

Hells Canyon Creek instream flow  
**FUTURE FISHERIES IMPROVEMENT PROGRAM  
 GRANT APPLICATION**

*(please fill in the highlighted areas)*

**I. APPLICANT INFORMATION**A. Applicant Name: Montana Fish, Wildlife & Parks (Ron Spoon)B. Mailing Address: P.O. Box 1137C. City: Townsend State: MT Zip: 59644Telephone: 406-266-4237 E-mail: rspoon@mt.govD. Contact Person: Ron SpoonAddress if different from Applicant: SEE ABOVE

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

E. Landowner and/or Lessee Name (if other than Applicant): SEE PROJECT LANOWNERS' CONTACT INFORMATION ATTACHED

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: MT Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

**II. PROJECT INFORMATION\***A. Project Name: Hells Canyon Creek Water LeaseRiver, stream, or lake: Hells Canyon CreekLocation: Township: T2S Range: R6W Section: 34Latitude: 45 37.408 Longitude: 112 19.988 *within project (decimal degrees)*County: Madison

B. Purpose of Project:

Prevent stream dewatering to maintain trout spawning and rearing habitat.

C. Brief Project Description: \_\_\_\_\_

## FFIP APPLICATION-HELLS CANYON CREEK

In 1995, three landowners converted open ditches into a single gravity pipeline system at Hells Canyon Creek. FWP and NRCS provided cost share to this project and FWP leased water for instream use for the past 20-years. The term of the 20-year lease is expiring prior to the 2016 irrigation season, and FWP has recently negotiated a 3-year extension with all three water users.

A long term lease is anticipated after three years of system review by landowners and NRCS. In addition to flow improvement, the gravity pipeline was equipped with a fish screen which prevented the loss of thousands of trout, and landowners will continue to operate/maintain this screen during the 3-year lease extension.

D. Length of stream or size of lake that will be treated:

Approximately 1 mile of habitat below the irrigation diversion will have improved stream flow. The spawning run in the lower 4 miles will benefit by eliminating fish loss to the irrigation system.

E. Project Budget:

**Grant Request (Dollars): \$ 7395.20**

Contribution by Applicant (Dollars): \$ 0 In-kind \$ 0  
(salaries of government employees are not considered as matching contributions)

Contribution from other Sources (Dollars): \$ 7000.00 In-kind \$ 0  
(attach verification - See page 2 budget template)

**Total Project Cost: \$ 14395.20**

F. Attach itemized (line item) budget – see template

G. Attach specific project plans, detailed sketches, plan views, photographs, maps, evidence of landowner consent, evidence of public support, and/or other information necessary to evaluate the merits of the project. If project involves water leasing or water salvage complete supplemental questionnaire ([fwp.mt.gov/habitat/futurefisheries/supplement2.doc](http://fwp.mt.gov/habitat/futurefisheries/supplement2.doc)).

H. Attach land management and maintenance plans that will ensure protection of the reclaimed area.

### III. PROJECT BENEFITS\*

A. What species of fish will benefit from this project?:

Rainbow Trout, Rainbow/Cutthroat hybrids, Brown Trout, and a variety of other non-game species such a sculpins, longnose dace, and sucker species.

B. How will the project protect or enhance wild fish habitat?:

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## FFIP APPLICATION-HELLS CANYON CREEK

Improved streamflow below the screened pipeline diversion results from significantly increased efficiency of the irrigation system. Water rights for three users totaling 7.3 cfs are combined in a pipeline with a capacity of approximately 2.5 cfs. In addition, water users provide guaranteed minimum flows to the stream during rainbow trout egg incubation (1.60 cfs) and trout fry migration (0.25 cfs). Monitoring of streamflow from 1996 through 2015 document that the stream was never dewatered during the previous water lease term.

- C. Will the project improve fish populations and/or fishing? To what extent?:

Loss of both migrating juvenile trout and spawning trout to the irrigation diversion has been eliminated for the past twenty years. This 3-year lease will ensure this continues. In addition, juvenile trout abundance was monitored below the diversion most years after 1995, and juvenile trout abundance remained healthy throughout the period. This spawning run provides important recruitment to the Jefferson River where fish are available to anglers. Fishing in Hells Canyon Creek is rare due to the small size of the stream and improved fishing is less important.

