



**Montana Fish, Wildlife & Parks** **RECEIVED**  
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LEGISLATIVE ENVIRONMENTAL  
POLICY OFFICE

May 8, 2006

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  
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Montana Fish, Wildlife & Parks:

Director's Office      FWP Commissioners      Fisheries Division      Parks Division  
Design & Construction      Lands Section      Legal Unit      Wildlife Division  
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  
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Montana Wildlife Federation, P.O. Box 1175, Helena, MT 59624  
Wayne Hurst, P.O. Box 728, Libby, MT 59923

Ladies and Gentlemen:

Montana Fish, Wildlife and Parks (FWP) has completed an environmental assessment (EA) of implementing a Candidate Conservation Agreement with Assurances (CCAA) for Fluvial Arctic Grayling in the Big Hole River.

Grayling currently occupy only 5% of their historic range within the upper Missouri River basin in Montana. The grayling in the Big Hole River may be the only remaining fluvial population of grayling in Montana. Recently declining to historically low levels, the Big Hole grayling fluvial population has been petitioned for listing under the Endangered Species Act (ESA).

Most of the habitat occupied by grayling in the Big Hole River is on or adjacent to non-federal lands. The decline of grayling in the system has been primarily linked to agricultural activities on these lands, so the active involvement of non-federal landowners is viewed as critical to the conservation of the species in the Big Hole. However, the occurrence or expansion of grayling in waters on their properties is a concern to private landowners because of potential regulatory restrictions on farm or ranch operations should grayling be listed as threatened or endangered under the ESA. These restrictions may affect landowner willingness to participate in efforts to conserve the species.

The conservation goal of the CCAA is to secure and enhance populations of grayling within the historic range of the species in the upper reaches of the Big Hole River drainage. The purpose of the CCAA is to encourage non-federal landowners to voluntarily implement proactive conservation measures that benefit grayling in the upper Big Hole River by providing them with assurances that their land and water management activities will not be required to change beyond the remedies identified in their site-specific plan should grayling be listed as threatened or endangered. This CCAA will help alleviate private property concerns, as well as generate support from private landowners for improving habitat conditions for grayling on enrolled properties in the area covered by the CCAA.

After review of the draft EA and public comments, it is recommended that, with the issuance of a Section 10(a)1(A) Enhancement of Survival permit, the CCAA be implemented as described in Alternative B of the EA. Most of the public comments received were directed at the content and approach of the CCAA, rather than as evaluation of a preferred EA alternative. The language in the draft CCAA was modified to address several of the comments or concerns expressed during the public comment period. These changes are indicated in the following responses to comments. Responding to comments regarding the ESA aspects of the CCAA (i.e. whether the CCAA adequately meets the CCAA policy, whether the CCAA will preclude listing, etc.) is the responsibility of the U.S. Fish and Wildlife Service (USFWS). Responses to these types of comments are addressed in the USFWS's decision documentation. FWP did not develop responses for this category of comments. Copies of the final EA and CCAA can be obtained from FWP Fisheries Division, c/o Arctic Grayling CCAA, PO Box 200701, Helena, MT 59620-0701, or on the FWP website: <http://fwp.mt.gov>. A copy of the Decision Notice that includes responses to those comments not substantively covered in the draft EA is attached for your information.

Sincerely,



Patrick J. Flowers  
Region 3 Supervisor

Attachment

**Decision Notice for Implementation of a Candidate Conservation Agreement with  
Assurances for Fluvial Arctic Grayling in the  
Upper Big Hole River**

**Project Proposal**

The purpose of the CCAA is to encourage non-federal landowners to voluntarily implement proactive conservation measures that benefit grayling in the upper Big Hole River by providing them with assurances that their land and water management activities will not be required to change beyond the remedies identified in their site-specific plan should grayling become listed as threatened or endangered. The CCAA will help alleviate private property concerns, as well as generate support from private landowners for improvement of habitat conditions for grayling throughout the Project Area. The conservation goal of the CCAA is to secure and enhance populations of grayling within the historic range of the species in the upper reaches of the Big Hole River drainage.

