



## Montana Fish, Wildlife & Parks

Region One  
490 North Meridian Rd.  
Kalispell, MT 59901  
(406) 752-5501  
FAX: 406-257-0349  
Ref:ARS014-04  
November 15, 2004

Ladies and Gentlemen:

Montana Fish, Wildlife & Parks (FWP) has completed an environmental assessment (EA) for the Bull River/Lake Creek Conservation Project located on the watershed divide between the Bull River in Sanders County and Bull Lake in the Lake Creek drainage, Lincoln County (T28N, R33W, S9 and portions of S4, 10, 15, and 16). FWP adopts the draft EA as the final EA and proposes to acquire in fee two properties totaling approximately 1,321 acres and receive a donated conservation easement on 559 acres of Avista land. The purposes of the land purchase and conservation easement are to protect the fish and wildlife habitat on the properties and provide public access for compatible recreational purposes in perpetuity.

Please direct any questions or comments to Gael Bissell, Habitat Conservation Biologist, Montana Fish, Wildlife & Parks, 490 N. Meridian Road, Kalispell, MT 59901, or e-mail to [gbissell@state.mt.us](mailto:gbissell@state.mt.us).

Sincerely,

Ed Kelly  
Acting Regional Supervisor

/ni

Enclosure

c: Governor's Office, Attn: Todd O'Hair, PO Box 200801, Helena, 59620-0801  
FWP Commission

Environmental Quality Council, Capitol Building, Helena, 59620-1704

\*Dept. of Environmental Quality, Planning, Prevention & Assistance, PO Box 200901, Helena, 59620-0901

\*Dept. of Environmental Quality, Permitting Compliance, PO Box 200901, Helena, 59620-0901

Montana Fish, Wildlife & Parks: Director's Office, Legal Unit, Lands, Wildlife

\*Mt Historical Society, State Historic Preservation Office, 225 North Roberts, Veteran's Memorial Bldg., Helena 59620

DNRC, PO Box 201601, Helena, 59620-1601; Kalispell: Jon Dahlberg\*

\*Montana State Library, 1515 East Sixth Ave., Helena, 59620-1800

Jim Jensen, Montana Environmental Information Center, PO Box 1184, Helena, 59624

George Ochenski, PO Box 689, Helena, 59624

Joe Gutkoski, Montana River Action Network, 304 N 18<sup>th</sup>, Bozeman, 59715

Wayne Hirst, MT State Park Foundation, P O Box 728, Libby, 59923

Sanders County Commissioners, PO Box 519, Thompson Falls, 59873

Lincoln County Commissioners, 512 California Avenue, Libby, 59923

Sen. Jim Elliott, 100 Trout Creek Road, Trout Creek, 59874-9609  
Sen. Aubyn Curtiss, PO Box 216, Fortine, 59918-0216  
Rep. Rick Maedje, PO Box 447, Fortine, 59918-0447  
Rep. Eileen Carney, PO Box 1193, Libby, 59923-1193  
Rep. Paul Clark, 20 Fox Lane, Trout Creek, 59874-9510  
Dale Becker, Manager, CSKT Fish & Wildlife Program, PO Box 278, Pablo, 59855  
Marcia Pablo, CSKT, PO Box 278, Pablo, 59855  
Les Evarts, CSKT, PO Box 278, Pablo, 59855  
Tom McDonald, Div Admin, CSKT Natural Resources, PO Box 278, Pablo, 59855  
Jerry Sorenson, Plum Creek Timber Company LLC, 500 12<sup>th</sup> Ave W, CF, 59912  
Tim Swant, Avista Corporation, Inc., PO Box 1469, Noxon, 59853  
\*Chuck Dalby, MT DNRC, PO Box 201601, Helena, 59601  
\*Nancy Johnson, DEQ, 1420 E Sixth, Helena, 59620  
\*Mike McLane, MT DNRC, PO Box 201601, Helena, 59601  
Interested Parties

