



May 26, 2020

Dear Interested Citizen:

Thank you for your thoughtful reviews and comments on a proposal by Montana Fish, Wildlife & Parks (FWP) and Montana Department of Natural Resources and Conservation (DNRC) to remove the structure known as Elbow Lake Dam on the Clearwater River in Missoula County.

As stated in the draft Environmental Assessment (EA), the dam is illegal as it lacks the necessary authorization and accompanying water rights, and it is highly unlikely that those could be obtained in the future. Therefore, the purpose of the EA was not to debate the legality of the dam or whether perceived benefits to local residents and the environment justified its continued presence. Rather, the EA was a mechanism to inform the public of the issues, disclose the environmental impacts of the removal, and discuss the possible measures to remedy noncompliance. The proposed preferred alternative was to use heavy machinery to remove the dam during a low-flow period in the summer of 2020. Based on public feedback and continued discussion among agency staff, FWP and DNRC have decided to defer taking that action for the time being and allow natural processes to degrade the dam. Future maintenance of the dam by private groups or individuals will not be allowed. FWP and DNRC will monitor the structure, and if unauthorized maintenance continues or if the dam still presents unacceptable barriers to fish passage, it will be removed.

Enclosed you will find a Decision Notice (DN) that describes this decision in detail, as well as agency responses to public comment. Upon completion of this public involvement process and with the inclusion of the DN, FWP and DNRC accept the draft EA as final. The DN includes all comments received on the proposed action during the public comment period.

Please feel free to contact us with any questions you may have. Thank you for your interest and participation.

Randy Arnold
FWP Region 2 Supervisor
3201 Spurgin Road,
Missoula, MT 59804
Phone 406-542-5500
email: rarnold@mt.gov

Mike O'Herron
DNRC Southwestern Land Office Area Manger
1401 27th Avenue
Missoula, MT 59804
Phone 405-542-4200
email: moherron@mt.gov

This page left intentionally blank

Decision Notice for REMOVAL AND REMEDIATION OF ELBOW LAKE DAM Draft Environmental Assessment

May 26, 2020

INTRODUCTION

This Decision Notice follows a draft Environmental Assessment (EA)¹ prepared for the proposed removal of Elbow Lake Dam on the Clearwater River in Missoula County. The project was proposed by the Montana Department of Natural Resources and Conservation (DNRC) and Montana Fish, Wildlife & Parks (FWP) to remove an unauthorized and illegal impoundment structure (dam) built on the mainstem Clearwater River on DNRC state trust property. The structure is currently in violation under the state Natural Streambed and Land Preservation Act in Missoula County (310 Law administered through the Missoula Conservation District) and the federal Clean Water Act (“404” permit administered through the U.S. Army Corps of Engineers). The site also lacks DNRC authorizations, including a legal water right (which would allow water impoundment and storage) and a valid land-use license for structures within the low watermarks on a navigable water in Montana (state-owned riverbed). A 2006 Montana Water Court ruling (Case 76F-22) is a primary action that directly affected the impoundment of water in this area.

Goals of the proposed dam removal included: 1) alleviate violations of aforementioned state and federal laws occurring on state trust property, 2) restore natural streambed conditions on the river, 3) eliminate the dam that acts as a partial barrier to the natural movement of fish and recreationists, and 4) reduce the probability of continued violations.

After extensive review of public comments² and applicable state and federal laws, and further discussion with state and federal partners, DNRC and FWP have reached the following decision.

PROPOSED ACTION ALTERNATIVE

The joint FWP and DNRC Decision is to:

1. Defer taking the proposed action,
2. allow the existing structure to continue degrading naturally,
3. monitor the structure for any sign of rebuilding, and
4. take action in the future to remove the dam if monitoring shows it is being rebuilt.

¹ Available at <http://fwp.mt.gov/news/publicNotices/environmentalAssessments/restorationAndRehab/pn_0174.html>. Accessed 19 May 2020.

² Comments received during the public comment period are in Appendix A. FWP and DNRC responses to those comments are in Appendix B.

Why the Decision to defer the proposed action?

The objective of the proposed action was to stop the repeated rebuilding of a structure that was:

- built and maintained on public land without authorization,
- impounding water without a water right, and
- negatively impacting native fish and recreationists.

Indications are that the structure has not been actively rebuilt or maintained over the past year, allowing the structure to degrade naturally. This natural degradation of the structure has reduced its ability to impound water, as well as reduced the structure's impacts to native fish and recreationists. The natural degradation if allowed to continue, will meet the objectives of the proposed action.

ALTERNATIVES

No Action Alternative. *Leave dam structure in place, with no authorization for future work or maintenance.*

The structure is currently not authorized under Montana water law or local stream permitting jurisdictions. Leaving the structure in place does not satisfy legal requirements, permitting deficiencies, or mitigate ongoing environmental impacts.

Proposed Preferred Alternative. *Management agency removal of artificial dam structure and restoration of project area riverbed to approximate natural condition.*

The proposed alternative involved the complete removal of the cobble rock overlay as well as the underlying, older substructure of the dam. Removal of the dam structure could be completed in less than one day, with minimal short-term environmental impacts. This action would alleviate ongoing permitting deficiencies, meet state water rights requirements, and provide desired environmental benefits associated with a natural river environment.

However, complete removal of the dam would not meet the objectives of local residents who largely prefer the effects of water impoundment upstream of the structure. After further review of the project and public comments, state managers agreed that most if not all the ecological benefits of complete removal could be achieved by simply allowing the cobble overlay to degrade naturally and keeping the underlying dam substructure in place.

If private citizens continue to unlawfully build up the cobble overlay, then state managers will have no choice but to completely remove the dam substructure.

Alternate Action Alternative. *Require removal of the structure and remediation of the site by individuals responsible for unauthorized construction and maintenance.*

Specific individuals responsible for unauthorized construction and maintenance of the dam have not come forward or been identified through investigation. Responsible agencies would prefer to alleviate permitting and water right deficiencies by adopting the deferred action, rather than relying on voluntary remediation completed by local residents or by conducting a criminal investigation.

Alternative Considered, but Not Analyzed in Detail. *Authorize existing structure with continuation of customary maintenance by local residents and lessees, while pursuing acquisition of legal water rights and applicable permits.*

DNRC and FWP searched for a pathway which would result in authorization and continued maintenance of the dam. However, the lack of a legal water right and other applicable permits--which would allow water impoundment and storage at this location--prevented further exploration of this alternative. Please see the EA for a complete summary of applicable water rights.

PUBLIC REVIEW PROCESS

FWP and DNRC released a Draft EA for public review of the proposed Removal and Remediation of Elbow Lake Dam Project on September 30, 2019 and accepted public comment until October 29, 2019, for a 30-day comment period.

Legal notice of the proposal and availability of the Draft EA was published once each in the *Independent Record* (Helena, September 30), *Missoulian* (September 30), and *Seeley Swan Pathfinder* (October 3) newspapers.

FWP mailed 40 copies of the Draft EA, and emailed approximately 59 notifications of the EA's availability, to adjacent landowners, interested individuals, groups and agencies. The EA was available for public review and comment on FWP's web site (<http://fwp.mt.gov/>, "Recent Public Notices" and "Submit Public Comments") from September 30 through October 29, 2019.

SUMMARY OF AND RESPONSE TO PUBLIC COMMENT

FWP and/or DNRC received a total of 276 comments, representing 165 commenters³ (persons and groups) during the 30-day public comment period. Please see Appendix A for a compilation of all comments received during the public comment period.

- Sixty-six (40%) of the 165 commenters submitted comments that were the same (or nearly the same) "form-letter"⁴ type comment.
- The 9 groups included sportspersons organizations, agencies, and private entities, including Backcountry Hunters and Anglers (MT Chapter), Clark Fork Coalition, Missoula Conservation District (CD), Missoula County Commissioners, Trout Unlimited (MT), Trout Unlimited (WestSlope Chapter), US Fish and Wildlife Service (MT Ecological Services Office), Camp Utmost and the Calhoun Family Limited Partnership.

Comments covered a wide range of issues, including perceived ecological issues with both the No Action and Proposed Action alternatives, recreational value of Elbow Lake, and legal questions. Please see Appendix B for a summary of public comments and FWP and DNRC responses.

³ Many commenters submitted comments 2 or more times, and some comment submissions were "signed" by 2 or more people but are counted as one comment. Additionally, some comments submitted to FWP were also copied to DNRC or vice versa. And 25 comments were also copied to the Governor's office.

⁴ A second "form-letter" type comment was submitted each by 2 people, one of which whom also submitted the Camp Utmost form letter.

DECISION

Based upon the Draft Environmental Assessment and the applicable laws, regulations, and policies, we have determined that the proposed deferred action will not have significant negative effects on the human and physical environments associated with this project. Therefore, we conclude that the EA is the appropriate level of analysis, and preparation of an Environmental Impact Statement is not warranted.

The proposed deferred action would satisfy most environmental concerns, is supported legally, and allows the lake to remain at a higher level than complete removal, which could allay local homeowners' most serious concerns. FWP and DNRC will monitor the site for compliance and take necessary action if illegal maintenance or rebuilding resumes. By notification and inclusion of this Decision Notice, the draft EA is hereby made the final EA. The finding of a deferred Proposed Action Alternative is the product of this Notice.



Randy Arnold
FWP Region 2 Supervisor

5/26/2020

Date



Mike O'Herron
DNRC Southwestern Land Office Area Manger

5/26/2020

Date

APPENDIX A

Comments on the proposed Removal and Remediation of the Elbow Lake Dam Project and its Draft EA, received by FWP and DNRC during the public comment period of September 30 through October 29, 2019. Comments received via E = email, M = mail, Ph = Phone. (Note: certain characters [e.g., quotation mark, apostrophe, dash] did not always translate correctly between the fonts that the commenters used and how those fonts or characters displayed in those comments as received by FWP, sometimes resulting in question-mark characters appearing at odd places within a comment. When that occurred, FWP attempted to substitute the likely intended character for the question mark, for better readability of the comments in this table.)

Com- men- ter #	Via	Para- graph	Comment
1	E	1	Montana Chapter of Backcountry Hunters and Anglers appreciates the opportunity to comment on the proposal to remove a manmade dam on the Clearwater River. Many of our 3000 Chapter members reside in western Montana and fish and hunt in the Blackfoot drainage, including the Clearwater River.
		2	We support the Alternative to remove this structure. We believe it inhibits upstream movement of native fish, including threatened bull trout, and may create an unnecessary impediment to recreational floating the Clearwater River. In addition, unnecessary impoundments add to the lentic conditions that contribute to water temperature increases that favor non-native fish such as northern pike. In a time when native fish are already stressed by temperature, this dam adds to the thermal stress issue that promises to get even worse to our western Montana streams in the future.
2	E		The dam was put in place before the 1960s and has been vital to the wetlands around that area since put in place you remove that dam and all the wildlife your sworn to protect is gone and you failed your job. Beavers, cranes, turtles, Fish will not survive the transition from a lake to shallow stream in spots. this is a shame and should be reconsidered by this department. If I fish ladder needs to be in place then that should happen but removing this dam will do more damage than preservation of natural waterways
3	E		This dam is no different than the one at the end of Salmon Lake or Blanchard Lake and it was probably there prior to those. Please take a current photo. Your photo is misleading. Please add a photo of every outlet of every lake on the Clearwater River. This is a ridiculous waste of government funds. There is no such thing as a partial barrier to fish, that statement proves the point that fish can go over and around the weir. I watch recreationalists, including myself, my kids and many floaters and guides go right over the weir all season long. There needs to be real data to support any claims that this is blocking anything. Furthermore, the DNRC owns the land and could have and should have helped their lease holders with water rights, this has been permitted before, but the DNRC has turned their backs on their own lease holders. The real question here is why is DNRC not sticking up for their lease holders? You can have water rights for half a century. You can even be permitted for 11years, but we are the government and we can do anything we want, so now you are done. No more rights for you! I am against this action and furthermore, I believe there has been governmental wrong doing during this process.
4a	E	1	Please address loss of wetlands. How many acres are connected with Elbow Lake? How many beaver dams will be lost? What does fish have "partially barrier " mean? Reminds me of a sign I saw in a hotel, "bathrooms are partially ADD compliant". Seems like decisions are being made before environmental impacts are researched. Can I comment more than once, I have other questions? <i>[FWP responded 10-8-2019 that a person can comment more than once, but all his/her comments would be considered/counted as one commenter.]</i>
		2	I look forward to your reply.
4b	E		Will I receive a reply to my questions? <i>[FWP responded 10-8-2019 that questions/comments will be responded to in the Decision Notice.]</i>
5	E		Missoula Conservation District supports the project to eliminate the unauthorized structure on the Clearwater River and appreciates the coordinated efforts of MT FW&P and MT DNRC to restore the natural streambed conditions of the river.
6	E		I am a lease holder on Elbow Lake, lot 25, and I am strongly against the removal of the rock dam. The dam has provided human recreation and a large wetland habitat for nesting birds, beaver, turtles, a variety of fish, and all kinds of other wildlife. If the dam is removed a whole wetland ecosystem will be destroyed. I have 40 years worth of before pictures I will be glad to show/compare to the aftermath of this potential removal. I will be glad to show these to all interested parties. The leaseholders on Elbow Lake are very willing to put in/open up ladders (pathways for fish). This is not a major dam, it's made of rocks and can be made to allow fish (including Bull trout) to travel without removing the whole dam and destroying wetlands. Thanks for your time.
7	E		I oppose the dam removal on Elbow Lake

