

**Upper Clark Fork River Basin Steering Committee  
Meeting Summary  
February 3, 2010**

**Introductions**

Gerald Mueller, members of the Upper Clark Fork River Basin Steering Committee (Steering Committee), and others in attendance introduced themselves. Those in attendance included:

<b>Members</b>	<b>Group/Organization Represented</b>
Bob Benson	Clark Fork Coalition
Stan Bradshaw	Montana Trout Unlimited (TU)
Jim Dinsmore	Granite Conservation District
Senator Dave Lewis	Senate District 42
Mike McLane	Montana Department of Fish, Wildlife and Parks (DFWP)

**Public**

Darryl Barton	Clark Fork River Technical Assistance Committee (CFRTAC)
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**Agency Personnel**

Chris Lorentz	DFWP, Parks Division
Chet Crowser	DFWP

**Staff**

Gerald Mueller	Facilitator
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**Agenda**

- Review summary of the December 8, 2010 Meeting
- Possible Steering Committee Budget Reduction
- Land Application of Sewage Treatment Plant Effluent
  - Land Application and Water Rights
  - Deer Lodge Project
- Water Rights and Wetlands
- Blackfoot River Recreation Management Plan
- Updates
  - Bull Trout Critical Habitat Proposal
  - Water Policy Interim Committee Presentation
- Public Comment
- Next Meeting

**December 8, 2010 Meeting Summary**

The Steering Committee made no changes to the meeting summary.

**Possible Steering Committee Budget Reduction**

Gerald Mueller noted that according to recent press reports, Governor Schweitzer has asked executive branch agencies to identify 5% cuts in their general fund budgets because of falling

state revenues. When the reports first appeared in the media, Mr. Mueller emailed Ann Schwend and volunteered to propose to the Steering Committee that it cut its budget by 5%.

Mr. Mueller passed out copies of the Steering Committee budget and expenditures to date for FY2010-2011. The general fund is the source of Steering Committee funding for the biennium. See Appendix 1.

Mr. Mueller also stated that in a recent conversation, Ann Schwend told him that Paul Azevedo, Chief of the Water Management Bureau, has not recommended that the Steering Committee budget be reduced. If agency reductions increase from 5% to 10%, Mr. Azevedo may review this decision. Ms. Schwend also said that reducing the Steering Committee's general fund budget may result in a drop of funding for the next biennium.

*Comment - Reports to the legislature indicate that state general fund revenues continue to fall. I expect that a 20% cut may be required for the next biennium budget, which is unprecedented.*

***Steering Committee Action - Those members present at this meeting agreed to recommend to DNRC a cut in the Steering Committee if the department is required to cut its current budget by 10%.***

### **Land Application of Sewage Treatment Plant Effluent**

Ethan Mace, who is with the Missoula Regional Office of the DNRC Water Resources, planned to attend this meeting to discuss this and the water rights and wetlands topic, but due to illness was unable to do so. Gerald Mueller, therefore, reported on this topic based on a conversation with Mr. Mace.

Land Application and Water Rights - In 1996, to clarify the feasibility of a land application by the City of Deer Lodge, the Steering Committee assisted the City in obtaining a declaratory ruling by the DNRC concluding that:

...the City of Deer Lodge is not required to obtain either a new water use permit nor a change authorization from the DNRC before land treating its sewage effluent in this case.

Downstream appropriators cannot insist upon the continued discharge of the sewage effluent into the Clark Fork River. (Final Order B-No. 97514-76G page 12)

Mr. Mueller passed out copies of this order.

DNRC stands by this order. As long as the City of Deer Lodge intends to use land application to treat its sewage treatment plant effluent it would not need a permit to apply the effluent to land whether owned by the city or by a private party at a location in or outside of the city limits. The land to which the effluent is applied may be grazed or cropped. The effluent may also be conveyed in a ditch transporting other water.

*Comment - Land application of effluent from the Anaconda sewage treatment plant is occurring on Ueland property. Anaconda is seeking to expand the area of the land application. The expanded area will allow the city to lower the treatment plant cell levels prior to winter and thereby increase storage of effluent over the winter.*

*Comment - Land application also occurs in Glacier Park. To prevent the build up of nutrients in ground water, the Park has harvested a crop from the land to which the effluent is applied.*

*Comment - At a recent meeting of the Montana Department of Environmental Quality Nutrient Work Group, a representative of the City of Billings stated that DNRC has told the city that use of its sewage treatment effluent for agriculture would not require a water right permit, but using it for a constructed wetland or for aquifer recharge would require a water right permit.*

*Question - Are you familiar with the City of Philipsburg advertising for land for a land application project?*

Answer - No.

Deer Lodge Project - Darryl Barton, who is a consultant to the City of Deer Lodge for its sewage treatment plant, provided an update on the status of the City's treatment plant upgrade project using a PowerPoint presentation entitled "Deer Lodge Wastewater Project.". The content of his presentation without the pictures is included below in Appendix 2.

