited matching funds (1%), although a possibility exists that additional matching funds could be obtained and thereby reduce the Restoration Fund request. The other two projects do not have matching funds. With greater matching funds, these three projects would have been considered to be of high net benefit.

2. Medium Ranked Projects Approved for Full Funding: Big Hole Transmission Line (Year 3), Moore Acquisition, Peterson Ranch Conservation Easement, and Warm Spring Ponds Recreational Improvements

Ranking Rationale: These projects are replacement projects that are judged to be of net benefit, offering substantial benefits at a reasonable cost, reasonably feasible, and cost-effective. These projects generally rank lower than the three projects in category #1 because they are replacement rather than restoration projects and thus do not do as well for the multiple criteria that give preference to restoration of injured natural resources and lost services. None of these projects have significant uncertainties that remain to be resolved. Similar to the Milltown land acquisition components, the Moore and Peterson acquisition projects have remaining due diligence land transaction work that remains to be done, thus necessitating funding conditions, but these two projects have less of such work to be completed compared to the Milltown project. These two land acquisition projects are outside normal government function, whereas the other two medium-ranked projects augment normal government function.

Replacement of the Big Hole Transmission Line, which delivers up to 70% of Butte's water supply and is in serious disrepair, offers substantial benefits to Butte and Rocker residents and compensatory restoration for the lost use of the Butte's bedrock groundwater, which cannot be restored. Benefits include improved delivery of a reliable drinking water source; reduced demand on water resources; reduced water pumping, treating, and transportation costs; reduced repair costs; and improved flows and fire protection. Matching funds are 20%.

Public acquisition of the 30 acre Moore property will protect critical winter range and a key movement corridor for the Anaconda bighorn sheep herd and a popular wildlife viewing area. Matching funds are 17%.

The Peterson Ranch easement project will result in permanent protection of 3,775 acres of high quality wildlife habitat that includes extensive open native grasslands that provide critical winter range for elk and mule deer. It also enhances recreational services through the designation of a non-motorized recreational trail for public use on the property. The requested Restoration Funds are substantially below, or 30%, of the estimated appraised value of the easement, with 40% of the easement value covered by federal grant matching funds and 30% of the easement value covered through landowner donation, for a total match of 70%.

The Warm Springs project will provide improved sanitary and recreational services for the public at a reasonable cost. FWP's proposed limited improvements will take care of immediate

and near-term maintenance needs and thus should not interfere with the final remedy determination for the Warm Springs Ponds site. Matching funds are 4%.

3. Lower Ranked Projects Approved for Full Funding: Anaconda Waterline (Year 8), Bird's-eye View Education Project, Butte Waterline (Year 9), and Paracini Pond Acquisition.

Ranking Rationale: These replacement projects generally rank lower than the medium-ranked projects because they are judged to have benefits considered commensurate with costs, or because they are considered less feasible or cost-effective than the higher ranked projects.

The Paracini Pond Acquisition project is judged to be of net benefit. It will enhance public recreation, including both river and pond fishing opportunities; secure opportunities for restoration that may not otherwise occur under private ownership; and provide for the facilitation and long-term protection of remediation and restoration activities on about one mile of the Clark Fork River on the property. It is ranked lower than the other projects that are judged to be of net benefit because of its uncertain feasibility. The landowner has not met the deadlines set by the NRDP and GGTU for completion of the buy/sell agreement, which lends great uncertainty to the feasibility of this acquisition.

The Bird's-eye View Education project provides a unique "hands-on" opportunity for children and adults to learn about birds and their habitats and how riparian areas were injured and are being restored. Because there is some uncertainty as to whether the program will achieve the desired level of participation, the project was judged to be of potential net benefits and potentially cost-effective and thus is ranked lower than projects judged to be of net benefits.

The Anaconda and Butte waterline projects will enhance existing water supplies from uncontaminated sources and are an effective way to compensate these communities for the pervasive and extensive injuries to area groundwater resources. Benefits include improved fire protection; reduced pumping, treatment, repair, and property damage costs that result from reduced leakage; and reducing the need to seeking additional water main replacement. They are reasonably feasible and considered to offer benefits that are commensurate with their costs, thus ranking lower than projects considered to be of net benefit. They also rank lower from a cost-effectiveness standpoint because they do not involve additional metering, which, combined with water system improvements, would be the most cost-effective way to achieve water conservation benefit, as indicated in the county water master plans. The waterline projects augment normal government function to a greater extent than other projects that ranked higher, except for the Big Hole Transmission Line project, which offers a greater magnitude of benefits and had greater matching funds than the two waterline projects. Relative to each other, the Butte Waterline project offers greater matching funds of about 16% compared to about 10% for the Anaconda Waterline and the Butte community has a greater proportion of metered users (45% in Butte compared to 12% in Anaconda).

4. Projects Approved for Partial Funding: Restoring Fish in East Fork Rock Creek

By enhancing fish passage and instream flows, the East Fork project will directly benefit the fishery of the East Fork Rock Creek, a tributary that supports native and non-native trout and is considered by the USFWS to be an important spawning and rearing stream for recovery of the Rock Creek bull trout core area. A large number of fish, estimated to be in the thousands,

previously lost to the Flint Creek Main Canal will remain in their native drainage. There are, however, significant uncertainties with the project due to the conceptual nature of the proposal, particularly the costs, such that the cost:benefit relationship is uncertain. The project, as proposed, substantially augments normal governmental function at an unacceptable level because the proposed fish screen has been a permitting requirement since 1936. It also involves some improvements to an irrigation structure that would need to be replaced regardless of the required fish screen installation. Based on these three considerations/criteria, and because there remains some uncertainty with regards to the magnitude of the fishery benefits, the Governor approved partial funding of $370,000. The $370,000 would cover the costs of the project design and the fish screen components of the project that are most linked to fishery benefits and the restoration of natural resources.

5. Projects Not Approved for Funding: KT Ranch Restoration Project

The KT Ranch project will likely result in some improvement to fishery resources of Flint Creek and associated fishing opportunities. Flint Creek is an important recreational fishery and tributary for fish recruitment to the Clark Fork River. While the project reach is one that has been identified by the state as warranting fishery restoration work, this project, as proposed, involves an unnecessary amount of streambank stabilization, channel work and revegetation activities. Consequently, the costs of many of the proposed activities are considered to exceed the benefits that would be derived from them, especially since the benefits do not include public access. The project benefits would have been greatly increased with the addition of public access as a part of this project.

In its *October 2009 Pre-Draft Work Plan*, the NRDP recommended partial funding of $58,282 for those project components that would derive the majority of the fishery benefits. Those components involved the removal of the existing berms from the floodplain, which would include revegetation of disturbed areas, and the fencing of the stream areas, with associated grazing management activities. Both the Advisory Council and Trustee Restoration Council did not recommend any project funding, however, primarily because of the lack of public access benefits and lack of surety that the improvements would be maintained in the long-term, such as through a conservation easement. The Governor did not approve funding for this project.

Table 3-1 identifies the Governor's funding decisions and funding conditions. Pursuant to the *RPPC*, three funding conditions apply to all projects. First, the applicant must enter into a grant agreement with the NRDP which provides the details of how the project will be funded in accordance with the final Restoration Work Plan approved by the Governor. Second, funding should be contingent on the NRDP's approval of the final design for various components of the projects. Third, the proportionate share of matching funds recognized by the NRDP in the project-specific criteria narrative will apply to project implementation, and adequate documentation of both in-kind and cash matches will be required.

