

**Documents  
Submitted by  
FWP**

**BEFORE THE PARKS AND RECREATION BOARD  
OF THE STATE OF MONTANA**

FRIENDS OF HELL CREEK,	)	
	)	
Petitioner,	)	<b>FISH, WILDLIFE AND PARKS'</b>
v.	)	<b>POSITION PAPER AND FILING OF</b>
	)	<b>ADMINISTRATIVE RECORD</b>
DEPARTMENT OF FISH, WILDLIFE	)	
AND PARKS,	)	
	)	
Respondent.	)	

COMES NOW the Respondent, Department of Fish, Wildlife and Parks (FWP), by and through its counsel Aimee L. Hawkaluk, and submits its Position regarding the Petition Regarding Hell Creek State Park (HCSP) currently before the Parks and Recreation Board (Board). This appeal is before the Board pursuant to the FAS and Park Development Appeals Procedure (Appeals Procedure) (attachment A).<sup>1</sup> FWP has attached the administrative record for its decision to this Position Paper (Attachment B).

**BACKGROUND**

The decision the Petitioner currently challenges involves two proposed actions at HCSP: an upgrade of the fish cleaning station's wastewater treatment system and replacement of the existing potable water cistern with an underground 20,000-gallon cistern. The project was initially presented to the Board as an agenda item on October 15, 2014, and most recently presented to the Board and approved February 16, 2017. After approval from the Board, FWP prepared an Environmental Assessment (EA) describing its proposed alternative and other

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<sup>1</sup> The procedure was adopted by the FWP Commission on October 13, 1995 and is attached here for the Board's reference purposes. The appeal refers to the FWP Commission. The FWP Commission was subsequently split by legislation into the Parks Board and the Fish and Wildlife Commission. *See* Mont. Code Ann. §§ 2-15-3406 and 23-1-111. The Board now has the authority over this subject matter.

potential alternatives along with an assessment of all alternatives involved. FWP also sent out a press release announcing the public comment opportunity regarding the infrastructure improvement project at Hell Creek State Park on June 13, 2017. The draft EA and public comment opportunity were announced in a news release, circulated for 30 days, and legal notices were published in multiple newspapers as well as posted on the Montana State Parks website. FWP received 24 public comments during the 30-day period and prepared responses to those comments.

On August 14, 2017, FWP issued a Notice of Decision, determining that the preferred alternative was to proceed with the proposed public health and safety infrastructure upgrades. Specifically, the decision was made to replace the failing 8,000-gallon metal water cistern and relocate the public water storage system serving the park and to remove the fish cleaning station from the existing system and construct a dedicated septic treatment system. The Petitioner then appealed the decision pursuant to the Appeals Procedure and the appeal is now before the Board.

### **STANDARD OF REVIEW**

The Appeals Procedure establishes the criteria the Board may use in reaching a decision in this matter. The appeal may be dismissed if the issues raised in the appeal are not relevant to the decision being made on the proposed development. The Board may uphold the appeal, in whole or in part, deny the appeal in whole or in part, or return the proposed decision back to FWP for clarification or further consideration.

The appeal must be upheld and remanded back to FWP if 1) FWP failed to comply with any applicable law, administrative rule, or department policy or procedure in making its decision; 2) FWP based its decision on invalid or incomplete information that would have substantially altered the decision; or 3) if the decision made by FWP was arbitrary and

capricious.

### **ARGUMENT**

This appeal process is limited to the proposed improvements outlined in FWP's Notice of Decision. FWP's previous responses in this matter are part of the administrative record in this case and FWP incorporates its responses at those steps in this Position Paper. FWP asks that the Board dismiss the appeal because the Petitioner has not shown any of the three standards listed above have been met.

**I. FWP complied with all applicable laws, administrative rules, and department policies and procedures in making its decision to proceed with the proposed public health and safety infrastructure updates at HCSP.**

FWP complied with appropriate legal requirements in reaching its decision regarding the proposed updates at HCSP. FWP has the authority to develop outdoor recreational resources "for the purposes of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing their use and enjoyment, thereby contributing to the cultural, recreational and economic life of the people and their health." §23-1-101, MCA. This is a very standard and typical public health and safety project proposed for a state park.

Montana Code Annotated §23-1-110 and ARM 12.2.433 guide public involvement and comment for improvements at state parks, including requirements set forth under the Montana Environmental Policy Act (MEPA), §75-1-101, MCA. ARM 12.8.601 additionally requires FWP to consider the wishes of the public, the capacity of the site for development, environmental impacts, long-range maintenance, protection of natural features and impacts on tourism as these elements relate to development or improvement to state parks. FWP met all these requirements prior to making its decision.



The proposed project was initially presented to the Board as an agenda item October 15, 2014 prior to the 2015 Legislative Session, where funding was sought via the Governor's proposed House Bill 5 capital budget. This project and HCSP in general have been discussed by the Board several times since the 2014 timeframe. The most recent time a funding decision for the current project was presented to the Board was as an agenda item February 16, 2017. At that meeting, the Board again approved the capital funding and proceeding with the project. Copies of the two agenda cover sheets for each of the respective Parks Board meetings, as well as the Board minutes from the February 16, 2017 meeting concerning the Hell Creek topic, are part of the administrative record regarding this decision.

After approval from the Board, FWP prepared an EA which complied with the requirements of MEPA, Mont. Code Ann. §23-1-110 and Administrative Rules 12.2.433 and 12.8.601. In addition to the legal notices published in multiple newspapers, FWP also sent out a press release announcing the 30-day public comment opportunity on June 13, 2017 and posted the same on the Montana State Parks website.

Finally, on August 14, 2017, FWP issued its decision to proceed with its preferred alternative – “to replace and relocate the public water storage system serving the park and to remove the fish cleaning station from the existing system and construct a dedicated septic treatment system.” The process followed in reaching this decision was consistent with state law and FWP's practice for dozens of EAs and Notices of Decision issued each year. The Petitioner has not shown that FWP violated any law, rule, or policy in reaching its decision here and this appeal should be denied accordingly.

**II. The decision was based on valid information and the Petitioner has not presented any information that would substantially alter the decision.**

FWP considered an extensive amount of well-researched information in making its decision. Both the fish cleaning station septic system and replacement water cistern have been identified by two separate private consulting firms (Peaks-To-Plains and Great West Engineering) in recent years as critical infrastructure upgrades which are necessary for public health and safety. *See* EA, pages 5-6. The aging infrastructure has experienced numerous breakdowns every summer. EA page 6. The Montana Department of Environmental Quality completed its Hell Creek State Park's 2010 Sanitary Survey which recommended full replacement of the water storage tank due to evidence of settlement and ground movement surrounding the existing buried water supply tank. EA page 6.

The Petitioner incorrectly contends that a current "Agreement and Permit" between FWP and its concessionaire require FWP to gain the concessionaire's permission before proceeding with the proposed site infrastructure projects.<sup>2</sup> Under Section 28 (Right of Access) of the Agreement, FWP retained a right of access to the property "for the purpose of engaging in any activities deemed necessary for the *construction (emphasis added)*, operation, and maintenance of the Reservoir, Hell Creek State Park, the concession, and all works and facilities appurtenant thereto or for any other purpose authorized or required by law." In fact, the Section begins with the clear language of "The Concessionaire recognizes the right of ingress and egress..." Additionally, Section 36 (Modification) of the Agreement provides that the Agreement may not be modified except in writing and by signature of the parties, which has not occurred.

The Army Corps of Engineers (Corps) has approved the proposed locations of the 20,000-gallon potable water cistern and the septic system for the fish cleaning station. Please

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<sup>2</sup> The "Agreement and Permit" is attached for the Board's reference in the Administrative Record.

reference the attached April 11, 2017 memo from the Corps to FWP that states, “Section 6 of lease DACW45-1-93-6035, ensures the Lessee (MTFWP) shall have the right to erect additional structures and to furnish additional services in accordance with approved development plan. Nothing in Hell Creek Marina’s sublease agreement with MTFWP for acreage within Hell Creek State Park shall affect, waive, modify or interpret in any manner whatsoever the terms, covenants and conditions of the Department of the Army Lease.”

The Petitioner additionally argues that FWP intends to close Hell Creek State Park in 2021. This is not the case. Over the past several years, Montana State Parks, community members, and stakeholders, have noted the issues present at Hell Creek State Park and explored various management options for the park. Hell Creek State Park is operated by Montana State Parks subject to a lease with the Corps. FWP has had numerous leases with the Corps dating back to the 1960’s and the current lease expires in April 2021. However, Montana State Parks has no plans to “close” Hell Creek State Park. There are two entire recreational seasons yet to occur before the current lease with the Corps concludes.

The record in this case is clear – FWP considered valid information in reaching its decision. None of the information presented by the Petitioner justifies substantially altering the decision, and the appeal should be denied accordingly.

### **III. The decision made by FWP was not arbitrary and capricious.**

The record here clearly indicates that the decision made by FWP is not a “baseless arbitrary decision” as the Petitioner contended in their appeal dated September 12, 2017. Montana State Parks followed the standard procedure for this type of project, carefully considered a reasonable number of alternatives and public comment and made a decision as the result of that process. The reasoning for the decision, including reasons involving public health

and safety, is outlined in the Notice of Decision. That Notice is in turn supported by the draft EA and multiple professional reports referenced in the EA and in this Position Paper.


Contrary to the Petitioner's contentions, taking no action could be said to be arbitrary and capricious. The existing 8,000-gallon metal water cistern has reached the end of its useful life and was sized/installed prior to the much of the park infrastructure it supports being built over the past decade including a staff housing comfort station in the campground and the installation of the fish cleaning station. As noted in the EA, HCSP operates as a general services campground under ARM 37.111.201 et. seq. EA page 7. Allowing the failure of the present systems would put FWP in violation of ARM 37.111.206 and ARM 37.111.217, cost FWP funds and man hours unnecessarily, and subject the public to any negative outcome resulting from a lack of site improvements, or the failure of the existing park infrastructure.

The decision in this matter is not arbitrary and capricious and the Petitioner's appeal should be denied in whole.

### **CONCLUSION**

The Petitioner has shown no legal or factual reason for the Board to uphold their appeal. In contrast, the record in this matter shows a carefully contemplated decision by FWP dating back to 2014 and earlier, which complies with law, rule, and policy, and which considered professional and public opinions. This appeal should be denied in whole.

DATED this 29th day of April, 2019.

  
Aimee Hawkaluk, Agency Legal Counsel  
Fish, Wildlife and Parks



**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of April, 2019, I served a true and accurate copy of FISH, WILDLIFE AND PARKS' POSITION and ATTACHMENTS, US Mail, Postage Prepaid, to the following:

Jim Carr  
Carr Law Firm  
611 Pleasant Street  
Miles City, MT 59301

Montana State Parks and Recreation Board  
c/o Jessica Snyder, Paralegal  
Fish, Wildlife and Parks  
PO Box 200701  
Helena, MT 59601  
(HAND DELIVERED 6 COPIES)



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Kaedy Gangstad, Paralegal  
Fish, Wildlife and Parks

## APPEALS PROCEDURE FAS AND PARK DEVELOPMENT

Adopted by FWP Commission on  
October 13, 1995

### I. PURPOSE

To establish procedures that: 1) provide an opportunity for the public to appeal decisions made by the department to improve or develop fishing access sites and state parks; 2) encourage the public to participate at the beginning of the decision making process; and 3) resolve appeals at the lowest administrative level possible.

### II. DECISIONS SUBJECT TO APPEAL

The decision notice on a plan or project that results in a decision to improve or develop a fishing access site or state park is subject to appeal under these procedures, provided that the improvement or development significantly changes (as defined in 12.8.602, ARM) fishing access site or state park site features or use patterns. For the purpose of these procedures, a decision notice is a written finding made by the decisionmaker that explains the basis for the final decision and that responds to all public comments received. The department shall prepare a decision notice for any decision subject to the requirements of 23-1-110, MCA and distribute the decision notice to everyone who has commented on or participated in the decision making process.

### III. STANDING

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.

### IV. SUBMISSION OF AN APPEAL

An appeal must be submitted to the director in writing and must be postmarked or received within 30 days of a decision notice. An appeal may be made on any grounds or arguments made to the department during the department's original decision making process. 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.

In order to provide adequate opportunity for an appeal, the department may not commence construction until 30 days after the decision notice. If an appeal is made within 30 days following the decision notice, the department may not commence construction until

the final resolution of the appeal.

The director may dismiss the appeal if the issues raised in the appeal are not relevant to the decision being made on the proposed development.

#### V. DEPARTMENT RESPONSE TO AN APPEAL

The first level of review is the regional supervisor. If an appellant is not satisfied with the decision made by the regional supervisor, the appeal may be pursued to the director. The final level of review is the commission. However, the commission will not address an appeal before the director has made a decision on the appeal.

Within 10 days of receipt of an appeal, the department shall notify the appellant of receipt of the appeal.

The appeals process before the department should be non-adversarial and provide an additional opportunity for conflict resolution. Any appropriate means may be used to resolve an appeal, including but not limited to fact finding, site visits, hearings, meetings with the appellant and other parties, informal mediation and negotiations. The department shall address the appeal within 60 days of receipt, and shall notify the appellant in writing of its decision.

#### VI. DECISION CRITERIA

An appeal may be upheld in whole or part, denied in whole or part, or the proposed decision may be returned to the original decisionmaker for clarification or further consideration. An appeal must be upheld and the decision remanded back to the original decisionmaker for corrective action if:

1. The department, in making its decision, failed to comply with any applicable law, administrative rule or department policy or procedure;
2. The department based its decision on invalid or incomplete information that would have substantially altered the decision; or
3. The decision made by the department was arbitrary and capricious.

#### VII. APPEAL TO COMMISSION

If an appellant has sought review of an appeal by the department and is not satisfied with the final decision of the director, the appellant may appeal the decision to the commission within 10 days of receiving notification of the director's decision. The commission will hear and address the appeal within 60 days.



## **FRIENDS OF HELL CREEK v. DEPARTMENT OF FISH, WILDLIFE AND PARKS**

### **ADMINISTRATIVE RECORD CONTENTS**

1. Parks and Recreation Board Agenda Item Cover Sheet October 15, 2014
2. Parks and Recreation Board Agenda Item Cover Sheet and Minutes February 16, 2017
3. Environmental Assessment for Hell Creek State Park Water Cistern Replacement and Fish Cleaning Station Septic System Upgrade May 22, 2017
4. Environmental Assessment Public Comments Received
5. Montana State Parks Notice of Decision August 14, 2017
6. Friends of Hell Creek Appeal of Notice of Decision September 12, 2017
7. Montana State Parks Response to Appeal and included attachments August 30, 2018
8. Friends of Hell Creek Appeal of Notice of Decision to FWP Director Williams September 19, 2018
9. FWP Director Williams Response to Appeal and included attachment January 8, 2019





# **Attachment**

**B-1**



## MONTANA STATE PARKS AND RECREATION BOARD AGENDA ITEM COVER SHEET

**Meeting Date:** October 15, 2014

**Agenda Item:** Parks Capital Projects - 2015 Legislative Session

**Division:** Parks

**Action Needed:** Informational

**Time Needed on Agenda for this Presentation:** 10 min.

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### Background:

Each Legislative Session funding is provided via the HB 5 process for capital improvements at State Parks sites throughout Montana. The anticipated Parks funding from the 2015 Legislative Session is expected to be;

\$70,800	Boat-In-Lieu	\$2,000,000	Highway Fuel
\$696,000	Parks 'Big Four'	\$1,300,000	Federal MBDJ

Parks capital projects planned for the upcoming biennium include;

• Logan SP – dock replacement/upgrade; electrification of the campground.	\$400,000
• Hell Creek SP – campsite reconfiguration; site upgrades.	\$1,500,000
• Madison Buffalo Jump SP – install access road to the upper viewing area.	\$75,000
• Finley Point SP – campsite reconfiguration, replace latrines; road improvements.	\$1,000,000
• Cooney State Park – access road upgrades.	\$500,000
• Park Major Maintenance Projects – two year's cycle.	<u>\$500,000</u>
	\$3,975,000

Note that the projects planned include those which will utilize the available Highway Fuel and Federal MBDJ funds. These funding sources are expected to be \$3.3 million. It is anticipated that the balance of the unallocated capital appropriation will be utilized on misc. project needs that occur, construction contingency, and similar uses.

### Public Involvement Process & Results:

With the exception of the pending future Parks Major Maintenance projects, each of the proposed capital projects will go through a separate Environmental Assessment (EA) and public involvement process. The majority of the annual Parks MM projects selected are typically excluded from the public comment process due to the routine nature of the work.

**Alternatives and Analysis:** N/A

**Agency Recommendation and Rationale:** N/A

### Proposed Motion:

This is an informational item to provide awareness and update the Board on the Parks Capital program. No Board action is required.



# **Attachment**

## **B-2**



## MONTANA STATE PARKS AND RECREATION BOARD AGENDA ITEM COVER SHEET

**Meeting Date:** February 16, 2017

**Agenda Item:** Hell Creek State Park Capital Project

**Division:** Parks

**Action Needed:** Final

**Time Needed on Agenda for this Presentation:** 20 min.

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### Background

Per policy, Board approval is required for proposed capital funding commitments exceeding \$5,000. This agenda item pertains to proceeding with proposed infrastructure improvements at Hell Creek SP. Specifically, replacement of the 8,000-gallon water storage tank serving the park (new = buried 25,000-gallon capacity) and installing a separate septic system for the high-volume Fish Cleaning Station (FCS). These are the highest priority infrastructure needs for the Hell Creek site.

An on-site water and sewer flow study was conducted in Summer 2016. This data is needed for designing the infrastructure upgrades and the DEQ permitting process.

The preliminary cost estimate for the work is \$634,000 (\$364,000 water storage and \$270,000 FCS septic). These consultant estimate include design fees.

Funding proposal is; \$579,738 (75% Fed. DJ) + \$193,246 (25% State) = \$772,984; say \$773,000 total (+20% est.).

Following the design, permitting, and bidding process, it is anticipated that the improvements would be constructed in Fall 2018. The new systems would be on-line and available for use beginning with the 2019 season. Associated with completing this project in late 2018, it is recommended that the Board consider clarifying its' decision on Hell Creek lease-type issues until the end of the summer 2019 season.

