



Montana Fish, Wildlife & Parks

September 14, 1999

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
Nongame Coordinator
Ken McDonald, Native Species Coordinator
Missoula Office

MT Environmental Information Center
Montana Audubon Council
Montana Department of Natural Resources and Conservation
North Powell Conservation District
U.S. Fish and Wildlife Service, Helena
Montana State Library, Helena
Montana Trout Unlimited, P.O. Box 7186, Missoula, MT 59807
Jon and Diane Krutar, 4981 Highway 200, Ovando, MT 59854

Ladies and Gentlemen:

Please find enclosed an Environmental Assessment prepared for a Future Fisheries Project tentatively planned to provide partial funding towards consummating a water lease from the Krutar family on Kleinschmidt and Rock creeks. Montana Trout Unlimited is proposing to lease most of the Krutar family water rights on Kleinschmidt and Rock creeks to insure the water remains instream. The water rights proposed for leasing are currently not being diverted for beneficial use and, as such, are subject to appropriation. A water lease consummated by Montana Trout Unlimited would insure that the Krutar water rights on these two streams are being put to beneficial instream use and, as a result, would not be subject to appropriation for the term of the lease.

Please submit any comments that you have by 5 P.M., October 15, 1999 to:

Montana Fish Wildlife and Parks
Kleinschmidt and Rock Creek Water Leasing Project
P.O. Box 200701
Helena, MT 59620-0701

Powell

Funding of this proposed project is contingent upon approval being granted by the Fish, Wildlife and Parks Commission. Completion of the project is also contingent upon approval of "Change" applications by the Montana Department of Natural Resources and Conservation.

If you have any questions, feel free to contact me at (406) 444-2432.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Lere". The signature is fluid and cursive, with a large loop at the end.

Mark Lere, Program Officer
Habitat Protection Bureau
Fisheries Division

ENVIRONMENTAL ASSESSMENT
Fisheries Division
Montana Fish, Wildlife and Parks
Kleinschmidt and Rock Creek Water Leasing Project

General Purpose: The 1995 Montana Legislature enacted statute 87-1-272 through 273 which directs the Department to administer a Future Fisheries Improvement Program. The program involves physical projects to restore degraded fish habitat in rivers and lakes for the purpose of improving wild fisheries. The legislature established a funding account to help accomplish this goal. A statute enacted by Montana's 1995 legislature (85-2-408 and 409, MCA) under HB 472 addresses water leasing by private entities. The purpose of this legislation is to provide a mechanism for private entities to lease existing water rights for instream flows to benefit the fishery resource. The law allows private entities to temporarily lease water rights from willing individuals who have traditionally used the water for diversionary purposes.

The fishery in both Kleinschmidt and Rock creeks have benefited from habitat restoration projects that have been completed in the recent past. This proposed water lease would insure that these recent habitat restoration projects would be protected from potential dewatering. The water rights proposed for leasing are currently not being diverted for beneficial use. A portion of these rights are being kept instream because the ranch has created "salvaged" water by converting from flood to sprinkler irrigation. "Salvage water" is water not used for irrigation because of improvements in efficiency. These unused water rights are now subject to potential appropriation by others. The proposed lease would insure that these water rights are legally being put to beneficial use and, as a result, would not be subject to appropriation for the term of the lease.

Montana Fish, Wildlife and Parks' Future Fisheries Improvement Program is proposing to contribute up to \$6,000.00 in funding towards perfecting the lease. The proposal calls for Montana Trout Unlimited to lease most of the Krutar family water rights on Rock and Kleinschmidt creeks to insure the water remains instream. The lease involves 15.03 cubic feet/second (cfs) on Rock Creek and 0.56 cfs on Kleinschmidt Creek. The Krutar's own the lowest reach of both Kleinschmidt and Rock creeks.

I. Location of Project: Rock Creek is a tributary to the North Fork of the Blackfoot River located approximately 5 miles east of the town of Ovando (see Attachment 1). Kleinschmidt Creek flows into Rock Creek near it's confluence with the North Fork. The proposed project would be located within Township 14 North, Range 11 west, Section 6 in Powell County.