Table 3-1. Summary of the Governor's Final Decisions and Funding Conditions

Project	Approved Restoration Funding	Project Specific Funding Conditions[1]
1. Highly Ranked Project Approved for Full Funding: (Projects in this category are listed in alphabetic order and not in any ranking order)		
Milltown Bridge Pier and Log Removal	$262,177	1) that the NRDP approve of landowner agreements; and 2) that grant activities be coordinated with DEQ's remedial action to remove the Stimson cooling pond.
Milltown/Two Rivers Recreational Facilities and Access – **Revised**	$2,663,749	1) that the purchase price for the land acquisition is at or below the fair market value determined by an appraisal approved by the NRDP or the requested $1,080,000, whichever is less, and that the State's cost for the appraisal, survey, and title work and insurance and related matters be deducted from this purchase price; 2) that title of the lands proposed for acquisition is not subject of any restrictions, including third party mineral ownership, that would negatively affect the recreation/conservation use/value or materially encumber the title; 3) that, prior to commissioning the appraisals and surveys, TNC provide the NRDP with preliminary title commitments for each of the parcels and copies of all encumbrances and related documents cited in those commitments; 4) that the NRDP approve the appraisal and survey engagement letters and instructions prior to the commissioning of those services; 5) that the NRDP review and approve of all land transaction documents, such as title commitment, surveys, deeds, appraisals, and buy/sell agreements, prior to closing; 6) that a deed restriction and reversion in favor of the State be placed on Parcel #1, which is to be owned by the Bonner School District, to assure the property has a recreation/conservation end use in the long-term; 7) that a reservation for a trail easement on Parcel #1 be provided for in the transfer of Parcel #1 to the Bonner School District; and 8) that the NRDP review and approve the bridge design as being not inconsistent with the State's restoration of the Milltown site.
Silver Bow Creek Greenway– **Revised**	Reduced funding of $1,500,000	No additional funding conditions
2. Medium Ranked Projects Approved for Full Funding: (Projects in this category are listed in alphabetic order and not in any ranking order)		
Big Hole Transmission Line – Year 3	$2,666,618	No additional funding conditions

[1] These project-specific funding conditions are in addition to the general funding conditions listed on p.3-6 that apply to all projects.

Project	Approved Restoration Funding	Project Specific Funding Conditions[1]
Moore Acquisition	$142,500	1) that the NRDP approve of land transaction documents (e.g. buy/sell agreement); 2) that NRDP conduct a CERCLA All Appropriate Inquiries prior to the State acquiring the property in order for the State to attain liability protection under CERCLA; and 3) that FWP commit to complying with CERCLA Continuing Obligations after acquiring the property in order for the State to maintain liability protection under CERCLA.
2. Medium Ranked Projects Approved for Full Funding, continued:		
Peterson Ranch Conservation Easement – **Revised**	$334,125	1) that the NRDP review and approval of the land transaction documents that remain to be finalized (including the buy/sell agreement, title commitment, terms of the conservation easement and deed, and final appraisal)
Warm Springs Ponds Recreational Improvements	$82,989	No additional funding conditions
3. Lower Ranked Projects Approved for Full Funding: (Projects in this category are listed in alphabetic order and not in any ranking order)		
Anaconda Waterline – Year 8	$1,988,478	No additional funding conditions
Bird's-eye View Education Project – **Revised**	Reduced funding of $100,000	No additional funding conditions
Butte Waterline - Year 9	$2,684,747	No additional funding conditions
Paracini Pond Acquisition– **Revised**	$1,184,205	1) that the NRDP approve all pending land transaction documents (e.g. buy/sell agreement) prior to closing; and 2) that the NRDP conduct a CERCLA All Appropriate Inquiries prior to the State acquiring the property in order for the State to attain liability protection under CERCLA.
4. Lower Ranked Projects Approved for Partial Funding		
Restoring Fish in East Fork Rock Creek - **Revised**	Reduced Funding of $370,000	Given that the FCWUA has pledged via letter to perform regular upkeep and maintenance of the fish screen once it is installed, this commitment shall be formalized in an enforceable agreement with DNRC.
5. Projects Not Funded		
KT Ranch Restoration Project - Revised	$0	
Total Recommended Funding	**$13,979,588**	

APPENDIX A:

Input from Advisory Council, DOI, and Tribes

Final Advisory Council Recommendations on 2009 Grant Proposals
Summary of Actions Taken at December 16, 2009 Advisory Council Meeting

The Advisory Council voted unanimously to recommend the same draft funding conditions for the following nine projects for which the Council's draft funding recommendations were the same as those of the TRC and in the Drat Work Plan:

• Milltown Bridge Pier and Log Removal	$262,177
• Silver Bow Creek Greenway – Revised	$2,336,914
• Big Hole Transmission Line – Year 3	$2,666,618
• Moore Acquisition	$142,500
• Peterson Ranch Conservation Easement – Revised	$334,125
• Warm Springs Ponds Recreational Improvements	$82,989
• Bird's-eye View Education Project – Revised	$172,946
• Butte Waterline – Year 9	$2,684,747
• KT Ranch Restoration Project – Revised	Not Recommended for Funding

The Advisory Council separately considered the other four projects for which there had been difference between the AC and TRC recommendations:

Milltown/Two Rivers Recreational Facilities and Access: Discussion focused on the Parcel 1 B Hill. Members recognized the input of local community on the merits of the acquisition. The Council voted unanimously in favor of the full project as proposed for the $ 2,663,749, including the Parcel 1 acquisition.

Anaconda Waterline: Discussion focused on the metering issue. Anaconda area Council members met with County officials and felt the concerns about metering had been adequately voiced and being addressed. County officials indicated they would not apply for a grant next year unless the proposal included a metering component. The Council voted in favor of recommendation to fund the proposal as requested ($1,988,478) without any additional funding condition, with the Tribes abstaining.

Paracini Ponds: Discussion focused on issue of whether to leave the door open for a partial purchase if full purchase did not go. The Council voted unanimously for a motion that left flexibility so that if negotiations weren't successful, other options could be considered without having to go through another year-long grant process. Motion language passed: "Recommend the full proposal for funding ($1,184,205), but if negotiations on it are not successful, allow an optional project to be considered for funding separate from the grant cycle process."

East Fork: The Council voted unanimously to recommend funding at $370,000 as recommend by TRC and not with the additional language of "or 20%, whichever is less."

UPPER CLARK FORK RIVER BASIN
REMEDIATION AND RESTORATION
ADVISORY COUNCIL

TO: Trustee Restoration Council

FROM: Bill Rossbach, Advisory Council Chairman

DATE: November 9, 2009

RE: Advisory Council Draft Funding Recommendations

Following is a summary of the Advisory Council's draft funding recommendations for the thirteen 2009 grant proposals determined at our November 4, 2009 meeting.