# DECISION NOTICE AND FINAL ENVIRONMENTAL ASSESSMENT

## *BULL RIVER/LAKE CREEK CONSERVATION PROJECT*

*Prepared by Region One, Montana Fish, Wildlife & Parks*

*November 12, 2004*

### **PROPOSED ACTION**

Montana Fish, Wildlife & Parks (FWP) proposes to the Commission that FWP complete three simultaneous adjoining conservation transactions on land located in the upper Bull River and Lake Creek drainages in Lincoln and Sanders Counties. In the first transaction, FWP would purchase approximately 1,281 acres from The Conservation Fund (TCF). This land, consisting of one parcel currently owned by Plum Creek Timber Company (PCT) and a separate parcel currently owned jointly by TCF and Avista Corporation (Avista), is located south and east of Bull Lake in Sanders and Lincoln Counties in all or portions of Sections 4, 9, 10, 15, and 16 in T28N, R33W (See attached).

In the second transaction, Avista would donate 40 acres of contiguous land in the northeast quarter of Section 16 to FWP. Avista and The Conservation Fund acquired this 40-acre parcel with the help of a North American Wetlands Conservation Act grant. Combined, these first two fee-title acquisitions would become the Bull River Wildlife Management Area (WMA).

In the third transaction, FWP would accept a donated perpetual conservation easement from Avista on the company's adjoining 559 acres of land in Section 15, T28N, R33W. The donated conservation easement would maintain the important aquatic and terrestrial habitat values of this property as well as maintain compatible public recreational uses of this land. The conservation easement would restrict subdivision and development, remove commercial uses, and allow managed public access and other land management activities that would restore, enhance, or maintain fish and wildlife habitats.

FWP's proposed land acquisitions reflect four factors that come together in the Bull River/Lake Creek Conservation Project: the exceptional quality of this landscape for at-risk species of native fish and wildlife, including bull trout, westslope cutthroat trout, grizzly bear, lynx, and bald eagle; the immediate threat of sale of much of this land for subdivision and residential development; Avista's focus on this project area for habitat protection, mitigation, and enhancement programs related to its Clark Fork hydropower relicensing; and the opportunity for FWP to obtain federal acquisition funds because of the importance of this land to the recovery of species listed under the Endangered Species Act.

### **PURCHASE PRICE, DONATED VALUE, AND APPRAISALS**

The purchase price for the fee-title land acquisitions will be based on appraisal and is expected to be approximately \$3,600/acre, for a total of \$4,610,800. This amount would be entirely funded with a grant to FWP from the U. S. Fish and Wildlife Service Habitat Conservation Plan Land Acquisition Program (HCP). The U.S. Fish and Wildlife Service approved this funding in federal fiscal years 2003 and 2004. The value of the donated conservation easement is estimated to be approximately \$2,700/acre, totaling about \$1,500,000, and would provide the 25% match required by the HCP grant.

Paraic Neibergs of Clark Wheeler & Associates is completing the final appraisal for the fee-title land acquisitions and the conservation easement donation, following federal appraisal standards. Dave Heine & Associates of Kalispell will conduct the review appraisal that also follows federal appraisal standards.

The final appraisal and review are expected to be completed before the December 16, 2004, meeting of the Montana Fish, Wildlife & Parks Commission.

### **CONSERVATION EASEMENT TERMS**

The major provisions of the proposed conservation easement are:

- ❑ **Prohibit any subdivision of the land except to a public agency or entity that will carry out the purpose of the conservation easement.**
- ❑ **Prohibit development and permanent structures; allow for the removal of the existing cabin; and provide an area of the property for temporary uses for fire-fighting camps, wildlife research activities, and educational camps.**
- ❑ **Prohibit mining, industrial activities, and commercial uses including outfitting.**
- ❑ **Allow for nonmotorized dispersed public access to these lands for activities such as bird watching, hiking, fishing, boating, photography, hunting, and other compatible uses, while providing for seasonal restrictions on public access as deemed necessary to protect wildlife and habitat.**
- ❑ **Allow land management activities such as weed control, timber management, stream restoration, fencing, and erosion control that will contribute to the enhancement, maintenance, or restoration of fish and wildlife habitats.**

The complete terms of the conservation easement in their entirety will be contained in a “Deed of Conservation Easement,” to be granted by Avista to FWP as part of the closing of the land transactions.