- D. Will the project increase public fishing opportunity for wild fish and, if so, how?:

The rainbow trout fishery has improved in the Jefferson River during the past 10 years due to a variety of factors. FFIP projects at Willow Springs, Parson's Slough, and the water lease at Hells Canyon Creek have contributed to the fish population increase, but it is difficult to determine the relative contribution of each of these projects. Rainbow trout abundance in the Jefferson River near Waterloo (downstream of Hells Canyon Creek) improved from below 400 trout/mile to over 1000 trout/mile between 2004 and 2014.

- E. If the project requires maintenance, what is your time commitment to this project?:

Landowners will be required to maintain irrigation system. Both irrigation and fishery benefits are provided by this maintenance. As part of the lease, FWP installs a stage data logger, and makes manual stream discharge measurements throughout the irrigation season.

- F. What was the cause of habitat degradation in the area of this project and how will the project correct the cause?:

The chronic streamflow depletion of Hells Canyon Creek (and associated fish loss to irrigation systems) was due to past allocation of irrigation water without providing water for instream uses. This water lease provides water to both irrigation and instream uses without reducing water delivered to croplands.

- G. What public benefits will be realized from this project?:

The gravity irrigation pipeline provides efficient delivery of water to croplands while enhancing streamflow for the wild and self-sustaining fishery. Improved fishing in the Jefferson River and maintained agricultural production benefits the local landowners and the local economy.

- H. Will the project interfere with water or property rights of adjacent landowners? (explain):

No. All three landowners and water right owners affected by the lease are partners to the project. This project is intended to benefit both the fishery and associated landowners.

FFIP APPLICATION-HELLS CANYON CREEK

I. Will the project result in the development of commercial recreational use on the site?: (explain):

No. Currently, there are no commercial operations related to fisheries on Hells Canyon Creek, and none are anticipated with the completion of this project. Outfitter related fishing trips of the Jefferson River near Hells Canyon Creek are currently taking place, and will likely continue in the future.

J. Is this project associated with the reclamation of past mining activity?:

No.

Each approved project sponsor must enter into a written agreement with the Department specifying terms and duration of the project.

IV. AUTHORIZING STATEMENT

I (we) hereby declare that the information and all statements to this application are true, complete, and accurate to the best of my (our) knowledge and that the project or activity complies with rules of the Future Fisheries Improvement Program.

Applicant Signature:

  
For Ron Spoon

Date:

November 27, 2015

Sponsor (if applicable):

[Redacted]

\*Highlighted boxes will automatically expand.

Mail To: Montana Fish, Wildlife & Parks  
Habitat Protection Bureau  
PO Box 200701  
Helena, MT 59620-0701

E-mail To: Michelle McGree  
[mmcgree@mt.gov](mailto:mmcgree@mt.gov)

Incomplete or late applications will be returned to applicant.  
Applications may be rejected if this form is modified.

\*\*\*Applications may be submitted at anytime, but must be received by the Future Fisheries Program office in Helena before December 1 and June 1 of each year to be considered for the subsequent funding period.\*\*\*

## FFIP APPLICATION-HELLS CANYON CREEK

**Project Landowners' Contact Information**

Alan Carroll  
15201 Rd. 25  
Dolores, CO 81323-9447  
Phone (970) 570-1683  
Email: [kooltez@gmail.com](mailto:kooltez@gmail.com)

Shawn and Janet Dustin  
PO Box 531  
Twin Bridges, MT 59754-0531  
Phone: (406)684-5255  
Email [dustinfam@gmail.com](mailto:dustinfam@gmail.com)

Hells Canyon Creek, LLC.  
c/o Daryl Drake and John Breternitz  
1519 Foster Dr.  
Reno, NV 89509-1211  
Phone for Daryl (775)721-4071  
Phone for John (775) 742-4413  
Email: [daryledrake@gmail.com](mailto:daryledrake@gmail.com); [johnbreternitz@gmail.com](mailto:johnbreternitz@gmail.com)

## FFIP APPLICATION-HELLS CANYON CREEK

**FUTURE FISHERIES IMPROVEMENT PROGRAM****SUPPLEMENTAL INFORMATION SHEET FOR  
WATER LEASING OR WATER SALVAGE PROJECTS**

The following additional information is requested to supplement the Future Fisheries Application for projects associated with water leasing or water salvage. Please complete this supplemental form and submit it as part of the Future Fisheries Grant Application.

