

**State of Montana's Response to Public Comments on the
NRDP Funding Recommendation for Broken Circle Split
Season Lease Project**

**Prepared by the Montana Natural Resource Damage
Program**

August 28, 2023

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Introduction

As part of the implementation of the *Upper Clark Fork River Basin (UCFRB) Aquatic and Terrestrial Resources Restoration Plans* (Restoration Plans), on July 21, 2023, the Montana Natural Resource Damage Program (NRDP) released the Broken Circle Split Season Lease Project documents for public comment. The comment period ran through August 23, 2023.

Background and Prior Valiton Ditch Restoration Actions

The Montana Natural Resource Damage Program (NRDP) is partnering with the Broken Circle Ranch to enter into an agreement to lease late season water for instream flow in the Clark Fork River. The project is in a Group 1 Priority Area for Flow Augmentation, which is defined as the highest priority area for flow augmentation and would partially implement Section 3.2.1 of the *Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans* (Restoration Plans).

In 2019, the Clark Fork River Ranch was purchased to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources. The purchase included water right on the Valiton Ditch which is a significant irrigation canal in the Upper Clark Fork River. One of the resource benefits identified in the funding request for the purchase of the ranch and associated water rights was to “use water from Valiton Ditch more efficiently to benefit aquatic life in this critically dewatered section of the CFR.”

Since 2019, NRDP has been working with the Grieco Family who also hold water rights on Valiton Ditch on a reduction in water use agreement. Under this Agreement, Grieco use the State's 240 irrigated acreage to produce hay in exchange for foregoing the use of its own water rights on Grieco property from July 15 to September 6 each year, when the Clark Fork River is at 180 cfs or less. On average flows on the mainstem Clark Fork at Deer Lodge drop below 180 cfs 9 out of 10 years. The Grieco Split season lease agreement is being intensively monitored by NRDP. Monitoring focused on evaluating the production and sustainability of a split season lease on crop production as well as associated flow benefits. This project is intended to be used as a template for other split season leases in the Clark Fork Basin. NRDP and the Grieco family intend to continue this water use agreement for the next 20 years.

Project Summary

In 2023, the third and last water user on the Valiton Ditch approached NRDP regarding a similar agreement on their property.

This funding recommendation includes a one-time lump sum payment of \$404,000 to Broken Circle Ranch in exchange for the property owner (Broken Circle Ranch) forgoing their water rights on Valiton Ditch after July 15 until September 6 each year, when the Clark Fork River is at 180 cfs or less. On average, flows on the mainstem Clark Fork at Deer Lodge drop below 180 cfs 9 out of 10 years. The Broken Circle water reduction agreement will last for the next 20 years.

NRDP is proposing to pay the estimated ton per acre lost due to the split season lease of \$20,200 per year for twenty years or \$404,000. This funding recommendation is contingent on Broken Circle entering into a Restoration Project Agreement with NRDP. The project agreement requires Broken Circle to file for a DNRC change authorization to convert the late season water to instream flow.

For outreach on this public comment period, NRDP posted the public comment announcement on the NRDP web page and sent notice of this opportunity for public comment to approximately 202 individuals/entities on the NRDP mailing lists related to the Upper Clark Fork River Basin.

NRDP received four comment letters during the public comment period. The four comment letters were very supportive of the project and NRDP's funding recommendation. Specific comments stated, "[t]his project delivers water to the Upper Clark Fork River when it is needed most, while still maintaining agricultural productivity", "[t]he lease.... will reduce irrigation withdrawals in a chronically dewatered reach of the Clark Fork River, improving streamflow during critical late season conditions to support recovery of the Clark Fork River fishery" and "[t]his project is an example of a productive partnership between a local water user and state agency that will have benefits for the Broken Circle Ranch, fisheries resources, and the recreating public using the UCFR." Comments also acknowledged that this project was in the highest priority area for flow restoration. One commenter specifically requested to study the effects of split season leases on crop production and alfalfa.

See Appendix A for copies of the comment letters. NRDP does not propose any changes to the funding recommendation based on the response to comments.

This draft response to comments document summarizes the public comment received and provides NRDP's draft response to the comments. The draft response will be considered at the October 4, 2023, meeting of the Advisory Council, and the upcoming meeting of the Trustee Restoration Council (TRC). More information about the time/location of these meetings can be found at <https://dojmt.gov/lands/council-meetings/>. This draft response may be revised based on recommendations from the Advisory Council and TRC and final decision by the Governor.

Comment Summary and Response

Comments in support of the project and funding with NRD funds – 4 letters

Comments: NRDP received four comment letters during the public comment period. The four comment letters were very supportive of the project and NRDP's funding recommendation. Specific comments stated, "[t]his project delivers water to the Upper Clark Fork River when it is needed most, while still maintaining agricultural productivity", "[t]he lease... will reduce irrigation withdrawals in a chronically dewatered reach of the Clark Fork River, improving streamflow during critical late season conditions to support recovery of the Clark Fork River fishery" and "[t]his project is an example of a productive partnership between a local water user and state agency that will have benefits for the Broken Circle Ranch, fisheries resources, and the recreating public using the UCFR." Comments also acknowledged that this project was in the highest priority area for flow restoration. One commenter specifically requested to study the effects of split season leases on crop production and alfalfa.

Response: NRDP appreciates this acknowledgment of support from the public, project partners, and resource managers. Addressing the comment to study the effects on crop production, NRDP is currently performing a multiyear study looking at the effect of late season deficit irrigation on hay crop health, yield, and species compositions at the Clark Fork River Ranch which is also under pivot irrigation and has a split season lease agreement. NRDP will present the results of this study at the Advisory Council, TRC, Upper Clark Fork Streamflow Working Group and prepare a report for public distribution. It is intended that this study will help inform other split season leases in the basin.