8a	E	DO NOT REMOVE THE DAM. Why not adding a salmon letter? [ladder?]
8b	E	Do not remove the dam.
8c	E	[same as 8b]
8d	E	[same as 8b]
9	E	[same as 8b]
10a	E	DO NOT REMOVE THE WEIR !
10b	E	1 Please read the following regarding the removal of the weir on Elbow lake.
		2 To whom it may concern-
		3 In response to the issue of removing the weir on Elbow Lake , I would like to share another opinion. When our family is enjoying the lake , we frequently see many animals that call Elbow lake their home. These wetlands are home to many water fowl including many ducks , geese and blue heron ,
		4 eagles and song birds. There is an abundance of turtles that live among the lily pads and vegetation. But the creature that we need to protect is the beaver. in my understanding , the beaver impacts the overall ecosystem very directly. Elbow Lake has an abundance of beaver families and dams. We hear them slapping their tales as we are fishing or enjoying a canoe ride. .
		5 My basic understanding is that you want to remove the weir for fish species to migrate, but in doing so ,this would also impact the water level in and around Elbow lake. When the weir is taken out , the water level will drop , the lake that has been in place for half a century ,will then become a river. The wetlands and homes for all these animals ,including the fish species, will all be impacted. The beaver will move and have to find other areas to build their dams, which in turn will kill off and /or affect other species that depend on the beaver to keep the ecosystem healthy and vibrant. So how can we justify removing something that has been in place for years (the weir) that will impact so many animals? Have you studied how this will impact the health of Elbow lake and all its creatures? Do you have research studies to back the need to change the weir ? Have you studied the wetlands, meadows and lily pond pools in and around Elbow lake?
		6 If the beaver lose this habitat they will move on. "Beaver ponds create wetlands which are among the most biologically productive ecosystems in the world. They increase plant life , support bird and wildlife variety, improve overall water quality, and raise salmon and trout populations. ... Algae and aquatic plants grow in the sun drenched, nutrient rich water. " (beaverinstitute.org)
		7 According to an article on Sierrawildlife.org , " Wetlands are very important habitat for many endangered species. Besides providing critical wetland habitat, Beaver dams slow the water's flow, which reduces erosion and decreases flood damage downstream. Water sinks into the ground, replenishes the water table, and increases riparian vegetation." (serriawildlife.org)
		8 Another article I read from, Sciencedaily.com ,explains that " a study that comes as the beaver population in Rocky Mountain National Park is dwindling. Approximately 30 of the animals currently live there, down from a high of nearly 600 estimated in 1940. The authors caution that additional reductions in the population could harm the current hydrologic balance in the river valley and affect the area's water cycle and soil conditions, potentially changing plant species and influencing the overall diversity of the ecosystem in the future. They suggest that although there are multiple explanations for the reduction in beaver population, such as alterations in the flow along the Colorado River, similar hydrologic effects downstream likely affect river systems worldwide."
		9 (American Geophysical Union. "Beaver Dams Create Healthy Downstream Ecosystems." ScienceDaily. ScienceDaily, 6 June 2006. <www.sciencedaily.com/releases/2006/06/060605120417.htm>.)
		10 Lastly , "There can also be negative effects to fish from loss of riparian vegetation, sedimentation, erosion, and temperature changes . As a result, when studying the health of habitat along a particular area of river or lake , all sources of environmental impacts must be reviewed.
		11 Riparian vegetation and its bordering waters provide critical habitat for birds, waterfowl, and small and large mammals. "
		12 "When habitat is lost, animals are forced to move to higher ground or other areas. In cases where water levels stabilize at a new height, vegetation in riparian zones can re-emerge and species can re-populate an area. With storage projects, the riparian zone that re-emerges has conditions that now reflect that of a reservoir or lake rather than a free-flowing river. When such conditions occur, certain species will begin to decline, others will become more abundant, and some will populate these areas for the first time." (fwee.org)
		13 I found it interesting to read that, "Ducks and geese are examples of waterfowl that are strongly attracted to the habitat conditions found in reservoirs. For some of these species, reservoirs are providing an important alternative to the wetland areas that they formerly occupied. Canada geese are one example of birds that now frequent reservoirs as part of their migration pattern. (fwee.org)
		14 Please consider all this information as you reflect on the removal of the weir. Please consider all the creatures that will be impacted. Please provide us with the proof that justifies changing the weir. Can we not come to a compromise? Our family cares deeply about the animals that inhabit Elbow Lake.

10c	E	consider how much wildlife will be effected if the weir is taken out of Elbow Lake. There are so many beaver, otter, water birds and amphibians that we see on a daily basis at elbow lake when are recreating on the lake and staying at the cabin. There is an abundance of wildlife that thrive on Elbow. I have read about Beavers and they are part of maintaining a healthy ecosystem and actually help maintain water levels and prevent erosion. There are many beaver dams and beavers that call Elbow home and that make it special. I How can you put the importance of one species about the rest? Shouldn't there be science and research done to decide on the removal of the weir and how it might impact all the creatures? It has been in place for decades. Please please we are begging that you pause and research this before you remove this weir. Can't we come to an agreement that this is a decision that impacts too many lives both humans and wildlife. Elbow is a healthy body of water, it's special and it's part of Montana and why it is the last best place. We must treasure it.
10d	E	[same as #10c]
11	E	Please don't remove the rock dam! My family and I have visited Elbow every summer for over 30 years. We love it. There will be nothing but a little creek left with a mess all around it.
12	E	I oppose the removal of the Elbow Lake damn. I have multiple family friends with homes there and this would severely diminish both their enjoyment of the surrounding environment and the investment made to the properties.
13	E	Please do not remove this dam.
14	E	Please don't do this! It will forever change Elbow Lake and will be devastating to the people who have loved going there for as long as I can remember. This is a horrible idea!!
15	E	Don't do this, it will forever change a great spot.
16	E	I very much oppose the removal of the dam and the detriment to the people (who recreate and reside on the shores of that little lake) the removal of that dam would bring. It is also a great pike fishery that would undoubtedly be decimated by this change.
17	E	Don't remove the dam.
18	E	Leave the dam at Elbow Lake!
19	E	Please don't remove the damn.
20	E	Please don't remove Elbow Dam as many many folks enjoy this stretch of the water
21	E	This is totally unreasonable. It's been this way for ~50 years. People have made decisions to buy property here based on the current status. Will they be compensated for any change in their property values?
22	E	I am opposed to removing the elbow creek dam.
23	E	Please do not remove the dam at Elbow lake. I oppose this move.
24	E	I am very opposed to the dam removal on Elbow Lake - please leave as is!!
25	E	1 We have leased and now own the property on the Clearwater River (Elbow Lake) for the last 27 years. Over the past years we have seen the water level of the river consistently reside. Now the invasive, non-native water lily has become pervasive. It has all but eliminated the cat tails and is threatening to block access to the river from many lot sites.
		2 The pictures sited in the above PDF files are not recent. I suspect they are 10 to 20 years old. We personally have not contributed to building or maintaining the weir since we were prohibited in 2006 and have not seen the rock structure that extensive since that time. We were required to have "fish ladders" on the ends of the weir and these pictures definitely don't depict that. A more recent picture depicting the adherence to the 310 permit would have been more accurate and HONEST!
		3 Along with the lily pads, the river and lake are becoming choked with seaweed and sediment. One has to ask if removing the rock weir will really restore the river to its original state or will it create a new wave of problems and make the Clearwater River less desirable for animals, fish and humans and also make the river less healthy.
		4 Please re-evaluate the removal of the weir until a comprehensive evaluation can be done to of the long term effects this will have on the waterway. An Environmental Assessment is not the same as Environmental Impact Study. We want to know what the Clearwater River will look like long term when the weir is removed.
26	E	I do not agree with the removal of the damn. It has been there for centuries and is not harmful to the habitat. Its a waste of time and money. No removal!
27	E	I strongly oppose the removal of the dam!!!
28	E	This is a mistake. Although this damn might be unauthorized, it has been in place for 50 years and has direct impact on land owners in the area who have been there that long. I understand the desire to restore to natural habitat, but the overall impact of dam removal is much more on human beings than it is on a very small waterway, to appease the agencies projects.

29	E		This seems very unfair. The "dam" has been there for decades. The dam is very small but creates a large benefit to the community of people that use the lake. The fish can easily cross the small dam, boats and paddle boards go over it without problems. This seems like someone has an agenda which they are pushing through under the disguise of saving fish. I've been told the lake is too warm for bull trout.
30	E		While you continue to call this a dam and the body of water Elbow Lake, once the weir is removed you will be creating another segment to the Clearwater River. Your entire dialogue centers around the bull trout, completely ignoring the other wildlife that inhabits Elbow Lake. We spend hours upon hours watching the unique critters that we are so fortunate to have. Draining the established wet lands will have a devastating effect on all. I am concerned that the low water and higher water temperatures will affect bull trout adversely, We are looking forward to working towards an outcome that will be satisfactory to both sides. One final note, bull trout are unable to go past Potter's Dam and so this is a moot point. We are fully aware that he has a 99 year lease. You may be jumping the gun on the removal of our weir.
31	E	1	Natural stream bed from 50 years ago?
		2	Partial barrier for fish movement (what does that mean?).
		3	Seems to me that removing the dam will create more of a disturbance than just leaving it alone.
		4	Do the residents want this done or are there politics at play here?
		5	If you remove this dam, isn't it reasonable to say that every dam in this country should be removed to restore "natural stream beds"?
		6	Leave the dam. What's the "real" harm?
32	E		I strongly oppose the removal of the dam on elbow lake.
33	E		To those taking public comment re: removal of Elbow Lake Dam: I did some research and could find no distinguished arguments in favor of keeping the dam in tact. However, as I thought about it more, remembering the wonderful memories we, as a family, have shared, at "the little piece of heaven," (our cabin on Elbow Lake), I thought, this is as good an argument as I can make. For the past two years, our family has gathered at this cabin to swim, boat, fish and recreate, along with other families who share our happiness there each summer. Our teenagers are learning independence as they steer the boat slowly through the waters, chop wood for fires, and cook on the open grill. Our games of volleyball, bingo and sitting around the fire together are priceless memories. We are a middle class family, living in Missoula, who have sacrificed to have this "piece of heaven," and we request that, amongst all the evidence for or against, you count our happiness at Elbow Lake as a big enough piece of evidence to sway your decision to, at the very least, buy some time and keep the dam in tact. You ask, why can't we continue to do this, whether the dam is in place or not, my answer, the pooled water is what makes for most of the recreation, without the pooled water, it's just another cabin by a creek. Thank you.
34	E	1	I support the department's preferred alternative to remove the dam due to the multiple issues it has caused for certain fish species. The unauthorized dam acts as an obstruction to upstream fish migration, especially when the river is at base flows in late summer through early spring. The modifications to habitat also favor illegally introduced non-native fish species such as Northern Pike. The dam was also constructed with the assumption that the appropriate water rights and permits were in place. This is not the case as the original permit was discontinued and there are no current permits in place to allow the continued existence of the structure.
		2	I fish the Clearwater and also the Blackfoot regularly and it is my understanding that the removal of the dam would be beneficial to all species of fish especially the bull trout.
		3	It is my understanding that this is an illegal dam and is harming fish habitat. Please remove it.
35	E		This illegal dam should not be allowed to persist. I guess it is so people can wake board or jet ski? There is plenty of lake upstream for that. Please let the fish pass. This needs to be removed and people informed that it is illegal to create a dam.
36	E		I support the FWP's preferred alternative to remove the illegal dam on the Clearwater River, commonly known as the Elbow Lake Dam. Connectivity in waterways is vital for native fish survival especially for the endangered Bull Trout, and this illegal structure is a detriment to their survival. I recreate on the Clearwater drainage regularly and as a navigable portion of the Clearwater River, this illegal dam restricts/hinders that ability as well.
37	E		I am in favor of the preferred alternative to remove the illegal dam on the Clearwater River, known as the Elbow Lake Dam. To allow individuals to illegally modify/alter our waterways is unacceptable, and removal of the dam is crucial for our fish populations.
38	E		I oppose the removal of the dam.
39	E		I support the FWP's plan to remove the illegal dam on the Clearwater River, known as the Elbow Lake Dam. The waterways being connected is vital for native fish survival. It is very upsetting that these people have illegally changed the course of the river-Which is against environmental protection laws are in violation as are many other laws-please restore this area to its natural condition and elevation .
40	E		I support FWP's proposed project to remove the Elbow Lake Dam. The connectivity of waterways is critical for native fish to survive and reproduce.

41	E		I spend a lot of time fishing on Blackfoot and Clearwater rivers. I believe the Elbow lake dam should be removed. It is my understanding it was built without proper permits and is illegal. It was built to benefit a few landowners at the expense of Fish passage and natural habitat. It should be removed in a way that it cannot be reconstructed by the local landowners.
42	E		I support FWP's preferred alternative to remove the illegal dam on the Clearwater River, known as the Elbow Lake Dam. Having connected waterways is vital for native fish survival and non-hindrance of enjoying navigable waterways.
43	E		This dam has been on Elbow lake for years. The land around it has been leased at great expense for years. Why would you not consider the loss to these people. The lake is healthy with frogs, snakes and turtles and fish. Many enjoy recreating there. What will happen to its habitat should the water be released. I have been in the Clearwater area and Seeley area my whole life. I saw turtles, frogs, snakes all but disappear around Seeley. Please don't do this to Elbow. My grandchildren love this lake.
44	E		[same as #42]
45a	E	1	The impact this will have on the whole area is unbelievable. Where is your proof that the water will only decrease by less than 4 feet. Where is your documentation?
		2	Stating illegal dam over and over is crazy as this weir has been in place for at least 100 years. Why is it now such an urgent concern? Who put the weir in place?
		3	Taking down the weir will have a huge impact on the beavers, otters, ducks, turtles, fish ect. The wetlands / ecosystem that this weir has created will be gone.
		4	The whole Elbow Lake Community takes pride in this beautiful place and you are wanting to decrease the land value, cause loss of the wetlands, for what purpose?
		5	You must reconsider and at least do a fair environmental impact study on the effects this will cause. Consider working out an option that will benefit everyone.
45b	E	1	I would like to know if an economic analysis along with a social and environmental study has been done. My understanding is THIS IS REQUIRED UNDER MEPA. Please provide a copy of the study or where I can get a copy IF it was done. I don't believe there has been a full review because if there was the understanding of social and environmental impact would be addressed and perhaps there would be willingness to NOT tear down the weir.
		2	Perhaps bringing this to the attention of the EQC board will put it more in the public eye as it seems as though FWP & DNRC don't feel our words mean anything.
		3	I would also like to see where I can read the comments that are being submitted. Please let me know. Thank you.
45c	E		Please let me know when the public meeting is scheduled for the public comments for the removal of the Elbow Lake Weir. [FWP responded 11-4-2019 that we have no plans for a public meeting at this time, but all commenters are on a distribution list for any further information on this proposal.]
46	E		I believe the information in this proposal comes with very little validation. My family has been on this lake for close to 50 years and the damn has ALWAYS been there. It has never inhibited the fish movement. To say that they are going to bring it back to its natural state, well for 50+ years it's been this way and everything around it is thriving and doing great. The pictures they display are over 20 years old and even though we tried and keep it somewhat built up they (FWP) suddenly for no good reason are going to make changes. Their decision to make these changes after 50+ years is not a fair action. Those of us that were raised around this lake have grown up swimming, learning to water ski and have kept the land clean and well taken care of. It has always been a great place to go and fish and see lots of wildlife. The FWP proposed actions will cause a lot of heart ache for many people ruining great memories from the past and future for our families. They don't have a good reason to change anything. Please save a small damn.
47	E		I fully support the Department's preferred alternative to remove the unauthorized dam on Elbow Lake/Clearwater River. The dam is a barrier to upstream fish migration through the Clearwater system, including migratory bull trout and cutthroat trout. It's also a barrier to recreational floaters on the Clearwater River. The dam should be removed and the natural state of the stream-bed restored. Thank you for the opportunity to comment.
48	E		The dam should be removed. It is illegal, unpermitted and detrimental to the natural functioning of the river and associated species. Landowners who bought property under the auspices of there being a lake should take it up with their real estate agents, sellers, and/or title companies who may have made false claims, inflated prices, etc,

