DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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May 16th, 2016

Ladies and Gentlemen:

The enclosed Finding of No Significant Impact / Decision Notice is completed for the Willow Creek Dam and Reservoir Transfer Final Environmental Assessment (EA). The Final EA and Finding of No Significant Impact / Decision Notice can be viewed on the DNRC website at www.dnrc.mt.gov in the Environmental Documents section.

Sincerely,

Tim Davis
Water Resources Division Administrator

FINDING OF NO SIGNIFICANT IMPACT / NOTICE OF DECISION

MAY 16TH, 2016

Dear Reader:

On February 8th, 2016, the Montana Department of Natural Resources and Conservation (DNRC) released a draft Environmental Assessment (EA) on the Willow Creek Dam and Reservoir Transfer.

The Willow Creek Dam and Reservoir is located in Madison County, approximately 4 miles east of Harrison and nine miles south of Willow Creek. The dam was constructed in 1938 by the State Water Conservation Board. The Project is currently owned and administered by the Montana Department of Natural Resources and Conservation (DNRC) through its State Water Projects Bureau (SWPB) for the benefit of the Willow Creek Water Users Association (WCWUA). The WCWUA operates the Project under a water marketing contract with the DNRC for the purpose of marketing agricultural water to individual users. The WCWUA is currently a private not for profit corporation organized pursuant to Mont. Code Ann. § 85-6-101 et seq. With a storage capacity at spillway crest of 18,000 acre feet, the Project's original purpose was to provide supplemental irrigation to 12,000 acres of land along the Willow Creek Valley. Today, up to 12,000 shares (one share = one acre-foot) of water is marketed to individual members of the WCWUA for agricultural purposes.

The WCWUA recently expressed interest in acquiring the project. At their request, Senate Bill 221 was introduced and passed into law in the 2015 legislative session. The bill directs DNRC to attempt to dispose of the project by June 30th, 2015. Acting for the Department, SWPB options for disposal of a state water conservation project are limited where there is an active water user's association such as at the Willow Creek Project (see 85-1-211(5) (a) and 85-6-109 MCA). The water user's association has a purchase preference and must approve any sale or disposition to any other entity. Also, the preface to SB 221 and the legislative hearings indicate that the transfer was to be to the WCWUA. Consequently, this EA does not consider alternatives for disposal of the Project other than transfer to the WCWUA.

SWPB is authorized to transfer ownership of state water project property and facilities to a water users' association without regard to other laws that would otherwise pertain to the disposition of state property (85-1-211(5) (a) MCA). Prior to taking that action, SWPB is required to determine the market value of the property (85-1-210, 211(5) (a) MCA). The determination of market value must consider all liens, encumbrances, and other limitations on the water project. This analysis was conducted internally and included in the draft EA.

The findings of the market value analysis determined that the Project had limited value to any entity other than the State of Montana or the WCWUA. This finding was due to the statutory requirements of limiting transfer options to the WCWUA as well as maintaining the underlying historical uses (agriculture). Because of the costs and liabilities that WCWUA would assume as owners, the SWPB determined that a no fee transfer would be appropriate.

The Project was built with public funds. These costs, which included land purchases and the original construction, were repaid in total by the WCWUA over a period of approximately 75 years. While the water stored is marketed for agricultural purposes, the project also provides

flat water recreational opportunities. In order to minimize adverse effects for this action and address concerns regarding transferring this state asset at no cost, the selected alternative maintains these historical benefits. The transfer documents will reserve public recreational access, prohibit development on the lands surrounding the Project except as necessary for the safe and continued operations of the Project, and will limit the Project water rights to their historic agricultural uses or non-consumptive uses. The SWPB also has the option to reacquire the Project at no fee should the WCWUA dissolve or fail to operate the Project within the parameters of their Operating Permit as issued by the Montana Dam Safety Program.

The EA was distributed for a thirty day comment period. A one-week extension was granted to allow for additional public and agency review. The official comment period, including the one-week extension, closed on March 15th, 2016. Comments were received from Trout Unlimited, Montana Fish, Wildlife and Parks (DFWP), and the Willow Creek Water Users Association (WCWUA). Other comments were received by individuals (WCWUA members) who added their support to the WCWUA comments previously received.

Please Note: Comment letters are attached in Notice of Decision Appendix A.

