Montana Fish, Wildlife & Parks

2300 Lake Elmo Drive
Billings, MT 59105

NOTICE OF DECISION

October 16, 2008

TO: Environmental Quality Council
Director's Office, Dept. of Environmental Quality
Montana Fish, Wildlife & Parks*
- Director's Office
- Parks Division
- Fisheries Division
- Wildlife Division
- Regional Supervisors
- Lands Section
- Design & Construction
- Legal Unit
- Federal Aid Coordinator (when P-R, D-J project)

Mike Volesky, Governor's Office *
Sarah Elliott, Press Agent, Governor's Office*
Montana Historical Society, State Preservation Office
Janet Ellis, Montana Audubon Council
Montana Wildlife Federation
Montana State Library
George Ochenski
Montana Environmental Information Center
Wayne Hirst, Montana State Parks Foundation
FWP Commissioner Shane Colton*
DNRC Area Manager, Southern Land Office
County Commissioners
Other Local Interested People or Groups
* (Sent electronically)

Ladies and Gentlemen:

From September 10 to October 10, 2008, a draft Environmental Assessment (EA) was circulated for suppressing nonnative fishes in two tributaries of the Yellowstone River near Big Timber, MT, through mechanical removal, and transferring pure Yellowstone cutthroat trout within one watershed and to another creek near Red Lodge. The streams involved were Upper and Lower Deer creeks and Thiel Creek. Legal notices were posted in all local newspapers, and a landowner meeting was attended on October 4. Responses to comments offered at the meeting and via letters, emails, calls and visits are included in the attachment.

After reviewing this proposal and corresponding comments, it is my decision to proceed with this project as proposed. If you have questions regarding this decision notice or wish a copy of the final EA, you may email me at ghammond@mt.gov, or call Jim Darling at 247-2961.

Sincerely,

Gary Hammond

Gary Hammond
Regional Supervisor

Enclosure

Lower and Upper Deer Creeks Nonnative Trout Removal

Summary of Proposed Actions

Because of the continuing threat to native Yellowstone cutthroat trout (YCT) by nonnative trout in the Deer Creeks, we are planning to remove brown trout and brook trout from strategic locations where they are competing with and suppressing YCT. The YCT populations in both creeks have been substantially reduced, and only occupy a small portion of their historic range. These actions are part of a conservation approach aimed at securing YCT within its historic range in Montana, and reducing the justification for including this species on the endangered species list.

Upper and Lower Deer creeks have considerable conservation value because they support some of the few populations of pure YCT in this part of the state. Like many other YCT populations, these populations have declined over the years because of drought and competition with, or predation by, introduced brown trout and brook trout. Furthermore, hybridization with rainbow trout presents a dire threat to the remaining pure YCT in Lower Deer Creek. Montana Fish, Wildlife & Park's (FWP's) goal is to protect these populations and ensure that they persist long into the future. The environmental assessment covers short-term measures designed to protect and secure the remaining pure YCT. In addition, a description of potential, long-term actions provides the framework for the overall conservation approach. The long-term actions will be addressed in separate environmental assessments.

In the short term, FWP deems removal of some nonnative fish necessary to give these struggling YCT populations a boost. We plan to do this only in areas where YCT and nonnative fish are present in relatively equal numbers. For instance, in areas where we have approximately 50% brown trout and 50% YCT, we would remove brown trout for a few years with the intent of converting those areas to mostly YCT. The intended result is increased growth and survival of YCT, leading to substantially increased numbers of this native fish. This would also increase genetic diversity, and provide a larger pool of fish to draw from should we decide to construct a barrier and remove all fish, followed by re-stocking YCT back into their native streams.