- Milltown Bridge Pier and Log Removal – Recommended for full funding (9-0 vote)
- Milltown/Two Rivers Recreational Facilities and Access – Recommended funding for entire project except for the funding of the acquisition of parcel 1 ("B" Hill) (7-3 vote)
- Silver Bow Creek Greenway – Recommended for full funding (10-0 vote)
- Big Hole Transmission Line (Year 3) – Recommended for full funding (9-0 vote)
- Moore Acquisition – Recommended for full funding (10-0 vote)
- Peterson Ranch Conservation Easement – Recommended for full funding (10-0 vote)
- Warm Springs Ponds Recreational Improvements – Recommended for full funding (9-0 vote)
- Anaconda Waterline (Year 8) – Recommended for full funding, contingent upon the county providing a plan and time frame for metering acceptable to staff before the contract for the new waterlines is put out for bid (9-0 vote)
- Bird's-eye View Education Project – Recommended for full funding, with a suggestion to have adequate osprey blood sampling (10-0 vote)
- Butte Waterline (Year 9) – Recommended for full funding (9-0 vote)
- Paracini Pond Acquisition – Recommended for full funding with understanding that, if needed, a revised project could be considered (10 – 0 vote)
- KT Ranch Restoration Project – Not recommended for funding unless there is a guarantee of public access (7-3 vote)
- Restoring Fish in East Fork Rock Creek – Recommended for partial funding of $370,000 or 20% of total project costs, whichever is less (10 – 0 vote)

United States Department of the Interior

NATIONAL PARK SERVICE
Grant-Kohrs Ranch National Historic Site
266 Warren Lane
Deer Lodge, Montana 59722

N 2219 (2)

May 4, 2009

Carol Fox
Restoration Program Chief
Natural Resource Damage Program
P.O. Box 201425
Helena, MT 59620-1425

Dear Carol,

The United States Department of the Interior (USDOI) has reviewed the applications submitted for funding under the 2009 Upper Clark Fork River Basin Restoration Fund Grant Program. The focus of our review was two-fold: (1) how the projects might impact DOI properties, trust resources, or legislative responsibilities; (2) the overall appropriateness of each project given the funding guidelines; and 3) notes stemming from consistency in procedures of how the board handled similar projects in years past. Our comments on the reviewed applications are as follows:

Anaconda Waterline –Year 8 **$1,988, 478**
This project involves continued improvements to the Anaconda drinking water system. This is the seventh consecutive year of ADLC water project funding requests. This project will upgrade drinking water lines. While this project does replace lost ground water resources in Anaconda, a comparison of total estimated project costs to the value of the settled injury claim would be useful in assessing the appropriateness and scale of future project funding, particularly in terms of establishing an appropriate total funding value relative to settlement.

Avian Science Center- **$ 577,159**
The pilot project of this program was well received by visitors at Grant-Kohrs Ranch NHS. NPS goals for resources education are served well by this project.

Big Hole Waterline –Year 3 **$2,666, 617**
This project involves continued improvements to the Butte drinking water system.

Butte Waterline – Year 9 **$2,684,747**
This project involves continued improvements to the Butte drinking water system. This is year 8 of a 15 year replacement project for lost ground water resources in the Butte area.

CFC Blackfoot River pier and log removal- **$ 262,177**
Log removal by NRDP funds is questioned. Isn't this the responsibility of Mill? If Mill contributes in kind labor towards this project, it would serve as match. There is no match showing at this time.

DNRC East Fork Reservoir & Flint Creek Improvements **$1,665,000**
No DOI properties are affected and fisheries restoration is consistent with DOI interests.

Five Valleys Land Trust Moore Acquisition **$142,500**
This project replaces lost services. Improvement of habitat for Bighorn Sheep is consistent with DOI interests. Does price include 10% endowment for weed management? If not, suggest additional funding be set aside for this issue.

FVLT Peterson Easement **$495,000**
The conservation of natural grassland resources as replacement for lost services is consistent with DOI interests. If Mullan Road is listed on the National Register at state or national level, then NPS requests consultation with SHPO for preservation strategies to be incorporated into easement. Easement appraisals are highly specialized with only a few practitioners.

Although this is a large amount, requesting a second appraisal for comparison, is unlikely to be successful. Does easement assume any liability for public use, or weed management in partnership with owner? Costs? Even with questions, this is a well rounded and developed partnership effort.

Fish, Wildlife, Parks Warm Springs Ponds Improvements & Maintenance **$ 82,989**
DOI recognizes NRDP obligations to provide for absorbed recreational facilities but regrets that maintenance and public safety costs were not endowed at the time of transfer from ARCO. Improvement of public recreational facilities is within DOI interests and we see no negative impacts to DOI properties.

Milltown Recreation & Lands **$6,083,686**
This project is a replacement for lost services and is within appropriate project guidelines. Enhancing the confluence area for public use and recreation is within interests of DOI and we see no negative impacts to DOI properties. DOI supports this project.

Silver Bow Creek Greenway-Year 8 **$4,899,688**
This project is a continuation of the Greenway Trail Project and complements remedial action currently underway along Silver Bow Creek.

TU Paracini Ponds Acquisition **$1,190,955**
This project has a number of concerns that we would like to see addressed. 1) The West Side Ditch passes in close proximity to the west side of the pond in a deeded easement for ¼ mile within the Don Beck property. Grant-Kohrs Ranch is a 1/7 shareholder in the Ditch. The ditch is an open water conveyance and is not designed to protect the public from trespass that could endanger people. It contains rapidly flowing water and could be an attractive nuisance. Public access near the ditch exposes the Ditch Company and the US Government to risk and/or costs that need to be mitigated. This acquisition introduces a level of public access that occurs nowhere else along the 11 mile ditch system. 2) The WSD may be eligible for listing on the National Register of Historic Places at either or both the state and national levels in association with the Grant-Kohrs Ranch NHL, and the company is considering this process. 3) NRDP acquisitions of this high money value should require a second appraisal. The certification level of the Appraiser should be that of an MAI, or its equivalent. The current Appraisers use national accreditation language, but they do not list certification.

KT Ranch Restoration **$ 214,254**
Improvement of water quality and fisheries habitat is consistent with DOI interests and we see no negative impacts to DOI properties.

Sincerely,

Laura Rotegard
LR/ks

cc: Karen Nelson, USFWS
Greg Nottingham- NPS Case Manager, UCFRB
Dr. Mark Baumler, MT SHPO

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
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A People of Vision

A Confederation of the Salish, Upper Pend d'Oreilles and Kootenai Tribes

November 3, 2009

Carol Fox, Restoration Chief
Natural Resources Damages Program
1301 East Lockey
P.O. Box 201425
Helena, MT 59620-1425

Dear Ms. Fox:

RE: 2009 PRE-DRAFT UPPER Clark Fork RIVER BASIN RESTORATION WORKPLAN

This letter transmits the Confederated Salish and Kootenai Tribes (Tribes) comments on the 2009 Pre-Draft Upper Clark Fork River Basin (UCFRB) Restoration Work Plan October 2009. These comments are provided pursuant to the *Memorandum of Agreement among the State of Montana, Confederated Salish and Kootenai Tribes and United States Department of Interior Regarding Restoration, Replacement or Acquisition of Natural Resources in the Clark Fork River Basin.* These comments are not exhaustive but highlight the Tribes' culture resource concerns and other selected issues.

Project Implementation and Protection of Tribal Cultural Resources

The Tribes and the NRDP have discussed the need for the parties to jointly review NRDP's procedures for project implementation and meeting the provisions of the MOA concerning protection of Tribal Cultural Resources / Tribal Religious Sites (Section IV (7) (a)) and protection of undiscovered /undocumented cultural resources (Section IV (7) (c)). The parties have been very successful on cooperating on this MOA and we look forward to concluding the joint review prior to NRDP awarding grants for the 2009 workplan. To accomplish this goal we will contact you this week to schedule a meeting.