Trout Unlimited Comments:

The Trout Unlimited comments centered on the need to update the reservoir management and operations plan and incorporate this into the transfer process. The comments included the need to further assess impacts on water rights, downstream flows, and the perceived need to incorporate hydrologic relationships into the EA. Trout Unlimited also stated that an updated reservoir operating plan is needed to meet the State's obligations under the Montana Environmental Policy Act (MEPA).

In response to Trout Unlimited comments, the operation of the reservoir is guided by a current, approved Operation and Maintenance Manual and meets all the statutory requirements of the Montana Dam Safety Act and associated Operating Permit. The MEPA action for this site does not require additional analysis other than what is provided in the existing EA, as long as historical operations are continued. As stated in the Draft EA, maintaining historical operations will continue as a condition of the transfer. Therefore, existing operations, water rights, downstream flows, and reservoir water rights are unaffected by the transfer. The transferee will be responsible to submit to the Montana Dam Safety Office a new Operation and Maintenance Manual and approved Emergency Action Plan as requirements for obtaining a Dam Safety Operating Permit. The submittal of these documents to maintain the Dam Safety Operating Permit is required for all permitted high hazard dams and detailed hydrologic analyses are typically not required.

Trout Unlimited brings up many good points in regards to overall planning and watershed basin management. However, the current action under review is to maintain historical operations, water deliveries, and storage practices, of which there is at least 75 years of record. Additional studies on the existing conditions may provide better information for decision making; however data above the site is limited. Regardless, that level of analysis is not warranted for the actions under discussion. Should the owner of the Project at some time in the future wish to add uses or otherwise modify the underlying water rights, at that time all appropriate rules, regulations, and laws will control. In addition to requiring that the WCWUA maintain a Dam Safety Operating Permit, DNRC is also requiring that water rights associated with the project be limited to their historic agricultural uses with the exception of potentially adding non-consumptive uses which would involve a change authorization that must be approved by DNRC.

Willow Creek Water User Association Comments:

The WCWUA objected to several statements and requirements outlined in the "Purpose and Need for Action" section of the EA., such as the requirement for a boundary survey, the assumption of liability, the transfer of property to the DFWP, the restrictions on development, and the requirement to maintain historical uses, as detailed in the associated reservoir water rights. The WCWUA also objected to the inclusion of various alternatives as part of the EA analysis.

In response to the objections of the WCWUA to the "Purpose and Need for Action", the requirements outlined were included in the EA to:

- Ensure that the public interest in the reservoir, which serves as a popular water based recreation area, is protected and provided for into the foreseeable future. DNRC is conducting a boundary relocation and retracement survey of the property between DNRC and DFWP to eliminate any issues or discrepancies between public access prior to transfer. This survey is limited to that specific area and will be recorded appropriately. DNRC lands adjacent to existing DFWP property will be transferred to DFWP and retained in State ownership to ensure permanent public access.
- Ensure property ownership issues are resolved prior to the no-fee transfer. Typically, boundary surveys are completed for any real estate transaction and said costs are covered by the person or entity buying the property. Regardless, the State will use a Quit Claim Deed to transfer the Project, thus not warranting that any of the parcels transferred have property boundaries that are true and correct. The WCWUA has been advised that DNRC does not have a high degree of confidence that all boundaries are or were described appropriately. Should the WCWUA not conduct a proper survey for recording, they assume the full risk and future liability for any and all property disputes, etc. If the County requires a boundary survey of all the parcels in question prior to recording, the Association will be responsible for costs associated with that requirement, prior to transfer.
- Limiting development on transferred property to those uses necessary only for the continued safe operations of the Project ensures the continued public recreational aspects of the Project and prevents profiteering on a project that was originally paid for with public funds.
- Regarding recreation, liability concerns are noted. However, ownership of any permitted high hazard structure that has always allowed public access includes the corresponding assumption of risks and liabilities. Recreational liabilities may be mitigated by existing state law and further review of this issue to understand actual liabilities is the responsibility of the WCWUA.
- The WCWUA offered that should the Project return to State ownership, water rights would remain with the adjacent landowners. This request by the WCWUA is misguided as the water rights are storage rights and are neither tied to nor appurtenant to specific properties. The Project's water rights were developed to allow a fixed amount of shares to be marketed during irrigation season within a defined service area. Any stored water above this marketed amount remains in the reservoir as carry-over storage as insurance to meet the next season's demands. The Project water rights are integral to and cannot be separated from the Project.
- The WCWUA, upon acceptance of the transfer, is required to meet all State Dam Safety Program requirements, including maintaining an approved and active Operating Permit. In the unlikely event the WCWUA fails to operate the Project within their Operating

