



Montana Fish, Wildlife & Parks

1400 South 19th Avenue
Bozeman, MT 59718

October 6, 2010

To: Governor's Office, Mike Volesky, State Capitol, Room 204, P.O. Box 200801, Helena, MT 59620-0801
Environmental Quality Council, State Capitol, Room 106, P.O. Box 201704, Helena, MT 59620-1704
Dept. of Environmental Quality, Metcalf Building, P.O. Box 200901, Helena, MT 59620-0901
Dept. of Natural Resources & Conservation, P.O. Box 201601, Helena, MT 59620-1601
Montana Fish, Wildlife & Parks:

Director's Office	Parks Division	Lands Section	FWP Commissioners
Fisheries Division	Legal Unit	Wildlife Division	Design & Construction

MT Historical Society, State Historic Preservation Office, P.O. Box 201202, Helena, MT 59620-1202

MT State Parks Association, P.O. Box 699, Billings, MT 59103

MT State Library, 1515 E. Sixth Ave., P.O. Box 201800, Helena, MT 59620

James Jensen, Montana Environmental Information Center, P.O. Box 1184, Helena, MT 59624

Janet Ellis, Montana Audubon Council, P.O. Box 595, Helena, MT 59624

George Ochenski, P.O. Box 689, Helena, MT 59624

Jerry DiMarco, P.O. Box 1571, Bozeman, MT 59771

Montana Wildlife Federation, P.O. Box 1175, Helena, MT 59624

Wayne Hurst, P.O. Box 728, Libby, MT 59923

Ladies and Gentlemen:

The enclosed Decision Notice was prepared for the draft Canyon Creek Wildlife Management Area (WMA) Addition Environmental Assessment (EA). FWP used the Decision Notice to modify the draft EA based on the comments received. So the Decision Notice and draft Canyon Creek Wildlife Management Area Addition Environmental Assessment will be considered the Final EA. Montana Fish, Wildlife and Parks (FWP) proposes to acquire a 151-acre Wildlife Management Area in the Robert E. Lee Range northwest of Canyon Creek in Lewis and Clark County. The purpose of this proposal is to secure additional fish and wildlife habitat and to enhance compatible recreational opportunities and access for the public. Public comment was received from 24 parties during a 15-day comment period ending at 5:00 pm on September 28, 2010 and a public hearing held at 7 pm on September 22, 2010 at the Fish, Wildlife and Parks headquarters in Helena.

Based on the EA and public comment, it is my decision to approve the acquisition of the Canyon Creek Wildlife Management Area Addition pending review by the FWP Commission and the Montana Land Board. Both the Decision Notice and the draft EA are available for review at the FWP Helena Area Resource Office in Helena and the Regional Headquarters in Bozeman, by phoning (406) 495-3260, or on the FWP web site: <http://fwp.mt.gov/publicnotices>.

Questions regarding this Decision Notice should be mailed to: Canyon Creek WMA Addition Project, Montana Fish, Wildlife & Parks, Helena Area Resource Office, PO Box 200701, Helena, MT 59620 or e-mailed to: jsika@mt.gov.

Thank you for your interest.

Sincerely,

Patrick J. Flowers
Region Three Supervisor

Attachments

**CANYON CREEK WILDLIFE MANAGEMENT AREA ADDITION
ENVIRONMENTAL ASSESSMENT
DECISION NOTICE**

**Montana Fish, Wildlife & Parks
Region Three, Bozeman
October 2010**

Proposed Action

Montana Fish, Wildlife and Parks (FWP) proposes to acquire in fee 151.09 acres located in the Robert E. Lee Mountain Range both east and west of Hwy 279 northwest of Canyon Creek, Montana. The property includes portions of the Tar Head drainage as well as the confluence of Tar Head and Canyon Creeks. The property would be an addition to the existing 2,200 acre Canyon Creek Wildlife Management Area (WMA) northwest of Helena.

The Canyon Creek WMA provides yearlong habitat for elk, upland game birds, small mammals, and birds and seasonal habitat for deer, bear, forest carnivores, raptors, and endemic and neo-tropical migrant birds. Little Mill Creek, Big Mill Creek, and Sawmill Gulch flow through the WMA and contain brook trout. Public recreation opportunities include hunting, wildlife viewing, hiking, horseback riding, and picnicking. Public access to adjacent public lands (i.e. USDA Forest Service (USFS) and Department of Natural Resources and Conservation (DNRC)) is also provided through this WMA.

The benefits of the additional property not only include increasing the amount of existing, contiguous protected wildlife habitat and further protection of a stream corridor containing native westslope cutthroat trout, but also include increasing public access to public lands in a strategic location along Hwy 279.