Milltown / Two River Recreational Facilities and Access

The Tribes actively participate in remediation and restoration of the Milltown Sediment Removal Area through consultation and coordination with the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality and the Montana Natural Resources Damages Program. We believe the access trail and land acquisition components are necessary to ensure protection of State and Federal investments in

remediation and restoration at the Milltown SRA. State ownership and management of lands surrounding the confluence of the Clark Fork and Blackfoot rivers provides additional benefits including greater protection of Tribal Cultural Resources, greater protection of natural resources of special interest, and appropriate access to usual and accustomed areas. Designated Tribal Cultural Resources areas occur within the project area and there is potential for encountering undocumented or undiscovered cultural resources during construction. The applicants should treat cultural resources information as privileged and confidential and should not specifically identify the location of cultural resource areas in information intended for public distribution. This project would be a priority for the joint review of NRDP project implementation procedures and protection of Tribal Cultural Resources discussed previously.

Silver Bow Creek Greenway

The SBC Greenway project has the potential to significantly improve injured Treaty-protected resources and appropriate access to usual and accustomed areas. The project has the potential to encounter undiscovered and undocumented cultural resources during construction. Because this project implements restoration concurrent with remediation this project is also priority for joint review of NRDP project implementation procedures and protection of Tribal Cultural Resources discussed previously

Restoring Fish in East Fork Rock Creek

The proposed project implicates Tribal resources of special concern, notably native trout and water. The Tribes and the State of Montana Reserved Water Rights Compact Commission are presently involved in formal compact negotiations to quantify the Tribes' reserved water rights on the Flathead Reservation and the Tribes' aboriginal water rights off the Flathead Reservation including East Fork Rock Creek. In addition the location of the State-owned water project on Forest Service land triggers certain Trustee responsibilities of the U.S. Forest Service to federally recognized Indian Tribes which cannot be delegated to a State agency. The Tribes' potential support of the Pre-Draft funding conditions and funding recommendations does not imply quantification or waiver of the Tribes' rights to East Fork Rock Creek water or a waiver of relevant trust responsibility.

Five Valleys Land Trust Conservation Easement - Peterson Ranch

The project area contains potential undocumented cultural resources including lithic scatter sites and Native American campsites. Tribal staff have not yet visited the site to survey potential Tribal cultural resources as stated in the Pre-Draft criteria evaluation. However we request reasonable access to the Peterson Ranch to allow Tribal Preservation Office staff to document and preserve Tribal knowledge of the cultural resources.

Bird's Eye View of the Upper Clark Fork River Basin

The Tribes request that CFWEP coordinate with the University of Montana to actively recruit Tribal students to ensure that a reasonable percentage of the anticipated 1600 students are Tribal students (students who are self identified Tribal members).[1] This

[1] For example send request letters to tribal schools on the Flathead Reservation and tribal social or cultural groups that have a nexus with Tribal students living off the Reservation in the UCFRB.

request is a continuation of coordination between the NRDP, the Tribes and CFWEP initiated in 2008 regarding adequate Tribal representation in educational programs funded through the Clark Fork Restoration Fund.

General Comment

While reviewing the 2009 Pre-Draft Restoration Workplan we reflected upon one of the Tribes' fundamental positions: That the Upper Clark Fork River ecosystem is a unitary resource and what we believe to be the joint goal to preserve the river where it is now healthy and restore it where it is now damaged. To these ends we have long asserted that a comprehensive UCFRB restoration plan is necessary to inform restoration decisions and responsibly approve or disapprove restoration projects. We understand the NRDP, in consultation with MFWP, is developing restoration plans and identifying restoration priorities for aquatic and terrestrial resources. We believe such plans are necessary to ensure that Clark Fork Restoration Fund expenditures reflect the intent of Montana v. ARCO as well as requirements of the Consent Decree and settlement agreements. In order to facilitate continued co-trustee cooperation the Tribes propose that the Advisory Council resume discussions regarding a roadmap to guide allocation of the Clark Fork Restoration Fund among injured areas and injured resources.

Thank you for your commitment to and work on restoring injured natural resources as well as your continuing commitment to the Memorandum of Agreement between the Tribes, the State and the Department of Interior. Please continue to coordinate with Mary Price, Legal Department Staff Scientist and Stu Levit, Legal Department Staff Attorney regarding the issues identified in these comments.

Sincerely
Confederated Salish and Kootenai Tribes

James Steele, Jr.
Chairman – Tribal Council

APPENDIX B:

Application Review Guidelines

UCFRB RESTORATION GRANTS

2009 APPLICATION REVIEW GUIDELINES

Introduction

The January 2007 *UCFRB Restoration Plan Procedures and Criteria* (*RPPC*) provides the framework for expending Restoration funds and describes the criteria to be used to evaluate Restoration Grant Projects. To help in these evaluations, the NRDP developed the following Application Review Guidelines based on the *RPPC*. These Guidelines categorize the likely manner in which restoration projects meet or address a particular criterion. For example, for technical feasibility, projects are categorized as reasonably feasible, uncertain feasibility, or not feasible. These categories provide a framework to assist in evaluating and comparing projects consistently. Reviewers should note that it is the explanatory text for each criterion provided in the detailed Project Criteria Narratives, not the titles provided in this guidance to categorize projects that forms the basis of judging how well a project addresses a particular criterion. The titles/headers should not be misconstrued to denote a certain level of ranking or adequacy in meeting the *RPPC* criteria. In addition, certain projects may have unique aspects for a certain criterion for which none of the broad categories provided herein are appropriate.

STAGE 1 CRITERIA REQUIRED BY LEGAL CONSIDERATIONS

1. TECHNICAL FEASIBILITY

General Considerations: Reviewers should bear in mind that the ultimate question to be answered under this criterion is: To what degree is the project likely to achieve its objectives? As per DOI regulations, "Are the technology and management skills necessary to implement the project well known and does each element of the plan have a reasonable chance of successful completion in an acceptable period of time?" To evaluate both the technology aspects and management aspects, the application asks for a scope of work as well as information regarding successful application of the selected technology to similar sites. We are not just evaluating whether a particular technology has been successfully applied in the past, but also whether it will work as applied to this particular project as planned by the applicant.

Reasonably Feasible: The following descriptions apply to a project that is "Reasonably Feasible."

- The project employs well-known and accepted technology in design, engineering and implementation components of the project, and/or;

- The project applicant demonstrates that any innovative technologies proposed in the project are reasonably likely to achieve their stated objectives.

- Any uncertainties/issues requiring future resolution associated with the project are insignificant.

- There is a reasonable degree of confidence that the technologies proposed to be utilized in the project (whether well-known and accepted or experimental or innovative) can be applied to the project site to achieve their stated objectives.

- The project applicant demonstrates management skills necessary to implement the technologies at the project site in an acceptable period of time.

Based on these findings, the project is "Reasonably Feasible," and is therefore reasonably likely to achieve its objectives.

Potentially Feasible: Projects in this category have a few uncertainties that could be significant but it appears they can be resolved and the project can achieve its objectives.

Uncertain Feasibility: If any of the following descriptions apply to a project that otherwise satisfies the description of a "Reasonably Feasible" project, then the project is of "Uncertain Feasibility."

