

February 22, 2008
215 W. Aztec
P.O. Box 938
Lewistown MT 59457

Environmental Quality Council
Montana Department of Environmental Quality
Montana Department of Fish, Wildlife and Parks
 Fisheries Division
 Endangered Species Coordinator
 Native Species Coordinator, Fisheries Division
Montana State Library, Helena
MT Environmental Information Center
Montana Audubon Council
Montana Wildlife Federation
U.S. Army Corp of Engineers, Helena
U.S. Fish and Wildlife Service, Helena
State Historic Preservation Office, Helena
U.S. Forest Service, Gardiner Ranger District
Cedar Creek Water Right Owners of Record

Ladies and Gentlemen:

Please find enclosed an Environmental Assessment (EA) prepared for Montana Fish, Wildlife and Parks (FWP) and the Future Fisheries Improvement Program. FWP proposes to purchase water rights from Cedar Creek, a tributary to the Yellowstone River near Corwin Springs. These water rights are currently leased by FWP for in-stream flow for the benefit of the fishery. The intent of the project is to maintain habitat for salmonids, primarily Yellowstone cutthroat trout. Cedar Creek is located about 2 miles downstream of Corwin Springs and about 10 miles downstream of Gardiner.

Please submit any comments that you have by 5:00 P.M., March 11, 2008 to Montana Fish, Wildlife & Parks at the address listed above. The funding for this project through the Future Fisheries Improvement Program and the approval to purchase the water rights is contingent upon approval being granted by the Fish, Wildlife and Parks Commission. If you have any questions, feel free to contact me at (406) 538-4658. Please note that this draft EA will be considered as final if no substantive comments are received by the deadline listed above.

Sincerely,

Andy Brummond
Water Resources Specialist
Habitat Protection Bureau
Fisheries Division
e-mail: abrummond@mt.gov

ENVIRONMENTAL ASSESSMENT
Fisheries Division
Montana Fish, Wildlife & Parks
Cedar Creek Water Right Acquisition

General Purpose: The 1995 Montana Legislature enacted sections 87-1-272 through 273, MCA that directs the Montana Fish, Wildlife and Parks (FWP) to administer a Future Fisheries Improvement Program. The program involves providing funding for physical projects to restore degraded fish habitat in rivers and lakes for the purpose of improving wild fisheries. The legislature established an earmarked funding account to help accomplish this goal. Additionally, the 1999 Montana Legislature amended statute sections 87-1-273, 15-38-202 and Section 5, Chapter 463, Laws of 1995 to create a bull trout and cutthroat trout enhancement program. The program calls for the enhancement of bull trout and cutthroat trout through habitat restoration, natural reproduction and reductions in species competition by way of the Future Fisheries Program.

Section 87-1-209, MCA authorizes FWP to acquire water rights for water suitable for fish restoration, propagation or protection. In addition section 85-2-436, MCA authorizes FWP to temporarily or permanently change water rights to in-stream flow purposes to benefit of the fishery.

Montana Fish, Wildlife and Parks is proposing to purchase three water rights from Cedar Creek, a tributary to the Yellowstone River near Corwin Springs. FWP currently leases these 3 water rights from Frank Rigler, a private landowner. In addition FWP leases water rights from the U.S. Forest Service. These two water right leases provide for 3.0 cubic feet per second (cfs) of instream flow to provide sufficient water for Yellowstone cutthroat trout spawning, incubation and fry migration to the Yellowstone River. Cedar Creek provides substantial Yellowstone cutthroat fry recruitment to the Yellowstone River and is vital to maintaining Yellowstone cutthroat populations. The Future Fisheries Improvement Program is proposing to provide 50% of the funding for the water right purchase with the remainder coming from other FWP sources.

I. Location of Project: This project involves maintaining stream flow in approximately the lower 2700 feet of Cedar Creek. This stream reach is located in Section 13, Township 8 South, Range 7 East, Park County. See attached map.

II. Need for the Project: One goal within Montana Fish, Wildlife and Parks six-year operations plan for the fisheries program is to “restore and enhance degraded fisheries habitats” by implementing habitat restoration projects and administering the Future Fisheries Improvement Program to restore important habitats on private and public lands. This proposed project would help meet this goal.

A review of the hydrology of Cedar Creek in relation to the spawning period for Yellowstone cutthroat shows that the lease of the Rigler water rights is critical in providing sufficient water depth for adult spawning fish to enter and spawn in Cedar Creek. The 1.3 cfs provided by the Forest Service lease alone would not likely be sufficient to support spawning of adult Yellowstone cutthroats, while it is sufficient for incubation and out-migration of fry. Recent years have shown that flows in Cedar Creek are now regularly dropping earlier and to a greater degree than they historically did. The full value of the 1.7 cfs private lease may have not been apparent when the lease was originally conceived, but its importance in facilitating spawning is now more evident.

The Forest Service lease was renewed for 10 years in 2005. The Forest Service lease is considered quite

secure given that the Forest Service also works to improve and protect Yellowstone cutthroat populations. The Rigler lease provides an additional 1.7 cfs of flow that is protected downstream of the irrigation diversions while it decreases the total diversion by up to 7.01 cfs.

III. Scope of the Project:

Approximately the lowermost 2700 feet of Cedar Creek would directly benefit from the project. Additional important benefits will result in the Yellowstone River as continued fish recruitment helps maintain the mainstem Yellowstone cutthroat trout population as well as benefiting other fish populations.

