



Montana Fish, Wildlife & Parks

MEMORANDUM OF UNDERSTANDING

Between

MONTANA FISH, WILDLIFE AND PARKS

And

**NATURAL RESOURCES CONSERVATION
SERVICE**

And

STEVEN K. AND SUSAN R. ADAMS

For

STREAM RESTORATION OF BIG SPRING CREEK

This Memorandum of Understanding (MOU) is entered into by and between the State of Montana, Department of Fish, Wildlife & Parks, hereinafter referred to as "FWP", the Natural Resources Conservation Service, hereinafter referred to as "NRCS", and Steven K. and Susan R. Adams, hereinafter referred to as "Landowner". This MOU is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5.

1. Objectives of the Work

The project for which this Memorandum of Understanding is written is the restoration of Big Spring Creek immediately downstream of the Highway 191 Bridge, including all construction, re-vegetation, planting, and fencing in accordance with the plans and specifications as designed by NRCS and administered by FWP. This Memorandum of Understanding stipulates project coordination between FWP, Landowners, and NRCS for the implementation, administration, and payment of project construction.

Steve Becker, PE, NRCS State Conservation Engineer will serve as the Engineer of Record. FWP will administer the construction contract on behalf of the Landowner and should be considered the primary point of contact for project coordination and issues. NRCS will administer funds from an Environmental Quality Incentives Program contract to the Landowner. The Landowner will pay all invoices submitted to them by FWP for the project construction. The

Landowner will be secure against responsibility for future damage or liability as a result of this project.

2. EFFECTIVE DATE & DURATION

This MOU shall take effect upon signature of all parties and terminate on December 31, 2018.

3. CONSIDERATION/PAYMENT

In consideration of services rendered pursuant to this MOU, and certification of completed construction work by the Engineer of Record, NRCS agrees to initiate EQIP payment to the Landowner, as stipulated in existing contractual agreements, in an amount not to exceed \$96,768.00. FWP agrees to submit invoices to the Landowner, with carbon copy to NRCS, for reimbursement of paid approved and certified construction services. The amount invoiced to the Landowner shall equal the amount invoiced by the construction contractor but not to exceed a project total of \$96,768.00. The Landowner agrees to make payment to FWP for the amount invoiced within 10 days of receiving EQIP payment from the NRCS. As financial contributions and services from other cooperators (Future Fisheries Montana, Trout Unlimited, etc.) are involved in funding this project, FWP agrees to provide the NRCS and Landowners with documentation supporting any in-kind contributions or cooperator contributions.

COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract.

4. LIAISON AND SERVICE OF NOTICES

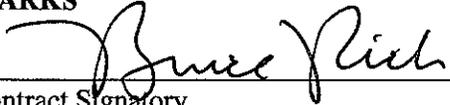
All communications by FWP to the NRCS concerning this MOU shall be addressed to Lorna Philp, District Conservationist, at 211 McKinley Street, Lewistown, Montana 59457 and telephone number of (406) 538-7401 ext 116. All communications by FWP to the Landowners shall be addressed to Steve and Susan Adams at 100 Fergus Avenue, Lewistown, MT 59457 and telephone number of (406) 538-2398. All communications by the NRCS and Landowners to the FWP will be addressed to Clint Smith, 215 W. Aztec Drive, PO Box 938, Lewistown, Montana 59457 and telephone number of (406) 538-4658 ext 227.

5. SCOPE, AMENDMENT, AND INTERPRETATION

This MOU consists of 3 numbered pages. These documents contain the entire MOU of the parties. Any enlargement, alteration, or modification of the MOU will require a written amendment signed by all parties signatory below.

**MONTANA DEPARTMENT FISH, WILDLIFE, &
PARKS**

12/4/14
DATE

BY: 
Contract Signatory

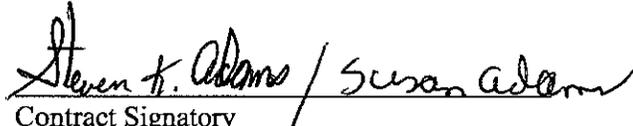
**NATURAL RESOURCES CONSERVATION
SERVICE**

12/10/14
DATE

BY: 
Contract Signatory

STEVEN K. & SUSAN R. ADAMS

12/09/14
DATE

BY: 
Contract Signatory

**MONTANA DEPARTMENT OF FISH, WILDLIFE
& PARKS LEGAL DEPARTMENT**

12/2/14
DATE

BY: 