### Public Involvement Process & Results

If approved, the next step will involve the drafting of an Environmental Assessment for the proposed project, including a 30-day public comment period. An update would be provided at a future Board meeting.

### Alternatives and Analysis

Alt. #1 – approval of the proposed capital expenditures for the water storage tank and FCS septic system.

Alt. #2 – modified approval for the proposed capital expenditures for the two infrastructure projects.

### Agency Recommendation and Rationale

It is recommended that the Board approve the proposed capital funding commitments for the two projects.

### Proposed Motion

I move to approve the Parks Division's proposal to commit \$773, 000 in available capital funds to proceed with the water tank replacement and FCS septic system project at Hell Creek State Park. Additionally, I move to clarify that if there are decisions to be made concerning lease arrangements or terms in 2019 they will occur after the summer , season, likely at the August 2019 Board meeting.



the policy instructs MSP to develop a naming strategy for MSP properties that is consistent with Classification and to present this strategy to the Montana State Parks Board.

The draft naming strategy was presented to the parks board in October 2016 and includes 4 primary designations: State Parks, State Heritage Sites, State Recreation Areas, and State Natural Areas. In addition, there will be an Undesignated Property category for properties that do not yet have a management plan and/or are not yet developed. At this time, the Board requested updates in December and February related to naming.

Since December, staff have been refining the criteria for each type of designation and working on design standards for the website, park brochures, and signage. The Classification and Prioritization Policy was the subject of a 31-day public comment period prior to its passage. Stakeholder engagement in the implementation of the policy is ongoing.

Acting Director Martha Williams indicated that it is best for Parks to determine what the statutes provide and exactly what the delineation of authority is in renaming policy. Chairman Towe asked for clarification on whether there is someone within the agency that is not supportive of renaming policy and indicated that he would be amenable to the policy going through legal for final approval. Chairman Towe indicated that if Paul Sihler has a problem with the renaming policy, he would like to be made aware of it because the division has done a great job with this plan and he does not want to see the agency intervene in its implementation.

Member Welch indicated that he is supportive of the plan and thinks it is imperative, as per the Strategic Plan, but would like to see the division begin working on the cost of implementation.

#### 10. Hell Creek State Park Capital Project

Assistant Administrator Tom Reilly reported that per policy, Board approval is required for proposed capital funding commitments exceeding \$5,000. This agenda item pertains to proceeding with proposed infrastructure improvements at Hell Creek SP. Specifically, replacement of the 8,000-gallon water storage tank serving the park (new = buried 25,000-gallon capacity) and installing a separate septic system for the high-volume Fish Cleaning Station (FCS). These are the highest priority infrastructure needs for the Hell Creek site.

An on-site water and sewer flow study was conducted in Summer 2016. This data is needed for designing the infrastructure upgrades and the DEQ permitting process. The preliminary cost estimate for the work is \$634,000 (\$364,000 water storage and \$270,000 FCS septic). These consultant estimate include design fees. Funding proposal is; \$579,738 (75% Fed. DJ) + \$193,246 (25% State) = \$772,984; say \$773,000 total (+20% est.).

Following the design, permitting, and bidding process, it is anticipated that the improvements would be constructed in Fall 2018. The new systems would be on-line and available for use beginning with the 2019 season. Associated with completing this project in late 2018, it is recommended that the Board consider clarifying its' decision on Hell Creek lease-type issues until the end of the summer 2019 season. The project has no impact on the current concession lease at Hell Creek State Park.

If approved, the next step will involve the drafting of an Environmental Assessment for the proposed project, including a 30-day public comment period. An update would be provided at a future Board meeting.

Chairman Towe asked the status of the issue regarding the concessionaire's objection that a water tank be placed where he intends to put in campsites. Assistant Administrator Reilly indicated he would be working with the concessionaire directly to work out that issue.

Chairman Towe called for public comment on the agenda item. Teddy Robertson, a commissioner in Hell Creek Country, addressed the Board, indicating that she is aware of the problem at Hell Creek State Park. The park receives more than 30,000 visits per season. The marina is very important to the community, a small and not-well-funded community. The improvements have the potential to help things get progressively better. On behalf of the community and its board, Commissioner Robertson appreciates the effort of MSP to make improvements. Vice-Chairman Sexton indicated that the loss of the gas tax monies has a large impact on how much MSP can partner with the community on these improvements.

Representative Bridget Smith, House District 31, just north of Hell Creek State Park, addressed the Board to ask for help with the road to Hell Creek. Rep. Smith believes that if the road were improved, visits to the park could double, and that is extremely important to the residents of eastern Montana. Working with the existing concessionaire on his lease and contract is also very important, namely trying to get him a long-term lease. Rep. Smith also indicated she introduced a bill that would provide for a tax on soda pop that would go to Montana State Parks.

*Action: Member Welch moved to approve the Parks Division's proposal to commit \$773,000 in available capital funds to proceed with the water tank replacement and FCS septic system project at Hell Creek State Park. Motion carried unanimously.*

*Action: Vice-Chairman Sexton moved to clarify that if there are decisions to be made concerning lease arrangements or terms in 2019 they will occur after the summer season, at the August 2019 Board meeting. Motion carried unanimously.*

Chairman Towe, upon the arrival of Rep. Ken Holmlund, called for his comments after action was taken on this item. Rep. Holmlund indicated that he is happy a decision was made to update the water and sewer systems because it is crucial to maintaining the facility. His concern now lies with the road because he believes that visitation could rise to 50,000 from 30,000 if the road was improved. Rep. Holmlund contacted someone from Garfield County to get an estimate on the cost of fixing the road using magnesium chloride. The holes in the road would have to be filled before that step is taken. These steps may have to be taken in sections over several years, to afford it. Rep. Holmlund also expressed his concern over the reservation system because it reports that Hell Creek is full when it is not, causing people not to come to the park when it is not, in fact, full. Rep. Holmlund indicated that Montana Fish, Wildlife & Parks has a terrible reputation in eastern Montana because promises have been made that have not been kept by the agency. He urged the Board and FWP to follow through on any decisions or promises that are made.

# **Attachment**

**B-3**



# **Environmental Assessment**

## **Hell Creek State Park Water Cistern Replacement and Fish Cleaning Station Septic System Upgrade**



**05.22.2017**





## **Environmental Assessment MEPA, NEPA, MCA 23-1-110 CHECKLIST**

### **PART I. PROPOSED ACTION DESCRIPTION**

**1. Type of proposed state action:**

Montana State Parks (MSP), a division of Montana Fish, Wildlife and Parks (FWP), proposes two actions at Hell Creek State Park (HCSP); to upgrade the Fish Cleaning Station's wastewater treatment system and replace the existing potable water cistern with a 25,000-gallon tank.

**2. Agency authority for the proposed action:**

MSP has the authority to develop outdoor recreational resources in the state per 23-2-101 Montana Code Annotated (MCA): *"for the purposes of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing their use and enjoyment, thereby contributing to the cultural, recreational and economic life of the people and their health."*

Statute 23-1-110 MCA and Administrative Rules of Montana (ARM) 12.2.433 guide public involvement and comment for the improvements at state parks, which this document provides. ARM 12.8.602 required the Department to consider the wishes of the public, the capacity of the site for the development, environmental impacts, long-range maintenance, protection of natural features and impacts on tourism as these elements relate to development or improvement to state parks. This document describes the proposed project in relation to this rule.

**4. Anticipated Schedule:**

Estimated Commencement Date: Fall 2018

Estimated Completion Date: Fall 2018

Current Status of Project Design (% complete): 5%

**5. Location affected by proposed action (county, range and township – included map):**

Hell Creek State Park is located approximately 25 miles north of the Town of Jordan in Garfield County, Montana. The Park is located on the Hell Creek Arm of Fort Peck Reservoir.

Fig 1. Location Map of Hell Creek State Park

Fig 2. Hell Creek State Park Map - Proposed System Upgrades

*Figure 1: Location Map of Hell Creek State Park*



Figure 2: Hell Creek State Park Map - Proposed System Upgrades





6. **Project size -- estimate the number of acres that would be directly affected that are currently:**

	<u>Acres</u>		<u>Acres</u>
(a) Developed:		(d) Floodplain	<u>0</u>
Residential	<u>0</u>		
Industrial	<u>0</u>	(e) Productive:	
(existing shop area)		Irrigated cropland	<u>0</u>
(b) Open Space/	<u>approx. 1</u>	Dry cropland	<u>0</u>
Woodlands/Recreation		Forestry	<u>0</u>
(c) Wetlands/Riparian	<u>0</u>	Rangeland	<u>0</u>
Areas		Other	<u>0</u>

7. **Permits, Funding & Overlapping Jurisdiction.**

- (a) **Permits:** permits will be filed during the design process.
- | <u>Agency Name</u>         | <u>Permits</u>                     |
|----------------------------|------------------------------------|
| US Army Corps of Engineers | Site Plan Modification             |
| Montana DEQ                | Wastewater and Public Water System |
- (b) **Funding:**  
State Special = \$193,000; Federal DJ = \$580,000; Total = \$773,000.
- (c) **Other Overlapping or Additional Jurisdictional Responsibilities:**
- | <u>Agency Name</u>         | <u>Type of Responsibility</u> |
|----------------------------|-------------------------------|
| US Army Corps of Engineers | Landowner                     |

8. **Narrative summary of the proposed action:**

Situated along the southern banks of Fort Peck Reservoir, Hell Creek State Park (HCSP) provides a full range of facilities including two boat ramps, a fish cleaning station, 71 campsites of which 44 sites take reservations during peak season, vault latrines, full-service comfort station, group use building, a marina operated by a concessionaire (Hell Creek Marina) and picnic shelters for the 26,355<sup>1</sup> annual visitors utilizing the park. In 2016 campsites were occupied for a total of 15,714<sup>2</sup> camper nights with an average stay of 3.25 nights.

In 2015, the *Hell Creek State Park Master Site & Management Plan* was created by Peaks to Plains Design, PC to develop recommendations for future expansion and campground management practices. Supplemental information was compiled by Great West Engineering in a *Facility Conditions Inventory* (FCI) report and *HCSP Potable Water and Wastewater Flow Study Report* (FSR) where areas of critical need were recognized. The two priorities listed below were

<sup>1</sup> Montana State Parks "2016 Annual Visitation Report" (2016): p5

<sup>2</sup> Montana State Parks "2016 Reservation Program Report" (2016): p5

identified by the reports after extensive public input, a detailed inventory and an assessment of aging park infrastructure:

1. Septic System Upgrade/Replacement of Fish Cleaning Station
2. Potable Water Supply Storage Tank Replacement

#### Necessity of Septic System Upgrade for the Fish Cleaning Station:

Hell Creek State Park's sanitary sewer system is composed of three existing systems. The primary public sewage system handles effluent generated from the comfort station, fish cleaning station and RV dump station<sup>3</sup>. Constructed in 2001<sup>4</sup>, it was designed by Stahly Engineering to accommodate users of the electric campground's 43 designated sites. The existing system cannot accommodate the heavy use during peak weekends.

Hell Creek State Park's aging infrastructure has experienced numerous breakdowns every summer. With extremely high rates of usage, it is necessary to pump the fish cleaning station's 4000-gallon holding tank multiple times a month. The lack of frequent pumping and common closures of the fish cleaning station detracts from visitors' experiences. Montana State Parks proposes to remove the fish cleaning station from the primary septic system and provide a dedicated treatment system designed to handle the unique effluent water quality. This action would alleviate much of the burden placed on the primary septic system and allow both systems to function adequately. The final location of the proposed FCS septic system has yet to be determined on-site. (See Figure 2).

#### Necessity for water supply storage tank replacement:

The existing 8000-gallon metal water storage tank installed in 1993 was designed to service the campground and the concession area. However, the system cannot keep up with the demand for water which has significantly increased as a result of a new public comfort station, staff housing, an enhanced RV dump station, fish cleaning station and an increase in campground usage and park visitations<sup>5</sup>. *The Hell Creek State Park's 2010 Sanitary Survey* completed by Montana DEQ recommended full replacement of the water storage tank due to evidence of settlement and ground movement surrounding the existing buried water supply tank<sup>6</sup>. The expansive and movement-prone soils have shifted and exposed portions of the water tank. Additionally, the tank suffers from deterioration due to corrosive water as noted in both the sanitary survey and the FCI.

MSP proposes the construction of a new 25,000-gallon water tank based on the given design flows recorded by Great West Engineering<sup>7</sup>. The larger size

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<sup>3</sup> Peaks to Plains Design PC "Hell Creek State Park Master Site & Management Plan" (2015): p26

<sup>4</sup> Peaks to Plains Design PC "Hell Creek State Park Master Site & Management Plan" (2015): p26

<sup>5</sup> Peaks to Plains Design PC "Hell Creek State Park Master Site & Management Plan" (2015): p25

<sup>6</sup> Montana DEQ "Hell Creek State Park's 2010 Sanitary Survey" (2010)

<sup>7</sup> GreatWest Engineering "Hell Creek State Park Potable Water & Wastewater Flow Study Report" (2016): p5

would provide nearly two days of storage at the projected visitor demands and minimize closures of favorite amenities. The new water storage tank's capacity will allow the concessionaire to connect to and utilize the park's public water supply system as required for a public water supply as determined by the Montana Department of Environmental Quality..

**9. Description and analysis of reasonable alternatives:**

**Alternative A: No Action**

If no action is taken, the existing water storage tank and primary septic system have a high likelihood of failure in the next two years. Given the continued increase in visitation, park staff will continue the trend of spending operations monies and FTE man hours repairing and troubleshooting continuous breakdowns until one or both of the water tank and primary septic system experience complete failure. HCSP operates as a general services campground as per ARM 37.111.2. Allowing the regulated sanitary sewer disposal (ARM 37.111.217.) and potable water systems (ARM 37.111.206) to fail would be a violation of these rules. Funding allocated for this project would likely be reallocated to project needs at parks in other locations.

**Alternative B: Proposed Action (Preferred)**

The preferred course of action is twofold:

1. Replace and relocate the existing 8,000-gallon potable water tank with a 25,000-gallon storage tank. The preferred location of the proposed buried water tank is noted in Figure 2. The lower elevation and flatter ground slope would minimize the potential for ground movement. A small pump station, with pressure tanks, would be required to maintain system pressures. The proposed elevation would still allow gravity water supply to the Park, in the event the pump station encountered failure. In addition, this alternative would provide a backup power generator to safeguard the water system. This alternative provides easy access from park roads and requires minimal piping underground, enabling ease of maintenance by HCSP staff in areas prone to land movement. The environmental impacts of this preferred action are minimal.
2. Remove the fish cleaning station from the primary septic system and construct a dedicated treatment system designed to handle the unique quality of the water effluent. The final location of the septic system upgrade is noted in Figure 2. Environmental impacts of this action are minimal.

**10. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:**  
None.

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8 GreatWest Engineering "Hell Creek State Park Potable Water & Wastewater Flow Study Report" (2016); p6



## **PART II. ENVIRONMENTAL REVIEW CHECKLIST**

**Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the Physical and Human Environment.**

### **A. PHYSICAL ENVIRONMENT**

1. <u>LAND RESOURCES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Soil instability or changes in geologic substructure?		x				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?		x				
c. Destruction, covering or modification of any unique geologic or physical features?		x				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		x				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		x				

2. <u>AIR</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Emission of air pollutants or deterioration of ambient air quality? (Also see 13 (c).)		x				
b. Creation of objectionable odors?		x				
c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?		x				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		x				

e. For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regulations? (Also see 2a.)		x				
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3. <u>WATER</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?		x				
b. Changes in drainage patterns or the rate and amount of surface runoff?		x				
c. Alteration of the course or magnitude of floodwater or other flows?		x				
d. Changes in the amount of surface water in any water body or creation of a new water body?		x				
e. Exposure of people or property to water related hazards such as flooding?		x				
f. Changes in the quality of groundwater?		x				
g. Changes in the quantity of groundwater?		x				
h. Increase in risk of contamination of surface or groundwater?		x				
i. Effects on any existing water right or reservation?		x				
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		x				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?		x				
l. For P-R/D-J, will the project affect a designated floodplain? (Also see 3c.)		x				
m. For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a.)		x				

4. <u>VEGETATION</u> Will the proposed action result in?	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?		x				
b. Alteration of a plant community?		x				
c. Adverse effects on any unique, rare, threatened, or endangered species?		x				
d. Reduction in acreage or productivity of any agricultural land?		x				
e. Establishment or spread of noxious weeds?		x				
f. For P-R/D-J, will the project affect wetlands, or prime and unique farmland?		x				
g. Other:						

5. <u>FISH/WILDLIFE</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Deterioration of critical fish or wildlife habitat?		x				
b. Changes in the diversity or abundance of game animals or bird species?		x				
c. Changes in the diversity or abundance of nongame species?		x				
d. Introduction of new species into an area?		x				
e. Creation of a barrier to the migration or movement of animals?		x				
f. Adverse effects on any unique, rare, threatened, or endangered species?		x				
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?		x				



h. For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f.)		x				
i. For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d.)		x				

## B. HUMAN ENVIRONMENT

6. <u>NOISE/ELECTRICAL EFFECTS</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Increases in existing noise levels?		x				
b. Exposure of people to serve or nuisance noise levels?		x				
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?		x				
d. Interference with radio or television reception and operation?		x				

7. <u>LAND USE</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?		x				
b. Conflicted with a designated natural area or area of unusual scientific or educational importance?		x				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		x				
d. Adverse effects on or relocation of residences?		x				

8. <u>RISK/HEALTH HAZARDS</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?		x				
b. Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?		x				
c. Creation of any human health hazard or potential hazard?		x				
d. For P-R/D-J, will any chemical toxicants be used? (Also see 8a)		x				

9. <u>COMMUNITY IMPACT</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?		x				
b. Alteration of the social structure of a community?		x				
c. Alteration of the level or distribution of employment or community or personal income?		x				
d. Changes in industrial or commercial activity?		x				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		x				

10. <u>PUBLIC SERVICES/TAXES/UTILITIES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Will the proposed action have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:		x				10.a.
b. Will the proposed action have an effect upon the local or state tax base and revenues?		x				
c. Will the proposed action result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		x				
d. Will the proposed action result in increased use of any energy source?			x			10.d.
e. Define projected revenue sources						
f. Define projected maintenance costs.						

