

**DECISION NOTICE**  
**SAMS SPRING CREEK CHANNEL RESTORATION PROJECT**

**Prepared by**  
**Montana Fish, Wildlife and Parks**  
**March 24, 2009**

**I. Proposal**

Montana Fish, Wildlife and Parks (FWP) proposes to provide partial funding through the Future Fisheries Improvement Program for a stream channel restoration project on two unnamed spring creeks, both small tributaries to Flint Creek.

**II. Montana Environmental Policy Act (MEPA)**

MEPA required FWP to assess the potential consequences of the proposed action for the human and natural environment. The proposal was detailed in an Environmental Assessment (EA) released by FWP on February 20, 2009. The 30-day comment period for this EA ended March 23, 2009.

Issues raised during the public comment period for this EA are addressed in the Comments section of this Decision Notice. The draft EA and Decision Notice will serve as the final document.

**III. Summary of Public Comment**

Two written e-mail comments were received in response to the draft EA. No other comments were received. One commenter was neutral. The other commenter stated, **“We strongly object to this proposed expenditure of public funds for private benefit.”**

Issues brought forward from this written comment included:

- 1. Based on the ground disturbance required by this undertaking we feel that this project has the potential to impact cultural properties. We, therefore, recommend that a cultural resource inventory be conducted in order to determine whether or not sites exist and if they will be impacted.**

Response: We concur and an inventory will be completed.

- 2. There are a number of obvious but unanswered questions that could be posed regarding the EA. In addition, there are several contradictory statements that need to be rationalized and rewritten. No mention is made of public access to the streams for recreational angling or any other purpose. It is specifically stated that Sam’s Spring Creek does not reach**

**Flint Creek so even the feeble “trickle down” excuse alleging benefits to downstream fisheries is precluded. Thus, there is no need to make specific comments on the proposal since there are negligible public benefits.**

Response: We agree that the public benefits associated with this proposed project appear to be marginal. The westernmost spring creek channel proposed for restoration does reach Flint Creek and could provide spawning and recruitment opportunities for fish residing in Flint Creek. Additionally, the westernmost spring creek is accessible via the stream access law at the county bridge located immediately upstream of the project. Both the Future Fisheries citizen review panel and the FWP Commission felt that the public benefits associated with the project justified approval of the requested funding. The enabling legislation for the Program and the associated Montana Code Annotated (MCA) are very clear about not requiring public access on private property where a Future Fisheries Improvement project has been completed. MCA (87-1-272) states: “A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.”

To ensure that the our decision maker, the FWP Commission, has the opportunity to fully review all public comments associated with the Future Fisheries Program prior to Commission action being taken, we will be adjusting our EA timing process starting in July 2009. Additionally, we would encourage you to take advantage of opportunities for providing your comments to the Program decision makers. These opportunities include the meetings of the Future Fisheries review panel and the meetings of the FWP Commission. Future Fisheries proposals are presented to the Commission during their regularly scheduled meetings in March and September.

#### **IV. Modifications to the Environmental Assessment**

Modifications to the draft EA are deemed to be unnecessary.

#### **V. Decision**

After review of the proposal, it is my decision to proceed with funding though the Future Fisheries Improvement Program for the Sams Spring Creek Channel Restoration Project. The action is expected to benefit the fishery in the restored reaches of the two streams.

I find there to be no significant impacts associated with this action and conclude that an Environmental Impact Statement is not needed. The completed EA and the Decision Notice provide an adequate level of analysis.

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Jim Darling, Habitat Bureau Chief  
Fisheries Division