### **PROJECT HISTORY AND ENVIRONMENTAL REVIEW**

FWP has been working with Avista, The Conservation Fund, and PCT for several years to put this project together and has informed numerous interest groups about the project throughout this process. In 2001, Avista and The Conservation Fund purchased the former 716-acre Genesis Mining Company land to protect important bull trout and other riparian/wetland habitat values associated with this property. Soon after, PCT indicated they were proposing to sell their land immediately north of the Genesis lands. The partnership then worked to develop a broader conservation project to conserve the most important riparian/wetland areas associated with the Bull River and Bull Lake for their combined fish and wildlife values and in particular for threatened and endangered species. FWP Region One staff presented a conceptual overview of this overall project to the FWP Commission on January 24, 2002, identifying the key objectives, partnerships, and potential funding opportunities. Avista, FWP, and The Conservation Fund also presented the project proposal to the Clark Fork Settlement Agreement Management Committee for their approval of the sale of Avista/Conservation Fund land to FWP and the donated conservation easement on the balance of the property in March 2003. The Clark Fork Settlement Agreement Management Committee, which consists of 28 interested parties in the Clark Fork and Pend Oreille basin that cooperatively oversee Avista’s Federal Relicensing agreement with the Federal Energy Regulatory Commission, overwhelmingly supported the project at this meeting. In September 2004, the Management Committee approved use of Clark Fork Settlement Agreement funds for FWP’s land management costs associated with the acquisition and monitoring costs of the conservation easement.

FWP updated the FWP Commission in April 2004. At that time, FWP had received approval from the U.S. Fish and Wildlife Service for a \$1,000,000 HCP grant for the project and was awaiting the outcome of the 2004 HCP grant process.

FWP staff completed the draft environmental assessment (EA) for the entire proposed project September 21, 2004, and released it for a 30-day public comment period. The proposed action described in the draft EA called for FWP to complete the land transactions, acquiring 1,321 acres in fee and a conservation easement on an additional 559 acres.

FWP provided a copy of the draft EA to the Sanders and Lincoln County Commissioners; two immediately adjoining private landowners, as well as Avista and PCT; several state agencies in Montana and Idaho; the Confederated Salish and Kootenai Tribes; the Cabinet and Three Rivers Ranger Districts of the Kootenai National Forest; the U.S. Fish and Wildlife Service; six local watershed councils, conservation, or resource organizations; five local legislators; the local libraries in Heron, Thompson Falls, Troy, Libby, and Kalispell; several Helena-based organizations and individuals who request all our draft EA documents; and ten members of the Wildlife Mitigation Advisory Committee not on other mailing lists. In all, FWP mailed copies of the draft EA to 55 different entities. In addition, on September 22, FWP mailed returnable post cards with a brief project explanation and a draft EA request form to 27 other nearby private landowners, 11 other resource organizations, three other tribes in the basin, ten local businesses, and 75 addresses provided by the Angel Island and Bull Lake homeowner associations. FWP received 31 responses requesting a copy of the draft EA.

FWP bought legal ads in two local weeklies and two western Montana daily newspapers. The Western News published the legal ad September 29, while the Sanders County Ledger published it on September 30. Legal ads were published in the Missoulian and in the Daily Inter Lake on September 24.

FWP scheduled two public hearings: September 29 in Troy, beginning with an open house at 6:30 p.m. at the Troy High School, and on September 30 in the Noxon Fire Hall with the same schedule. On September 21 FWP issued a press release about the project, availability of the draft EA, and upcoming public hearings to all the local northwest Montana media. The Western News carried an article on the project September 24 and the Sanders County Ledger published an article on September 30.