- 1. Please complete the following table describing the water right(s) associated with the proposed project.** Note: Much of this information can be obtained either from your own water rights records or online at <http://www.dnrc.state.mt.us/wrd/home.htm> (choose “water rights” and then select an index to look up applicable claims)

<b>RIGHT NUMBER; WATER SOURCE</b>	<b>POINT OF DIVERSION</b>	<b>QUANTIFIED FLOW (CFS)/ VOLUME (AF)/ IRRIGATED ACRES</b>	<b>PRIORITY DATE; PERIOD OF USE</b>	<b>RELATIVE PRIORITY ON WATER SOURCE</b>	<b>PURPOSE OF WATER RIGHT</b>	<b>OTHER CLAIMED ON THE STREAM SENIOR TO YOUR LISTED CLAIMS</b>
41G 196995-00; Hells Canyon Creek	NWNWNW Sec. 34, Twp 2S, Rge 6W  NWSSENW Sec. 34 Twp 2S, Rge 6W	3.64 cfs/1,571.2 acre-feet/120 acres irrigated	12/31/1884; April 1 through November 4	1 <sup>st</sup> priority of three claims.	Irrigation	0
41G 197171-00; Hells Canyon Creek	NWNWNW Sec. 34, Twp 2S Rge 6W  NWSSENW Sec. 34 Twp 2S Rge 6W	2.66 cfs/921 acre- feet/36 acres irrigated	8/23/1889; April 30 through October 19	2 <sup>nd</sup> priority of three claims	Irrigation	3.66 cfs
41G 25646-00	NWNWNW Sec. 34, Twp 2S, Rge 6W  SENW Sec. 34, Twp 2S, Rge. 6W	1.00 cfs/364.32 acre-feet/17 acres irrigated	8/29/1912; May 1 through October 31	3 <sup>rd</sup> priority of the three claims	Irrigation	6.32 cfs

2. In the last 10 years, has your full water right amount regularly been available at your point of diversion throughout your period of use?

**Yes**

Have you ever made “a call” on junior water users to obtain the water you needed (through a

## FFIP APPLICATION-HELLS CANYON CREEK

water commissioner or otherwise)?

**Yes. The senior user has requested junior users to reduce withdrawal approximately 3 times in the past twenty years.**

3. Please describe or include a summary of any measurements of the amount of water you have regularly diverted and how much typically flows by your diversion during different time periods.

**The capacity of the irrigation pipeline is approximately 2.5 cfs, and the pipeline flow rate has not been routinely monitored. The combined total of the three water rights using this pipeline is 7.3 cfs. A minimum of 1.6 cfs flows past the headgate from April 1 to July 15, and a minimum 0.25 cfs flows past during critical periods of summer irrigation (July 15 to November 4). FWP monitored streamflow from 1995 to 2014 to determine lease compliance.**

4. Has your local FWP fish biologist confirmed that your leasing/salvage project addresses a stream flow problem that significantly limits the fishery?

**Yes.**

**The fish biologist (Ron Spoon) confirmed fish loss to the irrigations season and documented flow problems prior to the existing lease. The biologist has also documented fish survival in the stream below the headgate for the past 20 years of leasing.**

5. How much actual water (often different than just the remainder of your water rights) will be added to the stream through completion of your project?

**1.12 Please fill in and circle one – cfs**

**During early summer when flow is relatively abundant, the pipeline can reduce diversion by approximately 2 to 5 cfs compared to the old, open ditch system. During extremely low flow periods when the stream may only carry at total of 3 to 4 cfs, the lease and associated pipeline prevent complete dewatering of the stream, and guarantee 0.25 cfs flows to the mouth of Hells Canyon Creek.**

What length of stream will benefit from this additional flow? **(Note: Under certain circumstances, senior water can be protected legally from diversion by downstream junior users.)**

**Approximately 1 miles (please fill in or describe)**

6. Is there a water commissioner on your stream? No.

FFIP APPLICATION-HELLS CANYON CREEK

Are you willing to actively assist in monitoring and/or protecting the conserved water instream? **Yes.**

