**NRDP Funding Recommendation**

**For Purchase of**

**Dry Cottonwood Creek and Clark Fork River Ranch Easements**

**April 2018**

**Background and Project Summary**

The Natural Resource Damage Program (NRDP) is working with the Clark Fork Coalition (CFC) and the Montana Land Reliance (MLR) to protect 5.5 miles of the Clark Fork River and 3,396 acres of wetland, grassland and forest habitat near Galen, Montana with a permanent conservation easement. NRDP, CFC & MLR will also work with Montana Fish, Wildlife & Parks (FWP) to secure public access for hunting, fishing, and other recreation activities on the two ranches. The ranches are owned by Dry Cottonwood, L.L.C (DCCR) and Deer Lodge River Ranch, L.L.C (DLRR). This project partially implements Section 3.2.1 and 4.2.4.6 of the Upper Clark Fork River Basin (UCFRB) Aquatic & Terrestrial Resources Restoration Plans (2016) (Restoration Plans) and the Revised Restoration Plan for the Clark Fork River Aquatic and Riparian Resources (NRDP 2008) (CFR Restoration Plan).

Dry Cottonwood Creek and Deer Lodge River Ranch riparian habitat, montane grasslands, wetlands and forestlands are connected to larger reaches of wildlife habitat connecting the Boulder Mountains, Anaconda-Pintler Wilderness and Flint Creek Range. Both properties enhance access to 2,500 acres of adjoining Department of Natural Resources (DNRC) lands and Dry Cottonwood Creek Ranch’s eastern boundary borders U.S. Forest Service lands. The DCCR ranch has one existing home-site along *Eastside Road* and collectively the two ranches have a combination of center-pivot, flood-irrigated, and wild-hay pasturelands located west of *Eastside Road* and east of the Clark Fork River. Other than the home-site both properties remain undeveloped and provide rangeland and diverse habitat for wildlife.

This project is within the *Deer Lodge South Priority Landscape Area* identified in the in the UCFRB Terrestrial Wildlife Resource Prioritization plan and the Clark Fork River mainstem, one of the injured resource areas where the State made restoration claims. Dry Cottonwood Creek Ranch and Deer Lodge River Ranch are both classified as *Priority One Areas* under the aforementioned Restoration Plans, recognizing the importance of “maintaining or improving wildlife species diversity, natural ecological functions, and habitat connectivity in grassland, forest, and riparian ecological systems.” Both ranches are also Class I & II Terrestrial Focus Areas for Montana Fish, Wildlife & Parks’ State Wildlife Action Plan (2015).

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

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

This document provides the NRDP funding evaluation and recommendations that will be the subject of a 30-day public comment period that will begin on April 4, 2018 and end on May 5, 2018. The two indicated councils will consider the NRDP’s recommendation and public comment in making their final recommendation to the Governor, who will make the final funding decision.

Based on an appraisal commissioned by NRDP, the appraised value of the DCCR is approximately $4.1 million and for the DLRR is approximately $1.08 million for a total value of $5,180,000. Restoration funds to purchase the ranches will be allocated with a combination of two funding sources; 1) an UCFRB Restoration Funds allocation of $4.6 million and 2) an CFR Restoration Plan funds allocation of $0.6 million.

**NRDP Funding Recommendations Summary**

The NRDP recommends funding of this project for $5,180,000, subject to the following funding conditions;

* That the NRDP review and approve of the remaining land transaction documents;
* NRDP coordinate with MLR in developing a conservation easement that meets the goals of the Restoration Plans and the CFR Restoration Plan protecting the natural resources of the two ranches and providing for public access;
* That the agreement between the CFC and the State is successfully executed.[[1]](#footnote-1)

**Land Acquisition Due Diligence Summary**

Most of the needed land transaction due diligence has been completed to date. This includes an appraisal, environmental site assessment, water rights evaluation, and the warranty deed. The NRDP has found all these land transaction documents to be acceptable.

The environmental site assessment commissioned by NRDP and completed in March 2017 concluded that the properties do not appear to present an environmental liability. The title work of the properties does not indicate any unacceptable encumbrances on the property. The appraisal of both properties commissioned by the NRDP and completed in March of 2018[[2]](#footnote-2) concluded a fair market value of $5,180,000 for both ranches. A mineral guarantee commissioned by NRDP and completed in October 2017, indicated that within the properties there is a low potential for economic metallic mineral occurrence or oil and gas development on the property due to the lack of past or current development and mineral bearing formations. The buy-sell agreement, public comment, consideration of the UCFRB Advisory Council and Trustee Restoration Council and Governor approval of the purchase are still to be completed.