FWP also presented a project summary for the Wildlife Mitigation Advisory Committee on October 14 to 11 people who attended that meeting.

### **NEED FOR EIS and FINAL EA**

After issuing the draft EA and completing public review, FWP has determined that this proposed action would not significantly impact the social or physical environment; therefore this project does not need an Environmental Impact Statement. FWP adopts the draft EA as the Final EA.

### **SUMMARY OF PUBLIC COMMENTS**

**Public Hearings:** Twelve citizens and two Forest Service staff attended the Troy open house and public hearing. FWP answered numerous questions during the open house and then received two public comments in favor of the project. The Forest Service staff formally indicated that they would like to have the conservation easement specifically allow use of the Avista property for future fire fighting operations including use of a portion of the land for a helibase and fire camp. These same comments were submitted in writing and are addressed below.

Six citizens attended the Noxon open house and hearing. After the questions, FWP received three oral public comments all in favor of the proposed project. One of the private landowners with land inside the proposed FWP acquisition of 117 acres of Avista property, who supports the overall project, raised concerns about the existing log cabin on the Avista property that FWP might acquire, trespass and/or waterfowl hunting in December or January, and winter muskrat trapping. These same issues were also raised in written public comments and are addressed below.

**Written Comments:** FWP received a total of 37 different written or voice mailed comments. Twenty-five of these came from individuals and 12 from organizations or businesses. Of these 37 comments, 34 supported the proposed land conservation project. Three commenters did not mention positions, but asked questions or raised a concern.

Supporters mentioned the overall outstanding habitat and recreation values of these properties as the primary reasons for their support. Other reasons included the concerns about the effects development would have on these values if this project were not completed. Several agreed that nonmotorized use was preferable to minimize spread of noxious weeds and reduce impacts to wildlife. Many use the area for bird watching, elk hunting, and wildlife viewing.

The Sanders County Commissioners support the project because it would benefit important habitats for fish and wildlife, provide public recreational opportunities, and prevent unwanted future costs of community services if PCT were to develop these lands. The Lincoln County Commissioner from Troy also supports the project because it would help provide a needed wildlife link between the East and West Cabinet Mountains. The questions or concerns raised by all commenters along with FWP's responses are listed below.

### **Questions or Concerns Raised by the Public:**

1. The U.S. Forest Service asked if the conservation easement would clearly allow for the possibility of the Forest Service establishing a temporary fire camp and/or a helibase on that portion of the Avista property that they used in 2001 for firefighting (near the existing east cabin site).

Response: The conservation easement to be granted to FWP by Avista would allow the landowner to authorize emergency use of a portion of the land for use as a helicopter base, landing area, and/or fire camp. This area includes the area used in 2001 and would be designated in the conservation easement.

2. One nearby landowner asked if the previously used helicopter landing site could be placed somewhere else. He noted that the dust and noise impacts of the constant flying by the Forest Service fighting the Ross Creek fire during 2001 were significant. He also noted that others (i.e., FWP) used that site for flying.

Response: The area designated as a helibase and fire camp would only be used in the case of emergency response and possibly for limited helicopter-based wildlife surveys. FWP will consider moving its helicopter activities to a portion of the WMA on the west side of Highway 56 (in the vicinity of an existing gravel pit), but must evaluate the suitability and safety considerations of this alternative site.

3. A private timber company manager expressed concern that FWP would not undertake any timber management activities on the Wildlife Management Area. They mentioned that the current stand of 20-year-old trees, if properly thinned, would be ready for commercial products in 20 to 40 years.