**Public Involvement**

FWP submitted an application for a Section 10(a)1(A) Enhancement of Survival permit and a draft CCAA for fluvial Arctic grayling in the upper Big Hole River to the USFWS in August 2005. A joint EA was drafted and released by FWP and USFWS for 30 days of public comment in December 2005. Public meetings were held in Wisdom (January 9, 2006) and Butte (February 12, 2006) to gather public comment. A total of 11 comments were received, with 10 of those supporting the EA's Alternative B, implementation of the CCAA.

**Responses to Comments**

1. There is insufficient adaptive management in the CCAA.

The CCAA incorporates adaptive management throughout the document for many of the criteria for measuring the effectiveness of implementing the conservation measures. Provisions to amend or supplement the CCAA if additional conservation measures are necessary are described in the CCAA. For example, provisions described in the section entitled, "Changed Circumstances", provide a mechanism to address effects of drought, wildfire, floods, adjudication of water rights and encroachment of nonnative species. Supplementary actions to be taken if conservation goals are not achieved are included in the discussions of each of the four conservation measures. Additionally, the section entitled "Adaptive management plan for grayling population response to conservation measures" describes additional actions that could be taken if the grayling population does not respond to the conservation measures and/or new information would improve implementation of the CCAA or benefit grayling.

2. Biological objectives are unstated or vague.

The conservation goal of the CCAA is to “secure and enhance the population of Arctic grayling within the historic range of the species in the upper Big Hole River” by providing improved instream flows, improving riparian and instream habitats, reducing entrainment of insufficient flows, and increasing the grayling’s access to currently unoccupied habitat. The ultimate measure of achievement of that goal and the effectiveness of implementing the conservation measures specified in site-specific plans will be an increase in the abundance and distribution of Arctic grayling in the Big Hole River. The CCAA describes both 5 and 10-year benchmarks for the biological response of the grayling population. Additional conservation actions are required if the population does not respond as expected.

3. There is inadequate coordination of CCAA implementation.

The CCAA contains methods to provide coordination of its various components, including the implementation of conservation measures, biological and compliance monitoring, and reporting. The Agencies responsible for implementing the CCAA have demonstrated a commitment to coordination, with periodic meetings to further communication and coordination. Having a single agency, FWP, as the Section 10(a)1(A) Enhancement of Survival permit holder with the responsibility for program coordination provides a simplified accountability for implementation of the CCAA.

4. Landowner obligations for water conservation and installation and calibration of flow-measuring devices are unclear.

Participating landowner obligations are fully described under the discussion of implementation of the CCAA (pg. 58 of the draft CCAA) and under “obligations of Partners” (pg. 65 of draft CCAA). The specific obligations of each Participating Landowner will be identified in their site-specific plan. An example of a site-specific plan appears as Appendix G in the draft CCAA. Language to further clarify Participating Landowner obligations for maintenance of installed structures has been added to the final CCAA document and in the section detailing Participating Landowner obligations.

5. The order in which water diversions are improved needs to be prioritized.

A prioritization scheme for determining the order of implementing specific conservation projects, including improvements to irrigation diversions, is fully discussed within the draft CCAA. The prioritization uses location, habitat use by grayling lifestage, entrainment significance and potential benefit to grayling to determine the priority of each project. Projects that provide more immediate benefit to grayling receive priority for implementation.

6. Stream channel reconstruction needs to be added as a conservation measure.

References within the CCAA to improving stream channel morphology obviously include channel reconstruction, if needed. While it is preferable to have natural, dynamic spring peak flows provide the mechanism for achieving natural channel morphology, channel reconstruction is an option that can provide more rapid achievement of a preferred channel profile although at an increased cost. The use of stream channel reconstruction as a habitat improvement technique has been added to the final CCAA.

7. Who is responsible for monitoring water withdrawals?

Monitoring landowner compliance with water withdrawals identified in site-specific plans is the responsibility of DNRC. Enforcement of all negotiated components of the site-specific plans, including complying with water withdrawal reduction agreements, is the responsibility of FWP and the USFWS. FWP and the USFWS agree that compliance with site-specific plans is necessary for the CCAA to be successful. A description of the compliance monitoring component is included in the draft CCAA.

8. I don't like the concept of giving landowners ESA assurances. If provided with assurances, landowners don't have to comply with their site-specific plans. How will compliance monitoring and enforcement occur? Compliance with site-specific plans must be enforced.

The concept of providing assurances to landowners is a cornerstone of the CCAA program. Without the assurances provided through CCAAs and similar ESA conservation agreements, there is little incentive for landowners to cooperate in conservation programs for candidate or listed species.