We understand that Upper and Lower Deer creeks are popular destinations for local anglers, and we want to conduct our work in a way that minimizes impacts to the angling experience. All work will be done on National Forest lands. In areas where brook trout and brown trout make up the majority of the fish population, we will not remove these fish. Removal in such places would not provide the maximum benefit to YCT, and angling opportunities could be affected. For instance, areas in Lower Deer Creek below Placer Gulch contain mostly brown trout, which grow to a substantial size. We will not be removing fish in these areas because it may not benefit cutthroat trout over the short term. The only feasible way to convert these areas to YCT would be to construct a barrier and remove all brown trout, which is beyond the scope of this EA. Another example of our work would be in Upper Deer Creek near the Iron Mountain Road crossing. The creek in this area is dominated by brook trout. In our population estimates,

we found 84 brook trout and 4 YCT. Removal in these areas would take away from angling opportunities because it would take some time for YCT to fill the void created by removing brook trout. In contrast, about 1 to 2 miles downstream this location, brook trout and YCT are present in equal numbers. Here, we would want to remove brook trout to help this YCT population expand.

These are very short term solutions to the problem we face, but we feel that we need to act now to protect these populations until longer term solutions are found. Removal of nonnative fish will occur in less than 5 miles of stream, but this should provide some very positive short-term benefits to these YCT populations, and buy us some time before taking further action.

Over the long-term, several actions will be required to protect the remaining native YCT. Long-term goals include construction of barriers and removal of nonnative fish above barriers to reduce the threats of hybridization, competition, and predation, which would otherwise lead to extirpation of these populations. Factors influencing barrier site selection will include cost, access, landowner concerns, and biological considerations regarding sufficiency of the habitat protected. Barrier design will incorporate expressed concerns on structural stability during flood events, and the ability of the structures to pass woody debris. FWP will prepare an environmental assessment, and the public will be given opportunity to review designs and the provide comment on these actions.

Lower Deer Creek Wild Fish Transfer

Summary of Proposed Actions

We plan to transfer Yellowstone cutthroat trout (YCT) from two areas in Lower Deer Creek to an area above a natural barrier falls in Lower Deer Creek and to Thiel Creek, waters that received YCT in prior transfers. The purpose of these transfers is to protect this population of YCT from hybridization with rainbow trout and from extinction due to competition with and predation by brown trout.

Genetic samples from 2006 indicated the presence of a first generation (F1) hybrid rainbow x YCT on private land in the Lower Deer Creek drainage below where we intend to take fish for transfer. All fish sampled for genetics in the areas from which we plan to move fish were identified as genetically pure YCT, and no rainbow trout currently occur in these areas. The potential for these hybrid fish to move up the drainage and interbreed with pure YCT highlights the need for quick action to prevent genetic contamination of this otherwise pure population. Fisheries Biologist Jim Olsen stated that he was able to easily identify the F1 hybrids taken for genetic sampling, but beyond that, it may be difficult to tell if a fish is hybridized.

We will collect samples for genetic analysis from fish in the donor reaches of Lower Deer Creek this summer (2008) and will not move fish until receiving test results. We will not move any fish from an area that has been identified as being hybridized with rainbow trout unless we can confidently identify F1 hybrids and results do not detect hybridization beyond the F1 stage.

If successful, these fish transfers will help provide two separate sources of genetically pure YCT for reintroduction into Lower Deer Creek for future YCT restoration. These alternate sources will be particularly important in the event that hybridization continues to move up the drainage. Thiel Creek contains a small number of YCT resulting from fish transfers in 2006 from Lower Deer Creek. A concrete fish barrier was constructed in Thiel Creek, and many brook trout were mechanically removed from the creek above the barrier, where YCT were transferred. Most of the adult YCT transferred left the system and likely perished, but young-of-year and age-1 fish stayed in the creek and appear to be surviving very well. It is our goal to create a self-sustaining YCT population in Thiel Creek for future transfer back into Lower Deer after nonnative trout removal, and we believe that this will require stocking age-1 and younger YCT from Lower Deer Creek over a period of 3-4 years. After a self-sustaining population is established, it will no longer be necessary to transfer fish to Thiel Creek.