Response: FWP recognizes the timber growing potential of these lands, noting that many trees on the property only 7 or 8 years old are over 10 feet in height. Based on the existing tree spacing, thinning could be an appropriate forest management activity in 20-40 years. There may also be a need to thin densely stocked stands to promote tree growth. For the fee-title lands, FWP plans to complete a baseline timber stand inventory and develop a long-term habitat management plan that includes management actions for the forest components. FWP's long-term goals would likely reflect habitat needs, risk of fire, protection of important ecological areas such as the forested wetlands, maintenance of winter range, spread of noxious weeds, and overall management costs. FWP agrees that over time, some type of forest management will be required. When future management actions are needed, FWP would develop a site-specific plan and make it available for public review through our environmental review process. For the Avista lands, the conservation easement allows Avista to undertake management activities that will improve, restore, or maintain habitat values, subject to prior approval by FWP. However, the conservation easement prohibits timber harvests intended strictly for commercial purposes.

4. The same private timber company manager also asked if there was a comprehensive management plan for the project and who would pay the property taxes and land management costs?

Response: **Management Plan** – FWP included the Bull River WMA draft land management plan in Appendix B of the draft EA. In that plan, we specified needed tasks and anticipated management costs for such activities as noxious weed control, signs, parking areas, inventories, and other activities, with initial costs to be at least \$24,000 for the first few years with eventual annual costs to be in the neighborhood of \$4,000-\$5,000 per year (not including taxes). FWP plans to update this management plan once proper inventories and other preliminary management activities are completed. **Taxes** – As mentioned on page 14 of the draft EA, Avista would continue to pay taxes on their property encumbered with the conservation easement and FWP would be responsible for property taxes on the proposed WMA. **Management Costs** – Through the Clark Fork Settlement Agreement, Avista can fund management costs for their conservation projects. In this case, the Clark Fork Settlement Agreement Management Committee has agreed to allow Avista to pay for land and habitat management activities on both the proposed WMA and the Avista lands through the funding processes set up by the Clark Fork Settlement Agreement. The bulk of these costs will likely come from the Aquatic and Terrestrial programs. Avista is also considering setting up an endowment for long-term management costs of the Bull River WMA and conservation easement.

5. The same commenter also felt the project lands would be closed to public use too much of the winter, especially for an area so close to the highway.

Response: Although project lands may be closed seasonally to prevent wildlife disturbance, the Ross Creek and South Fork Bull River county roads that pass through the property would remain open and would continue to provide recreational access to Forest Service lands just beyond the proposed project. The Forest Service also has a reserved right to use an area adjacent to the beginning of the Ross Creek Road for a parking area and cross-country ski access area. This right will be maintained.

6. This same commenter also asked to be kept informed of management decisions regarding timber, roads, and other activities.

Response: FWP will keep the current mailing list of all interested parties and will notify those parties through the environmental assessments for future management activities.

7. One individual requested that FWP prohibit motorized boating on the Bull River because of its high use by floating boats and the need to protect the area's quiet and important habitats.

Response: Determining type of boat use for the entire Bull River or closing the river to motorized craft is outside the scope of this draft EA. However, the FWP Commission received a citizen petition to prohibit motorized watercraft on the Bull River and discussed the proposal at their meeting on November 4, 2004. At that meeting the Commission decided not to restrict motorized watercraft on the Bull River.

8. The private landowners who own five acres that would be surrounded by the proposed WMA mentioned concerns about their personal historical use of these lands for waterfowl hunting, trapping, snowmobiling, or retrieving escaped dogs from December 1 through May 14; they also did not want to be "fenced in" with perimeter fences.

