



Montana Fish, Wildlife & Parks

Region 1
490 North Meridian Road
Kalispell, MT 59901

Foys Bend Management Plan Decision Notice

November 2, 2009

Proposal

In May 2009 Montana Fish, Wildlife & Parks (MFWP) purchased approximately 245 acres on Foys Bend of the Flathead River a few river miles below the Old Steel Bridge southeast of Kalispell. The property, now known as the Foys Bend Fisheries Conservation Area, was purchased using funds provided by the Bonneville Power Administration (BPA) for the express purpose of protecting and enhancing resident fish habitat to help mitigate fish habitat losses associated with the construction of Hungry Horse Dam. This was one of several collaborative land acquisitions made in accordance with a 2007-2009 Memorandum of Agreement between BPA, MFWP, and the Confederated Salish and Kootenai Tribes (CSKT).

BPA requires states and tribes to complete management plans for all lands they acquire using BPA's fisheries mitigation funds. BPA also retains a conservation easement on any lands that MFWP or CSKT purchases using fisheries mitigation program funds. The conservation easement for Foys Bend Fisheries Conservation Area was recorded when MFWP acquired the property in May 2009. This conservation easement ensures the property will be protected in perpetuity for fish and wildlife habitat and restricts activities that would negatively impact the conservation values of the property.

The conservation easement and an associated MOA required MFWP to develop a management plan for Foys Bend within one year of MFWP's acquisition of it. The management plan will provide MFWP with guidelines for the administration of the Foys Bend parcel over the next 10 years and is consistent with the purpose and terms of the conservation easement held by BPA.

Environmental Policy Act Process

MFWP is required to assess potential impacts of the proposed project to the human and physical environment. In compliance with requirements of the Montana Environmental Policy Act (MEPA), a draft environmental assessment (EA) was completed by MFWP and released for public comment on September 18, 2009. Public notices were posted in local newspapers and libraries, and copies of the EA were available at the Region One headquarters in Kalispell and on the MFWP website.

Issues raised during the public comment period on the draft EA are listed in the comment section below. There were two modifications to the draft EA based on public comment that were incorporated into the final management plan: Section 1.5.1 for trapping and Section 1.6.f for mosquito control.

Summary of Issues Addressed in the Environmental Assessment (EA)

The primary goal is to protect, create, and maintain permanent, naturally self-sustaining, native or native-like habitat that is populated primarily with plants and animals native to this area prior to the arrival of European settlers. This goal shall be achieved over time through management actions that promote initial development of such native habitat that then requires only minimal treatment or alteration to maintain these habitat conditions. Within this context, another goal is to provide opportunities for environmental education. Conversion of existing hay fields to native habitat will take time, planning, and management to control weeds, nonnative invasive species, and other competing plants. Conversion of hay fields to forest or shrub habitats or grasslands cannot occur all at once. Interim management could entail several years of active agricultural crop or hay management of some fields while other areas are being restored. Limited grazing and/or hay or crop production may be used to address nuisance wildlife, weeds, game damage, or to benefit native wildlife.

Public Comments and Responses to Public Comments

The comment period on the Foy's Bend Fisheries Conservation Area Draft Management Plan was for 22 days from September 18 to October 9, 2009. Fish, Wildlife & Parks received comments from 5 individuals during the comment period, and 9 issues were identified. Each issue and MFWP response is identified below.

Comment 1: Noise of firearms disturbing neighbors' serenity.

MFWP Response: The amount of hunting that will be allowed on the property will be very controlled and limited – one hunting party of no more than 4 people per day, from Friday through Monday. No hunting will be allowed from Tuesday through Thursday. It is doubtful that neighbors will be able to tell if there are more gunshots than happen currently from duck and goose hunters on the river.

Comment 2: Neighbors concerned about stray bullets and safety.

MFWP Response: As in the reply to Issue 1, it is unlikely that neighbors will be able to detect any change in the amount of hunting near their property. Also, in anticipation of and to address this concern, the management plan restricts weapon types beyond those allowed on neighboring properties to shotgun, muzzleloader or traditional handgun only, and no hunting is allowed within 200 yards of any building, including buildings on adjacent properties.

Comment 3: A neighbor wanted to know if there was any plan for predator control.

MFWP Response: Recreational trapping will be allowed on the property, which will help to control predators. However, if predator populations become a problem, the management plan addresses it on page 21:

“There may, however, be times when wildlife populations will have to be reduced, for example, when animal densities on the property damage the habitat or neighboring properties. In such cases special hunting, trapping, or other measures may be used to achieve desired population reductions.”

Comment 4: A neighbor wanted to know if neighboring landowners will have any special privileges to utilize the property since they are the ones most impacted by new hunters and traffic.

MFWP Response: As with all other public lands in Montana, there are no provisions accorded to neighbors for recreational purposes. MFWP will, however, look first to neighbors for any agreements for work to be done on the property such as farming, fencing, etc.

Comment 5: There was concern about bird hunting and trapping occurring simultaneously and the possibility of a domestic dog being caught in a trap.

MFWP Response: Trapping and upland and waterfowl hunting are done simultaneously all over Montana, and in many cases in places where there is a higher hunter density than likely to occur here. We do not see a higher potential for conflicts here than on many other areas. As pointed out on page 4 of the draft management plan, trapping needs special authorization from MFWP. However, the raising of this issue prompted MFWP to further clarify regulations concerning trapping on the FBFCA. Therefore, the following is added to Section 1.5.1 Public Access Rules and Regulations in the final management plan:

Trapping will be allowed by one permitted individual who has daily access to check traps from the opening of trapping season, November 1, until the end of waterfowl season, usually about mid-January, to conform with the general closure of the area to the public to provide wildlife security. Use of snares will not be allowed and trapping regulations on the FBFCA concerning ground sets are same as those in the Montana furbearer regulations concerning Public Land Ground Sets:

“Ground sets using 7x7-inch and larger body-gripping traps must have the trigger recessed a minimum of seven (7) inches in wood, plastic and metal enclosures or cubby that provide an opening of 52 square inches or less.”

Additional trapping after the waterfowl season may be allowed as a predator population control measure.

Comment 6: One person wondered whether it might be possible to allow more than one party at a time to use the property for recreational/hunting/fishing purposes.

MFWP Response: The amount of use on the property is a sensitive issue that was identified during initial scoping and was raised during the comment period (see Issues 1 and 2 above). It must be remembered that, as pointed out on page 4 of the draft EA, public recreation is not the primary purpose of the FBFCA, but is an important secondary purpose for this property. Moreover, under the Montana Good Neighbor Policy (MCA 23-1-126) MFWP must be sensitive to and address, “impact on those adjoining lands from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy.” MFWP has addressed these concerns and regulations by limiting the time and amount of public access.