- It is uncertain whether any innovative or experimental technologies proposed in the project are likely to achieve their stated objectives.

- There are many significant uncertainties associated with the project that require future resolution.

- It is uncertain whether the technologies proposed to be utilized in the project (whether well known and accepted or experimental or innovative) can be applied to the project site to achieve their stated objectives.

- It is uncertain whether the project applicant demonstrates management skills necessary to implement the technologies at the project site in an acceptable period of time.

Based on these findings, the project is of "Uncertain Feasibility," and therefore the likelihood of the project achieving its objectives is uncertain.

Not Feasible: The conclusion that a project is "Not Feasible" may be based on one or more of several possible findings, including:

- Technologies (or a technology) proposed in the project are (is) not likely to achieve their (its) stated objectives.

- The project applicant does not demonstrate management skills necessary to implement the technologies (technology) at the project site in an acceptable period of time.

Based on these findings, the State concludes that the project is "Not Feasible," and therefore not likely to achieve its objectives.

2. RELATIONSHIP OF EXPECTED COSTS TO EXPECTED BENEFITS

General Consideration: Pursuant to this criterion, reviewers should evaluate to what extent a project's costs are commensurate with the benefits it provides. All costs and benefits, both direct and

indirect, should be considered in this evaluation. Costs include monetary and other costs associated with the project. Because some project benefits and costs may be hard to quantify, reviewers should not attempt to assign a monetary value to all costs and benefits.

Note: Because this criterion involves a weighting of all public natural resource and service benefits expected to be derived from a project against all costs associated with the project, it is suggested that reviewers undertake this evaluation only after completing all other Stage 1 and Stage 2 criteria evaluations. If the project is part of a larger project, reviewers should evaluate the costs/benefits from the perspective of the benefits the project achieves by itself and its costs, as well as the benefits of the larger project and its costs. This criterion will ultimately be used to relatively compare projects. At this stage, however, the evaluation is confined to assessing the degree to which the project's costs are commensurate with the project's benefits.

High Net Benefits: Project benefits significantly outweigh/exceed costs associated with the project.

Net Benefits: Project benefits outweigh/exceed costs associated with the project.

Commensurate Benefits and Costs: Project benefits are generally commensurate with, or proportionally equal to, costs associated with the project.

Net Costs: Project costs outweigh/exceed benefits to be gained from the project.

High Net Costs: Project costs significantly outweigh/exceed benefits to be gained from the project.

Uncertain: There are some uncertainties to the project that lend variability to the cost:benefit relationship or there is an insufficient basis upon which to judge this relationship.

3. COST-EFFECTIVENESS

General Consideration: The analysis of cost effectiveness evaluates whether a particular project accomplishes its goals the least costly way possible, or whether there is a better alternative. For example, if the project replaces a service, is this the most cost-effective way to replace that service? In our application guidelines, we asked applicants to provide:

1. A description of alternatives to the proposed project that were considered, including the no-action alternative;

2. A comparison of the benefits and costs of each alternative (to the extent possible); and

3. Justification for the selection of the preferred alternative.

Note: Whereas the previous criterion compared all of the costs and benefits associated with the project as proposed by the applicant, this criterion requires reviewers to compare the project as proposed with alternative methods of accomplishing the same or substantially similar goals. Reviewers should not limit this evaluation to the alternatives discussed by applicants. If the applicant does not discuss an obvious alternative, reviewers should consider that alternative in reaching their conclusions on cost-effectiveness.

Cost Effective: The applicant provides a complete and thorough analysis and the selected alternative is most cost-effective.

Likely Cost Effective: Although the applicant only provided a limited analysis of alternatives, based on available information, the State concludes that the selected alternative is likely to be cost-effective.

Potentially Cost Effective: There are some unknowns regarding the project such that the State can not definitively conclude whether it is or is not cost-effective, but the applicant proposed an adequate approach to reach a cost effective alternative.

Not Cost Effective: A suitable alternative exists that will produce the same or similar level of benefits, but at significantly lower costs.

Uncertain: Insufficient information is available to conclude that the selected alternative is likely to be cost-effective.

4. ENVIRONMENTAL IMPACTS

General Consideration: To what degree will the project adversely impact the environment? Reviewers will evaluate to what degree the applicant has properly identified and addressed any potential short-term or long-term adverse impacts that significantly affect the quality of the human environment. For Montana Environmental Policy Act (MEPA) compliance, we will need to assure that all adverse environmental impacts and reasonable alternatives have been adequately characterized and considered during decision-making. If this assurance is uncertain, we may conduct some further evaluation or seek supplemental information.

Note: In the application, we divided our information requests to applicants regarding the impacts to the human environment into "environmental impacts" and "human health and safety" components. In this section, reviewers should consider applicant responses in the "environmental impacts" section as set forth in the application. In the following section, reviewers should consider applicant responses in the "human health and safety" section as set forth in the application. For assistance with MEPA terminology, please refer to Attachment A.

No Adverse Impacts: Without mitigation, the project presents no potential adverse impacts, either significant or minor, to the environment.

No Significant Adverse Impacts: Without mitigation, the project presents no potential significant adverse impacts to the environment. The project involves the potential for some minor adverse environmental impacts that do not rise to the level of significance.

Short-Term Adverse Impacts with Mitigation: The project presents potential significant short-term adverse environmental impacts. Mitigation measures, however, are included in the project that reduce otherwise significant adverse environmental impacts to below the level of significance. Mitigation that reduces significant adverse environmental impacts to below the level of significance results in a finding of no significant adverse impacts.

Long-Term Adverse Impacts with Mitigation: The project presents potential significant long-term adverse environmental impacts. Mitigation measures, however, are included in the project that

reduce otherwise significant adverse environmental impacts to below the level of significance. Mitigation that reduces significant adverse environmental impacts to below the level of significance results in a finding of no significant adverse impacts.

Significant Adverse Impacts with Insufficient Mitigation: The project presents potential significant adverse environmental impacts, either short-term or long-term, and includes no (or insufficient) mitigation measures to reduce the otherwise significant impacts to below the level of significance.

5. HUMAN HEALTH AND SAFETY IMPACTS

General Consideration: To what degree will the project have an adverse impact on human health and safety? If this is uncertain, further evaluation may be conducted or supplemental information may be gathered.

No Adverse Impacts: Without mitigation, the project presents no potential adverse impacts, either significant or minor, to human health and safety.

No Significant Adverse Impacts: Without mitigation, the project presents no potential significant adverse impacts to human health and safety. The project involves the potential for some minor adverse human health and safety impacts that do not rise to the level of significance.

Short-Term Adverse Impacts with Mitigation: The project presents potential significant short-term adverse human health and safety impacts. Mitigation measures, however, are included in the project that reduce otherwise significant adverse human health and safety impacts to below the level of significance. Mitigation that reduces significant adverse human health and safety impacts to below the level of significance results in a finding of no significant adverse impacts.

Long-Term Adverse Impacts with Mitigation: The project presents potential significant long-term adverse human health and safety impacts. Mitigation measures, however, are included in the project that reduce otherwise significant adverse human health and safety impacts to below the level of significance. Mitigation that reduces significant adverse human health and safety impacts to below the level of significance results in a finding of no significant adverse impacts.