Response: FWP's draft management plan indicates the WMA would be closed to public use from December 1 through May 14. Further, the management plan indicates that motorized use on the property off the county roads would not be allowed. Therefore, unauthorized use of the WMA during the closed season or with a snowmobile or off-highway vehicle would be a violation of these rules. The closure of the WMA for purposes of wildlife security during the critical winter months is consistent with most of the WMAs in the state. However, FWP can issue special use permits for uses of the property that would be compatible with the WMA or that would not cause any significant impacts. FWP recognizes that trapping beaver or muskrats may be a legitimate use of the WMA and will consider allowing trapping on the WMA on a limited basis. Additionally, FWP will consider public use of the area for waterfowl hunting during periods when the WMA is open. However, no decisions have yet been made on these issues, which must be evaluated for how they would affect the purposes of this specific management area, as well as consistency with Department policies. For other uses, our intent is to restrict public use of the area to maintain winter habitat security for elk and other wildlife. Consequently, winter snowmobile use would be restricted. For an isolated incident, FWP would give permission to retrieve dogs from the WMA during winter, but this should occur only rarely and FWP will encourage neighboring landowners to control their animals, as required by law. FWP does not anticipate fencing the perimeter of the WMA unless there is a need such as livestock or off-highway vehicle trespass. FWP would prefer to use signs along the boundary.

9. These same landowners also asked what would be happening to the log cabin that is currently located on the western portion of the Avista property (northeast quarter of section 16). They noted that one of their grandfathers built the cabin in 1961, and they were interested in acquiring it if it was going to be moved off the property.

Response: As stated in the draft Bull River WMA Management Plan, Appendix B (p. 25), FWP may acquire this cabin in Section 16 from Avista for administrative purposes related to managing the WMA. FWP is now evaluating whether or not to secure ownership of the cabin and will make a decision based on the potential uses of the cabin, as well as consideration of the liabilities of cabin

ownership and maintenance. If FWP determines that the cabin will be an asset to managing the WMA, then FWP will acquire it from Avista and will assume management responsibility for it. If FWP determines that the cabin is not needed, Avista will dispose of the cabin and, in doing so, will contact potentially interested parties, including those who have expressed interest in the cabin through this review.

10. Several individuals mentioned their concern about anticipated subdivision and development on the Plum Creek property located directly north of the proposed WMA (Section 3). They thought FWP would have to deal with extensive and costly management problems with people living so close to the WMA. One person suggested that the new development adhere to a food storage order.

Response: FWP recognizes that several private land parcels are interspersed within and near the proposed WMA and conservation easement area. We recognize that new developments on the border could impact some habitat values on the WMA and increase our management costs for issues such as trespass, fencing, noxious weed infestations, game damage, wildlife feeding, public safety concerns over mountain lions or bears, garbage management, and illegal activities. Given the importance of the habitats in the proposed WMA, FWP is committed to addressing these challenges, participating in decisions affecting development in the vicinity of the WMA, and providing information to new residents about the importance of the WMA and its rules and regulations.