**FWP will monitor the flow. Landowners adjust the bypass plate to ensure flow passes the pipeline screen and allow access to inspect.**

BUDGET TEMPLATE SHEET FOR FUTURE FISHERIES PROGRAM APPLICATIONS

WORK ITEMS (ITEMIZE BY CATEGORY)	NUMBER OF UNITS	UNIT DESCRIPTION*	COST/UNIT	TOTAL COST	CONTRIBUTIONS			
					FUTURE FISHERIES REQUEST	IN-KIND SERVICES	IN-KIND CASH	TOTAL
<b>Personnel</b>								
Survey	0			\$ -				\$ -
Design	0			\$ -				\$ -
Engineering	0			\$ -				\$ -
Permitting	0			\$ -				\$ -
Oversight	0			\$ -				\$ -
Labor	0			\$ -				\$ -
			Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Travel</b>								
Mileage	0			\$ -				\$ -
Per diem	0			\$ -				\$ -
			Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Water Lease</b>								
Payment to Landowners for Water Lease	3 years		\$3,465.40	\$10,396.20	\$6,396.20		\$4,000	\$ 10,396.20
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
			Sub-Total	\$ 10,396.20	\$ 6,396.20	\$ -	\$ 4,000.00	\$ 10,396.20
<b>Equipment</b>								
Ultrasonic Pipeline Flow Meter System	3		\$1,333.00	\$ 3,999.00	999.00		3,000.00	\$ 3,999.00
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
			Sub-Total	\$ 3,999.00	\$ 999.00	\$ -	\$ 3,000.00	\$ 3,999.00
<b>Mobilization</b>								
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -

**BUDGET TEMPLATE SHEET FOR FUTURE FISHERIES PROGRAM APPLICATIONS**

			\$	-				\$	-	
		Sub-Total	\$	-	\$	-	\$	-	\$	-
<b>TOTALS</b>			\$	14,395.20	\$	7,395.20	\$	-	\$	7,000.00
			\$		\$		\$		\$	14,395.20

\*Units = feet, hours, inches, lump sum, etc.

**MATCHING CONTRIBUTIONS**

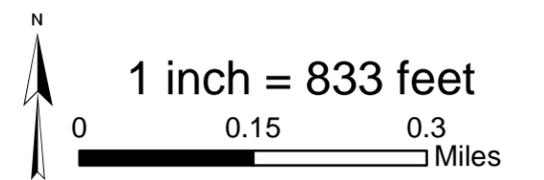
CONTRIBUTOR	IN-KIND SERVICE	IN-KIND CASH	TOTAL	Verified? (Y/N)
George Grant TU (lease & metering)	\$	\$3,000.00	\$3,000.00	NO
Jefferson Valley Sportsman's Assoc. (lease & metering)	\$	\$3,000.00	\$3,000.00	NO
Landowners (Carrol, Dustin, HC LLC) for metering	\$	\$1,000.00	\$1,000.00	NO
	\$	-	\$-	
	\$	-	\$-	
	\$	-	\$-	
	\$	-	\$-	
	\$	-	\$-	
	\$	-	\$-	
	\$	-	\$-	



# Hells Canyon Creek Water Lease Renewal

## Legend

-  POD
-  Protected\_Reach
-  HCC\_Pipeline
-  Streams
-  Sections
-  Townships and Ranges
-  Cadastral



STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1520 E. 6TH AVE. PO BOX 202301 HELENA, MONTANA 59620-2301



# Authorization To Change Appropriation Water Right

PURSUANT TO SECTION 85-2-402, MCA, THE APPLICATION FOR CHANGE OF APPROPRIATION WATER RIGHT NO. 41G-V(W)025646-00 SUBMITTED ON OCTOBER 19, 1994 BY:

MONTANA STATE OF DEPT OF FISH WILDLIFE & PARKS  
1420 E SIXTH AVE  
PO BOX 200701  
HELENA MT 59620-0701

IS HEREBY APPROVED SUBJECT TO THE FOLLOWING AUTHORIZATION:

WATER RIGHT: STATEMENT OF CLAIM

NUMBER: 41G-W025646-00

PRIORITY DATE: AUGUST 29, 1912

NUMBER: 41G-W196995-00

PRIORITY DATE: DECEMBER 31, 1884

NUMBER: 41G-W197171-00

PRIORITY DATE: AUGUST 23, 1889

SOURCE: HELLS CANYON CREEK

APPROVED WATER RIGHT LEASE

TOTAL FLOW RATE: 1.12 CFS

PURPOSE OF USE: MAINTAINING OR ENHANCING STREAMFLOWS FOR FISHERIES FROM APRIL 1 TO NOVEMBER 4.

