



Montana Fish, Wildlife & Parks

2300 Lake Elmo Drive
Billings, MT 59105

NOTICE OF DECISION

May 20, 2004

TO:

Environmental Quality Council
Director's Office, Dept. of Environmental Quality
Montana Fish, Wildlife & Parks

Director's Office

Resource Assessment

Fisheries Division

Parks Division

Regional Supervisors

Wildlife Division

Design & Construction

Legal Unit

Lands Section

Piscicide Committee

Montana Historical Society, State Preservation Office

Janet Ellis, Montana Audubon Council

Montana Wildlife Federation

Montana State Library

George Ochenski

Commissioner Dan Walker

Montana Environmental Information Center

U.S. Fish and Wildlife Service

American Fisheries Society, Montana Chapter

Yellowstone River Parks Association

Magic City Fly Fishers

Federation of Fly Fishers

Walleyes Unlimited, Billings Chapter

Montana Pike Masters, Billings Chapter

Adjacent Landowners

Montana State University Foundation

Montana State University – Veterinary Molecular Biology

Ladies and Gentlemen:

The draft Environmental Assessment (EA) for the proposal to chemically treat Otie Reservoir (Stillwater County) and restore a short segment of a tributary stream was circulated for 30 days with a 45-day extension. A news release was sent to six local newspapers and the Northern Ag Network. One person responded, and his comments are addressed in the attachment. The final EA includes a correction. The land surrounding the tributary is owned by the Johnson Family Foundation, a private, non-profit organization, and not by Montana State University.

After review of this proposal and corresponding comments, it is my decision to proceed with this project designed to establish a self-sustaining Yellowstone cutthroat trout population in the reservoir and stream.

RECEIVED

MAY 21 2004

LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE

This project is subject to appeal, which must be submitted to the FWP Director in writing, and postmarked within 30 days of the date on this decision notice. The appeal must specifically describe the basis for the appeal, explain how the appellant has previously commented to the department or participated in the decision-making process, and lay out how FWP might address the concerns in the appeal. If you have questions regarding this decision notice, please send e-mails to hnyberg@state.mt.us or call me at 247-2951.

Sincerely,


Harvey E. Nyberg
Regional Supervisor

RESPONSE TO CONCERNS RAISED DURING THE PUBLIC COMMENT PERIOD

1. I don't see any "participation" in the EA's budget for this project from MSU, et al., and since they seem to be in favor of the project and since the existing damage was caused by the grazing practices used under their lease agreements, why shouldn't they contribute at least matching funds to repair the damage they caused?

The Johnson Family Foundation, a non-profit organization, has agreed to share costs of the project (approximately \$2,500) toward fencing and stream restoration. The misunderstanding that Montana State University is involved stems from our incorrectly listing them in the draft EA as the owners of the land surrounding the tributary stream. This error has been corrected in the final EA.

2. Are there any attempts by FWP to negotiate with MSU to ensure future grazing leases are structured to prevent similar damages to streams in the area?

Again, the landowner involved is the non-profit Johnson Family Foundation and not MSU or the MSU Foundation, as we incorrectly stated. We are entering into a standard Stream Restoration Agreement with them that accompanies all projects approved for Future Fisheries Improvement funding. This agreement includes their consenting to protect and maintain the investment in restoration for a minimum of 20 years through grazing management, etc.

3. Are there any efforts underway by FWP to work with MSU, et al., to ensure that ALL grazing leases issued by the Montana University System or its foundations contain provisions to protect state waters from similar damage? Once again, it seems logical that it is cheaper and easier to stop the damage from occurring through simple lease agreements than to spend public funds to restore the damage.

We are not aware of any such efforts, but the issue is not relevant to this project that involves a private, non-profit foundation.

4. What assurance is there that going through the expense and effort to establish the Yellowstone Cutthroat population will not be wasted if the reservoir is dewatered by irrigation? It's one thing to kill the suckers, fix up the stream, and build a watering pond for livestock, but it may all fail if this small, 3-acre reservoir is either drained or drawn down so low that it heats up and kills the trout during the summer months or is left at such a low level that winterkill occurs. Unfortunately, the EA is devoid of historical information on temperatures and water levels in the reservoir, so it is impossible to determine whether FWP's actions make sense or not. It seems prudent to include some kind of minimal pool requirement from the landowner/irrigator BEFORE you decide to spend state dollars on the project.

Please provide me with your historic data on pool level and temperatures for the Otie Reservoir since, as you know, suckers can exist at much higher temps and more degraded water conditions than trout, so it would be prudent to ensure that the project has a reasonable chance of success prior to its initiation.

Otie reservoir has supported stocked populations of rainbow trout for at least 8 years and has supported a self-sustaining population of brook trout for at least 20 years prior to that. The rainbow trout currently in the reservoir were planted in 1999 and are 5 years old; thus, year-to-year survival does not appear to be limiting the trout fishery. The reservoir is approximately 30 feet deep at the dam when at full pool. The design of the reservoir and irrigation system only allows the reservoir to be drained to approximately 1/2 pool. Although it can be drained to this level, it rarely is lowered this far except to work on the outflow pipe. At most other times of the year, irrigation water is drawn from the reservoir at a headgate located at the full-pool elevation. Thus, the reservoir must be completely full in order for it to be used as an irrigation source, and it is generally maintained at full pool for most of the summer. To the best of our knowledge, there has never been a fish kill caused by drawdown at Otie Reservoir. We have no historical temperature data for the reservoir, but because of its depth and elevation, thermal problems are not likely for salmonids. In addition to the reservoir's depth, the spring that feeds it runs year-round, continually bringing in cool, fresh water that would maintain adequate oxygen levels and prevent a winter kill.

5. Although the EA states there has historically been an agreement to allow the public access to the reservoir for fishing, you did not include any such agreement as an attachment to the EA. Please provide me with a copy of whatever formal agreement exists between FWP and the owner of the land on which the reservoir is located.

Billings
Montana, Montana

Department of Fish, Wildlife and Parks
Helena, Montana

The undersigned agrees that in consideration of the stocking of a certain impoundment located upon Section 14 (SE 1/4) Township 4S of Range 17E with trout, that the same shall be and remain open to public fishing by permission for a period of at least 5 years.

The spring pond consists of approximately 28 surface acres of water.

[Signature]
Date: 9-22-99
778.4932

6. The EA says: "*FWP possesses the rotenone and equipment necessary for applying the chemical, so other than personnel time, there will be no additional costs associated with chemical removal of the fish.*" Obviously, there IS a cost to the public for FWP to have acquired the rotenone in the first place, and that should have been included in the budget. Please provide an estimate of the cost of the rotenone and equipment required for the chemical removal of the fish.

The rotenone and equipment we will use were originally purchased for a rehabilitation project at Bad Canyon Creek. We estimate that approximately 12 gallons of rotenone will be needed to treat the reservoir, which would have cost approximately \$200. The other equipment required includes a boat and outboard motor (or ice auger if the reservoir is ice-covered), hose, buckets, dripper stations (to administer rotenone to the stream), backpack sprayers (for applying chemical to backwater areas) and safety gear, all of which we have from the Bad Canyon project. Generally we don't include the cost of equipment that we already have in the cost of doing a particular project (e.g., we don't include the cost of our vehicles in projects budgets), but I would estimate (excluding the boat and motor or ice auger) that if new equipment were purchased for the Otie Reservoir project, it would cost an additional \$100-\$300.