



# **Montana Fish, Wildlife & Parks**

2300 Lake Elmo Drive  
Billings, MT 59105  
May 1, 2009

## **NOTICE OF DECISION Clarks Fork of the Yellowstone Fishing Access Site**

TO: Montana Environmental Quality Council  
Director's Office, Dept. of Environmental Quality  
Montana Fish, Wildlife & Parks\*

Director's Office	Lands Section
Parks Division	Design & Construction
Fisheries Division	Legal Unit
Wildlife Division	Federal Aid Coordinator

Regional Supervisors  
Mike Volesky, Governor's Office \*  
Sarah Elliott, Press Agent, Governor's Office\*  
Maureen Theisen, Governor's Office\*  
Montana Historical Society, State Preservation Office  
Janet Ellis, Montana Audubon Council  
Montana Wildlife Federation  
Montana State Library\*  
George Ochenski  
Montana Environmental Information Center  
Wayne Hirst, Montana State Parks Foundation  
Montana Parks Association (land acquisition projects)  
Bob Raney  
FWP Commissioners  
DNRC Area Manager, Southern Land Office  
Carbon County Commissioners  
Other Local Interested People and Groups  
\* (Sent electronically)

Ladies and Gentlemen:

A Draft Environmental Assessment (EA) was prepared for acquisition of the Clarks Fork of the Yellowstone (Meinhardt) property on the Clarks Fork of the Yellowstone River for the purposes of a Fishing Access Site. The draft EA was circulated for 30 days (2/17/09-3/16/09) and legal notices were published in the Billings Gazette, Helena Independent Record and Carbon County News and on the FWP Web site. More than 50 individuals, 10 of whom made oral comments, attended a public meeting held in Bridger, Mont., on February 25, 2009. Forty-nine written comments on the project were received.

Purchase of the Clarks Fork property would provide needed public opportunity to access the Clarks Fork River and 172 acres of diverse habitats associated with the property. The property would be purchased through Access Montana funds (\$516,000). While hunting and fishing opportunities are certainly important elements of this acquisition, the property also has potential for many other recreational activities including walking, camping (at select campsites), picnicking, wildlife and bird watching, or represents just a peaceful place to stop with family and friends to enjoy Montana's outdoors. If this property is not purchased by FWP, it is likely that it would be subdivided, or could be purchased by a recreational buyer that would likely restrict or close the property to public recreation. This property has a willing seller and the purchase price is less than values established by a licensed appraiser for similar properties.

After review of the wide range of public comments this proposal has generated, and considering our resources and ability to address concerns raised by both landowners and recreationists, it is my recommendation to accept Alternative 'B,' the preferred alternative, which is to acquire the property known as the Clarks Fork of the Yellowstone River property from the Meinhardt family subject to final approval by the FWP Commission and the Montana Land Board. The acquisition of the property will provide the public with an additional recreation site under the management of FWP along this picturesque waterway. The site is strategically located along tourist travel routes and is within one hour of Billings. Additionally, it would be the largest public access site on the Clarks Fork of the Yellowstone, and would also provide recreational opportunities for local residents in Bridger, Belfrey, Red Lodge and the Clarks Fork valley.

We would limit firearms use to shotguns (for waterfowl and upland game bird hunting), while archery hunting would be allowed during established seasons. Target shooting and paint-balling would be prohibited. FWP would develop the basic level of access as soon as funding allows. We would consult with the Carbon County Preservation Office for advice on dealing with historic structures as well as any other cultural feature on the property. Noxious weed management would begin immediately in cooperation with the Carbon County Weed Supervisor.

If the FWP Commission and Land Board approve this purchase, we would expect to have this property in public ownership by late summer. The FWP Commission proposes to make a final decision at its June 25<sup>th</sup> meeting, while the Land Board would make a decision at its July 20<sup>th</sup> meeting.

Development and improvement of the project are subject to appeal, and must be submitted to the FWP Director in writing, and postmarked within 30 days of the date on this decision notice. The appeal must specifically describe the basis for the appeal, explain how the appellant has previously commented to the department or participated in the decision-making process, and lay out how FWP might address the concerns in the appeal. If you have questions regarding this decision notice, please address them to me at [dhabermann@mt.gov](mailto:dhabermann@mt.gov) or call me at 247-2954.

Sincerely,



Doug Habermann  
Region 5 Parks Program Manager

## CLARKS FORK YELLOWSTONE RIVER FAS ACQUISITION

### **EA PUBLIC COMMENT SUMMARY**

A public notice was published on the state Web site and paid notices appeared twice each in the Billings Gazette, Carbon County News and Helena Independent Record.