10.a. The effects will be positive in nature as the project resolves current Health and Safety issues.

10.d. The proposed action will result in an increase of electricity usage.

11. <u>AESTHETICS/RECREATION</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		x				
b. Alteration of the aesthetic character of a community or neighborhood?		x				
c. Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report.)		x				
d. For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c.)		x				



12. <u>CULTURAL/HISTORICAL RESOURCES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?		x				
b. Physical change that would affect unique cultural values?		x				
c. Effects on existing religious or sacred uses of a site or area?		x				
d. For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a.)		x				

### SIGNIFICANCE CRITERIA

13. <u>SUMMARY EVALUATION OF SIGNIFICANCE</u> Will the proposed action, considered as a whole:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total.)		x				
b. Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?		x				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?		x				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		x				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		x				
f. For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e.)		x				

g. For P-R/D-J, list any federal or state permits required.						13.g.
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13.g. Permits listed above in section 7.

### PART III. NARRATIVE EVALUATION AND COMMENT

The proposed action is not expected to have negative cumulative effects on the physical and/or human environments.

Montana State Parks will fulfill its public safety duties by greatly reducing and terminating reoccurring septic overflows. By reducing health and safety concerns related to objectionable sights and smells of the fish cleaning station and increasing the supply of potable water, these improvements will contribute positively to the overall user experience at Hell Creek State Park. This project also complies with the long-range goals of MSP by raising park standards and having code compliant infrastructure through the provision of quality and diverse recreational experiences, which meets the Parks' Program Outcomes of protection and enhancement of public resources.

### PART IV. PUBLIC PARTICIPATION

#### 1. **Public involvement:**

The public will be notified in the following manners to comment on this current EA, the proposed action and alternatives:

Two public notices in each of these papers: Jordan Tribune, Billings Gazette, Helena IR, Miles City Star, Lewistown News-Argus.

Statewide press releases will be issued in addition to public notices on the Montana State Parks web page: <http://stateparks.mt.gov>.

#### 2. **Duration of comment period:**

The public comment period will extend for (30) thirty days. Written comments will be accepted until 5:00 p.m., Thursday, July 13, 2017 and can be mailed or emailed to the addresses below:

Hell Creek State Park Facility Improvements  
Hell Creek State Park  
PO Box 102  
Jordan, MT 59337

Email: [mmatheson@mt.gov](mailto:mmatheson@mt.gov)

## **PART V. EA PREPARATION**

- 1. Based on the significance criteria evaluated in this EA, is an EIS required? (YES/NO)? No**

Based on an evaluation of impacts to the physical and human environment under MEPA, this environmental review revealed no significant negative impacts from the proposed action; therefore an EIS is not necessary and an environmental assessment is the appropriate level of analysis in determining the significance of impacts.

- 2. Person(s) responsible for preparing the EA:**

Marina Matheson, Park Manager  
Hell Creek State Park  
P.O. Box 102  
Jordan, MT 59337  
406-557-2362

- 3. List of agencies or offices consulted during preparation of the EA:**

1. Great West Engineering
2. US Army Corps of Engineers



**APPENDIX A**  
23-1-110 MCA  
PROJECT QUALIFICATION CHECKLIST

**Date:** 01/01/2017

**Person Reviewing:** Marina Matheson

**Project Location:** Hell Creek State Park

**Description of Proposed Work:**

The following checklist is intended to be a guide for determining whether a proposed development or improvement is of enough significance to fall under 23-1-110 rules.

- ☐ A. New roadway or trail built over undisturbed land?  
Comments: *No, proposed roadway over existing fire break*
- ☐ B. New building construction (buildings <100 sf and vault latrines exempt)?  
Comments: *No, proposed building to be <100sf*
- ☒ C. Any excavation of 20 c.y. or greater?  
Comments: *Yes*
- ☐ D. New parking lots built over undisturbed land or expansion of existing lot that increases parking capacity by 25% or more?  
Comments: *No*
- ☐ E. Any new shoreline alteration that exceeds a doublewide boat ramp or handicapped fishing station?  
Comments: *No*
- ☐ F. Any new construction into lakes, reservoirs, or streams?  
Comments: *No*
- ☐ G. Any new construction in an area with National Registry quality cultural artifacts (as determined by State Historical Preservation Office)?  
Comments: *No*
- ☐ H. Any new above ground utility lines?  
Comments: *No*
- ☐ I. Any increase or decrease in campsites of 25% or more of an existing number of campsites?  
Comments: *No*
- ☐ J. Proposed project significantly changes the existing features or use pattern; including effects of a series of individual projects?  
Comments: *No*

# **Attachment**

**B-4**

HELL CREEK STATE PARK EA

PUBLIC COMMENTS

SUMMARY 07/22/2017

**Total comments received: 24**

**Comments supporting the need for the project: 8**

**Comments opposing the need for the project: 4**

**Comments that do not show support or opposition to the project: 12**

**Comments in support of the location: 1**

**Comments against the location: 12**

**Comments that do not show support or opposition to the location: 11**

**Comments voicing support of Hell Creek Marina and the lease "Leave them Alone": 16**

**General Themes:**

While there is more support than opposition for the need of the proposed project, half of the comments received voiced strong disapproval of the proposed location, due to the fact that the location is within Hell Creek Marina's 55 acre leased area. Sixteen comments mentioned Hell Creek Marina by name and the general need for Montana State Parks to work with the concessionaires and not against them. A majority of comments were angry in tone. One comment, from a licensed engineer, voiced concern over the use of sand filters as an outdated and inappropriate solution.



#### Comment

At \$18.00 a night for a resident to park a camper, with no water or electric, and prices going up from there, it is time to open the books on this facility so the public can see where the generated revenue is being spent.

Three quarters of a million dollars on a park you want to abandon?? Seems like a stupid idea to me. We do need a new Water and sewer system but What you failed to mention was it's on Hell Creek marina lease

The new water and sewer systems are most definitely needed! As far as location, I don't believe they should go on Hell Creek Marina's 55 acres of leased land considering MSP has over 200 acres of their own leased property to develop.

Marina, Thanks for talking with me the other day on the proposed septic system. My comments are as follows: After looking at the proposed site, which is on Hell Creek Marina's lease, I hope that something could be worked out with Hell Creek Marina such as a trade if that is the only suitable site. I think everyone agrees that a new septic is needed. Also, I hope that they would run the septic line from the fish cleaning station to the new septic field on the opposite side of the road from the Hell Creek Marina's lease. Thanks for letting us comment on this matter. Jim Muzynoski Office Phone: 406-585-2239 Cell Phone: 406-539-2069 Email: jimmuz@icemt.com

To whom it may concern, I am inputting my public comment about the draft of the Environmental Assessment (EA) For Improvement Project at Hell Creek State Park. I agree as a user of Hell Creek that the existing water tank, fish cleaning station, and septic system do need to be upgraded. With that said, all of the services mentioned above are provided and maintained by Hell Creek State Park, not Hell Creek Marina. The reason I bring up Hell Creek Marina is because as of right now, these proposed changes are planned to be taken place on part of the 55 acre lease that Hell Creek Marina is responsible for. Where the proposed upgrades are planned to be put in is on the 55 acre lease by Hell Creek Marina, where the marina is supposed to be able to upgrade & expand their own dry dock storage above the current fish cleaning station, and the flat of land below the Hell Creek Marina Owner's Residence. Hell Creek State Park has over 200 acres on their own lease that could and should be utilized for the proposed upgrades, instead of the acres on Hell Creek Marina's lease. Sincerely, Megan Thomas P.O. Box 238 Jordan, MT 59337 meganthomas568@gmail.com 406-852-3919

To whom it may concern, This letter is to submit my public comment about the draft concerning the Environmental Assessment for Improvement Project at Hell Creek State Park. Hell Creek State Park and Hell Creek Marina are both needed to satisfy the wide customer base that comes to the area. As of right now, the fish cleaning station, existing water tank, and septic system are due to be upgraded. The main concern I would like to address is the issue of where these expansions would take place. Currently, Hell Creek State Park has over 200 acres of land on their lease, whereas Hell Creek Marina has 55 acres. Yet, the proposed expansions as of right now are set up to be put onto the land that Hell Creek Marina leases. Since these expansions are services that are provided and managed by the Hell Creek State Park, I think that they should be placed on the land the park leases, and not the land that is leased by the marina. Sincerely, Layne Thomas P.O. Box 238 Jordan, MT 59337 laynethomas21@gmail.com 406-853-2981

It has been brought to my attention that the proposed improvements are intended to be placed on property being leased by Clint and Deb Thomas. Not only is it under their lease, but it would infringe on some of their main sources of income. This is not acceptable. My husband has camped at Hell Creek State Park every year of his life. He has continued that tradition with our two sons every year of their lives. Without the Marina, those trips would likely move to another park. We have used their cabins many times while the kids were small, we have rented their pontoon boat for days of fishing and fun, we buy food, drinks, tackle, and other items from them every trip, and we enjoy visiting with them every time we come. They are wonderful people trying to make a living in a beautiful place. Infringing on the rights of contract holders with leased property, especially when you have other viable options, is unacceptable. Make your improvements, but move them to your own leased land.

All existing contract agreements with the Thomases regarding the Hell Creek Marina need to be honored as to not impede their business. I am personally impressed with Clint's hospitality and the helpful nature he exudes to fishermen looking to find fishing success and enjoyment. A half lie is not a whole truth. Either the marina is first consideration in any improvements or all actions are a purposeful assault to the best stewards of that public use location.

MSP, please listen to us and our concerns.... My family fishes Fort Peck..... All existing contract agreements with the Thomases regarding the Hell Creek Marina need to be honored as to not impede their business. Either the marina is first consideration in any improvements or all actions are a purposeful assault to the best stewards of that public use location.

A new water tank? good. But why aren't you honoring the contract? Why are you trying to destroy our public rights? What our FW&P is doing is terrible. Your destroying our state. How about opening the land back up to the public? Nobody needs to be restricted to a small park like you have setup. It is not destroying the public land by letting the public use it. Remember when you could park up and down the shore line. Or you could pull into the campground and camp there at a very reasonable rate. Not the ridiculous charges you have now. Your doing a terrible job.

I oppose your improvements. Isn't Montana State Parks leaving their lease with the ACOE in 2021? If so why waste the taxpayer dollars! I do see that most of the money is coming from federal funds. How much more property is the state park system trying to take from the concessionaire? They do have a 55 acre lease! If you are replacing the fish cleaning station why don't you grind the fish waste and send it back into Ft Peck. That should not hurt anything and save the taxpayers a lot of money. I have been going to Hell Creek for 20 years, yes it has gotten busier over the years but it is only for a couple of months in the summer. I would much rather see you spend the money maintaining the Hell Creek road. For once I hope that the State Park system listens to the people who pay their wages, the tax payers of Montana!

If you want to make improvements at Hell Creek Park make those improvements on the State Park's 300 acres of lease land, NOT on Hell Creek Marina's lease land. If State Parks were good stewards of the Hell Creek Park they would never put the fish cleaning station improvements so close to the park where the prevailing west winds will carry the stink right into the park. State Parks needs to leave Hell Creek Marina's 55 acre lease alone.

We go to Hell Creek state park every year for our now 6 year old daughter, we fish and bring our RV , the people there are friends and have birthday with us for our Chloe, we would love to see the road improved !!! We ? Hell Creek and our many memories there and future ones!!! Chantz, Patty and Chloe Nelson Sidney,MT

We all know the intention is for MSP to confiscate the land. Please let the proprietors operate their businesses. Leave Hell Creek alone.

It is a gross overreach of power to put this septic system on the Hell Creek Marina lease. put it on the Montana State Parks lease.

Most importantly is the suggested location for the septic system is not on the Montana State Parks lease, it is directly on Hell Creek Marina's lease. That just isn't right. Plan ahead and pump regularly.

Please work with Clint and Deb at Hell Creek marina they have been terrific over the years. Very committed to supplying the area with what we need when visiting the area. It would be a tremendous loss without them.

I am not a resident of Montana but have family that are. I also lived in Montana as a child and visited Fort Peck many times as I still do. I am very upset with the way Hell's Creek Marina is being treated. To start with, why are you having a meeting on July 6 when public comments don't end until July 13th. That doesn't make any sense to anyone. Next, I thought a public entity contract was gospel. But the handling of their contract is not godly. Montana you are better than that so whoever is making these decisions needs to be removed so you can be respected again. The Thomases have been a very valuable asset to Hells Creek. They go out of their way to provide a good experience for the people enjoying your park. And let me tell you it is not cheap to use your faculties as it is a 5 hour drive just to get there on that miserable road. It would be impossible to run to Jordan for gas, small groceries, propane, etc. LEAVE THEM ALONE and pay attention to the things you can change. Such as, completely moving the fish station so the campgrounds doesn't stink so bad, by putting in a lot MORE electric first come sites. If you eliminated the reservations, you would get a lot more campsite income as they won't just be used on weekends and holidays. Most of us who drive hundreds of miles, would like to stay the whole 14 days but gets hard when you don't have water, sewer, or electric, especially if you are elderly or have babies. Fix the road, if you have so much control, fix the basted road. Gravel is fine, but when you can't go over 5 miles an hour without destroying your camper or boat that is crazy. When we were there in June, we could not get water for over a week be the fixture was broken. So there are lots of things you can to improve Hells Creek State Park but leave the folks at the marina have their 55 acres ALONE. Linda Clemens

I think the proposed plan is needed for the park to continue to operate with as many people use the facilities. As long as the proposed items are put where designated in the proposal, and will not encroach on any existing structures, parking, or dry docks that is currently there.

If you take away the marina-- you will loose the visitors you have-- that park lives because of the marina.. otherwise-- Devil's Creek, or Bone Trail would be crowded-- all you really so naive to think to public who use the site can't see through your smoke screen..?? I've used the park since the 80's-- and the marina...spent money there...and Jordan, marina goes-- the dough goes also...

I have reviewed the draft EA for improvements to the Hell Creek State Park water storage and to address the proposed change for a pumping station and drainfield, etc for the fish cleaning station to help reduce the overload to the campground system. My initial thoughts are that I am very happy to see some propose changes to see some improvements to the Hell Creek State Park. In going through the proposed changes I do have some reservations and questions about the proposals: 1. It would seem prudent to look at these changes along with a long range plan for the State Park and Hell Creek Marina and potential future expansion of the dry dock, additional camping, etc. as I would expect future improvements and expansion over time.....especially when something is done to improve the access road. So I am wondering if what is proposed has considered what the long range plans and goals may be or if this is just a bandaide approach that would not fit in well with future plans? 2. Although I don't know exactly what is involved with these proposed changes I am wondering if the location of a new drainfield or treatment system located SW of the main campground is prudent or not. Will there be a problem with prevailing winds and odor in the main campground? If so, have alternative locations been considered? 3. I also have to wonder a bit about totally abandoning the current water supply storage. I saw comments about some issues with it, but apparently it is still functional and maybe it would be worth maintaining to provide some additional storage? It could even be used as a backup system? 4. Could the individuals involved with the Outfitter camp be allowed to hook into the system....there are 4 Camp spots that were recently developed at the expense of the outfitters....with a parking pad and electricity but it would be nice to have a sewer hookup. Bottom line, with hearing all the issues over the past couple of years on how the State apparently doesn't want to continue managing the Hell Creek State Park and is threatening to terminate or not renew the lease with the Corp of Engineers, it is very frustrating to not see plans for long term. This area is too popular and access to the lake is so limited that whether or not the State manages it or not, someone will so long term plans and future development should be considered now so what is done now, will work with future plans.



Dear Marina: My name is Thomas J. Kallenbach. I am a licensed professional engineer in the state of Montana and manufacturer of Eliminite advanced wastewater systems. We are perhaps the largest manufacturer of wastewater treatment systems in the state and have a great deal of experience working with high-strength wastewater. Prior to incorporating Eliminite in 2004, I operated a consulting engineering firm in Bozeman that specialized in decentralized infrastructure, with specific emphasis on wastewater treatment systems. I have read the current Hell Creek EA, spoken to several people in the state park system regarding the fish cleaning station and have offered my opinion. I am firmly opposed to the option the state park is pursuing to manage wastewater at Hell Creek for several reasons. 1) The wastewater generated from macerated fish parts will be characterized by a high BOD, high TSS and high nitrogen. Scales, bone and skin will clog treatment system components regularly. Therefore, the system proposed cannot be regarded as passive but rather will require regular, invasive maintenance just to keep the liquid flowing. In my experience working with the state park system, this maintenance will not be conducted and the system will fail.

2) Previously, a sand filter was installed at this site for wastewater treatment. The sand filter likely failed soon after it was put into service because a sand filter is simply not the appropriate technology for this type of wastewater. I base this opinion on my 20+ years of experience working in the decentralized wastewater treatment industry, having been called upon countless times to assess failed systems—often sand filters—and propose appropriate replacements/upgrades to match specific site requirements and treatment demands. The nature of this high strength wastewater will cause microorganisms to grow. As they grow, they generate a biofilm which will have the effect of clogging the tiny interstitial pore spaces between the grains of sand. Air, vital to the treatment process, will not be able to move through the sand bed and the treatment will cease. Sand bed hydraulic failure will follow. Sand filters were fairly popular in Montana in years past. Currently, however, it is generally accepted that sand filters are not a sufficiently robust technology for many applications given Montana's harsh climate. The DEQ removed sand filters from Level 2 consideration after an extensive, DNRC-sponsored 16-month field study revealed several key shortcomings. As a result, very few new sand filters are being installed and, as you are experiencing, old ones are being removed and replaced. In my opinion, the mere consideration of a sand filter as an option to treat this type of unique wastewater demonstrates a fundamental lack of scientific and engineering experience with high strength wastewater and sand filters in the onsite treatment context. In other words, the sand filter option should have been abandoned immediately for this application. 3) The cost for the individual components is not broken out (or perhaps I did not see an itemization) so I cannot comment directly on the cost of the sand filter. I imagine it represents a significant portion of the \$750,000+ price tag. In my experience the state park system barely has enough of a budget to clean an effluent filter or collect a BOD sample for analysis, let alone fund long-term operation and maintenance practices that would be necessary in this context. Therefore, in my opinion, spending this much money on a treatment system that will require a good deal of maintenance and ultimately fail anyway, is a reckless waste of taxpayer money considering how cash-strapped the park system already is. As stated above, I manufacture advanced wastewater systems but I am not attempting to make a case for the park to use my technology. To the contrary, when I was contacted about this project, I advised park employees to not use any treatment system because the Montana park system is simply not equipped to manage the type of treatment system that would be required to provide long-term, reliable results. Furthermore, a treatment system is simply not necessary because the waste is a naturally occurring by-product of recreational fishing. If the waste has become a nuisance, there are other more viable options for managing the waste than attempting to apply it to a sand filter. Sincerely, Thomas J. Kallenbach, P.E.