**DCCR and DLRR Overview**

The current property owner of the DCCR is Dry Cottonwood, L.L.C. and the owner of the DLRR is Kathy and Wayne Hadley. Both landowners have managed their respective properties in a way that was protective of the natural resources on the ranches. The Hadley’s purchased the DLRR in 1999 and have been attentive in preserving the uplands with a focus on wildlife habitat. Dry Cottonwood L.L.C. also worked on conserving and enhancing the aquatic and wildlife resource during their 12-year ownership of the DCCR. The two ranch owners have agreed not to put the property on the open market, which has allowed the NRDP the time to implement its land protection process, including public scoping, without risk of a private sale. The NRDP proposes to purchase both ranches for full market value of $5,180,000 and allow the CFC to hold title for the State, under an Agreement, while NRDP finalized the terms of a conservation easement with the MLR. The land will then be placed on the market and sold to a buyer restricted by the conservation easement with the proceeds of the sale being returned to the UCFRB Restoration Fund and the CFR Restoration Plan fund. The appraised value of the conservation easement for the two ranches is $2,810,000 (an approximately 55% reduction). The expected proceeds to be returned to the UCFRB Restoration Fund and CFR Restoration Plan fund after purchased by a buyer is approximately $2,370,000. Of this amount, approximately 88% will be returned to the UCFRB Restoration Fund and 22% to the CFR Restoration Plan Fund.

The combined 2,385 acres of upland surrounding the east end of the property is primarily native intermountain grasslands and conifer forests that provide habitat for a variety of game and non-game species. The DCCR and DLRR hold important big game winter range, primarily for elk, mule deer, and antelope. Numerous other species have been documented on, or near, the property in the Montana Natural Heritage Program database. Both ranches have participated in one of the most heavily utilized Block Management Areas in both Deer Lodge and Powell Counties. Through the proposed conservation easement acquisition, access will continue to be available to the public in perpetuity.

As described, these properties located in the Deer Lodge South Priority Area meet the goals of the Restoration Plans and the CFR Restoration Plan, replacing injured terrestrial wildlife resources by protecting and enhancing grassland, shrub-steppe, riparian, wetland, and conifer forest habitats in the UCFRB that are similar to those injured. This involves maintaining or improving wildlife species diversity, natural ecological functions, and habitat connectivity in grassland, forest, and riparian ecological systems. In addition, the goal for projects that have a large conservation footprint that adjoin public lands or lands under conservation easement, which target several habitats, that complement fisheries goals, and for which recreational use does not compromise conservation values is met.

**Remedy and Restoration on the Properties**

The DCCR is located within Phase 5 and 6 of the remediation and restoration of the Clark Fork River Operable Unit, which underwent cleanup activities in 2014 through mid-2016. This consisted of the 4.3 river miles and its floodplain, which contained heavy metals, arsenic and low pH. The most contaminated areas were slickens (barren areas of tailings) and thick layers of tailings/impacted soils that had severely impacted the aquatic and terrestrial resources in this approximate 300-acre area. The primary objective of the cleanup was to excavate an estimated 530,000 cubic yards (CY) of tailings/impacted soils from streambanks and the floodplain within the Site, haul these materials and place them in the Opportunity Ponds, backfill excavations with non-impacted floodplain materials, reconstruct portions of the streambanks, and the revegetation of the area with thousands of riparian trees and shrubs. This new floodplain does not function as an un-impacted area that has not been covered with mine tailings. Even though much of the impacted soils have been removed, the backfilled soils are susceptible to disturbances, which can impact the vegetation that has been recently established. The floodplain post remedial actions are not equivalent to the deep alluvial soil typically found in a non-contaminated floodplain.

The DLRR remedy and restoration actions are projected to occur on the property in several years. Contractors are estimated to remove 200,000 cubic yards of contaminated sediments along 100 acres of the floodplain and riverbanks, backfill with un-impacted soil and revegetation of the area with thousands of riparian trees and shrubs. These efforts are expected to significantly increase fishery and wildlife benefits over time as the CFR corridor is remediated and restored. The timeframe for the recovery of the floodplain may be years and will remain sensitive to disturbances to the riparian vegetation for some time.

**Ranch consolidation and Easement Terms**

The two ranch properties are anticipated to be consolidated, owned and managed by the CFC for a transition period to allow for the combined ranches to be encumbered with a conservation easement to be held by Montana Land Reliance. The consolidated ranch will then be sold to a private buyer. NRDP and MLR plan to work jointly to secure and develop a public access plan for river recreation and public hunting access. The intent of the conservation easement is to protect this property’s fish and wildlife habitat and public recreational values while keeping the property in private ownership and management. The consolidated property may remain a working ranch and retain agricultural and cultural values in Deer Lodge County. Protecting these two properties will conserve native habitats, retain and enhance native shrub grasslands, enhance riparian area condition and integrity, protect the remediated areas along the river, and provide public access to fish and wildlife resources and river-based recreation.