49	E		<p>I am writing in regard to the Elbow Lake weir located on the Clearwater River in Greenough, Montana, and the plans to remove it. Please consider and encourage an alternative to the pending decision and actions of removing the weir. As supporters and users of Camp Utmost, which leases property on Elbow Lake, our family has greatly benefited from Camp Utmost's swimming and canoeing programs, which only exists because of the weir. Without this lake area, Camp Utmost will no longer be able to offer this important outdoor activity which is a critical part of the programming to more than 600 campers each summer. This also impacts many others with property along the lake shore as well as wildlife which rely on the existence of Elbow Lake in its current state. Please consider the many people and wildlife in our area who will be negatively impacted by its removal. Again, I urge you to encourage those making this decision to seek an alternative to this planned removal.</p> <p><i>[Note: there were many comments received that were the same as this #49. It is essentially a "form email" (like a "form letter") copied and submitted by many people. Commenter #49 may not be the originator of this form email, but this person's comment happened to be the first of this form email that was added to this comment compilation.]</i></p>
50a	E	1	My name is [name], my family has had a summer cabin on Elbow Lake for what will be, 50 years, this summer.
		2	I truly respect all that your department is doing for Montana's water and fish. As, I'm sure do many of my family members. It is actually at the cabin that's I learned to fish and to respect the waterways and animals. It's were I learned about wildflowers, Indian paint brush being my favorite.
		3	My grandfather [name] was president of the parks department, in our town, for several years. Except for an outhouse, my family built the cabin with their own two hands. A huge part being that you work in the morning than water sports in the afternoon. This lake is so important me, my family and "cabin life".
		4	I know that another concern is that you may not have any support in putting up and taking down the dam. My family motto is "doin good, havin fun, maybe both" I know that I, would be happy to come together and to whatever I can to support you. Physically and financially. I'm not rich but I can work. Please, down take down the dam for good. Let us come together to achieve a compromise. We are not the only family on Elbow Lake. Please, consider coming to the table to compromise. I know that we can create a plan that benefits the natural waterways and the families invested in the lake. Please, feel free to contact me at [phone]. Let's work together.
50b	E		<i>[identical to 50a]</i>
51	E	1	I live on Rattlesnake Creek here in Missoula. I have 3 granddaughters and we'd love to build a dam across the creek to create a better swimming hole or at least easier wading. But we don't and we chose not to for good reasons.
		2	Simple dams like this block fish passage, especially bull trout during their spawning migration in late summer early fall when the creek is at its lowest. It is simply a matter of putting something more important than our own personal enjoyment first: the health and quality of our creek.
		3	That's why I'm supporting the removal of the Elbow Lake Dam on the Clearwater. This dam has a devastating effect on bull and cutthroat trout migrations and spawning success. It is bad for the fish and the environment. There is a reason these structures are illegal.
		4	Please remove this dam and prevent it from being made in the future. Best regards,
52	E		I support the Department's preferred alternative of removing the Elbow Lake Dam. the Dam was illegally constructed and there is no basis in fact or in law to grandfather this illegal construction project in a public water way. It is an illegal appropriation of public property by a few private individuals.
53a	E	1	I am a Calhoun, owner of 160 acres on either side of the north end of Elbow Lake. We have owned this property, enhancing our residence and surrounding area, since 1970.
		2	To correct your Environmental Assessment, the weir at Elbow Lake has been in place for more than 50 years--some speculate over a century. So I question, just what natural environment could be restored? Consider that in the past 50 years, Lost Prairie Creek no longer runs, the groves of Aspen trees are gone, invasive water lilies choke the waterway and Van Noys cattle openly graze at the shore of Elbow Lake. Add in years of gas powered boat traffic feeding down the river system from Seeley & Salmon Lakes and you have a very different set of elements at play in the Clearwater River. Yet, current wildlife abounds in present conditions. It is hard to imagine your process of determining which species of wildlife gets more support--perhaps there is an actuary table putting Bull Trout, amphibians and shorebirds ahead of beaver, otters, loons and bald eagles?

		3	Yet another correction to your EA cover letter (IX. Environmental Assessment Conclusion Section, #4), most residents were NOT notified starting 15 years ago. And you selectively picked which ones you eventually contacted. My family, now numbering 33 members, has by far the most shoreline within our deeded parcel, yet you chose to only contact lease-holders about a 310 permit. And when they didn't hold up the terms of the permit, we offered our support and management as a compromise. Your response of "Sorry, too late" reflected the legal reality of the situation, but completely ignored any aspect of positive community relations and up-front accountability.
		4	I suggest that you change Chart B, line 10 regarding "General Public Controversy" from "Minor, Can be mitigated" to "Major", but can be dismissed.
53b	E	1	I am writing about the weir at the end of Elbow Lake, near Clearwater Junction, in Missoula County. My family and I are greatly opposed to the idea of the weir being dismantled permanently.
		2	I am a proud member of the Calhoun Family, who purchased 160 acres at the north end of Elbow Lake in 1970. I honestly don't remember life before Montana – I was only 4 years old. As a child, then with my children, I have scoured every inch of that lake and lake shore, knowing every species of wildlife, reveling in the nature that abounds. This idyllic setting is threatened. Our waterfront that we built as a family with our dearly-departed father is threatened. Our lake is about to be drained before our very eyes. And for what?
		3	I don't know if the Bull Trout can be restored to this river system since this system has totally changed since they were last here – well before my 50 years. But, what I can fight for are the species of wildlife that flourish at Elbow Lake currently. From beaver to osprey, bald eagles to loons, Elbow Lake is teeming with animal activity. I fear for the changes that will come if the weir is removed.
		4	Before he passed away, our father fought for a compromise, but was thoughtlessly dismissed. The lack of communication and deliberately misleading information in the Environmental Assessment is laughable. We are now much better informed and our supporters have grown in vast numbers. We continue to implore the FWP, DNRC and political parties to allow this historic weir to continue in a modern and manageable manner. My family has offered, and continues, to offer, to manage the weir being partially dismantled and thoughtfully rebuilt each year, alongside our wonderful and dedicated neighbors.
		5	Please lend your support to a compromise and a fair resolution to the existence of the weir at Elbow Lake. We have so many more memories to make at Elbow Lake and we don't want it to change.
		6	Thank you for your consideration,
54	E	1	My husband and I have ever growing concerns about water, land use and wildlife and how they are affected, mostly by man, and his decisions about our planet's resources. But we also have concerns about Wildlife and Parks and the DNRC's recommendations in an environmental assessment of the weir below Elbow Lake. Last year we had an opportunity to visit Elbow Lake and found it to be a surprising, relatively unknown, wildlife habitat. We saw ducks in the wetland areas, beaver and deer and plenty of wildflowers in our short time there. Fishing was great!
		2	It appears to us that the hand-stacked weir located on the clearwater below elbow lake was given a temporary permit 2005 and a permanent permit in 2007. Permanent according to Webster's dictionary means "to stay to the end, not changing, fixed, abiding." It is shocking then to find that "permanent" permits are removed at the whim of government agencies. It seems that between 2005 and 2007 there was adequate time to review the permit before finalizing it.
		3	According to an article in the Missoulian Browning and Calhoun are wanting to sit down and figure out what it will take to leave the weir in place with modifications. They are willing to do the work necessary to allow fish to pass, apply for the necessary permits and be responsible for maintenance of the weir. Given the history of this "permanent permit" this is a reasonable approach in our estimation. The previous modifications of other dams on the clearwater drainage opens that door.
		4	Please add our letter to those opposed to the removal of the dam.
55	E	1	We are writing to you to express our concern about the possibility of the dam on Elbow Lake being removed. Our family, the Rambos, have enjoyed this area since we built our cabin in 1959. The dam has been a part of the lake as long as we have had our cabin.
		2	Needless to say, we are very concerned about the possibility of the dam being removed and trying to understand why all of the sudden, this is a such an important issue. Here are our comments:
		3	• The wildlife and the people have grown up around this area of paradise at Elbow Lake.
		4	• Fish ladders have been a part of the dam for many years on both sides of the lake.
		5	• May of the species of fish that are referenced in the various communications have never been caught by our family and friends fishing at Elbow Lake.
		6	• If the water drops at the maximum of the 4 feet, it will have a significant impact to the wildlife and the people who enjoy the lake.
		7	• What about the Bald Eagle? Isn't is a protected species? What kind of an impact will this change have on similar animals? Has that been taken into consideration?
		8	We are just trying to understand why this is happening now. There should be a way that after all of these years the dam on Elbow Lake can be "grandfathered" in so that it does not have to be removed.

	9	Please feel free to contact me at any time about this issue.
	10	Thank you for taking our comments
56a	E	[same as #49]
56b	E	[same as #49]
56c	E	[same as #49]
57a	E	[same as #49]
57b	E	[same as #49]
58a	E	[same as #49, with the addition of this sentence between sentences 4 and 5:] We personally participate in sending many underprivileged kids up there every summer.
58b	E	[same as #49, with the addition of this sentence as a P.S.:] We have been personally involved in getting many underprivileged kids up there during the summer and see the great need.
58c	E	[same as #49, with the addition of this sentence as a P.S.:] we personally have been involved in getting many underprivileged kids up there - we see the great need for this!
59a	E	[same as #49]
59b	E	[same as #49]
59c	E	[same as #49]
60	E	[same as #49]
61a	E	[same as #49]
61b	E	[same as #49]
62a	E	[same as #49]
62b	E	[same as #49]
63a	E	[same as #49]
63b	E	[same as #49]
63c	E	[same as \$49]
64a	E	[same as #49]
64b	E	[same as #49]
65a	E	[same as #49]
65b	E	[same as #49]
66a	E	[same as #49]
66b	E	[same as #49]
66c	E	[same as #49]
67a	E	[same as #49]
67b	E	[same as #49]
67c	E	[same as #49]
68a	E	[same as #49]
68b	E	[same as #49]
69a	E	[same as #49]
69b	E	[same as #49]
70a	E	[same as #49]
70b	E	[same as #49]
70c	E	[same as #49]
71a	E	[same as #49]
71b	E	[same as #49]
72a	E	[same as #49]
72b	E	[same as #49]
73a	E	[same as #49]
73b	E	[same as #49]
74a	E	[same as #49]
74b	E	[same as #49]
75a	E	[same as #49]
75b	E	[same as #49]

75c	E	[same as #49]
76a	E	[same as #49]
76b	E	[same as #49]
76c	E	[same as #49]
77a	E	[same as #49]
77b	E	[same as #49]
78a	E	[same as #49]
78b	E	[same as #49]
79a	E	[same as #49]
79b	E	[same as #49]
80a	E	[same as #49]
80b	E	[same as #49]
81a	E	[same as #49]
81b	E	[same as #49]
82a	E	[same as #49]
82b	E	[same as #49]
83a	E	[same as #49]
83b	E	[same as #49]
84a	E	[same as #49]
84b	E	[same as #49]
85	E	[same as #49]
86a	E	[same as #49]
86b	E	[same as #49]
87a	E	[same as #49]
87b	E	[same as #49]
88	E	[same as #49, except "My friends have" instead of "Our family has"]
89a	E	[same as #49]
89b	E	[same as #49]
90a	E	[same as #49]
90b	E	[same as #49]
91	E	My children have gone to camp utmost for years and love it[,] with out swimming and the lake I fear it will close
92a	E	[same as #49]
92b	E	[same as #49]
92c	E	[same as #49]
93a	E	[same as #49]
93b	E	[same as #49]
94	E	1 I would like to see the efforts made to obtain a good standing for this weir. Has the FWP and MDNRC sought compliance? Have the interested parties been given an opportunity to get into compliance? It seems like the correct permitting would allow the weir to remain intact.
		2 My opinion is that removing the weir will create an ugly shoreline upstream. I think it would be best to look into options for creating compliance which I am sure can be done.
		3 Finally, I also wonder who, if anyone, will benefit from the removal of the weir? You might be able to guess where I'm going with this, but anyone found to be involved in instigating this action for their own benefit should be unequivocally banned from utilizing this river system.
95a	E	Respectfully, do not remove this weir. The weir predates the law. "Natural" state of rivers and streams is not always the most useful. Elbow Lake is a beautiful, actively used lake by the thousands upon thousands of campers over the years
95b	E	[reworded version of #95a] Respectfully, do not remove the Elbow Lake weir. The weir predates current guidelines/law. "Natural" state of rivers and streams is not always best. Elbow Lake has been enjoyed by thousands of Camp Utmost campers over the years and should not be at risk by removal of the weir.
96a	E	[same as #49]

96b	E	[same as #49]	
96c	E	[same as #49]	
97a	E	[same as #49]	
97b	E	[same as #49]	
97c	E	[same as #49]	
98a	E	[same as #49]	
98b	E	[same as #49]	
98c	E	[same as #49]	
99a	E	[same as #49]	
99b	E	[same as #49]	
100	E	[same as #49]	
101a	E	[same as #49]	
101b	E	[same as #49]	
102a	E	Please keep Elbow Lake available and accessible to Camp Utmost it is a huge part of camp	
102b	E	[same as #102a]	
103a	E	[same as #49]	
103b	E	[same as #49]	
104a	E	[similar to #49; written from that template] I am writing about the Elbow Lake weir located on the Clearwater River near Greenough, Montana, and the plans to remove said weir. Please seek an alternative to it's removal. As a supporter and user of Camp Utmost, which leases property on the Lake, my family and our friends have greatly benefited from the camp's swimming, canoeing and recreational opportunities on that lake property. Without this lake the camp will not be able to offer water based activities to it's users and thus the camp will lose a valuable resource and service to western Montana and Idaho. This is a critical part of their programming to about 600 campers each summer. This action would also impact many others with property along what is snow the lake's shoreline. Wouldn't a project of this scale negatively impact the water quality downstream and impair the recreational opportunities that depend on this pristine river for miles? I sincerely urge that an alternate plan be sought that will not have this type of impact on property owners and users.	
104b	E	[same as #104a]	
105	E	I strongly endorse the plan to restore the NATURAL streambed conditions on the Clearwater River by removing the Elbow Lake dam. This river belongs to all of Montana's citizens and should be treated as such by removing this "unauthorized" dam. My endorsement comes particularly because it will "eliminate the dam that acts as a partial barrier to the natural movement of fish..."	
106a	E	[same as #49]	
106b	E	[same as #49]	
106c	E	[same as #49]	
107a	E	[same as #49]	
107b	E	[same as #49]	
107c	E	[same as #49]	
108a	E	I am writing in regards to the Elbow Lake weir removal. I work at Camp Utmost in the summer during camp season where over 600 campers use the lake to swim and canoe. This project would greatly affect the recreational side of our camp. Please consider all aspects of this project as it affects more than just the people living on the lake and all the other wildlife that need the lake to live.	
108b	E	I am a missionary at Camp Utmost where the Elbow Lake weir project is located. We have been using the lake for over 60 years as part of the recreational side of our camp. The removal of the weir would drain the lake and greatly affect over 600 campers each summer. It's not just the people who have homes on the lake that will be affected but all the other wildlife that depend on the lake to survive as well.	
109a	E	[same as #49, with the addition of:] Thank you for your consideration.	
109b	E	[same as #49, with the addition of:] Thank you for your consideration.	
110	M	1	Thank you for the opportunity to provide comments on the proposed project to remove and remediate the Elbow Lake Dam. We have reviewed the proposal and associated draft Environmental Assessment, and we wish to go on record strongly supporting this project. Quite plainly, the existing structure is illegal, and we support the Department utilizing their authority in removing the structure to restore connectivity for fish and aquatic species.