A large amount of habitat exists above the barrier falls in the headwaters of Lower Deer Creek and in the West Fork of Lower Deer Creek. Hatchery fish that were stocked above the Lower Deer Creek falls in the early 2000's do not appear to have successfully reproduced. Stocking fish above the falls and above a barrier in the West Fork with a source of YCT from just below these barriers should establish a self-sustaining YCT

population. Following extensive fire in the drainage, stream levels appear to be much higher and are likely to provide more spawning habitat for introduced YCT. Transferring multiple age classes of YCT into this area from immediate downstream locations over a period of 3-4 years should establish a self-sustaining YCT population.

This project will provide a substantial benefit to the long-term restoration of YCT in the Lower Deer Creek drainage. The loss of YCT being transferred out of Lower Deer Creek will be minimized because:

1) Most of the fish we plan to transfer will be age-1 and younger YCT. Because of the presence of competitive and predatory brown trout, there is a high rate of YCT mortality during these early life-stages, and our taking fish from the drainage will be compensatory to mortality that YCT would have experienced had they not been transferred. Conversely, YCT that are transferred to the receiving waters will have little or no competition for food and space, and will experience much lower mortality rates than they would have in Lower Deer Creek.
2) To additionally protect YCT in the short term while seeking a better long-term solution (barrier construction and nonnative removal), we plan to remove brown trout from Lower Deer Creek in areas where they have the greatest impact on YCT, thereby reducing mortality and opening up more niche space for the YCT population to expand. This removal should minimize or eliminate any population level impact induced by fish transfers. We are currently preparing an EA to address this and other proposed actions to protect YCT in the Deer Creeks.

If you have any questions, comments or concerns regarding the proposed action, please feel free to contact me.

Jeremiah Wood
Regional Fisheries Biologist
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RESPONSES TO COMMENTS REGARDING SPPRESSING NONNATIVE FISHES IN UPPER AND LOWER DEER CREEKS AND TRANSFERRING YELLOWSTONE CUTTHROAT TROUT

Montana Historical Society
Comment: *We feel there is a low likelihood cultural properties will be impacted. We, therefore, feel that a recommendation for a cultural resource inventory is unwarranted at this time. However, should cultural materials be inadvertently discovered during this project we would ask that our office be contacted and the site investigated.*
Response: We will contact the MHS if we discover any cultural materials.

Calls:
Comment: *A long-time angler of Lower Deer Creek likes to take his grandkids fishing there and doesn't want the current trout population removed and replaced with Yellowstone cutthroat trout.*
Response: The project will involve only selected areas within a total of 5 stream miles (see attached figure) located in the Custer National Forest. (A more complete summary of the proposed mechanical removal and fish transfer is also attached.) Nonnative fish will be removed only where Yellowstone cutthroats represent at least half of the resident population. Fishing will be affected temporarily, but the native fish should increase and grow to provide good fishing.

Comment: *A landowner called to support the removal of nonnative fish. She noted that the fisheries of Upper Deer Creek had suffered from drought and fire in recent years.*
Response: We appreciate her support for the project. The recent events are a reminder that the ultimate health of the fisheries in these drainages also involves the recovery of the stream habitat and riparian areas.

Comment: *Another landowner noted the decrease in fish in Upper Deer Creek during the bad water years. He believed that I would experience opposition at the October 4 meeting to barrier construction.*
Response: His prediction about barrier concerns was true, and those comments will be addressed in a subsequent EA, should we decide to pursue installing one. The current project involves only mechanical removal and transfer of fish.

Landowner Meeting
Comments: *I met with 19 concerned people, mostly landowners, at Burntout Lodge on Lower Deer Creek on October 4, 2008. Mr. Bill Ralph facilitated the meeting and summarized the comments (attached).*
Response: As Mr. Ralph noted, most of the comments centered around potential future plans to construct barriers on Upper and Lower Deer creeks and remove nonnatives above those barriers using chemicals. I assured them that we would prepare a separate EA concerning those plans, would address the concerns they had raised, and would hold a public meeting to thoroughly discuss all of the alternatives. Also, those attending the meeting would be added to the circulation list for this and any subsequent EA.