Comment 7: Two people commented on the property caretaker who will live in the residence on the property and the costs involved. One person was not in favor of a caretaker while the other was.

MFWP Response: There will be no cost to MFWP for the caretaker because the person will live there free of charge in exchange for their services of daily management chores, deterring vandalism, monitoring compliance with regulations, etc. An MFWP Warden Sergeant is the current caretaker.

Comment 8: Mosquito control. Flathead County Mosquito Control (FCMC) wants to continue mosquito control work on the standing water on the property. Treatment of this property has been important to mitigate impacts of mosquitos on adjoining property owners along Lower Valley Road. The county uses low toxicity larvicides in strict accordance to label and EPA standards.

MFWP Response: MFWP's pollution control biologist determined that the FCMC project would have no effects on fish, as the products would only be used on standing water and they are specific to mosquito larvae and would not affect other aquatic insects. Therefore, in the final management plan Section 1.6.f is added, allowing continued mosquito larvicide treatments.

Comment 9: One person thought there were too many regulations and wondered why even open the land to the public at all.

MFWP Response: Page 4 of the draft EA notes, "Public use and enjoyment of this property are important secondary purposes for this property, but such public uses will be carefully managed to avoid adverse impacts to any of the conservation values associated with this property."

Decision

Through the MEPA process, MFWP found no significant impacts on the human or physical environments associated with this management plan. Therefore, the EA is the appropriate level of analysis, and an environmental impact statement is not required.

Based on the EA and public comment, it is my decision to accept the Foys Bend Management plan with the two modifications described above.

James R. Satterfield, Jr.

November 2, 2009

James R. Satterfield, Jr., Ph.D.
Regional Supervisor

Date

Foys Bend Fisheries Conservation Area Management Plan

Final Environmental Assessment

Region One Fisheries Habitat Mitigation Program

November 2, 2009



Prepared By:

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**Montana Fish,
Wildlife & Parks**

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**Foys Bend Fisheries Conservation Area
Management Plan
Final Environmental Assessment
MEPA, NEPA, MCA 23-1-110 CHECKLIST**

PART I. PROPOSED ACTION DESCRIPTION

1. Type of proposed state action:

Montana Fish, Wildlife & Parks proposes to approve and implement the Foys Bend Fisheries Conservation Area Management Plan (See *Appendix A* for plan).

2. Agency authority for the proposed action:

State Statute 87-1-209 defines the authority Montana Fish, Wildlife & Parks has in acquiring land for the restoration, propagation, and/or protection of game, birds, fish, or fur-bearing animals.

Additionally, 75-7-101 of the Montana Code Annotated provides protection to natural rivers and streambeds and the lands and property immediately adjacent to them to be protected and preserved in order to keep soil erosion and sedimentation to a minimum.

3. Anticipated Schedule:

State fiscal years 2010-2019

4. Location affected by proposed action:

Flathead County, Range 21 W, Township 28 N, Sections 26, 27, 34, & 35

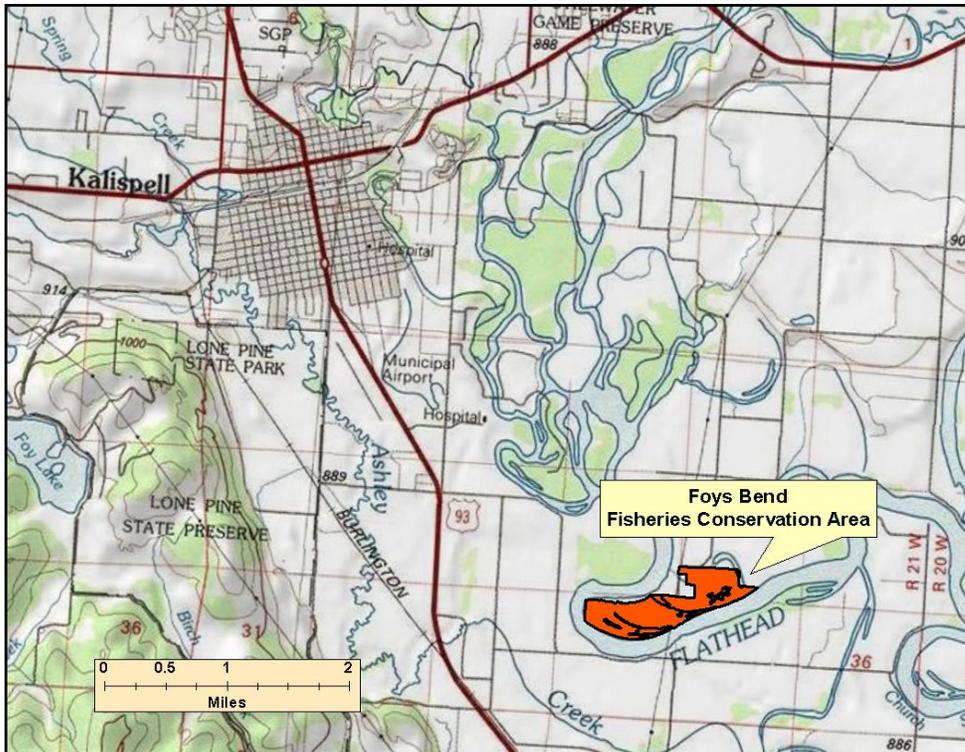


Figure 1. Location of Foys Bend Fisheries Conservation Area southeast of Kalispell along the Flathead River, Flathead County, Montana.

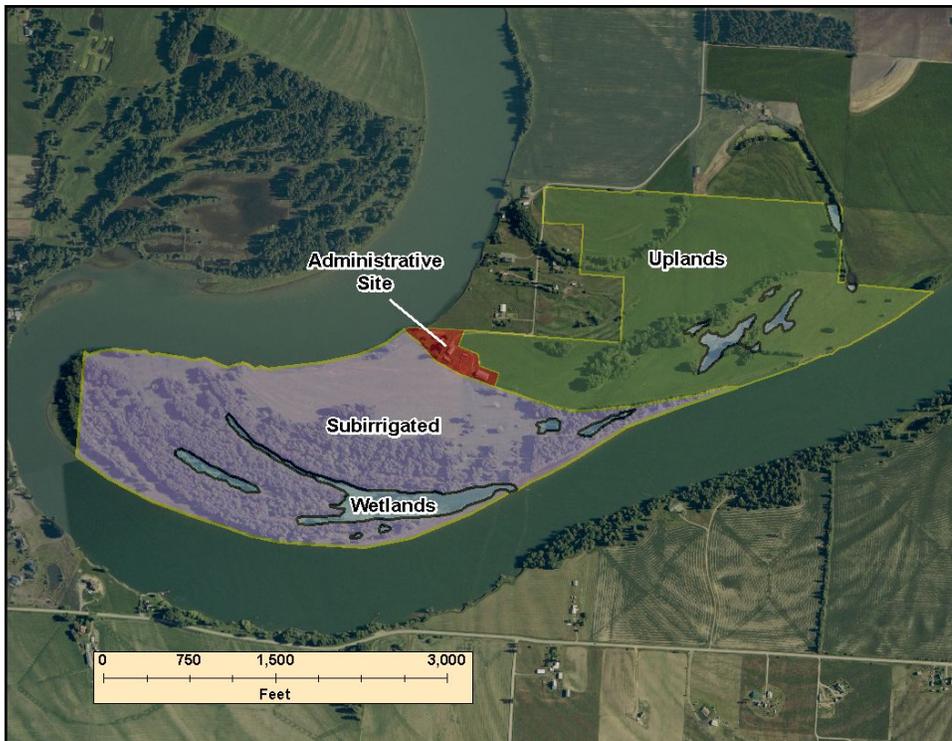


Figure 2. Aerial view of Foys Bend Fisheries Conservation Area.