Under this CCAA, assurances are not provided to landowners until they have completed an approved site-specific plan. Further, compliance with their site-specific plans is required for Participating Landowners to remain enrolled in the CCAA under a Certificate of Inclusion that provides assurances. Those landowners that do not comply with their site-specific plans will have their Certificates of Inclusions revoked and they will lose their assurances.

The CCAA details who will perform compliance monitoring and requires landowners to permit access by FWP personnel or its agents for the purposes of monitoring compliance. Compliance monitoring will be an on-going activity on all enrolled properties throughout the duration of the CCAA. Additionally, Participating Landowners are required to meet with FWP or its agents, at least twice each year. The Agencies agree that Participating Landowners' compliance with site-specific plans is necessary. Additional language has been added to the final CCAA to clarify the monitoring and enforcement of landowner compliance with site-specific plans.

9. If individual landowners are not complying with their site-specific plan, the agencies must be willing to revoke their Certificates of Inclusion. Landowners must be held accountable for not complying with their Certificates of Inclusion.

Landowner compliance with site-specific plans is necessary for the success of the CCAA. As needed, enforcement of compliance is a major component of the CCAA implementation. Participating Landowners will be notified when they are out of compliance with their Certificates of Inclusion and have 7 days from receipt of the notification to remedy the compliance variance. Further agency action, including suspension of all or part of a Participating Landowner's Certificate of Inclusion or total revocation of the Certificate of Inclusion, can occur if compliance is not restored within the 7-day period. Language in the final CCAA has been added to clarify the compliance enforcement process.

10. Where ground-disturbing activities occur, cultural resources could be impacted. Cultural resource inventories should occur.

Federal and state policy and law require that cultural inventories be performed when cultural resources may be impacted by ground-disturbing activities funded wholly or in part with federal or state funding. The potential impacts to cultural resources for each project will be evaluated during the environmental review (via an Environmental Assessment) for the project. All EAs will be sent to the State Historic Preservation Office for evaluation and comment.

11. No definition of "proper functioning" irrigation diversions is provided in the CCAA.

While not specifically defined, as described in the draft CCAA, proper functioning irrigation diversions require control over the water (the ability to turn on, turn off and adjust flow through the diversion) and flow measurement (method or device to measure flow through the diversion).

12. Fish screens should be placed on all diversions greater than 10 cfs. FWP is urged to evaluate the cumulative effects of screening ditches.

There is insufficient data on grayling entrainment to justify the installation of fish screens on all diversions above a certain arbitrary flow. Evaluating the population-level threat to grayling from entrainment is part of the monitoring required by the CCAA and is initiated early in the enrollment process. The CCAA prioritizes the installation of fish screens based on the level of threat of entrainment of all diversions. As part of the evaluation of the threat from entrainment of grayling into irrigation systems, FWP will assess the cumulative effects screening irrigation diversions will have on other resident fish species, with an emphasis on native species.

13. A statement comparing expected results to historical streamflows must be included in the CCAA so the reader can understand the expected benefit to streamflow as a result of implementing the CCAA.

The historical hydrograph in the Big Hole River during the period of record is an effective reference for comparing the improvements to instream flows from implementation of the CCAA conservation measures. However, providing a reliable, quantitative estimate of the expected benefit to instream flows resulting from implementation of the CCAA is not possible given current information. The realized improvements to instream flows will depend on, among other things, the level of landowner participation in the CCAA, the characteristics of the enrolled lands and associated water rights, climatic conditions, and the water use of un-enrolled landowners adjacent to and within the project area. Attributing a specific net gain in streamflows within a specific Management Segment to a collection of as-yet-undetermined site-specific conservation actions has little value given the level of uncertainty of the numerous associated assumptions. Site-specific plans will incorporate irrigation and stock watering efficiency improvements, voluntary irrigation reductions during low water periods, and improvements to infrastructure for 40 ranches with over 700 unique irrigation water rights. At this time the details of these plans have not been developed and, therefore, the net benefits are difficult to predict. However, voluntary water-saving agreements with landowners in 2005 (prior to implementation of the CCAA) demonstrated that water-saving arrangements can increase instream flows above those that would have been provided without these arrangements. FWP believes that, given the anticipated level of enrollment in the CCAA, the water conservation strategies included in site-specific plans will significantly increase the instream flows in the Big Hole River and its tributaries.