The City built the current treatment plant in 1985. It was a party to the existing Voluntary Nutrient Removal Project (VNRP) for the Clark Fork River that was finalized in 1989. Under the VNRP, Deer Lodge had a zero discharge level of nutrients to the Clark Fork River during the summer months. DEQ is currently converting the VNRP into a Total Maximum Daily Load (TMDL), and as a result, the City expects that it will continue to have a zero nutrient permit requirement for its sewage treatment plant in the summer.

Since the late 1990's, the City has met the zero summer discharge by land applying the sewage treatment plant effluent. It had an agreement with the Grant Kohrs Ranch (GKR) to land apply the sewage treatment plant effluent on the GKR property. This agreement is ending so that the land application can continue on the GKR only this year and possibly next. If land application is to continue, a new location must be found. The City has explored land application on property owned by the Rock Creek Land and Cattle Company, property offered for sale by the Morrisons, and the Montana Prison Ranch. Of these three, only the Prison Ranch site appears feasible.

The City experiences large inflow of ground water into its sewage system that increases the volume of waste water that it must treat. The increased volume compromises its ability to comply with biochemical oxygen demand (BOD) and total suspended solids (TSS) standards. Fixing the leaks in the system to stop the inflow of ground water would likely be as or more expensive than building a new plant. The City is therefore planning to build a new plant east of town on the Prison Ranch property.

*Question - You said that the Prison Ranch currently irrigates its land near the site the City is considering for its new sewage treatment plant. What is the source of water for the irrigation?*

Answer - The Prison ranch uses water from Tin Cup Creek and from its sewage treatment plant effluent.

*Question - How might the Steering Committee assist the City's project?*

Answer - As we apply for funding for the rebuild, we may ask for letters of support from this group.

## **Water Rights and Wetlands**

The other topic in addition to land application and water rights that Mr. Mace intended to talk about today was water rights and wetlands. In his absence, Mr. Mueller again addressed this topic based on his recent conversation with Mr. Mace.

Mr. Mace was a primary contributor to proposed DNRC rules addressing wetland water rights. However, because of comments on the proposal, the department has withdrawn it to continue to work on the wetland water right framework. Some commentors thought that the rules would establish wetlands as a beneficial use. This was not the case, as wetlands are already a beneficial use for which water right permits can be obtained. Other commentators, including the Montana Department of Transportation (MDT), DFWP, and the Natural Resource Conservation Service (NRCS) were concerned about the proposal provisions regarding wetlands with artificial water control structures. Wetlands without a water control structure do not require a water right permit. DNRC is moving away from issuing water rights for wildlife ponds in favor of wetland water rights. Mr. Mace will shortly issue a paper addressing wetland hydrology.

*Question - Has DNRC said when the wetland rule adoption process might be restarted.*

Answer - No.

*Comment - The NRCS concern about wetland water rights stemmed from a lawsuit it recently lost regarding the Pushkin wetland restoration project. The NRCS installed a dike to restore a wetland, but was sued by water users who had developed water rights based on leakage from the Pushkin Canal. The court ruled that NRCS needed a water right.*

*Comment - MDT and DFWP did have reservations about the proposal stemming from the threshold between restoring and creating a wetland. The rub is when the control of the flow of water and the affect on the water balance.*

## **Blackfoot River Recreation Management Plan**

Chet Crowser, Montana DFWP River Recreation Manager, and Chris Lorentz, DFWP Park Manager, discussed this topic. Mr. Crowser used a PowerPoint presentation entitled "Draft Blackfoot River Recreation Management Plan and Environmental Assessment (EA)" to discuss the content of the draft Blackfoot River Recreation Management Plan, the process used to develop it, and the make up and role of the River Recreation Advisory for Tomorrow (RRAFT) Committee. The content of his presentation, except for one chart on the management approach which could not be converted to a Word format, is included below in Appendix 3.

*Question - Is DFWP monitoring impacts of Blackfoot River recreation on natural resource values?*

Answer – Not with a formal monitoring plan, but the draft Blackfoot Recreation Plan includes tools for monitoring including vegetation loss, erosion, litter, etc. The DFWP Fisheries Bureau monitors impacts relating to fisheries and recommends fishing regulations. The DFWP divisions will work cooperatively to maintain resource values.

*Question - Are you including the local DFWP fishery biologist, Ron Pierce, in the assessment of the impacts of recreation on resource values?*

Answer - Yes. Issues mentioned by the public have included hook scaring and fishing regulations.

*Question - Are you using data collected by one of your predecessors, Woody Baxter?*

Answer - Yes. DFWP conducted a study of non-commercial Blackfoot River recreation in 2002. Commercial use data is most comprehensive from 2005 to present.

*Question - What methods do you plan to use to assess the number of recreational users and the type of use?*

Answer - We have a sampling plan including provisions for data collection, but implementing it will depend on funding. One person employed during the summer will not be adequate. We have counted traffic in established parking lots such as picnic areas and campgrounds. We still lack a good census.