5. Project size: Total approximately 245 acres

	<u>Acres</u>		<u>Acres</u>
(a) Developed:		(d) Floodplain	<u>241</u>
Residential	<u>4</u>	(2/3 in 100-year & 1/3 in 500-year flood plain)	
Industrial	<u>0</u>	(e) Productive:	
(existing shop area)		Crop or hay lands	<u>98</u>
(b) Open Space/ Woodlands/Recreation	<u>245</u>	Dry cropland	<u>0</u>
(c) Wetlands/Riparian Areas	<u>143</u>	Forestry	<u>0</u>
		Rangeland	<u>0</u>
		Other	<u>0</u>

6. Listing of any other local, state, or federal agency that has overlapping or additional jurisdiction:

- (a) Permits: None required
- (b) Funding: Management actions and rate of implementation subject to availability of funding from Bonneville Power Administration, MFWP, and other potential partners.
- (c) Other overlapping or additional jurisdictional responsibilities:
 Bonneville Power Administration – approval of management plan required prior to any actions on the property.
 Montana State Historic Preservation Office (SHPO) – cultural and historic resources

7. Proposed Action

Background

In May 2009 Montana Fish, Wildlife & Parks (MFWP) purchased approximately 245 acres on Foys Bend of the Flathead River a few river miles below the Old Steel Bridge southeast of Kalispell. The property, now known as the Foys Bend Fisheries Conservation Area, was purchased using funds provided by the Bonneville Power Administration (BPA) for the express purpose of protecting and enhancing resident fish habitat to help mitigate fish habitat losses associated with the construction of Hungry Horse Dam. This was one of several collaborative land acquisitions made in accordance with a 2007-2009 Memorandum of Agreement between BPA, MFWP, and the Confederated Salish and Kootenai Tribes (CSKT).

BPA requires states and tribes to complete management plans for all lands they acquire using BPA’s fisheries mitigation funds. BPA also retains a conservation easement on any lands that MFWP or CSKT purchases using fisheries mitigation program funds. The conservation easement for Foys Bend Fisheries Conservation Area (*Appendix B*) was recorded when MFWP acquired the property in May 2009. This conservation easement

ensures the property will be protected in perpetuity for fish and wildlife habitat and restricts activities that would negatively impact the conservation values of the property. The conservation easement and an associated MOA required MFWP to develop a management plan for Foys Bend within one year of MFWP's acquisition of it. The attached draft management plan will provide MFWP with guidelines for the administration of the Foys Bend parcel over the next 10 years and is consistent with the purpose and terms of the conservation easement held by BPA.

Purpose of the Conservation Area

The primary purpose of the Foys Bend Fisheries Conservation Area is to preserve, create, enhance, restore, and protect the functional values of riparian lands, wetlands, and uplands for the benefit of fish and wildlife habitat, water quality, floodwater retention, groundwater recharge, open space, aesthetic values, and environmental education.

Public use and enjoyment of this property are important secondary purposes for this property, but such public uses will be carefully managed to avoid adverse impacts to any of the conservation values associated with this property. The management plan proposes limits on numbers of parties per day (not to exceed one party/day) and numbers of days of use depending on the season. Group use and trapping need special authorizations from MFWP staff. Public use is restricted from January through April.

Goals of the Management Plan

The primary goal is to protect, create, and maintain permanent, naturally self-sustaining, native or native-like habitat that is populated primarily with plants and animals native to this area prior to the arrival of European settlers. This goal shall be achieved over time through management actions that promote initial development of such native habitat and then requires only minimal treatment or alteration to maintain these habitat conditions. Within this context, another goal is to provide opportunities for environmental education.

Conversion of existing hay fields to native habitat will take time, planning, and management to control weeds, nonnative invasive species, and other competing plants. Conversion of hay fields to forest or shrub habitats or grasslands cannot occur all at once. Interim management could entail several years of active agricultural crop or hay management of some fields while other areas are being restored. Limited grazing, and/or hay or crop production may be used to address nuisance wildlife, weeds, game damage, or to benefit native wildlife.

Existing Condition of the Property and Resource Inventory

The 245 acres in the Foys Bend Fisheries Conservation Area consist of approximately 143 acres of wetlands and riparian areas, 124 sub-irrigated acres, 98 acres of uplands, a 4-acre administrative site, and 2.1 miles of riverbank.

A baseline inventory of the Foys Bend property will be completed prior to implementation of management activities. Inventories will document dominant vegetative communities, species composition, soil types, and inventory of noxious weeds. The property will also be inventoried to document wildlife use and distributions. These data will help further refine

the following proposed management activities would take place and document fish and wildlife responses to management actions.

8. Alternatives:

Alternative A: No Action - The proposed Management Plan would not be implemented.

MFWP would not actively engage in the management of the natural resources at Foys Bend and public access would be prohibited. Implementation of a management plan for the area would be postponed. However, MFWP would have to prepare and initiate a management plan for the property prior to May 2010 or MFWP will be in violation of its agreement with the Bonneville Power Administration (BPA)

Without any management, the fisheries and wildlife habitat values and restoration options may be impaired, altered, or limited, and fish and wildlife values could be diminished.

Alternative B: Proposed Action - MFWP would approve and implement the Foys Bend Fisheries Conservation Area Management Plan as drafted.

MFWP would initiate the management strategies for Foys Bend as they are described in *Appendix A*.

PART II. ENVIRONMENTAL REVIEW CHECKLIST

Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the Physical and Human Environment.