The following are details of the resource values FWP wants to protect:

- Acquisition of this property would secure more direct public access to adjacent public lands in a strategic location for fishing, hunting and other non-motorized recreation. The proposed acquisition would also provide another point of public access to the southwest corner of the existing WMA to further disperse hunters within the WMA.
- Although limited in size, acquisition of this property would secure additional habitat and movement connectivity for wildlife across Hwy 279 between the WMA and nearby public lands (USFS, Bureau of Land Management (BLM), DNRC). This property is within the Continental Divide wildlife movement corridor, which is a priority area for the conservation of species that exist at low densities, such as Canada lynx, grizzly bear, and wolverine. Montana Species of Concern (SOC) verified to occur in this vicinity include wolverine, Canada lynx, grizzly bear, pileated woodpecker, golden eagle, and westslope cutthroat trout. Unverified SOC for this area includes fisher.
- The proposed acquisition would not only further protect the stream corridor from invasion by non-native fish species but may also expedite FWP's efforts to further enhance and extend the current distribution of westslope cutthroat trout. Although not currently listed as a "Conservation Population," implementation of habitat improvement projects for westslope cutthroat may be

simplified if the lower portion of the stream was located on public lands. Habitat improvements, such as barriers to prevent immigration of non-native rainbow and brook trout, stream bed restoration, or improvements to the riparian corridor, may allow additional treatment to improve the Tar Head cutthroat population and elevate its conservation status.

If the acquisition is completed, the additional 151 acres of the Canyon Creek WMA would be managed under the guidance of the *2002 Canyon Creek Wildlife Management Area Management Plan*.

Alternative Considered to the Proposed Action

No Action: FWP would not purchase the addition to the Canyon Creek WMA

Under a No Action Alternative, FWP would not acquire the property from the current landowners, the Ball Family. Since it has been listed for sale by the Ball Family, eventually the property would likely be sold to a private entity or divided, and the opportunity for public access in this strategic location would be unlikely to be obtained by FWP through another property in the area.

Montana Environmental Policy Act

Montana Fish, Wildlife & Parks is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision whether or not to proceed with the project.

In compliance with MEPA, a draft Environmental Assessment (EA) was completed on the proposed action by FWP and released for public comment September 14, 2010. The public comment period was for 15 days with a deadline of 5:00 pm September 28, 2010.

Additionally, a public hearing was hosted by FWP at the FWP Headquarters building in Helena on the evening of September 22nd. The meeting provided an opportunity for FWP to address questions about the proposed project and its alternative and to receive public comments.

Legal notices announcing the availability of the EA were published in the *Bozeman Chronicle* and *Helena Independent Record*. In addition to the announcement, the EA was posted on FWP's webpage: <http://fwp.mt.gov> under *Recent Public Notices, Environmental Assessments*. The EA was mailed to 30 interested groups and individuals, including adjacent landowners, and emailed to 14 additional parties, in addition to internal FWP distribution. The proposal was previously advertised for comment by the Montana Fish and Wildlife Conservation Trust for three months between May and August 2010. That comment solicitation was advertised in all major newspapers, and three letters were sent to MACO and local county officials.

Summary of Public Comments

Twenty-six people signed in at the public hearing in Helena. Eleven people testified: five in support, one opposed, and four with specific suggestions for FWP to consider. FWP made a digital recording of the hearing. Fourteen comments were received from individuals or parties via email and regular mail during the public comment period on the proposed action. A total of 16 individuals and organizations (67% of all who commented in writing or at the hearing) indicated support for FWP to purchase the addition to the

Canyon Creek WMA. Three registered opposition to FWP acquiring the property, and five (21%) commented without giving a clear opinion for or against the property coming to FWP.

Public participation is a mechanism for agencies to consider substantive comments on a proposal. The following is a synopsis of the feedback, and FWP's response to those comments and questions.

1. Supportive of public ownership, use and public access

FWP Response: The overall objectives for this project include providing recreational opportunity on the property and providing strategic public access through this property to adjoining public lands.

2. a. Supportive of the land remaining undeveloped
b. FWP ownership will benefit the riparian corridor, wildlife, habitat, and habitat connectivity.

FWP Response: Under FWP ownership, minimal development of public facilities such as parking areas and interior roads and trails is planned in order to maintain the undeveloped, primitive nature of the area. The overall objectives for this project include maintaining or improving the wildlife and fisheries values of the property.

3. Poor choice of property given size and cost

FWP Response: The benefits of the additional property not only include increasing the amount of existing, contiguous protected wildlife habitat and further protection of a stream corridor containing native westslope cutthroat trout but also include increasing public access to public lands in a strategic location. The location of the targeted property will provide strategic public access to more than 5,000 acres of BLM and USFS lands in an area that is currently closed to public access except from the continental divide above. At the present time, wildlife move across Hwy 279 in this area, and the Tar Head Creek drainage to the west and a draw on the east creates a natural funnel through the area for wildlife. FWP ownership (public ownership) will ensure protection of these functions in this area in perpetuity, as there are no protective measures on surrounding private lands at this time. The opportunity for public access in this strategic location would be unlikely to be obtained by FWP through another property in the area. The cost is based on an independent property appraisal as required by the Montana Fish and Wildlife Conservation Trust, the Trust providing the acquisition funds.