II. Need for the Project: Department Goal A indicates that a Fisheries Division objective is to "protect existing aquatic habitat and improve degraded stream systems for the welfare of healthy fish populations and other wildlife species and for public enjoyment and use." The Future Fisheries Improvement Program is a tool to help achieve that objective.

Kleinschmidt and Rock creeks have undergone habitat restoration projects in the recent past and

are scheduled for additional restoration projects in the near future. The intent of these projects is to enhanced the resident and migratory fisheries in the two streams. Rock Creek contains rainbow trout, brown trout, brook trout and very low densities of westslope cutthroat trout and bull trout. Kleinschmidt Creek contains brown trout and brook trout. A portion of the water rights proposed for leasing are currently not being diverted for beneficial use and, as such, are subject to appropriation. Consummation of the proposed lease would help insure that the Krutar's maintain their water rights and, at the same time, would help protect the restored reaches of Kleinschmidt and Rock creeks from potential dewatering. The lower 0.5 and 0.25 miles of Rock and Kleinschmidt creeks, respectively, would potentially benefit from this lease proposal.

III. Scope of the Project: The proposal calls for Montana Trout Unlimited to lease the unused portion of the water rights owned by the Krutar family for instream flow purposes. The water rights proposed for leasing include:

1. 0.03 cfs on Rock Creek (priority date of November 14, 1883);
2. 15.0 cfs on Rock Creek (priority date of June 26, 1932); and
3. 0.56 cfs on Kleinschmidt Creek (priority date of September 15, 1916).

On Rock Creek, the Krutar water rights are the oldest and sixth oldest rights in the drainage, and the most senior on the lower reach of the stream. The Krutar's water right on Kleinschmidt Creek is the oldest and most downstream right in the drainage. The annual period for the lease would be the existing period of use for the water right (May 1 to September 4). The term of the lease would be for 10 years. Ten annual payments of \$1,200 would be made to the Krutar family for the lease. Montana Fish, Wildlife and Parks, through the Future Fisheries Improvement Program, is proposing to contribute up to \$6,000.00 in funding to help perfect the lease. Remaining funding would be provided by Montana Trout Unlimited.

Although the two parties have reached general agreement on this water lease, the lease cannot be implemented until a Change in Appropriation Water Right application is approved by the Department of Natural Resources and Conservation (DNRC). Any water users who feel they would be effected by this proposed lease have an opportunity to object to this "Change". The lease cannot be implemented until all objections have been resolved if, in fact, any objections are received. The lease period would begin the first complete irrigation season following the date this "Change" applications is approved by DNRC.

IV. Environmental Impact Checklist:

Please see attached checklist.

V. Explanation of Impacts to the Physical Environment:

1. Terrestrial and aquatic life and habitats.

There will be no adverse impacts to fish and wildlife as a result of the proposed project. By insuring that water historically designated for consumptive use remains instream in Kleinschmidt and Rock creeks, the fisheries (and to some extent wildlife) are expected to be maintained or improved.

2. Water quantity, quality and distribution.

No changes in drainage patterns, natural surface runoff or water distribution will occur as a result of the proposed project. However, the proposed lease would insure that water rights that were historically designated for consumptive purposes are legally being put to beneficial use as instream flow. As such, the water rights would not be subject to appropriation for the term of the lease.

5. Aesthetics.

Aesthetics would be maintained by insuring that water currently not needed for irrigation or fish farming is kept instream.

7. Unique, endangered, fragile, or limited environmental resources

In addition to supporting several species of non-native trout, Rock Creek presently supports very low densities of westslope cutthroat trout and bull trout. Bull trout are listed as threatened under the Endangered Species Act. As such, this project will be included in Montana Fish, Wildlife and Parks' Section 6 conservation plan with the U.S. Fish and Wildlife Service. Westslope cutthroat trout are listed as a species of special concern in the state of Montana and have recently been petitioned for listing under the Endangered Species Act. This project would insure that water historically designated for consumptive use is kept instream for the term of the lease by preventing other users from potentially appropriating unused water rights. If these rights were appropriated for consumptive use, the lower reaches of Rock Creek and Kleinschmidt Creek could become dewatered.