A. PHYSICAL ENVIRONMENT

1. <u>LAND RESOURCES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Soil instability or changes in geologic substructure?		X				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?		X				
c. Destruction, covering, or modification of any unique geologic or physical features?		X				
d. Changes in siltation, deposition, or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		X				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		X				

No additional development will occur on this parcel as it is not MFWP's mission to develop lands nor is it allowed under the terms of the conservation easement granted to BPA as part of this project. Most of the property would be restored and remain as natural habitat. A portion of the property that is cultivated may continue to be cultivated for wildlife habitat purposes over several years while other areas are being restored. The property has been grazed for many years. Under MFWP ownership, grazing or farming would only occur if they were deemed necessary to help restore native habitat and/or to control weeds, address nuisance wildlife or game damage, or to benefit native wildlife species.

2. <u>AIR</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Emission of air pollutants or deterioration of ambient air quality? (Also see 13c.)		X				
b. Creation of objectionable odors?		X				
c. Alteration of air movement, moisture, or temperature patterns, or any change in climate, either locally or regionally?		X				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		X				
e. For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regs? (Also see 2a.)		X				

There should be no impacts to air quality or air resources with the management of the property.

3. WATER Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Discharge into surface water or any alteration of surface water quality, including but not limited to temperature, dissolved oxygen, or turbidity?		X				3a.
b. Changes in drainage patterns or the rate and amount of surface runoff?		X				
c. Alteration of the course or magnitude of floodwater or other flows?		X				
d. Changes in the amount of surface water in any water body or creation of a new water body?			X		No	3b.
e. Exposure of people or property to water-related hazards such as flooding?		X				
f. Changes in the quality of groundwater?		X				
g. Changes in the quantity of groundwater?		X				
h. Increase in risk of contamination of surface or groundwater?		X				
i. Effects on any existing water right or reservation?		X				
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		X				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?		X				
l. For P-R/D-J, will the project affect a designated floodplain? (Also see 3c.)		X				
m. For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a.)		X				

3a. The management of this parcel will result in improved water quality over time. MFWP will likely no longer allow grazing on the property (except as a future management action to aid habitat restoration). Water quality will improve as banks begin to revegetate. MFWP will manage weeds and may help restore native vegetation to accelerate bank stabilization and reduce erosion. Restoration actions are proposed in the management plan. Those activities would be completed after detailed inventories and assessments of need are conducted.

3b. Management actions may include wetland manipulation necessary to promote naturally self-sustaining native plant communities and associated fish and wildlife habitat values, to the extent possible given the influence of Kerr Dam operations on this part of the Flathead River main stem. Any future wetland management would be subject to all necessary permitting processes, including cultural reviews and clearances.

4. <u>VEGETATION</u> Will the proposed action result in?	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Changes in the diversity, productivity, or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?			X			4a.
b. Alteration of a plant community?		X				4b.
c. Adverse effects on any unique, rare, threatened, or endangered species?		X				
d. Reduction in acreage or productivity of any agricultural land?					X	4d.
e. Establishment or spread of noxious weeds?		X				4e.
f. For P-R/D-J, will the project affect wetlands, or prime and unique farmland?		X				

4a. Abundance of native tree and shrub species would increase through time as an objective of this management plan

4b & 4e. The purpose of the management plan for this parcel is to protect native fish habitat for bull trout and westslope cutthroat trout. All existing riparian and wetland vegetation will be left in its natural state. If weeds become a problem, they will be managed to control or eliminate them per state law. MFWP may need to help restore native riparian vegetation to accelerate bank stabilization, reduce erosion, and improve habitat and water quality. Active restoration actions will be part of the management plan. A detailed inventory and assessment of the plant communities will be conducted, and funding will be secured for restoration projects. Noxious weeds will be managed through appropriate application of biological, mechanical, and chemical means.

4d. Acreage in agricultural crop production would decrease through time as native plant communities are restored. Conversion from cropland to native habitat may be complete on the property, adding to cumulative losses of important agricultural land throughout the valley. However, wildlife habitat losses caused by the loss of cropland would be partially mitigated by habitat improvements resulting from increased native plant communities. In addition, some croplands may be retained if our monitoring determines them to be important for sustaining wildlife populations on the property or for reducing game damage to neighboring properties.

5. FISH/WILDLIFE Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Deterioration of critical fish or wildlife habitat?		X				5a.
b. Changes in the diversity or abundance of game animals or bird species?			X		Yes	5b.
c. Changes in the diversity or abundance of nongame species?			X		Yes	5c.
d. Introduction of new species into an area?		X				
e. Creation of a barrier to the migration or movement of animals?		X				
f. Adverse effects on any unique, rare, threatened, or endangered species?		X				
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest, or other human activity)?		X				
h. For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f.)		X				
i. For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d.)		X				

5a-c. The purchased parcel will be primarily managed for fish and wildlife habitat and left in its natural state or enhanced through restoration and revegetation efforts. Habitat values for fish & wildlife habitat will likely improve over time. MFWP's primary management goal for this property includes restoring and enhancing fish and wildlife habitat that is likely to result in a potentially significant increase in diversity and abundance of wildlife species as well as provide opportunity for natural resource education. If wildlife populations increase to an undesirable level (primarily white-tailed deer), they can be reduced by hunting or by trapping. Hunting and trapping are considered secondary uses of the property and cannot impact the overall habitat values of the land.

B. HUMAN ENVIRONMENT

6. <u>NOISE/ELECTRICAL EFFECTS</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Increases in existing noise levels?		X				6a.
b. Exposure of people to severe or nuisance noise levels?		X				
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?		X				
d. Interference with radio or television reception and operation?		X				

6a. In the past, the property has been managed primarily for agricultural production, including grazing. The previous landowner has also allowed hunting and trapping. The land will remain relatively undeveloped with the possibility of continuing limited crop production. Natural resource education is a primary purpose and will be allowed via a permit and cannot impact the natural resource values. Hunting will be allowed. Trapping will also be allowed, but on a case-by-case basis. These land uses and noises would be similar to those of previous landowner, and no changes or increases in noise would likely occur. The existing homesite will be used by host/caretaker, and normal noises associated with this use would likely continue.

7. <u>LAND USE</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?					X	7a.
b. Conflict with a designated natural area or area of unusual scientific or educational importance?		X				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		X				
d. Adverse effects on or relocation of residences?		X				

7a. The management of the property should not affect existing land uses in the area. The land will remain relatively undeveloped with the possibility of continuing limited crop production for wildlife benefits. Grazing will likely be eliminated unless it was essential to restoring healthy riparian vegetation. Hunting and trapping will be allowed consistent with approved Management Plan. The existing homesite will be used by an MFWP host/caretaker. The existing structures would be maintained for habitat restoration and management purposes. Acreage in agricultural crop production would decrease through time as native plant communities are restored. Conversion from cropland to native habitat may be complete on the property, adding to cumulative losses of important agricultural land throughout the valley. However, wildlife habitat losses caused by the loss of cropland would be partially mitigated by habitat improvements resulting from increased native plant communities. In addition, some croplands may be retained if our monitoring determines them to be important for sustaining wildlife populations on the property or for reducing game damage to neighboring properties. No other structures or uses would be added, but existing structures could be replaced with similar ones.