*Comment - White water recreation is moving up river.*

*Comment - When it is allowed, floating from the Blackfoot into Missoula via the Clark Fork will likely be important.*

Answer - Floating through the confluence to be allowed in 2012-2013. This pending change is the reason that Missoulians were included on the RRAFT. We will apply experience with enforcement on the lower Blackfoot River to the Clark Fork River below the confluence of the two rivers into Missoula.

*Question - Has enforcement on the lower Blackfoot River changed behavior?*

Answer - Yes. We have had support from the Missoula County Sheriff and the Bureau of Land Management (BLM). The number of citations for severe behavior has dropped. More families and children are using this portion of the river.

*Question - Has recreation activity on the Clark Fork down river of Deer Lodge changed?*

Answer - We have anecdotal evidence that recreational river use has increased from Deer Lodge to Drummond. Fishing in the Clark Fork above Milltown has improved. We anticipate that recreational use of the Clark Fork will continue to increase.

*Question - Will the I-90 bridge piers in the Blackfoot be removed?*

Answer - These piers make floating this stretch of the river tricky. Jurisdiction for their removal, however, is with the Montana Department of Transportation.

*Question - One of concerns expressed at the last Steering Committee meeting was lack of representation of Powell and Granite Counties on the RRAFT. Would you consider adding members to it?*

Answer - The RRAFT includes 17 representatives of a diverse group of river users, geographic areas, and agency partners. We have tried to keep membership on the RRAFT at a workable number. During the two year planning process, the RRAFT met 30 times. The meetings are always open to the public and public participation is welcomed.

*Question - If the Powell and Granite County Commissions requested membership on the RRAFT, would you consider it?*

Answer - We would discuss this with our supervisor.

*Question – How was the proposed Blackfoot River permit allocation system different than the permit system on the Smith River?*

Answer - The proposed permit allocation system in the Draft Plan suggested a first-come-first-serve reservation system rather than a lottery system. Permits would be available on a phased basis.

## **Updates**

Bull Trout Critical Habitat Proposal - Gerald Mueller reported that the US Fish and Wildlife Service (FWS) is proposing to revise the critical habitat designation for bull trout. In 2005, a rule was adopted that excluded much of the federal land that had been proposed for critical habitat designation in 2004. The present proposal would add many stream miles on federal land in the Clark Fork River Basin. Maps of the area in the proposal are available at:

<http://species.fws.gov/bulltrout> .

Mr. Mueller passed out copies of a FWS fact sheet regarding the critical habitat designation and a map of the proposed designation in the upper Clark Fork River basin. See Appendix 4 below. The FWS will hold a public informational meeting on the proposed rule in Missoula from 3:00 p.m. to 8:00 p.m. on February 18 at the DFWP offices at 3201 Spurgin Road.

Mr. Mueller discussed the proposed rule with Wade Fredenberg, the FWS Endangered Species Coordinator in Montana. Mr. Fredenberg does not expect significant change in the existing situation regarding bull trout management as a result of the proposed rule. Critical habitat designation affects only federal land; it does not affect private land. When a federal land management entity anticipates a regulatory or funding action that might destroy or adversely modify critical habitat, it must consult with the FWS. According to Mr. Fredenberg, these consultations have been occurring regarding streams occupied by bull trout that are not currently designated as critical habitat, which is why he does not see significant change as a result of the proposed rule.

*Comment - Travis Horton, the DFWP Native Species Program Manager, also does not expect much to change as a result of the proposed rule.*

*Question - Would consultations be required for every 319 grant, 310 permit, United States Forest Service and BLM permit, and the Corps of Engineer 404 permit?*

Answer - Consultations are required of federal agencies considering funding or permit actions that might adversely affect critical bull trout habitat. 310 permits are not federal actions; they address private actions on private lands and would bull trout critical habitat consultations would not be required.

*Question - Are Racetrack Creek and the Little Blackfoot River included in the critical habitat proposal?*

Answer by Mike McLane - No. The local DFWP fishery biologist for this area, Jason Lindstrom,

has not found bull trout in the Clark Fork River tributaries in the Deer Lodge Valley, with the exception of upper Warm Springs Creek. See the map of proposed critical habitat designations.

*Question - What about the East Fork Reservoir and Georgetown Lake?*

Answer - Because they are on federal land, East Fork and Georgetown Lake would require consultations for renewal of the special use permits.

Water Policy Interim Committee Presentation - Gerald Mueller reported that Joe Kolman has requested a presentation on Milltown Dam water rights at the March 10-11, 2010 Water Policy Interim Committee meeting. Mr. Mueller asked for the Steering Committee's approval to make a presentation based on the Steering Committee's paper plus the information comparing possible fishery beneficial uses with river flows at Milltown Dam provided by Mr. McLane. Mr. Mueller noted that Mr. McLane's comparison does not constitute a DFWP position and is for illustrative purposes only. He noted that Carol Fox had suggested that a presentation address the work that the Steering Committee has done on this topic rather than addressing the water rights. Mike McLane stated that the transfer of the land and water rights at Milltown to the state has not yet occurred. The transfer will have to go through the federal government, and agreement regarding this transfer has not yet occurred.