14. Flow targets are not being met 100% of the time. The goal should be to meet flow targets 100% of the time.

The Agencies will strive to meet or exceed the biologically-based flow targets presented in the draft CCAA. The Agencies, therefore, are working toward meeting the flow targets 100% of the time during implementation of the CCAA. However, the effects of climate (precipitation & timing of snowmelt runoff), cumulative drought, and the potential water use of non-enrolled water users in the upper Big Hole River basin make it unrealistic to expect that flow targets will be attained 100% of the time. Based on expert opinion, analysis, and interpretation of the existing hydrologic data, and the expected improvements to streamflows under implementation of the CCAA, the Agencies have estimated that the targets will be met 75% of the time after 10 years of implementation in years with average snowpack. This is a significant improvement over historical streamflows. Additionally, as the expected improvements to stream channel morphology increase river and stream depth-to-width ratios, habitat suitability for grayling will significantly improve even during periods when streamflows drop below target levels.

It cannot be emphasized enough that, while the percentage of days that the flow targets are met within the spring and summer/fall periods are important metrics with which to judge the success of the CCAA, the most meaningful measure of the CCAA's effectiveness will be the biological response of the grayling (i.e. increased abundance and distribution). The instream flows are only one of the many factors that will contribute to this response.

15. Why will flow targets for Management Segment C be met less frequently than the flow targets in the other four Management Segments?

Several of the largest diversions on the mainstem Big Hole River are located immediately above the Wisdom gage at the bottom of Management Segment C. As a result, a large amount of water is diverted around the gage to irrigate lands downstream of the gage. In addition, the river reach immediately above the Wisdom gage is known to lose water through natural seepage during low water periods. Because of these conditions unique to Management Segment C, it will be more difficult to meet the flow targets in Management Segment C than in the other four Management Segments.

16. Include in the CCAA a metric to determine success of meeting flow targets in multiple-year increments (e.g., meeting targets in 3 of 5 years).

The numbers of flow targets (2 seasonal targets for each of the 5 Management Segments) makes the evaluation of not meeting one or more flow target and then determining the effects of each deficiency on the grayling population a very difficult and complex problem. Until the biological and physical responses to the flow targets are more fully understood, evaluating the success of meeting flow targets at other than an annual basis has little merit.

17. Bifurcate spring flows from summer flows and determine success when flows during both periods have been exceeded 75% of days.

The draft CCAA did not clearly state that the Management Segment flow targets are to be met in both the spring (April-June) and Summer-Fall (July-October) periods, rather than in just one period or the other, or the entire April-October period. Striving to meet the flow targets for both spring and summer-fall periods is necessary to ensure adequate flows for spawning, rearing, feeding, and movement of fluvial Arctic grayling throughout the year. The text in the final CCAA has been modified to clarify this point.

18. The CCAA ignores the importance of groundwater storage.

During the past ten years DNRC and the Montana Bureau of Mines and Geology have monitored and studied the effects of groundwater storage and return flow in the upper Big Hole River. The most significant return flow period in the upper river occurs during June and early July when soils are saturated and overland flow is prevalent. Due to historic flood irrigation practices, the irrigation efficiencies of many of the operations in the upper basin are less than 20%. The CCAA does not intend to improve irrigation efficiency to

such a degree that it hinders maintenance of a saturated soil profile or impedes groundwater storage. Instead, any efficiency improvements will focus on reducing conveyance losses and the amount of field runoff. The proposed operations improvements will enhance channel maintenance flows and decrease water temperatures and nutrient loading while maintaining groundwater storage that is critical to supplement base flows late in the fall.

19. Mark-recapture estimates, rather than CPUE, should be used to determine grayling population responses.

While mark-recapture electrofishing sampling may be a preferred population estimation method, all population estimates include variances around the population estimate that is not often reported. CPUE methods are widely used in monitoring fish populations, especially where a species exhibits a nodal (discontinuous) distribution and, as with the current distribution of grayling in parts of the Big Hole drainage, the species is rare. Preliminary analyses by FWP indicate a strong correlation between CPUE and abundance estimated by mark-recapture at most long-term grayling monitoring reaches in the Big Hole River. Consequently, CPUE provides a valid index of abundance and abundance trends.