4. Comments related to easements and private landowner access to adjoining properties through the project property
- a. "The Draft Environmental Assessment did not mention the obvious road nor the right-of-ways for the Mack nor McDonald properties."
- b. Will FWP stop McDonalds from accessing their private property? McDonalds would like to see the access the same as it is now or as it has been with the Ball Family.
- c. By implication, the "cattle" trailing easement would include activities to maintain the cattle (motorized access to the McDonald's "Tar Head" pasture).
- d. The McDonalds only have a recorded stock-trailing easement, and access across the targeted property was for cattle management only.
- e. Do the McDonalds get to drive through the Macks' property after FWP acquires the project (Ball) property?

FWP Response: The Draft EA includes the following on page 9: "There is a road easement through the property for access by one adjoining neighbor" and on page 11: "There may be a legal road easement through a portion of the property for one adjoining landowner, and there

may be a legal stock driving/trailing easement through the property for another adjoining landowner". FWP can understand how these statements may have caused confusion. After additional consultation with the local title company, the landowners, and the neighbors, the EA is hereby revised to include the following information regarding recorded access rights held by others on the property:

"A 2006 survey of the property portrays a 30' wide access/utility easement across the Ball property adjoining Macks' 6 acre tract to the south. The 30' wide easement shown on the survey then proceeds across the Macks' land back to the Balls' property. No other instrument was ever recorded regarding these reciprocal access rights other than the survey. FWP has requested the families record reciprocal easements prior to FWP's acquisition, in order to clarify the present use and intent of the 2006 survey for future reference.

Furthermore, there is a recorded 1947 reserved right of way to drive stock on a trail across the Ball property to other private pasture. This private property right is now claimed by the McDonald Family who own adjoining property to the west. The public records of Lewis and Clark County verified a second access held by the McDonalds across other private property to the north. FWP has not researched any similar rights to trail stock across the Mack property. The proposal would not change the status of third party rights, if any, held by others on the Macks' land or existing rights on the Ball property.

There are other typical recorded rights of way for utilities and the state highway."

The road on the project property leaves and crosses two different parcels of private property owned by two different parties, and neither of these parcels of land are part of this acquisition project.

5. Comments related to trespass on neighboring property
 - a. Hunters/the public will trespass onto private land
 - b. Public ownership may reduce trespass on private land
 - c. Will FWP build a fence around the 6-acre Mack property to keep people and livestock out? Macks request a locked gate across the existing road through Mack's property.

FWP Response: FWP expects that hunters utilizing the WMA will do some "self-policing", based on reports made by hunters to the FWP area wardens and wildlife biologist in the past. If FWP acquires the property, we 1) plan to sign the boundary between the WMA addition and private property and 2) plan to install a sign at the parking area depicting the WMA boundary and surrounding private property and public property. As shown on the conceptual drawing on page 7 of the EA, FWP plans to fence the parking area and provide gate access to others relative to their existing access rights.

As a new acquisition, FWP area game wardens would plan to elevate patrol of this area initially, as allowable with other regional responsibilities.

Landowner permission is required for all hunting on private property in Montana (87-3-304MCA). Therefore, anyone hunting on property without permission can be cited for that violation, if the landowner chooses to pursue such. Posting of property is NOT required regarding Hunting Without Landowner Permission during established hunting seasons in order to pursue violations.

Persons trespassing on private property outside of the hunting season can be charged with Criminal Trespass (45-6-203MCA). In order to prosecute for Criminal Trespass, the property IS required to be posted.

FWP would not hold any rights to create new public access rights across the Mack property through this acquisition. FWP plans to manage the public access on the project (Ball) property by restricting it to non-motorized use only and, if necessary, the property boundary between the project property and the Macks' property may need to be signed if trespass issues occur.

6. Infrastructure construction and maintenance

- a. FWP ownership of the targeted property will potentially damage Leite's water right, ditch and bank, and fences. Who will repair Leite's fences and ditch and banks?

FWP Response: FWP ownership will not change existing legal, private water rights. No water rights would transfer to FWP with acquisition. No motorized access, other than administrative access, is anticipated by FWP. Public access will be limited to non-motorized use. The Macks' access through the property crosses the ditch and the McDonalds' right to trail stock across the ditch exists whether or not FWP acquires the property. FWP plans to follow legal rules and regulations concerning irrigation ditches crossing the project property. FWP plans to work cooperatively with the ditch owner to address maintenance issues that may arise from foot and/or horse traffic crossing the ditch.