		2	We support the Department's preferred alternative to remove this dam for a number of reasons, namely the impact that it has on certain fish species during critical times of the year, namely during late season flow in to early spring. Those are critical moments for native bull trout migrations through the Clearwater chain, and removal of the dam structure would greatly benefit the terrestrial and aquatic species and their habitat. Furthermore, the dam has benefited non-native invasive species like Northern Pike. Lastly, the appropriate water rights and permits for having this structure are not in place since the original permit was discontinued and no subsequent permits are in place to allow the continued existence of the structure.
		3	Founded in 1964, Montana Trout Unlimited is the only statewide grassroots organization dedicated solely to conserving, protecting, and restoring Montana's coldwater fisheries. Montana Trout Unlimited is comprised of 13 chapters across the state and represents approximately 4,500 Trout Unlimited members.
		4	Please do not hesitate to contact us with any questions, or if you need additional information regarding the comments that we have submitted (via email at [email address] or by phone at [phone #]). Again, we thank you for the opportunity to comment.
111	E	1	The Westslope Chapter of Trout Unlimited works to preserve, protect and restore cold water fisheries in the Missoula area. Collectively, the chapter represents over 900 passionate anglers that care deeply about our mission. We write to express our support for the removal and remediation of the Elbow Lake Dam on the Clearwater River.
		2	We support the department's preferred alternative to remove the dam due to the multiple issues it has caused for certain fish species. The unauthorized dam acts as an obstruction to upstream fish migration, especially when the river is at base flows in late summer through early spring. The modifications to habitat also favor illegally introduced non-native fish species such as Northern Pike. The dam was also constructed with the assumption that the appropriate water rights and permits were in place. This is not the case as the original permit was discontinued and there are no current permits in place to allow the continued existence of the structure.
		3	Removal of the dam would have several benefits for terrestrial and aquatic species and their habitat. This includes potentially significant benefits for threatened species such as the bull trout. Specifically, migratory bull trout using the Clearwater chain for annual migrations would benefit from improved connectivity. Because the dam was constructed with river rock from the existing stream bed, the project can be completed quickly and without major disturbances.
		4	In plain terms, this structure is illegal, and FWP should exercise its legal authority in removing the dam to alleviate the ongoing violations of environmental laws and restore connectivity for fish and other aquatic species. The WestSlope Chapter of Trout Unlimited fully supports the department's preferred alternative to remove the dam. Thank you for the opportunity to comment.
112	E	1	The U.S. Fish and Wildlife Service (Service) reviewed the proposed Elbow Lake Dam removal project and have the following comments. The Clearwater River and Chain of Lakes supports important bull trout populations. One of the primary actions needed for recovery of bull trout includes the protection, restoration, and/or maintenance of habitat conditions (USFWS 2015). Within the Clearwater River Core Area, the section of river between the Blackfoot River and the Chain of Lakes provides an important migratory corridor for bull trout. Therefore, the Service supports your efforts to improve connectivity by removing the Elbow Lake Dam.
		2	We appreciate our partnership with Montana Fish, Wildlife and Parks in the recovery of threatened and endangered species. If you have questions or comments related to issues, please contact [name] at [email] or [phone #].
113a	E		[same as #49]
113b	E		[same as #49]
114	E	i	Please find the attached letter from the Missoula County Commissioners' in regards to the Elbow Lake dam project. If you have any questions please direct them to [name] at our Community and Planning Services office @ [email].
		1	Thank you for the opportunity to comment on the draft environmental assessment for the removal and remediation of Elbow Lake Dam. We would like to express our support of the project and the preferred alternative of removal of the dam structure by the management agency and restoration of the riverbed to its approximate natural condition.
		2	This topic has been brought to our attention in previous conversations with both agencies, and we are aware that the unauthorized rock dam has been removed in previous years but then rebuilt by members of the public.
		3	The presence of the dam structure and creation of Elbow Lake negatively alters the flow of the Clearwater River, leading to enhanced habitat for non-native species, obstruction of upstream fish passage and changes to the sediment and nutrient composition of the river.
		4	While we recognize that some residents will not support removal of the structure, we also understand that the rock dam exists as an artificial structure with associated ongoing permitting violations and that the preferred alternative would alleviate current legal deficiencies.

		5	Thank you for your continual natural resource-management efforts in Missoula County. We appreciate the opportunity to comment on this project.
115	E	i	Attached, please find the Clark Fork Coalition's comments on the proposed Elbow Lake dam removal project.
		1	I submit this comment letter on behalf of the Clark Fork Coalition (CFC), a non-profit organization with a 30-year history of protecting and restoring water of the Clark Fork River basin. As a watchdog for the Clark Fork River system and a strong advocate of native fisheries, the CFC supports the agency's proposed action to remove the illegal dam constructed at Elbow Lake.
		2	Rivers are dynamic, interconnected systems. The health of a watershed largely depends on the health of its parts. Therefore, as a general rule, the CFC supports restoration projects in our watershed that promote connectivity and return streams and riparian habitats to a natural state. Likewise the CFC supports efforts to restore stream flows and improve fish passage on key tributaries. In recent years, the CFC has invested hundreds of thousands of dollars in projects that improve fish passage, eliminate entrainment, and restore stream and floodplain habitat on numerous tributaries in our watershed. Whenever possible, the CFC invests in projects aimed at protecting native species.
		3	As noted in the agency's Environmental Assessment ⁹ EA), the mainstem Clearwater River represents a major connective corridor between the upper Clearwater Lake/ River system and the mainstem of the Blackfoot River. For years, Montana FWP has been working to increase connectivity throughout the Clearwater chain of lakes, and this is the logical next step in that process. FWP has concluded that permanent removal of the Elbow Lake dam would improve connectivity for native and desirable aquatic species--including threatened bull trout and native westslope cutthroat--attempting to migrate upstream through this connective reach. It would also remove habitat for unwanted, warm water species like northern pike. The proposed action would provide a clear, ecological benefit at a very low cost.
		4	Finally, while the CFC is sympathetic to the concerns of riparian landowners who may have seen recreational or aesthetic benefits from the artificially raised water level, to sanction an illegally constructed impoundment in an over-appropriated basin such as the Clark Fork would set a dangerous precedent. Further, the proposed alternative will not burden any landowners who may have thought the dam was permitted, with costs associated with its removal.
		5	On behalf of CFC, we urge the FWP to adopt the proposed action.
116a	E		<i>[same as #49; except "Our family and our friends have" instead of "Our family has," and separates 1 paragraph into 4 paragraphs]</i>
116b	E		<i>[same as #49; except "Our family and our friends have" instead of "Our family has," and separates 1 paragraph into 4 paragraphs]</i>
116c	E		<i>[same as #49; except "Our family and our friends have" instead of "Our family has," and separates 1 paragraph into 4 paragraphs]</i>
117a	Ph	1	I'm a Camp Utmost camper from way back; 1968 [1986?] was last year I was there.
		2	Speaking about Elbow Lake and the Clearwater River and the quote-unquote unauthorized quote-unquote dam, partial dam that's been there over 60 years.
		3	I would sincerely request that the 600 plus campers that use that deep part of the river as a swim and recreation area for Camp Utmost, that that area be left alone.
		4	It is not causing fish issues; they can jump over that little weir that's in the water. They've been doing it for 60 years plus.
		5	I don't know who would use a rocky stream bed for anything if that weir is taken out.
		6	I don't understand how taking that weir out would benefit anybody.
		7	You've got a nice lily bed in that corner opposite the access to the stone beach that Camp Utmost uses.
		8	I think it would be a bigger detriment to nature and the humans use of that river to remove that weir.
		9	That's my humble opinion.
		10	Thank you for your time. I appreciate what you do for <u>real</u> contamination and <u>real</u> damage use, but this is not one of them. Thank you.
117b	E	1	I was a camper at Camp Utmost from 1976-1986. The weir in the River has been there for greater than 50 years. IF this weir had affected fish runs, there would be no fish above the weir after 5 decades. My opinion would be to leave the riverbed alone as 2 wrongs don't make a right... Recreational kayaking would NOT be any better over a rocky riverbed. Please, leave it alone.
		2	600+ campers use the riverbend for swimming and canoeing. Why not leave it be if for no other reason?
118	E	1	I oppose the proposal to remove the rock weir at Elbow Lake by MT FWP & DNRC . The removal of the weir at Elbow lake will have little effect on the limited migration of bull trout that is occurring, let's be real here, we all know this to be true. What it will ABSOLUTELY affect are the hundreds of people who use this lake and have cabins on it.
		2	The Elbow weir is not illegal, the 310 permit should be reinstated, and a reasonable compromise reached where the land owners can help to manage the weir, which we have already offered.

		3	On a personal note, this has caused our family a great deal of stress and sleepless nights. We are in the process of buying our land from the state, knowing that this will have a huge negative impact on the water our cabin sits on. We planned to pass this onto our children someday, what are we buying? What will this lake become? Why would they do this to us? The entire situation has been poorly communicated, poorly executed and frankly doesn't feel legal in any way, shape or form. The fact that this wasn't brought to EVERY cabin owner's attention much sooner than now reflects on how little the MT FWP & DNRC respect us as land owners and lease holders. Shame on you. This situation can be easily remedied by MT FWP & DNRC coming to the table like adults and creating a plan with the owners on this lake for the sake of all of us so that we can continue to enjoy our lake just as it is- a LAKE, not a babbling brook!!!!!!
119a	E		[same as #49]
119b	E		[same as #49]
119c	E		[same as #49]
120	M	1	50 years ago, in 1970, Roland and I decided to build a cabin for summer vacations. After looking at several options we decided that Elbow Lake, Montana, was ideal.
		2	So Roland, his brother Jim, and our son Jeff, built the cabin, which today is still in very good condition. Our family of 5 children and their families have loved the summers there.
		3	Elbow lake is the ideal size for us swimmers and boaters. The depth of the lake was also ideal. To reduce the depth 1 ft-4 ft as is forecast, makes the lake impossible for beavers and fish--as well as people.
		4	My sincere hope is that the DNRC will reconsider removing the weir, which has existed for 100 yrs. Our family will happily do our part to ensure rocks will be removed when summer is over. Sincerely.
121	E	i	please see attached letter in opposition to the removal of the Elbow Lake/Clearwater River dam
		1	I am responding to your letter dated September 30, 2019 indicating the Montana Department of Fish Wildlife and Parks (FWP) intention to remove a rock weir (or dam as you call it) on the Clearwater River in the vicinity of Elbow Lake. I am opposed to this action and believe that it violates the premise of responsible water, land, and wildlife management for which you and the State of Montana are responsible. Additionally, the in-house environmental assessment dated also September 30, 2019, is so poorly done, incomplete and biased, that it alone is evidence an Environmental Impact Study is warranted before any action can take place.
		2	The rock dam that you refer to has been in place for the 25+ years of use my family has had as leases and owners of Elbow Lake lots, and has been supporting significant wetland areas upstream for decades. Your proposed action will effectively drain these wetlands causing harm and potentially irreversible negative impacts on many species of aquatic life, plants, birds and mammals. There is more at stake here than just a single species, the bull trout. Your agency and the State of Montana have not addressed the negative consequences of the weir/dam removal including but not limited to:
		3	• Higher water temperatures from lower water levels is never healthy for trout species
		4	• Increased invasive aquatic weeds, some of which are already present and uncontrolled
		5	• Reduced land values as shown by the recent lot appraisal values dropping 40-50%
		6	• Reduced income for the State of Montana in land sales and rental property income
		7	• Decreased wetlands reducing prime avian habitat and negatively effecting grizzly, lynx and other endangered species habitat
		8	Some to the various inhabitants of the Elbow Lake area include - Loons, Grebes, Golden Eye, Mergansers, Cranes, Trumpeter Swans, Bald and Golden Eagles, Osprey, Beaver, Otters, Turtles Deer, and more. Without doubt, draining these wetlands will have a detrimental effect on these and other animal and plant life.
		9	Entire removal of this rock weir/dam structure will inflict unnecessary environment damage to the upstream wetland ecosystem. I am asking for a full Environmental Impact Study be completed before any action is taken regarding the removal of this rock weir/dam so there is a more complete understanding of the serious and negative changes that will result from this action. I am open to working with you and your staff to find a less harmful and invasive solution to the action proposed in your letter. Please keep me informed of any permit applications, reports and/or public comment periods pertaining to your proposed action.
122	M	1	My wife [name] and I lease Lot [#] at Elbow Lake and oppose removing the Elbow Lake Weir for the following reasons:
		2	1) The weir has been present since the late 1800s. It was built as a splash dam to help send logs to the Bonner Mill. There are western larch stumps on our lot left from early logging . . . western larch no longer grow along this stretch of Elbow Lake. Has the Montana State Historic Preservation Office been contacted regarding the historic significance of the Weir? Elbow Lake could be used to draft water for fire suppression. Removing the dam would eliminate this water source. The photos of the July, 2019 weir does no represent the photo of the weir in the EA, which is misleading.

3		2) The draft Environmental Assessment proposed alternative is pre-decisional. FWP's and DNRC have talked about removing the weir for years, so, the proposed action has been pre-determined and in reality provides no voice for lease-holders and the public. [Wife's name] and I request that FWP and DNRC select and develop alternative "4. Alternative Considered, but Not Analyzed in Detail." Apply for a legal water right and other permits and design and construct a weir that maintains water levels in the lake, provides fish passage, and provides recreationists access to the lake for boating, canoeing, kayaking, fishing, swimming, etc.
4		3) Include a "social/economic analysis" for the EA. This analysis is needed to determine the loss of value to developments (homes and other buildings) and the loss of value with home sites, which are part of the DNRC home-site sale program. The home-site sale program also does not disclose the social and economic effects of the weir removal to those interested in the sale program. Boat docks would be damaged by lower water levels . . . there may not be connection of boat docks to Elbow Lake. Will lease holders have lake access? Social/economics should include social/economic analysis for Camp Utmost loss of a swimming-hole for their 600 summer campers, removal of the weir, which is an historic site, and recreation loss elevates the proposed action to an Environmental Impact Statement level.
5		4) The cumulative effects boundary for the proposed action has not been established. The cumulative effects boundary should be the entire Clearwater River. We have heard that FWP and DNRC has plans for weir and dam removal upstream and downstream from the action area. Are bull trout present in the upper and lower Clearwater River, and what effects do weirs and dams have on bull trout movement? Do northern pike inhabit the Clearwater River, where are they located, and do they inhabit the Big Blackfoot River? Could fish ladders be designed to provide fish movement above and below the weir?
6		5) Please disclose the effects of the proposed action on Montana Species of Concern. What will the effects of weir removal have on common loon, trumpeter swan, great blue heron, and bald eagle? These species, and more, inhabit Elbow Lake. Elbow Lake is a beautiful wetland, providing for river otter, American beaver, muskrats, Sandhill cranes, and others. What will FWP and DNRC do with beavers if they attempt to build dams and increase water levels?
123	E	[same as #49]
124	E	My family has had a cabin on this lake since the mid 1960's. The little dam has been there since before then. The eco system that has developed since whenever it was built, has now been established and by removing this dam you will again change the environment as it is. It will greatly effect the birds, beavers and other wildlife that use this lake for their home, as well as disturbing the fish that are now residence of this lake. The people, like us, who have cabins on the lake will also be greatly effected. The people downstream from the dam will be effected with additional water and an introduction of new fish that have not been in their water for many many years. I do not understand why we would want to change the environment that has now been established for many years to "fix" a problem that is no longer a problem. This issue should have been addressed 60+ years ago, not now. Now you will be doing more harm than good. I hope you will consider all the comments and see that is is best to leave the current situation as it is. Thank you for your consideration.
125a	E	[similar to #49; written from that template] I am writing in regard to the Elbow Lake weir located on the Clearwater River in Greenough, Montana, and the plans to remove it. Please consider and encourage an alternative to the pending decision and actions of removing the weir. As a recreation user and family member of a lessee, my friends and family have greatly benefited from the recreation opportunities provided by Elbow Lake, which only exists because of the weir. Without this lake area, our use of the area will be dramatically impacted. This decision also impacts many others with property along the lake shore as well as wildlife which rely on the existence of Elbow Lake in its current state. Please consider the many people and wildlife in our area who will be negatively impacted by its removal. Again, I urge you to encourage those making this decision to seek an alternative to this planned removal.
125b	E	[Same as #125a]
126	E	[same as #49]
127a	E	[same as #49]
127b	E	[same as #49]
128a	E	[same as #49]
128b	E	[same as #49]
129	E	[same as #49] [Name], a college student who grew up attending this camp and learning about Montana's beautiful habitats at Elbow Lake.