FWP now has the authority to permanently change water rights to in-stream flow on 12 stream reaches. The high value of Cedar Creek in maintaining a viable Yellowstone cutthroat population warrants its inclusion of one the 12 stream reaches. If the Rigler water rights were acquired, FWP would move to permanently change them to in-stream flow.

Due to a recent land sale and related factors, Mr. Rigler has offered the water rights presently lease for sale to FWP. The present investment in the remaining 26 years of the existing lease has been considered in determining the payment for the water rights. The total purchase price for the water rights is \$75,000 with the Future Fisheries Improvement Program proposing to contribute \$37,500 and the remainder coming from other FWP funding sources.

IV. Environmental Impact Checklist:

Please see attached checklist.

V. Explanation of Impacts to the Physical Environment

No impacts to the physical environment are expected. Currently the three water rights FWP proposes to purchase are being leased for in-stream flow for the benefit of the fishery in Cedar Creek. This lease has been in place for 4 years with 26 years remaining. FWP purchasing these water rights and permanently changing them to in-stream flow would have no impacts on the physical environment as nothing would be changing with regard to the present situation. The hydrologic regime in Cedar Creek that has been experienced over the last 4 years will continue within the context of the climatic effects on stream flow.

VI. Explanation of Impacts on the Human Environment.

As with the physical environment, no impacts to the human environment are expected. It should be noted that when FWP initially leased these three water rights, in exchange for the lease FWP provided funding to help Mr. Rigler develop a new irrigation system from a new water source to continue irrigating the lands historically irrigated from Cedar Creek. Therefore, no decrease in agricultural production has occurred or will occur as a result of this water right purchase. Similarly the tax base associated with the agricultural land will not decrease.

VII. Discussion and Evaluation of Reasonable Alternatives.

1. No Action Alternative

If no action is taken, the existing water right lease will continue for 26 years at which time it must be renegotiated or terminated. If the water is no longer left in-stream to provide instream flow, the Yellowstone cutthroat trout population in the upper Yellowstone River would suffer.

2. The Proposed Alternative

The proposed alternative intends to maintain the status quo beyond the 26-year life of the existing lease into perpetuity. Yellowstone Cutthroat spawning, rearing and fry out migration historically has occurred in Cedar Creek due to irrigation diversion bypassing some flow. This lease serves to legally protect that bypassed flow and maintain Cedar Creek as an importing Yellowstone cutthroat spawning stream. This project would serve to ensure that Cedar Creek remains a viable Yellowstone cutthroat spawning stream in perpetuity. This project also serves to mitigate hydrologic changes associated with climate change that may be impacting the ability of adult Yellowstone cutthroat to use Cedar Creek for spawning.

VIII. Environmental Assessment Conclusion Section

1. Is an EIS required? No.

We conclude from this review that the proposed activities will have a positive impact on the physical and human environment.

2. Level of public involvement.

The proposed project was reviewed and supported by the public review panel of the Future Fisheries Improvement Program. The Fish, Wildlife and Parks Commission also will review the proposed project. Both the authority to acquire the water rights and the funding will be contingent upon their approval. The Environmental Assessment (EA) is being distributed to all individuals and groups listed on the cover letter. The EA also will be published on Montana Fish, Wildlife and Parks webpage: www.fwp.mt.gov/publicnotices

3. Duration of comment period?

Public comment will be accepted through 5:00 PM on March 11, 2008.

4. Person responsible for preparing the EA.

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MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS
 1420 E 6th Ave, PO BOX 200701, Helena, MT 59620-0701
 (406) 444-2535

ENVIRONMENTAL ASSESSMENT

Project Title: Cedar Creek Water Right Acquisition

Division/Bureau: Fisheries Division -Future Fisheries Improvement, Water Program

Description of Project: Montana Fish, Wildlife and Parks is proposing to purchase three water rights from Cedar Creek, a tributary to the Yellowstone River near Corwin Springs. FWP currently leases these 3 water rights from Frank Rigler, a private landowner. The intent of the project is to maintain Yellowstone cutthroat spawning, rearing and out-migration in Cedar Creek to help maintain the Yellowstone cutthroat population in the upper Yellowstone River. The project site is located approximately 2 miles downstream of Corwin Springs and about 10 miles downstream of Gardiner in Park County.

POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Terrestrial & aquatic life and habitats				X		
2. Water quality, quantity & distribution				X		
3. Geology & soil quality, stability & moisture				X		
4. Vegetation cover, quantity & quality				X		
5. Aesthetics				X		
6. Air quality				X		
7. Unique, endangered, fragile, or limited environmental resources				X		
8. Demands on environmental resources of land, water, air & energy				X		
9. Historical & archaeological sites				X		

POTENTIAL IMPACTS ON THE HUMAN ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Social structures & mores				X		
2. Cultural uniqueness & diversity				X		
3. Local & state tax base & tax revenue				X		
4. Agricultural or industrial production				X		
5. Human health				X		
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational and wilderness activities				X		
8. Quantity & distribution of employment				X		
9. Distribution & density of population & housing				X		
10. Demands for government services				X		
11. Industrial & commercial activity				X		
12. Demands for energy				X		
13. Locally adopted environmental plans & goals				X		
14. Transportation networks & traffic flows				X		

Other groups or agencies contacted or which may have overlapping jurisdiction none

Individuals or groups contributing to this EA Scott Opitz, FWP Fisheries Biologist

Recommendation concerning preparation of EIS No EIS required.

EA prepared by: Andy Brummond

Date: February 22, 2008

General Location Map