NEW PLACE OF USE:

HELLS CANYON CREEK FROM A GAUGE IN THE  
NWNWNW, SEC 34, TWP 02S, RGE 06W, MADISON CO.  
TO THE CREEK'S CONFLUENCE WITH THE JEFFERSON RIVER IN THE  
W2NWSE, SEC 34, TWP 02S, RGE 06W, MADISON CO.

**\*\* IN LIEU OF:**  
THIS AUTHORIZATION IS ISSUED IN LIEU OF AUTHORIZATION TO CHANGE APPROPRIATION WATER RIGHT DATED AND ISSUED MAY 10, 1995. THE LEASE TERMS AND PLACE OF USE WERE CLARIFIED.

**\*\*LEASE TERMS:**  
THIS LEASE AUTHORIZATION IS APPROVED FROM APRIL 1, 1996 TO APRIL 1, 2016. IF THE WATER RIGHT LEASE IS TERMINATED PRIOR TO APRIL 1, 2016 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, WATER RIGHTS BUREAU MUST BE NOTIFIED IN WRITING WITHIN 30 DAYS OF TERMINATION.

**\*\* FURTHER INFORMATION:**  
THIS LEASE AUTHORIZATION WILL BE VALID WHEN THE NOTICES OF COMPLETION OF CHANGE OF APPROPRIATION WATER RIGHT (FORM 618) ARE FILED WITH THE DEPARTMENT ON AUTHORIZATION NOS. 41G-G(W)197171-00 AND 41G-G(W)196995-00.

**\*\* FURTHER INFORMATION:**  
THE IDENTIFIED FLOW RATE CAN ONLY BE DIVERTED DURING THE PERIOD OF USE SHOWN IN THE EXISTING WATER RIGHTS. SEE THE CHANGE FILE FOR THE INDIVIDUAL AMOUNTS LEASED UNDER EACH RIGHT.

**\*\* CONDITIONAL APPROVAL:**  
THE APPROVAL OF THIS CHANGE IS NOT TO BE CONSTRUED AS RECOGNITION BY THE DEPARTMENT OF THE WATER RIGHTS INVOLVED. ALL WATER RIGHTS ARE SUBJECT TO POSSIBLE MODIFICATION UNDER THE PROCEEDINGS PURSUANT TO TITLE 85, CHAPTER 2, PART 2, MCA, AND 85-2-404, MCA.

FAILURE TO COMPLY WITH ANY TERMS AND CONDITIONS MAY RESULT IN THE LOSS OF THIS AUTHORIZATION TO CHANGE.

WITNESS

*[Signature]*

WATER RESOURCES DIVISION

01/11/96  
DATE

## Hells Canyon Creek Water Rights Lease Revision and Renewal Agreement

THIS AGREEMENT is effective this \_\_\_\_ day of \_\_\_\_\_, 2015, between the Montana Fish, Wildlife & Parks (FWP) and Alan C. Carroll, Shawn Dustin, and Hells Canyon, LLC., hereinafter collectively referred to as, “the Owners”.

WHEREAS, Hells Canyon Creek is located in Madison County, Montana and is one of three known spawning tributaries for the rainbow trout population of the Jefferson River; and

WHEREAS, Owners or Owners’ predecessors in interest entered an agreement entitled “Hells Canyon Creek River Restoration And Water Rights Lease Agreement” (referred to herein as “Original Agreement”), effective August 8, 1995 and said agreement provided that the lease may be renewed under terms and conditions negotiated by the parties; and,

WHEREAS, the lease for salvage water as approved by the DNRC expires on April 1, 2016; and

WHEREAS, pursuant to the Original Agreement, the Owners replaced one of the two active diversions with a “fish friendly” diversion and installed a more efficient sprinkler irrigation system that enabled the Owners to make salvaged water available to FWP to lease for instream flow; and