Letters and Emails

Comment: *A person wrote in support of our work to preserve cutthroat trout, but asked that the State of Montana require the US Forest Service to develop a watershed protection plan for the Deer Creeks that would protect and improve the water quality.*
Response: We appreciate his support of the project. Both Upper and Lower Deer creeks are on the Department of Environmental Quality's (DEQ) list of polluted streams (303[d] list) due to sediment coming from silvicultural activities. DEQ is responsible for developing water quality restoration plans to address this pollutant by 2012. Contact Dean Yashan at DEQ ([406] 444-5317 or dyashan@mt.gov) for more information on schedule and how to become involved in this water quality planning process.

Comment: *The Eastern Wildlands Chapter of the Wilderness Association supports such efforts to preserve what remains of genetically pure populations of Yellowstone cutthroat trout. They are concerned that a June 2008 decision by the Gallatin National Forest to open trails in these drainages to motorcycle use reduces protection for these fish. They requested that we ask the Gallatin Forest not to open these trails.*
Response: Their comments were forwarded to the Gallatin National Forest. We believe that this project has merit regardless of their decision about trail use. In this case, the proposed project is needed to ensure survival of pure strain Yellowstone cutthroat populations threatened by competition with, predation by, and hybridization with non-native trout species. These threats must be addressed before the effects of additional use in the area are considered.

Comment: *The Beartooth Back Country Horsemen commended the Department for the work proposed for the cutthroat conservation effort. They also objected to the provision in the Gallatin Forest Travel Plan allowing motorcycle use in this area, and felt this provision would make the cutthroat restoration a waste of time, effort, and monies.*
Response: Their comments were also forwarded to the Gallatin National Forest.

Received 10/10/2008

October 6, 2008

Mr. Jim Darling
Regional Fisheries Manager
2300 Lake Elmo Drive
Billings, MT 59105

Dear Jim,

I have attached three enclosures to this letter:

1. Comments to your 10 Sept 08 Draft EA from our 04 Oct 08 meeting

2. Comments by Mr. R. Holman at our 04 Oct 08 meeting

3. Mrs. K. Houge's e-mail address

I want to thank you for attending our 04 Oct 08 meeting on your day off, your friendly and patient overview of the Draft EA, for your give and take during the question and answer session and last, but not least, your assurance to the attendees chief concern, that they needed to be heard about the effects they feel barriers will cause them. Your promise that all attendees would be individually notified in sufficient time to fully respond to that Draft EA, addressing barriers, made our 04 Oct 08 meeting calmer than I had expected. Thanks.

Sincerely,

Bill Ralph

Bill Ralph
652 Highway 10 East
Big Timber, MT 59011

Enclosure 1.

Subject: FWP Draft Environmental Assessment (EA) dated September 10, 2008

1. Comments at the 04 Oct 08 public meeting on the subject Draft EA were clearly concerned with the effects barriers could cause attendees. The following is a list of those concerns and should be addressed in any following EA:

   A) effects on irrigation
   B) effects on fishing
   C) potential flood problems D) placement sites
   E) time tables
   F) state liability for failure G) construction data

2. FWP regional Manager J. Darling held an overview of the Draft EA and then a question and answer session with attendees. The questions relating to the cutthroat ranged from the purpose for the move, the current cutthroat status, how and when the FWP would move the cutthroat, effects on other non-native fish, and effects this activity would have on people - both residents and tourists.

3. Mr. Darling stressed that attendees would be individually notified of the following Draft EA which will contain barrier information and details, in time for the attendees to make individual comments.

4. Mr. R. Holman prepared a detailed comment for this draft and is attached as an enclosure.

Enclosure 2.

