DECISION NOTICE:
Scotty Brown Bridge FAS Acquisition and Improvements

Montana Fish, Wildlife and Parks
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DESCRIPTION OF PROPOSED PROJECT

Montana Fish, Wildlife & Parks proposes to exchange approximately 7 acres of land it owns in Powell Co for approximately one acre of private land adjacent to the Blackfoot River at Scotty Brown Bridge for inclusion in the Fishing Access Site program. Once acquired, the existing 4-stall parking lot would be redesigned to allow for up to 6 vehicles and trailers, and hand launch boating access would be available. As part of the proposal, the old county road right-of way associated with the previous Scotty Brown Bridge would be formally abandoned.

In response to the controversy surrounding the Scotty Brown Bridge site, FWP began exploring the possibility of acquiring land adjacent to the bridge and forming a new Fishing Access Site, which would provide river access to the public and also hopefully reduce public misuse of adjacent private lands. During this time, the area adjacent to the bridge where the parking area is located was sold to Tom and Lynn Meredith (the "Merediths") who agreed to work with FWP towards this goal. Pending final agreement, the Merediths have permitted FWP to manage the site. The barbed wire has been removed, and both fishing and hand launching of boats are permitted. After much negotiation, a permanent arrangement has since been reached, which this EA addresses.

In this agreement, the Merediths will exchange the one-acre site adjacent to the road and river, part of which is currently used for public parking and river access, in exchange for a 7-acre sliver of land owned by FWP elsewhere in the area. Upon completion of a formal appraisal and exchange, FWP will construct a new, larger parking lot in the same area as the old one that will improve public safety, allow for easier maneuverability, and will accommodate boat trailers. The new parking area will still only have four parking spaces, but FWP has the right to establish up to two additional drive-in parking spaces on the site in the future if that is deemed appropriate; as is stated in the Reservation and Grants of Real Property Covenants. The site design and land exchange agreement allows for management of the site for access to the river for boat launch and take out. To protect both sensitive fisheries resources and reduce social crowding, no formal boat ramp or vehicle access to the river for boat trailers will be provided. Boat launch and take out will remain unimproved, requiring hand-carry of equipment to and from the river. The site will be managed as a primitive site.

An additional issue related to the proposed exchange is the fact that a conservation easement exists on Merediths' property, including the parcel slated for exchange to FWP, Lot B-1. Because conservation easements remain in place regardless of ownership, this easement would remain on Lot B-1 after the exchange and FWP takes ownership. The Nature Conservancy, which holds the conservation easement on the Meredith property, has agreed to amend the easement to permit the transfer of the site to FWP. The draft Amendment to Deed of Conservation Easement states in part that:

" Whereas, it is to the public benefit to have Montana Fish, Wildlife & Parks own and manage the Site for public access purposes and;... while the Site shall remain subject to the terms and conditions of the Easement, nothing contained therein or in the Amendment shall be deemed to

prohibit or limit FWP's management and modification of the Site as a public access site for both fishing and boating, including commercial use, and parking for cars and trailers".

The Nature Conservancy agreed to modify the conservation easement and the Merediths agreed to convey the site to FWP only if covenants and servitudes are placed on the property at the time of transfer to FWP. In addition, the Merediths are willing to exchange the site at the bridge to FWP for Tract 1 only if Powell County Commissioners formally abandon the old right-of-way from the original road and bridge. The area of the old road on the north side of the new bridge would ultimately be conveyed to FWP along with the entire site. The area of the old road on the south side of the bridge would be conveyed to the adjacent landowners, Roy and Susan O'Connor, et al. ("Heart Bar Heart Ranch"). The abandonment of the "old roads" is required for several reasons:

1. Landowners (currently the Merediths and Heart Bar Heart Ranch) dispute the right of the public or Powell County to use the "old roads" for access to the river. They contend that access at the site was gained by permissive parking on the landowners' lands alongside the old road in place before construction of the new bridge in 1994, or by trespassing on private lands adjacent to the bridge; and that such use did not create a right in the public or Powell County to use these private lands to gain access to the river.

2. Abandonment formally implements the Brunner Agreement, which requires the Powell County Commissioners to manage the road easement and bridge area in a fashion that limits parking as long as the parking area is located in the area of the new bridge. The Commissioners cannot do anything with the lands that are arguably part of the "old roads."

3. The easements granted by Heart Bar Heart Ranch and the Brunners for the road to the new bridge were given under threat of condemnation. The easements specifically note that they are "in substitution for" the old road easements. If the County Commissioners assert a right to the "old roads", the landowners will argue, among other things, that the new road easements are void for lack of consideration, were fraudulently obtained by Powell County, or will raise other claims for damages from Powell County and the Commissioners individually resulting from such actions.