WHEREAS, pursuant to the Original Agreement, the Owners deactivated the other active diversion and made it inoperable throughout the term of the lease; and

WHEREAS, FWP desires to continue to lease water through this Water Rights Lease Revision and Renewal Agreement (hereinafter “Renewed Agreement”) to maintain continuous instream flow in the lower reach of Hells Canyon Creek to its mouth in the Jefferson River; and

WHEREAS, the Owners own four irrigation water rights on Hells Canyon Creek and two of those rights, totaling 6.3 cfs, currently share one active diversion located approximately ½ mile from where the creek enters the Jefferson River; and

WHEREAS, the Owners intend that this Renewed Agreement provides a mechanism to utilize the provisions of §85-2-436, MCA, to accomplish the renewal of the existing water right lease and continue to accomplish the instream flow purposes of the existing lease.

THEREFORE, the Owners agree as follows:

1. Lease of Water Rights. Owners agree to lease the savaged portions of the following water rights to FWP under the terms and conditions of this Agreement:

<b>Owner</b>	<b>Claim Number</b>
Alan C. Carroll	41G-196995 00
Shawn and Janet Dustin	41G-197171 00
Hells Canyon Creek, LLC.	41G-025646 00

2. Term of Agreement. The term of this Renewed Agreement is from the date of execution through April 30, 2019 or the date on which temporary authorization to change the rights to instream flow expires, whichever is later, unless renewed upon expiration or terminated under the provisions of Paragraph 13.

3. Lease Payment. In consideration of the lease for the salvage portion of the water rights owned, FWP hereby agrees to pay the Owners \$3,465.40 per year. FWP's payments shall be made under the following terms and conditions:

- A. The first payment shall be made by May 31, 2016, or within 30 days of DNRC's approval of the lease renewal, whichever is later. Subsequent payments shall be made by May 1<sup>st</sup> of every year the Renewed Agreement is in effect for the entire irrigation season.
- B. The Owners agree to provide FWP with an agreed upon formula for which the sum of the lease agreement is to be split amongst the Owners at least 30 days prior to the first lease payment.
- C. If the Owners do not provide FWP with an agreed upon formula for payment as provided in paragraph 3.B., FWP will distribute the lease payment using a percentage based on the amount of protected flow approved by the DNRC (1.12 cfs) allotted to each water right as determined in the original change application:
  - a. Carroll- $(.75 \text{ of total acres irrigated} \times .97 \text{ cfs}) / 1.12 \text{ cfs} = 65\% \text{ share, or } \$2,252.51$
  - b. Dustin- $(.25 \text{ of total acres irrigated} \times .97 \text{ cfs}) / 1.12 \text{ cfs} = 22\% \text{ share, or } \$762.39$

- c. Hells Canyon Creek, LLC-.15 cfs/1.12 cfs = 13% share, or \$450.50
4. Operation. Owners agree to maintain and operate the irrigation system installed pursuant to the Original Agreement under the terms and conditions of this Renewed Agreement as follows:

A. The salvaged portions of the water rights listed in paragraph 1 of this Agreement will be used to enhance instream flows below the “fish friendly” diversion shall not be less than the following:

<b>Period of Year</b>	<b>Minimum Instream Flow Allowed to Bypass New Irrigation system Diversion</b>
April 1-July 15	1.60 cfs
July 16-November 4	0.25 cfs

B. If the instream flows reaching the “fish friendly” diversion are less than the minimum instream flows stated in this paragraph, Owners shall be deemed to have complied with this Agreement if water is not diverted into the “fish friendly” diversion or any other diversion and the instream flows are allowed to bypass the “fish friendly” diversion. Owners are not liable for any reduction in instream flows caused by acts of God or natural conditions beyond their control, or reductions caused by persons or entities not parties to this Agreement if those persons or entities are not acting as agents, employees or representatives of the Owners.

C. The one inactive diversion structure described on page 1 of this agreement shall continue to be inactive and inoperable during the period of this Renewed Agreement. At a minimum, the Owners agree to lock the headgate from the existing active diversion structure and fill the ditch behind the headgate with suitable material to make it impossible for water to enter the existing active ditch from Hells Canyon Creek. Owners agree not to use or divert water through the existing active diversion structure during the term of this lease.