Anyone who damages ANY fence regardless of who owns the fence can be charged with Criminal Mischief (45-6-101MCA). Generally the defendant is required to reimburse the owner for the cost of repairs. As a condition of sentence, a defendant can be ordered to repair or replace the damage he/she caused.

- b. Signing property boundaries and directional signage are important to the project.

FWP Response: If FWP acquires the property, we 1) plan to immediately sign the boundary between the WMA addition and private property and 2) plan to install a sign at the parking area prior to the 2011 hunting season depicting the WMA boundary and surrounding private property and public property.

- c. FWP should construct a trail to direct the public to public lands beyond the targeted property, including a bridge crossing of Canyon Creek to prevent resource damage.

FWP Response: FWP will take this under consideration. If FWP acquires the property, we 1) plan to sign the boundary between the WMA addition and private property and 2) plan to install a sign at the parking area depicting the WMA boundary and surrounding private property and public property. Under FWP ownership the public would have access to and use of the entire project property following the WMA rules and regulations, except during a winter closure period for wildlife.

In addition to access, the overall objectives for this project include maintaining or improving the wildlife and fisheries values of the property. Therefore, if a designated stream crossing were necessary to prevent resource damage, then FWP would plan to establish an appropriate crossing.

- d. Parking should be placed east of the highway; access is proportionately greater to the targeted property than to the existing WMA.

FWP Response: FWP Design and Construction staff visited the property to assess placement of a suitable public approach and parking area. It was determined that the safest approach for public use of the project property would likely be on the west side of the highway, and a draft proposal of this approach and parking area were included in the Draft EA. It was determined that a public approach on the east side of the highway would be unlikely to be approved by the Montana Department of Transportation due to line-of-sight constraints and subsequent safety concerns.

The overall objectives for this project include providing recreational opportunity on the property and providing strategic public access through this property to more than 5,000 acres of adjoining public lands (BLM and USFS) in an area that is currently closed to public access except from the continental divide above.

7. Comments related to public participation
 - a. Public notification of the project was adequate.
 - b. Public notification of the project was inadequate.

FWP Response: Landowners that adjoin the targeted property were contacted by the FWP Helena area wildlife biologist in early July to discuss the project, get feedback, and to answer questions. As requested by these landowners, additional contacts were added to the distribution list for the Draft EA.

Copies of the cover letter, Draft EA, and the management plan for the existing Canyon Creek WMA were sent via US post office and email to 44 parties on September 14th and 15th, in addition to internal FWP distribution. These items were also posted to the FWP website on Tuesday, September 14th, 2010.

Notices of the availability of the Draft EA for public comment and public hearing were submitted for the September 15th, 19th, and 26th issues of the Helena Independent Record and the 15th and 19th issues of the Bozeman Daily Chronicle, and the Public Notice appeared on those dates in the Bozeman Daily Chronicle. However, due to errors at the Helena Independent Record, the Public Notice appeared in that paper on September 21st and 22nd. A public hearing was held on September 22nd at 7 p.m. at the FWP headquarters in Helena.

In addition to FWP actions to involve the public, the Montana Fish and Wildlife Conservation Trust had public comment periods regarding this project that solicited comment May through August 2010.

8. Comments related to project costs
 - a. There will be no cost to tax payers, as the purchase is funded by a private trust.
 - b. Funding/costs are not clear.

FWP Response: The purchase price of the property would be funded by Montana Fish and Wildlife Conservation Trust. Associated closing costs/fees, maintenance funds, and property taxes (after acquisition) would be the responsibility of FWP. These FWP funds would come from fishing and hunting license dollars paid by sportsmen and women.

Final Environmental Assessment for the Canyon Creek Wildlife Management Area Addition

FWP concludes that the impacts associated with the proposed alternatives would not have a significant impact on the physical environment or human population in the area. In determining the significance of each impact, the criteria defined in the State of Montana's Administrative Rule 21.2.431 was used.

This environmental assessment is therefore the appropriate level of analysis for the proposed action and an environmental impact statement is not required.

Based on the comments received and consideration of their value to improve and clarify the assessment for this project, FWP has made some modifications to the Draft Environmental Assessment narrative as presented in this Decision Notice. This Decision Notice and attached draft Canyon Creek Wildlife Management Area Addition Environmental Assessment will be considered the Final EA. Both will be posted on FWP's website.

Decision

Based upon the Environmental Assessment and public comment, it is my decision to approve the acquisition of the Canyon Creek Wildlife Management Area Addition pending review by the FWP Commission and the Board of State Land Commissioners.



Pat Flowers, Regional Supervisor
Montana Fish, Wildlife & Parks