4. Some members of the public years ago alleged that they had a right to use the "old roads" because they have not been formally abandoned. Such use, however, is in violation of the agreement reached by Powell County with the landowners to induce them to grant the new road easements to Powell County.

5. The new bridge was constructed in 1994, and the Brunners limited the parking at the site to 3-4 cars (not trailers) on the Brunners' lands until the Merediths permitted FWP to manage the site 3 years ago.

6. The "old roads" do not provide appropriate public access to the river. If members of the public used the "old roads" to get on and off of the river, they accessed the banks under the old bridge, and then walked up the banks to the road. Such access is difficult at best. The new access site managed by FWP will provide more useful, safe and convenient access for the public to the river.

7. In order for FWP to manage the new site appropriately, and in order to avoid conflicts among the County, the public and landowners, including FWP, the "old roads" should be abandoned so there cannot be any arguments that the FWP site must be shared with members of the public in an uncontrolled fashion.

8. The abandonment of the "old roads" will be conditioned upon the Merediths' and FWP's accomplishing the exchange and the conveyance of the 1 acre site to FWP.

Alternative A: No Action

Under the No Action Alternative, FWP would not acquire the one-acre site adjacent to the Blackfoot River for inclusion in the FWP Fishing Access Site (FAS) program in exchange for seven acres it owns to the north. No improvements would be made to the site, and the parcel would remain under private ownership. FWP would continue to help the private landowner manage the site for the time being. This Alternative is not preferred for numerous reasons.
1) The existing parking area is suitable only for single vehicles. 2) Boat launching would not be secured in perpetuity. 3) Long-term access is not guaranteed because owners of the parcel might change or terminate the agreement permitting FWP to manage the site.
4) Management decisions are made unnecessarily complicated because of multiple party inputs.

Alternative B:

Under Alternative B, FWP would engage in the proposed land exchange with Tom Meredith, thus acquiring the one-acre parcel adjacent to the Blackfoot River and forming a permanent FAS there. However, instead of a low level of development, FWP would construct a larger parking area, a vehicle-accessible boat ramp, and install a vault latrine. This Alternative is no longer being considered because of concerns that increased visitation and fishing pressure would negatively impact several species of fish in the Blackfoot River, particularly Bull Trout, which are a federally listed threatened species and which rely heavily on this stretch of the Blackfoot for thermal refuge in the summer. Also, this level of development is prohibited in the Conservation Easement between the Merediths and The Nature Conservancy. The other adjacent landowner, Heart Bar Heart Ranch, is also strongly against more intensive development of the site.

Preferred Alternative C: Proposed Action

Under the Preferred Alternative C, FWP would, following a formal appraisal, exchange approximately 7 acres of land it owns for approximately 1 acre of land currently owned by the Merediths for the establishment of a permanent FAS on the Blackfoot River. The site is currently managed as public access and contains a four-stall gravel parking area, but FWP would redesign the site to allow for trailer parking and offloading of boats for hand launching. The new parking area will still only have four parking spaces, but FWP has the right to establish up to two additional drive-in parking spaces on the site in the future if that is deemed appropriate; as is stated in the Reservation and Grants of Real Property Covenants. This is the proposed Alternative because it represents the best compromise among all parties. The public would retain access to the Blackfoot River at that location, and while visitation numbers would be limited, parking would be available for trailers for offloading boats for hand launching at the site. Such facilities are an upgrade from the current parking area and from historic access opportunities from the bridge shoulder. Private landowners would be free from the headache and potential liability of owning land used for public access, and should see a sharp reduction in problems such as trespass, litter, and vandalism from river users. Parking on the road shoulder would still be prohibited for 300 yards on either side of the bridge. The fisheries resource would continue to be protected from over-use and stress by continuing to control visitation numbers and from active management by FWP.

PUBLIC PROCESS AND COMMENT

The EA was sent out and the public comment period began March 22, 2007, and ran through April 23, 2007. Legal notices were published in the *Missoulian*, the *Helena Independent Record* and the *Silver State Post*. There were 54 full copies, 4 electronic versions, and 118 post cards about the EA

were sent to interested parties consisting of neighbors, friends, conservation groups, Montana state legislators, county & state departments or agencies. This EA was posted on the MFWP web site on March 20, 2007. A statewide news release was also sent out.

Eleven comments were received. Nine of the comments supported the project, however, there were common concerns expressed in those comments.