Permit parameters and the Montana Dam Safety Program terminates the Permit, the DNRC will have the option to reacquire the Project in its entirety (including but not limited to all lands, water rights, dam, structures, easements, and any improvements made by the WCWUA during their ownership) without compensation to the WCWUA or charge to the DNRC or State. This right of reentry by the DNRC shall not be automatic or obligatory and shall only be exercised upon due diligence and determination by the State that reacquiring the Project is in the best interests of the State considering the condition of the Project and property, the associated costs and liabilities, and the resources of the State. Neither the DNRC nor the State shall be under any obligation to the Association or the water users to reacquire the Project and resume operations and store and deliver water. If the WCWUA abandons operations and does not transfer to an entity such as an Irrigation District that can continue operations under the terms and conditions of this transfer, the WCWUA understands that it will remain the owner of the Project and the associated liabilities and that the State of Montana and DNRC are not liable as long as the right of reentry is not exercised.

- The WCWUA objects to forming into an irrigation district. The DNRC will rescind this requirement. The WCWUA and water users will not be precluded from reforming as an irrigation district or other entity that may be able to operate under the conditions of this transfer should they decide to do so.

<u>Montana Department of Fish Wildlife and Parks Comments:</u>

The Montana Department of Fish, Wildlife and Parks submitted comments in support of maintaining public recreational access, to include the proposed boundary relocation and recreational / public access easements on all State lands transferred to the WCWUA as part of the Project.

The DFWP agrees, contingent upon obtaining Fish and Wildlife Commission approval, to accept in fee title the transfer of land adjacent to the Fishing Access Site (FAS) as generally identified in the EA. The DFWP also requested pubic access easements on all DNRC lands containing roads leading to the FAS. The DNRC is evaluating this request. We presume that the general recreational / public access easements already proposed to be implemented on transferred parcels should satisfy DFWP's request, however, if there is a question on maintaining access, DNRC will consider the additional clarification prior to transfer. Without a properly conducted property survey, it is unclear if portions of the existing road are on DNRC or private lands.

DFWP requested that DNRC assign a recreational easement on all land transferred allowing existing recreational practices to continue. The DNRC will assign said easement to all project lands transferred, with public access restrictions assigned to those portions of the dam, spillway, and outlet for public safety, as determined by the WCWUA. Foot access over the dam will be permitted to continue to allow for public downstream stream access.

The Draft EA erroneously states that the DFWP manages the FAS under a DNRC Lease (Draft EA Appendix E). However, as DFWP points out in their comments, the DFWP owns 40-acres in fee title, with some infrastructure inadvertently built on DNRC land (without a lease). The lands in questions will be included within the proposed boundary relocation to ensure that infrastructure and public access issues are resolved permanently.

DFWP requested additional details about past recreational use and seasonal reservoir level changes as they relate to boat ramp access. This is to substantiate current recreational opportunities and ensure that they are not negatively affected. The DFWP is the appropriate

agency to provide that specific information. The DNRC does not maintain separate records of recreational use on DFWP managed Fishing Access Sites. The recreational use information used in the EA was taken directly from data obtained from the DFWP Fisheries Information Webpage.

Other concerns expressed by DFWP related to both minimum reservoir storage and general outflow releases for minimum flows. Although the DNRC understands the concerns expressed by DFWP concerning hydrologic data (volumetric content or downstream releases), additional analysis and studies are not pertinent to the proposed action of transferring the project to the WCWUA as a condition of the transfer is to maintain historical operations.

The DFWP supports maintaining historical uses of the Project and suggested that the association forms into a County Water District. If this option has merit, the WCWUA has the ability to look at this and any other option in the future to accommodate their needs.

Future Action:

Based on the EA's disclosure and analysis of potential impacts and the comments received, the DNRC concludes that the proposed action will not result in any significant impacts. The DNRC will issue this Notice of Decision and the Draft EA as the Final EA. Where there are discrepancies between the Notice of Decision and Draft EA, the Notice of Decision controls.

Future Actions to accomplish the transfer are:

- Complete limited property boundary survey and adjustment between DNRC and DFWP parcels, file and record.
- Prepare Quit Claim Deed and transfer documents containing terms and conditions as described in this Notice of Decision and EA and submit to the WCWUA for their review and acceptance or rejection (85-6-109 (5) MCA).
- Upon approval of the WCWUA, finalize transfer. Should discussions with the Association result in changes not discussed within this EA that substantially differ from alternatives considered; a new Draft EA will be prepared for comment.