The increase in the number of monitoring reaches required for implementing the CCAA dictates that a combination of single-pass CPUE and multiple-pass mark-recapture techniques be used to quantify the grayling population within each monitoring reach. Thus the CCAA's grayling monitoring program includes a combination of CPUE (to detect trend) and, when possible, mark-recapture (to provide point estimates of abundance). All grayling captured will be given an identifying mark, and when 10 or more Age 1+ grayling are marked in a reach, a second-pass will be performed to provide the data necessary for an estimate of Age 1+ grayling abundance. The text of the CCAA has been changed to clarify this point.

20. How will the public know when recovery of the grayling occurs? What is the ultimate goal for the grayling population? What is an acceptable population trend? The biological objective of "recovered" was not defined.

A CCAA is not required to define recovery thresholds for the covered species. For unlisted species, it is the responsibility of the managing agency (FWP) to determine the population demographics that assure long-term persistence, usually in a restoration or management plan. For listed species, it is the responsibility of the USFWS to develop a recovery plan for the species in collaboration with the respective management agencies that describes "recovery".

The CCAA is a habitat conservation/restoration plan whose conservation goal is to secure and enhance (i.e. increase the distribution and abundance) grayling populations in the upper Big Hole basin. As a result of the implementation of the habitat conservation measures described in the CCAA, the abundance and distribution of the current Big Hole grayling population are expected to increase. The CCAA establishes two criteria for

measuring progress towards a self-sustaining population: a positive trend for Age 1+ grayling over 5 years for population abundance as measured by CPUE indices at each of the 10 monitoring reaches; and reoccupation or utilization of currently unoccupied habitats within 10 years of implementing the CCAA. Language in the final CCAA has been modified to clarify these population trend trajectories.

21. There were several comments regarding the availability and content of the annual report. The public should be kept aware of the progress of the CCAA. The Agencies should report what projects were completed and how funds were expended.

The "Reporting" section of the final CCAA has been expanded to modify FWP's annual reporting requirements. The completion date for the annual report has been changed from May 1 to February 1 so that the annual report can be presented to the public at the Arctic Grayling Workgroup. The annual report will be available on both FWP's and the USFWS' websites. The evaluation of compliance with site-specific plans is an important measure of the effectiveness of the CCAA, thus FWP's annual report will include the reporting of compliance variances that required enforcement actions. The annual report will also include an accounting of projects completed and their associated expenditures of agency funding.

22. All site-specific plans should be made available to the public.

The Montana constitution and Montana law require that all documents derived through state agency action be available to the public unless there is a legal need or regulatory action that would require confidentiality. As site-specific plans do not involve a regulatory process, completed site-specific plans will be available to the public upon request.

23. The NRCS riparian assessment system is not ecologically based.

According to the NRCS's *Riparian Assessment - Using the NRCS Riparian Assessment Method* (NRCS September 2004), "The NRCS Riparian Assessment Method is a modification of "Assessing Health of a Riparian Site" originally developed by the staff of the Montana Riparian and Wetland Research Program at the University of Montana (Thompson et al., 1998) which has been used and tested in several states and Canada since 1992."

"The NRCS Riparian Assessment Method is designed to help users understand the physical attributes and processes that should occur in stream systems and their adjacent riparian areas. It is based on providing a "first cut" evaluation of stability and sustainability as a surrogate for riparian 'health'. The evaluation helps to characterize the physical and ecological attributes that represent thresholds for sustainability. Subsequent ratings over a period of time on the same stream reach can be used to evaluate trend."

24. The CCAA should provide a description of the NRCS riparian assessment tool.

A description of NRCS's planning process is included as Appendix A to the CCAA. To include a collection of all agency protocols, guidelines, and technical manuals used in the implementation of the CCAA would make the document too cumbersome. As mentioned in Appendix A, a copy of the NRCS's riparian assessment tool is available at <http://www.mt.nrcs.usda.gov>.

25. In the CCAA, the minimum acceptable riparian condition score is 80%. The minimum acceptable riparian condition should be 95%.

It is desired that all enrolled riparian corridors achieve or are maintained in a "sustainable" condition (index score ranging from 80-100%). The riparian condition assessment is designed to evaluate stability and sustainability only. It is not intended to give the user a quantitative and comprehensive analysis of all ecological and physical processes. Additionally, the rating is not intended to provide an absolute numeric value that can be used to compare the reach to other riparian/wetland areas.