Montana Fish, Wildlife & Parks

MEMORANDUM OF UNDERSTANDING

Between

MONTANA FISH, WILDLIFE AND PARKS

And

**NATURAL RESOURCES CONSERVATION
SERVICE**

And

MARK MACHLER

For

STREAM RESTORATION OF BIG SPRING CREEK

This Memorandum of Understanding (MOU) is entered into by and between the State of Montana, Department of Fish, Wildlife & Parks, hereinafter referred to as "FWP", the Natural Resources Conservation Service, hereinafter referred to as "NRCS", and Mark Machler, hereinafter referred to as "Landowner". This MOU is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5.

1. Objectives of the Work

The project for which this Memorandum of Understanding is written is the restoration of Big Spring Creek immediately downstream of the Highway 191 Bridge, including all construction, re-vegetation, planting, and fencing in accordance with the plans and specifications as designed by NRCS and administered by FWP. This Memorandum of Understanding stipulates project coordination between FWP, Landowners, and NRCS for the implementation, administration, and payment of project construction.

Steve Becker, PE, NRCS State Conservation Engineer will serve as the Engineer of Record. FWP will administer the construction contract on behalf of the Landowner and should be considered the primary point of contact for project coordination and issues. NRCS will administer funds from an Environmental Quality Incentives Program contract to the Landowner. The Landowner will pay all invoices submitted to them by FWP for the project construction. The

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2. EFFECTIVE DATE & DURATION

This MOU shall take effect upon signature of all parties and terminate on December 31, 2018.

3. CONSIDERATION/PAYMENT

In consideration of services rendered pursuant to this MOU, and certification of completed construction work by the Engineer of Record, NRCS agrees to initiate EQIP payment to the Landowner, as stipulated in existing contractual agreements, in an amount not to exceed \$284,841.00. FWP agrees to submit invoices to the Landowner, with carbon copy to NRCS, for reimbursement of paid approved and certified construction services. The amount invoiced to the Landowner shall equal the amount invoiced by the construction contractor but not to exceed a project total of \$284,841.00. The Landowner agrees to make payment to FWP for the amount invoiced within 10 days of receiving EQIP payment from the NRCS. As financial contributions and services from other cooperators (Future Fisheries Montana, Trout Unlimited, etc.) are involved in funding this project, FWP agrees to provide the NRCS and Landowners with documentation supporting any in-kind contributions or cooperator contributions.

COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract.

4. LIAISON AND SERVICE OF NOTICES

All communications by FWP to the NRCS concerning this MOU shall be addressed to Lorna Philp, District Conservationist, at 211 McKinley Street, Lewistown, Montana 59457 and telephone number of (406) 538-7401 ext 116. All communications by FWP to the Landowners shall be addressed to Mark Machler at PO Box 767, Lewistown, MT 59457 and telephone number of (406) 538-3528. All communications by the NRCS and Landowners to the FWP will be addressed to Clint Smith, 215 W. Aztec Drive, PO Box 938, Lewistown, Montana 59457 and telephone number of (406) 538-4658 ext 227.

5. SCOPE, AMENDMENT, AND INTERPRETATION

This MOU consists of 3 numbered pages. These documents contain the entire MOU of the parties. Any enlargement, alteration, or modification of the MOU will require a written amendment signed by all parties signatory below.

MONTANA DEPARTMENT FISH, WILDLIFE, & PARKS

12/4/14
DATE

BY: OCBR [Signature]
Contract Signatory

NATURAL RESOURCES CONSERVATION SERVICE

12/10/14
DATE

BY: [Signature]
Contract Signatory

MARK MACHLER

12-9-14
DATE

BY: Mark Machler
Contract Signatory

MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS LEGAL DEPARTMENT

12/2/14
DATE

BY: [Signature]



Montana Fish, Wildlife & Parks

CONSTRUCTION AGREEMENT

Between

MONTANA FISH, WILDLIFE AND PARKS

And

MOUNTAIN ACRES MOBILE HOME PARK, LLC

For

STREAM RESTORATION OF BIG SPRING CREEK

This Agreement is entered into by and between the State of Montana, Department of Fish, Wildlife & Parks, hereinafter referred to as "FWP", and the Mountain Acres Mobile Home Park, LLC, hereinafter referred to as "LANDOWNER".