Copies of the Final EA are available upon request. The Final EA and Finding of No Significant Impact / Decision Notice can be viewed on the DNRC website at www.dnrc.mt.gov in the Environmental Documents section. Please direct questions to:

James P. Domino
State Water Projects Bureau
MT DNRC, 1424 9th Ave., P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6622 e-mail: jdomino@mt.gov

Thank you for your interest.

Sincerely,

Tim Davis
Water Resources Division Administrator

Notice of Decision Appendix A – Comments Received

PO Box 7186 Missoula, MT 59807 (406) 543-0054

James P. Domino
Environmental Science Specialist
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SENT VIA ELECTRONIC MAIL: jdomino@mt.gov

March 8, 2016

Re: Montana Trout Unlimited Comments on Draft Environmental Assessment for the Willow Creek Dam and Reservoir Transfer Project

Dear Mr. Domino:

Montana Trout Unlimited (MTU) appreciates the opportunity to comment on the Draft Environmental Assessment (EA) for the Willow Creek Dam and Reservoir Transfer Project. MTU is a membership organization comprised of 13 chapters representing approximately 4,000 anglers dedicated to the conservation, protection, and restoration of Montana's wild and native trout. Founded in 1964, MTU is the only statewide grassroots organization dedicated solely to conserving and restoring coldwater fisheries. Protecting and restoring river and stream flows are central to MTU's mission to conserve, protect, and restore Montana's wild and native trout.

MTU supported the transfer of ownership in the 2015 legislature under the expectation that the Department of Natural Resources and Conservation (the Department) would assist the water users in development of an updated reservoir operations plan as part of the transfer. At the time we also expected that the analysis for the updated reservoir management plan would include hydrological and operational information that could better inform the water users how they could more efficiently operate the facility, while also better accommodating downstream water rights and resources such as Montana FWP's instream flow water reservation and Willow Creek's fishery. The EA fails to do this. MTU has a track record of successful collaboration with water users and state and federal agencies to develop workable reservoir operating plans based on solid science. In the Sun River basin, for example, we worked with the Bureau of Reclamation, the Greenfields Irrigation District, the Fort Shaw Irrigation District, the Broken O Ranch, and Sun

River Watershed Group to analyze inflows to the basin and historic snowpack data to develop hydrologic relationships that guide Gibson Reservoir operations.

The hydrologic relationships between forecasted total inflows to the reservoir, and rates of accumulation and melt of the snowpack, now guide reservoir operations at Gibson. This ensures not only that Gibson Reservoir will fill in nearly every year, but that all water rights — both reservoir storage rights and water users' natural flow rights on the Sun River — have the best chance of being fulfilled every year, even in dry years. Of course under drought conditions, the most senior water rights are fulfilled first. But even under drought conditions the reservoir operating plan brings transparency and science to water management that reduces conflict due to water scarcity. Similarly, on Silver Lake and Warm Springs Creek in the Upper Clark Fork River basin, we have worked with water users and the Montana Department of Fish, Wildlife, and Parks, to develop hydrologic relationships and a better understanding of inflows to the basin. This has been key to developing a water management plan on Warm Springs Creek.

Similarly, the development of a reservoir operating plan for Willow Creek Reservoir based on hydrologic relationships will likewise ensure that the reservoir will fill in nearly every year, while also ensuring that other water users' water rights based on the natural flow of Willow Creek have the best chance of being fulfilled. Just as in the Sun River basin, the development of a reservoir operating plan based on sound hydrologic relationships ensures that even under drought conditions, transparent and data-driven water management decisions are made. This not only reduces the potential liability of the dam owner and operator, but also reduces conflict over water scarcity and increases the confidence in decision-making for all water users. Such a reservoir operating plan is also required to meet the State of Montana's obligations under the Montana Environmental Policy Act (MEPA) for the major state action of transferring from public to private ownership the Willow Creek Dam and Reservoir.