8. <u>RISK/HEALTH HAZARDS</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?		X				
b. Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?		X				
c. Creation of any human health hazard or potential hazard?		X				8c.
d. <u>For P-R/D-J</u> , will any chemical toxicants be used? (Also see 8a)		X				8d.

8c-d. No chemicals or hazardous materials will be used on this parcel. Noxious weeds may be controlled using legal application of herbicides.

9. <u>COMMUNITY IMPACT</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?		X				
b. Alteration of the social structure of a community?		X				
c. Alteration of the level or distribution of employment or community or personal income?		X				
d. Changes in industrial or commercial activity?		X				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		X				9e.

9e. No impacts should occur at the community level on this parcel. There may be a slightly greater number of vehicles using the county road to access this area on a seasonal basis. Public uses might include wildlife viewing, hunting, or education. The maximum allowable public use is one party/day, and all users must first obtain a permit (at no cost) from MFWP. Group users (greater than 10 individuals) and trappers would need to be pre-approved by MFWP.

10. PUBLIC SERVICES/TAXES/UTILITIES	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
Will the proposed action result in:						
a. An effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:		X				
b. An effect upon the local or state tax base and revenues?		X				10b.
c. A need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		X				
d. Increased use of any energy source?		X				
e. Define projected revenue sources						
f. Define projected maintenance costs.		X				10f.

10b. MFWP makes payments to counties for property taxes; the payments are equal to taxes assessed to private lands. Taxes in 2007 were \$4,254.71.

10f. Funding will be necessary to manage this parcel. It will include costs associated with surveys, boundary markings, parking area, display signs, management of fences, weeds, and habitat restoration, as well as the maintenance of the possible caretaker site. Funds will come primarily from BPA as part of the MFWP Region 1 Fisheries mitigation program budget, other state programs, and partners. Routine management costs are expected to range, annually, from \$5,000 to \$10,000 per year unless additional grants or funding sources allow short-term increased expenditures associated with habitat restoration efforts.

11. <u>AESTHETICS/RECREATION</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		X				
b. Alteration of the aesthetic character of a community or neighborhood?		X				
c. Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report.)		X				11c.
d. For P-R/D-J, will any designated or proposed wild or scenic rivers, trails, or wilderness areas be impacted? (Also see 11a, 11c.)		X				

11c. The parcel will be managed primarily for fish and wildlife habitat purposes. No additional buildings are planned. The current homesite and hay shed will currently remain as is allowed by the conservation easement that will be granted to BPA as part of this project. Habitats will likely be restored or improved as allowed under the conservation easement terms. Recreational opportunities may increase under public ownership, but will be limited as described in the management plan to maintain habitat values and provide high quality recreational opportunities. No visual obtrusions to scenic vistas or landscape would occur. The future land uses that will be allowed must be consistent with the purposes of this acquisition and management plan.

12. <u>CULTURAL/HISTORICAL RESOURCES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Destruction or alteration of any site, structure, or object of prehistoric, historic, or paleontological importance?		X				12a.
b. Physical change that would affect unique cultural values?		X				
c. Effects on existing religious or sacred uses of a site or area?		X				
d. For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12a.)		X				12d.

12a & 12d. See Appendix C

SIGNIFICANCE CRITERIA

13. <u>SUMMARY EVALUATION OF SIGNIFICANCE</u>	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
Will the proposed action, considered as a whole:						
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total.)		X				
b. Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?		X				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard, or formal plan?		X				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		X				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		X				13e.
f. For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e.)		X				
g. For P-R/D-J, list any federal or state permits required.		X				

13e. The parcel will be primarily managed for habitat and fish and wildlife values that will benefit water quality and wildlife and fish populations. The management plan for these purposes will not significantly change the neighborhood land uses nor be incompatible with adjoining agricultural operations or nearby residential landowners. Limited agricultural land uses may continue if beneficial for wildlife or necessary to limit game damage. The existing residence may remain in use by a caretaker. The opportunities for compatible public uses may increase as long as they are compatible with the conservation easement held by BPA as part of this project. They may also decrease if impacts to habitat or habitat values occur. Hunting and wildlife viewing can occur with the possible limited seasonal increase in local traffic. The maximum allowable use is only one party/day. Access is limited during some seasons to protect habitat values. Public and land uses are subject to the Management Plan pending public review of this draft EA.

- 2. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:** Not applicable.

PART III. NARRATIVE EVALUATION AND COMMENT

This analysis did not reveal any significant impacts to the human or physical environment. The proposed project consists only of a management plan proposed for implementation by MFWP. No additional construction, improvements of any kind, or removal of existing structures are included in this proposal. Any additional habitat restoration, public use, or other land uses are included in the Management Plan. The alternative, no management plan, would preclude MFWP from undertaking any property restoration, property maintenance, weed control, and/or wildlife management and would restrict all public access.

PART IV. PUBLIC PARTICIPATION

1. Public involvement for this project:

The EA for the acquisition of Foys Bend by MFWP provided a 28-day public review starting on December 12, 2008, and ended on January 9, 2009. That review included notices placed in the Bigfork Eagle, Whitefish Pilot, Hungry Horse News, and Daily Inter Lake, and direct mailings to neighboring property owners, local conservation groups, and other area outdoor organizations. That EA fully outlined the fact that the Foys Bend acquisition would be subject to a conservation easement held by BPA or the terms of that conservation easement subject to an approved management plan

The public will be notified in the following manners to comment on this current EA, the proposed action, and alternatives:

- Two public notices in the *Daily Inter Lake & Bigfork Eagle* newspapers.
- One statewide press release.
- Public notice on the Fish, Wildlife & Parks web site: <http://fwp.mt.gov>.

Notification of this environmental assessment will be sent to the neighboring landowners and interested parties to ensure their knowledge of the proposed project.

This level of public notice and participation is appropriate for a project of this scope, having limited impacts, many of which can be mitigated.

Duration of comment period:

The public comment period will be 21 days, through October 9, 2009. Comments may be e-mailed to jwachsmuth@mt.gov, or written comments may be sent to the following address:

John L. Wachsmuth, Fisheries Conservation Specialist
Montana Fish, Wildlife & Parks
490 N. Meridian Road
Kalispell, MT 59901

PART V. EA PREPARATION

1. Based on the significance criteria evaluated in this EA, is an EIS required?

No. Based on an evaluation of impacts to the physical and human environment under MEPA, this environmental review revealed no significant negative impacts from the proposed action because land uses would be similar to existing uses, with an increased emphasis on fish and wildlife habitat management that would have beneficial effects. In addition, the EA is sufficient to identify critical issues and all potential impacts; therefore, an EIS is not necessary and an environmental assessment is the appropriate level of analysis.