1. PURPOSE

This agreement between FWP and the LANDOWNER is entered into authorizing work to restore a straightened section of Big Spring Creek. The project location is in the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 10, Township 15N, Range 18E. Work will be performed as described in the design plans and technical specifications prepared by NRCS. Construction is projected to begin in fall of 2015 and be completed by the end of spring in 2016.

This project will create a meandering, riffle/pool channel with an inset floodplain. Project construction limits extend approximately 25 feet south of the existing Big Spring Creek channel bank. Ingress, egress and construction activities will take place on and within Mountain Acres property with the installation of this project. For this reason, conditions for project implementation are stated and agreed to.

2. CONDITIONS OF AGREEMENT

The LANDOWNER and FWP agree to the following conditions:

- a) Ingress and egress from the project area will be allowed on the East and West ends of the Mountain Acres property. The ingress and egress location will be agreed to by both parties and will limit to the extent possible impact to existing landscaped lawns or features.
- b) Ingress, egress, and activity by the project contractor, workers, MFWP and NRCS employees, and other project associated government employees shall be allowed within the project construction limits without contacting or gaining additional approval from the Mountain Acres property manager.
- c) No long term staging areas shall occur on Mountain Acres property. Temporary stockpiling (less than 72 hours) and parking of equipment may occur between the fence boundary of the landscaped yards and south boundary of the existing stream location.
- d) All existing, mature trees along the south side of the stream corridor shall be retained to the extent possible while allowing for project construction. Any trees requiring removal will be marked and agreed to prior to construction.
- e) A significant amount of trimming and lopping of overhanging branches along the stream corridor will occur. Trimming will be limited to branches that impede an established travel route along the existing stream reach or get in the way of equipment operation for stream channel and bank construction.
- f) Existing riprap along the south side of the stream corridor will remain in place except where additional key rock is prescribed for overflow channel rock plug and drop structure installations or trunk placement is required for Type I bank protection.
- g) Excavation within Mountain Acres property will be limited to installing (a) key rock material for the overflow channel rock structures and (b) trunks for Type I bank protection.
- h) Excavation will be limited to the north side of lawn fencing.
- i) Earthfill will be placed within the existing stream corridor to the elevations prescribed in the drawings. The top of fill elevation approximates the existing top of bank within +/- 1 foot. Earthfill will be placed around some of the existing tree trunks to a maximum depth of 1 foot.
- j) Earthfill will NOT inhibit free drainage from the existing runoff drain located near the west end along the north side of the Mountain Acres property. Any impact to the runoff drain will be repaired and free drainage from the runoff drain will be assured the time of project completion.

3. EFFECTIVE DATE & DURATION

This Agreement shall take effect upon signature of all parties and terminate upon completion of the stream restoration project.

4. LIAISON AND SERVICE OF NOTICES

All communications by FWP to the LANDOWNER concerning this Agreement shall be addressed to Joe Wilson, Mountain Acres Mobile Home Park at P.O. Box 2926, Norris, MT 59745 and telephone number of (406) 209-1699. All communications by the LANDOWNER to the FWP will be addressed to Clint Smith, 215 W. Aztec Drive, PO Box 938, Lewistown, Montana 59457 and telephone number of (406) 538-4658 ext 227.

5. SCOPE, AMENDMENT, AND INTERPRETATION

This cooperative agreement consists of 3 numbered pages. These documents contain the entire agreement of the parties. Any enlargement, alteration, or modification of the agreement will require a written amendment signed by both parties.

MOUNTAIN ACRES MOBILE HOME PARK, LLC

7-22-15
DATE

BY: Joseph E Wilson for.
Contract Signatory

MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS

7/31/15
DATE

BY: G. L. Ryan for BR
Contract Signatory

7/29/15

Approved for Legal Content
Bill Smith
FWP Legal Counsel
7

086554

086554 Fee: \$ 147.00 Bk Pg

FERGUS COUNTY Recorded 01/02/2007 At 09:13 AM
Kathy Fiehart, Clk & Rcdr By Kim Mansour
Return to: FIRST AMERICAN TITLE CO. PO BOX 644
LEWISTOWN, MT 59457



**RECREATIONAL ACCESS AGREEMENT AND DEED OF
CONSERVATION EASEMENT
Machler Property**

THIS RECREATION ACCESS AGREEMENT AND DEED OF CONSERVATION EASEMENT is made this 2nd day of January, 2007 by D. Mark Machler, whose address is P.O. Box 767, Lewistown, Montana 59457-0767, (Landowner), to the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (Department).