VI. Explanation of Impacts on the Human Environment.

4. Agricultural or industrial production.

There are no anticipated adverse impacts to agricultural production as a result of this proposed project.

7. Access to & quality of recreational activities.

It is anticipated that the fisheries in both Kleinschmidt and Rock creeks would be maintained by insuring that the existing flow regime in the lower reaches of both streams

is preserved.

VII. Discussion and Evaluation of Reasonable Alternatives.

1. No Action Alternative

If no action is taken, the unused portion of the Krutar family water rights on Kleinschmidt and Rock creeks could be subject to appropriation by other consumptive users. If this were to happen, instream flows in the lower reaches of both stream would be adversely affected and, as a result, aquatic habitat would be diminished.

2. The Proposed Alternative

The proposed alternative is designed to insure that the unused water rights on Kleinschmidt and Rock creeks, now subject to potential appropriation by others, remain instream for the term of the lease. The proposed lease would insure that these water rights are legally being put to beneficial instream use and, as a result, would not be subject to appropriation. Perfecting the lease would protect the recently restored fishery from potential dewatering.

3. Alternatives considered but not recommended

Other means of maintaining the flow regime in Kleinschmidt and Rock creeks are not feasible at this time for the following reasons:

- * There are no existing or planned water storage projects within either drainage.
- * Montana Law prevents the purchase of water rights for instream flows.
- * To our knowledge, other water rights appropriated for these two streams are not available for leasing.

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.

2. Level of public involvement.

The proposed project was reviewed and supported by the public review panel of the Future Fisheries Improvement Program. The proposed project also will be reviewed by the Fish, Wildlife and Parks Commission and funding will be contingent upon their approval.

Before this project could be implemented, the water lease must be approved by DNRC. Trout Unlimited will be submitting a "Change" application to DNRC which will be publicly noticed in local newspapers. Any objections to the "Change" must be resolved before the two leases are approved. The "Change" will be denied by DNRC if the lease is found to adversely affect the water rights of other users on Kleinschmidt and Rock creeks.

The Environmental Assessment (EA) is being distributed to all individuals and groups listed on the cover letter. The EA will be published on the Montana Electronic Bulletin Board.

3. Duration of comment period?

Public comment will be accepted through 5 P.M. on October 15, 1999. Submit comments to:

Montana Fish, Wildlife and Parks
Kleinschmidt and Rock Creek Water Leasing Project
P.O. Box 200701
Helena, MT 59620-0701

4. Person responsible for preparing the EA.

Mark Lere, Program Officer
Habitat Protection Bureau
Fisheries Division
Montana Department of Fish, Wildlife and Parks
1420 East 6th Avenue
Helena, MT 59620

Telephone: (406) 444-2432

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 Kleinschmidt and Rock Creek Water Leasing Project
 Division/Bureau Fisheries Division -Future Fisheries Improvement

Description of Project The proposal calls for Montana Trout Unlimited to lease most of the Krutar family water rights on Kleinschmidt and Rock creeks to insure the water remains instream. The water rights proposed for leasing are currently not being diverted for beneficial use and, as such, are subject to appropriation. Montana Fish, Wildlife and Parks' Future Fisheries Improvement Program is proposing to contribute up to \$6,000.00 in funding towards perfecting the lease.

POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Terrestrial & aquatic life and habitats			X			X
2. Water quality, quantity & distribution				X		X
3. Geology & soil quality, stability & moisture				X		
4. Vegetation cover, quantity & quality				X		
5. Aesthetics			X			X
6. Air quality				X		
7. Unique, endangered, fragile, or limited environmental resources			X			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		
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			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 North Powell Conservation District, MT DNRC, U.S. Fish and