The EA does not clearly state what the fate of the fish cleaning wastewater will be; only that it will be removed from the primary system and will have a separate system designed to handle the unique wastewater. Because the system is yet undetermined, there seems to be no way to assess its' impact. I design, sell, and install onsite wastewater treatment systems in MT. I have been contacted by engineering firms regarding treatment of fish cleaning station waste and have looked into possibilities. The reality is that it is extremely difficult and very expensive to effectively treatment waste from fish cleaning stations. The State needs to know the type and cost of the system before proceeding. Justin Buchanan 88 Laura Ct Bozeman, MT 59718

Email	Time	Need: Yes/No	Location: Yes/No	HCM Mentioned	Other Mentions	Comment
<a href="mailto:jamesvastbinder@hotmail.com">jamesvastbinder@hotmail.com</a>	Fri 6/16/2017 8:38 PM			No	Prices	At \$18.00 a night for a resident to park a camper, with no water or electric, and prices going up from there, it is time to open the books on this facility so the public can see where the generated revenue is being spent.
<a href="mailto:nelconst@mldrivers.com">nelconst@mldrivers.com</a>	Sat 6/24/2017 9:10 PM	No		No		Three quarters of a million dollars on a park you want to abandon?? Seems like a stupid idea to me. We do need a new Water and sewer system but What you failed to mention was it's on Hell Creek marina lease
<a href="mailto:Kaylaestes91@gmail.com">Kaylaestes91@gmail.com</a>	Mon 6/26/2017 1:36 PM	Yes	No	Yes		The new water and sewer systems are most definitely needed! As for the location, I don't believe they should go on Hell Creek Marina's 55 acres of leased land considering MSP has over 200 acres of their own leased property to develop.
<a href="mailto:manescape613@gmail.com">manescape613@gmail.com</a>	Mon 6/26/2017 3:20 PM	Yes	No	Yes		Marina, Thanks for talking with me the other day on the proposed septic system. My comments are as follows: After looking at the proposed site, which is on Hell Creek Marina's lease, I hope that something could be worked out with Hell Creek Marina such as a trade if that is the only suitable site. I think everyone agrees that a new septic is needed. Also, I hope that they would run the septic line from the fish cleaning station to the new septic field on the opposite side of the road from the Hell Creek Marina's lease. Thanks for letting us comment on this matter. Jim Muzynski Office Phone: 406-585-2239 Cell Phone: 406-539-2069 Email: jimmuz@lcmnt.com
<a href="mailto:jim.muzynski@lcmnt.com">jim.muzynski@lcmnt.com</a>	Wed 6/28/2017 7:58 AM	Yes	No	Yes		To whom it may concern, I am inputting my public comment about the draft of the Environmental Assessment (EA) For Improvement Project at Hell Creek State Park. I agree as a user of Hell Creek that the existing water tank, fish cleaning station, and septic system do need to be upgraded. With that said, all of the services mentioned above are provided and maintained by Hell Creek State Park, not Hell Creek Marina. The reason I bring up Hell Creek Marina is because as of right now, these proposed changes are planned to be taken place on part of the 55 acre lease that Hell Creek Marina is responsible for. Where the proposed upgrades are planned to be put in is on the 55 acre lease by Hell Creek Marina, where the marina is supposed to be able to upgrade & expand their own dry dock storage above the current fish cleaning station, and the flat of land below the Hell Creek Marina Owner's Residence. Hell Creek State Park has over 200 acres on their own lease that could and should be utilized for the proposed upgrades, instead of the acres on Hell Creek Marina's lease. Sincerely, Megan Thomas P.O. Box 238 Jordan, MT 59337 meganthomas568@gmail.com 406-652-3919
<a href="mailto:meganthomas568@gmail.com">meganthomas568@gmail.com</a>	Wed 6/28/2017 10:07 AM	Yes	No	Yes		To whom it may concern, This letter is to submit my public comment about the draft concerning the Environmental Assessment for Improvement Project at Hell Creek State Park. Hell Creek State Park and Hell Creek Marina are both needed to satisfy the wide customer base that comes to the area. As of right now, the fish cleaning station, existing water tank, and septic system are due to be upgraded. The main concern I would like to address is the issue of where these expansions would take place. Currently, Hell Creek State Park has over 200 acres of land on their lease, whereas Hell Creek Marina has 55 acres. Yet, the proposed expansions as of right now are set up to be put onto the land that Hell Creek Marina leases. Since these expansions are services that are provided and managed by the Hell Creek State Park, I think that they should be placed on the land the park leases, and not the land that is leased by the marina. Sincerely, Layne Thomas P.O. Box 238 Jordan, MT 59337 laynethomas21@gmail.com 406-653-2981
<a href="mailto:laynethomas21@gmail.com">laynethomas21@gmail.com</a>	Wed 6/28/2017 5:37 PM	Yes	No	Yes		It has been brought to my attention that the proposed improvements are intended to be placed on property being leased by Clint and Deb Thomas. Not only is it under their lease, but it would infringe on some of their main sources of income. This is not acceptable. My husband has camped at Hell Creek State Park every year of his life. He has continued that tradition with our two sons every year of their lives. Without the Marina, those trips would likely move to another park. We have used their cabins many times while the kids were small, we have rented their pontoon boat for days of fishing and fun, we buy food, drinks, tackle, and other items from them every trip, and we enjoy visiting with them every time we come. They are wonderful people trying to make a living in a beautiful place. Infringing on the rights of contract holders with leased property, especially when you have other viable options, is unacceptable. Make your improvements, but move them to your own leased land.
<a href="mailto:mrs.s.tuma@gmail.com">mrs.s.tuma@gmail.com</a>	Fri 6/30/2017 5:39 AM	Yes	No	Yes		All existing contract agreements with the Thomases regarding the Hell Creek Marina need to be honored as to not impede their business. I am personally impressed with Clint's hospitality and the helpful nature he extends to fishermen looking to find fishing success and enjoyment. A half lie is not a whole truth. Either the marina is first consideration in any improvements or all actions are a purposeful assault to the best stewards of that public use location.
<a href="mailto:josh@prettyprettvnc.com">josh@prettyprettvnc.com</a>	Fri 6/30/2017 7:36 AM		No	Yes		MSP, please listen to us and our concerns.... My family fishes Fort Pack..... All existing contract agreements with the Thomases regarding the Hell Creek Marina need to be honored as to not impede their business. Either the marina is first consideration in any improvements or all actions are a purposeful assault to the best stewards of that public use location.
<a href="mailto:pkparcel@gmail.com">pkparcel@gmail.com</a>	Fri 6/30/2017 10:02 AM			Yes		A new water tank? good. But why aren't you honoring the contract? Why are you trying to destroy our public rights? What our FW&P is doing is terrible. Your destroying our state. How about opening the land back up to the public? Nobody needs to be restricted to a small park like you have setup. It is not destroying the public land by letting the public use it. Remember when you could park up and down the shore line. Or you could pull into the campground and camp there at a very reasonable rate. Not the ridiculous charges you have now. Your doing a terrible job.
<a href="mailto:bkallam@mt.net">bkallam@mt.net</a>	Fri 6/30/2017 1:58 PM	Yes				

<a href="mailto:kitt_jimnefall@hotmail.com">kitt_jimnefall@hotmail.com</a>	Fri 6/30/2017 10:19 PM	No	Yes	Road	<p>I oppose your improvements, isn't Montana State Parks leaving their lease with the ACOE in 2021? If so why waste the taxpayer dollars? I do see that most of the money is coming from federal funds. How much more property is the state park system trying to take from the concessionaire? They do have a 55 acre lease! If you are replacing the fish cleaning station why don't you grind the fish waste and send it back into Ft Peck. That should not hurt anything and save the taxpayers a lot of money. I have been going to Hell Creek for 20 years, yes it has gotten busier over the years but it is only for a couple of months in the summer. I would much rather see you spend the money maintaining the Hell Creek road. For once I hope that the State Park system listens to the people who pay their wages, the tax payers of Montana!</p> <p>If you want to make improvements at Hell Creek Park make those improvements on the State Park's 300 acres of lease land, NOT on Hell Creek Marina's lease land. If State Parks were good stewards of the Hell Creek Park they would never put the fish cleaning station improvements so close to the park where the prevailing west winds will carry the stink right into the park. State Parks needs to leave Hell Creek Marina's 55 acre lease alone.</p> <p>We go to Hell Creek state park every year for our now 6 year old daughter, we fish and bring our RV, the people there are friends and have birthday with us for our Chloe, we would love to see the road improved !!! We ? Hell Creek and our many memories there and future ones!!! Chantz, Patty and Chloe Nelson Sidney, MT</p> <p>We all know the intention is for MSP to confiscate the land. Please let the proprietors operate their businesses. Leave Hell Creek alone.</p> <p>It is a gross overreach of power to put this septic system on the Hell Creek Marina lease, put it on the Montana State Parks lease.</p> <p>Most importantly is the suggested location for the septic system is not on the Montana State Parks lease, it is directly on Hell Creek Marina's lease. That just isn't right. Plan ahead and pump regularly.</p> <p>Please work with Clint and Deb at Hell Creek marina they have been terrific over the years. Very committed to supplying the area with what we need when visiting the area. It would be a tremendous loss without them.</p>
<a href="mailto:jemil@midrivers.com">jemil@midrivers.com</a>	Mon 7/3/2017 12:35 PM	No	Yes		
<a href="mailto:hoytatkines@gmail.com">hoytatkines@gmail.com</a>	Mon 7/3/2017 6:51 PM		No	Road	
<a href="mailto:chad@bar-X.com">chad@bar-X.com</a>	Tue 7/4/2017 3:02 PM	No	No	Yes	
<a href="mailto:fishfortpeck@gmail.com">fishfortpeck@gmail.com</a>	Tue 7/4/2017 4:30 PM	No	Yes		
<a href="mailto:Marybethkibler@yahoo.com">Marybethkibler@yahoo.com</a>	Tue 7/4/2017 4:33 PM	No	Yes		
<a href="mailto:Billf@universalotg.com">Billf@universalotg.com</a>	Wed 7/5/2017 11:16 AM		Yes		
<a href="mailto:lclemens@rangaweb.net">lclemens@rangaweb.net</a>	Wed 7/5/2017 5:38 PM	No	Yes	<p>Move fish cleaning station. Eliminate Reservations , Fix Road.</p>	<p>I am not a resident of Montana but have family that are. I also lived in Montana as a child and visited Fort Peck many times as I still do. I am very upset with the way Hell's Creek Marina is being treated. To start with, why are you having a meeting on July 6 when public comments don't end until July 13th. That doesn't make any sense to anyone. Next, I thought a public entity contract was gospel. But the handling of their contract is not godly. Montana you are better than that so whoever is making these decisions needs to be removed so you can be respected again. The Thomases have been a very valuable asset to Hell's Creek. They go out of their way to provide a good experience for the people enjoying your park. And let me tell you it is not cheap to use your facilities as it is a 5 hour drive just to get there on that miserable road. It would be impossible to run to Jordan for gas, small groceries, propane, etc. LEAVE THEM ALONE and pay attention to the things you can change. Such as, completely moving the fish station so the campgrounds doesn't stink so bad, by putting in a lot MORE electric first come sites. If you eliminated the reservations, you would get a lot more campsites income as they won't just be used on weekends and holidays. Most of us who drive hundreds of miles, would like to stay the whole 14 days but gets hard when you don't have water, sewer, or electric, especially if you are elderly or have babies. Fix the road, if you have so much control, fix the blasted road. Gravel is fine, but when you can't go over 5 miles an hour without destroying your camper or boat that is crazy. When we were there in June, we could not get water for over a week be the fixture was broken. So there are lots of things you can improve Hell's Creek State Park but leave the folks at the marina have their 55 acres ALONE. Linda Clemens I think the proposed plan is needed for the park to continue to operate with as many people use the facilities. As long as the proposed items are put where designated in the proposal, and will not encroach on any existing structures, parking, or dry docks that is currently there.</p> <p>If you take away the marina-- you will loose the visitors you have-- that park lives because of the marina... otherwise-- Devil's Creek, or Bone Trail would be crowded-- all you really so naive to think to public who use the site can't see through your smoke screen...?? I've used the park since the 80's-- and the marina...spent money there...and Jordan, marina goes-- the dough goes also...</p>
<a href="mailto:kaciaraekillen@gmail.com">kaciaraekillen@gmail.com</a>	Wed 7/5/2017 10:41 PM	Yes	Yes	No	
<a href="mailto:leschrenberg@hotmail.com">leschrenberg@hotmail.com</a>	Fri 7/7/2017 10:12 AM		Yes		



I have reviewed the draft EA for improvements to the Hell Creek State Park water storage and to address the proposed change for a pumping station and drainfield, etc for the fish cleaning station to help reduce the overload to the campground system. My initial thoughts are that I am very happy to see some proposed changes to see some improvements to the Hell Creek State Park. In going through the proposed changes I do have some reservations and questions about the proposals: 1. It would seem prudent to look at these changes along with a long range plan for the State Park and Hell Creek Marina and potential future expansion of the dry dock, additional camping, etc. as I would expect future improvements and expansion over time.....especially when something is done to improve the access road. So I am wondering if what is proposed has considered what the long range plans and goals may be or if this is just a bandaid approach that would not fit in well with future plans? 2. Although I don't know exactly what is involved with these proposed changes I am wondering if the location of a new drainfield or treatment system located SW of the main campground is prudent or not, WRT there be a problem with prevailing winds and odor in the main campground? If so, have alternative locations been considered? 3. I also have to wonder a bit about totally abandoning the current water supply storage. I saw comments about some issues with it, but apparently it is still functional and maybe it would be worth maintaining to provide some additional storage? It could even be used as a backup system? 4. Could the individuals involved with the Outfitter camp be allowed to hook into the system....there are 4 Camp spots that were recently developed at the expense of the outfitters....with a parking pad and electricity but it would be nice to have a sewer hookup. Bottom line, with hearing all the issues over the past couple of years on how the State apparently doesn't want to continue managing the Hell Creek State Park and is threatening to terminate or not renew the lease with the Corp of Engineers, it is very frustrating to not see plans for long term. This area is too popular and access to the lake is so limited that whether or not the State manages it or not, someone will so long term plans and future development should be considered now so what is done now, will work with future plans.

[MrWalleyeLLC@gmail.com](mailto:MrWalleyeLLC@gmail.com)

Sun 7/9/2017 12:07 PM

Dear Marina: My name is Thomas J. Kallenbach. I am a licensed professional engineer in the state of Montana and manufacturer of Eliminite advanced wastewater systems. We are perhaps the largest manufacturer of wastewater treatment systems in the state and have a great deal of experience working with high-strength wastewater. Prior to incorporating Eliminite in 2004, I operated a consulting engineering firm in Bozeman that specialized in decentralized infrastructure, with specific emphasis on wastewater treatment systems. I have read the current Hell Creek EA, spoken to several people in the state park system regarding the fish cleaning station and have offered my opinion. I am firmly opposed to the option the state park is pursuing to manage wastewater at Hell Creek for several reasons. 1) The wastewater generated from processed fish parts will be characterized by a high BOD, high TSS and high nitrogen. Scales, bone and skin will clog treatment system components regularly. Therefore, the system proposed cannot be regarded as passive but rather will require regular, invasive maintenance just to keep the liquid flowing. In my experience working with the state park system, this maintenance will not be conducted and the system will fail. 2) Previously, a sand filter was installed at this site for wastewater treatment. The sand filter likely failed soon after it was put into service because a sand filter is simply not the appropriate technology for this type of wastewater. I base this opinion on my 20+ years of experience working in the decentralized wastewater treatment industry, having been called upon countless times to assess failed systems, often sand filters, and propose appropriate replacements/upgrades to match specific site requirements and treatment demands. The nature of this high strength wastewater will cause microorganisms to grow. As they grow, they generate a biofilm which will have the effect of clogging the tiny interstitial pore spaces between the grains of sand. Air, vital to the treatment process, will not be able to move through the sand bed and the treatment will cease. Sand bed hydraulic failure will follow. Sand filters were fairly popular in Montana in years past. Currently, however, it is generally accepted that sand filters are not a sufficiently robust technology for many applications given Montana's harsh climate. The DEQ removed sand filters from level 2 consideration after an extensive, DNRC-sponsored 16-month field study revealed several key shortcomings. As a result, very few new sand filters are being installed and, as you are experiencing, old ones are being removed and replaced. In my opinion, the mere consideration of a sand filter as an option to treat this type of unique wastewater demonstrates a fundamental lack of scientific and engineering experience with high strength wastewater and sand filters in the onsite treatment context. In other words, the sand filter option should have been abandoned immediately for this application. 3) The cost for the individual components is not broken out (or perhaps I did not see an itemization) so I cannot comment directly on the cost of the sand filter. I imagine it represents a significant portion of the \$750,000+ price tag. In my experience the state park system barely has enough of a budget to clean an effluent filter or collect a BOD sample for analysis, let alone fund long-term operation and maintenance practices that would be necessary in this context. Therefore, in my opinion, spending this much money on a treatment system that will require a good deal of maintenance and ultimately fail anyway, is a reckless waste of taxpayer money considering how cash-strapped the park system already is. As stated above, I manufacture advanced wastewater systems but I am not attempting to make a case for the park to use my technology. To the contrary, when I was contacted about this project, I advised park employees to not use any treatment system because the Montana park system is simply not equipped to manage the type of treatment system that would be required to provide long-term, reliable results. Furthermore, a treatment system is simply not necessary because the waste is a naturally occurring by-product of recreational fishing. If the waste has become a nuisance, there are other more viable options for managing the waste than attempting to apply it to a sand filter. Sincerely, Thomas J. Kallenbach, P.E.

