

August 10, 2009  
1420 East 6th Ave.  
P.O. Box 200701  
Helena, MT 59620-0701

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  
    Bozeman Office  
Montana State Library, Helena  
MT Environmental Information Center  
Montana Audubon Council  
Montana Wildlife Federation, P.O. Box 1175, Helena, MT 59624  
Wayne Hadley, 1016 Eastside Road, Deer Lodge, MT 59722  
Montana River Action, 304 N 18<sup>th</sup> Ave., Bozeman, MT 59715  
Park Conservation District, 5242 Highway 89 South, Livingston, MT 59047  
U.S. Army Corp of Engineers, Helena  
U.S. Fish and Wildlife Service, Helena  
State Historic Preservation Office, Helena  
Trout Unlimited, 321 East Main Street, Suite 411, Bozeman, MT 59715  
Joe Springer, Vice President, Church Universal and Triumphant, P.O. Box 5000, Corwin Springs, MT 59030-5000

Ladies and Gentlemen:

Please find enclosed an Environmental Assessment (EA) prepared for the Future Fisheries Improvement Program. The program tentatively proposes to provide partial funding in order to protect and maintain in-stream flow in North Fork Fridley Creek. The project would involve Trout Unlimited and the Church Universal and Triumphant entering into a 50-year water lease agreement. The intent of the project is to ensure the stream has a sufficient volume of water during the critical spawning and rearing period for Yellowstone cutthroat trout. North Fork Fridley Creek, a tributary to the Yellowstone River, is located about 2 miles southwest of the community of Emigrant in Park County.

Please submit any comments that you have by 5:00 P.M., September 10, 2009 to Montana Fish, Wildlife & Parks in Helena at the address listed above. The funding for this project through the Future Fisheries Improvement Program 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) 444-2432. Please note that this draft EA will be considered as final if no substantive comments are received by the deadline listed above.

Sincerely,

Mark Lere, Program Officer  
Habitat Protection Section  
Fisheries Bureau  
e-mail: mlere@mt.gov

ENVIRONMENTAL ASSESSMENT  
Fisheries Division  
Montana Fish, Wildlife & Parks  
North Fork Fridley Creek In-stream Flow Protection Project

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.

Prior to 2004, the Park Branch canal captured North Fork Fridley Creek before it reached the Yellowstone River. In 2004, a restoration project reconnected this stream to the Yellowstone River by passing the stream through an open-bottom arch culvert installed underneath the canal. Additionally, in-stream flow was enhanced through an irrigation conversion project that created salvaged water. Since completion of this project, North Fork Fridley Creek has been connected to the Yellowstone River and Yellowstone cutthroat trout from the river have been observed annually spawning in the stream. Since the completion of the restoration project, Trout Unlimited has been exploring leasing upstream water right claims owned by the Church Universal and Triumphant. The three water rights claims total 95.4 acre-feet. Although these water rights claims have not been used in several years, a dedication of these water rights to in-stream flow would prevent the resumption of consumptive use and would help maintain the benefits that were created from the original restorative effort. The project site is located about 2 miles southwest of the community of Emigrant in Park County.

I. Location of Project: This project involves maintaining stream flow in approximately the lower 2 miles of North Fork Fridley Creek. This stream reach is located in Township 5 South, Range 8 East, Sections 31 and 32 in Park County (Attachment 1).

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.

North Fork Fridley Creek is a site of a habitat restoration project that was completed in 2004. This restoration involved reconnecting the stream to the Yellowstone River and enhancing in-stream flow through the development of a groundwater well and upgrading flood irrigation to a pivot sprinkler system. North Fork Fridley Creek now supports spawning by Yellowstone cutthroat trout of unknown genetic integrity. Upstream water rights claims, although known to have been unused over the past several years, threaten the efficacy of this restoration project should consumptive water use resume. North Fork Fridley Creek is a small stream and resumption of these unused rights for consumptive use would effectively dewater the stream and would create a difficult water rights administration problem for the senior downstream rights that are now dedicated to in-stream flow.