***Steering Committee Action - Those members present at this meeting agreed to a presentation to WPIC by Mr. Mueller based on the Steering Committee's Milltown Dam water right paper plus the illustrative comparison provided by Mr. McLane.***

## **Public Comment**

There was no additional public comment.

## **Next Meeting**

The next meeting was scheduled for Wednesday, March 17, 2010 in Deer Lodge.

**Appendix 1**  
**Appendix 1 - Steering Committee 2010-11 Budget**

Budget Item	Natural Resources Operation Biennium Budget	Budget Quarter		Total Expended	Balance
		7/01-9/30/09	10/1-12/31/09		
Mueller Facilitation Services	\$20,000.00	(\$2,500.00)	(\$2,500.00)	(\$5,000.00)	\$15,000.00
<b>Subtotal</b>	<b>\$20,000.00</b>	<b>(\$2,500.00)</b>	<b>(\$2,500.00)</b>	<b>(\$5,000.00)</b>	<b>\$15,000.00</b>
Publications and Education	\$4,200.00				\$4,200.00
Newsletter		(\$243.00)			(\$243.00)
Postage		(\$89.54)			(\$89.54)
Meeting Expenses	\$1,800.00	(\$75.00)	(\$150.00)	(\$225.00)	\$1,575.00
<b>Subtotal</b>	<b>\$6,000.00</b>	<b>(\$407.54)</b>	<b>(\$150.00)</b>	<b>(\$225.00)</b>	<b>\$5,442.46</b>
Travel Expenses	\$6,000.00	(\$68.20)	(\$151.80)	(\$220.00)	\$5,780.00
<b>Subtotal</b>	<b>\$6,000.00</b>	<b>(\$68.20)</b>	<b>(\$151.80)</b>	<b>(\$220.00)</b>	<b>\$5,780.00</b>
Unspecified	\$1,992.00				\$1,992.00
<b>Subtotal</b>	<b>\$1,992.00</b>				<b>\$1,992.00</b>
<b>Total</b>	<b>\$33,992.00</b>	<b>(\$2,975.74)</b>	<b>(\$2,801.80)</b>		<b>\$28,214.46</b>

## Appendix 2

***Deer Lodge Wastewater Project***  
**Presented to: Upper Clark Fork Basin Steering Committee**  
**February 3, 2010**  
**Darryl Barton**

### ***Purpose of the Presentation***

- Driving Factors in Waste Water Treatment Upgrades
- What are the Reasonable Options for the City of Deer Lodge and its Rate Payers?
- Update on Project and its Future

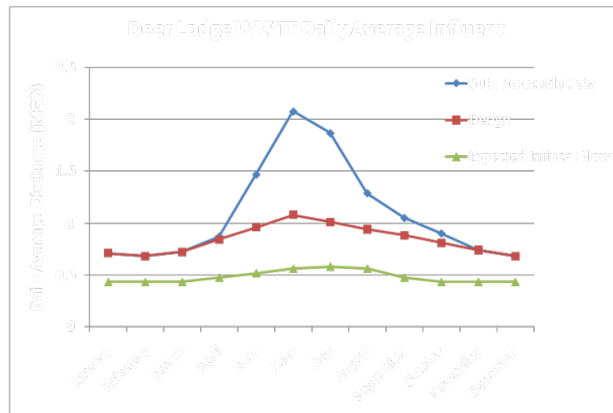
### ***Driving Factors for Deer Lodge Wastewater Upgrades***

1. *Permit requires Zero Discharge of nitrogen and phosphorus during summer months (June 21 through September 21)*
2. Grant Kohrs Ranch agreement ends. We must find another location for irrigation!
  - Current site:
    - Rock Creek Cattle
    - Mosier
  - New site: Prison Ranch
3. *Permit requires 85% removal of BOD and 65% removal of TSS*
  - Groundwater infiltration reduction
    - 2009 City Streets
    - Town to Plant or New location
4. Stringent ammonia limits in next permit
5. Current facility cannot meet requirements
6. Administrative Order from DEQ with compliance schedule

## ***Existing Infiltration and Inflow is a long-term challenge***

### Deer Lodge WWTF Daily Average Influent

*Existing Infiltration and Inflow  
is a long-term challenge*



Green represents wastewater expected for DL with no inflow

Red represents wastewater flow expected after improvements

Blue is current wastewater flow at the DL WWTF

Graph shows 0.5 million gallon per day increments (0 – 2.0 MGD)

### ***2010 Work Planned***

- Public meetings to present alternatives and gain public comment and support – January and February 2010
- Secure a location for irrigation of effluent
- Submit TSEP grant application – April 15, 2010
- Submit DNRC grant application – May 15, 2010
- Continued improvements of current system

### ***Project Implementation***

- Submit Grant Apps – Spring 2010
- Finalize Funding Package – Fall 2011
- Complete Design – Winter 2011
- Bid Project – Spring 2012
- Complete Construction – Fall 2012
- Submit Grants for Phase II – Spring 2012
- Complete Construction – Fall 2016