The Billings Gazette (2/22/2009, 2/27/2009), Carbon County News (3/5/2009) and KULR television (2/23/2009, 2/24/2009) published news articles detailing comment deadlines and issues addressed in the EA.

A public meeting on the environmental assessment was held Wednesday, 2/25/2009 from 7-9 p.m. at the Bridger Civic Center.

- The meeting was attended by approximately 50 people, 36 of whom signed in at the front door.
- Ten people spoke. Six identified themselves as neighbors to the property. Two were from Billings and one each from Fromberg and Red Lodge.
- Five spoke against acquisition, four spoke in favor and one was informational.

An earlier onsite meeting was held with neighbors to share information and answer questions. Numerous telephone calls were fielded by staff at the FWP regional office in Billings.

Public comment period extended from the 2/17/2009 meeting through 3/16/2009.

- 38 people, organizations or agencies sent letters or emails commenting positively on the acquisition during the formal comment period. Two of those letters were signed by presidents representing organizations (Magic City Fly Fishers and Billings Rod and Gun Club). Two letters of support, one from a neighboring landowner and one by the federal Bureau of Land Management, arrived after the published deadline but before the decision notice was written. In all, 40 letters of support were submitted. Copies of all written comments may be viewed upon request at Region 5 Headquarters, 2300 Lake Elmo Drive, Billings, Mt..
- Nine people submitted written, emailed or called-in comments opposing the acquisition. They also submitted a petition with 146 signatures.
- For the purposes of this decision notice, no anonymous Web log posts, letters to the editor or nonscientific newspaper poll results were considered.

### **RESPONSE TO PUBLIC COMMENTS**

#### **IN SUPPORT OF THE PREFERRED ALTERNATIVE**

Public comment on this proposal expressed support for selection of the preferred alternative (Alternative B: Acquisition and development of the Clarks Fork Yellowstone River property).

Those summarized public comments expressing support include the following:

- Proposed purchase would give the public additional access to a public waterway. Private development would block access to the river and remove the possibility of public access to the land.
- Montana sportsmen need access to public land and water whenever they can get it. Demand for public-land recreation is exceeding the supply around Bridger.

- FWP’s purchase would permanently protect a significant piece of open space from development. Public ownership would protect wildlife habitat.
- The area under consideration for acquisition would provide valuable access to currently landlocked BLM public land.
- More places are needed for camping, fishing, hiking, bird watching and other outdoors pursuits.
- Its proximity to a population center (Billings) adds value to the public, including children and families who recreate outdoors.
- The seller has the right to sell to anyone he wants. Neighbors have no say in the sale of land that they do not own. If neighbors want to sell their land, others should not have a say in the transaction.
- Bridger businesses would benefit from people traveling to the area to visit the site.

#### **FUTURE OF THE PROPERTY IF A NO-ACTION ALTERNATIVE IS CHOSEN**

If the no-action alternative (Alternative A: No action) is chosen, and Montana FWP does not acquire the property from the current owner, it likely would be sold to another buyer through a local real estate agent. The property already has been listed with a real estate agent once during the past year. Considering the location on the river, proximity to Billings, size, existing development on adjacent land and natural features, the property is most likely to be developed as a residential subdivision. In either the event of a subdivision or purchase by a recreational buyer, public access would likely not be part of the future management scenario.

#### **COMMENTS OPPOSED TO THE PREFERRED ALTERNATIVE SAFETY AND PRIVACY**

- Hunting should be restricted to shotguns and archery equipment only, or should not be allowed at all. Homes are within .75 miles of the property boundary. School buses travel on roads and highways adjacent to the property.
 

*Approximately a third of the fishing access sites and state parks in Region 5 do not allow hunting with high-powered rifles due to safety concerns. If the proposed action is approved and a successful sale is completed, FWP will restrict hunting on the site to include only shotguns (for waterfowl or upland game bird hunting) and archery equipment. Target shooting will be prohibited. If game damage to neighboring agricultural interests is identified as per MCA 87-1-225, FWP may consider remedial actions to address qualified damage situations.*
- FWP purchase would violate state “good neighbor policy” which seeks a goal of no impact to adjoining lands from noise, litter and loss of privacy.
 

*Montana Code Annotated 23-1-126 (good neighbor policy - public recreational lands) requires Montana Fish, Wildlife and Parks to “place maintenance as a priority over additional development at all state parks and fishing access sites” 23-1-127 defines maintenance as, among other things, placing, cleaning and stocking of latrines; garbage and litter removal; fence installation and repair of existing fences; weed control; implementation of safety and health measures required by law to protect the public; installation of fire rings, picnic tables and trash collection facilities; and new trails, new boat ramps and necessary new access roads into and within the state park or fishing access site. All current options for purchase of the property, commission and land board approval of the purchase and initial improvement fall within the constraints of*

*those laws. Further, the recently implemented SB 164 will assure additional funding for FAS (20% over the purchase price) that will assist in the maintenance and operation of those sites.*

- Deer crossing highways to reach FWP's planned food plots would be subject to collisions with automobiles.