The following Exhibits are attached hereto and incorporated into this Recreational Access Agreement and Deed of Conservation Easement by this reference.

- Exhibit A** - Legal Description of the Land
- Exhibit B** - Map Identifying Conservation Easement Boundary, Designated Building Area, and Fishing Access Site Parking Area
- Exhibit C** - Livestock Grazing Plan and Stockwatering Diagram
- Exhibit D** - Hay and Grain Fields Area and Wetland and Riparian Area
- Exhibit E** - Proposed Creek Channel and Trail Location after stream restoration and rechanneling project.
- Exhibit F** - Proposed Riparian Buffer Area and Recreational Corridor location along Big Spring Creek after completion of the stream restoration and rechanneling project.

I. RECITALS

A. Landowner is the owner of certain real property located in Fergus County, Montana, (the Land) described in Exhibit "A" and as shown on Exhibit B attached hereto and incorporated herein by this reference.

B. The Land is bisected by Big Spring Creek, which is a stream with important fishery, riparian, and water resources, but limited public access.

C. The Department and Landowner intend to pursue a stream restoration/reclamation project that will place Big Spring Creek as close as practicable and feasible to its original historic channel.

D. The Land consists of significant open-space, as defined in Montana's Open-Space Land and Voluntary Conservation Easement Act, Section 76-6-104(3), M.C.A.

E. The Land provides significant benefit to the people of the State of Montana and Fergus County by preserving and providing the following conservation values:

- a. Relatively natural habitat for native plants, fish, and wildlife;
- b. Wetlands and riparian habitats, which are important to the ecological integrity of Big Spring Creek;
- c. Open-space lands that provide opportunities to continue traditional agricultural practices;
- d. Recreational opportunities for the general public;
- e. Fishing access for anglers and;
- f. Planned hiking trail for the general public;

(hereafter collectively referred to as the "Conservation Values").

F. The Landowner wishes to provide recreational access to the public, and wishes to protect the Conservation Values of the Land by granting a Recreational Access Agreement and Deed of Conservation Easement to the Department with the Landowner retaining fee title to the Land.

G. Landowner and Department intend that the Conservation Values of the Land be preserved and maintained by this Recreational Access Agreement and Deed of Conservation Easement in perpetuity.

II. AGREEMENTS

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §76-6-101, et seq.; §§87-1-209 through 87-1-241; and Title 70, Chapter 17, MCA, Landowner voluntarily grants and conveys to the Department and the Department accepts a Recreational Access Agreement and Deed of Conservation Easement in perpetuity consisting of the following rights and restrictions over and across the Land.

A. PURPOSES

1. The purpose of this Easement is to preserve, protect, and provide for, in perpetuity, the following Conservation Values:

- a. Relatively natural habitat for native plants, fish, and wildlife;
- b. Wetlands and riparian habitats, which are important to the ecological integrity of Big Spring Creek;
- c. Open-space lands that provide opportunities to continue traditional

- d. agricultural practices;
- d. Recreational opportunities for the general public;
- e. Fishing access for anglers;
- f. Planned hiking trail for the general public;

B. LANDOWNERS' RIGHTS

Subject to the Restrictions on Landowner's Land and Activities set forth in II. D below, Landowner reserves to himself, his heirs, successors, and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that 1) are not expressly prohibited or restricted by this Conservation Easement, 2) are not inconsistent with the purposes of the Conservation Easement, and 3) will not significantly impact the Conservation Values of the Land. The significance of an impact will be evaluated by the severity, duration, geographic extent, or frequency of the occurrence of the potential impact. Without limiting the generality of the previous statement and subject to the restrictions on Landowner's activities in this Conservation Easement, the following rights are expressly reserved:

1. All rights accruing from ownership of the Land, including the right to engage in or permit others to engage in all uses of the Land that are not expressly prohibited or restricted by this Easement and are not inconsistent with the purposes and Conservation Values of the Easement;

2. The right to raise, pasture, and graze livestock as long as livestock are restricted from entering the riparian area of Big Spring Creek according to the Livestock Grazing and Stock Watering Plan and Diagram shown in the attached Exhibit C.

