



Region 2
3201 Spurgin Road
Missoula, MT 59804

July 19, 2018

Dear Interested Citizen:

Thank you for your thoughtful reviews and comments on a proposal by Montana Fish, Wildlife and Parks (FWP) to accept assignment (delegation) of the "right of public access" component of a conservation easement (CE) to be held by the Montana Land Reliance (MLR) on the Dry Cottonwood Creek and Deer Lodge River Ranches (the Ranches) in Deer Lodge County. The Ranches are comprised of a diverse mix of habitats, including 5.5 miles of the Clark Fork River, forest, big game winter range, and irrigated meadows and pastures, which support elk, mule deer, white-tailed deer and antelope.

MLR would purchase a CE on the Ranches to protect the water resources, wildlife habitat, working agricultural ground, and public recreation opportunities currently present on 3,409 acres. MLR would then assign to FWP the rights portion of the CE that provides for public hunting access on the entire project area and public recreational access to the Clark Fork River Corridor. The Upper Clark Fork River Basin Remediation and Restoration Advisory Council voted on May 23, 2018, to recommend complete funding from the Montana Department of Justice Natural Resource Damage Program (NRDP) to complete this proposed project. No FWP funds would be used to acquire the proposed CE; therefore, the proposed action is for FWP to accept the assignment of the right of public access, in perpetuity, as further set forth in the CE to be held by MLR.

Enclosed is a decision document in which FWP explains its rationale for recommending that the Fish & Wildlife Commission approve this project as proposed. Upon completion of the public involvement process, FWP accepts the draft environmental assessment (EA) as final. The decision document also summarizes all public comments on the proposed public hunting access and river recreation access assignment.

FWP will request approval for this proposal at the monthly Fish & Wildlife Commission meeting scheduled for August 9, 2018 in Helena. This meeting is open to the public, as are other regularly scheduled Commission meetings.

Please feel free to contact me at 406-542-5500 with any questions you may have. Thank you for your interest and participation.

Sincerely,

Randy Arnold
Regional Supervisor

RA:sr

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Decision Notice for the Draft Environmental Assessment for the Dry Cottonwood Creek & Deer Lodge River Ranches Public Access in Perpetuity Conservation Easement

Prepared by:
Montana Fish, Wildlife & Parks
Region 2 Wildlife
3201 Spurgin Road, Missoula, MT 59804
July 19, 2018

PROPOSAL SUMMARY

Montana Fish, Wildlife and Parks (FWP) proposes to accept assignment (delegation) of the “right of public access” component of a conservation easement (CE) to be held by the Montana Land Reliance (MLR) on the Dry Cottonwood Creek and Deer Lodge River Ranches (the Ranches) in Deer Lodge County. The Ranches are comprised of a diverse mix of habitat, including 5.5 miles of the Clark Fork River, forest, big game winter range, and irrigated meadows and pastures, which support elk, mule deer, white-tailed deer and antelope. MLR would purchase a CE on the Ranches to protect the water resources, wildlife habitat, working agricultural ground, and public recreation opportunities currently present on 3,409 acres. MLR would then assign to FWP the rights portion of the CE that provides for public hunting access on the entire project area and public recreational access to the Clark Fork River Corridor. The Upper Clark Fork River Basin Remediation and Restoration Advisory Council voted on May 23, 2018, to recommend complete funding from the Montana Department of Justice Natural Resource Damage Program (NRDP) to complete this proposed project. No FWP funds would be used to acquire the proposed CE; therefore, the proposed action is for FWP to accept the assignment of the right of public access, in perpetuity, as further set forth in the CE to be held by MLR.

DESCRIPTION OF PROPOSED ACTION

Alternative B: Acquisition of the Public Hunting and River Recreation Access Rights in the Dry Cottonwood Creek and Deer Lodge River Ranch Conservation Easement

FWP proposes to secure public access in perpetuity for hunting and river recreation on about 3,409 acres of wetland, grassland and forest habitat near Galen, Montana, which are owned by Dry Cottonwood, LLC and Deer Lodge River Ranch, LLC. The proposed grant of public access would not require any purchasing costs from FWP. If selected and implemented, this proposed action would bind FWP to implement, review and update a *Public Access Plan* for the subject properties annually, or up to every five years, in cooperation with the landowner(s). Following guidance in the conservation easement and *Public Access Plan*, FWP would be responsible for verifying that the landowner offers the opportunity for at least 800 hunter days of fair and equitable, free, public hunting access each year into the future, excluding the landowner’s family and employees. For context, such opportunity would be achieved by the continuation of past hunting opportunities that the Ranches have offered under FWP’s Block Management Program. FWP would also be responsible for verifying that the landowner offers the opportunity for free, year-round, public recreational access within a posted (open) and/or otherwise described Clark Fork River Corridor. FWP would provide an enforcement presence consistent with its presence on other conservation easements, Block Management Areas, Fishing Access Sites and similar points of public access on or surrounded by private lands.