*Historically, the farming that has been conducted on the site has attracted diverse species of wildlife, including deer, to the property. While FWP plans call for cultivation of dense nesting cover and food plots favoring upland game birds and waterfowl, we discourage harboring of big game animals, and with public activity on the site, we do not anticipate increased conflicts relative to vehicle/deer collisions. It is likely that if FWP does not purchase the property, harboring of wildlife (with resultant increased wildlife/vehicle collisions) would be more probable given the likelihood of restricted public use of the property.*

- Purchase of the property by FWP would increase traffic and the potential for accidents at approaches and nearby intersections.

*On each of its properties, FWP works closely with the Montana Department of Transportation to ensure the safest possible approaches from highways and roads. Where possible, approaches are along straight stretches of roads and signed in all directions at distances and specifications recommended by MDOT. There appears to be good site distance for approaches to this property, particularly on State Highway 72. FWP design and construction staff has proposed parking areas to be contained internal to the property and away from existing county roads. Additionally, appropriate signage alerts traffic to the site entrance.*

- State noxious weed control would contaminate the river and adjacent crops.

*Weeds will be managed under the auspices of the FWP Statewide Integrated Noxious Weed Management Plan. FWP has met with the Carbon County Weed Supervisor on site. If the proposed action is approved, before a successful sale is completed, FWP will complete an integrated plan to control any noxious weeds and utilize required safety practices for herbicide application. Where appropriate, insects and other bio-controls may also be utilized.*

## **ENFORCEMENT AND SITE MANAGEMENT**

- Bridger and Carbon County law enforcement already have enough to do without patrolling a new property. Nearest warden is in Red Lodge.

*While FWP wardens have law enforcement responsibilities on a broad landscape, FWP lands receive an increased department and law enforcement presence. The Region 5 enforcement division has nine field wardens, nine ex-officio wardens, two warden sergeants and a warden captain who proactively patrol and are available for call out. The division staff communicates and cooperates with the Carbon County sheriff office, which is available when immediate warden response is unavailable. Damage to public or private property is subject to penalties under criminal statute MCA 45-6-101. Additionally, public use of the site would provide an additional presence that assists law enforcement by reporting inappropriate or illegal activities.*

- Litter, lights, noise, vandalism and partying would increase with public ownership.

*FWP's management goal will be a safe, clean site with a minimal impact on neighbors. If issues arise or persist, FWP can use progressively more development or management to reach that goal. The site will be added to our regular maintenance schedule that includes two visits per week during high-use periods. The majority of FWP fishing access sites are managed with a pack-it-out/leave-no-trace approach without any garbage service provided. This places the responsibility on recreational users and prevents household garbage from being dumped in garbage cans. The site will be managed under the existing FWP public-use regulations. Vehicles will be restricted to established roads and parking/camping areas. FWP will maintain a strong enforcement presence at the location. Additionally, public use of the site would provide an additional presence that assists law enforcement by reporting inappropriate or illegal activities.*

## **COST AND VALUE**

- With state budget shortages, money would be better used on other priorities, including education or maintenance of existing parks, trails and FAS properties.

*Money for the purchase was appropriated by the Montana Legislature in 2007 as part of the Access Montana program specifically for public land acquisition to enhance public access. The legislature is within its purview, as elected representatives of the Montana public, to decide priorities and funding levels for all state government functions and acquisitions.*

- Public ownership would remove the property from the local tax base.

*Montana Fish, Wildlife and Parks pays local property taxes on its fishing access sites. FWP will pay identical property taxes on this property to the County of \$228.13 per year. Additionally, FWP will also pay the same irrigation assessment of \$156.80 per year.*

- FWP's Bridger FAS fewer than four miles downstream seldom gets used and is not maintained.

*The Bridger Fishing Access Site is heavily used during some seasons. It is a comfortable distance downstream from the proposed acquisition to provide for floating or fishing. The Bridger Fishing Access Site is patrolled regularly during the recreation season by both parks maintenance workers and enforcement staff.*

- Per-acre cost of the property is too high and a waste of tax money.

*The sale price of the property was determined by comparable sales and validated by appraisal. Before the sale is closed, it must be approved by the Montana Fish, Wildlife and Parks Commission, which is appointed by the governor, and the Montana Land Board, which consists of the state's top five elected officials. The FWP Commission will make a final decision on this proposal at its June 11<sup>th</sup> meeting in Helena. The Land Board will make a final decision subsequent to the FWP final at its July 20<sup>th</sup> meeting.*

- State could be legally liable for shooting damage to surrounding property, trespass, noise, trash and pollution.