130a	E		[similar to #49; written from that template] I am writing in regard to the Elbow Lake weir located on the Clearwater River in Greenough, Montana, and the plans to remove it. Please consider and encourage an alternative to the pending decision and actions of removing the weir. As supporters and users of Camp Utmost, which leases property on Elbow Lake, my family has greatly benefited from Camp Utmost's swimming and canoeing programs, which only exists because of the weir. I myself have gone through the entire camp and volunteered there almost every summer for the past 10 years most of the time helping with lake activities which all the camper, counselors, and staff look forward too. Without this lake area, Camp Utmost will no longer be able to offer this important outdoor activity which is a critical part of the programming to more than 600 campers each summer. This also impacts many others with property along the lake shore as well as wildlife which rely on the existence of Elbow Lake in its current state. Please consider the many people and wildlife in our area who will be negatively impacted by its removal. Again, I urge you to encourage those making this decision to seek an alternative to this planned removal.
130b	E		[same as #130a]
130c	E		[same as #130a]
131a	E		[same as #49]
131b	E		[same as #49]
131c	E		[same as #49]
132a	E		[same as #49]
132b	E		[same as #49]
133a	E	1	[similar to #49; written from that template] I am writing to ask for your help in regard to the proposed removal of the Elbow Lake weir located on the Clearwater River in Greenough, Montana.
		2	Please consider and encourage an alternative to the plan as outlined by in the Draft Environmental Assessment from the Montana Department of Natural Resources and Conversation (DNRC) and Montana Fish, Wildlife & Parks (FWP) by Montana DRNC dated September 30, 2019. The pending decision and action of removing the weir will have a serious and negative impact to the many people and wildlife in the area.
		3	In addition to the wildlife and families with cabin sites at Elbow Lake, the lake has been home to Camp Utmost's swimming and canoeing programs for the many years. Our family supports this program which only exists because of the weir. Without this lake area, Camp Utmost, which leases property on Elbow Lake, will no longer be able to offer this important outdoor activity which is a critical part of programming to more than 600 campers each summer.
		4	Please consider the many people and wildlife in our area who will be negatively impacted by the weir removal. Again, I urge you to encourage those making this decision to seek an alternative to this planned removal.
133b	E		[same as #140]
133c	E		[same as #133a]
134a	E		[same as #49]
134b	E		[same as #49]
135a	E		[same as #49]
135b	E		[same as #49]
135c	E		[same as #49]
136a	E		[same as #49]
136b	E		[same as #49]
136c	E		[same as #49]
137	E		This in reference to the removal of the dam on elbow lake. The removal is totally unnecessary. It appears that neither the DNRC or FWP care about the impact it will have to the wetlands, wildlife or the humans who use the lake. Nice to see state gov. have so much concern for the people they sre suppose to represent. I woder how those bull trout have been getting up stream and the people who irrigate below have been doing there thing since 1936 when the dam went in. Removal is very bad idea.
138a	E	1	I am writing in regard to the Elbow Lake weir and the plans to remove it. I am currently the director of Camp Utmost which has used the Clearwater River above the weir for various water activities since 1960. We have had a lease at a specified area on Elbow Lake with DNRC since approximately 2001 for what is specified for the purpose of swimming and canoeing. Our current lease extends until 2025.
		2	Without the weir, Elbow Lake will no longer exist which is bothersome for a lot of reasons but specifically for these reasons in regard to Camp Utmost.
		3	1. Without Elbow Lake, which will be gone without the weir, there will no longer be a place to swim and canoe.
		4	2. Our lease with DNRC states and provides a place for Camp Utmost to swim and canoe on Elbow Lake.

		5	3. Our lease extends until 2025 which would indicate that the area we are leasing will be available for those specified activities until at least September 2025.
		6	4. We as a leasee have never been notified by DNRC or FWP of the pending removal of the weir and a pending change that what DNRC leases to us will no longer be available.
		7	5. Swimming and canoeing at Elbow Lake are a major part of our programing and yet we have not been notified nor have we been asked for input or any other regard as to the way that DNRC no longer plans to honor our current lease.
		8	I have not presented these issues to an attorney but it appears that there are legal issues regarding DNRC not honoring a standing lease and the plans to abandon the lease without agreement on our part.
		9	There are many other issues to consider as well in the removal of the weir which affect other lease holders, land owners and wildlife. There needs to be further study and discussion for alternatives, and there are several alternatives which will allow all parties to be satisfied, before this action of removal takes place.
138b	E		[same as #138a]
138c	E		[same as #138a]
139	E		Please consider my response to the proposed removal of the Elbow Lake weir. I am not a lease holder, but am an avid wildlife and bird watcher. Elbow Lake has been a "lake" for over 100 years. It is listed in the 2019 FWP Fishing regulations as a lake. State and National Forests maps indicate it as a lake. Please leave it as the wildlife habitat it has grown to be through the years. It is home to beavers, sandhill cranes, swans, a myriad of duck species, river otters, fishers, mink, toads and turtles. I urge you to look for alternatives to eliminating the weir and to consider working with the stakeholders, both lease holders and the general public.
140	E	1	I am a leaseholder at Elbow Lake, responding to the draft Environmental Assessment (EA) for the proposed removal of the Elbow Lake "Dam", more accurately described as a "Weir"
		2	The biased Environmental Assessment (EA) for this action does not provide any scientific support for its conclusion. In my opinion, the EA was written specifically to support a predetermined preferred alternative.
		3	The pictures of the weir included in the EA are at least 10 years old and do not remotely reflect the current condition of the weir.
		4	Land use, community impact, revenue, aesthetics and recreation, evaluation of significance and general public controversy, are all listed in the EA has having minor impact if the weir is removed. I strongly disagree. This action will lower the lake level by up to four feet. Lowering the lake level will drain decades old wetlands impacting plant and wildlife throughout the Clearwater corridor.
		5	It unbelievable that two state agencies charged with land and resource management propose draining significant wetlands without a thorough, unbiased environmental review. This action will degrade property values and impact recreational opportunities that occupants along the lake have enjoyed for decades.
		6	I support the effort to enable upstream passage of bull trout and suggest exploring other solutions to achieve this goal. This issue has been successfully addressed in other locations without permanent removal of dams or weirs.
		7	The impoundment at Elbow Lake predates the 1973 Montana Use act and therefore enjoys historic water rights. The weir is not illegal, the 310 permit should be reinstated and a reasonable compromise should be reached for Elbow Lake that will allow fish passage while mitigating the effects on the species that have populated the lake since it was dammed decades ago. I urge the FWP and DNRC to engage with the Elbow Lake cabin owners who have offered to work in partnership with the state to find a workable compromise.
141a	E	1	I am a leaseholder at Elbow Lake, responding to the draft Environmental Assessment (EA) regarding the proposed removal of the Elbow Lake "dam" (more accurately, "weir"). My lot is situated below the weir, so I may be personally less affected than some of my fellow Elbow Lake cabin owners. Nevertheless, I am opposed to removal of the weir, for the following reasons.
		2	1. Elbow Lake has existed as a lake at least since the mid-1950s, when some of the first state leases were issued. The weir is not "a new appropriation of water." The impoundment predates the 1973 Montana Water Use Act and should therefore enjoy historic stream rights; and it was incumbent on the relevant state agencies to file for water rights within the stipulated time period.
		3	The long history of Elbow Lake as a lake is reflected in:
		4	• The DNRC's reference on its website to "Elbow Lake."
		5	• The map within the EA that features "Elbow Lake."
		6	• My DNRC lease (renewed just this year), for a lot on "Elbow Lake," not on the Clearwater River or Elbow Loop (the street name), and the attached certificate of survey that refers to "Elbow Lake." [Note: there was no attachment with this email]
		7	• The appraised values (on which lease fees are based) on Elbow Lake, which are higher than those for DNRC-owned lots on the Clearwater River south of Seeley Lake -- even where the Clearwater River lots are much larger than the Elbow Lake lots.

		8	2. I appreciate that the state is obligated to address concerns about upstream fish migration. However, the draft EA oversimplifies a more complex issue. In the 70+ years since this stretch of the Clearwater River was dammed, it has become habitat for beavers, otters, lake birds, toads, deer, elk, fox, grizzly bears, black bears, and mountain lions, not to mention new types of plant life. The EA doesn't adequately address the effects on these species, even those listed as endangered. Proceeding without conducting a detailed EIS that studies the impact on the entirety of the current Elbow Lake ecosystem would be irresponsible if not illegal.
		9	In addition, the EA misrepresents the size of the weir (Figure 3) -- it has for at least the last few years been low enough to float over in a boat, as many rafters coming down from the Wild Mile could attest -- and minimizes the potential impacts on the human environment, not the least of which is property values.
		10	3. The passage of bull trout has been successfully addressed in other locations on the Clearwater lake system through other means, such as fish ladders, rather than permanent removal of dams or weirs. Similar alternative solutions should be explored for Elbow Lake.
		11	Surely a solution can be found for Elbow Lake that will allow fish passage while mitigating the effects on the species that have populated the lake since it was dammed in the 1950s (or earlier) and while also preserving property values. I urge the FWP and DNRC to engage with the Elbow Lake cabin owners who have offered to work in partnership with the state to find a workable compromise.
141b	E		<i>[same as 141a; and email contained no attachment]</i>
142	E		I am commenting on the Elbow Reservoir. I feel it needs to be removed because it does not allow for any migration of native fish. Plus it increases the water temperature of the river thus putting negative pressure on the native fish. I am on a ditch board in Missoula and realize how stringent our water rights are in Montana and should not be taken lightly. If this is allowed to continue it would set a terrible precedent that would allow other illegal water projects to either continue or be done. I worry more about our wildlife to continue to flourish than I do about someone floating in an illegal reservoir once or twice a year. Thank you for your work.
143	E		Remove the dam! This has been going on for years and continues to degrade OUR natural resources and waste the time and resources of those charged to protect and defend them. Why should a few selfish people whose true aim is to increase their property values by manipulating the environment, obfuscating the issue and desperately searching for someone with power and/or money to champion their illegal efforts be rewarded at the expense of a natural system? FWP has done the work to support the removal of the dam, enforce the law and protect the greater good.
144	E	1	As you can imagine, as a representative of folks in the Elbow Lake area, I'm receiving lots of emails about removal of Elbow Lake Dam.
		2	I read the brief summary on the FWP web site which states that the dam was never authorized. Before I consider responding to people with a copy of the FWP summary, could you give me info about why the dam removal is being considered at this time? Has it really been around for 50 years?
			<i>[Note: FWP replied with the weblink to the EA and its comment webpage, that EA had further details, along with FWP contacts for further info.]</i>
145	E		I strongly support the removal of the Elbow Lake dam. The removal would serve to help restore and protect bull trout in the watershed and that should be a priority for the state.
146	E	1	I am a summer visitor who has only watched Elbow Lake since 1996, but in that time I have seen dramatic recent changes, chiefly from the partial lowering of the weir several years ago. Since that time, the lilies have begun a march across what was once a comparatively wide and deep-enough channel, the safe water for minnows has been reduced along with once-plentiful stocks of minnows themselves. Ducks and loons are far more rare, there are far fewer adult fish jumping at sunset, and the only populations that seem to have grown, unfortunately, are non-native Pike, despite the best efforts of Lake fishermen.
		2	I fail to see how a further reduction of the decades-old weir could do anything but worsen the above dismal trends. That is to say nothing about the promises made by the state to lessees (including children's summer camps) and buyers who believed they were buying into a lakefront community. I would make a confident bet that the weir was here even before the homesteader's cabin that still sits above the lake's shore.
147	E	i	See attached letter.
		1	I am opposed to the removal of the Elbow Lake rock dam. My parents C L and Lucy Clevenger built a cabin on Elbow Lake lot # 19 starting in 1957. So the cabin has been there before I was born. I remember maintaining the dam every year as long as I can remember. So the size of the lake has been the same as it is today for 60 years. Removing the dam would leave a lot of empty lake bed.
		2	There is a shallow channel above lot #19 that will restrict the boat access to the lake for the lots down river from there if the dam is removed. Therefore lots 19 through 24 will be river front instead of lake front properties.
		3	Maybe you could use the excavator to move the rocks downstream to an elevation that would maintain the level of the lake without building a dam. If the stream bed had a more natural rise so the water could flow year round, but at a higher discharge elevation everybody would be happy

148a	E	1	Thank you for the opportunity to weigh in on the proposed project to remove the weir at the lower end of Elbow Lake. I am providing this comment letter against the removal of the rock weir and in support of a transparent, informed process that reflects not only the state rules but also the stakeholder expectations.
		2	I am a Montanan, born and raised, who values the environment and recreation. I have been visiting Elbow Lake since I was a young child, enjoying our time camping, hiking, canoeing and fishing with our family and friends. Visiting this area was foundational to my childhood and was the inspiration for me to become an environmental engineer with a career focused on water and environmental protection. Since 2001, my family has had a DNRC lease on Elbow Lake, allowing us to spend even more time in this splendid area. Now, as the parent to two young kids, I get to plan for a future in which they get to grow up loving the same place that I cherish. The beauty of this place is unmatched, and it is with an understanding of the history and an eye on the future that I share these comments.
		3	General Comments
		4	The Montana Environmental Policy Act includes requirements for environmental assessments. Within these rules, are requirements for inclusion of interested parties in the process and a requirement to determine the issues that may have significant impact. The Draft Environmental Assessment for the Removal and Remediation of the Elbow Lake Dam does not include adequate science to support the findings of no negative impact (in fact "an overall positive impact..."). This proposed project will negatively affect hundreds of Montanans every year and these impacts are glossed over or patently ignored. This process was not transparent or inclusive of the impacted stakeholders. The MEPA rules state "The agency is responsible for providing additional opportunities for public review consistent with the seriousness and complexity of the environmental issues associated with a proposed action and the level of public interest." Montana FWP and DNRC have met the bare minimum regarding the public process. The nature of the proposed project and the level of impact on wildlife, individuals and families, and organizations warranted public meetings, public hearings, and a higher level of input than what has occurred.
		5	One over-arching comment throughout the entire environmental assessment is the woeful lack of data, scientific review and assessment, and references. In many places where the state makes claims, the environmental assessment needs to be re-done to incorporate adequate science. The environmental assessment incorrectly refers to the rock weir as a dam, thus placing regulatory obligations on a structure that are incorrect. The environmental assessment should be updated to reference the rock weir and remove all references to a dam. Section V states that the dam was created more than two decades ago. This statement does not capture the full history of the rock weir, which has been in place for decades. The environmental assessment has not thoroughly evaluated the loss of riparian habitat and wetland species (plant and animal) by the removal of the structure.
		6	The state itself has established Elbow Lake as a lake through the process of issuing leases, through the value placed on these leases (higher value for lake versus river property), and mapping that clearly references Elbow Lake. The water body predates the 1973 Montana Water Use Act and should fall under the historic stream rights.
		7	The photos (Figure 2 and Figure 3) misrepresent the structure and function of the weir, which is low enough for people to float over the top of. The environmental assessment should include a date reference on those photos and must include a current photo that reflects the current condition.
		8	Comments on Specific Sections
		9	Section IV: The state suggests that the project cost is \$3,000-\$5,000 but the potential impacts to the wildlife, the environment, and the leaseholder and property owners far exceed this. Please provide a third-party analysis of the impact to property values. What is the projected loss of revenue to the state from lower lease values?
		10	The state should provide an estimate of the value of loss of critical habitat for other species such as loons, grebes, golden eyes, mergansers, sandhill cranes, trumpeter swans, bald and golden eagles, osprey, hawks, bears, beaver, otters, deer, and elk. These all have a value attributed to them and this EA does not document it.
		11	Section V. The EA claims that the "...major issue is that the structure creates an obstruction to the upstream migration for some species and sizes of fish." The document does not provide data or reference to a study that documents that the structure is impacting fish populations in the basin. What species and sizes of fish are obstructed by the weir? What species are expected to be present? What species and in what numbers are currently found upstream and downstream of the weir? There are many species present in/near the lake, what species are in their food chain? It appears that the food chain species exist in suitable quantities to allow the other species to thrive. What data does the state have to show the effect on the entire food chain when the water level drops?