2. Persons responsible for preparing the EA:

John Wachsmuth, Fisheries Conservation Specialist	406-751-4554
John Vore, Wildlife Biologist	406-751-4584
Gael Bissell, Wildlife Biologist	406-751-4580
Alan Wood, Wildlife Mitigation Program Manager	406-751-4595
Joel Tohtz, Fisheries Mitigation Program Manager	406-751-4570

3. List of agencies consulted during preparation of the EA:

Montana Fish, Wildlife & Parks
 Fisheries Division
 Wildlife Division
 Lands
 Legal Bureau
Montana State Historic Preservation Office (SHPO)
Confederated Salish and Kootenai Tribes (CSKT)

APPENDIX A

Foys Bend Fisheries Conservation Area Draft Management Plan

In May 2009 Montana Fish, Wildlife & Parks (MFWP) purchased approximately 245 acres on Foys Bend of the Flathead River a few river miles below the Old Steel Bridge southeast of Kalispell. The property, now known as the Foys Bend Fisheries Conservation Area, was purchased using funds provided by the Bonneville Power Administration (BPA) for the express purpose of protecting and enhancing resident fish habitat to help mitigate fish habitat losses associated with the construction of Hungry Horse Dam. This was one of several collaborative land acquisitions made in accordance with a 2007-2009 Memorandum of Agreement between BPA, MFWP, and the Confederated Salish and Kootenai Tribes (CSKT).

BPA requires states and tribes to complete management plans for all lands they acquire using these fisheries mitigation funds. BPA also retains a conservation easement on any lands that MFWP or CSKT purchase using BPA fisheries mitigation program funds.

Montana Fish, Wildlife, & Parks' primary goal for the Foys Bend Fisheries Conservation Area is to protect, create, and permanently maintain the functional values of native or native-like riparian lands, wetlands, and uplands that are naturally self-sustaining, with an emphasis on plants and animals native to this area prior to the arrival of European settlers, for the benefit of fish and wildlife habitat, water quality, floodwater retention, groundwater recharge, open space, aesthetic values, and environmental education.

Public use and enjoyment of this property are important secondary purposes for this property, but such public uses will be carefully managed to avoid adverse impacts to any of the conservation values associated with this property. The management plan proposes limits on numbers of parties per day (not to exceed one party/day) and numbers of days of use depending on the season. Group use and trapping need special authorizations from MFWP staff. Public use is restricted from January through April.

Existing Condition and Inventory

The 245 acres in the Foys Bend Fisheries Conservation Area consist of approximately 143 acres of wetlands and riparian areas, 124 sub-irrigated acres, 98 acres of uplands, a 4-acre administrative site, and 2.1 miles of riverbank. A baseline inventory of the Foys Bend property will be completed prior to implementation of management activities. Inventories will document dominant vegetative communities, species composition, soil types, and inventory of noxious weeds. The property will also be inventoried to document wildlife use and distributions. These data will help further refine the following proposed management activities would take place and document fish and wildlife responses to management actions.

1.1 Habitat/Vegetation Management

Objective: Restore, maintain, and enhance native climax vegetation on riparian forest, wetlands, and on a significant portion of the uplands over time.

Management Strategies:

- a) **Wetlands and riparian areas** – Maintain and enhance natural wetlands and riparian vegetation. This may include wetland manipulation necessary to promote naturally self-sustaining native plant communities and associated fish and wildlife habitat values to the extent possible given the influence of Kerr Dam operations on this part of the Flathead River main stem. Wetland development would be subject to all necessary permitting processes. Native wetland vegetation is expected to return naturally to historically disturbed, grazed, and pastured areas. Noxious weeds will be managed through appropriate application of biological, mechanical, and chemical means. If browsing by deer or other species impacts the recovery of wetland plants, some small areas may be protected by temporary wildlife enclosures to promote native plant recovery.
- b) **Sub-irrigated areas** – Lower-lying areas of the property that are wet and/or sub-irrigated will be maintained as, or restored to, native cottonwood/aspen forest along with its native multi-layered understory. This may necessitate planting, wildlife enclosure fencing, or some form of ground disturbances to stimulate or encourage tree and shrub regeneration and tree sucker growth. Such tree/shrub and understory growth will not be encouraged or allowed within the BPA power line right of way. Native herbaceous plants will be encouraged and protected. Noxious weeds will be managed in a way that does not significantly impact native species.
- c) **Uplands** – On the uplands a combination of Douglas fir, ponderosa pine, aspen, and other native species will be encouraged and maintained on suitable sites. This will most likely involve tree plantings and fencing for a number of years to protect young trees from browsing by deer, voles, or other species. It may also necessitate periodic silvicultural treatments to promote rapid development of a structural mosaic that includes scattered, large trees that will provide snow intercept and thermal cover during winter. Such tree growth will not be encouraged or allowed within the BPA power line right of way.

Some of the uplands may be managed as nonforested openings to provide habitat for migratory and resident birds, deer, small mammals, and other species. Maintenance of openings would provide habitat diversity, seasonal source of food, and possible foraging areas for migratory and resident wildlife species. This may become more important as adequate winter cover for deer, birds, and other wildlife increases over time to possibly address or reduce crop depredation on adjoining lands.

- d) **Wildlife Food Plots** – The production and maintenance of wildlife food plots through annual cropping and/or haying may be used as a tool to control weeds while native patches of forest are being established across the uplands. Cropping and haying will help reduce immediate noxious weed infestations, but will also help improve soil and nutrients through rotation of nitrogen-fixing plants with food sources such as oats, wheat, or other grains. This management approach will be evaluated over the next 5 years to determine if it benefits native migratory birds and other wildlife, is compatible with adjoining landowners, and is cost-effective.

1.2 Noxious Weed Management

Objective: Control noxious weeds.

Management Strategies:

- a) Identify noxious weed infestations on the property.
- b) Develop a weed management plan operating under the guidelines of the 2008 MFWP Statewide Integrated Noxious Weed Plan.
- c) Implement control and eradication as soon as practical. Weed management will use techniques that have minimal impacts to fish and wildlife habitat and native plant communities.
- d) Coordinate management actions with county weed districts, adjoining landowners, and others active in local weed identification and control.

1.3 Fisheries Habitat Management

Objective: Protect and enhance habitat for migratory bull trout and west slope cutthroat trout, sustain habitat for all aquatic species, maintain important habitat values associated with riparian/wetlands and associated uplands, and allow natural river hydrologic processes to continue as a way to promote naturally functioning habitat for all native plant and animal species.