Along with the need for an operations plan, MTU found that the Draft EA was silent on analyzing effects of the transfer on reservoir operations, fishing access, fisheries, and water rights. While MTU appreciates the efforts to secure fishing access to the reservoir, the EA fails to provide enough information on which to analyze the effects the transfer of ownership has on access easements. Likewise, although abundant information on fisheries, hydrology, and water quality is available to analyze the effects of reservoir operations and the transfer, no information is presented to analyze effects of the changing ownership on the human environment. For instance, the EA does not disclose what the plans – and the effects of – will be for future water management at Willow Creek Reservoir. Montana TU is not opposed to the transfer of ownership of Willow Creek Reservoir, but we believe before the transfer occurs the EA should provide a detailed hydrological analysis that will enable the water users to more efficiently operate the facility and give them a better idea on what they are inheriting, include options for ensuring downstream effects -- including instream flows for fisheries -- are better accommodated, and include a proposed future operating plan for the project. That is the only way the effects of this transfer can be analyzed.

1. **The Draft EA for the Willow Creek Dam and Reservoir Transfer Project Fails to Analyze or Address Likely, Significant Environmental Impacts from Reservoir Operations.**

The Draft EA for the Willow Creek Dam and Reservoir Transfer Project omits any substantive review of the likely, significant environmental impacts of transferring ownership from the State of Montana to the Willow Creek Water Users Association. The Draft EA, at page 6, explains that "effects on downstream water quality and quantity" were "considered and **eliminated from further study** because the proposed action does not involve any construction or operational changes." (emphasis added). There is no other mention of the current or future operation of Willow Creek Dam and Reservoir under the ownership of the Willow Creek Water Users Association in the Draft EA. MTU believes that the transfer of a public facility to private ownership is a major state action that at minimum requires a forward-looking reservoir operations plan and a full environmental analysis of that facility's current impacts. In the absence of such analysis, the water users and the public both assume significant risk due to great uncertainty.

MEPA requires state decision makers to fully examine the impacts of proposed actions and to evaluate alternatives that may reduce or avoid those impacts. Mont. Code Ann. § 75-1-201. MEPA requires an agency to take a "hard look" at the environmental impacts of a given project or proposal by compiling all pertinent data and reasonably analyzing relevant information. *Ravalli County Fish & Game Assn.*, 273 Mont. 371, 377, 903 P.2d 1362 (1995).

A smooth transition of Willow Creek Dam and Reservoir from state to private ownership requires a reservoir operations plan based on a comprehensive review of historic and projected basin inflows and snow-melt rates, together with an analysis of water rights that need to be met in the basin in addition to the storage rights in Willow Creek Reservoir. A revised Willow Creek Draft EA that provides these elements will allow MTU and others to fully support the transfer of Willow Creek Dam and Reservoir.

The Draft EA provides no data or analysis of environmental impacts of current reservoir operations. However, MEPA requires a full review of environmental impacts including the impacts of reservoir operations on fisheries, water quality and water quantity. For example, the existing *Willow Creek Dam Manual for Operation and Maintenance* recognizes that "stoppage of dam releases in winter is a serious problem to downstream fishery." State Water Projects Bureau 2005. *Willow Creek Dam Manual for Operation and Maintenance.* Dept. of Nat. Res. and Conserv., at 13. However, the Draft EA contains no information on which to gage how reservoir operations have affected fisheries in Willow Creek below the reservoir or the rainbow trout population in the reservoir (which has provided a significant source of eggs for fisheries management across the region).

Without compiling, reporting and analyzing any information on fisheries and wildlife resources or water quality and quantity, the Department has not conducted an adequate analysis of effects on the human environment and the Draft EA is inadequate. Understanding the effects

of reservoir operations on economics and habitat is important for the both the water users and the public to make informed judgments.

2. **The Draft EA for the Willow Creek Dam and Reservoir Transfer Project Fails to Analyze or Address Likely, Significant Impacts from Reservoir Operations on Existing Water Rights, including a State-Owned Instream Flow Reservation.**

The Draft EA also fails to address impacts of reservoir operations on water rights, including Montana Fish, Wildlife and Parks's (FWP) instream flow reservation for the fishery. The Draft EA makes no mention of any water rights other than the 1935 DNRC storage rights. Draft EA at 8. The Draft EA states "Although the reservoir is filled primarily during spring runoff and is released for beneficial uses during the irrigation season, these rights allow water to be diverted into storage year round. Water can be stored only when water is physically and legally available and there is capacity in the reservoir." *Id.* Water rights for irrigation, livestock, fisheries, and other uses exist both below and above Willow Creek Reservoir. FWP holds a 14 cfs instream flow water right in Willow Creek. It is unclear how reservoir operations may have helped or hampered exercise of this year-round water right. The Draft EA should at least describe the history of outflows from the reservoir since the instream right is specifically included in the Operations Manual. Operations Manual at 13. FWP also holds a 27.9 cfs instream water right for spawning upstream of the reservoir. At least a dozen more water rights are privately owned on Willow Creek below the reservoir and a greater number in tributaries to the reservoir. How reservoir operations' *status quo* is affecting private and public water rights above and below the reservoir requires analysis. Unless flow and storage data is collected and analyzed, how can the water users, the public, or the Department determine if significant impacts exist?