Subject: Address by R. Holman

Meeting of concerned citizens seeking information, I thank you for your attendance and interest,

This issue came up a couple years ago. I too a bunch of pictures that show dozens of large cottonwood trees lying dead in or along Lower Deer Creek, wrote a letter to F.W. and Parks strongly opposing their proposal as a dangerous life and property threatening proposal. I also left a copy of my letter and pictures with at least two residents for use if I was gone.

I have been a resident of Montana since 1939, a WWII Montana enlisted veteran, member of Big Timber American Legion, and Absorokee VFW. I have thoroughly enjoyed roaming the Lakes and mountains of Montana and catching many fish. I have seen lakes full of cutthroat. I have worked construction most of my life and have worked on many dams and am well aware of what establishes liability.

I lived up the Boulder when the bridges on Lower Deer Creek went out and drove around and through Roundup to reach Billings as did people from Livingston and Bozeman. That country flooding and bridge deletion was an act of God, not manmade. Will the next one be manmade as proposed or an act of God and what will be the extent of the damages? Liability can be endless and can reach out and engulf anyone and everyone who enters a stream to make a change in the stream or install an obstruction.

We now have hundreds of dead logs lying along or in our streams thanks to the recent Derby fire. An act of God or possible others, not us? We have seen in Louisiana and Texas the hundreds of millions of dollars cost of flooding and the lives lost. I pointed out the potential danger of placing an obstruction in a stream that becomes a trap to possibly catch a log or hundreds of logs that may smash homes or kill. The minute that obstruction is placed in the stream it becomes a liability, our liability, a liability of Montana. That means us, you and I, because we are legal residents of Montana. Will our taxes go up? Will the Federal Government bail us out? We installed the liability--not an act of God. We cannot plead ignorance.

Following discharge, I returned to Absorokee, bought a place just above town that had been used by Montana Power for generation of electricity; they had built a retaining wall for diversion. My house was about 15 feet above water level. One spring, due to early and heavy rain and snow melt, Emerald Lake ice broke up early. Slabs of ice 18-inches to 20-inches thick and the size of my house soon reached the diversion wall and piled up one on the other and I soon had a pile of ice 40 to 50-feet high and higher than the house. I got my family out, but it was a close call. I was also caught by flood waters one time and carried almost _-mile before I managed to get out. I have had experiences.

I live along Lower Deer Creek, close to National Forest and border a school section where I have right of ways. To be legal, I built an approach and a steel based bridge, at a cost of $130,000. Based on the current steel increases since 1980, in my opinion, it would cost close to one million to replace this bridge if washed out and rolled down stream. There has been an obstruction proposed

Enclosure 2. (cont.)

above my bridge and if that obstruction is so placed I want a bond or a guarantee by the state to replace my bridge if damaged.

If the proposed obstruction is placed below the bridge, it may not be a problem for me. lt must be considered! The potential is there; the obstruction placed by the state of Montana. Any obstruction of water creates a pressure; the more water, the more pressure to seek relief. Obstructions create barricades to freedom of water, logs can pile up. How high, how much pressure before relief? How big a pile of logs, hundreds are available? Will another 1967 or worse be created? Remember danger is being created. Does anyone know how much? Have qualified engineers been consulted? Will you be a party or become involved? Will you gamble your house, bridge or possibly family? The potential for danger is being proposed, in my opinion. You be your judge or get legal advice. I offer my opinions.

I am of the opinion, based on experience, that hybridization improves the cutthroat and makes it a better fighter, better eating. Cutthroats can hybridize with rainbow which are Spring spawners. Brown and brook trout are Fall spawners. I had hybridization shown to me close to 50 years ago.