Management Strategies:

- a) Perpetuate native species and their habitats by allowing natural processes to occur.
- b) Minimize the presence of nonnative plant species, especially noxious weeds, focusing on roads, disturbed riparian areas, and other disturbed sites.
- c) Inventory weed distribution, density, and species by June 2010.
- d) Develop a comprehensive strategy that includes mapping, spraying, pulling, and encouraging growth of native riparian plant species appropriate to the site.
- e) Implement control measures to reduce weed infestation in half by 2010.
- f) Work toward preserving and restoring native riparian vegetation, particularly along the river banks, using wildlife exclosures, vegetative bank stabilization test projects, and other possible methods to encourage regeneration of native shrubs, trees, and herbaceous plants.
- g) Integrate human use consistent with other components of the management plan.

1.4 Wildlife Population Management

Objective: Restore, maintain, and improve wildlife populations for use and enjoyment by the public without unduly impacting adjoining landowners or the conservation values of the property. Wildlife management will emphasize native species.

Management Strategies:

- a) The habitat management strategies outlined above will encourage and maintain populations of native wildlife in balance with the habitat. Quality habitat on this MFWP property will help hold animals on the property and minimize wildlife-related problems with adjoining landowners. There may, however, be times when wildlife populations will have to be reduced, for example when animal densities on the property damage the habitat or neighboring properties. In such cases special hunting, trapping, or other measures may be used to achieve desired population reductions. Public hunting or trapping would be managed per the public use strategies and regulations listed in the next section.
- b) Human activities will be managed as outlined below to help hold animals on MFWP property, thereby minimizing problems with adjoining landowners and providing quality public recreation opportunities.
- c) Osprey nesting structures within the BPA power line right of way are meant to keep osprey off of the power line and will be allowed.
- d) Guidelines outlined in the Montana Bald Eagle Management Plan (2009) will be followed in the event an eagle nest is found on or near the property.

1.5 Public Education, Recreation, and Access Management

Objective: Provide public educational and recreational opportunities that are compatible with primary habitat purposes. Limit public use so that animals will not be chased onto neighboring properties and to avoid significant increases in traffic levels in this neighborhood.

These lands will be managed under the standard MFWP recreational use regulations (ARM 12.8.101-12.8.213), the MFWP Commercial Use Rule (ARM 12.14.101-12.14.170), and the special regulations outlined below. Free permits will be required for individual use, group use, commercial use, scientific research, hunting, trapping, and any projects involving handling wildlife.

General Management Strategies and Regulations:

- a) Persons using the property include anyone accessing the property by any means, via motorized or nonmotorized transportation including boats.
- b) The exterior boundary of the property will be posted using standard MFWP signs. The west end of the Foy's Bend peninsula includes a small parcel of private land that will need to be clearly identified.

- c) No dogs allowed except for the purposes of hunting upland game or waterfowl during established seasons and consistent with other restrictions outlined in this section.
- d) Vehicle parking will be allowed only at designated parking areas. No other public motorized use on the property will be allowed.
- e) Users that access this property by boat must also have a permit and meet the above public use requirements.
- f) No motorized vehicles, bicycles, horses, or other livestock will be allowed on the property except for administrative or management purposes.
- g) No overnight camping.
- h) Signs would also be used to prevent boat landings along fragile riverbanks or in newly planted, seeded, or revegetated areas. However, boat landing and public use along the shoreline is expected to be minimal because boat access is limited as described below.
- i) No campfires or fires of any kind except as needed for natural resource management purposes conducted by MFWP.
- j) For garbage, “pack it in; pack it out” rules would apply. No trace or low impact day use would be encouraged.
- k) Discharge of firearms will be restricted to lawful hunting or trapping of animals during legal hunting or trapping seasons only. Recreational shooting and hunting of nongame animals such as ground squirrels will be prohibited (ARM 12.8.202).

1.5.1 Public Access Rules and Regulations

- a) The area will be closed to all public use from the end of the waterfowl season, usually about mid-January, to the beginning of spring turkey season, usually about April 12, to provide wildlife security. Trapping may be allowed during the general closure, but on a case-by-case basis.
- b) Sensitive areas such as nesting habitat for eagles, raptors, colonial nesting birds, and waterfowl will be surveyed and documented. If necessary for maintaining nesting success, MFWP may implement temporary closures around these sensitive areas. Sensitive areas may also include areas just planted or seeded.
- c) During spring turkey season (generally about April 12 – May 15) and from the beginning of upland game bird until the end of waterfowl season (September 1 to about January 15) the following regulations will apply:
 - Public access will be allowed only during four days of the week, Friday through Monday, followed by three days of rest, Tuesday through Thursday.
 - Hunter numbers will be restricted to one party of no more than four people per day. Hunters must make a reservation in person at MFWP headquarters in Kalispell no more than a week in advance of the date they

wish to hunt. They may only hunt one day/week and not on consecutive days.

- Firearms are restricted to shotgun, muzzleloader, or traditional handgun.
 - Archery equipment is allowed for hunting following annual regulations established for this hunting district.
 - No hunting within 200 yards of any building, including buildings on adjoining or nearby properties.
 - Hunting blinds must be removed or dismantled daily; no permanent blinds will be allowed. Hunting blinds may not be constructed by cutting or otherwise damaging woody vegetation on the property.
 - Under the “leave no trace” concept, no screw-in tree stands will be allowed - only portable tree stands.
- d)** During the summer, from the end of spring turkey season (usually about May 15) to the start of upland game bird season (September 1), the area will be open seven days per week to one party of no more than four adults and a maximum of ten people total per day (including children under age 18). Visitors must make a reservation in person at MFWP headquarters in Kalispell no more than a week in advance of the date they wish to visit.
- e)** Groups larger than ten total or more than four adults must secure a group use permit that will be considered on a case-by-case basis, and only if consistent with the primary purposes for which this property was purchased (e.g., environmental education).
- f)** Removal of natural, geological, historical, or archeological resources from the property will be prohibited except for berries or lawfully taken fish and game (ARM 12.8.207).
- g)** Commercial use will require a permit in accordance with the Statewide Commercial Use Rules (ARM 12.14.101-170).
- h)** Trapping will be allowed by one permitted individual who has daily access to check traps from the opening of trapping season, November 1, until the end of waterfowl season, usually about mid-January, to conform with the general closure of the area to the public to provide wildlife security. Use of snares will not be allowed, and trapping regulations on the FBFCA concerning ground sets are the same as those in the Montana furbearer regulations concerning Public Land Ground Sets:
- “Ground sets using 7 X 7 inch and larger body-gripping traps must have the trigger recessed a minimum of seven (7) inches in wood, plastic and metal enclosures or cubby that provide an opening of 52 square inches or less.”

Additional trapping after the waterfowl season may be allowed as a predator population control measure.

1.6 Public Safety

Objective: Proactively implement public safety measures.