The Draft EA should also mention how the transfer could work to implement the new 2015 State Water Plan, which urges the Department and its partners to address "drought resilience" in the basin by identifying how water storage in State Water Projects could contribute to drought planning and protecting rivers during drought. Stored water at Willow Creek Reservoir could satisfy irrigation demand and still improve drought resilience down Willow Creek and into the Jefferson River. The Jefferson River may be more affected by drought and low water years than any other river basin in Montana; it has a history of more fishing-closure days than any other river in the state. Angler days are also highly correlated with Jefferson River basin streamflows. For example, in 1999, an average water year, there were 17,346 angler days. In 2005, a dry year, there were 53% fewer angler days, or only 9,120 angler days. *See, Montana's Snowpack Economy: Climate Change and the Economics of Fishing the Jefferson River,* Trout Unlimited, Montana Water Project (2006). The Draft EA should include an analysis of water supply and demands over time, in drought and wet years, to help water users meet their obligations to irrigators and assess potential options for surplus storage in the future.

At minimum, MTU requests that the Department collect and analyze available information regarding effects of reservoir operations on the human and physical environment (which includes fish, wildlife, and water rights) and update the operation plan. The Department should gather information from the period of record including inflows to reservoir, snowpack history, reservoir outflows, storage levels, and water deliveries. Ultimately, the EA should include updating the reservoir operating model for Willow Creek Reservoir, on which the water users can make informed decisions in the future. Technical experts with the Department and other partners should be consulted *before* the transfer to ensure the water users aren't assuming a large financial burden *after* the transfer.

In conclusion, the Draft EA fails to gather or analyze crucial information pertaining to the effects of transferring Willow Creek Reservoir to the water users. Without collecting, analyzing, and reporting even minimal information prior to the transfer, the water users, the Department, and the public cannot make a rational judgment on the effects of the transfer on future economic impacts on water users and the environmental impacts of the transfer. MTU acknowledges that the water users are capable of assuming responsibility for operating and maintaining the facility, but a detailed MEPA analysis is required to fully inform the water users and the public on the risks and benefits of the transfer. Without additional hydrological data, detailed disclosure of future operations and their effects, and a good-faith recommendation and analysis on how the reservoir could be managed more efficiently for water users while also accommodating FWP's instream flow reservations and downstream fisheries, Montana TU is reluctant continue to support the transfer. We believe the water users would also benefit from the additional information and analysis.

Sincerely,

Bruce Farling

Bruce Farling

Executive Director

cc.

Kevin Smith, DNRC

Fred Robinson, DNRC

Tim Davis, DNRC

Ziemer, TU

Byorth, TU

March 1, 2016

State Water Projects Bureau
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1424 9th Avenue
Helena, MT 59620

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James P. Domino,

This letter is to inform the DNRC of our comments to the EA. There are a number of objections to this document (a new survey, formation of an irrigation district, assumed liability for recreationalists, and many more). The WCWUA also feels much of the language is unnecessary. It seems there is more focus on the 'transfer' rather than the actual 'environment assessment' and this should be addressed.

The dam and reservoir has been operated, maintained and managed by WCWUA since 1938 with the oversight of DNRC. This was not properly communicated throughout the document and seems it was written with a biased perspective. The document does not convey the history and commitment that the WCWUA has demonstrated for the last 70 + years.

Below is a list of WCWUA comments and concerns.

Page 3 First bullet: "Conduct a boundary survey of all parcels considered for transfer." We object.

Page 4 Third bullet: "The Project shall not be operated for profit. Any revenue generated by the sale of water from the Project shall be dedicated to paying the costs of continued operations, maintenance, repair, rehabilitation, and safety of the Project." We object and this needs to be clarified.

Page 4 Fourth bullet: In order to ensure that existing public recreational access to the reservoir, transferred lands and the DFWP Fishing Access Site are maintained in perpetuity, the DNRC will relocate the property boundary adjacent to the DFWP Fishing Access Site to provide unrestricted access to the lake and allow to allow future recreational site development and / or assign to DFWP a conservation / recreational easement on all lands transferred to allow the same uses. We object to the new proposal Appendix H Property Ownership Map Red Hatch Areas is taking "excessive land." We suggest going with a lease like the one that is in existence now.