- Several raised the concern regarding the need to address sanitation issues associated with public access sites, since the project did not propose latrine facilities with the initial development. *MFWP Response: The 1 acre parcel is subject to a conservation easement held by The Nature Conservancy which is to protect and preserve open space on the property for the benefit of the public. The Grantor reserves certain covenants and servitudes to the property. FWP may install latrines, only after obtaining written permission from the Grantor. FWP will monitor this situation very closely and work with the Grantor if this issue becomes a problem.*
- Many made the recommendation to build the full 6 parking spaces now. *MFWP Response: The covenants and servitudes do allow the Grantee in its discretion to establish up to two additional drive-in parking spaces on the site, for a total of six. MFWP will consider this recommendation as it moves forward with development.*
- Several made the recommendation to create a timed loading/unloading zone for people with watercraft. *MFWP Response: The site plan on page 7 of the EA does show the area for the loading and unloading of watercraft. Appropriate timed signage and enforcement will help in managing the site.*
- Several suggested that use of the site by outfitters be prohibited on weekends between Memorial Day and Labor Day. One suggested a "citizens day" similar to the Big Hole regulations. *MFWP Response: The Department will be monitoring the use of the site. If overcrowding of the site on the weekends becomes a problem, the Department may have to move forward with this type of solution. The Department would hope that outfitters would be sensitive to this potential issue and react on a voluntary basis.*
- A couple of comments recommended the establishment of an overflow parking area within some reasonable distance from the access site. The concern is a public safety concern, knowing some folks will park along the County road after the 300-yard zone. *MFWP Response: The Department will need to monitor very closely, the use of this site.*
- Several comments came in regarding the use of the parking stalls. Since each stall will be long enough for a vehicle with a trailer, people that park without a trailer might try parking two vehicles from their party onto just the one parking site. Enforcement of rules will be key. Another comment suggested that the parking stalls be managed so that one recreating party with multiple vehicles can't occupy more that one parking stall. *MFWP Response: Proper signage will be necessary to explain the parking rules. Enforcement of these rules will be imperative.*
- A couple of comments came in supporting the need to protect the fisheries resources. *MFWP Response: We agree.*
- One of the comments made felt that using parking restrictions to protect the fisheries is wrong and instead the Department should be using fish regulations to protect the fisheries. *MFWP Response: This action is consistent with and works complimentary with the fishing regulations.*
- One person wanted more information regarding the 7 acres FWP is trading. *MFWP Response: The 7 acres being traded is a long triangular shape with the wide end at the road and the narrow end at the river. It's located approximately 200 yards North from the bridge. The proposed site at the bridge is by far a better access point to the river.*

- One person wanted our building plans to avoid disturbing the osprey nearby in the spring during nesting time. *MFWP Response: When the site is constructed, we will keep disturbance to a minimum. Construction will more than likely occur in late summer or fall.*
- Another comment suggested we manage the site only as an access point and not as a recreation site. *MFWP Response: It is not our intent to manage this site for recreational activities other than access to the river. We will manage it as a day-use only site and not put facilities at the site other than a latrine when needed.*
- Powell County wanted to make sure we followed any flood plain concerns and permits. *MFWP Response: We will make sure we follow county requirements.*

Two of the comments received did not support the proposal.

- One person felt the Department had given in to the right-of-way issue. *MFWP Response: The Department felt this proposal was a win-win situation for all parties involved including the public. The 1-acre of land the Department will receive for public access at Scotty Brown Bridge for boat launching and wade fishing is far superior to the small piece of old right-of-way associated with the old bridge location. Proper development for good access requires adequate size to build safe facilities.*
- The other commenter indicated that the River is already too busy and therefore did not support another site at Scotty Brown Bridge and feels there are enough sites on the river. *MFWP Response: The public outcry for a site at Scotty Brown Bridge was loud and clear when the bridge was moved and reconstructed. Many people and sportsmen's groups contacted the Department asking us to re-establish access at this point.*

DECISION

Based on the analysis in the Environmental Assessment (EA) and the applicable laws, regulations and policies, I have determined that this action will not have a significant effect on the natural or human environment. Therefore, an Environmental Impact Statement will not be prepared. It is my decision to implement Alternative C, the *Preferred Alternative* and proceed with the land exchange. This action also requires the approval of the MFWP Commission, scheduled in May. By notification of this Decision Notice, the draft EA is hereby made the final EA with the MFWP responses in this Decision Notice. The final EA with Decision Notice may be viewed at or obtained from Montana Fish, Wildlife & Parks at the above address. The EA is still available for review at http://fwp.mt.gov/publicnotices/archive_2006,4.aspx.

In accordance with MFWP policy, an appeal may be made by any person who has either commented in writing to the department on the proposed project, or who has registered or commented orally at a public meeting held by the department on the proposed project, or who can provide new evidence that would otherwise change the proposed plan. An appeal must be submitted to the Director of FWP in writing and must be postmarked or received within 30 days of this decision notice. The appeal must describe the basis for the appeal, how the appellant has previously commented to the department or participated in the decision-making process, and how the department can provide relief. The appeal should be mailed to: Director, Fish, Wildlife & Parks, 1420 East 6th Avenue, Helena, MT 59620.

4/27/07

Mack Long **Date**
Regional Supervisor