## **THE DECISION**

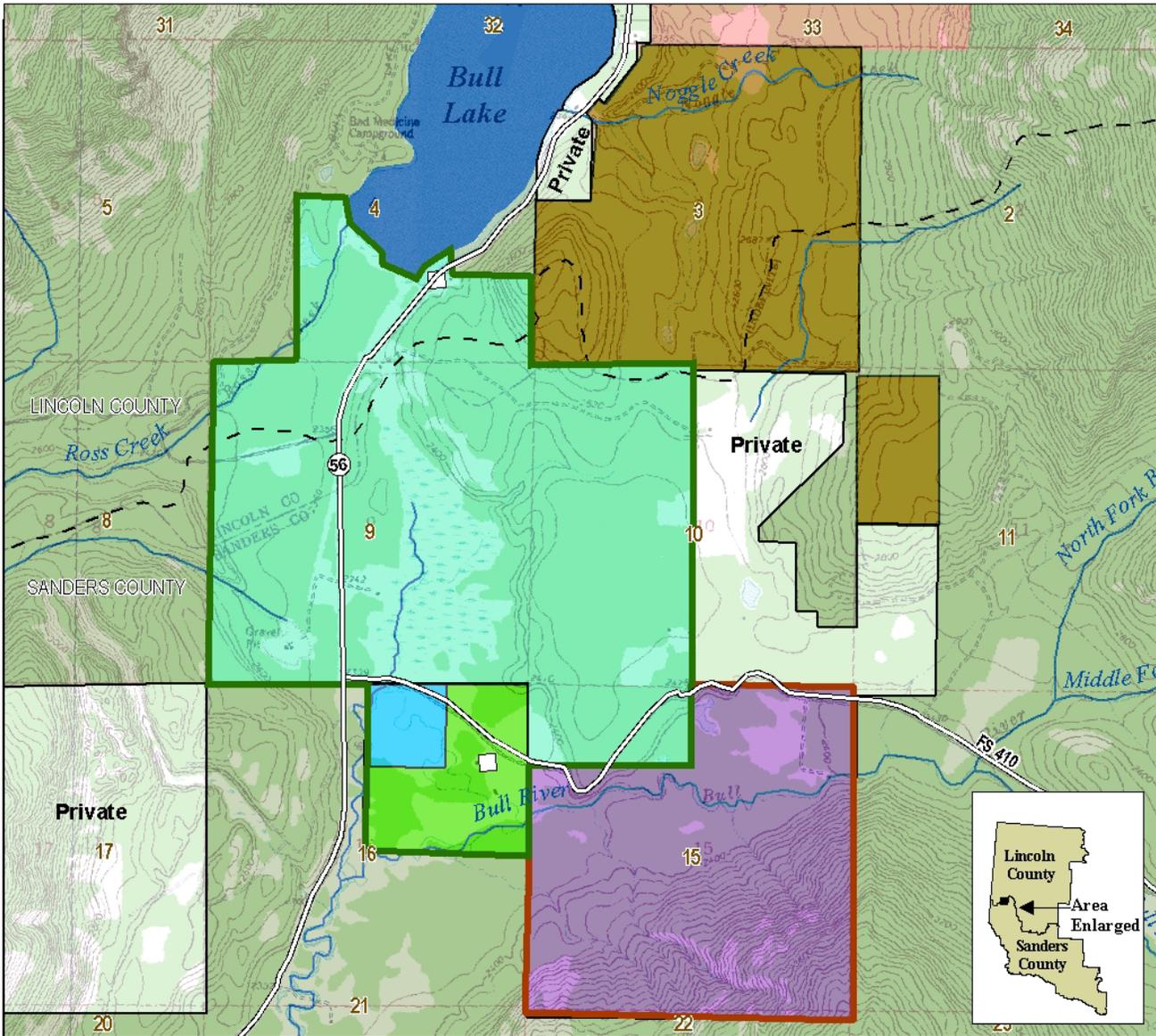
Based on the exceptional benefits of the proposed action for fish and wildlife habitat conservation, and further based on the substantial threats to this important habitat from probable residential development in the event of inaction, FWP recommends that the Montana Fish, Wildlife & Parks Commission approve the Bull River/Lake Creek Project as proposed and authorize FWP to complete the land transactions, as presented in the environmental assessment process and this decision notice. FWP would use \$4,610,800 of federal HCP grant funds to purchase a total of 1,281 acres from The Conservation Fund. In addition, FWP would accept a 40-acre fee-title donation from Avista and a donated conservation easement on another 559 acres of adjoining land held by Avista.

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Date

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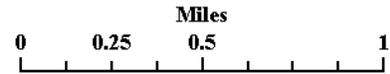
Acting Region One Supervisor



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|---|---|
|  FWP Purchase of Plum Creek Timber Company Land    |  Plum Creek Timber Company Future Development |
|  Avista Conservation Easement Donation (HCP Match) |  Plum Creek Timber Company                    |
|  Avista Fee Title Donation to FWP (NAWCA Funded)   |  US Forest Service                            |
|  Avista/TCF Land for FWP Fee Title Purchase        |  Small Private Parcel                         |
|  Proposed Bull River WMA Boundary                  |   |
|  Proposed FWP Conservation Easement Boundary       |   |



**Montana Fish,  
Wildlife & Parks**  
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**Proposed Bull River/Lake Creek Conservation Project, Lincoln and Sanders Counties, Montana.**