[tjk@mail.eliminite.com](mailto:tjk@mail.eliminite.com)

Thu 7/13/2017 10:34 AM

No

No

[justin.eoninw@gmail.com](mailto:justin.eoninw@gmail.com)

Thu 7/13/2017 2:19 PM

Not  
sufficient  
Information

The EA does not clearly state what the fate of the fish cleaning wastewater will be; only that it will be removed from the primary system and will have a separate system designed to handle the unique wastewater. Because the system is yet undetermined, there seems to be no way to assess its impact. I design, sell, and install onsite wastewater treatment systems in MT. I have been contacted by engineering firms regarding treatment of fish cleaning station waste and have looked into possibilities. The reality is that it is extremely difficult and very expensive to effectively treatment waste from fish cleaning stations. The State needs to know the type and cost of the system before proceeding. Justin Buchanan 88 Laura Ct Bozeman, MT 59718



# **Attachment**

**B-5**



2300 Lake Elmo Drive  
Billings, MT 59105

## NOTICE OF DECISION

August 14, 2017

To the Interested Public and Agencies:

A Draft Environmental Assessment (EA) was prepared for proposed domestic water storage and septic upgrades at Hell Creek State Park (HCSP). The draft EA was circulated for 30 days and legal notices were published in the Jordan Tribune, Billings Gazette, Helena Independent Record, Miles City Star and the Lewistown News-Argus as well as posted on the Montana State Parks website.

24 total public comments were received. We thank those that made comments and these comments are noted. Comments received expressed disagreement regarding the proposed locations of the infrastructure improvements within Hell Creek Marina's 55-acre concession area. Several comments voiced concern over details of the private engineering consultant's provided design of the septic system. Responses to specific comments are included below. Comments outside the scope of the proposed project are not addressed here in this decision. Several comments were made regarding the county road to Hell Creek State Park. \$2.0 million of state parks funding has been allocated by the Montana Legislature to the Montana Department of Transportation/Garfield County to make improvements to the Hell Creek Road.

Montana Fish, Wildlife & Parks (FWP) has decided that proceeding with the proposed public health and safety infrastructure upgrades is the preferred alternative; to replace and relocate the public water storage system serving the park and to remove the fish cleaning station from the existing system and construct a dedicated septic treatment system. Both are priority public health and safety infrastructure improvement projects identified in two independent consultant reviews of the public facilities at HCSP. The infrastructure locations will be as shown in the environmental assessment.

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 (406) 247-2954. Thanks for your interest in Hell Creek State Park.

Sincerely,

Douglas D. Habermann  
Regional Parks Manager



## **Public Comment Responses**

Comments received more than once are responded to together. Comments are paraphrased, in some cases, to allow one response.

1. **Cost of the project and future management of Hell Creek State Park.** A private engineering consultant firm prepared the estimates for the proposed infrastructure improvements. Due to the remote location of the site, the public bidding and contracting requirements, and the short construction season available to minimize impacts to park visitors, construction costs are higher than in urban areas of Montana. The Montana State Parks and Recreation Board has approved moving forward with this project as essential for the health and safety of the public and FWP employees. The project design was done with cost as a primary determinate factor. The 2015 Montana Legislature approved funding for infrastructure improvements at HCSP. Regardless of future operation and management, the public, including park visitors, overnight guests at the Hell Creek Marina, and staff require and should expect safe and reliable drinking water and septic service. These infrastructure improvements will benefit the visitors at Hell Creek, including those using concession services, for decades into the future.
2. **The improvements should not be located on the identified Concessionaire area.** FWP is granted use of 337 acres by the USACE for “public and recreational purposes” via Contract No. DACW45-1-93-6035. The agreement includes a listing of anticipated improvements on this 337 acres (Appendix C – Development Plan). The agreement between the Hell Creek Marina (HCM) and FWP grants the HCM the right to provide exclusive commercial services to the public as identified in the contract. The contract does not preclude FWP from installing necessary site infrastructure and utilities in areas of the 55 acres for other purposes that are reasonable. As depicted on Attachment A of the contract, numerous site infrastructure improvements are identified and documented in the concession contract (originally awarded in 1999). Park roads, the fish cleaning station and RV dump station, the water well and portions of the existing water and septic system are within that area. The locations identified have been determined to be both the most feasible and economic locations and to have the least impact on the park visitors, including park visitors utilizing concession services. Most of the utility infrastructure improvements will be buried and not preclude future expansion of concession operations. The upgraded public water system will be able to serve the concession operation, which is required by state law and the USACE to be potable.
3. **Why isn’t the system located elsewhere on FWP lease land?** The system needs to be proximate to the point of use both to reduce initial costs as well as make maintenance easier and less expensive. The 2015 Hell Creek State Park Master Site and Management Plan identified that only 15 percent of the park (excluding the concession area) as suitable for development and found that very little of that area has not been utilized. The 20,000-gallon water cistern will be buried and the septic drain field will be located on the most suitable location.

4. **The improvements would infringe on the HCM's main source of income.**  
The improvements are not located where any concession operations are currently occurring.
5. **What are the future plans for Hell Creek?** Although this comment is outside the scope of the project, this is a reasonable question. The immediate health and safety needs and benefit to the visitors of Hell Creek State Park are being addressed by this project. The lease arrangement between the USACE and MFWP extends through April 30, 2021.
6. **Why abandon the old system and could it be kept as a backup?** As determined by two independent engineering studies, the current system is past its usable life and only would require additional costs to keep it, even as a backup system. The cistern is in an exposed and highly erodible location.
7. **Can the outfitter camps be hooked into the system?** Yes. The HCM provides water to the outfitter camps and this would ensure that that water is potable and safe to drink and use.
8. **Engineering and design concerns.** A professional engineering firm has been retained for the project per State statute requirements. All proposed design solutions for the proposed public water and sewer system infrastructure improvements will be reviewed and approved by the Montana Department of Environmental Quality(DEQ) as is standard for public facilities.

This project is subject to appeal, which 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 FWP or participated in the decision-making process, and lay-out how FWP might address the concerns in the appeal.



# **Attachment**

**B-6**

To: Fish Wildlife and Parks Director  
Martha Williams  
1420 East Sixth Avenue; P.O. Box 200701  
Helena, MT 59620-0701

12 September 2017

I'm appealing the Notice of Decision dated 14 August 2017 signed by Douglas Habermann concerning Hell Creek State Park for the following reasons. I submitted comments with respect to FWP/MSP during the decision-making process. Those should be part of your records.

1. Montana State Parks was out of compliance of Montana State notice requirements; Notice for the comment period in the affected area was provided by the Jordan paper on 23 Jun 2017 comment period ended 13 July 2017 total time 20 days! No other signs or notice were evident in the affected area or community. These proposed changes include waste water, sewage and potable water and fall under DEQ rules of notification and public awareness, as well, and can be far more restrictive than Montana State Parks requirements of notification. This is a general legal requirement affecting constitutional rights to notice and participate in Montana state government decisions so my comments, and this appeal, really could not anticipate such an occurrence. Nonetheless, I suggest the only way of rectifying this problem is to vacate the decision and begin anew with a process that comports to Montana law.

2. In the Montana State parks para 2, of notice of decision dated August 14, 2017, but posted and publicly available August 15, 2017, Doug Habermann states there is no preclusion in the contract between Montana State Parks to prevent any development by Montana State Parks on the Thomases's 55-acre lease. In my assessment, there is no conclusion or verbiage that gives Montana State Parks the legal right to alter or remove any portions of the 55-acre lease in the contract to meet their current needs without a negotiated settlement! In addition, leases and landlord tenant agreements are also addressed in a multitude of other statutes in the Montana legal system, and Mr. Habermann has failed to take those statutes into consideration prior to rendering what amounts to his legal opinion and conclusion! Mr. Habermann is not an attorney, and any conclusions or interpretations of the contract should be made within the constraints of the Montana legal system. Because Mr. Habermann could not have reached such a decision, it lacked any legal review with respect to the controlling conclusions he reaches and are, at the very least, arbitrary in nature. Again, I did not comment on this, but I could not reasonably foresee that Mr. Habermann would act in such a manner and form such conclusions. I suggest this also requires that the process be restarted, and that the state's liability be assessed.

3. On July 6, 2017, at Montana State Park Board's meeting in Helena, MT, Assistant State Parks Director, Tom Reilly, was asked by a member of the Montana State Park Board if Montana State Parks could make any improvements or changes on the 55-acre lease held by Clint and Deb Thomas without the Thomas's permission! Mr. Reilly testified that, no, they could not make any changes or improvement on the 55-acres controlled by the Thomases without the Thomas's approval! As of September 12, 2017, there has been no legal decision reversing that statement of fact by Mr. Reilly. Because Mr. Habermann's conclusion is in direct conflict with the opinion of his own agency supervisor his conclusion defies logic and law. A decision with consistency and legal foundation needs to be reached by someone competent to make it.

4. para 4, of the above-mentioned letter. It states these improvements would not infringe on the Thomas's source of income. This is not a true statement. It lacks foundation and is not supported by any evidence. The locations that have been designated for the changes sit directly on the Thomas's 55-acre lease and will be placed directly on the area approved for expansion provided for the Thomases in the current contract. Again, any changes or decisions concerning this contract must be negotiated prior to any changes or improvements on the Thomas's 55 acre lease. MSP should discuss expansion plans with the concessionaire and include the public before reaching

such any baseless arbitrary decision with such long-term impacts. MSP can also agree to mitigate negative economic impacts by replacing encumbered areas or through better park management to increase usage.

5. Montana State Parks failed to address the expenditures of significant financial resource on a State Park that they do not own and intend on closing in 2021. "Montana State Parks (stateparks.mt.gov) announced today that the Division will relinquish management of Heli Creek State Park when the site lease agreement with the U.S. Army Core of Engineers (USACE) expires in 2021. The decision was approved by the Montana State Parks & Recreation Board at their December 16th meeting." The Public has not been made aware that any changes have been made concerning this decision.

6. Para. 3 indicates the "Montana Fish, Wildlife & Parks (FWP)" decided this was the "preferred alternative." The Notice and the EA posted on the same day. The MSP Board meeting for August 15, 2017, was cancelled and the matter was not decided at the July 6, 2017 meeting. Mr. Habermann's Notice provides no information for when and how this decision was reached. Who reached the decision and when? What was their authority given the fact that both MSP and FWP have citizen comprised boards empowered to reach, or at least advise and participate in, these decisions? I suggest you halt further activity regarding this decision until the correct Board or Commission can discuss the merits of the conclusion which will also provide an opportunity for public comment. I would also request that the completed environmental impact statement with a certified completion date be added to the record. After reviewing the time frame and Governor's action and minutes of Montana Park Board it is obvious that Montana Fish Wildlife and Parks (MTSP) personal had come to their conclusion prior to the comment period and commencing and those comments were never considered in the final decision which is a direct violation of Montana State law.

7. In conclusion, many of the findings in the Notice of Decision dated August 14, 2017 appear to be based on a legal interpretation of the Thomas's contract with the Montana Fish Wildlife and Parks. The author of the Notice of Decision dated 14, August 2017, to the best of my knowledge, does not hold a law degree and is not licensed to practice law in the State of Montana. Prior to these or any other changes moving forward that have such a significant impact on the said contract between Montana Fish Wildlife and Parks and the Thomases will need to be litigated to determine whose interpretation of the contract is correct.



James A. Gustafson  
Friends of Heli Creek  
President

Copy Provided;  
Governor Steve Bullock  
Attorney General, Tim Fox  
Milt Datsopoulos and Chris Gallus, Attorneys for Clint and Deb Thomas, HC Concessionaires



# **Attachment**

## **B-7**



**COPY**



MONTANA FWP

STATEPARKS.MT.GOV

THE **OUTSIDE** IS IN US ALL.

P.O. Box 200701  
Helena, MT 59620-0701  
406-444-3750  
FAX: 406-444-4952  
Ref: 092-18  
August 30, 2018

James A. Gustafson  
1245 Lariat Road  
Helena, MT 59602

**Re: Appeal of Hell Creek State Park Decision Notice**

Dear Mr. Gustafson:

We have received your appeal of the August 14, 2017 Decision Notice for the replacement of the potable water cistern and fish-cleaning station (FCS) septic system at Hell Creek State Park.

Before addressing the substance of your appeal, there are some noteworthy organizational changes that must be addressed. Your appeal is pursuant to a policy adopted by the Fish, Wildlife and Parks Commission in October of 1995 addressing the development of fishing access sites and state parks. Though the existing policy references the Fish, Wildlife, and Parks Commission, legislation was passed subsequently reorganizing that Commission and creating the Parks and Recreation Board ("Board"), which oversees matters related to Montana state parks. *See* Mont. Code Ann. §§ 2-15-3406 and 23-1-111. The Board now has the authority over this subject matter, and, accordingly, if you pursue an appeal, the final stage of review will be with the Board.

Similarly, the Department has also undergone several re-organizations since the policy was adopted. At the time of adoption, the respective regional supervisor oversaw park staff. That is no longer the case and, as a result, we have determined the regional supervisor in this instance is not an appropriate position to review this appeal. Nor is the regional park manager, Doug Habermann, the individual who drafted the Decision Notice, appropriate. Because of this, I am reviewing your appeal at the first level as the Montana State Parks Division Administrator.

Your appeal makes several contentions, which I will now address.

First, you argue that Montana State Parks did not comply with constitutional notice and participation requirements and ask that the process be restarted. I have consulted with FWP's legal counsel and do not agree that the public's rights of notice and participation were somehow violated here. As stated in the Decision Notice that you are appealing, the draft EA "was circulated for 30 days and legal notices were published in the Jordan Tribune, Billings Gazette, Helena Independent Record, Miles City Star, and the Lewistown News-Argus as well as posted on the Montana State Parks website." The process followed for this decision notice was consistent with FWP's practice for the dozens of EAs and Decision Notices issued each year. The project was initially presented to the Board as an agenda item October 15, 2014 prior to

the 2015 Legislative Session, where funding was sought via the Governor's proposed House Bill 5 capital budget. This project and Hell Creek State Park in general, has been discussed by the Board several times since the 2014 timeframe. The most recent time a funding decision for the current project was presented to the Board was as an agenda item February 16, 2017. At that meeting, the Board again approved the capital funding and proceeding with the project. Both times the Board approved the proposed project. Copies of the two agenda cover sheets for each of the respective Parks Board meetings, as well as the Board minutes from the February 16, 2017 meeting concerning the Hell Creek topic, are attached for your reference. FWP also sent out a press release announcing the public comment opportunity regarding the facility improvements project at Hell Creek State Park on June 13, 2017.

Your second, third, and fourth paragraphs are focused on the Thomases' lease ("the Lease"). You contend that by not gaining the Thomases' permission, Montana State Parks is in violation of the Lease and that Doug Habermann, Region 5 Parks Manager, made "legal conclusions" concerning the Lease. Second, you allege those conclusions were incorrect, and that they were contradicted by Tom Reilly, Acting Administrator for Montana State Parks, at the July 6, 2017, Board meeting. Though Montana State Parks frequently consults with our attorneys, I disagree with your contention that Mr. Habermann made "legal conclusions" in the Decision Notice. More importantly, after consulting with our legal staff, I disagree with you regarding the Lease terms. The Lease specifically recognizes the Department's right of access to the property "for the purpose of engaging in any activities deemed necessary for the construction, operation, and maintenance of the Reservoir, Hell Creek State Park, the concession, and all works and facilities appurtenant thereto or for any other purpose authorized or required by law." Paragraph 36 of the Lease provides the Lease may not be modified except in writing and by signature of the party, and Mr. Reilly's – or any other employee's ad-hoc statement during a Board informational agenda item cannot modify the contract.

Your fourth paragraph also contends that the Decision Notice is a "baseless arbitrary decision" with "long-term impacts." I disagree. Montana State Parks followed the standard procedure for this type of project, carefully considered a reasonable number of alternatives and public comment, and made a decision as the result of that process. The reasoning for the decision, including reasons involving public health and safety, is outlined in the Decision Notice. Both the septic system and water cistern have been identified by two separate private consulting firms (Peaks-To-Plains and Great West Engineering) as critical for public health and safety and which must be addressed. The detailed reports are available. The existing 8,000-gallon metal water cistern has reached the end of its useful life and was sized/installed prior to the much of the park infrastructure it supports being built over the past decade. The FCS is on the septic system which serves the staff housing and comfort station, which it was not designed for. Extending the usable life of the current systems simply is not feasible. Within the 1999 concession area, numerous future infrastructure site improvements are identified including park roads, the fish cleaning station, RV dump station, the water well and portions of the existing water and septic system within that area. The locations identified have been determined to be both the most feasible and economic locations and to have the least impact on the park visitors, including park visitors utilizing concession services.

The ACOE has approved the proposed locations of the 20,000-gallon potable water cistern and the septic system for the FCS. Please reference the attached August 11, 2017 memo from the ACOE to FWP that states, "Section 6 of lease DACW45-1-93-6035, ensures the Lessee (MTFWP) shall have the right to erect additional structures and to furnish additional services in accordance with approved development plan. Nothing in Hell Creek Marina's sublease agreement with MTFWP for acreage within Hell Creek State Park shall affect, waive, modify or interpret in any manner whatsoever the terms, covenants and conditions of the Department of the Army Lease."

In your fifth paragraph, you state that Montana State Parks intends to close Hell Creek State Park in 2021. This is not the case. Over the past several years, Montana State Parks, community members, and stakeholders, have noted the issues present at Hell Creek State Park and explored various management options for the park. You are correct that Hell Creek State Park is operated by Montana State Parks subject to a lease with the Army Corps of Engineers ("Corps"). FWP has had numerous leases with the Corps dating back to the 1960's and the current lease expires in April, 2021. However, Montana State Parks has no plans to "close" Hell Creek State Park. There are two entire recreational seasons yet to occur before the current ACOE lease concludes.

Your sixth paragraph asks who was responsible for the decision notice and when. As I stated above, the project was initially presented to the Board as an agenda item October 15, 2014, and again as an agenda item February 16, 2017. Both times the Board approved the proposed project and associated capital funding commitments. As you are aware, the Decision Notice was issued on August 14, 2017.

Based upon the above, your appeal of the Department's Decision Notice for Hell Creek State Park is denied.