Significant Adverse Impacts with Insufficient Mitigation: The project presents potential significant adverse human health and safety impacts, either short-term or long-term, and includes no (or insufficient) mitigation measures to reduce the otherwise significant impacts to below the level of significance.

6. RESULTS OF SUPERFUND RESPONSE ACTIONS

(Readily Available Information)

General Consideration: This criterion considers the results, either existing or anticipated, of completed, planned, or anticipated (if there is a reasonable measure of confidence in the anticipated action) UCFRB Superfund response actions. To what degree would the project be consistent with, augment or, alternately, interfere with or duplicate the results of such actions, including Superfund investigations and evaluations?

Note: A finding of inconsistency with response actions will usually, but not always, mean that the action is inappropriate or unjustifiable. As stated in the RPPC, the State will tend to favor projects that augment response actions rather than undo a response action. If, however, the State considers a response action to be ineffective and non-beneficial, then interference or inconsistency with the response action may positively improve restoration of natural resources to baseline. This should be assessed on a case-by-case basis. If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.

Positive Coordination: The project coordinates with and augments the results of an effective Superfund action(s).

Consistent: The project may or may not augment the results of an effective Superfund response action(s), but it will not interfere with or duplicate the results of such an action(s).

Inconsistent but Potentially Beneficial: The project would interfere with or duplicate the results of an ineffective Superfund action(s).

Inconsistent: The project would interfere with or duplicate the results of an effective Superfund action(s).

7. RECOVERY PERIOD AND POTENTIAL FOR NATURAL RECOVERY

(Readily Available Information)

Note: If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.

General Consideration: Will the proposed restoration project affect the time frame for recovery of the injured resource and if so, to what degree? In addition to information presented by the project applicant, reviewers should rely on the 1995 Restoration Determination Plan and backup injury assessment reports to estimate natural recovery potential for injured resources addressed by the project. For projects that involve actual restoration of natural resources and, consequently, services, this criterion aims at determining just how well the project enhances the recovery period – does it significantly hasten that recovery? This criterion also evaluates the potential for natural recovery of an injured resource. If a resource is expected, on its own, to recover in a short period of time, a restoration action may not be justified.

Note: Given that the State recovered damages for past lost value of natural resources and services, it is not critical that all replacement projects consider the potential for recovery of the injured resource or services being replaced. This consideration may be relevant, however, when comparing replacement projects and relatively weighing the necessity of replacing one service or resource over another. For example, one project may replace services that will recover naturally in one year, while another project replaces services that will not recover naturally for 500 years. Depending on the service or natural resource replaced, the State may favor one of these projects over the other, based on the fact that the services or natural resources replaced will naturally recover in a short period of time for one project and not the other. For this reason, reviewers should consider recovery potential in the context of replacement projects.

Reduces the Recovery Period: The project enhances recovery potential of the injured resource and/or services provided there by reducing the time in which they will recover to baseline.

Note: This is a qualitative evaluation that should be assessed on a scale ranging from slight enhancement to complete restoration/replacement to baseline.

May Reduce the Recovery Period: It is possible but not certain that the project may reduce the time in which the injured resources and/or services provided thereby will recover to baseline.

No Effect on Recovery Period: The project most likely will not change the time frame for recovery.

Increases Recovery Period: The project diminishes recovery potential of the injured resource and/or services provided thereby by lengthening the time in which they will recover to baseline.

8. APPLICABLE POLICIES, RULES AND LAWS

(Readily Available Information)

General Consideration: To what degree is the project consistent with all applicable policies of state, federal, local and tribal government, including the *RPPC*, and in compliance with applicable laws and rules, including the consent decree?

The application requested information from applicants regarding four sub-issues: (1) permits obtained and any other permits required to complete the project, including pertinent dates; (2) deeds, easements or right-of-way agreements required to complete the project; (3) communication and coordination with local entities; and, (4) the effect, and consistency/ inconsistency with other laws, rules, policies, or consent decree requirements. The State may supplement applicant's information to the extent necessary to assess consistency with applicable policies and compliance with applicable laws and rules.

Note: For this criterion, applicants for projects over $10,000 were only required to submit readily available information. Applicants for projects of $10,000 or under were not required to address this criterion. Thus, the State may need to supplement information to evaluate this criterion. If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.

Consistent/Sufficient Information Provided: The applicant has provided sufficient information to make the following determinations:

- All permits necessary to complete the project on schedule are identified and obtained, or reasonable assurance is provided that they will be obtained.

- All deeds and easements or rights-of-way necessary to complete the project on schedule are identified and obtained, or reasonable assurance is provided that they will be obtained.

- As necessary, the applicant has demonstrated that communication and coordination with local entities has occurred, or reasonable assurance is provided that such communication and coordination will occur.

- The applicant has demonstrated measures taken to comply with, and that the project is otherwise consistent with, other laws, rules, policies, or consent decree requirements.

Consistent/Insufficient Information Provided: Based on information provided by applicant and supplemented by the State on Attachment B, it has been demonstrated that the project is consistent as described above.

Inconsistent: After supplemental information has been obtained by the State (if necessary), the State concludes that the project may not be implemented consistent with policies of state, federal, local and tribal government, including the *RPPC*, or in compliance with applicable laws and rules, including the consent decree.

9. RESOURCES OF SPECIAL INTEREST TO THE TRIBES AND DOI

(Readily Available Information)

General Consideration: Are any of the following located in the vicinity of the proposal? This criterion will require NRDP consultation with Tribes and DOI. For affirmative response, indicate whether the project may have a positive or negative impact on Tribal cultural resources or Tribal religious sites (as defined in the MOA) and/or natural resources of special environmental, recreational, commercial, cultural, historical, or religious significance to the Tribes or DOI. Projects of potential negative impact require special consideration according to the provisions of the MOA. If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.

Beneficial Impact: Project will have or may have beneficial impacts on these special sites/resources.

No Impact: Project has no adverse impacts on these special sites/resources.

Minor Adverse Impact: Project has potential minor adverse impacts on these special sites/resources but protective measures have been integrated or can be easily integrated without significant project changes.

Major Adverse Impact: The project has potential major adverse impacts on these special sites/resources that will require further consideration under terms of the MOA.

STAGE 2 CRITERIA REFLECTING MONTANA POLICIES

10. PROJECT LOCATION

General Consideration: This criterion requires evaluation of the geographic proximity of the project to the injured resources it proposes to restore or replace. The *RPPC* and application instructions express a preference for restoration (or replacement) projects that occur at or near the site

of injury, with the exception of Big Blackfoot River native trout restoration or replacement activities (see specific instructions below). There is no absolute scale of distance to determine proximity. Rather, proximity may be judged independently for each project, depending on a number of factors including the natural resource injury addressed and the geographic extent of benefits that may accrue from the project.

Specific instructions regarding Big Blackfoot River native trout restoration or replacement activities: For projects on the Big Blackfoot River watershed outside of the Milltown Dam area that an applicant states are intended to restore native trout that cannot, from an economic or practical standpoint, be restored in the UCFRB, categorize the project into the "Big Blackfoot Exception" below. Analyses conducted pursuant to other criteria will determine whether the project will actually accomplish what it says it will. For the purposes of the "Big Blackfoot Exception" only, rely on applicant's statement for this criterion.

Within Basin and Proximate: All or most of the restoration or replacement activities associated with this project will be conducted at or reasonably near the site of natural resource injury to be addressed through the project.