Page 4 Sixth Bullet: "Development or structures, except as may be needed for Project operations, shall not be permitted on the transferred property." We object.

Page 4 Seventh Bullet: "The Project shall be maintained and operated in compliance with the Montana Dam Safety Act. If, after transfer, the WCWUA is unable to maintain compliance with the Dam Safety Act or is in violation of operating permit, the Project, including water rights, shall revert to the DNRC free and clear of any liens, encumbrances, or restrictions. The WCWUA interest in the Project and its benefits

shall be terminated. The DNRC shall not in any way be obligated to the WCWUA or its individual members for continued or renewed operations of the Project." We will want to revise this language so the DNRC has first right of refusal and the water rights shall remain with the land owners.

Page 7 2.2 Descriptions of Alternatives: This section should be removed. There is no need to have a 'preferred alternative' and the section is not applicable to an EA.

Page 8 3.2 Water Resources: WCWUA objects to the language.

Page 10 3.6 Ownership and Land Use: Again, we object to a new survey.

Page 13 4.2: The language in this section is not necessary.

Page 15: There is no need for alternatives B or C. There should be only two alternatives. Either DNRC continues to own the dam or the dam is transferred to the WCWUA.

Page 19 No need for a 'preferred alternative' and we object to the last paragraph in 6.1.

Page 19 Section 6.2: We object to a preferred alternative.

Page 21 Section 6.5: We object to a new survey.

Appendix C Page 2: We want the language modified in the second and third paragraphs.

Appendix C Page 3: last bullet: We object to a new survey.

Appendix C Page 4: First bullet: We object.

Appendix E Rehabilitation Summary and Future Needs: This language is not necessary.

Thank you for considering our objections.

Sincerely,

Cathy Elmose

Cathy Elmose
Secretary WCWUA

Mark Cooper

Bob Sitz

Mike Elmose

Brian Dyke

Bill Buttleman

Name	Address	Signature
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Sam Platts	PO Box 671 Pony 59747	[illegible]
Ron Todd	P.O Box 517 Pony 59747	Ron Todd

Montana Fish, Wildlife & Parks

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MAR 17 2016
D.N.R.C

March 14, 2016

James Domino
MT DNRC Water Projects Bureau
1424 9th Avenue
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Helena, MT 59620-1601

Dear Mr. Domino:

Thank you for the opportunity to comment on DNRC's Draft Environmental Assessment for the Willow Creek Dam and Reservoir Transfer Project ("EA"). Montana Fish, Wildlife & Parks ("FWP") Fisheries and Fishing Access Site Program staff have reviewed the EA and respectfully provide the following comments.

Fishing Access and Recreational Use Comments:

FWP agrees that public recreational access to the reservoir should be maintained in perpetuity and appreciates DNRC's commitment to that objective. In 1961 FWP acquired approximately 40 acres in fee title for use as a Fishing Access Site ("FAS") on Willow Creek Reservoir, now known as Harrison Lake FAS. Since its purchase, FWP has developed extensive facilities at this site including a boat ramp, parking areas; several vault latrines and multiple camping facilities. This has proven to be a very popular fishing and camping destination for people from the local area. The most recent angler pressure survey data from 2013 shows this site ranked as 33rd in the region with 3,596 angler days of use. A capital project to improve the roads and camping areas is currently budgeted and anticipated to be completed this fall or in the spring of 2017.

Contingent on obtaining Fish &Wildlife Commission approval, FWP intends to accept in fee title the transfer of land as identified in the EA. FWP also requests that DNRC assign FWP a recreational easement on the balance of all the project related DNRC lands prior to transfer of the property to the water users association. Doing so will allow boaters and anglers the opportunity to use the reservoir shoreline, within DNRC's current ownership, to get out of their boats and fish from shore, picnic and otherwise utilize the reservoir shoreline for recreation as has been done in the past.

The EA equates the current level of legal public access to that which would prevail under Irrigation District ownership. Although this may be the case, the EA lacks adequate explanation of how this determination was made and additional detail is needed to ensure said access is maintained.

In Appendix E of the EA, The Willow Creek Dam Fact Sheet states that Montana Fish, Wildlife & Parks manages a fishing access site under a DNRC lease. In fact, FWP has approximately 40 Acres

of fee title ownership at the Fishing Access Site (FAS) but with some important infrastructure development on DNRC land (without a lease), and that infrastructure and public access would need to be continued perpetually.