Wildlife Service

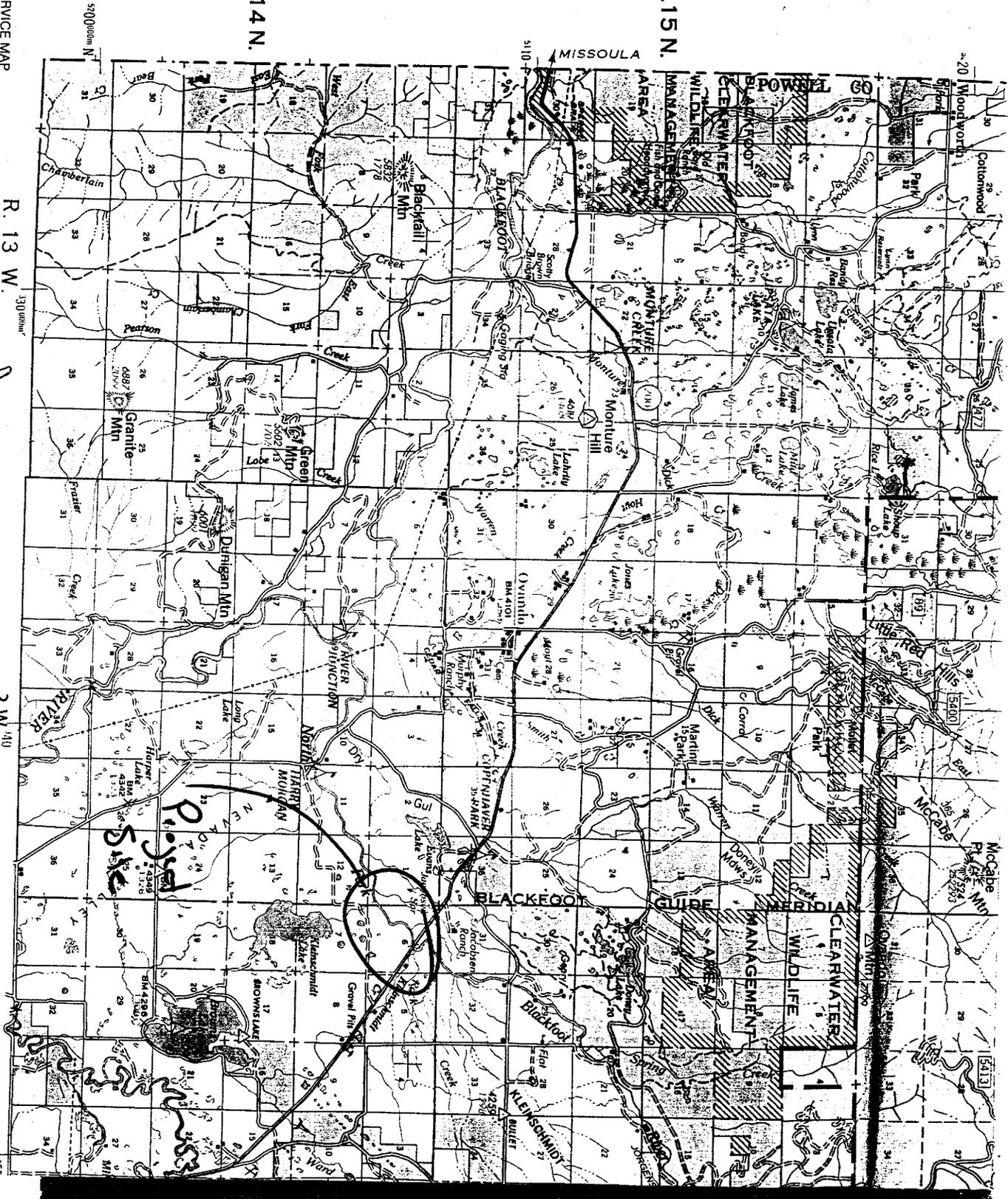
Individuals or groups contributing to this EA: Bruce Farling, Montana Trout Unlimited

Recommendation concerning preparation of EIS: No EIS required.

EA prepared by : Mark Lere

Date: September 14, 1999

FOREST SERVICE MAP
 Compiled and constructed in the Regional Office, Missoula, Montana
 in 1976 from U.S. Forest Service planimetric maps and U.S.
 Geological Survey topographic maps by photogrammetric methods
 Revised in 1987 by the U.S. Forest Service, Geomatics Service
 Center, Salt Lake City, Utah from 1985 field review by the Northern
 Region. Land ownership supplied by cooperating agencies.



ATTACHMENT 1

A 113°15'00"

B

4"U/30"

C

113°00'00"

13

47° 00' 00"

12