**Project Evaluation**

*Public Access:* Protection of the properties will expand on, improve, and ensure public access to the river corridor and the upland areas of these properties. The existing access to the properties, the river corridor and upland areas, is from state and county public roads that are adjacent or route through the properties. Access to the west side of the properties is gained from the south via Galen road and from the North via Gemback Road. East of the river, access via Eastside Road, the Dry Cottonwood Creek road, Sand Hollow Road or the Forest Service Road #85. The upland areas of the properties are presently enrolled in the Block Management program for hunting. Hunting is also allowed on the adjacent 2,500 acres of DNRC parcels. The river corridor of the DLRR is currently available for fishing access, with this land transaction the entirety of the DLRR and the DCCR will be available for the public to recreate in perpetuity. Given the proximity to Interstate 90, opportunities for hunters, hikers, fishermen, wildlife watchers, river floaters, and other users will be maximized.

*Cost-Benefit Relationship:* NRDP contracted Westech Inc. to prepare a Resource Evaluation Report that describes the natural resource and public recreational benefits of this project. The properties primary feature is 5.5 miles of the Clark Fork River where remedy and restoration actions have or will be taking place. The protection of the Clark Fork River corridor where $8 to $10 million has or will be invested cleaning up the mining impacted areas is a high cost-benefit. In addition, having this river corridor available for public use will be a benefit that Montana citizens can enjoy in perpetuity. Other riparian benefits from this project will be public use and enjoyment of 2.5 miles of Dry Cottonwood Creek and 1.2 miles of Modesty Creek.

The combined 2,385 acres of uplands areas are primarily native intermountain grasslands and conifer forests that provide habitat for a variety of game and non-game species and identified as Priority One terrestrial areas in the Restoration Plans. This area is already a heavily utilized Block Management area, which will continue to be available to hunting in perpetuity. Much of the uplands areas are important big game winter range, primarily for elk, mule deer, and antelope. Numerous other species have been documented on, or near, the property in the Montana Natural Heritage Program database. The numerous mammal and bird species are listed in the Resource Evaluation document. Protecting these property’s fits well with the Deer Lodge South priority landscape goals by conserving native habitats, retaining and enhancing native shrub grasslands, enhancing riparian area condition and integrity, and providing for wildlife related recreation. In addition, this property, as well as several adjacent properties, has received restoration funds for wildlife enhancement projects from the Terrestrial Restoration Plan.

It is the NRDP goal that there will be long term protection of the newly remediated and restored river that will significantly accomplish the aquatic goals set out in the Restoration Plans and the CFR Restoration Plan. This protection will be memorialized in a perpetual easement that will be held by MRL. Easement terms have been outlined and are currently being finalized. Additional benefit to the project will be the significant water rights that will be secured some of which will be changed from irrigation to instream flow to enhance fisheries habitat. Given the substantial natural resource and recreational benefits the project offers, along with contributing CFR Restoration Plan funds available, the NRDP considers the project to have a favorable cost: benefit relationship.

*Cost-Effectiveness:* The Resource Evaluation Report adequately justifies the reasons for and benefits of protecting the resources on these ranches in perpetuity. As stated therein: “the property is proximal to other public lands or lands under conservation easement. Public value would likely be high and would include fishing, hunting, hiking, and other outdoor activities”. Protecting the properties would safeguard the vast remedial and restoration expenditures in a cost-effective way for future generations to enjoy. Because of the significant benefits as described herein, this project will cost-effectively accomplish the Restoration Plans and the CFR Restoration Plan goals of protecting the remedial corridor and increase public access to the Clark Fork River and surrounding uplands.

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

1. The expected closing of the Buy/Sell agreement would be between the State of Montana, acting by and through the Department of Justice Natural Resource Damage Program and the CFC, who would hold title to the properties until a permanent owner can be found. [↑](#footnote-ref-1)
2. The March 2018 appraisal by Hall Widdoss and Company of Missoula, was the second appraisal completed on both ranches. The first appraisals were completed in late 2016 and early 2017 which resulted in an approximately same appraised value as the March 2018 appraisal. There is a possibility the appraised value may slightly change for unforeseen reasons as the draft appraisal is finalized in early April. [↑](#footnote-ref-2)