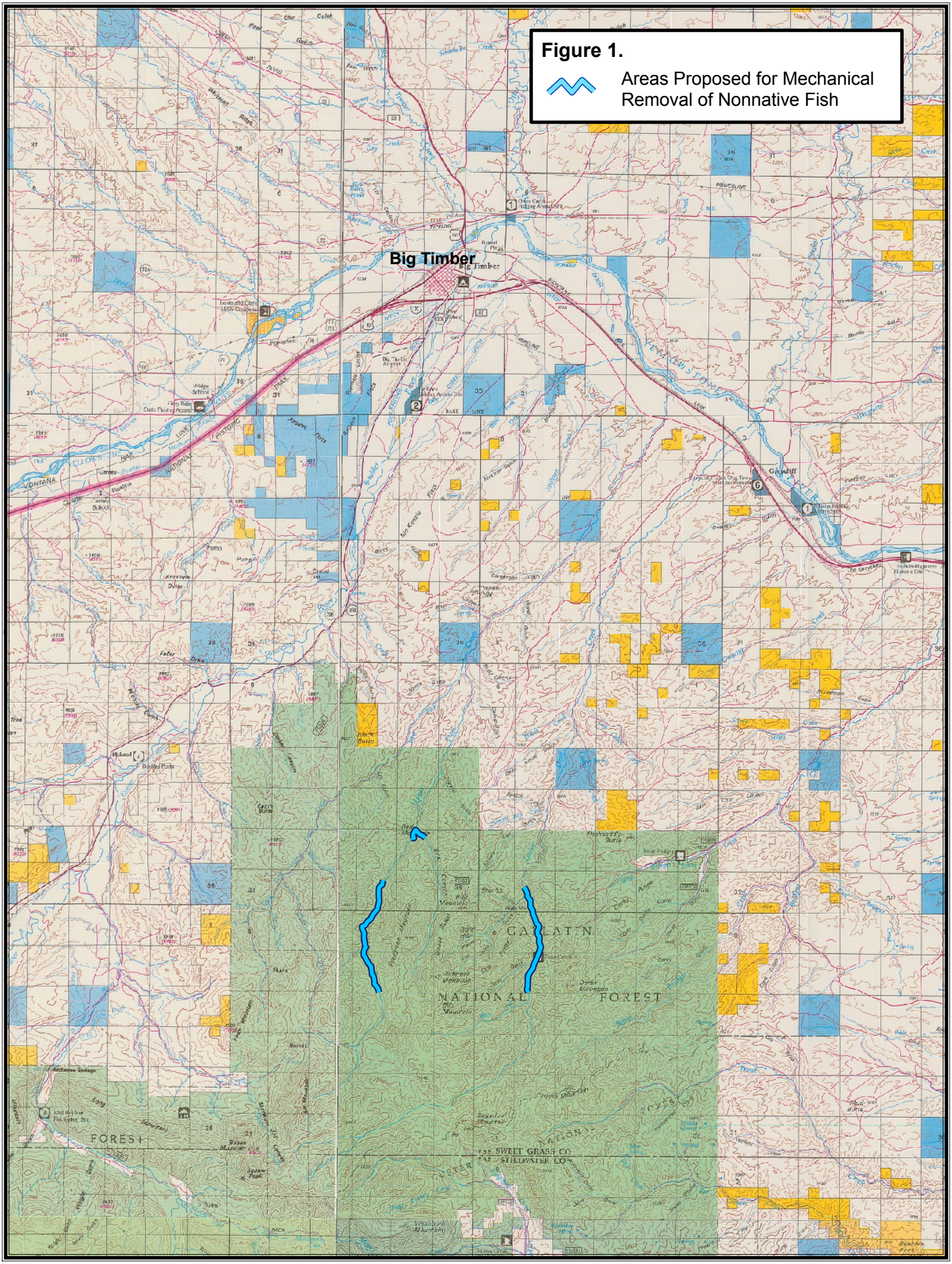
Figure 1.
Areas Proposed for Mechanical Removal of Nonnative Fish
Big Timber
GALLATIN
NATIONAL
FOREST
SWEET GRASS CO
STILLWATER CO