## Appendix 3

### **DRAFT BLACKFOOT RIVER RECREATION MANAGEMENT PLAN AND ENVIRONMENTAL ASSESSMENT (EA)**

Upper Clark Fork River Basin Steering Committee

Deer Lodge, MT

Wednesday, February 3, 2009

#### **OVERVIEW**

- ❖ Management Planning Process
- ❖ Draft Plan/Environmental Assessment
- ❖ Management Approach
- ❖ Key Issues
- ❖ Questions & Answers

#### **MANAGEMENT PLANNING PROCESS**

- ❖ Why is a Blackfoot River Recreation Management Plan Necessary?
  - Planning informs future management in order to preserve quality resources and recreation opportunities.
  - The plan builds upon recreation management efforts that have been ongoing since the 1970's.
  - Currently the Blackfoot does not have a comprehensive recreation management plan.
  - The Blackfoot continues to be a popular river recreation resource.
  - Concerns have been expressed over potential resource impacts and the quality of recreational experiences.

#### **MANAGEMENT PLANNING PROCESS**

- ❖ Establish a citizens advisory committee made up of diverse interest groups.
  - Directed by the Statewide River Recreation Rules
  - Implementation of a plan could have impacts or displace use to other rivers.
  - The Blackfoot River provides for a diverse array of recreational opportunities.
- ❖ The River Recreation Advisory for Tomorrow (RRAFT) Committee.
  - Over 70 applications were distributed.
  - 59 applications were received.
  - Selection was based upon the following:
    - Where does the applicant recreate?
    - What type of recreation does the applicant take part in?
    - Is the applicant an outfitter? If so, what type?
    - Is the applicant a business owner affected by river recreation?
    - Is the applicant a riverfront landowner?
    - 17 committee members were selected.
      - 1 stepped down

- 9 Agency Participants.
  - FWP, USFS, BLM, Missoula County
- 30 meetings were held over 2 years.
- ❖ Role of the River Recreation Advisory for Tomorrow (RRAFT) Committee
  - Develop the next planning document for the Blackfoot River.
  - Provide input on recreational use on other local rivers.
  - Develop management strategies that could address concerns or similar issues on other rivers.
- ❖ Draft Plan was developed for internal review.
- ❖ Draft Plan went out for public review (October 14 – December 16).
- ❖ 83 Comments received and analyzed.
- ❖ Decision document is being drafted.
- ❖ A decision is expected within the next 4-6 weeks.

#### **DRAFT PLAN/ENVIRONMENTAL ASSESSMENT**

- ❖ Plan Components
  - Introduction
  - Recreation and Resource Values
  - Recreation Management Approach
  - River Reaches, Settings & Desired Conditions
    - Built on 2000 Recreation Management Direction
  - River Management Issues, Direction & Management Actions
  - Environmental Assessment
  - Appendices

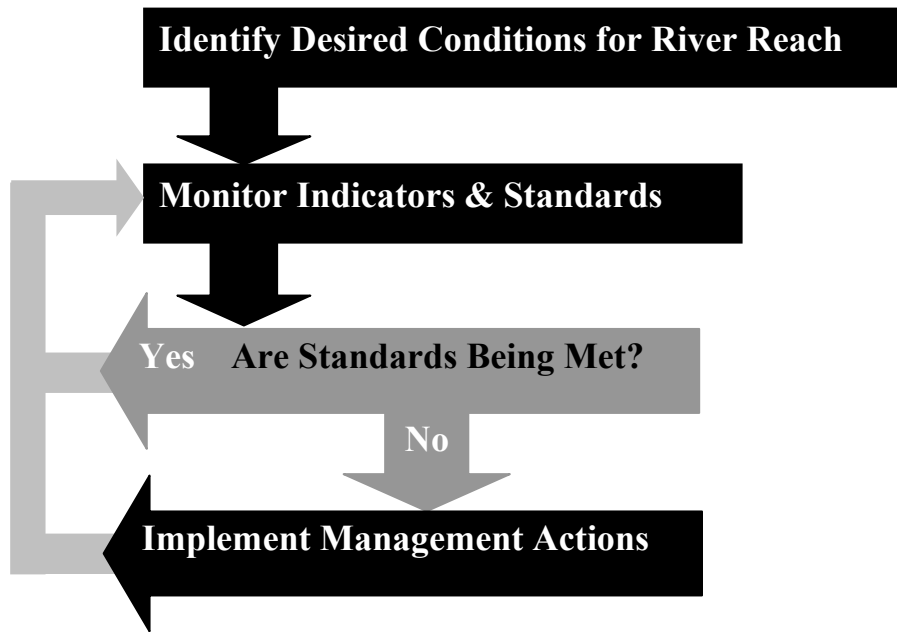
#### **MANAGEMENT APPROACH**

- ❖ Eight (8) defined river reaches
  - Provide for a range of recreation opportunities and experiences.
  - Originally established in the 2000 Blackfoot River Recreation Management Direction with help from the RecSteerCom.
  - Based upon the *settings*, *desired conditions*, and *opportunities* people are likely to encounter.
  - Allow for management that is tailored for unique and/or specific aspects of a given reach.