Within Basin and Proximate/Other: Some of the restoration or replacement activities associated with this project will be conducted at, or reasonably near, the site of natural resource injury to be addressed through the project. Some of the restoration or replacement activities associated with this project will be conducted at other locations away from the site of natural resource injury to be addressed through the project.

Within Basin: All or most of the restoration or replacement activities associated with this project will be conducted at a location that is within the UCFRB but away from the site of natural resource injury to be addressed through the project.

Outside But Serves the Basin: While the project is located outside the Basin, it services users inside the Basin.

Big Blackfoot Exception: Applicant states that this project proposes native trout restoration or replacement activities located in the Big Blackfoot River watershed which cannot, due to practical or economic considerations, be conducted within other areas of the UCFRB.

Not Applicable: The project is a research or monitoring project.

11. <u>ACTUAL RESTORATION OF INJURED RESOURCES</u>

General Consideration: The *RPPC* states that actual restoration of the resources that are injured should be given priority. This criterion requires evaluation of whether, and to what extent, the project will restore injured natural resources that were the subject of the <u>Montana v. ARCO</u> lawsuit.

Note: The term "restore" under this criterion is used in its specific meaning, i.e., actions are designed to return injured resources and services provided thereby to baseline conditions or accelerate the natural recovery process.

Restoration: All aspects of the project are intended to accomplish restoration of an injured natural resource.

Restoration/Other: Some aspects of the project are intended to accomplish restoration of an injured natural resource.

Contributes to Restoration: Although the project is not intended to directly accomplish restoration of an injured natural resource, some aspects of the project contribute to the restoration of an injured natural resource.

May Contribute to Restoration: Although the project is not intended to directly accomplish restoration of an injured natural resource, some aspects of the project may contribute to the restoration of an injured natural resource.

No Restoration: The project is not intended to accomplish restoration of an injured natural resource, nor is it likely to contribute to restoration of an injured natural resource.

12. RELATIONSHIP BETWEEN SERVICE LOSS AND SERVICE RESTORATION

General Consideration: The *RPPC* states that proposed restoration projects (general sense) that closely link the services that are the project's focus with the service flows that have been impaired, will be favored over projects that do not. To address this criterion, reviewers should examine the connection between the services that a project seeks to provide or augment and the services lost or impaired as a result of natural resource injuries.

Note: Complex projects may involve a combination of the following categories. Reviewers should note which aspects of each project fall into each of the categories.

Same/Substantially Similar: The services restored or augmented by the project are the same or substantially equivalent to services lost or impaired due to natural resource injury.

Similar: The services restored, augmented, or replaced by the project are not the same or equivalent to, but are similar to those lost or impaired due to natural resource injury.

Dissimilar: There is no connection between the services lost or impaired and the services provided or augmented by the project.

13. PUBLIC SUPPORT

General Consideration: What is the extent of public support for the project demonstrated in the application?

For this criterion, the State will identify the number of letters received by the State in either support or opposition to the project and identify the entities providing these letters. The evaluation conducted pursuant to these instructions is based exclusively on information available at the time of the evaluation, which is primarily the letters of support provided in an application. Subsequently, public support may be demonstrated throughout the funding selection process (e.g., at the pre-draft and draft review stages). This evaluation will need to be updated at each stage in the funding selection process. Public comment may demonstrate further support, opposition, or a mixture of support and opposition.

14. MATCHING FUNDS

General Consideration: To what extent does the project entail cost sharing?

For this criterion, the State will identify the amount of matching funds and indicate how much are cash contributions and how much are in-kind contributions. The State will calculate matching funds by determining the percentage of the total project costs for activities under the project's scope of work to be funded by other sources besides Restoration funds. For projects that are part of a larger project for which future funding will be sought, the State will only consider the matching funds dedicated to the phase of the project that is to be funded by Restoration funds. For land acquisition projects, the State will accept as matching funds payments or donations that make up the difference between the funding request and the appraised value.

Note: If necessary, reviewers will need to consult matching fund entities to determine the likelihood of matching funds. The State's determination of matching funds will not always match the applicant's determination.

15. PUBLIC ACCESS

General Consideration: This criterion evaluates whether a project will affect public access and the positive or negative aspects of any increased or decreased public access associated with the project. Public access is not required of every project, nor is it relevant to all projects.

Increased Access Beneficial: The benefits from the new or enhanced public access created by the project outweigh the adverse impacts associated with this increased access.

Increased Access Detrimental: The adverse impacts associated with new or enhanced public access created by the project outweigh the benefits associated with increased access.

No Access Beneficial: While public access is relevant and could have been a project component, increased access would have been detrimental to the restoration of injured or replacement natural resources in the long-term.

No Access Change: The existing acreage and methods of public access would not change as a result of the project.

Not Relevant: Public access is not a component of the project, nor is it relevant to the project.

16. ECOSYSTEM CONSIDERATIONS

General Consideration: This criterion examines the relationship between the project and the overall resource conditions of the UCFRB. The State will favor projects that fit within a broad ecosystem concept in that they improve a natural resource problem(s) when viewed on a large scale, are sequenced properly from a watershed management approach, and are likely to address multiple resource problems.

Positive: The project positively fits within a broad ecosystem concept in that it improves a natural resource problem when viewed on a large scale, and/or is sequenced properly from a watershed management approach, and/or addresses multiple resource problems. This category would apply to

projects in the Silver Bow Creek watershed that are consistent with the priorities established in the *Silver Bow Creek Watershed Restoration Plan*.

Negative: The project does not fit within or is inconsistent with a broad ecosystem concept and this makes it less likely to be effective in the long-term. The project is one that should wait from an ecosystem standpoint until certain environmental conditions occur. For example, problems in the upper portion of a watershed may need to be corrected first before work is conducted downstream. This category would apply to projects in the Silver Bow Creek watershed that are inconsistent with the priorities established in the *Silver Bow Creek Watershed Restoration Plan* and for which insufficient justification has been provided on why it should be funded anyway.

Not Relevant: The project is a service project for which ecosystem considerations are not relevant.

17. COORDINATION AND INTEGRATION

General Consideration: How well is the project planned to integrate with other ongoing or planned actions in the UCFRB? This criterion addresses coordination with other projects besides remedial actions, which is addressed under Criterion #6. Restoration projects that can be efficiently coordinated with other actions may achieve cost savings.

Coordinates/Integrates: The project coordinates and achieves efficiencies not otherwise possible through coordination with other actions (besides remedial actions).

None: The project does not coordinate/integrate with other actions.

Conflicts: Project may interfere with significant, beneficial on-going or planned actions or is one with missed coordination opportunities.

18. NORMAL GOVERNMENT FUNCTIONS

(Readily Available Information)

General Consideration: The *RPPC* states those activities, for which a governmental agency would normally be responsible or that would receive funding in the normal course of events, (absent the UCFRB Restoration Fund) will not be funded. The Restoration Fund may be used, however, to augment funds normally available to government agencies to perform a particular project if such cost sharing would result in implementation of a restoration project that would not otherwise occur through normal agency function. For this criterion, reviewers should determine whether the project is intended to accomplish activities that would otherwise not occur through normal agency function.

Note: If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.

Outside Normal Government Functions: The project does not involve activities normally conducted by government agencies or obligations of governmental entities under law for which they receive funding or for which they are responsible for securing funding.