Management Strategies:

- a) Provide an adequate law enforcement patrol and response presence on the site by game wardens and other MFWP personnel to enforce recreational restrictions and deter vandalism.
- b) Fire protection will be provided by Flathead County through a cooperative agreement with the state. The county agrees to provide protection to all non-forest district state properties in exchange for the state providing the county with training, equipment, and some planning assistance.
- c) MFWP will make tax payments to counties on these properties per state law.
- d) During the fire season, MFWP attends weekly fire conferences with county, state, and federal entities to discuss the current fire danger and assess appropriate actions relative to potential fire restrictions. These restrictions may include closure of the site to public use.
- e) Develop appropriate signage, regulatory postings, and educational messages related to public safety.
- f) Work in cooperation with Flathead County Mosquito Control to allow them access to the property for the purpose of applying low toxicity larvicides in strict compliance with label and EPA standards. Such treatment is necessary to control mosquito populations and limit the spread of disease pathogens.

1.7 Existing Buildings and Infrastructure

Objective: Maintain the 4-acre administrative site, structures, roads, fences and signs on the property to support administrative, management, and enforcement activities necessary to carry out this management plan.

Management Strategies:

- a) **Fencing** – Maintain or create wildlife-friendly exterior fences to prevent livestock from entering the property. Remove all interior fences to eliminate potential barriers to wildlife movement and possible wildlife entrapment and death. Construct temporary interior fences as necessary to promote forest and riparian restoration efforts.
- b) **Outbuildings** – Maintain the shop and hay barn to shelter supplies and equipment necessary for management of the property or other nearby fish and wildlife resources. Other outbuildings, including the horse stalls and root cellar, will be removed.
- c) **Residence** – Maintain the house to provide a residence for a caretaker that will live on-site to help with daily management chores, deter vandalism, monitor

compliance with public use restrictions, and report any problems to appropriate authorities.

- d) **Roads and Trails** – Maintain existing trails or dirt roads necessary for management purposes. In time, most unneeded roads and trails will be allowed to naturally revegetate or may actively be restored to a natural state. Identify and maintain a public parking area and minimize the risk of fire through mowing, graveling, and other means around the structures to provide safe public access to the property. Consider maintaining some type of administrative and/or public use trail on the property through mowing or mulching to provide some opportunity for environmental education, habitat monitoring, and other compatible uses without impacting habitat values.
- e) **Signs** – An adequate number of property boundary signs will be placed so that a reasonable person can easily determine the property boundary. Other administrative signs posting rules or other information will be placed as needed.

APPENDIX B

SUMMARY OF CONSERVATION EASEMENT TERMS

Restrictions on Landowner. MFWP will comply with the following:

- A. Prohibitions. Unless authorized as a compatible use under Part IV, it is expressly understood that the following activities and uses are prohibited on the easement area:
1. Haying and/or mowing;
 2. Altering of grassland, woodland, wildlife habitat, or other natural features by burning digging, plowing, disking, cutting, or otherwise destroying the vegetative cover;
 3. Dumping refuse, wastes, sewage, or other debris;
 4. Harvesting wood products;
 5. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or related activities, as well as altering or tampering with water control structures or devices;
 6. Diverting or causing or permitting the diversion of surface water into or out of the easement area surface by any means;
 7. Building or placing buildings or structures on the easement area;
 8. Planting or harvesting any crop; and
 9. Grazing or allowing livestock on the easement area.
 10. Mining - excavation, dredging, or removal of soil, sand, gravel, rock, minerals, or other surface or subsurface materials.
 11. Incompatible Uses - surface use except for such purposes necessary to preserve, enhance, restore, or create wetlands and riparian resource functions and values; and
 12. Acts Detrimental to Conservation - activities detrimental to conservation of the the following: fish and wildlife habitat, water quality protection and enhancement, traditional cultural materials production, and aesthetics.
 13. Subdivision - subdivision of land into multiple independently platted parcels.
- B. Noxious plants. MFWP is responsible for control of noxious weeds.
- C. Fences. Costs involved in maintenance of fences and related improvements to exclude livestock will be the responsibility of MFWP.
- D. Taxes. MFWP will pay any and all real property and other taxes and assessments, if any, which may be levied against the land by an agency with jurisdiction for such tax or assessment.

E. Reporting. MFWP will report to the BPA any conditions or events which may affect the conservation values or purposes of this easement.

However, the use of the easement area for compatible uses, including but not limited to haying, mowing, wildlife crop production, or riparian/forest restoration and other wildlife crop production purposes, may be allowed if addressed and approved by BPA in the Management Plan for the property.

Allowance of Compatible Uses by MFWP.

General. The use of the easement area for compatible economic uses, including but not limited to low impact recreational uses, managed timber harvest, periodic haying, or grazing, may be allowed if addressed and approved by BPA in the management plan for the property required by the 2008-2009 MOA. Once the management plan is completed and approved by both parties, the parties may agree to record a copy in the county or other appropriate land records office, and substitute the restrictions in the plan for those mentioned above.

Limitations. Compatible use authorization in the management plan will only be made if such use is consistent with the long-term protection and enhancement of the conservation purposes of the easement area.

Rights of the BPA. The rights of the BPA include:

A. Monitoring activities. BPA will have the right to enter unto the easement area upon reasonable notice, to undertake, at its own expense, any monitoring activity reasonably necessary to assure MFWP compliance with the terms of this Deed of Conservation Easement, including but not limited to conducting inventories of fish and wildlife habitat.

B. Access/Inspection. The authorized representatives of the BPA may utilize light vehicles and other reasonable modes of transportation for access purposes. Representatives of the BPA may enter the easement area in a reasonable manner, after reasonable notice, and at reasonable times to assure compliance.

APPENDIX C

September 9, 2008

John L. Wachsmuth
FWP
490 N Meridian Road
Kalsipell MT 59901

RE: FOYS BEND LAND ACQUISITION, 234 ACRES, FLATHEAD RIVER. SHPO
Project #: 2008090907

Dear Mr. Wachsmuth:

I have conducted a cultural resource file search for the above-cited project located in Sections 26, 27, 34, and 35, T28N R21W. According to our records there have been no previously recorded sites within the designated search locales. The absence of cultural properties in the area does not mean that they do not exist but rather may reflect the absence of any previous cultural resource inventory in the area, as our records indicated none.

We feel that there is a low likelihood cultural properties will be impacted with this land acquisition. We, therefore, feel that a recommendation for a cultural resource inventory is unwarranted at this time. However, should future projects in this area contain any ground disturbing activities we would ask that a cultural resource inventory be conducted prior to any ground disturbing activities.

If you have any further questions or comments you may contact me at (406) 444-7767 or by e-mail at dmurdo@mt.gov <<mailto:dmurdo@mt.gov>>. Thank you for consulting with us.

Sincerely,

Damon Murdo

Cultural Records Manager

File: FWP/FISH/2008