3. The right to maintain existing water resources on the Land necessary for grazing, wildlife, domestic, and all agricultural purposes that are allowed by this Easement and that are contemplated at the time the Easement is signed, provided that any such water resource maintenance, would not significantly impact wetlands or riparian vegetation and any such water resource maintenance or water use is subject to applicable laws, application, and permitting requirements. Livestock watering shall be according to the Livestock Grazing and Stock Watering Plan and Diagram shown in the attached Exhibit C.

4. After prior notice and in consultation with the Department, the right to place or construct, one single-family residence with a garage and small shop or storage structure within a Reserved Residential Building Area that is not to exceed 2 acres in size. The Reserved Residential Building Area and residence and associated structures must comply with all State, County, and Local environmental and building laws and codes. The Reserved Residential Building Area shall be located in an area that provides the least impact to the Conservation Values of the land. It is not the intent of this paragraph to preclude the landowner from identifying a site along Big Spring Creek as long as the location complies with all Local, County, and State requirements and is placed and maintained in a manner that will have the least impact on the riparian vegetation. The Landowner may also construct, reconstruct, maintain and repair, if necessary, utilities and an access road to this residence. These utilities and roadway must follow the least damaging routes possible from existing

utilities and roads.

5. The right to continue traditional farming, ranching, and other agricultural activities and to institute and carry on new farming, ranching, and other agricultural activities, including planting, raising and harvesting agricultural crops, and to raise and manage livestock, except as provided below:

a) On the north side of Big Spring Creek, traditional agricultural activities must be practiced no closer than 15 feet from the north high bank of the existing creek and no closer than 35 feet from the north high bank after completion of the creek restoration and rechanneling project except on the north side of Big Spring Creek where the new meanders or oxbows extend into the farm ground beyond the irrigation canal. Farming and ranching will be allowed to within 25 feet in these areas. The intent of this exception is to facilitate tilling and harvesting of the land.

b) On the south side of Big Spring Creek all farming and ranching activities are prohibited unless prior written consent is received from the Department.

6. The right to regulate public use of the Land at all times, subject to the public's recreational access described under Paragraph II.C.1. of Department's Rights in this Easement.

7. The right to construct, maintain, renovate, repair or replace fences and other improvements necessary for generally accepted land management purposes.

8. The right to grant an underground sewer line easement to the City of Lewistown in order to tie the Fergus County Fairgrounds sewage facilities into the city sewer lines as long as all permitting and licensing requirements are met. The impacted Land should be reclaimed and restored to the original state at the date of this Easement.

9. Upon prior approval from Department, the right to remove, maintain, repair, or replace existing roads, provided, however, that the roads do not substantially impact fisheries, riparian areas, water quality, wildlife habitat or wildlife migration on and through the Land. Landowner may construct new roads for Landowner's purposes and for the grant of new access to adjacent lands with prior approval from the Department. Department's approval will be based on an evaluation of potential significant impacts to the Conservation Values and purposes of this Easement.

10. The right to use agrichemicals for control of vegetation and insects on cultivated lands and shelterbelts and for control of noxious weeds on the Land, as defined by the state of Montana or other lawful authority with jurisdiction. Such use must be in the amounts and frequency of application constituting the minimum necessary to accomplish reasonable control of noxious weeds, and in a manner that will minimize damage to native plants. Aerial application of agrichemicals is prohibited.

11. The right to use motor vehicles and farming equipment on the Land in the ordinary

course of Landowner's agricultural business, but only in a manner that does not substantially impact the conservation values described and outlined in this Easement.

C. DEPARTMENT'S RIGHTS

The rights conveyed to the Department by this Easement are:

1. The right, on behalf of the general public, of access to the Land for the purposes of recreational fishing and hiking in accordance with the following terms and conditions:

a. The public's access shall be year-round for the purposes of recreational fishing and hiking along and within the riparian buffer area and recreational corridor delineated on the attached Exhibits F and G. The recreational corridor will move with the stream channel as the reclamation project is completed or as natural movement of the stream channel occurs. The riparian buffer area and hiking trail are within the recreational corridor.