## Blackfoot River & North Fork of the Blackfoot River



## MANAGEMENT APPROACH



## KEY ISSUES

- ❖ Opportunities for Overnight Float Trips
- ❖ Volume of Float Use in Reach 3
- ❖ Volume of Float Use in Reaches 4 and Upper 5
- ❖ Volume of float Use in Lower Reach 5 and Reach 6
- ❖ Proposed Permit Allocation System

### [HTTP://WWW.MISSOULAMC.INFO/OPPORTUNITIES FOR OVERNIGHT FLOAT TRIPS](http://www.missoulamc.info/opportunities-for-overnight-float-trips)

- ❖ There is public interest in float-camp opportunities.
- ❖ Existing opportunities can be limited.
- ❖ Existing and potential resource impact concerns exist, along with recreation/landowner conflicts.

### Management Alternatives Contained in the EA

- Manage existing camping opportunities as first-come, first-serve within existing campgrounds.
- (Preferred by the Agency) Restrict camping to designated sites in high-use reaches of the Blackfoot River and explore and pursue establishment of float-only campsites.

### VOLUME OF FLOAT USE IN REACH 3

- ❖ Angling is popular during early to mid-summer.
- ❖ Desired conditions include opportunities to recreate in the absence of large numbers of people.
- ❖ Establishing a trigger to manage the amount of use could be used to guide implementation of future management actions.

#### Management Alternatives Contained in the EA

- ❖ Continue to manage watercraft launches in Reach 3 without a trigger point to indicate when additional management actions may be warranted.
- ❖ (Preferred by the Agency) Establish a trigger point for the number of watercraft launches in Reach 3 and implement additional management actions if the trigger point is exceeded.

#### **VOLUME OF FLOAT USE IN REACHES 4 AND UPPER 5**

- ❖ These reaches are popular for a wide array of recreational activities.
- ❖ Use can be characterized as busy during certain times of the year.
- ❖ Management actions in Reach 3 could result in a need to manage for displaced use.

#### Management Alternatives Contained in the EA

- Continue to manage watercraft launches in Reach 4 and Upper Reach 5 without a trigger point to indicate when additional management actions may be warranted.
- (Preferred by the Agency) If a permit system is implemented in Reach 3, establish a trigger point for the number of watercraft launches in Reach 4 and Upper 5 and implement additional management actions if the trigger point is exceeded.

#### **VOLUME OF FLOAT USE IN LOWER REACH 5 AND REACH 6**

- ❖ High volumes of float use occur in these reaches.
- ❖ Strong enforcement and management presence have reduced resource impacts and behavioral concerns.
- ❖ High volumes of use are acceptable for some recreationists.

#### Management Alternatives Contained in the EA

- Continue to manage watercraft launches in Reach 3 without a trigger point to indicate when additional management actions may be warranted.
- (Preferred by the Agency) Establish a trigger point for the number of watercraft launches in Reach 3 and implement additional management actions if the trigger point is exceeded.

#### **PROPOSED PERMIT ALLOCATION SYSTEM**

- ❖ A permit system could become necessary if other less restrictive management actions are not effective
- ❖ A permit system should allow for both short and long-range planning options.
- ❖ A permit system may be most effective if implemented on a reach-by-reach basis.

#### Management Alternatives Contained in the EA

- No Permit System.
- (Preferred by the Agency) Two-phased permit allocation system with split allocation for the first phase and first come, first serve allocation for the second phase.

- Allocate all permits to individuals (none specifically to commercial users). Permit holders would then decide whether to hire a commercial service provider.
- Allocate a pre-defined quantity of permits to commercial users and a pre-defined quantity of permits to non-commercial users.

**Appendix 4**  
**Questions and Answers**  
**Regarding the Proposed Critical habitat Designation for**  
**Bull Trout**

***What it Means to Montana's Landowners and Recreationists***

***What action is the Fish and Wildlife Service taking?***

The Service is proposing to revise the critical habitat designation for bull trout throughout its range in five Pacific Northwest states.

***Why is the U.S. Fish and Wildlife Service proposing to revise the critical habitat designation for the bull trout?***

The Service is proposing to revise the critical habitat designation for bull trout to address irregularities in the 2005 designation as identified in a report by the Department of the Interior Inspector General. The report found a former Department of the Interior political appointee had inappropriately influenced the outcome of the final 2005 designation by directing large areas of habitat to be excluded from what was proposed in 2004.

***What is critical habitat?***

Under the Endangered Species Act, critical habitat is defined as a specific geographic area that is essential for the conservation of a threatened or endangered species and that may require special management considerations or protection. A critical habitat designation does not affect land ownership or set up a preserve or refuge and only applies to situations where federal funding, permitting, or land is involved.

***What areas in Montana are being proposed for bull trout critical habitat?***

In Montana, approximately 3,094 stream miles and approximately 223,762 acres of lakes or reservoirs are being proposed in Deer Lodge, Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders Counties.