D. The Owners shall operate, maintain and repair the irrigation system at their own expense. The Owners also agree to operate, maintain and repair the Irrigation System to accomplish the purposes of this Agreement. If the Owners, operate, maintain and repair the Irrigation system in compliance with this agreement, but fish and fry losses occur, this Agreement may not be terminated under paragraph 13. If the Owners fail to operate, repair and maintain the Irrigation system in compliance with this Agreement and fish and fry losses occur, FWP may terminate this Agreement as provided in paragraph 13.

5. Measurement of Instream Flow. Measurements of instream flows specified in paragraph 4(A) shall be made within 100 feet downstream of the Hells Canyon Creek Bridge. All measurements taken shall be made available to the Owners as provided in paragraph 20 of this Agreement.

6. Access to Property and Records. Owners agree that FWP may have limited access to the Owners' property and access to Irrigation system records as follows:

A. FWP may have access to the portion of the Owners' property on which the Irrigation system is located, including the Owners' ditch easement adjacent to Hells Canyon Creek where the "fish friendly" diversion is located, during reasonable daylight hours from April 1 through October 31 for the purposes of determining compliance with the terms and conditions of this Agreement. FWP will give one or more of the Owners courtesy notice via telephone, email or in person before entering the Owners' property under this subparagraph 6.A.

B. FWP may, with prior consent of the affected Party, have access to other portions of Hells Canyon Creek located on Owner's property for the purpose of monitoring fish populations, fry production, fry losses and instream flows at points other than those specified in paragraph 5. Owners and FWP will meet and agree on the procedures for obtaining prior approval of access under this paragraph.

C. Owners agree that FWP may have access to all documents and records concerning the maintenance, repair or operation of the Irrigation system.

7. Renewal of Lease. This lease may be renewed under terms and conditions negotiated by the Owners and any renewal must be in writing, signed by the Owners or their

successors in interest, and appended to this Agreement. The Lease renewal will be effective when and if the requirements of Section 85-2-436, MCA are met.

8. Water Commissioners. FWP may request that it and Owners jointly petition the District Court for the appointment of a water commissioner for Hells Canyon Creek if the instream flows measured under paragraph 4 are equal to or less than the minimum instream flows specified under paragraph 4.A. If a request to sign a petition for the appointment of a water commissioner is made under this paragraph, the Owners shall cooperate in petitioning the District Court. Upon appointment by the District Court, the water commissioner shall measure and distribute the water to water users on Hells Canyon Creek in accordance with Title 85, Chapter 5, MCA, and this Revised Agreement. The expenses of the water commissioner shall be paid by FWP if FWP requests appointment of a commissioner pursuant to this paragraph. If a water commissioner is appointed under the general provisions of Title 85, Chapter 5, MCA, based on petition filed by Owners or another landowner, FWP shall only be obligated to pay its proportional share of the expenses of the water commissioner for the admeasure and distribution of the water rights leased under this Agreement.

9. Measuring Devices. FWP shall pay all costs associated with installing measuring devices or monitoring streamflows in accordance with the measuring plan provided by FWP under Section 85-2-436, MCA.

10. Changes in Purpose and Place of Use. The Owners recognize that if another appropriator submits evidence of adverse effects that was not considered in the initial lease authorization, a new application for change of purpose and place of use must be filed with and approved by DNRC in order for the lease to be renewed. If required by DNRC, and upon agreement of both parties, a new application to change the purpose and place of use shall be submitted to DNRC by FWP, in consultation with the Owners, pursuant to §85-2-436(2)(e), MCA. The Owners agree to cooperate fully in the processing of this application. Any DNRC application fees shall be paid by FWP. If DNRC imposes conditions of approval unacceptable to the Owners or FWP, this Agreement shall terminate, unless other provisions are mutually agreed to by both parties in writing to correct the unacceptable conditions. If a new application to change the purpose and place of use is required and either party does not agree to submit such an application, this Agreement shall terminate.

11. Approval of DNRC. This Agreement is subject to approval by DNRC of the lease renewal or the new application to change the place of use and purpose, if required. If DNRC does not approve the lease renewal or, if required, the new application to change the place of use and purpose, this Agreement shall terminate.