FWP requests that public access easements be provided on all existing DNRC lands containing roads leading to the fishing access site.

FWP would like to see a detailed description that illustrates past recreational use (both spatially and temporally) and system operations. Without this detailed information, it is difficult to ensure that no changes occur in recreational opportunity or system operations, due to transfer of ownership. For example, The EA describes the existing opportunity to boat to the dam and hike downstream to the tailwater. FWP presumes that this opportunity will be maintained under future management.

Fisheries and Hydrology:

Willow Creek Reservoir provides a valuable recreational fishery, and perhaps equally important, the reservoir provides important streamflow releases to support a wild trout fishery downstream of the impoundment. In addition, this tributary provides critical water for the Jefferson River fishery which is frequently impacted by low streamflow and elevated water temperature. Willow Creek is a critical tributary for the fishery of the Jefferson River.

Historic water management by the Willow Creek Water Users Association (WCWUA) at a facility owned by the State has been favorable for maintaining the fishery in the reservoir. Although lake-level management needed to maintain a healthy conservation pool is not optimal for the fishery during some years, a review of limited available lake level management actions by WCWUA generally confirms protection of the conservation pool. Montana Fish, Wildlife & Parks conducts extensive monitoring of the reservoir fishery by operating a spawning weir for at least 60 days per year. Data from this trap operation indicate 1,000 to 3,000 adult trout enter South Willow Creek each year, and currently lake level management has been adequate to sustain the fishery. It is not known if relatively small changes in lake level management could impact the fishery. It should also be noted that the relatively wild strain of rainbow trout (DeSmet strain) in Willow Creek Reservoir represents an important wild egg source for stocking in other lakes and reservoirs. A minimum of 100,000 DeSmet strain eggs have been collected from this fishery annually for the past 20 years.

In addition, casual observations of streamflows downstream of Willow Creek Reservoir indicate good faith efforts by WCWUA to provide sufficient flow to prevent dewatering events that could impact the resident fishery in lower Willow Creek. Unfortunately, quantitative streamflow monitoring of Willow Creek downstream of the reservoir was discontinued in 1956. Therefore, an evaluation of fishery issues related to historic streamflow releases is inconclusive.

The EA identifies issues eliminated from further study because no negative impacts are expected by the preferred alternative. That section concludes that there will be no anticipated impacts on fisheries resources or on downstream water quantity because historic water use practices will be maintained. As outlined above, FWP agrees that past management has allowed adequate fish survival above and below Willow Creek Dam, but the EA provides no hydrologic data (volumetric content or downstream releases) to define past and future management that can guide future operation of the reservoir. These data appear necessary to conclude whether future management will

have positive, negative, or neutral effects; thus, FWP would like to see further detail provided within the EA to help with analysis.

FWP further provides the following comments on specific portions of the EA:

Page 4: WCWUA will maintain historic water use practices that allows 12,000 AF for agricultural use per year.

Comment: FWP fully supports the use of 12,000 AF for agricultural purposes. Details regarding water releases and lake elevation using historic data will be needed to assess fishery and streamflow effects, and to ensure that no negative changes occur under the new ownership.

Page 7: Describes preferred option to transfer to the Irrigation District.

Comment: FWP appreciates the fact that the current water users are the primary manager of this facility. Transfer of ownership to an "Irrigation District", however, may limit the ability of water users to adjust water management in ways that benefit both agriculture and drought resiliency efforts in the basin. The merits of forming a more flexible organization of existing users such as a County Water District should be evaluated for future management.

Page 17: Effects on Recreation

Comment: Seasonal lake elevation related to boat ramp access should be identified.

Page 21: Monitoring. Except for transfer stipulations, no monitoring is required

Comment: FWP was asked to attend the annual WCWUA meeting in 2015 to outline fisheries issues (including monitoring) related to Willow Creek. We met again in 2016 to discuss options for improved streamflow monitoring to assist water management. DNRC expertise and assistance for future monitoring would be very helpful to assist with management and document beneficial water use. FWP currently assists USGS with reservoir inflow monitoring of South Willow Creek.

Please feel free to contact my staff to answer questions relating to comments on the EA. Travis Horton (Regional Fisheries Program Manager) can be reached at 994-3155.

Sincerely,

Bruce Rich
Fisheries Division Administrator