The absolute number associated with the score is not as important as the overall category (i.e. "sustainable", "at-risk", "non-sustainable"). Once riparian areas are sustainable, they can provide many other desired values, such as regulating stream channel morphology to provide suitable grayling habitat. Because of the inherent variability in classifying riparian habitats, a riparian area which scores 95% may not actually have any better habitat than another area that has a score of 80%. Both riparian areas will provide acceptable habitat that will sustain itself over time.

26. NRCS should monitor riparian habitats every 2 years rather than every 5 years as required in the CCAA.

With increased management, some riparian areas can recover extremely quickly, while others will require more time. There are many variables that determine how fast riparian areas can recover. Some rated factors on the assessment may change quickly (e.g. browse utilization), while other take more time to change or to have measurable change (e.g. undesirable plants, stream incisement, lateral cutting, and deep-binding root mass). For these reasons, it is proposed that each reach, on each enrolled land, be evaluated once every 5 years to track change over time. FWP will monitor permanent transects in each CCAA reach every year to track changes in stream morphology.

27. How will Certificates of Inclusion, take permits and assurances be written and enforced if there are limited agency resources? Can a landowner be granted a Certificate of Inclusion if there are limited agency resources? Certificates of Inclusion should be invalidated if specific conservation measures are not implemented within specific time periods.

Participating Landowner compliance with Certificates of Inclusion conditions and agreements is a major requirement for the success and benefit to grayling of the CCAA. The Agencies are committed to the continued monitoring of compliance, even with the current level of available resources. Resources will always be limited, but compliance must occur, be monitored, and, if needed, enforced.

The Agencies are committed to the timelines established in the CCAA. Table 6 in the draft CCAA identifies the timelines of the three phases of implementation of the CCAA, the associated responsibilities of Participating Landowners, and when Participating Landowners receive incidental take coverage and assurances against further regulatory action. Thus, the speed with which conservation measures are implemented is an element of compliance with the Certificates of Inclusion. It must be realized that, given the scope of the CCAA, it will take time to implement all of the necessary conservation measures identified in site-specific plans. As long as a Participating Landowner is implementing the conservation measures of his site-specific plan, they will receive coverage for authorized incidental take and assurances.

28. I am concerned that the Agencies will not sustain the current staffing and funding commitments.

The Agencies are seeking additional funding and personnel, and are committed to providing sufficient resources to implement all of the conservation measures identified in the CCAA within the timeframes indicated. To further reinforce their commitment, FWP, NRCS and DNRC signed a Memorandum of Agreement in October 2005 that formalizes their commitment to implement the CCAA, including providing the necessary staffing to complete this mission.

29. Landowners may not be able to afford the proposed projects. Who will pay for the improvements on private lands?

The conservation measures identified in site-specific plans are collaboratively developed with the Participating Landowners. Although Participating Landowners are responsible for implementing the conservation measures identified in their site-specific plans as a requirement of their Certificates of Inclusion, the Agencies have already demonstrated their ability and desire to provide the necessary resources to assist landowners with implementation of conservation measures on their properties. Programs such as EQIP, LIP, and Future Fisheries have already been used to implement conservation measures on private lands within the Big Hole valley. Additional resources are being sought to augment the contributions of these programs.

30. The CCAA needs benchmarks and measurable objectives.

The CCAA contains several benchmarks with measurable objectives for evaluating biological responses to the implementation of conservation measures. If not achieved, these benchmarks trigger additional conservation actions by Participating Landowners and the Agencies. For example, a 15-year benchmark for achieving "sustainable"

riparian vegetation has been established. A 5-year benchmark for increased grayling abundance and a 10-year benchmark for increased grayling distribution have been established. Each of these benchmarks is used to evaluate if additional conservation measures are needed.

31. Many comments expressed concerns about various timelines for implementation of the CCAA, including the rate of completion of site-specific plans, the rate of completion of conservation measures, the duration of CCAA implementation phases, etc. Two commentors felt that the CCAA is "too little, too late".