12. Contingencies. The renewal of the water right lease is expressly conditioned upon satisfaction of the following conditions and contingencies. FWP must secure funding for the Agreement through the Future Fisheries Improvement Program and/or other sources. If secured, these funds will not be available until March 2016.

14. Default. If either party fails to perform any obligations required by this Agreement, the other party may serve a written notice upon the failing party specifying the default. The defaulting party shall have thirty (30) days from the date on which written notice of default is given to correct the default if the default is correctable. If the default is not correctable, or if the default is not corrected within thirty (30) days of notice, or if the default cannot be remedied within the thirty (30) day period and the defaulting party has not initiated a remedy of the default within thirty (30) days and thereafter diligently and continuously pursued the remedy to completion then a non-defaulting party may terminate this Agreement and retake or return possession, if applicable, without additional notice.

15. Notice. Any notice to be given under this Agreement shall be in writing and shall either be served upon the party personally or served by registered or certified mail, return receipt requested, directed to the party to be served at the address of the party set forth in this paragraph. A party wishing to change its designated address shall do so by written notice to the other party. Notice served by mail shall be deemed complete when deposited in the United States mail. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given shall be deemed to be receipt of the notice.

FWP's liaison, mailing address, and phone is:  
Stephen Begley, Water Conservation Specialist  
Montana Fish, Wildlife & Parks  
PO Box 200701  
Helena, MT 59620  
Phone: (406) 444-1229  
Email: sbegley@mt.gov

Owners liaison, mailing addresses and phone are:

Allan C. Carroll  
15201 Rd. 25  
Dolores, CO 81323-9447  
Phone: (970) 570-1683  
Email: [kooltez@gmail.com](mailto:kooltez@gmail.com)

Shawn and Janet Dustin  
PO Box 531  
Twin Bridges, MT 59754-0531  
Phone: (406) 684-5255  
Email: [dustinfam@gmail.com](mailto:dustinfam@gmail.com)

Hells Canyon Creek, LLC.  
c/o Daryl Drake and John Breternitz  
1519 Foster Dr.  
Reno, NV 89509-1211  
Phone for Daryl: (775) 721-4071  
Phone for John: (775) 742-4413  
Email: [daryledrake@gmail.com](mailto:daryledrake@gmail.com); [johnbreternitz@gmail.com](mailto:johnbreternitz@gmail.com)

16. Pending Adjudication. FWP leases the Owners' water rights subject to the Montana Water Court adjudication process.

17. No Abandonment of Leased Water Rights. Pursuant to §85-2-404(4), MCA nothing in this Agreement shall be interpreted to work abandonment or to evidence intent to abandon the water rights leased in this Agreement.

18. Indemnification. FWP shall indemnify and hold harmless the Owners against any claim or action by third parties challenging the use of the water leased under this Agreement by FWP for instream purposes, or challenging the validity of the statues allowing the lease of water for instream purposes by FWP. FWP shall not indemnify the Owners against any claim by third parties that arises out of or as a result of the negligent or willful conduct of the Owners not authorized under this Agreement.

19. Binding Effect. The provisions of this lease Agreement shall be binding upon the heirs, personal representatives, administrators and successors of the Owners in like manner as upon the original Owners, except as provided by mutual written agreement.

20. Cooperation of the Owners. The Owners hereto agree to cooperate fully and to provide such assistance and information as may be necessary to implement this Agreement.

21. Venue, Interpretation and Attorney Fees. The venue for any court action arising under this agreement with the exception of petitioning for a water commissioner must be in the First Judicial District in and for Lewis and Clark County, Montana. This Agreement must be interpreted according to the laws of Montana. In the event an action is filed to enforce, interpret or dispute this agreement, the prevailing party shall be entitled to recover reasonable attorneys fees from the other party in the suit.

IN WITNESS WHEREOF, the Owners hereto execute this Agreement:

OWNERS:

MONTANA FISH, WILDLIFE & PARKS

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

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

Allan C. Carroll                      Date

Bruce Rich                              Date

Chief of Fisheries

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

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

Shawn Dustin                          Date

Bill Schenk,                              Date

Agency Counsel

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

Hells Canyon Creek, LLC.          Date

Daryl Drake

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

Hells Canyon Creek, LLC.          Date

John Breternitz