b. The right to develop and maintain a fishing access site parking area sufficient in size for ten (10) motor vehicles as shown in Exhibit B and E. The Department may construct, repair, and maintain the parking area in accordance with its policies and standards for similarly situated fishing access sites. The right to construct, install, and maintain a latrine, informational signs, and necessary related facilities within the parking area.

c. The right to construct a hiking trail along the south side of the creek channel upon completion of the reclamation of Big Spring Creek. It is understood that until the reclamation is complete, the public will have access along both sides of Big Spring Creek but, not to exceed 20 feet from the high water line on the north side of Big Spring Creek. Said trail shall be contiguous with other trails on abutting parcels owned by the Department to provide for a contiguous trail network along Big Spring Creek. Upon completion of the rechanneling of Big Spring Creek a foot bridge will be required to take recreationist from the parking area to the south side of Big Spring Creek and then traverse across a second bridge located near the westerly Land boundary to continue on the trail as shown in Exhibit F, to adjacent Department lands.

d. The general public will not be allowed to hunt, discharge firearms, build fires, discharge fireworks, or camp on the Land without the express permission of the Landowner and the Landowner's permission is entirely discretionary for these activities.

e. The right to construct a fence to exclude grazing and farming activities within 35 feet of the northern high creek bank to protect and provide for a riparian buffer area and recreational corridor. Grazing and farming activities are prohibited on the south side of Big Spring Creek unless prior written permission is received from the Department.

2. The right to identify, preserve, and protect in perpetuity the wildlife habitat,

particularly the riparian vegetation communities on the Land, the Land's ecological features and the natural flora, fauna, and water resources on the Land.

3. The right to reclaim and re-meander Big Spring Creek through the property to bring it as close as possible and feasible to its original length and meander width to be in a natural riffle/pool meander pattern. A diagram of the general approximation of the proposed streambed reclamation and rechanneling is shown in more detail in the attached Exhibit F. The actual channel construction site may vary from the proposed channel identified and delineated in Exhibit F.

4. The right to enter the Land to monitor Landowner's compliance and to enforce the restrictions on Landowner's activities and rights granted to Department by this Easement, to observe, study, and make scientific observations of the Land's wildlife habitat and ecosystems, and to establish and maintain vegetation monitoring transects and enclosures, all upon prior notice to Landowner, and in a manner that will not unreasonably interfere with the use of the Land by Landowner.

5. The right to prevent any activity on, or use of the Land that is inconsistent with this Easement and to require the restoration of any areas or features of the Land that may be damaged by inconsistent activity or use by Landowner, as specified in this Easement.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. Except as provided for under Landowner's Rights in this Easement, the removal, control, or manipulation of riparian vegetation within the riparian corridor by any means is prohibited, unless specifically approved, in writing, by the Department.

2. The removal of timber (live or dead) by any means is prohibited, unless approved by the Department, except for the gathering of firewood for Landowner's personal use.

3. The legal or de facto subdivision of the Land for any purpose is prohibited.

4. Grazing and farming activities are prohibited within at least 15 feet from the north high bank of the existing creek and at least 35 feet from the north high bank after completion of the creek restoration and rechanneling project except as provided for in paragraph II.B.5.a.

5. Buildings and landscaping are prohibited within the Riparian Buffer Area and Recreational Corridor.

5. Grazing and farming activities are prohibited on the south side of Big Spring Creek without prior written permission from the Department.

6. The renting or leasing of, or sale of access to the Land or buildings on the Land to others for hunting or fishing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting or fishing on the Land or for access to public land, is prohibited. Landowner shall not sell, assign, convey, or otherwise transfer any interest in the Land or in the Landowner, if Landowner is a corporation, partnership, or other entity, for the purpose of providing access to the Land in contravention of this paragraph.

7. All agricultural activities must be carried out in a manner that is consistent with Best Management Practices and with the maintenance and enhancement of the soil composition, structure, and productivity, and only to the extent that such activities do not result in the pollution or degradation of any surface waters in such manner as to have detrimental effect upon fish or wildlife, their natural habitat, their passage, or the natural ecosystem.

8. The installation of utility structures, including natural gas pipelines or utility lines upon or under the Land, is prohibited without the prior written approval of Department except as provided for in Paragraph ILB.8. The installation of utility structures, including water wells, necessary for residential facilities is allowed if properly permitted by appropriate agencies, without the prior approval of Department.

9. The exploration for or development and extraction of minerals, coal, bentonite, soils, or other materials by any surface mining or sub-surface mining method is prohibited.