		12	The assessment claims that the structure provides "...enhancement of artificial lentic habitat that favors illegally introduced, non-native fish species such as northern pike (<i>Esox Lucius</i>) and smallmouth bass (<i>Micropterus dolomieu</i>).." The document indicates that the structure has been in place for 20 years. There is no reference cited that documents the increased density of northern pike and smallmouth bass in this stretch of the Clearwater River due to the structure that are not already present in Elbow Lake or Salmon Lake.
		13	Section VI. Specific comments on the Environmental Impact Review Checklist
		14	Section A3. There is a woeful lack of mitigation information provided here. Which fish species are spawning during the low flow period? What effect would the high turbidity have during the spawning season?
		15	Section A3. The explanation is missing any description of the water quantity impacts upstream of the weir when the water surface elevation drops 4 feet.
		16	Section A5. The environmental assessment states that the water levels will be reduced but there is no scientific assessment or discussion of wetlands loss, shoreline habitat loss, and other associated impacts.
		17	Section A7,8,10: This section makes bold and unsubstantiated statements that the proposed project is beneficial. The explanation provides a list of native species but no data or references to assess what species should exist in this area, what the fish counts in the river and lake system have shown, and specifically what data supports the claim that this project is beneficial to the environment. There is no reference to the loss of habitat and wetland areas, loss of beaver habitat, or any impacts up and down the food chain. The analysis does not evaluate the specific migratory and spawning patterns of each of the species presented. For example, sculpin are often referred to as "rocks with fins"; to include them in a list of migratory species is inaccurate.
		18	Item B2. The state asserts that there are no land use impacts to the human environment from this project. This is patently false--the land use of the lease holders and property owners will be negatively impacted by the four-foot drop in water surface elevation.
		19	Section B6: This explanation and evaluation does not capture the revenue losses to the state trust fund.
		20	Section B10. This section alludes to expressed support for the preferred alternatives. These letters or statements of support should have been included in the environmental assessment.
		21	Section VIII. It is unacceptable that Alternative 4 was not analyzed in further detail. There are willing stakeholders who want to be at the table and part of a cooperative solution that benefits the environment, the people, and the economy of the area. This section should include a summary of what it would take to get the regulatory approvals.
		22	Conclusion
		23	The state agencies are developing and implementing policy at the staff level through these actions. These 'policies' set precedent throughout the region and state for other areas with similar water bodies and similar wildlife and environmental impacts. The approach on this environmental assessment lacked the science, evaluation, and transparency that the people of Montana deserve.
		24	As the environmental assessment is written, and per the Montana state rules, this EA "does not adequately reflect the issues raised by the proposed action". It is my recommendation that the state perform a full EIS, through a third-party contractor, and that the process include robust and meaningful stakeholder engagement.
148b	E		<i>[same as 148a, except paragraphs 3, 8 & 22 were in bold font, and paragraph 13 was underlined.]</i>
149	E	1	I oppose the proposal to remove the rock weir at Elbow Lake by MT FWP & DNRC – this comment is based upon consultation with experts in water law and fisheries science. The migration of Bull Trout (a threatened but not endangered species in Montana) is certainly important and generally requires cold clean water, but large inflows of warm water tend to deter their migration - which the Clearwater certainly has; however, FWP states Bull Trout are migrating as far as Morrell Creek - this fact, plus the fact the agencies have no intention of removing the weirs above or below Elbow lake means removing the weir at Elbow will have little effect on the limited migration that is occurring. What this action will affect are humans - hundreds that use, recreate and enjoy this lake!
		2	The Impoundment at Elbow predates the 1973 Montana Water Use act and therefore enjoys historic water rights - the Elbow weir is not illegal, the 310 permit should be reinstated, and a reasonable compromise reached that involves an association, bylaws and covenants that satisfy FWP guidelines.
150	E	i	Please accept my public comments in the attached PDF regarding the Draft Environmental Assessment dated 9/30/19 for the removal and Remediation of Elbow Lake Dam (or Weir).
		1	As Ladd Knotek confirms in his comments to the Missoulian (10/19/19), he has led an effort for many years to remove the weir on Elbow Lake. His efforts have engaged multiple state agencies that have left cabin owners and lease holders along Elbow lake in a situation they are unable to resolve. His seemingly singular focus to create stream migration for bull trout undermines other wildlife, recreation, and existing property values. It also degrades the value of school trust lands held by the DNRC.

2	When Knotek initially pursued Elbow Lake weir removal sometime around 2005, lease and property holders along Elbow lake formed the Elbow Lake Homeowners Association (ELHA) to jointly apply for a 310 permit to maintain Elbow lake at its historic level. While the DNRC was the listed landowner at the project location, the ELHA submitted a 310 permit to maintain the weir, including fish passage channels, and a breach at the end of the summer season to allow for enhanced water flows and fish migration.
3	The ELHA successfully acquired a 310 permit in 2006 and 2007. I am unsure of 310 permit status in subsequent years, due to changes in ELHA leadership. I do know, however, that measures cabin owners took in good faith are testament to Knotek's recent comments that genetic testing is showing passage of bull trout in Salmon Lake from Monture Creek and the North Fork of the Blackfoot. This migration should be considered in light of migration disruption for more than 100 years dating back to 1873 when the weir was first used as a splash dam for the Big Blackfoot Lumber Company. Cabin owners have maintained the weir along Elbow Lake since the 1950s, without fish passage measures until 2006.
4	While the ELHA made efforts to resolve Knotek's concerns, there did not seem to be compromises afforded to other groups. For instance, the Missoulian reports that the Region 2 FWP supervisor, Randy Arnold, worked with other groups along the Clearwater River drainage to mitigate fish migration concerns, including the installation of fish ladders.
5	People who have built homes along Elbow lake are presently caught in a catch-22, where the water right for impounded water must originate with the DNRC, despite individual ownership of some properties along the lake. There is no doubt that family cabins and homes will be significantly impacted and devalued with the proposed changes, and yet government entities are not acting in the public interests represented.
6	Additionally, it is concerning that the individual responsible for leading the charge against the Elbow Lake weir is also the primary author of the Environmental Assessment (EA). The conclusions are one-sided and often misleading. The remainder of this letter refutes or elaborates on information included in the EA.
7	EA p. 3 "the dam was originally created more than two decades prior using local river rock"
8	Actually, the dam on the lower end of Elbow Lake dates back as early as 1873 when it was first used as a splash dam for the Big Blackfoot Lumber Company and later by the Anaconda Mining and Timber Company. Since the 1950s, the dam has impounded water to raise Elbow Lake approximately three feet to create approximately 22 acres of wetlands, enhance wildlife habitat for a multitude of species, and provide recreation opportunities for over 30 State lease cabins, privately owned residences, and the general public. The dam is not permanent and is currently made of native river rock. It measures 129 feet and is approximately 3.5 to 4 feet high. Each year, spring run-off degrades the structure and therefore requires annual maintenance to maintain late-season water levels. Beginning in 2006, the dam was modified to include natural fish passages.
9	EA, p.3
10	"One major issue is that the structure creates an obstruction to the upstream migration for some species and sizes of fish. This concern is magnified in late fall through early spring when fiver flows are at base level and the dam height has typically been increased to maximum level"
11	This statement predates the ELHA efforts to reach compromise with the FWP on this issue, which are copied below from a description of weir maintenance provisions that accompanied the submitted 310 permit.
12	FISH PASSAGE CHANNELS
13	Two fish passage channels will be built during dam construction. One channel will be located within 10 feet of both the right and left bank. Each channel will be a trough design with the mouth and body of the trough at least 2 feet in width. The trough will funnel water towards the center of the river channel. See attached photos of the troughs constructed for the 2006 310 permit.
14	<i>[See Appendix C, page C-1 for the photo that was presented at this point in these comments]</i>
15	DAM CONSTRUCTION
16	In this Annual Plan of Operation (APO), 'dam construction' refers to the process of re-piling rocks that have been displaced by high spring runoff. Elbow Lake homeowners have historically done annual dam construction on or around the 4th of July (weather and water level dependent). This APO would allow annual dam construction any time after July 1. Construction of the dam would be done by hand-placed native rock. A liner of 6-8 mil plastic * will be used to maintain consistent high water levels. Because of the porous nature of the dam, late season flows tend to move through the bottom of the dam rather than flow over the top or through the fish passage channels. The use of a temporary plastic liner will maintain higher lake levels and provide sufficient flow through the fish passage channels. Dam height, as inferred by lake level, will not exceed 2.0 feet as shown on a staff gauge affixed to a permanent dock located approximately 300 feet upstream of the dam (see photo below).
17	DAM DE-CONSTRUCTION

18	In this Annual Plan of Operation, 'dam de-construction' refers to the process of creating 2 large breeches in the dam to encourage upstream movement of fall spawners (e.g., bull trout). Dam de-construction would also involve the removal of all plastic used to line the dam during construction. The two breeches would be in the same position as the fish passage channels (within 10 feet of both banks) and would funnel water towards the center of the river. The breeches would be approximately 6 feet wide at the top of the dam and at least 2 feet wide at the bottom of the dam. This APO would require annual dam de-construction before September 15.
19	* Please note, that a plastic liner was never acquired and used.
20	EA, p6: Potential impacts to the physical environment
21	1. Geology and soil quality, stability and moisture (minor)
22	Correction: Potentially significant (negative).
23	Removal of the weir will drain approximately 22 acres of established wetlands that are home to a variety of species of concern (see MT species of concern here: http://mtnhp.org/SpeciesOfConcern/?AorP=a&OpenFolders=S&Species).
24	2. Existing water right or reservation (minor)
25	Correction: Potentially significant (negative).
26	Homeowners and lease holders will lose their ability to access the river corridor in a number of locations, violating the intent of lease agreements spanning decades, and real property improvements based on anticipated water recreation use.
27	3. Vegetation cover, quantity and quality (minor)
28	Correction: Potentially significant (negative)
29	Removal of the weir will drain approximately 22 acres of established wetlands that are home to a variety of protected species of concern (see MT species of concern here: http://mtnhp.org/SpeciesOfConcern/?AorP=a&OpenFolders=S&Species)
30	7. Terrestrial or aquatic life and/or habitats (minor-beneficial)
31	Correction: Potentially significant (negative).
32	22 acres of established wetlands used by numerous bird species, beavers, muskrat, turtles, deer, and elk to name a few will be impacted. This does not even scratch the surface of full ecosystem impacts.
33	EA, p8: Potential impacts to the human environment
34	2. Land use (none)
35	Correction: Potentially significant (negative)
36	Land use for swimming, boating, and wildlife viewing will be lost for cabin holders and recreationists.
37	4. Community impact (minor)
38	Correction: Potentially significant (negative)
39	The weir removal will significantly lower property values along the river corridor and will undermine recreation opportunities for campers and boaters.
40	In the 10/19/19 Missoulian article, the Director of Camp Upmost indicates his lease goes back to the 1960s to bring campers to the lake to boat and swim. Removal of the dam will result in sections of the lake becoming impassable by boat from mid-summer through October. It will significantly impact other swimming and boating activities along the corridor both for cabin owners, campers, and boaters traveling through the chain of lakes.
41	6. Potential revenue or project maintenance costs (minor)
42	Correction: Potentially significant (negative)
43	There are approximately 30 DNRC cabin leases along Elbow Lake that will be adversely impacted by the weir removal. People pay substantial lease payments for the opportunity to enjoy lake front property. Lease property valuations are based on lake-front property and property values will decrease, lowering lease assessments and likely increasing lease vacancies.
44	7. Aesthetics and recreation (minor)
45	Correction: Potentially significant (negative)
46	Lake-based recreation is significantly different than river-based recreation. Canoeing along the lake, swimming, and wildlife viewing will be negatively impacted. The viewshed of Elbow lake is stunning and the fact that the lake is too small to accommodate speed boats, jet skis or other loud and disruptive boat traffic ensures a tranquil place for wildlife to live and flourish.
47	10. Generate public controversy (minor)
48	Correction: Potentially significant (negative)

49	Efforts to undermine existing recreation along the Clearwater chain of lakes will likely become a very significant topic moving forward. I believe that many Montanans feel the overreach of government agencies and this could become a hot topic that will not shine favorably on the DNRC or FWP. Evidence suggests that land and lease owners were (and still are) willing partners to arrive at a workable solution and state agencies have been (and continue to be) unhelpful along the way.
50	Further responses to EA statements outlined in the Missoulian article (10/19/19).
51	“the hand-stacked rock dam doesn’t have a control structure, an emergency bypass spillway or other engineered features that allow for the release of stored water or safe operation of the dam”
52	The rock weir has been functioning since the 1870s without any adverse spillway effects. In fact, the natural river rock move slowly in response to increased river pressure (which happens during every spring runoff), and allow for normal release of stored water.
53	The impounded water is suspected to evaporate in an unknown amount, resulting in “consumptive use” designation, which adversely affects downstream water users in a system that’s already over appropriated”
54	The dam is reconstructed during high water. If anything, it provides an insurance pool (literally) for downstream water users that could be used (or breached) in times of extreme drought. The consumptive use is described in terms of evaporation, which cannot even be enumerated, and likely has no impact on any given day to water availability for downstream users
55	“the only way to mitigate that consumptive use is to retire or purchase an existing water right in the Clearwater drainage for a “beneficial water user permit”
56	Consumptive use from the weir is negligible on any given day and is not enumerated. For this reason, it likely does not need a beneficial water use permit.
57	“In conclusion, due to the complexity of the application required...the DNRC does not consider obtaining a water right for the existing non-permitted dam to be a viable option”
58	There are multiple users of the lake that would accept responsibility for filing documentation and maintaining the weir. They have shown this commitment in the past, and have indicated it for the future. As Calhoun was quoted from the Missoulian “We hope to come up with some sort of compromise, where we maintain the weir at our own expense so we can maintain the value of the lake....We are trying to offer our partnership...to do what needs to be done. Let’s sit down and figure out what we can do.”
59	To wrap up, the stated goal of the EA is to restore the surface elevations to their natural and historic condition. One wonders what historic condition refers to, when the weir has been maintained for over a century in its present state. Also concerning is how this effort will set precedence for other waterway use along the Clearwater corridor including Harpers and Blanchard lakes below Elbow, and Salmon, Seeley, Alva, Inez, and Rainy lakes above. Together the Clearwater chain of lakes have afforded generations of Montana families the opportunity to engage with wild and scenic places. Access to lakes for safe swimming and recreating are at a minimum and worth preserving. Wetlands that support diverse species and wildlife viewing are in decline and warrant saving. Certainly, there is opportunity for a collaborate effort to reach a more workable solution.
60	The lack of compromise in this process, the limited players and perspectives, and the dogged pursuit of removing an age-old river rock weir coincide to hurt many and help few. I would urge all parties to look more broadly and think more holistically than evidence put forward by Ladd Knotek – both the judge and juror in this case.
151	E i Hello- feel free to contact me if you have any questions about publishing my letter to FSP and the DNRC. My number is [phone #]. Thank you for printing my letter.
	1 This letter is a response to your letter and Draft Environmental Assessment (EA) of the “proposed” removal and remediation of Elbow Lake Dam. The project title itself is a contradiction to the proposal because the title refers to the name of what you want to eliminate, Elbow Lake.