*If the proposed action is approved and a successful sale is completed, shooting and gun use on the property will be prohibited outside of hunting seasons. During hunting seasons, firearms will be limited to shotguns (for waterfowl and upland bird hunting) or archery to address safety concerns of neighboring property owners. The property currently has no such restrictions. FWP's liability would be no greater than that of adjacent landowners for wanton,*

*reckless or illegal activity. In most instances, hunters in Montana must complete hunter education training that includes instruction, testing and certification on gun safety and responsibility. Wardens will patrol the property regularly and enforce the shooting and hunting regulations.*

## **FISH AND WILDLIFE**

- Public ownership would increase the number of hunters and chase all game off of the property.

*Anywhere hunting is present, some temporary seasonal displacement is likely. Subdivision of the parcel likely would make some of the displacement permanent, or could result in urban wildlife issues in the future. The parcel includes ample riparian security cover to retain deer, birds and other wildlife. Plans to plant dense nesting cover and food plots for upland game birds likely will increase the production and recruitment of birds. Outside of hunting seasons, those animals that were displaced will likely return to the property. There are many nonutilitarian activities attendant to this property, including hiking, bird watching and picnicking.*

- Fishing in the river is poor because of summer water quality and quantity and irrigation structures that block migrating fish.

*Based on the data gathered by FWP in the past, it appears that there is enough water and temperatures remain low enough to maintain a limited trout population in the vicinity of the property. Whitefish, burbot and a few grayling and Yellowstone cutthroat trout have been captured in Montana's upper stretches of the river. Fish that leave the area during low water migrate to holes upstream or downstream. Fish also drift into the area from stocking efforts in Wyoming during periods of higher water flows. Recreation at fishing access sites is not restricted to fishing, but also includes hiking, hunting, bird watching, floating and picnicking.*

- Public access will disrupt spring bird and waterfowl nesting

*Current spring nesting and waterfowl use of the river has adapted to existing land uses. There will likely be some shift in use patterns as a result of public ownership of the property. Even with some disruption/displacement, increased vegetative cover through the creation of food plots and dense nesting cover will compensate for some increase in disturbance, and will likely enhance some existing bird populations.*

- FWP would restrict irrigation to leave water in river for fishing. Also, FWP will change the designation of the river to that of a "blue-ribbon fishery".

*State water law governs diversion and use of irrigation water. The Clarks Fork River adjacent to the property does not have the physical or biological attributes to be considered a blue-ribbon trout stream.*

## **FUTURE DEVELOPMENT**

- Planned boat ramps could redirect flow of river in the spring causing downstream erosion.

*If the proposed action is approved and a successful sale is completed, FWP's design and construction professionals, working with local conservation districts, will determine placement and design of any boat launch facilities to ensure that development does not adversely affect the morphology or other physical*

*properties of the river. FWP professionals have successfully developed hundreds of similar FAS projects.*

- Spots planned for some development are under water during spring runoff.  
*Any development or maintenance would be considered only after first considering historic high water levels and flows, as well as design and construction constraints. Existing FWP design and construction professionals have successfully developed hundreds of similar FAS projects.*
- Public ownership and designated campfire rings would increase probability of wildfire.

*FWP properties not covered under direct fire protection by a wildland agency are covered by the county under a cooperative agreement with the state. The county agrees to provide protection to all non-forest state properties in exchange for the state providing the county with training, equipment, and some planning assistance. During the fire season, FWP participates in weekly fire conferences with county, state and federal entities to discuss the current fire danger and assess appropriate actions relative to potential fire restrictions. These restrictions may include closure of the site to public use. If the proposed action is approved and a successful sale is completed, motorized access on the property will be allowed only on designated travel routes. Standard fire protections/restrictions will apply to all picnic/camping areas. Fire restrictions issued by FWP at the site are enforced by wardens. Designated fire rings are kept clear of vegetation as part of regular maintenance of fishing access sites.*

## **ADDITIONAL COMMENTS AND DEPARTMENT RESPONSE**

### **HISTORIC AND CULTURAL RESOURCES**

- Sand Creek Canal through property may qualify as a historic irrigation system. Buildings on site may qualify for the national historic register because of age.

*There are no plans to modify or remove the various structures or canal, outside of routine maintenance. Any work done in the future will be in consultation with the state historic preservation office and local historical officials. We will look for partnerships to more completely record any cultural features on the property and take protective actions if warranted and agreed upon. This includes a complete accounting and evaluation of existing buildings and structures.*