This proposed action discloses this limited role for FWP as a partner in a larger project involving the Dry Cottonwood Creek and Deer Lodge River ranches. As background, the NRDP and the Clark Fork Coalition (CFC) are working with the MLR and the American Public Land Exchange (APLE) to protect 5.5 miles of the Clark Fork River and the above-referenced 3,409 acres by purchasing the ranches, consolidating the two into one property, and placing a perpetual conservation easement (to be held by MLR) on the consolidated property, prior to reselling the property. As part of this process, NRDP, CFC, MLR and APLE would work with FWP to secure public access provisions for hunting and river recreation across the consolidated ranches, which would become part of the MLR conservation easement. FWP then proposes to accept MLR's assignment of those easement provisions pertaining to public access because FWP is the qualified organization best equipped to manage, monitor and enforce the public access terms in perpetuity, consistent with the overall intent of the MLR conservation easement. FWP has long experience in acquiring and managing public access provisions in many perpetual conservation easements that are held in the public trust by FWP, and both ranches have participated as valued cooperators in FWP's Block Management Program for many years as part of the larger *Upper Clark Fork River Block Management Area*. MLR would retain sole and full responsibility as the Grantee for monitoring and enforcing compliance with all other terms of the conservation easement, beyond the public access component.

The subject properties are located on the banks of the Clark Fork River and foothills of the Boulder Mountains. Dry Cottonwood Creek Ranch and Deer Lodge River Ranch riparian habitat, montane grasslands, wetlands and forestlands are connected to larger reaches of wildlife habitat connecting the Boulder Mountains, Anaconda-Pintler Wilderness and Flint Creek Range. Both properties enhance access to 2,500 acres of adjoining Montana Department of Natural Resources and Conservation (DNRC) lands, and Dry Cottonwood Creek Ranch's eastern boundary borders US Forest Service lands. Each ranch has one existing home-site along Eastside Road and collectively the two ranches have a combination of center-pivot, flood-irrigated, and wild-hay pasturelands located west of Eastside Road and east of the Clark Fork River. Other than the two home-sites both properties provide open space and diverse habitat for wildlife.

This joint conservation easement project is within the NRDP Deer Lodge South Priority Landscape Area identified in the Upper Clark Fork River Basin (UCFRB) Aquatic & Terrestrial Resources Restoration Plan (2012)¹. Dry Cottonwood Creek Ranch and Deer Lodge River Ranch are both classified as Priority One Areas under the aforementioned NRDP plan, recognizing the importance of "maintaining or improving wildlife species diversity, natural ecological functions, and habitat connectivity in grassland, forest, and riparian ecological systems." Both ranches are also Class I & II Terrestrial Focus Areas for FWP's State Wildlife Action Plan (2015)².

The riparian habitat within the 5.5-mile reach of the Clark Fork River supports native fish populations, bird nesting areas and diverse populations of non-game and big game wildlife. The combined 2,385 acres of upland surrounding the east end of the property is primarily native intermountain grasslands and conifer forests that provide habitat for a variety of game and non-game species. The Dry Cottonwood Creek Ranch and Deer Lodge River Ranch hold important big game winter range, primarily for elk, mule deer, and antelope. Numerous other species have been documented on, or near, the property in the Montana Natural Heritage Program database. Both ranches continue to participate in one of the most heavily utilized Block Management Areas in both Deer Lodge and Powell counties. Through the proposed conservation easement hunting access would continue to be available to the public in perpetuity.

The Dry Cottonwood Creek Ranch is located within Phase 5 and 6 of the remediation and restoration of the Clark Fork Operable Unit, which underwent cleanup activities in 2014 through mid-2016. This consisted of the 4.3 river miles and its floodplain, which were contaminated by heavy metals, arsenic and low pH. The most contaminated areas were slickens (barren areas of tailings) and thick layers of tailings/

¹ Available at <https://dojmt.gov/wp-content/uploads/Final-AT-Restoration-Plan-Combined.pdf> Accessed 11 Jun 2018.