	2	I have had my State Lease on Elbow Lake since 1998. I acquired it from my friend Anna Lukens who had the lease since leases were created at Elbow Lake in the mid 1950's. It was called Elbow Lake, with emphasis on the word "Lake" back then because it had been a lake since the early 1900's. What we know today as the "Chain of Lakes" including Seeley Lake, Salmon Lake and Elbow Lake (and a few others) are all actually wide spots in the Clearwater River. As a historical reference, log drives from Seeley Lake down the Clearwater River to the Blackfoot River on to the mill in Bonner took place from 1907-1911. According to numerous sources, including John Toole's book The Baron, The Logger, The Miner, and Me and Cabin Fever published by the Seeley Lake Writers Club in 1990, splash dams were built in the Clearwater River between Seeley Lake and the confluence of the Clearwater River with the Blackfoot River to help get the logs downstream to the mill in Bonner. According to Cabin Fever, "Splash dams were built along the Clearwater River to hold back the water and raise the water level. Some of the mud sill logs near Seeley Lake can still be seen just below the bridge over the river on Riverview Drive. This was the first of the series of splash dam locations". I feel that your draft EA essentially provided almost no history of the waterway. The only historical reference can be found on Page 3 where it says, "The purpose of the project is to return the stream bed and local water surface elevations to their natural and historic condition after many years of artificial impoundment. The dam was originally created more than two decades prior using local river rock". This statement in the EA misrepresents the century of Elbow Lake as a long-standing established lake habitat for the wildlife and humans that call the place "home". The "historic condition" is the lake because the weir at Elbow Lake has been in existence for at least 100 years, clearly surpassing "more than two decades". At what point do you consider a simple rock weir to be "grandfathered" in by law?	
	3	I am not necessarily opposed to a river being in a natural state, but Elbow Lake has been a lake for 100 years. The area is loaded with wildlife of all kinds and I think it's wrong to make such a drastic change at one time to the water system and the associated wildlife habitat. I care about the State's approach to assisting bull trout, but I think a less drastic action than suddenly removing the rock weir is needed. I feel that you need to do a full Environmental Impact Statement and look at the historical use of the waterway, the full impact of a drastic drop in water levels and consider another option. Another major question is what will happen with 100 years of built-up silt on the bottom of the lake? Won't it drift down the Clearwater into the Blackfoot and on down to the Clark Fork for a long time? How will that sediment affect native trout?	
	4	I urge you to pause and re-think this idea of removing the rock weir in 'one fell swoop'. Too many unanswered questions exist in this brief EA and an EIS would demonstrate the respect that Elbow Lake deserves.	
	5	Thank you for considering a more thorough look at this rock weir question	
152	E	i	Please find attached comments related to proposed dam removal.
		1	This is a response to the draft Environmental Assessment (EA) regarding the proposed removal of the Elbow Lake Dam.
		2	I have a number of concerns related to this proposed action and am opposed to the removal of the structure until a more comprehensive review is conducted.
		3	Please see sections of the EA referenced below:
		4	Section VI. A Environmental Impact Review and Checklist - page 6
		5	No. 5, Vegetation cover, quantity and quality , considered to have a minor potential impact to the physical environment and can be mitigated. Supporting comments in the EA state, "Littoral areas along the river margins may also be more susceptible of invasion of by introduced fragrant water lilies (Nymphaea odorata)".
		6	Over recent years, leaseholders and cabin owners in the area have observed a significant increase in the surface area on Elbow Lake covered with water lilies. Have the possible impacts of the proliferation of this invasive species been thoroughly examined? Although the EA states "FWP considers unmodified, natural riverine habitat to be the preferred and most beneficial state for the river reach", is it possible for the river return to a natural state with such a large presence of an invasive species?
		7	It is indicated that susceptibility to the invasion of water lilies can be mitigated, however, it is unclear who, how, or when mitigation will be done should their numbers increase. With concerns about improved connectivity for native and desirable aquatic species attempting to migrate upstream, how will the proliferation of water lilies impact their movement through the connective corridor between the upper Clearwater Lake/River system and the mainstem Blackfoot River system? If mitigation of invasive species is needed, how will that be accomplished?
		8	Section VI. B Environmental Impact Review and Checklist - page 8
		9	No. 4 and 7, Community impact and aesthetics and recreation are considered to have a minor potential impact and can be mitigated. Comments by the DNRC indicate "the currently enhanced lentic environment is preferred by some local residents for recreation activities and aesthetics. In addition, site restoration may or may not affect property values, but does not affect use of the land itself."

10	The DNRC has recently sold and continues to lease cabin sites on Elbow Lake based on values comparable to those on glacial lakes. Minimum bids for lots in the Cabin Site Sales Program on Elbow Lake have been set by using appraisal data valuing Elbow Lake Cabin sites as lake front properties similar to those on Placid and Emerald Lakes. As recently as 2017, sales (Sales No. 881 and 883) appear to consider the value of Elbow Lake lots to be lakefront. It seems unlikely that the lots sold through the Cabin Site Sales Program will hold their value once the lake drops up to 4 feet. Besides the potential to reduce property values, this may also affect potential revenues and increase the potential for added new costs for mitigation.
11	VII. Narrative Evaluation and Comment – page 9
12	Although the EA states “the primary rationale for retention of the structure involves enhanced social amenities”, my concerns are the removal of the structure could have significant impacts on wetlands that support many species of aquatic, bird, animal, and plant life currently thriving in the area. The ecosystem of Elbow Lake is home to many creatures that could be significantly affected by a 4 foot drop in surface water elevations. Over the years, my family has observed deer, fox, beavers, river otters, bald eagles, great horned owls, trumpeter swans, sandhill cranes, a wide variety of diving and dabbling ducks, including mergansers, buffleheads, canvasbacks, mallards, and many varieties of dragonflies.
13	While concern for migration of bull trout is understandable, the simple removal of the dam does not take into account the well being of an ecosystem that supports many other creatures.
14	Removal of the dam would most certainly affect property values of those who have purchased or lease “lakefront” property offered by the DNRC.
15	I urge the DNRC and FWP to look at more comprehensive alternatives to the current draft EA and expand their Discussion and Evaluation of Reasonable Alternatives section (page 9-10).
16	In its’ current form, the EA indicates “Removal of the structure could be accomplished without causing significant environmental impacts. Minor impacts associate with the dam decommissioning could easily be mitigated.”
17	I’m going to have to disagree with this conclusion and request that the DNRC and FWP consider the above comments and those from other concerned stakeholders and conduct a more comprehensive review.
18	Please keep me apprised of your decision and any other developments concerning the proposed dam removal.
153	E
i	[same as 150.i]
ii	Please confirm receipt of this email and my comments.
1	I have read the draft EA pertaining to the proposed Elbow Lake dam removal and feel that the EA omits several important factors that should have been considered. I also feel the EA is misleading by highlighting arguments that support the preferred alternative and downplaying or outright ignoring rationale for considering other alternatives. I suggest a full EIS is necessary to better understand the costs and benefits of removing the dam on Elbow Lake.
2	1. One of the main arguments declared by FWP and DNRC (hereafter “The State”) for removing the weir is to improve upstream migration of fish. The EA also states that the “concern is magnified in late fall through early spring when river flows are at base level and the dam height has typically been increased to maximum level”. What the EA fails to recognize or mention is that the weir is partially deconstructed by Elbow Lake cabin owners and leaseholders after the summer, and therefore, <i>upstream migration of fish is not negatively impacted by the dam in late fall and early spring</i> . The State is aware of this and I am surprised this was not mentioned in the EA. Omitting this fact is highly misleading. Side note: hereafter I correctly refer to the supposed “dam” as a “weir” (see comment #4).
3	2. The EA also states that removing the weir will be overall beneficial to fish and wildlife, including endangered and rare species (see Table A in EA, row #7 & 8). In reading the rationale for this claim of a beneficial effect, it is obvious that this is mostly based on an assessment of fish. However, the EA also states that weir removal will benefit other species because the result will be shallower wetlands. However, <i>weir removal will result in a total loss of wetlands</i> . There are several large “inlets” that are only flooded when the water level is high; these areas will completely dry out if the weir is permanently removed. Simply put, a high proportion of the wetlands on Elbow Lake are present because of the weir; removing the weir will reduce wetlands. In looking at the FWP’s list of “species of concern” (http://mtnhp.org/SpeciesOfConcern/?AorP=a&OpenFolders=S), I found that there are several species listed that may actually benefit directly (e.g. higher water level) or indirectly (e.g. increased wetlands). For example, bats such as the little brown myotis are plentiful and highly active in the late evening, feeding on insects just above lake surface. Great blue herons are also very active on Lake Elbow, feeding in the shallow wetlands that are present because of the weir. Loons and trumpeter swans occasionally visit Elbow Lake; this will be highly unlikely to happen in the future if the weir is removed.
4	3. The EA also states that the is “a floating/boating obstruction for public river user”. Having spent many summers at Elbow Lake, I can say with confidence that this is simply not true . River users, those that pass through Elbow Lake and continue downstream, are only present in the late

		5	spring and early summer when the water is very high and river water easily passes over the degraded weir (by the rushing water and later summer deconstruction). These river users easily pass right over the degraded weir during these peak water flows. I also know from experience, that when the water is low, the Clearwater River is nearly impassable. I tried navigating the Clearwater River a couple of years ago from the weir to Clearwater Junction, and I ended up with a very scratched kayak that got stuck on numerous occasions and a broken fin on a stand-up paddleboard. Simply put, there are no river users when the water is low, and logic would suggest that the weir cannot obstruct nonexistent river users during low water. Related, the detrimental effects of weir removal on lake-based recreation was downplayed at best. Many of the cabin owners and leaseholders on Elbow Lake are very enthusiastic about water related activities such as fishing, kayaking, canoeing, stand-up paddleboarding, and swimming. The EA (Table B #7) states that impacts on aesthetics and recreation are “minor” and “can be mitigated”; this is simply not true . The impacts are substantial for lake users and I do not see any way these impacts can be mitigated (how do you mitigate low water for swimmers, stand up paddleboarders, etc.?).
		6	4. Even some of the terms and so-called facts used in the EA are misleading. For example, labelling the seasonal rock structure a “dam” in of itself can elicit visions and emotions that are not commensurate with the perceived costs or the actual structure. At Elbow Lake, cabin owners and leaseholders refer to the rock structure as a “weir”, which is more appropriate. Also, the EA states that “The dam was originally created more than two decades prior using local river rock”. Although this is technically true, this statement downplays the fact that the weir has been seasonally built on Elbow Lake for the last 80-110 years. Stating that was created only “more than two decades ago” sustainably downplays the historical significance of the weir at Elbow Lake to lake recreationalists, cabin owners, and leaseholders. Please refrain from using hyperbole (calling it a dam) and misleading statements about the longevity of the weir on Elbow Lake.
		7	In summary, the EA does not adequately represent the benefits and costs of removing the rock weir. I feel the EA is 1) misleading, 2) downplays/ignores impacts to recreation, and 3) downplays/ignores impacts to other species besides fish. To better understand the costs and benefits of removing the weir, a full EIS is necessary, with input from hydrologists, unbiased fish and wildlife biologists, land-use policy experts, real estate professionals, attorneys, recreation experts, social scientists, historians, and engineers.
		8	Thank you for the opportunity to respond,
154a	E	i	Attached to this email you will find our comment letter regarding the removal and remediation of Elbow Lake Dam. Thank you for your consideration to this matter.
		1	Comments for the proposed removal and remediation of Elbow Lake Dam.
		2	We are the current property owners of Lot 29. We had previously been lease holders of the property. Our cabin/lease had been owned by my parents, Jack and Marjorie Schwenk since 1976. They called their cabin “Shangri-la”, which is a perfect description/definition of this spot. So you see we have “history” with this beautiful spot as well as a desire to uphold the beauty for our children and grandchildren.
		3	We appreciate the opportunity to comment on the proposed removal of the weir at the end of Elbow Lake. We are sending this comment letter to voice our opposition to the proposal and to suggest that the FWP and DNRC engage in a process with the current lease holders and property owners to find a workable compromise.
		4	We have read the draft environmental assessment dated September 30, 2019.
		5	• It appears to us you have already made the decision to remove the weir prior to the public review/comment period of the draft EA
		6	• You included un-dated pictures of the weir; pages 4 and 5, that is not what the weir currently looks like
		7	• We disagree with the potential impacts to the physical environment listed on the checklist, page
		8	○ It will have a significant impact on the habitat for beavers, muskrat, loons, trumpeter swans, otters, deer, elk, blue herons, geese, ducks, turtles, mountain lions, bears (both Grizzly and Black) as well as the plant life and vegetation
		9	• We also disagree with the potential impacts on the human environment checklist on page 8
		10	○ It will have significant impacts on land use, recreation, property values for both landowners and lease holders.
		11	• On page 12 of the draft EA; under the Environmental Assessment Conclusion Section; item 4; the last sentence states “This level of public notice and participation is appropriate for a project of this scope having few physical and human impacts, many of which can be mitigated”. We disagree with this statement. There will be huge impacts if this proposal is carried out.
		12	We have two questions:
		13	• What is the amount paid for “annual maintenance” associated with the structure as you list in B.6. of the EA?
		14	• Doesn’t the removal of the weir require an Environmental Impact Statement? You have only provided an Environmental Assessment which you state on page 12 is enough after the review.