All critical habitat being proposed in Montana is currently considered occupied by bull trout. The proposed critical habitat includes only that lake and river habitat that is below the bankfull elevation (streams) or high water mark (lakes). The high water mark or bankfull elevation is generally recognized as the point where permanent terrestrial vegetation begins to occur.

Adjacent floodplains and lands above the high water mark are not proposed as critical habitat. However, it should be recognized that the quality of aquatic habitat within stream channels is intrinsically related to the character of the floodplains and associated riparian zones, and human activities that occur outside the river channels can affect the physical and biological features of the aquatic environment. We will continue to consult with Federal agencies on projects occurring within floodplains or riparian zones that may affect bull trout.

The Service is proposing critical habitat in only those areas that currently have the physical and biological characteristics necessary for the conservation and recovery of bull trout. In Montana, this includes only occupied streams where bull trout spawning and rearing or migratory connections presently occur as well

as downstream lakes and reservoirs where foraging and overwintering habitat exist.

***What are the regulatory consequences of a critical habitat designation?***

Regulatory consequences of a designation of critical habitat are that Federal agencies must consult with the Service before undertaking actions with ***a federal nexus*** (for example, projects or activities that require a Federal authorization, permit, license, or funding) that might destroy or adversely modify critical habitat. Because the bull trout is already listed as a threatened species under the Endangered Species Act, these consultations are already taking place and have been since 1998. Therefore little or no additional regulatory burden is anticipated. There will be no regulatory impact on private landowners taking actions on their lands which do not have a federal connection.

***How does the current proposed rule differ from the 2005 final rule, which is currently in effect?***

Under the 2005 bull trout critical habitat final rule, which is currently in effect, a series of disconnected patches of stream, lake, and reservoir habitat that occur primarily on State and private land were designated. The existing critical habitat in Montana totals 1,058 stream miles and 31,916 acres of lake/reservoir habitat. Under this new proposal, the inclusion of Federal lands would largely connect those patches into a continuous overlay that better represents the extent of important occupied habitat for bull trout.

***Do listed species in critical habitat areas receive more protection?***

An area designated as critical habitat is not a refuge or special conservation area; and it only affects activities with Federal involvement. Listed species and their habitat are protected by the Endangered Species Act whether or not they are in an area designated as critical habitat. The Act requires federal agencies to consult with the Service on actions they carry out, fund, or authorize that may adversely modify that critical habitat.

However, even when there is no critical habitat designation, Federal agencies must consult with the Service whenever they carry out, fund, or authorize any activity that could potentially jeopardize a listed species.

***What are the benefits of a critical habitat designation?***

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of the species. A critical habitat designation alerts the public as well as land managing agencies to the importance of these areas, but the Endangered Species Act only imposes restrictions on the actions or programs that are authorized, funded, permitted, or carried out by a federal agency that may adversely affect critical habitat.

***How would a critical habitat designation affect landowners in Montana?***

As a listed species since 1998, the bull trout is already protected under the Endangered Species Act wherever it occurs. Landowner development or building projects that require Federal authorization, permits, licensing, or funding already require consultation; therefore, a critical habitat designation would have minimal and largely unnoticeable effects on landowners beyond those measures already required to protect the species.

***How would a critical habitat designation for bull trout affect use of my personal property?  
Would this result in any taking of my property?***

The designation of critical habitat on privately-owned land does not mean the government wants to acquire or control the land. Activities on private land that do not require Federal permits or funding are not affected by a critical habitat designation. Critical habitat does not require landowners to carry out any special management actions nor does it restrict the use of the land.

If a landowner needs a Federal permit or receives Federal funding for a specific activity, the agency responsible for issuing the permit or providing the funds would consult with the Service to determine how the action may affect the bull trout or its designated critical habitat. We will work with the Federal agency and private landowner to minimize the impacts, if necessary. In many cases, programmatic type consultations for routine activities occur up front, so that future permit actions which meet certain standards are not delayed or modified. This may involve minor changes to the proposed project, such as to the timing of the work.

The obligation to protect bull trout and its habitat came when bull trout were listed as a threatened species under the Endangered Species Act in 1998. The Act prohibits any individual from engaging in unauthorized activities that will actually “take” (defined as to kill, harm, harass, trap, or wound) listed species. A designation of critical habitat would not add additional regulatory considerations.

***Would a critical habitat designation prohibit boating, fishing, and other recreational uses of lakes, reservoirs, and streams in Montana?***

No. A designation of critical habitat will not restrict or prohibit landowners and other people from accessing rivers, lakes, or reservoir areas for recreational and other activities. However, since the species was listed in 1998, the bull trout has been protected from “take” (defined as to kill, harm, harass, trap, or wound) under the Endangered Species Act. Since that time, the Service and other agencies with land and water management responsibility have attempted to minimize impacts to bull trout habitat, especially in riparian areas and through management of water delivery and hydropower systems.