Within but Augments Normal Government Functions: The project involves activities that are normally conducted by governmental agencies, but it augments such activities beyond a level required by law and for which funding is presently insufficient to implement the project. This category would apply to activities for which government agencies typically seek funds outside of their normal operating funds, such as supplemental grant funds.

Replaces Normal Government Functions: The project involves activities that are typically funded through a government's normal operating funds or obligations of governmental entities under law.

STAGE 2 CRITERIA – LAND ACQUISITION PROPOSALS ONLY

19. <u>DESIRABILITY OF PUBLIC OWNERSHIP</u>

General Consideration: This criterion assesses the potential benefits and detriments associated with putting privately owned land, or interests in land, under public ownership. Although the State has established a policy that favors actions that actually improve the condition of injured resources and services, land acquisition may be an appropriate replacement alternative.

Restoration Beneficial: The benefits of the acquisition to restoration of injured natural resources and services are considered major and the detrimental aspects of public ownership, if any, are considered minor.

Replacement Beneficial: The benefits of the acquisition to replacement natural resources and services are considered major and the detrimental aspects of public ownership, if any, are considered minor.

Detrimental: The detrimental aspects of putting privately owned lands into public ownership outweigh the benefits derived to public natural resources and services derived from the project.

20. <u>PRICE</u>

General Consideration: To what extent is the land/interest being offered for sale at fair market value?

Below Fair Market Value: Documentation indicates property is being acquired below fair market value.

At Fair Market Value: Documentation indicates the property is being acquired at fair market value.

Above Fair Market Value: Documentation indicates property is being acquired above market value.

Uncertain: Insufficient information is available at this time for comparison to fair market value.

<u>STAGE 2 RESEARCH AND MONITORING CRITERIA</u>

These criteria apply to any research activity, whether or not it constitutes the entire project or a portion of the project. These criteria also apply to projects for which monitoring is a significant focus

of the project, but not to projects that simply have a monitoring component tied to judging the project's effectiveness. Through minimum qualification determinations, we have already established that the proposed research or monitoring project pertains to restoration of injured natural resources in the UCFRB. These two criteria are designed to distinguish the level of benefits these projects will have on restoration of injured natural resources.

21. <u>OVERALL SCIENTIFIC PROGRAM</u>

General Consideration: To what extent is the monitoring or research project coordinated or integrated with other scientific work in the UCFRB?

Coordinates: The project will augment and not duplicate past and on-going scientific work, focusing on existing data gaps. The applicant has also demonstrated thorough knowledge of and coordination with other scientific work in the Basin.

Does not Coordinate: The project does not involve any coordination or integration with other scientific work in the Basin or may be duplicative.

Uncertain: Insufficient information has been provided to determine the level of coordination/ integration with other scientific work in the UCFRB.

22. <u>ASSISTANCE WITH RESTORATION PLANNING</u>

General Consideration: To what extent will this project assist with future restoration efforts of either injured resources or replacement natural resources?

Major Benefits: The project will be of major benefit to future restoration efforts in terms of needed information on the status and condition of natural resources and recovery potential/ constraints or assistance with restoration project planning, selection, implementation, and monitoring.

Moderate Benefits: The project will be of moderate benefit to future restoration efforts in terms of needed information on the status and condition of natural resources and recovery potential/constraints or assistance with restoration project planning, selection, implementation, and monitoring.

Minor Benefits: The project will be of minor benefit to future restoration efforts in terms of needed information on the status and condition of natural resources and recovery potential/ constraints or assistance with restoration project planning, selection, implementation, and monitoring.

ATTACHMENT A

MEPA Terminology

The Montana Environmental Policy Act ("MEPA"), Mont. Code Ann. § 75-1-101 through § 75-1-324, requires state agencies to carry out the policies in part 1 of MEPA through the use of a systematic, interdisciplinary analysis of state actions that have an impact on the human environment. To this end, MEPA has two central requirements: agencies must consider the effects of pending decisions on the environment and on people prior to making each decision; and, agencies must ensure that the public is informed of and participates in the decision-making process. Through the "Environmental Impacts" and "Human Health and Safety" analyses, reviewers accomplish this first important requirement of MEPA. This appendix provides basic information regarding MEPA with which reviewers should be familiar before undertaking their analyses of "Environmental Impacts" and "Human Health and Safety" criteria statements.

1. Terminology used in the *RPPC*: short-term, long-term, direct and indirect adverse impacts.

The *RPPC* states that **short-term**, **long-term**, **direct** and **indirect** adverse impacts will be evaluated. "Short-term" and "long-term" adverse impacts are not specifically discussed in MEPA. These terms, however, should be used by reviewers to subjectively categorize the duration of adverse impacts potentially presented by a project.

The Montana EQC guide to MEPA provides the following definitions of "direct" and "secondary" (rather than indirect) impacts.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the event.
- **Secondary impacts** are those that occur at a different location and/or later time than the action that triggers the effect.

2. MEPA evaluations apply to the "human environment."

Reviewers should be aware that the MEPA analysis of adverse impacts applies to the "**human environment**." The MEPA definition of the term "human environment" includes, but is not limited to "biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment…[E]conomic and social impacts do not by themselves require an EIS…" but when an EIS is prepared, "economic and social impacts and their relationship to biological, physical, cultural and aesthetic impacts must be discussed." MEPA Model Rule II (12).

3. What is a "significant" adverse impact, and what is a "minor" adverse impact?

The determination of the "**significance**" of an adverse impact on the human environment involves the consideration of several factors, as set forth in MEPA Model Rule IV. The standard

set forth in this rule is somewhat subjective, and reviewers should be familiar with the rule to make a determination of the significance of adverse environmental impacts. Additionally, there is a library-full of case law (speaking metaphorically) on what constitutes a "significant adverse environmental impact." Questionable or borderline determinations should be referred for a legal opinion.

MEPA Model Rule IV sets forth the following criteria for determining the significance of an impact on the quality of the human environment:

(a) the severity, duration, geographic extent, and frequency of occurrence of the impact;
(b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;
(c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;
(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;
(e) the importance to the state and to society of each environmental resource or value that would be affected;
(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and
(g) potential conflict with local, state or federal laws, requirements or formal plans.

"**Minor**" adverse environmental impacts are adverse environmental impacts that do not rise to the level of significance.

4. "Mitigation" under MEPA.

Mitigation reduces or prevents the undesirable impacts of an action. Mitigation measures must be enforceable. MEPA Model Rules II(14) and V(2)(h) define mitigation as: avoiding an impact by not taking certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of an action and its implementation; rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or, reducing or eliminating an impact over time by preservation and maintenance operations during the life of an action or the time period thereafter that an impact continues. Examples of mitigation include designs, enforceable controls, or stipulations to reduce the otherwise significant impacts to below the level of significance.

ATTACHMENT B

Supplemental Information Form
(to be utilized by reviewers)

Results of Superfund Response Actions – Supplemental Information

Recovery Period and Potential for Natural Recovery – Supplemental Information

Applicable Policies, Rules and Laws – Supplemental Information

- Additional permits necessary to complete the project on schedule.
- Additional deeds, easements or rights-of-way necessary to complete the project on schedule.
- Additional communication and coordination with local entities necessary to complete the project on schedule.
- Additional measures necessary for compliance and consistency with other laws, rules, policies, or consent decree requirements.

Resources of Special Interest to the Tribes and DOI – Supplemental Information