Sincerely,



Beth Shumate  
Administrator  
Montana State Parks

Attachments: Mont Code Ann. §§ 2-15-3406 and 23-1-111  
Parks and Recreation Board October 15, 2014 Meeting Cover Sheet  
Parks and Recreation Board February 16, 2017 Meeting Cover Sheet  
Parks and Recreation Board February 16, 2017 Meeting Minutes  
Army Corps of Engineers August 11, 2017 Memo



# Montana Code Annotated 2017

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 15. EXECUTIVE BRANCH OFFICERS AND AGENCIES

Part 34. Department of Fish, Wildlife, and Parks

## State Parks And Recreation Board -- Composition

**2-15-3406. State parks and recreation board -- composition.** (1) There is a state parks and recreation board.

(2) The board consists of five members appointed by the governor, as prescribed in **2-15-124**. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of state parks and outdoor recreational resources administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9.

(4) A person appointed to the board must be informed or experienced in the conservation and protection of state parks, heritage resources, natural resources, tourism promotion and development, or outdoor recreation.

(5) A vacancy on the board must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(6) The board is designated as a quasi-judicial board for purposes of **2-15-124**, except that the requirement that at least one member be an attorney does not apply.

**History:** En. Sec. 1, Ch. 235, L. 2013.



# Montana Code Annotated 2017

## TITLE 23. PARKS, RECREATION, SPORTS, AND GAMBLING

### CHAPTER 1. PARKS

#### Part 1. State Parks

## Powers And Duties Of Board -- Rulemaking -- Meetings

**23-1-111. Powers and duties of board -- rulemaking -- meetings.** (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the board shall:

- (a) set the policies and provide direction to the department for:
  - (i) the management, protection, conservation, and preservation of these properties, lands, and waters and their appropriate role relative to tourism and the economic health of Montana;
  - (ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, boating, and swimming;
- (b) work with the commission to maintain hunting and angling opportunities on these lands and waters;
- (c) establish the rules of the department governing the use of these properties and lands. The rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating recreation, including picnicking, camping, and swimming, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.
- (d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters by the department, except as provided in **87-1-209(4)**;
- (e) review and approve the budget of the department for the administration of these properties, lands, and waters prior to its transmittal to the office of budget and program planning;
- (f) review and approve construction projects that have an estimated cost of more than \$5,000;
- (g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote recreational opportunities statewide; and
- (h) encourage citizen involvement in management planning for these properties, lands, and waters.

(2) Pursuant to **87-1-301(1)**, the board does not oversee department activities related to the administration of fishing access sites.

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board.

**History:** En. Sec. 2, Ch. 235, L. 2013.

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## MONTANA STATE PARKS AND RECREATION BOARD AGENDA ITEM COVER SHEET

**Meeting Date:** October 15, 2014

**Agenda Item:** Parks Capital Projects - 2015 Legislative Session

**Division:** Parks

**Action Needed:** Informational

**Time Needed on Agenda for this Presentation:** 10 min.

---

### Background:

Each Legislative Session funding is provided via the HB 5 process for capital improvements at State Parks sites throughout Montana. The anticipated Parks funding from the 2015 Legislative Session is expected to be;

\$70,800	Boat-In-Lieu	\$2,000,000	Highway Fuel
\$696,000	Parks 'Big Four'	\$1,300,000	Federal MBDJ

Parks capital projects planned for the upcoming biennium include;

▪ Logan SP – dock replacement/upgrade; electrification of the campground.	\$400,000
▪ Hell Creek SP – campsite reconfiguration; site upgrades.	\$1,500,000
▪ Madison Buffalo Jump SP – install access road to the upper viewing area.	\$75,000
▪ Finley Point SP – campsite reconfiguration, replace latrines; road improvements.	\$1,000,000
▪ Cooney State Park – access road upgrades.	\$500,000
▪ Park Major Maintenance Projects – two year's cycle.	<u>\$500,000</u>
	\$3,975,000

Note that the projects planned include those which will utilize the available Highway Fuel and Federal MBDJ funds. These funding sources are expected to be \$3.3 million. It is anticipated that the balance of the unallocated capital appropriation will be utilized on misc. project needs that occur, construction contingency, and similar uses.

### Public Involvement Process & Results:

With the exception of the pending future Parks Major Maintenance projects, each of the proposed capital projects will go through a separate Environmental Assessment (EA) and public involvement process. The majority of the annual Parks MM projects selected are typically excluded from the public comment process due to the routine nature of the work.

**Alternatives and Analysis:** N/A

**Agency Recommendation and Rationale:** N/A

### Proposed Motion:

This is an informational item to provide awareness and update the Board on the Parks Capital program. No Board action is required.





## MONTANA STATE PARKS AND RECREATION BOARD AGENDA ITEM COVER SHEET

**Meeting Date:** February 16, 2017

**Agenda Item:** Hell Creek State Park Capital Project

**Division:** Parks

**Action Needed:** Final

**Time Needed on Agenda for this Presentation:** 20 min.

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### Background

Per policy, Board approval is required for proposed capital funding commitments exceeding \$5,000. This agenda item pertains to proceeding with proposed infrastructure improvements at Hell Creek SP. Specifically, replacement of the 8,000-gallon water storage tank serving the park (new = buried 25,000-gallon capacity) and installing a separate septic system for the high-volume Fish Cleaning Station (FCS). These are the highest priority infrastructure needs for the Hell Creek site.

An on-site water and sewer flow study was conducted in Summer 2016. This data is needed for designing the infrastructure upgrades and the DEQ permitting process.

The preliminary cost estimate for the work is \$634,000 (\$364,000 water storage and \$270,000 FCS septic). These consultant estimate include design fees.

Funding proposal is; \$579,738 (75% Fed. DJ) + \$193,246 (25% State) = \$772,984; say \$773,000 total (+20% est.).

Following the design, permitting, and bidding process, it is anticipated that the improvements would be constructed in Fall 2018. The new systems would be on-line and available for use beginning with the 2019 season. Associated with completing this project in late 2018, it is recommended that the Board consider clarifying its' decision on Hell Creek lease-type issues until the end of the summer 2019 season.

### Public Involvement Process & Results

If approved, the next step will involve the drafting of an Environmental Assessment for the proposed project, including a 30-day public comment period. An update would be provided at a future Board meeting.

### Alternatives and Analysis

Alt. #1 – approval of the proposed capital expenditures for the water storage tank and FCS septic system.

Alt. #2 – modified approval for the proposed capital expenditures for the two infrastructure projects.

### Agency Recommendation and Rationale

It is recommended that the Board approve the proposed capital funding commitments for the two projects.

### Proposed Motion

I move to approve the Parks Division's proposal to commit \$773, 000 in available capital funds to proceed with the water tank replacement and FCS septic system project at Hell Creek State Park. Additionally, I move to clarify that if there are decisions to be made concerning lease arrangements or terms in 2019 they will occur after the summer season, likely at the August 2019 Board meeting.

the policy instructs MSP to develop a naming strategy for MSP properties that is consistent with Classification and to present this strategy to the Montana State Parks Board.

The draft naming strategy was presented to the parks board in October 2016 and includes 4 primary designations: State Parks, State Heritage Sites, State Recreation Areas, and State Natural Areas. In addition, there will be an Undesignated Property category for properties that do not yet have a management plan and/or are not yet developed. At this time, the Board requested updates in December and February related to naming.

Since December, staff have been refining the criteria for each type of designation and working on design standards for the website, park brochures, and signage. The Classification and Prioritization Policy was the subject of a 31-day public comment period prior to its passage. Stakeholder engagement in the implementation of the policy is ongoing.

Acting Director Martha Williams indicated that it is best for Parks to determine what the statutes provide and exactly what the delineation of authority is in renaming policy. Chairman Towe asked for clarification on whether there is someone within the agency that is not supportive of renaming policy and indicated that he would be amenable to the policy going through legal for final approval. Chairman Towe indicated that if Paul Sihler has a problem with the renaming policy, he would like to be made aware of it because the division has done a great job with this plan and he does not want to see the agency intervene in its implementation.

Member Welch indicated that he is supportive of the plan and thinks it is imperative, as per the Strategic Plan, but would like to see the division begin working on the cost of implementation.

#### **10. Hell Creek State Park Capital Project**

Assistant Administrator Tom Reilly reported that per policy, Board approval is required for proposed capital funding commitments exceeding \$5,000. This agenda item pertains to proceeding with proposed infrastructure improvements at Hell Creek SP. Specifically, replacement of the 8,000-gallon water storage tank serving the park (new = buried 25,000-gallon capacity) and installing a separate septic system for the high-volume Fish Cleaning Station (FCS). These are the highest priority infrastructure needs for the Hell Creek site.

An on-site water and sewer flow study was conducted in Summer 2016. This data is needed for designing the infrastructure upgrades and the DEQ permitting process. The preliminary cost estimate for the work is \$634,000 (\$364,000 water storage and \$270,000 FCS septic). These consultant estimate include design fees. Funding proposal is; \$579,738 (75% Fed. DJ) + \$193,246 (25% State) = \$772,984; say \$773,000 total (+20% est.).

Following the design, permitting, and bidding process, it is anticipated that the improvements would be constructed in Fall 2018. The new systems would be on-line and available for use beginning with the 2019 season. Associated with completing this project in late 2018, it is recommended that the Board consider clarifying its' decision on Hell Creek lease-type issues until the end of the summer 2019 season. The project has no impact on the current concession lease at Hell Creek State Park.

If approved, the next step will involve the drafting of an Environmental Assessment for the proposed project, including a 30-day public comment period. An update would be provided at a future Board meeting.

Chairman Towe asked the status of the issue regarding the concessionaire's objection that a water tank be placed where he intends to put in campsites. Assistant Administrator Reilly indicated he would be working with the concessionaire directly to work out that issue.

Chairman Towe called for public comment on the agenda item. Teddy Robertson, a commissioner in Hell Creek Country, addressed the Board, indicating that she is aware of the problem at Hell Creek State Park. The park receives more than 30,000 visits per season. The marina is very important to the community, a small and not-well-funded community. The improvements have the potential to help things get progressively better. On behalf of the community and its board, Commissioner Robertson appreciates the effort of MSP to make improvements. Vice-Chairman Sexton indicated that the loss of the gas tax monies has a large impact on how much MSP can partner with the community on these improvements.

Representative Bridget Smith, House District 31, just north of Hell Creek State Park, addressed the Board to ask for help with the road to Hell Creek. Rep. Smith believes that if the road were improved, visits to the park could double, and that is extremely important to the residents of eastern Montana. Working with the existing concessionaire on his lease and contract is also very important, namely trying to get him a long-term lease. Rep. Smith also indicated she introduced a bill that would provide for a tax on soda pop that would go to Montana State Parks.

*Action: Member Welch moved to approve the Parks Division's proposal to commit \$773,000 in available capital funds to proceed with the water tank replacement and FCS septic system project at Hell Creek State Park. Motion carried unanimously.*

*Action: Vice-Chairman Sexton moved to clarify that if there are decisions to be made concerning lease arrangements or terms in 2019 they will occur after the summer season, at the August 2019 Board meeting. Motion carried unanimously.*

Chairman Towe, upon the arrival of Rep. Ken Holmlund, called for his comments after action was taken on this item. Rep. Holmlund indicated that he is happy a decision was made to update the water and sewer systems because it is crucial to maintaining the facility. His concern now lies with the road because he believes that visitation could rise to 50,000 from 30,000 if the road was improved. Rep. Holmlund contacted someone from Garfield County to get an estimate on the cost of fixing the road using magnesium chloride. The holes in the road would have to be filled before that step is taken. These steps may have to be taken in sections over several years, to afford it. Rep. Holmlund also expressed his concern over the reservation system because it reports that Hell Creek is full when it is not, causing people not to come to the park when it is not, in fact, full. Rep. Holmlund indicated that Montana Fish, Wildlife & Parks has a terrible reputation in eastern Montana because promises have been made that have not been kept by the agency. He urged the Board and FWP to follow through on any decisions or promises that are made.





DEPARTMENT OF THE ARMY  
OMAHA DISTRICT, CORPS OF ENGINEERS  
FORT PECK PROJECT OFFICE  
P.O. BOX 208  
FORT PECK, MONTANA 59223-0208

August 11, 2017

Marina Matheson  
Hell Creek State Park Manager  
Montana Fish, Wildlife and Parks  
PO Box 533  
Jordan, MT 59337

RE: Hell Creek State Park Water Cistern Replacement and Fish Cleaning Station Septic System Upgrade

Dear Ms. Matheson:

On March 9, 2017 the Fort Peck Project Office received via email the Draft Environmental Assessment for Hell Creek State Park Water Cistern Replacement and Fish Cleaning Station Septic System Upgrade. Our receipt of the EA included an invitation to participate in an on-the-ground meeting at Hell Creek State Park on Thursday March 16, 2017 to discuss locations, impacts, comments and concerns regarding this proposed project. The March 16, 2017 meeting was attended by MTFWP staff including: Melissa Baker, Darcy Yakoweshen and Marina Matheson; USACE staff including: Cindy Lott and myself; Hell Creek Marina Concessionaire: Clint Thomas and a surveyor from Great West Engineering. Initial discussions focused on the proposed water cistern location as it was agreed that the existing water tank was moving with ground slough and was not keeping up with demands during peak use times at Hell Creek State Park. There was a map available showing the proposed location for the new water tank and there were no objections made regarding the need for or location of the proposed upgraded water tank.

The majority of the meeting was spent discussing the location of the proposed drainfield for the new fish cleaning station septic system. Clint Thomas expressed his concern regarding the proposed drainfield location from the Draft EA dated March 9, 2017. He cited concerns of having the drainfield in the only buildable ground within the marina outgrant area and that the smell from the drainfield would bother campers. The original proposed location was directly south and east of the concessionaire's home. Melissa Baker noted that was the original location based on level ground and proximity to the fish cleaning station and that MTFWP would be open to looking at other locations. The group collectively walked through Hell Creek State Park to review and discuss 4 additional locations: the land north of the dump station between dry storage and concessionaire's entrance road, the current boat ramp parking lot, land near the intersection of the fire break and CMR road 452 and the hilltop southeast of park staff housing. All in attendance agreed that these locations would be considered, however factors such as soil type, topography, proximity to reservoir and cost would influence the final decision for the proposed drainfield location.

On May 30, 2017 Fort Peck Project Office received the Environmental Assessment for the above mentioned project dated May 22, 2017. This office is in support of the proposed location and addition of the larger water tank that will better serve Hell Creek State Park customers, including the Hell Creek Marina. On September 7, 2016 Clint Thomas, Hell Creek Marina concessionaire received a MT DEQ violation letter for failure to filter and disinfect a surface water source which meets the treatment technique requirements. The marina was issued a boil water order until the marina could: 1. Design, construct and operate a water treatment

plant. 2. Find a new groundwater source not under the direct influence of surface water, or 3. Make arrangements to re-connect to the Hell Creek State Park Public Water Supply System. On January 5, 2017 Territorial Landworks, Inc. on behalf of Clint Thomas, provided a copy of the Hell Creek Marina compliance schedule and water system history. Hell Creek Marina determined the quickest and most cost effective solution to get potable water to the marina was to re-connect to Hell Creek State Park's public water system. Fort Peck Project would like to see Hell Creek Marina come in to compliance as soon as possible and provide a compliant public water system to its customers. The proposed 25,000 gallon water tank would allow Hell Creek State Park to supply adequate water to its customers in addition to meeting the water needs of Hell Creek Marina which would also bring the marina into compliance with Montana DEQ requirements.

Fort Peck Project is in agreement with the proposed sewer forcemain location leading from the existing fish cleaning station traveling along the roadway, paralleling existing utilities within a common corridor, and ending up at the drainfield site near the intersection of the fire break and CMR road 452. The existing drainfield serving all of Hell Creek State Park Campground, the R.V. dump station and the fish cleaning station is inadequate and removing the fish cleaning station from this system will alleviate the overburdened system. Fort Peck Project also agrees that the proposed location for the drainfield is acceptable and appreciates that MTFWP listened to Clint Thomas' concerns at the initial March meeting regarding the proposed drainfield location directly south and east of his house.

The Department of the Army Lease, DACW45-1-93-6035, to Montana Fish, Wildlife and Parks for operation and maintenance of the 337 acre Hell Creek State Park includes the approximate 55 acres subleased to Hell Creek Marina. Per this lease MTFWP agrees to operate and maintain the premises for the benefit of the United States and the general public. Section 6 of lease DACW45-1-93-6035, ensures the Lessee (MTFWP) shall have the right to erect additional structures and to furnish additional services in accordance with approved development plan. Nothing in Hell Creek Marina's sublease agreement with MTFWP for acreage within Hell Creek State Park shall affect, waive, modify or interpret in any manner whatsoever the terms, covenants and conditions of the Department of the Army Lease. Additionally, Section 28 of the MTFWP/Hell Creek Marina Sublease agreement states in simple terms that the Concessionaire recognizes the right of ingress and egress by authorized employees and agents of MTFWP to engage in any activity deemed necessary for the construction, operation, and maintenance of Hell Creek State Park. Therefore, Fort Peck Project believes it is in the best interest of the general public as well as Hell Creek Marina that MTFWP upgrade to a larger potable water storage tank and connect the fish cleaning station to an independent septic system as proposed in the EA.

You may direct questions or comments concerning this matter to me or Cindy Lott at 406/526-3411.

Sincerely,

MCMURRY.DARI  
N.J.1230269544

Digitally signed by  
MCMURRY.DARIN.J.1230269544  
DN: cn=US, o=U.S. Government, ou=DoD, ou=FWI,  
ou=USA, cn=MCMURRY.DARIN.J.1230269544  
Date: 2017.08.11 16:05:07 -05'00'

Darin J. McMurry  
Operations Project Manager

Copy Furnished:  
CENWO-RE-G  
Tom Reilly  
Doug Habermann

# **Attachment**

**B-8**



***Carr Law Firm, P.C.***

611 Pleasant

P.O. Box 1257

Miles City, Montana 59301

Phone: (406) 234-4569

Fax: (406) 234-4824

E-mail: [carrncarr@midrivers.com](mailto:carrncarr@midrivers.com)

*John R. Carr*  
1924 ~ 2008

*James T. Carr*

September 19, 2018

**Martha Williams, Director**  
**Montana Fish Wildlife and Parks**  
**P.O. Box 200701**  
**1420 6<sup>th</sup> Avenue**  
**Helena, MT 59620-0701**

**Subject: *FHC Appeal from Initial Administrative Denial re: August 14, 2017 Hell Creek Agency Decision***

Dear Director Williams:

This is an appeal of Mr. Habermann's August 14, 2017 Notice of Agency Decision, and the agency administrator's denial of our objections to that notice. This appeal expresses two separate, but related concerns, regarding our due process rights pursuant to your departments published appeals procedure, and then with the substance of the of the denial itself. Since the due process concern suggests an alternative to another department response via letter, we will begin there.