10. The establishment or maintenance of any commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as the establishment or maintenance of a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire.

11. The use of the Land in connection with an alternative livestock ranch, game bird farm, fish hatchery, shooting preserve, fur farm, zoo or menagerie, or the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited. This prohibition does not apply to common domestic livestock, or to the introduction, transplantation or release of native wildlife or fish species on the Land or in Big Spring Crcek by the Department, with the consent of Landowner.

12. Any commercial or industrial use of or activity on the Land is prohibited, other than home occupations conducted by Landowner and others lawfully residing on the Land

13. The processing, dumping, storage, or other disposal of wastes, refuse, and debris on the Land is prohibited, except for organic wastes generated from activities permitted under this Easement.

E. EASEMENT BASELINE REPORT

The parties agree that an Easement Baseline Report (Report), will be completed by a natural resource professional familiar with the area, reviewed by Department and Landowner, and acknowledged by them to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of the original Deed of Recreational Access Agreement and Conservation Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the Report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy.

F. NOTICE TO DEPARTMENT

The purpose of requiring Landowner to notify the Department prior to undertaking certain permitted activities is to afford Department an opportunity to ensure that activities are designed and carried out in a manner consistent with the purposes and other provisions of this Easement. Whenever prior notice only is required under this Easement, Landowner must notify Department in writing not less than thirty (30) days prior to the date Landowner intends to undertake the activity. Whenever prior approval is required, Landowner must notify Department in writing not less than sixty (60) days prior to the date Landowner intends to undertake the activity. The notice must be sent by registered or certified mail, return receipt requested, or by courier, or personal delivery, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Department to make an informed judgment as to its consistency with this Easement. Department has sixty (60) days from receipt of the notice, as indicated by the registered or certified return receipt, or other proof of receipt, to review the proposed activity and to notify Landowner of its objections to the proposed activity. Objections must be based upon Department's opinion that the proposed activity is inconsistent with this Easement. If, in the opinion of Department, it is possible that the proposed activity can be modified to be consistent with the Easement, Department shall inform Landowner of the manner in which the proposed activity may thereafter be conducted in a manner that is mutually acceptable to Landowner and Department. Department's response to Landowner's notice must be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service. For requests for prior approval that involve a third party, such as a proposed grant of new access to an adjacent landowner, Department will review Landowner's request in consultation with Landowner and the third party to evaluate potential significant impacts resulting from the request to ensure that the request is designed and carried out to meet Landowner's objectives in a manner that is consistent with the purposes of this Easement. This section does not limit the Department's right to object in water right proceedings or limit the basis for such objections and does not limit the Department's rights to participate in proceedings under the Natural Streambed and Land Preservation Act.

If Department fails to post its response to Landowner's notice within sixty (60) days of receipt of the notice, the proposed activity must be deemed to be consistent with the terms of this Easement. Department has no further right to object to the activity identified by such notice.

Landowner is under no liability or obligation for any failure to give prior notice for any activity undertaken by Landowner necessitated by virtue of fire, flood, act of God, or other element, or any other emergency; however, after such an event, if there is damage to the conservation values protected by this Easement, Landowner shall notify Department of the damage as soon as practicable.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other must be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service addressed as follows:

To Landowner:	Mark Machler P.O. Box 767 Lewistown, MT 59457-0767	To Department:	Administrator, Fisheries Division Montana Fish, Wildlife & Parks 1420 East Sixth Avenue P O Box 200701 Helena, Montana 59620-0701
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or to such other address as either party from time to time shall designate by written notice to the other.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If Department determines that Landowner has violated the terms of this Easement or that a violation is threatened, or if Landowner undertakes any activity requiring approval of Department without first obtaining such approval, Department shall give written notice to Landowner of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged.

If Landowner fails to cure the violation within thirty (30) days after receipt of notice from Department, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally correct, Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by the terms of this Easement or damage to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Land to the condition that existed prior to the injury. Without limiting Landowner's liability, Department, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Land.

If Department, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Land, Department will

pursue its remedies under this paragraph and will make reasonable efforts to provide prior notice to Landowner, but need not wait for the period provided for cure to expire. Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement, and Landowner agrees that if Department's remedies at law for any violation of the terms of this Easement are inadequate, Department is entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Department may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle Department to bring any action against Landowner for any injury to or change in the Land resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of Department, and any forbearance by Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by Landowner shall not be deemed or construed to be a waiver by Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches or prescription.