² Available at <http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html> Accessed 11 Jun 2018.

impacted soils. The primary objective of the cleanup was to excavate an estimated 532,000 cubic yards (CY) of tailings/impacted soils from streambanks and the floodplain within the Site, haul these materials and place them in the Opportunity Ponds, backfill excavations with non-impacted floodplain materials, reconstruct portions of the streambanks, and plant thousands of riparian trees and shrubs. Deer Lodge River Ranch remedy and restoration actions are expected to occur on the property in coming years. Contractors are expected to remove 200,000 CY of contaminated sediments from the floodplain and riverbanks, backfilled with clean fill and again plant thousands of riparian trees and shrubs. These efforts are expected to significantly increase fishery and wildlife benefits over time as the CFR corridor is remediated and restored.

Dry Cottonwood Creek Ranch and Deer Lodge River Ranch properties are anticipated to be consolidated, owned and managed by the Clark Fork Coalition for a transition period to allow for the combined ranches to be encumbered with a conservation easement held by the Montana Land Reliance. Eventually the consolidated ranch would be sold to a buyer who is expected to keep the property as a working ranch. NRDP, MLR and CFC plan to work jointly with FWP to secure and develop a public access plan for river recreation and public hunting access. The intent of the conservation easement is to protect this property's fish and wildlife habitat and public recreational values while keeping the property in private ownership and management. The consolidated property would remain a working ranch and retain agricultural and cultural values in Deer Lodge County. Protecting these two properties would conserve native habitats, retain and enhance native shrub grasslands, enhance riparian area condition and integrity, and provide public access to wildlife resources and river-based recreation.

ALTERNATIVES CONSIDERED TO THE PROPOSED ACTION

Alternative A: No Action

Under the No Action Alternative, FWP would not accept assignment of the rights for public hunting access and year-round river recreational access on the Dry Cottonwood Creek and Deer Lodge River ranches from MLR's Conservation Easement. This would be expected to result in a failed CE project (i.e., the CE would not be purchased and finalized, due to lack of a public access component in the CE as desired by NRDP, the funding institution), in which case the opportunity to secure perpetual public access could be lost.

MONTANA ENVIRONMENTAL POLICY ACT PROCESS

FWP is required to assess impacts to the human and physical environment under the Montana Environmental Policy Act (MEPA). The Dry Cottonwood Creek and Deer Lodge River Ranches Public Access Conservation Easement proposal and its effects were documented by FWP in a Draft Environmental Assessment (EA).

PUBLIC REVIEW PROCESS

A draft Environmental Assessment (EA) for the proposed project was made available for public review and comment for a 30-day period from June 13 through July 12, 2018. The DEA was also posted on FWP's web site (<http://fwp.mt.gov>, under "Recent Public Notices") during that same period, and comments could be made directly on the EA's webpage or submitted to Region 2 FWP via mail or email. Legal notices were published twice each in the *Anaconda Leader* (June 13 & 20), *Independent Record* (Helena, June 12 & 19), *Missoulian* (June 12 & 19), *Montana Standard* (Butte, June 12 & 19), *Philipsburg Mail* (June 14 & 21), and *Silver State Post* (Deer Lodge, June 13 & 20) newspapers. A statewide News Release was prepared and distributed June 13, 2018 to a standard list of media outlets interested in FWP

Region 2 issues. FWP distributed 31 printed copies of the EA, and 50 email-notifications of the EA's availability, to adjacent landowners and interested individuals, groups and agencies.

A public hearing to explain the project, answer questions and take public comment was held in Deer Lodge on June 26, 2018 at 7:00 p.m. at the Elks Lodge (230 Main Street).

PUBLIC COMMENT RECEIVED

Public Comment

FWP received 3 emailed comments from members of the public during the public review period (Appendix, Commenters 1-3). These people were from Alberton, Emigrant, and Missoula, Montana.

Public hearing

Four people plus the Anaconda Sportsman Club (ASC) offered public testimony to FWP at the public hearing, for a total 5 commenters (Appendix, Commenters 4-8). Two of these commenters (including the ASC representative) were from Anaconda and 3 (including a landowner adjacent to the proposal) were from Deer Lodge.

Summary of All Public Comments

Seven of the total 8 commenters supported the proposal; supporters included 3 via email and 4 at the public hearing, including ASC. One commenter (an adjacent landowner at the public hearing) did not indicate support or opposition to the proposal but made a "formal objection to large caliber firearms in the river recreation area." No comments were received in opposition to the proposal.