**I. Due Process and Appeal**

**A. Administrator's Response to the FHC Appeal:**

As you are aware the Friends of Hell Creek was compelled to file a TRO and request a declaratory judgment because the Respondent in that action failed to acknowledge our properly filed objection to the Habermann 2017 Agency Decision. We appreciated that you and your department took swift action halting the construction<sup>1</sup> and began processing the objection/appeal, after the filing. We vacated a scheduled hearing based on a stipulation that construction related to the Notice would stop pending the processing of the FHC agency appeal.

The department's own appeals procedure provides that non-adversarial appeals are resolved at the lowest possible administrative level, and that these non-adversarial lowest level administrative appeals provide an opportunity for conflict resolution. Conflict resolution, as

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<sup>1</sup> The construction is still halted pending the outcome of the appeal. While the director, administrator and agency attorney's time and position was and still is appreciated it appears that some individuals within MSP may have ignored your directives which is an issue FHC or others reserves the right to address.



specifically mentioned in the department's appeals procedure, includes; (1) additional fact finding, (2) site visits, (3) mediation or (4) negotiations, and (5) even simple meetings.

The department's procedure provides for a period of up to 60 days so this can occur. The originating objection to the agency decision was filed on September 12, 2017 but was not fully acknowledged as received by the department until the legal action was filed and the agency entered into a stipulation with the Petitioners. The agency made a determination of relevancy with respect to the originating objection at that point. This occurred on August 27, 2018. The administrator addressed the appeal without any sort of interaction with the Friends of Hell Creek whatsoever and notified FHC on September 4, 2018—just 1 short week later.

The administrations rapid-fire response occurred despite the department's written administrative policy and despite the fact the litigation filed (TRO, para (2)(f), pg. 3) specifically asserts that FHC be afforded opportunities with respect to conflict resolution. Frankly, it appears that the FHC objection is being scuttled though as a mere annoyance based on a pesky oversight, when in fact the procedure serves as a vital and appropriate way for citizens to appeal and meaningfully participate in agency decisions that affect them. This right is established in the Montana Constitution rather than just afforded not by agency magnanimity or benevolence. Consequently, we formally object to the manner in which the initial agency review was addressed, and we find the review, and the denial, improper as a result.

We respectfully request that you rectify this at your level and instruct that the involved parties meet, and potentially even mediate, the respective issues. We respect the difficulties and time constraints you face as the Director and as an agency, and we understand that mediating each and every agency decision is an impossible suggestion, but the circumstances present here warrant it, which is why the department's policy includes mediation as well as other conflict resolution tools.

#### **B. Administrator's Response and Decision Criteria:**

The department's procedure specifically provides that an appeal must be upheld and the decision remanded back to the original decision maker (Respondent Habermann) for corrective action if the decision: failed to comply with law, or a department administrative rule, policy or procedure; was based on inaccurate or incomplete information, which can substantially alter the decision; or was arbitrary and capricious.

FHC's objection and appeal specifically asserts the decision fails to comply with law because it requires that the agency locate the proposed infrastructure on property it subleased to someone else while only reserving a right of ingress and egress.<sup>2</sup> Consequently, the decision maker is operating well outside his scope of authority. While there is speculation as to the

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<sup>2</sup> During discussions about the TRO and stipulation it was mentioned that FHC might not have standing to bring forth such a claim. While FHC disputes this, even in the context of an actual lawsuit, it is of absolutely no consequence with respect to this appeal. Pursuant to Section III of the department's appeals procedure, FHC commented in writing and orally to the department on the proposed project and specifically and repeatedly mentioned legal issues relating to the leaseholder which could complicate matters pertaining to the selected location.

validity of the assertion the issue has not been satisfactorily resolved. The administrator's letter only provides further speculation, and it simply does not provide a definitive answer. FHC does not believe that the language cited from the department's lease with the Corp or the Corp's approval of the request submitted by the department resolves the issue (see below).

Regardless of who is ultimately correct the letter fails to satisfactorily explain why Mr. Reilly took one position and was then followed by his subordinate, Mr. Habermann, just six weeks later, with a completely different opinion. If Mr. Habermann is incorrect, as the appellant, FHC, specifically asserts, the decision is invalid. Invalidating Mr. Habermann's position substantially alters the decision.

The scope of the State's rights with respect to the sublease is a legal issue which requires some level of resolution. The administrator cannot merely add further speculation to the veracity of FHC's assertion. FHC's position is shared by the Thomases as leaseholders who are now interveners in the underlying action. The Governor's office acknowledged the position has enough merit to warrant legal analysis. While a court might be the ultimate arbiter if we do not resolve the issue ourselves, the department should at least provide a legal analysis or memorandum which bolsters its opposing position. Adequate due process demands it under the circumstances, in my opinion.

## **II. Substantive Issues as contained in the administrator's letter:**

First, we thank the department and the administrator for clarification with respect to the notice the department provided regarding the agency decision. We appreciate it was consistent with FWP's practices and other decisions.

We also appreciate the administrators providing us with various minutes regarding the construction reflecting their approval, but there are glaring inconsistencies between the approval of a \$773,000 project and the official position that MSP would abandon the parks by not renewing the lease with the Corp when the lease expires on April 30, 2021. The adopted policy specifically provides that MSP will make only minimum improvements required to protect public health and safety. FHC agrees protecting public health and safety is the best and required approach, but we disagree that it presents an open-ended invitation to engage in capital improvements of the magnitude envisioned here. This is especially true when public health is protected better and with less expense. We are not being given the opportunity demonstrate this under the paper-shuffle style appeal.

The Board did, by vote, adopt a specific option that firmly establishes MSP will leave Hell Creek when the current lease expires. The only reservation contained in the Board's decision to abandon and not renew, is that the Board would review its decision, again, in August of 2019, but even then the anticipated 2019 Board action must be based on a substantial change in circumstances that would allow the park to operate in a way that meets the high standards set forth in the department's policy. Whether it's leaving, closing or not renewing the established policy, adopted by the Board, is to discontinue its association with Hell Creek. There have been no subsequent votes changing the policy. It was the policy when the decision was reached by Mr. Habermann on August 14, 2017. Hell Creek was, and still is, classified by MSP as a Class 3

park. While the appointed Parks in Focus Group may recommend changing the State's position and the Governor, the Board or the Legislature may adopt other classifications and standards, this has not been done.

The Board's December 16, 2015 vote is the adopted position (i.e. established policy) at the time of the agency decision, and it remains the status now. An agency decision of this magnitude is inconsistent with the established policy of the MSP Board. It violates the criteria established in the department's appeals process and it should be remanded to the decision maker for further review, with instructions to abide by the policy. If anything, as the recently concluded Legislative audit clearly indicates, the ability to continue operating Hell Creek as a park that meets the MSP established standards is getting worse, not better, which is a further indication that the circumstances will not sufficiently change by August, 2019 so that the Board can change its adopted position.

The administrator's letter does not address FHC's assertion that the State is in error with respect to constructing permanent structures or encumbrances within the 55-acre leasehold because the State only reserved the rights to ingress and egress even with respect to the items listed in the administrator's letter. The administrator's letter ignores the heading and additional language contained in the lease and the very paragraph (para. 28) asserted. The right is clearly for ingress and egress, and the administrator provides no explanation why these terms are conveniently ignored, and the administrator's letter provides no legal basis for why the department is permitted to summarily expand the provision without modifying the leasehold agreement. We agree that Paragraph 36 does require written modification, and this was not done, but that argument favors FHC, not the department.

Further, we disagree that Mr. Reilly's testimony can be characterized as "an ad-hoc statement." Mr. Reilly was responding to a direct questions from a Board member regarding the very issue of the lease on the subject of permission as it pertained to the proposed construction project prior to when the agency decision issued. While Mr. Reilly and Mr. Habermann are not attorneys they do implement Board policy and they do have a scope of authority allowing them to make decisions and reach conclusions. As agency employees they communicate with the public on a regular basis. Common sense mandates that they demonstrate some level of consistency with respect to important positions and decisions affecting the public. We have repeatedly asked, and it has never been explained, why Mr. Reilly would respond to his Board one way, and Mr. Habermann would take a directly opposite position the very next month. Do their positions remain in conflict? Was there a legal analysis that found Mr. Reilly in error? Who requested the analysis? When was it completed and is it available?

The administrator's letter next addresses FHC's contention that the agency decision is baseless and arbitrary. The letter asserts the locations identified have been determined to be both the most feasible and economic locations and have the least impact on the park visitors, including the park visitors utilizing the concession services. The letter cites the finding of two separate private consulting firms as sufficient reasons to support the agency decision conclusion. The two separate consultants do address the need, but we do not agree that the consultants conclude that the alternative Mr. Habermann selects is uncategorically the most feasible and economic location. The agency decision does not address the impact on park users of limiting



expansion of dry dock storage or eliminating the area designated for future RV sites within the 55-acres.

USACE may well have approved a proposal submitted by the agency for locating the infrastructure within the 55-acres but it was likely done without adequate explanation from the department regarding the terms of the sublease so the implications of those issues were not considered by USACE when it issued the approval. Regardless, the approval does not relieve the State of its written and actual obligations under the lease. Just because you have a theoretical right doesn't mean you actually preserved it. This is especially true when you reserved only a limited right with respect to the 55-acres. The State drafted the Agreement not the concessionaire. USACE reviewed and approved the sublease and the sublease specifically included paragraph 28 regarding the retained right of ingress and egress, and that right only.

The next to last paragraph of the administrator's letter is alarmingly false. It is completely erroneous. As described above the MSP Board took a vote and adopted a specific directive that MSP was, in fact, leaving Hell Creek State Park when the lease expires on April 30, 2021. This official Board action, contained in the Board's minutes, is the official position of MSP and it has never been rescinded. Consequently, the decision denying the appeal does not meet the established criteria and, on this basis alone, you should return it for further clarification and consideration. FHC's appeal must be upheld if the administrator's letter failed to comply with department policy, and if the administrator relied on invalid information that substantially alters the decision. In this instance, ignoring an adopted vote of the Board, or being unaware of it, is substantial and would clearly alter the conclusion with respect to the denial.

### **III. Conclusion**

FHC believes the new division administrator is doing a commendable and admirable job with respect to the agency and how it will operate into the future. We do disagree, however, that these proposed actions, by past administrators, comport with the established policy and are in the best interest of the park users. As park users we can tell you the resounding consensus is that proposed agency action is not in our interest. As we express with this appeal, we respectfully ask that you address each of our concerns, and that you direct that the unresolved issues be discussed and mediated as soon as possible.

Sincerely,

**CARR LAW FIRM, P.C.**

By: \_\_\_\_\_

**James T. Carr, Attorney at Law**

JTC/df

# **Attachment**

**B-9**





Director's Office  
PO Box 200701  
Helena, MT 59620-0701  
(406) 444-3186  
Fax (406) 444-4952  
Ref: DO007-19  
January 8, 2019

James Carr  
Carr Law Firm  
611 Pleasant Street  
Miles City, MT 59301

Dear Mr. Carr,

I am writing in response to your September 19, 2018 appeal regarding infrastructure improvements at Hell Creek State Park as outlined in the August 14, 2017 Decision Notice. The appeal process is limited to the proposed improvements and that is what I will discuss here.

First, I want to address your concerns about the timing of Ms. Shumate's decision. When Montana State Parks realized that there had been a paperwork error in this matter, we believed it was important to expedite a decision. I understand that you feel that there should have been additional meetings prior to that decision. Since that time, and prior to my decision today, we have reached out to you and to others involved in this issue in response to the concern you raised and have made every effort to meet regarding this issue.

I have reviewed your appeal and I agree with the reasoning outlined by Ms. Shumate in her previous decision to you. From my review of the file, it is clear to me that the appropriate public processes were followed and notice and opportunity for public participation was provided. Montana State Parks complied with appropriate legal requirements in reaching its decision discussed in the August 14, 2017 Decision Notice, and was consistent with its prior practices in so doing.

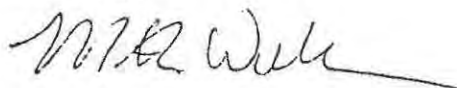
Your appeal next contends that Montana Fish, Wildlife & Parks should gain the Thomases' permission before proceeding with the proposed site infrastructure projects. I have reviewed the Thomases' "Agreement and Permit" ("the Agreement"), and believe that FWP is correctly following the terms of that Agreement. Under Section 28 (Right of Access) of the Agreement, Montana Fish, Wildlife & Parks retained a right of access to the property "for the purpose of engaging in any activities deemed necessary for the construction (*emphasis added*), operation, and maintenance of the Reservoir, Hell Creek State Park, the concession, and all works and facilities appurtenant thereto or for any other purpose authorized or required by law." In fact, the Section begins with the clear language of "The Concessionaire recognizes the right of ingress and egress..." Additionally, Section 36 (Modification) of the Agreement provides that the Agreement may not be modified except in writing and by signature of the parties, which has not occurred.



Lastly, and most importantly, the challenged infrastructure improvements are proposed to address critical public health and safety issues and are for the benefit of all users of Hell Creek State Park. As noted by Ms. Shumate, both the fish cleaning station (FCS) septic system and replacement water cistern have been identified by two separate private consulting firms (Peaks-To-Plains and Great West Engineering) in recent years as critical infrastructure upgrades which are necessary for public health and safety. Extending the usable life of the current systems simply is not feasible, and our decision was not arbitrary.

Based upon the above, your appeal of the Department's Decision Notice for Hell Creek State Park is denied.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Williams", with a long horizontal flourish extending to the right.

Martha Williams  
Director

C: Aimee Hawkaluk, FWP Legal Counsel  
Beth Shumate, Parks Division Administrator  
Governor's Office

## AGREEMENT AND PERMIT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 1999, between the STATE OF MONTANA, acting by and through it's DEPARTMENT OF FISH, WILDLIFE AND PARKS of Helena, Montana (Department) and Hell Creek Recreation Incorporated, (concessionaire) a Montana Business Corporation with principle address of P.O. Box 61 Jordan, MT 59337.

### RECITALS:

WHEREAS, the Department has administrative control over certain areas of Fort Peck Reservoir, specifically Hell Creek State Park in Garfield County, Montana under lease from the U.S. Army Corps of Engineers via a signed agreement dated February 21, 1994, on record at Fish, Wildlife & Parks Lands Section, Helena, Montana.

WHEREAS, the Department wishes to provide the recreating public at Hell Creek State Park certain commercial services, and

WHEREAS, the Concessionaire wishes to provide those services through the operation and maintenance of a concession site,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Description of Premises. The Department grants to the Concessionaire and the Concessionaire accepts from the Department permission to use and occupy the following tract of land, approximately 55 acres, described on attachment A for the purposes herein described and for no other purposes.
2. Term. This Agreement is for a term of twenty years commencing January 1, 1999, and ending December 31, 2018, unless otherwise terminated as provided by this Agreement and Permit.

If, at the expiration of the term of this lease agreement, the Department desires to re-lease the premises, the Concessionaire shall have a right of first refusal to renew its leasehold interest on such terms and conditions as may be mutually agreed upon by the parties. The Concessionaire may exercise it's right of first refusal to meet the terms of the bid only if the Concessionaire is at that time in good standing under this Agreement. The Concessionaire's good standing will

be determined as follows:

- A. The Department reasonably determines that the Concessionaire has offered good, quality services to the public during the term of this Agreement and,
- B. The Department has not invoked the terms or conditions as listed in paragraph 31, ~~Termination~~ by the Department~~.~~

Such right of renewal shall be exercised by the Department submitting a proposed lease agreement to the Concessionaire not less than 180 days prior to the expiration of the term of this Agreement. The Concessionaire shall then have 30 days after receipt of such notice to exercise it's right of first refusal to meet the terms of the services offered. If the Concessionaire is in good standing as determined in the preceding paragraph, and elects to meet the terms of the proposed lease agreement, then a new agreement and permit will be executed between the Department and the Concessionaire. If the Concessionaire elects not to accept the terms of the new agreement, the Department may solicit or receive offers (bids) from third persons upon the same terms and conditions as the proposed lease agreement submitted to the concessionaire.

If the Concessionaire elects not to accept the terms of the selected bid, or is not in good standing, the Concessionaire shall quit and vacate the premises at the expiration of the term provided in this Agreement. The new concessionaire shall be required to pay the Concessionaire the fair market value for the business owned and operated by the Concessionaire. The business property shall include but not be limited to all permanent improvements including the Hell Creek Marina store, cabins, decks, walkways, boat docks, dry dock, fuel dispensing system, boat rentals, RV hookups and inventory. Permanent improvements may not include road improvements, storage facilities and other work to the ground.

If the new concessionaire and the Concessionaire are unable to agree on the fair market value of the assets, the fair market value shall be determined by an independent state certified appraiser selected by the new concessionaire and the Concessionaire, and if



they are unable to agree on a state certified appraiser, the new concessionaire and the Concessionaire shall each select one, who shall select a third state certified appraiser, and the fair market value shall be deemed to be the average of the three independent appraisals. The purchase price must be paid in cash or a cash equivalent at the closing of the purchase which must take place no later than thirty (30) days after receipt of the appraisals. The Concessionaire and the new concessionaire will be responsible for the payment of their own appraiser's fees and the cost of third appraisal will be split between the parties equally.

3. The Concession Fee. The Concessionaire shall pay to the Department an amount equal to one percent (1%) of gross receipts of all gasoline sales, two percent (2%) of gross receipts from the sale of merchandise and services, five percent, (5%) of gross receipts from dry dock storage. The fee payment is based upon gross sales by calendar year (January 1, through December 31) and is due not later than April 15, of the following year. The minimum fee payment will be \$1,000.