The timelines established in the CCAA are realistic given the needs and expected responses of the grayling and the available agency resources. Implementation of many of the conservation measures is actually ahead of schedule due to the fact that much of the work has been conducted without the issuance of the Section 10(a)1(A) Enhancement of Survival permit to FWP by the USFWS. Any timelines identified in the CCAA document begin when FWP receives this Permit.

It is important to realize that the conservation measures identified in the CCAA are needed to reverse more than 130 years of habitat degradation that has occurred in the Big Hole. At this time, 40 landowners with ownership of over 200,000 acres of land have expressed interest in participating in the CCAA. The CCAA's conservation measures will impact more than 80 miles of river and tributaries. Thus, the timelines established in the CCAA are very ambitious for a conservation program of this scale.

Most of the upper Big Hole River lies within private property, requiring that private landowners must be willing to join in the conservation and restoration of grayling and their habitats. The CCAA provides the mechanisms to encourage private landowners to provide this necessary participation. Many of the conservation measures, including removal of immediate threats and the implementation of short-term water arrangements with landowners, will be initiated soon after a landowner is enrolled. Conservation measures to address threats with high priority have and will continue to be implemented prior to the completion of site-specific plans. We do not believe that a program that restores grayling to their formally occupied habitats, improves these habitats to where they support grayling, and increases the abundance and distribution of grayling within an entire drainage is "too little" nor do we believe that the timelines established for implementation of the CCAA conservation measures are "too late".

32. FWP is using the CCAA as a tactic to delay listing of the Big Hole grayling.

The concern that FWP is attempting to delay the ESA listing of the fluvial Arctic grayling in the Big Hole River is inaccurate. There is a low likelihood that individual landowners would have the resources or desire to enter into individual Safe Harbor agreements with the USFWS should the grayling be listed.

FWP realizes that the Big Hole population of grayling has been identified as a Category 3 candidate for ESA listing. It is expressly for this reason that FWP decided that the only way to ensure the cooperation and participation of private landowners within the Big

Hole drainage in the conservation and restoration of grayling was with an umbrella CCAA.

33. Several commentors expressed concerns about water rights issues, protection of instream flows, and maintaining saved water within stream channels.

To help address concerns about water rights issues, protection of instream flows, and maintaining saved water within stream channels, the Arctic Grayling Workgroup has formed a Technical Committee comprised of experts with expertise in water rights, water conservation, water agreements, and hydrology. This committee will provide review, assistance and technical advice on water conservation components of site-specific plans. The final CCAA has additional language documenting the need and function of this technical committee.

34. The TMDL recommendations for temperature targets in the Big Hole River should be adopted.

Many of the TMDL methodologies and criteria remain unresolved at this time. When completed, the TMDL methodologies and recommendations for the Big Hole River will be reviewed, and if appropriate, incorporated into the evaluation of biological and physical parameters. Currently a goal of the CCAA is to keep water temperatures below the commonly recognized temperature (70°F or 21°C) at which salmonids become stressed.

### Decision

It is my decision to proceed with the actions described under Alternative B (Preferred Alternative) described in the draft environmental assessment (EA). I base this decision on the analysis in the EA and the public comments received on the draft. With the implementation of Alternative B a Candidate Conservation Agreement with Assurances will be developed and a permit issued to Montana FWP from the USFWS. The project area covered will be approximately 380,000 acres in the upper Big Hole River Watershed. Participating landowners will sign up under the agreement, be issued a Certificate of Inclusion and be covered by the Permit. The conservation goal of the Agreement is to secure and enhance populations of fluvial Arctic grayling within the historic range of the species in the upper reaches of the Big Hole River drainage. The conservation guidelines of the Agreement will be met by implementing conservation measures that:

- Improve stream flows
- Improve and protect the function of riparian habitats
- Identify and reduce or eliminate entrainment threats for fluvial Arctic grayling
- Remove barriers to fluvial Arctic grayling migration

Conservation measures on non-Federal lands will be implemented by the participating landowner or cooperating agencies and the landowner will receive a level of incidental take coverage and assurances that no further conservation measures will be required if Federal listing occurs. These activities will include farming and ranching related activities such as hay production and livestock grazing, and supporting activities such as diversion of irrigation water and operations of farm equipment.

Based on the analysis in the EA and applicable laws, regulations and policies, I have determined that this action will not have a significant effect on the natural or human environment, and the EA is the appropriate level of analysis.



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May 8, 2006