I. HOLD HARMLESS AND INDEMNITY

Landowner shall hold harmless, indemnify, and defend Department, and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, regardless of cause, unless due to the negligence or willful misconduct of Department or its agents, employees, or contractors.

Department similarly agrees to hold harmless, indemnify, and defend Landowner and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of Landowner or their agents, employees, or contractors.

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION

It is the unequivocal intention of the parties that the conservation purposes of this Easement be carried out in perpetuity. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Department shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Land subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, as herein provided. The parties agree that changed economic conditions may not be circumstances justifying the modification, termination, or extinguishment of this Easement. Department shall use all such proceeds in a manner consistent with the conservation purposes of this Easement.

This Easement constitutes a real property interest immediately vested in Department which for the purposes of this paragraph, the parties stipulate to have a fair market value determined by multiplying the fair market value of the property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the property, without deduction for these values of the Easement, at the time of this grant. The values at the time of this grant are those values used to calculate the deduction, if any, for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the property unencumbered by the Easement remains constant.

If the Land covered by this Easement is taken, in whole or in part, by exercise of the power of eminent domain, Landowner and Department shall be entitled to compensation in accordance with applicable law.

K. SUBORDINATION

If at the time of conveyance of this Easement, the Land is subject to one or more mortgages or other security interests, the respective holders must have agreed to subordinate their rights in the Land to this Easement by separate instruments, which will be recorded immediately after this Easement is granted, to the extent necessary to permit the Grantee to enforce the purpose of and its rights under the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage holder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement.

Upon request, the Grantee agrees to subordinate its rights under this Easement to the rights of any future mortgage holders or other holder of a security interest provided that Grantee's rights subject to subordination are limited to monetary aspects of enforcement and collection of a loan

which under no circumstance may result in any modification, extinction, waiver, amendment, or alteration of any term or condition of this Easement or Grantee's right to enforce these terms and conditions. Any future subordination must be formalized in writing in a separate instrument between the Grantee and the lender.

L. ASSIGNMENT

This Easement is transferable, but Department may assign this Easement only to a mutually acceptable organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of such transfer, Department shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

M. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Landowner and Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the qualifications of this Easement as a conservation easement under any applicable laws, including §76-6-101, *et seq.*, MCA; or Section 170(h) of the Internal Revenue Code, as amended, and any amendment must be consistent with the purposes of this Easement, and may not affect its perpetual duration.

N. RECORDATION

Department shall record this instrument in a timely fashion in the official records of Fergus County, Montana, and may re-record it at any time as may be required to preserve its rights in this Easement.

P. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.

2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of §76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement as it relates to the Land described on the attached Exhibit A, and supersedes all prior discussions, negotiations, understandings, or agreements relating to such Easement and the

Land described in the attached Exhibit A, all of which are merged into this Easement.

4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.

5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.

6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected.

TO HAVE AND TO HOLD unto Department, its successors, and assigns forever.

IN WITNESS WHEREOF, Landowner and Department have set their hands on the day and year first above written.

LANDOWNER:

DEPARTMENT:

D. Mark Machler
D. Mark Machler

By: M. Jeff Hagener
M. Jeff Hagener, Director

State of MT)

County of Fergus)

This instrument was acknowledged before me on 1-2, ²⁰⁰⁷~~2006~~, by D. Mark Machler.

(SEAL)

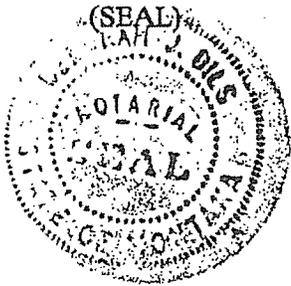


Kelly J. Miller
Notary Public for the State of Montana
Kelly J. Miller
Printed Name
Residing at Hewittstown
My commission expires 01/2/2008

State of Montana)

County of Lewis and Clark)

This instrument was acknowledged before me on December 20, 2006, by M. Jeff Hagener as Director, Montana Department of Fish, Wildlife & Parks:



Deborah J. Dils
Notary Public for the State of Montana

Deborah J. Dils
Printed Name

Residing at Montana City, Montana
My commission expires March 11 / 2008