Response to Public Comment

The following comments encompass specific issues or suggestions received during the public comment period, along with FWP's response to these issues.

Comment: I would opine that no motorized vehicles or off-road vehicle access be allowed to protect the riparian nature and reduce pressure on the wildlife (Comment 3).

FWP Response: This would not be a matter that would be specifically addressed or restricted in perpetuity within the conservation easement, but it would be specifically addressed in the 5-year public access plans as they come up for review and renewal. At present there is no motorized access for river recreation or hunting allowed off established public roadways, and no intent to introduce further motorized access.

Comment: I make formal objection to large caliber firearms in the river recreation area (Comment 6). I'm confident that FWP and landowners will address concerns of neighboring landowner (Comment 8.2).

FWP Response: Thank you for bringing this to our attention and for your confidence. A restriction on large caliber firearms would not be a matter that would be specifically addressed in perpetuity within the conservation easement, but it would be specifically addressed in the 5-year public access plans as they come up for review and renewal. There has been no caliber restriction on firearms in the Block Management agreements to date on the property. However, FWP will work to address your concerns in conversation with the landowner, and we will commit to making a reasonable accommodation, such as a safety zone, for example, or some other restriction that works for hunters, the landowner and the neighbors.

FINDING OF NO SIGNIFICANT IMPACT

FWP has reviewed the EA and applicable laws, regulations, and policies and has determined that this action will not have significant effect on the physical or human environment. Therefore, I conclude that the EA is the appropriate level of analysis and the preparation of an Environmental Impact Statement is not necessary.

DECISION

This proposal received strong support from the public—in this MEPA process, as well as in the public process conducted by NRDP in advance of this MEPA process—with no one expressing opposition to the action. FWP is the qualified organization best equipped to manage, monitor and enforce the public access terms in perpetuity, consistent with the overall intent of the MLR conservation easement. FWP has long experience in acquiring and managing public access provisions in many perpetual conservation easements that are held in the public trust by FWP, and both ranches have participated as valued cooperators in FWP's Block Management Program for many years as part of the larger *Upper Clark Fork River Block Management Area*. Through the proposed conservation easement hunting access would continue to be available to the public in perpetuity, along with recreational access to the Clark Fork River. Therefore, based on the analysis in the Draft EA and the public comment, I have selected the "Proposed Action" (Alternative B). I recommend to the Fish & Wildlife Commission that it approve FWP's proposed acceptance of the assignment of the public hunting access and year-round river recreational access rights on the Dry Cottonwood Creek and Deer Lodge River Ranches from the Montana Land Reliance under MLR's Conservation Easement on the Ranch.

Randy Arnold
Region 2 Supervisor
Montana Fish, Wildlife & Parks

Date

APPENDIX. Comments on FWP's proposal to accept assignment of the "right of public access" component of a conservation easement (CE) to be held by the Montana Land Reliance (MLR) on the Dry Cottonwood Creek and Deer Lodge River Ranches in Deer Lodge County, received by FWP during the comment period of June 13 through July 12, 2018. (Comments received via E = email or at PM = public meeting.)

Com- men- ter #	Via	Para- graph	Comment
1	E		<i>I strongly support conservation easements for the Dry Cottonwood Creek and Deer Lodge River Ranches.</i>
2	E		<i>I support Alternative B for the FWP acceptance of an assignment of public hunting and river recreational access rights in perpetuity from MLR on The Ranches. I see no negatives for this proposal.</i>
3	E		<i>This is a good idea, however, I would opine that no motorized vehicles or off-road vehicle access be allowed to protect the riparian nature and reduce pressure on the wildlife.</i>
4	PM		<i>Good because the conservation easement will draw a different kind of land purchaser that will like to keep the property open.</i>
5	PM	1	<i>I represent the Anaconda Sportsman Club. Access is our interest always.</i>
		2	<i>In the future the land could be subdivided, so it's best to have this conservation easement for our generation and generations to come.</i>
6	PM		<i>I make formal objection to large caliber firearms in the river recreation area.</i>
7	PM		<i>I support because it guarantees access for the youth.</i>
8	PM	1	<i>It's a win/win guarantee for local residents and [it's] going back to a working ranch.</i>
		2	<i>I'm confident that FWP and landowners will address concerns of neighboring landowner.</i>