After consideration of public comments, NRDP recommends approval of this project.

Appendix A – Public Comment Letters

List of 2023 Broken Circle Split Lease Comments

No.	Individual/Association	City/Area
1	Hans and Angel Lampert	MT
2	Trout Unlimited, Casey Hackathorn	Missoula, MT
3	Clark Fork Coalition, Karen Knudsen	Missoula, MT
4	Montana Fish, Wildlife, and Parks, Randy Arnold	Missoula, MT

Comment #1

From: [angel lampert](#)
To: [Natural Resource Damage Program](#)
Subject: [EXTERNAL] 2023 funding recommendations broken circle split season lease
Date: Saturday, August 5, 2023 10:46:31 AM

We are supportive of this and would like to see a few things studied when this occurs. Our biggest question is what effect this will have on the alfalfa stand in the following years? How does first crop production compare with what it was when irrigation went into fall of the previous year? Will the alfalfa need to be replanted more often? What type of irrigation is this under – pivot, sprinkler or flood?

Hans and Angel Lampert



August 22, 2023

TO: Montana Natural Resource Damage Program
Attn: 2023 NRDP Funding Recommendation-Broken Circle Split Season Lease
P.O. Box 201425
1720 Ninth Avenue
Helena, MT 59620-1425

RE: Support for NRDP Funding Recommendation for Broken Circle Split Season Lease

Trout Unlimited supports the Montana Natural Resource Damage Program's funding recommendation for a split season lease with the Broken Circle Ranch to provide instream flow for the Clark Fork River. The lease, pending project agreement, and associated water right changes will reduce irrigation withdrawals in a chronically dewatered reach of the Clark Fork River, improving streamflow during critical late season conditions to support recovery of the Clark Fork River fishery. The project is within the highest priority reach for flow restoration under NRDP's Restoration Plans and the proposed investment of flow restoration funding is appropriate for the projected benefit.

Trout Unlimited appreciates the work that NRDP, Clark Fork Coalition, and the Broken Circle Ranch invested in developing this important project and we're looking forward to seeing it implemented. Please let us know if there's anything that we can do to assist.

Sincerely,

Casey Hackathorn
Upper Clark Fork Program Manager

Comment #3



August 21, 2023

To: Montana Natural Resource Damage Program
Attn: 2023 NRDP Funding Recommendation-Broken Circle Split
Season Lease
P.O. Box 201425
1720 Ninth Avenue
Helena, MT, 59620-1425

Re: Support for 2023 NRDP Funding Recommendation- Broken Circle
Split Season Lease

To Whom it May Concern,

I would like to take this opportunity to voice the Clark Fork Coalition's enthusiastic support for NRDP's funding recommendation for the Broken Circle Split Season Lease. This project delivers water to the Upper Clark Fork River when it is needed most, while still maintaining agricultural productivity. We applaud NRDP for their work to carefully consider the project options to balance the resource needs.

The Clark Fork Coalition (CFC) is seeking cost share of \$200,000 through the Columbia Basin Water Transactions program to support this important project. An additional 13 CFS of flow to this reach of the Clark Fork River would substantially improve water quality and aquatic habitat, which would pay dividends for the overall health of the fishery. This project will also amplify the fish passage improvements that have already been made by CFC, TU, and NRDP at the Valiton diversion and the downstream Broken Circle Pump Station diversion.

We urge the NRDP councils and Governor to support this project.

Sincerely,

A handwritten signature in blue ink that reads "Karen Knudsen".

Karen Knudsen
Executive Director

PO Box 7593
Missoula, MT 59807

T: 406.542.0539

F: 406.542.5632

www.clarkfork.org



Montana Fish, Wildlife and Parks - Region 2
3201 Spurgin Road
Missoula, MT 59804
(406) 542-5500
08-22-2023

RE: Letter of Support for the Proposed Broken Circle Split Season Lease

To whom it may concern:

Fish, Wildlife and Parks (FWP) supports the Montana Natural Resource Damage Programs (NRDP) proposed *Broken Circle Split Season Lease Project*. This project intends to lease late season water for fisheries benefits from the Broken Circle Ranch in exchange for a monetary payment and agricultural production from State owned property in the area.

FWP aims to conserve and enhance existing populations of native fish, including bull trout and westslope cutthroat trout, as well as sport fish such as brown trout in the Upper Clark Fork River (UCFR). Late summer flows have been identified by FWP and others as a primary limiting factor for trout populations in the upper Clark Fork, and specifically in the reach impacted by this lease. Addressing late summer minimum flows in this reach of the Clark Fork River has been identified as a priority for fisheries restoration by NRDP and FWP in NRDP's *Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans* and in FWP's *Draft Statewide Fisheries Management Plan*. The proposed lease would be one step towards addressing minimum flows in this reach of the UCFR during late summer when flows are at their lowest and temperatures are high.

This project is an example of a productive partnership between a local water user and state agency that will have benefits for the Broken Circle Ranch, fisheries resources, and the recreating public using the UCFR. We support NRDP's proposal and intend to work collaboratively with NRDP and other partners in the Upper Clark Fork to identify and complete flow projects that benefit local agricultural producers and fisheries resources of the UCFR.

Thank you for the opportunity to comment on this project. We encourage you to reach out with any questions to Caleb Uerling, Fisheries Biologist, (406) 493-2694, Caleb.Uerling@mt.gov. We look forward to working with NRDP to ensure the success of this project.

Sincerely,

Randy Arnold
Regional Supervisor, Region 2