***How will this affect lakeshore property owners?***

In general, routine property management activities of lakeshore property owners are not known to adversely impact bull trout. Protection of clean, cold water is in the best interests of both lakeshore property owners and bull trout. If a property owner is undertaking an activity requiring a Federal permit, we will work with the Federal agency and the landowner to minimize any adverse impacts to bull trout.

***How will the critical habitat designation affect reservoir and lake levels on systems regulated by dams?***

There is little evidence that existing water level fluctuations in reservoirs (for example, hungry Horse or Kooicanusa) or in Flathead Lake have negatively impacted bull trout. However, water level manipulation of the associated rivers is a greater concern for bull trout, based on available scientific information. To provide for adequate “river like” flows to designated critical habitat downstream of the dams, manipulation of reservoir levels may be necessary to provide water for releases at appropriate times of the year. Most consultations regarding activities of this nature have already occurred, through prior actions that were associated with the listing of the species in 1998.

***What does this critical habitat designation mean to Tribes?***

Any adverse effects that this critical habitat proposal might have on Tribal trust resources. Tribally-owned fee lands, or the exercise of Tribal rights will be taken into consideration before the final decision is made. Tribes will be contacted on a government-to-government basis for their input into the rule.

***How would a designation of critical habitat affect Federal agencies that undertake, permit or fund projects?***

Because Federal agencies are already required to consult on actions that may affect bull trout, we anticipate little or no additional regulatory burden will be placed on Federal agencies as a result of a designation of critical habitat.

***Do Federal agencies have to consult with the Service outside critical habitat areas?***

Even when there is not a critical habitat designation, Federal agencies must consult with the Service, if an action that they fund, or authorize, or permit may adversely affect listed species. Since bull trout do occur in some Montana waters that are not proposed for designation as critical habitat, consultation on projects in those areas would continue.

***How would State lands be affected by a critical habitat designation for bull trout?***

Non-Federal activities are not affected by critical habitat designation. Designation of critical habitat requires Federal agencies to review activities they fund, authorize, or carry out, to assess the likely effects of the activities on critical habitat. So, projects on State lands that involve a Federal nexus would continue to be consulted on. Projects with no Federal nexus would be treated like any other on non-Federal lands and would be exempt from Section 7 consultation.

***Does the Endangered Species Act require an economic analysis as part of a critical habitat proposal?***

Yes. The Service must take into account the economic impact of specifying any particular area as critical habitat. The Service may exclude any area from designation if it determines that the benefits of such exclusion outweigh the benefits of designation, unless it determines that failure to designate the area as critical habitat will result in the extinction of the species.

An economic analysis has been prepared and is available for public comment and is posted to the Service's web site: <http://mountain-prairie.fws.gov/fishbulltrout>

***What activities could adversely affect critical habitat?***

Any activities that adversely affect the basic elements of healthy bull trout habitat especially those that contribute sediment to spawning and rearing streams or that alter the quantity or quality of clean, cold water and the connectivity of migratory corridors have the potential to adversely affect critical habitat.

***Will the public have an opportunity to comment on the proposed critical habitat designation for bull trout?***

Yes. The Service is currently soliciting comments and information from the general public. Federal and state agencies, private landowners, conservation organizations, user groups, Tribal organizations, congressional groups, counties, and municipalities on the proposed critical habitat designation. An in-depth economic analysis of the critical habitat proposal was also prepared and is available for public comment

along with this proposed rule.

The public is also invited to attend an informational meeting in Missoula, Montana on February 16, 2010 from 3p.m. to 8p.m. at Montana Fish, Wildlife and Parks Headquarters, 3201 Spurgin Road. The informational meeting will provide an opportunity for people to learn more about the critical habitat proposal and to submit written comments. Two structured presentations will be given (at 3 p.m. and 6p.m.) along with ample opportunity for individual interaction. This public meeting will not be a formal public hearing, but there will be a public hearing in Boise, Idaho on February 25, 2010.

Written comments on the proposed critical habitat revision and on the draft economic analysis can also be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>.

In the box that reads “Enter Keyword or ID,” enter the docket number for this proposed rule, which is FWS-RI-ES-2009-0085. Check the box that reads “Open for Comment/Submission,” and then click the Search button. You should then see an icon that reads “Submit a Comment.” Please ensure that you have found the correct rulemaking before submitting your comment.

- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: FWS-RI -ES-2009-0085; *Division of Policy and Directives Management*; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive. Suite 222; Arlington, VA 22203.

***How can I get more information concerning habitat in Montana that is being proposed as critical habitat for bull trout?***

For more information specific to proposed habitat in Montana, you may contact Wade Fredenberg at Creston Fish and Wildlife Center at 406-758-6872 or Shawn Sartorius at FWS Montana Field Office in Helena (406-449-5225 ext. 208) or visit our web site at: <http://mountain-prairie.fws.gov/fish/bulltrout>

# Critical Habitat for Bull Trout (*Salvelinus confluentus*)

Unit: 31, Clark Fork River Basin

Sub-unit: Upper Clark Fork River