III. Scope of the Project:

Trout Unlimited is seeking to lease three water rights claims on North Fork Fridley Creek from the Church Universal and Triumphant (Attachment 2). These water rights claims include Nos. 43B 122560 00 (priority date of 1880, 1.25 cfs and 25 irrigated acres claimed), 43B 122561 00 (priority date of 1900, 1.88 cfs and 140 acres claimed) and 43B 122557 00 (priority date of 1885, 2.5 cfs for the same 140 acres). All of these water rights claims, totaling approximately 95.4 acre-feet of historically consumed water, would be dedicated to in-stream flow for the benefit of the fisheries found in North Fork Fridley Creek. These listed water rights claims have not been used for consumptive purposes over the past several years. However, resumption of consumptive use would lead to dewatering of the stream. The proposed 50-year water lease agreement with the Church Universal and Triumphant would act to secure the investment in restoration on North Fork Fridley Creek (previously funded, in part, with Future Fisheries dollars).

The project is expected to further secure in-stream flow in the lower two miles of North Fork Fridley Creek. The total purchase price for the water rights would be \$38,160 as a single payment for the entire 50-year lease. Trout Unlimited has estimated the cost of undertaking the change in use application to be approximately \$10,000.00 and annual monitoring obligations to be approximately \$5,405.00 per year. The Future Fisheries Improvement Program is proposing to contribute the entire \$38,160.00 to pay for the 50-year lease. Trout Unlimited would contribute the cost of the change in use process and the cost of required monitoring as in-kind services.

IV. Environmental Impact Checklist:

Please see attached checklist.

V. Explanation of Impacts to the Physical Environment

No new impacts to the physical environment are expected. The water rights claims in question have not been used over the past several years. As a result, the hydrologic regime in North Fork Fridley Creek is expected to remain the same - within the context of the climatic effects on the drainage. The scope of the project is to ensure the maintenance and protection of the investment in restoration that has already occurred on the stream.

VI. Explanation of Impacts on the Human Environment.

3. Local & state tax base & tax revenues.

The tax base associated with the agricultural land will not decrease.

4. Agricultural or industrial production.

Since these water rights claims have remain unused for consumptive use over the past several years, the proposed project would not decrease agricultural production that has occurred in the relatively recent past.

VII. Discussion and Evaluation of Reasonable Alternatives.

1. No Action Alternative

If no action is taken, the three water right claims remain vulnerable to the resumption of consumptive use. Should the Church Universal and Triumphant resume consumptive use of their water rights, the efficacy of past restoration efforts on North Fork Fridley Creek would be severely diminished.

2. The Proposed Alternative

The proposed alternative would protect and maintain the status quo of the flow regime in North Fork Fridley Creek for the next 50 years. The proposed water lease would secure the investment in habitat restoration already made on the stream and would protect the fisheries that are now found there.

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. As part of the proposed water lease, Trout Unlimited would need to apply for a change in water use with the Montana Department of Natural Resources and Conservation (DNRC). DNRC would then need to prepare an environmental assessment as part of their decision making process.

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 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](http://www.fwp.mt.gov/publicnotices)

3. Duration of comment period?

Public comment will be accepted through 5:00 PM on September 10, 2009.

4. Person responsible for preparing the EA.

Mark Lere, Program Officer  
Montana Fish, Wildlife and Parks  
Fisheries Bureau  
Habitat Protection Section  
1420 East 6<sup>th</sup> Avenue

Helena, MT 59620-0701  
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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: North Fork Fridley Creek In-stream Flow Protection Project  
 Division/Bureau: Fisheries Division -Future Fisheries Improvement Program  
 Description of Project: Montana Fish, Wildlife and Parks is proposing to provide funding to consummate a water lease for in-stream flow purposes in North Fork Fridley Creek between Trout Unlimited and the Church Universal and Triumphant. The intent of the project is to preserve and protect the investment in habitat restoration that has already been made on the stream and would protect the fisheries that now reside there. The project site is located approximately 2 miles southwest of the community of Emigrant 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		X
4. Agricultural or industrial production				X		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: Montana Department of Natural Resources and Conservation

Individuals or groups contributing to this EA Laura Ziemer, Trout Unlimited; Scott Opitz, FWP Fisheries Biologist

Recommendation concerning preparation of EIS No EIS required.

EA prepared by: Mark Lere

Date: August 7, 2009