If the Concessionaire fails to submit to the Department all monies owed from the sale of goods and services, by the deadline established by the Department, an interest charge equal to the rate charged on late corporation license tax payments under 15-31-502 must be assessed. Payments will be made in cash or in the form of a cashier's check payable to Department of Fish, Wildlife & Parks.

4. Allowable Activities. The Concessionaire is hereby granted permission and license to establish, operate and maintain a business and the necessary buildings and equipment in and upon the above described land in accordance with these purposes and no other:

To provide services for the public, including sale of ice, rental of rooms and recreational vehicle parking/camp sites, rental of docks, sale of fishing and sporting equipment and supplies, sale of clothing, souvenirs and gifts, rental of boats, excluding personal water craft (PWC) more commonly known as jet skis, rental of sporting equipment, or any other paraphernalia,

provide outfitting/ guide services for hunting and fishing and the sale of supplies, tools, equipment, parts and gasoline, greases, and oils needed for all of the above described equipment, the conduct of recreational activities such as the right to launch boats, and to conduct a business which is generally recognized for recreational purposes, the right to sell beverages, including beer, wine and liquor as prescribed by law and Corp of Engineers rules, as well as candies, food, ice cream, and other sundry items which are generally desired by the public in recreation areas. It shall be the responsibility of the Concessionaire to equip all rental boats pursuant to Montana Statute 23-2-521. The Concessionaire will also abide by Montana Statute 23-2-503, the keeping of records of all renters of boats.

The rental or loan of personal water craft (PWC) more commonly known as jet skis is expressly forbidden.

These activities must be conducted in accordance with the provisions of this Agreement. The Concessionaire may not use the premises for any other purpose without obtaining prior written consent of the Department. All necessary licenses and permits must be obtained and approved prior to opening each year.

5. Required Activities. The Concessionaire must provide the following minimum services:

Operate and maintain a concession store on site providing:

Sale of gasoline, oil and boating supplies;

Food and beverage sales;

Grocery sales;

Fishing supplies and equipment sales;

Firewood sales;

Obtain all necessary licenses and permits prior to opening, for providing any of the above listed services.

6. Quality of Service. All items sold by the Concessionaire shall be of first-class quality and all services shall be rendered courteously and efficiently. The Department reserves the right to prohibit the sale of any item that it deems objectionable or inappropriate to the area. The Department also reserves the right to order the

improvement of the quality of either merchandise or service rendered. The Concessionaire shall employ a sufficient number of qualified employees to properly operate and maintain the concession facilities and oversee water plant operation.

7. Posting of Rates and Charges. The Concessionaire shall conspicuously post the prices for all services offered, all goods shall have their prices conspicuously attached.
8. Department Approval of Rates. The Concessionaire must provide to the Department within 15 days of demand, a written copy of items for sale or rent, and such rates and charges.
9. Nondiscrimination. The Concessionaire may not discriminate against any person because of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry by refusing to furnish any service or privilege offered to or enjoyed by the general public, except as allowed by law. The Concessionaire may not publicize the services provided hereunder in any manner that would directly or inferentially reflect upon the acceptability of the patronage of any person because of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, residency or ancestry. The Concessionaire shall use hiring practices which are in compliance with all existing federal and state laws.
10. Hours of Operation. The Concessionaire shall operate the business permitted by this Agreement at sufficient hours and times to serve the public wishing to avail themselves of the Concessionaire's services. The Concessionaire's services must be available to the public, excepting natural conditions beyond control of Concessionaire, a minimum of at least 8 hours per day, 7 days per week from and including the Friday immediately proceeding Memorial Day through and including the day following Labor Day of each year, unless a longer or shorter season is agreed to by mutual written agreement. The Department may require longer daily hours which may be met on an "on call basis."
11. Force Majeure. Any prevention, delay or stoppage due to strikes, walkouts, labor disputes, acts of God, inability to obtain labor, materials, or reasonable substitutes, governmental restrictions, controls or regulations or actions such as extensive draw down of the reservoir ,



enemy or hostile governmental action civil commotion, fire or any other causes determined by the Department (in the exercise of fair discretion) to be beyond the reasonable control of the Concessionaire will not be deemed to be a breach of this Agreement. The Concessionaire will have a reasonable time after cessation of any of the above mentioned causes to render performance.

12. Competition. During the term of the Agreement the Department may not grant a permit or license on or within Hell Creek State Park to any other person that would allow that person to offer such goods and services offered by the Concessionaire. In the event the Department deems desirable the offering of additional goods and services, the Concessionaire has the first right to offer such goods and services on the premises. The Department reserves the right to permit recreation area visitors to bring and use all equipment, food or other property for their own personal use and consumption to any location on the recreation area including the premises described in this agreement. The Department further reserves the right to impose recreation fees on park users.

It is further agreed that the Concessionaire will extend the same courtesy to the general public as to the visitors of this concession, and that all persons will be permitted to enter the premises and public portions of the buildings and area freely and to enjoy the conveniences and privileges accorded to the patrons of the concession governed by this Agreement.

13. Assignment and Hypothecation Prohibited. The Concessionaire may not assign this Permit or any right, privilege or license conferred by this Permit except upon prior written approval of the Department. The concessionaire may not lease, subcontract, lien or encumber any portion of the concession premise without first obtaining the written consent of the Department. Violation of this provision automatically terminates this Agreement and Permit.

It is further agreed that any legal contracts or partnership arrangements which in any way relate to or are bound to this agreement must be approved by the Department before they have effect. The Department further requires that irrespective of any partnership or cooperative agreements that the Department might approve, it will require the Concessionaires to appoint one person to be accountable for meeting the terms and conditions of this agreement and permit.

14. Repair and Maintenance. The Concessionaire shall maintain the premises of the concession business and any improvements in good order and repair at his own expense during the entire term of this Agreement and Permit. If the Concessionaire neglects or refuses to do so, the Department has the right to:
- (a) perform such maintenance or repairs for the account of the Concessionaire and the Concessionaire shall promptly reimburse the Department for the cost thereof, provided that the Department shall first give the Concessionaire thirty (30) days written notice of its intent to perform such maintenance or repairs for the account of the Concessionaire to enable the Concessionaire to perform such maintenance and repairs at his own expense, or
  - (b) terminate this Agreement and Permit in accordance with provisions of Section 31, "Termination by the Department". If the repairs or maintenance are to correct a public safety problem or hazardous condition, the Department may demand repairs be made immediately.
15. Approval for Alterations Required. No alterations or additions to the site or facilities thereon including land manipulations, facilities construction and painting may be made on or to the subject premises or facilities by the Concessionaire without first obtaining written consent of the Department. Unless the Department agrees to share the cost of alterations or additions, permitted alterations and additions must be made at the sole expense of the Concessionaire. Written approval from the Department must be received prior to the commencing of any work. All work must be completed on a schedule established at the time of approval.
16. Boat Docks. Docks and all on water facilities including gasoline dispensing docks must be maintained in a usable condition in a manner acceptable to the Department. Docks must be built and have a design, floatation, structural, decking and anchor designs and materials which are approved by the Department.
17. Signs. The Concessionaire may not erect any sign on the premises or any sign advertising the premises except those signs furnished or approved by the Department. All

alterations to signs must be approved by the Department. The Department shall approve of any advertising if the Department of Fish, Wildlife & Parks or State Park is used or mentioned.

18. Utility lines. All future utility lines and relocated or rebuilt existing utility lines must be installed underground in accordance with the applicable standards for underground utility installation. The Department, however, may agree to permit overhead lines provided that reasonable alternatives such as relocation or undergrounding are not available.
19. Trash Removal. The Concessionaire shall promptly remove to the nearest Montana Department of Health and Environmental Sciences approved disposal area, all rubbish, waste and garbage (wet or dry) which is generated by the Concessionaire's activities or public use of the concession area. No wastes of any kind except sewage via an approved disposal system will be disposed of on the concession area or in public recreation areas.
20. Fire Hazards. The Concessionaire may not create or suffer to exist any fire hazard. The Concessionaire shall take all reasonable precautions to prevent and suppress grass fires.
21. Destruction of Facilities. If any part or all of the concession facilities or structures is partly or totally destroyed by fire or the elements during the term of this Agreement and Permit or so damaged as to make repair or restoration thereof impractical and therefore defeat the purposes of the Agreement and Permit, this Agreement and Permit shall terminate at the option of either party and all of the rights and obligations of the Concessionaire hereunder shall cease except for the obligation for any concession fees due and any clean up of area as directed by the Department liaison. If the facilities or structures are not to be restored or rebuilt, the Concessionaire shall remove all debris from the land on which the facilities or structures were formerly located and to restore the land to conditions similar to their original appearance insofar as it is practical to do so. Such restoration shall be completed within ninety (90) days from the date when the damage occurred including any time work was prevented by causes beyond the Concessionaire's control. If the structures or facilities so damaged by the elements or fire are to be rebuilt, restored or repaired so as not to require the termination of the Agreement and Permit, then the Concessionaire agrees to restore or rebuild the same at his sole expense in accordance with plans and specifications which are

approved by the Department. The restoration must be accomplished by which ever is longer; (a) within one hundred (100) days from the date when the damage occurred. The 100 (100) days excludes any time work was prevented by causes beyond the Concessionaire's control.

22. Utilities and Services. The Concessionaire shall pay before delinquency all charges for utility services, supply services, material or other similar charges which arise or grow out of the operations and maintenance of the premises.
23. Taxes and Fees. The Concessionaire shall pay promptly before the penalty date all taxes and fees of any nature which are levied by federal or state governments or any subdivision or agency of either.
24. Insurance Coverage. The Concessionaire shall at all times maintain and pay for liability insurance. Minimum limits of liability insurance shall be \$1,000,000 per claimant and \$2,000,000 per occurrence, 2-9-108 MCA, with the Department as co-insured. True copies of all such policies shall be forwarded to the Department prior to April 30 of each year.
25. Indemnification. The Concessionaire agrees to indemnify and save harmless the Department from all claims from injuries or damages arising or growing out of the operations of the concession or it's premise, except for acts caused solely by the negligence of the Department or it's employees.
26. Compliance with Laws. The Concessionaire shall comply with applicable federal, state, and local laws or ordinances governing the operation of all facets of the business and the premises. Violation of such laws or ordinances may be considered as cause for termination of this Agreement and Permit.
27. Accounting and Records. The Concessionaire shall keep full and true accounts of all receipts and disbursements in a book or set of books prescribed for that purpose by the Department. The bookkeeping and accounting must be of a type and nature as the Department may direct or using a standard customary accounting procedure. The agents or representatives of the Department will have the right to examine books at any reasonable time. The Concessionaire shall submit to the Department an annual financial report by March 1 of each year for the preceding calendar year. This report will include a copy of all reports sent to state and federal tax authorities.



28. Right of Access. The Concessionaire recognizes the right of ingress and egress to authorized employees and agents of the U.S. Army Corps of Engineers, the Department, and other governmental agencies for the purpose of engaging in any activities deemed necessary for the construction, operation, and maintenance of the Reservoir, Hell Creek State Park, the concession and all works and facilities appurtenant thereto or for any other purpose authorized or required by law.

The Concessionaire further agrees that the Department or its designee may at all reasonable times and during reasonable hours have full access to the concession premises and through the facilities or structures located thereon for the purpose of examining and inspecting the condition thereof or of exercising any of the rights or powers reserved to the State under the terms, conditions and provisions of this Agreement.

29. U.S. Army Corps of Engineers. The Concessionaire understands and agrees that this Agreement and Permit is subject to all rules, regulations, and restrictions of the U.S. Army Corps of Engineers.

Further, the Concessionaire understands and agrees that in the event of termination of the lease between the U.S. Army Corps of Engineers and the Department dated February 21, 1994, on record at the Lands Section office in Helena, Montana, the U.S. Army Corps of Engineers shall be deemed to stand in the stead of the Department as grantor for the remainder of the term of this Agreement; provided, however, in the event of such termination the United States at any time within ninety (90) days thereafter may terminate this Agreement by giving to the Concessionaire thirty (30) days written notice thereof, and in such event, the Concessionaire shall have the privilege of selling or removing for a period of thirty (30) days after termination of this Agreement or such longer period as may be determined by the U.S. Army Corps of Engineers to be reasonable, improvements which have been constructed on the premises at the sole cost or expense of the Concessionaire; otherwise after the expiration of said period of time, title to such improvements shall vest in the U.S. Army Corps of Engineers.

30. Water Use. Permission is granted to the Concessionaire to pump storage water from the reservoir for domestic purposes only. Such use is by permission only and grants no water rights to the user. It is understood by the Concessionaire that the grant of permission to pump storage water from Fort Peck Reservoir does not preclude

the U.S. Army Corps of Engineers from requiring the Concessionaire to enter into an appropriate water service contract if it is determined to be a requirement of such water use. The State of Montana further grants the concessionaire permission to draw water from the potable water system which serves Hell Creek State Park, for domestic purposes only. The location and type of connection to the potable water system shall be approved and inspected by the Department prior to completion. No modification or alteration to said connection may occur without the prior written consent of the Department. The amount of water consumed by the concessionaire must be metered. The concessionaire shall reimburse the Department for water used. Reimbursement will be based on the percentage of water used by the Concessionaire as compared to the total amount of water the plant processes annually. The Concessionaire shall pay a like percentage of the total expense for operating and maintaining the water plant. This total expense will include the cost to the Department of transportation to and from the site plus labor costs. Percentage of total water use will also be the percentage of the total expense for operating the water plant and does not warrant the quality of the water for domestic use and assumes no liability for water used for such purposes. Furthermore, the Department is under no obligation to construct or furnish new water treatment facilities or expand current water plant production beyond existing capacity. The established annual season for operation of the water treatment plant is from May 15 to October 1 of the same year. Any requests for service outside this period must be made in writing to the Department prior to April 1 of the current service year. The Concessionaire shall provide a water plant operator trained to Department standards who will be responsible for water plant operation outside of the established annual operation season. The Concessionaire's water plant operator shall read the service meters on the appropriate dates to determine the amount of water used during any requested service periods outside the annual operation season for the water plant. The amount of water used during said period(s) will be deducted from the Concessionaire's total water use for the same year. Ground water developed by the Concessionaire for domestic purposes must be developed in the name of the State of Montana, Department of Fish, Wildlife & Parks. Ground Water may not be developed for other than domestic purposes. Plans for water facilities must be approved in writing by the Department and the Montana Department of Environmental Quality.

- 31 Termination by the Department. If in the judgement of the Department, the manner of the operation of the premises

or services does not meet the requirements of this Agreement and Permit, or if the Concessionaire is in default of any term of this Agreement, the Department shall give the Concessionaire written notice specifying the particulars of the unsatisfactory performance or default. If the Concessionaire fails or refuses to remedy such unsatisfactory performance or default within thirty (30) days of receipt by the Concessionaire of such notice, the Department may terminate this Agreement and Permit. The decision of the Department on any such matters shall be final.

32. Removal or Sale of Improvements. The Concessionaire shall be permitted for a period of 180 (180) days after expiration or termination of this Agreement and Permit to remove any improvements or other property thereon and restore the premises to a condition satisfactory to the Department and to the U.S. Army Corps of Engineers. Except as noted in Article 29 hereof, removal of the Concessionaire's improvements or other property and restoration of the premises within the 180 day period are the responsibility of the Concessionaire. All improvements or other property not removed within the 180 day period will be considered abandoned and will automatically become property of the state of Montana and subject to disposal under state regulations. Any removal of improvements or other property and restoration work remaining will be performed by the State of Montana and the Concessionaire will be liable for all costs therefor. The Concessionaire's sole right during this 180 day period will be for the removal of property, no other business activities will be conducted or allowed.

If during the 180 day period the Department enters into a Concession agreement and permit with a third party, said third party shall purchase the Concessionaires business property at it's fair market value as set forth in paragraph 2.

33. Weeds and Plants. The Concessionaire shall use the land in such a manner as to reasonably control the growth and spreading of noxious weeds and promote acceptable conservation of the land. The Concessionaire shall obtain the consent of the Department for the establishment of any plant species proposed on the premises. The Concessionaire shall further cooperate in weed control programs to control noxious weeds under certain specified conditions.
34. Pesticides. Use of pesticides on land covered in this Agreement and Permit must comply with all provisions of state pesticide laws, and with the Department's policies.



The Concessionaire shall secure written approval from the Department prior to using any pesticides on the premises.

35. Pollution. The Concessionaire agrees to comply fully with all applicable federal laws, orders and regulations and laws of the State of Montana concerning the pollution of streams, reservoirs, ground water, or water courses and the air with respect to discharge of refuse, garbage, sewage effluent, industrial waste, oil, or other pollutants. The Concessionaire further agrees to obtain all required permits or licenses from appropriate federal, state, or local authorities.
36. Modification. This writing and the attached exhibits contain the complete agreement of the parties hereto and no modification hereof shall be binding on either party unless signed by the party to be bound subsequent to the date of this Agreement.
37. Liaison. The Department appoints Region 7, regional park manager, Miles City, Montana, to act as liaison between the Department and the Concessionaire for the period of this Permit.
38. Venue. The Department and Concessionaire agree that venue for any court action arising under this Concession Permit and Agreement shall be in the First Judicial District in and for Lewis and Clark County, Montana. Further, the Department and Concessionaire agree that this Concession Permit and Agreement be interpreted according to the Laws of the State of Montana.
39. Coordination Meetings. Within ten days immediately preceding the seasonal opening of the Concession store each spring, and within ten days immediately following closure each fall, representatives of the Department and the Concessionaire shall meet formally for the purpose of reviewing the requirements, obligations, activities and actions addressed in the agreement in order to ascertain that performance has been satisfactory.
40. Control of Premises. The Department shall be responsible for enforcing it's regulations on the premises. Violations will be referred by the Concessionaire to the Department liaison. Violations of other civil or criminal codes shall be referred by the Concessionaire to the county sheriff.



IN WITNESS WHEREOF, the Director of the Montana Department of Fish, Wildlife and Parks by the authority vested in him on behalf of the State of Montana and through the Department of Fish, Wildlife and Parks, and John FitzGerald, Concession President have hereunto set their hand this day and year first mentioned above.

STATE OF MONTANA  
DEPARTMENT OF FISH, WILDLIFE & PARKS  
BY: Patricia J. Graham  
Director

John FitzGerald  
John A. FitzGerald Pres.  
Concessionaire

# Attachment A