		15	While we support the goal of helping the passage of bull trout upstream; other alternatives should be addressed and explored instead of removal of the weir. As we stated earlier in this letter - a process should take place with the involvement of property and lease holders to find a workable compromise
154b	E	1	Comments: We appreciate the opportunity to comment on the proposed removal of the weir at the end of Elbow Lake. We want to voice our opposition to the proposal and to suggest that the FWP and DNRC engage in a process with the current lease holders and property owners to find a workable compromise.
		2	While we support the goal of helping the passage of bull trout upstream; other alternatives should be addressed and explored instead of removal of the weir. As we stated earlier in our letter - a process should take place with the involvement of property and lease holders to find a workable compromise.
155	E	1	Thank you for the opportunity to weigh in on the proposed project to remove the weir that currently extends across the base of Elbow Lake.
		2	I am a recreationist who has used and enjoyed the Elbow lake area for over 40 years to camp, fish, hike, canoe, and for bird watching, white water rafting, and in general communing with nature along with my family and many friends. I continue to visit this area even now, and the beauty and tranquility are nearly unmatched in the region and at only 42 miles from my hometown of Missoula, it is an easy area to access.
		3	But I am just one in a long line of people who have used this area since time immemorial, My friend Gary McLean who was an anthropologist for the Flathead National Forest found many ancient fire rings and flakes from the making of arrowheads and spear points by aboriginal hunting parties who camped in the same sites as I have used for these many years. I also once found a 1910 dime from the Denver mint buried in the dirt of a road just above Elbow Lake as I was looking for arrowheads. In short, it is an area that has been used extensively for millennia. And I have been assured by old-timers to the region that the weir that impounds Elbow Lake has been in place in various iterations since early in the 20th century. It was even used as a log impoundment dam to hold the logs that were floated downstream during high water spring flows to supply the mills at Milltown and Bonner, way back when the railroad still ran up the Clearwater valley, and people first began building summer cabins next to the warm lakes of the beautiful Clearwater River valley between the Mission and Swan Mountain ranges.
		4	I am saddened and alarmed to hear that FWP and DNRC are proposing to drastically alter the environment that I have cherished since the first time I visited the area in 1977.
		5	It is my understanding that a portion of the weir is removed every fall to allow for a free flow of water during the fall, winter and early spring when just before high water, the weir is once again put across the entire base of the lake. It is also my understanding that it is the landowners and leaseholders that remove and replace the weir in the fall and spring seasons.
		6	Since that is the case, I think in the very beginnings of my comments I would like to make it clear that the structure being considered is not a dam, but rather a weir, and its impermanence as an water impoundment is of importance as my comments are considered.
		7	In beginning, I would like to challenge the assertion that impounding the water subjects the water in the lake to some sort of evaporative loss and that
		8	This supposed increased consumptive use that somehow exceeds and is more detrimental than the loss of useable water that would occur if the many hundreds of thousands of acre-feet of water were allowed to simply flow to the sea unimpeded creates difficulties. The increase argument seems to be a red herring because of the historic use of the weir and impoundment of Elbow Lake that has been in existence since the early 20th century. The perceived water loss due to evaporation has already been accounted for in the total amount of water available for approximately 120 years, and likely is older than most of the water claims in the basin. It can therefore not be considered an increase in water use that needs to be mitigated by purchasing an already existing water claim. It should instead be considered a historic or natural loss that is otherwise immeasurable.
		9	The impoundment of water is a well-known feature of water conservation efforts, and I propose that Elbow Lake protects and preserves hundreds of thousands of acre-feet of water for late season use by downstream water rights holders and FWP as they protect the Blackfoot river system by insuring minimum flow levels for low water season. In other words, Elbow Lake preserves far more water than it loses to evaporation.
		10	The associated wetlands of Elbow Lake provide excellent breeding habitat for many species of birds, mammals, fish, and amphibians. The idea put forth by the FWP and DNRC shrinks by an unstated magnitude the overall size of these wetlands, and as such puts many species in danger of loss of habitat. This should cause the FWP to pause and reconsider their statement that the project will have minimal impact on wildlife.

11	I understand that FWP and DNRC perceive a legal exposure to water rights issues by some unstated and undefined antagonists. Since this issue is not at all well defined by this EA, I think it is fair to say that the perceived threat is in many ways overstated, and in other ways understated. FWP seems to have water rights sufficient to ensure minimum water flows in the Blackfoot/Clark Fork river drainages, and claims to have the power to shut off mid level rights holders when minimum flow rates are reached. But I contend that this consideration fails to take into account the overarching rights claimed by the Flathead Water Compact that is waiting ratification in the Congress of the USA. Since the Salish-Kootenai tribes have treaty rights to all the waters that flow in their historic lands, they deserve the right to weigh in on the water rights issues that FWP brings up as the cause of their legal liability. It seems to me that their input has been at the least overlooked, and at worst ignored by this EA. This project should be delayed until the Tribes have had a chance to examine the proposal and weigh in on the use of their water.
12	I would like to weigh in at this time on the specific environmental and Human impacts that are charted and rated and examined in this EA.
13	The Environmental Impact Review Checklist has several areas that I find contain difficulties , and I will address these areas with quotes from the explanations given and my rebuttal will follow.
14	A1. The EA states; that the weir
15	Even the chart accompanying the EA admits that the upstream use of the river channel is infrequent, and thus is hardly a reason to justify the removal of the weir. Also, since the weir is in place during higher flows and during spring melt, as such, it diverts the power of the river over a larger area. If removed, and the river channel is narrowed, stream bank erosion will increase rather than decrease as suggested in the EA. This will increase the turbidity of the water and cause land loss due to river bank erosion.
16	A4. The EA states
17	While the weir will not affect the water rights of upstream use, there is no mention of how water rights of downstream use have been affected by the historic presence of the weir. Which would indicate that there has been no litigation over the existence of the weir by the owners of downstream water rights. It appears that only FWP and DNRC are concerned about the existence of the weir.
18	A5. The EA states:
19	The removal of the weir would be the direct cause of shoreline vegetative decomposition. The lowering of the water levels from 0-4 feet will also make upper Elbow lake more susceptible to invasion of the fragrant water lilies that currently infest shallower areas near the current shoreline. I believe that in the lower lake, the infestation could extend across the entire width of the lake, making boating and recreating in those reaches impossible. Lower water levels in the shallower sections of the entire lake will increase water lily infestation, and the areas made dry by dewatering will be susceptible to noxious weed infestations if the entire shoreline is not rehabilitated. Of course, this will increase the cost of the project exponentially.
20	A7. A8 and A10 The EA states:
21	I completely reject the assertion that bull trout will ever use the Clearwater river for spawning or even year-round habitat. It is a well- known fact that bull trout require cold clear fast-moving water for their habitat. The Clearwater River corridor is neither fast-moving, nor cold through most of its path to the Blackfoot River. There is only one section of the Clearwater River that flows between Salmon Lake and Elbow Lake that could be considered fast-moving and it is only just under a mile long. The entire corridor should not be considered as even marginal habitat for bull trout. It is common knowledge that bull trout use the North Fork of the Blackfoot and Monture Creek for their spawning beds because of their constant cold water flows.
22	The EA further states;
23	The entire lake as currently situated is a habitat for all of the above-mentioned wildlife species including shorebirds and amphibians. Lowering the level creates a competition between species that impacts many species and benefits other species.
24	The competition created by de-watering reduces overall habitat availability that will result in a reduction of habitat for important species such as loons, beaver, sandhill cranes, blue heron, bald eagles, osprey, kingfisher, and water ouzels (dippers). These and many other species may be forced to leave the Elbow Lake area entirely, while according to the EA the de-watering will be beneficial for killdeer, and salamanders. This does not seem like a good balance of use and should cause the FWP biologist to re-consider the cost and the benefits of the project.
25	On Chart B. POTENTIAL IMPACTS ON THE HUMAN ENVIRONMENT I will again quote areas of difficulty, and add my rebuttal.
26	B4, and B7. The EA states;

		27	Considering the historic use of the State-owned leases that are sold on Elbow lake, it seems incredulous to examine the use of the land without examining the use of the water that the leased land abuts. Yes, leasees and recreationists will still be able to walk on the land, but if the level of the lake is lowered by 4 feet during low water/ late summer season, access to the water may be blocked by noxious mudflats that become impassable. The land and the shoreline and the water of Elbow Lake are deeply and historically intertwined, and should always be considered as a whole. These same considerations should be applied to recreationists who access the area through FWP land just above Elbow lake and DNRC land at the road that leads to the weir in question because their access to the lake could be blocked as well.
		28	B10. The EA states:
		29	I think it is incorrect to state that the perceived controversy is low. If it is low, it is because of a lack of awareness of the actual impacts the dewatering of Elbow Lake will cause. While the EA has minimized the actual impacts and maximized the wildlife benefits, they have created the false illusion of a project that will upset a few locals but help some fish species and killdeer and salamanders. This false narrative has supposedly convinced some conservation groups and Missoula County residents to approve of the project, but they have not been cited in this EA, and as such cannot be approached to gain an understanding of their positions.
		30	In summary it is my contention that the FWP and DNRC have not acted in good faith by putting forth this flawed and incomplete EA to the public as the basis for their proposal to remove a rather benign weir that straddles the Clearwater River at the foot of Elbow Lake for 4 or 5 months out of every year.
		31	The proposal appears to be an effort to get the FWP and DNRC out of a loosely defined and seemingly non-existent legal pickle. There is currently no threatened litigation noted in the reasons given for the proposed actions. The leaseholders and landowners have stated emphatically in interviews with the Missoulian and the Seely Lake Pathfinder that they are willing to sit down with any affected parties and try to work out an agreement that would mitigate all of the issues that the FWP and DNRC have brought up including water rights, permitting, and other legal issues.
		32	As a result of the difficulties in this EA, the entire project should be put on hold until a further scientific study can be held to examine the actual effects of the shrinking of Elbow Lake and associated wetlands. At the same time, a legal analysis should be conducted to examine the actual legal exposure of FWP and DNRC to litigation that might result from leaving Elbow lake as it is. Such legal analysis should include the overarching impact of the Salish-Kootenai water compact that could solidify the water rights issues concerning late-season minimum water flows. Although that compact has not been ratified by Congress yet, it could very well be definitive and prevail over all of the stated water rights claims mentioned in this EA. If the Salish-Kootenai water compact were not to be ratified, the projected outcome of water rights litigations should be considered as well, as the Confederated Salish-Kootenai Tribes will surely sue the existing water right holders and establish their claim to all of the water in the basin
		33	The landowners, leasees and recreationists that all use and love Elbow Lake as it currently exists also deserve a place at the table while consideration of the environmental, economic and legal aspects of this proposed project are put to the test. We have been forced to defend our position from a disadvantage that has been short of time and opportunity to organize and put forth a reasoned and unified position in defense of our beloved Elbow Lake.
		34	There is much work that needs to be completed before the proposed removal of the weir can even be considered, and I as a recreationist urge the FWP and DNRC to complete all of this work before once again considering the advisability of this project.
		35	Thank You for the opportunity to express my opinions on the EA submitted by FWP biologist William L. Knotek, Fisheries Management Biologist Region 2 FWP 3201 Spurgin Rd Missoula, MT 59804 Telephone: 406-542-5506, E-mail: lknotek@mt.gov
156a	E	1	The letter appended references Water Court Ruling Case 76F-22. I have searched the Montana Water Court cases and have not found that case. Can you please point me to where I can find that case as I would like to read the decision myself. <i>[There was no letter appended or attached to this email comment]</i>
		2	Thanks in advance for your assistance.
156b	E	1	I am contacting you because I would like to find and review the 2006 Montana Water court ruling (Case 76F-22) which is referenced in the 2019 letter - Draft EA for proposed removal of Elbow Lake Dam. I have searched the Montana Water Court Case site and so far have not been able to find this case.
		2	Can you please point me to the source where this Water Court Decision can be found?
		3	Thanks in advance for your assistance.
			<i>[DNRC responded with a copy of an FWP letter to the Elbow Lake Homeowners Association (dated August 23, 2013, "Adjudication of Elbow Lake recreational water rights"); a copy of that letter is in Appendix C, pages C-2 to C-5.]</i>
156c	E	1	We are writing this letter in opposition to the removal of the rock dam/weir on Elbow Lake.

2	Based on what we have read in the Montana Water Court documentation, the Montana Water Court did not deny an “implied claim” specific to this dam as is stated in the letter dated Sept. 3, 2019 “Responses to Questions and Concerns regarding Elbow Lake Dam Removal” from DNRC and MFWP. The DNRC withdrew the “Implied Claim” that they had themselves filed on behalf of the Lease holders. The DNRC withdrew the “Implied Claim” probably due to several reason but primarily due to the MFWP objection to that “Implied Claim” as well as the fact that a timely claim was never filed by the DNRC for this use and would likely be denied because of that oversight. Because of the withdrawal, the Montana Water Court had nothing to rule on. This is evident in that the stated ruling noted “76F-22” does not exist in the Montana Water Court case records. It doesn’t exist because there was no ruling.		
3	My point is this, The Montana Water Court did not rule that the dam must be removed. If the dam was causing downstream water rights problems, we most certainly would have heard about that and the Montana Water Court would most certainly had ordered the dam removed because the impounded water did not have a water right and was adversely affecting downstream water right holders. This has never happened in it very long history.		
4	The question this raises is this, Does the DNRC have the legal right to remove the dam? Does the MFWP have the legal right to remove the dam? It seems that at a minimum it would require a court order to do so in this case and the Montana Water Court has not done that. Arguments against removing the dam because of lost wetland habitat have been made. Can the DNRC, without a court order, remove this structure causing negative impacts to these wetlands?		
5	As a cabin owner and more recently landowner on Elbow Lake we have noticed the DNRC playing both sides of this contentious issue. During the purchasing process of land that our Cabin sits upon we argued that the land was river frontage, not lake frontage (because of the dam removal) and the appraisals should use comparable properties that were river frontage and not lake frontage. However, this is not what happened. Most of the comparable properties were lake front properties. At that time the State was treating these lots as lake front lots and arguing that fact as well. Now, the state has completely reversed its position. They have changed all the language for the lot sales, and they are now contending they are river front lots. Of course, they now have all the previous sales as comparable properties that were likely driven much higher in value when evaluated as lake front lot. I would think that the 4 parties that have already purchased the land from the state on Elbow lake would certainly have a legal argument to contest all previous appraisals if the dam removal is allowed.		
6	The state said, “It’s a Lake” now they are saying “It’s a river”. The state said, the lease holders have an “Implied Water Right” now they support the idea there never was a water right and therefore the dam is illegal and must be removed.		
7	The reality is this, there is a structure in the water in a shallow spot on the Clearwater river that has likely been there for upwards of a 100 years maybe more. Its existence is suddenly illegal. Who determines what rock was placed by humans and what rock was not? We can argue that the dam was at least partially natural. Please provide proof otherwise. I would like to see that. If you can’t provide that proof, how can you possibly determine what the natural stream bed is or was. Was there a natural deposit of rocks in this area before humans even touched it? Sure we can look at pictures of the dam built up but there are no pictures of this area when there was not a dam. So what is the natural state?		
157	E	1	I have spent 25 summers on Elbow Lake, traveling from various parts of the country each time to enjoy the untouched beauty of Western Montana. As kids we used to watch with glee as deer would come down to drink from Elbow Lake and eagles and herons would hunt for fish from above.
		2	I have visited Elbow Lake in June, July, and August. Each time I enjoy kayaking down to the weir and back to my family’s property. This is why I had to laugh when I saw Figure 3 in the Environment Assessment--the weir has NEVER looked like that. In mid-August of this year, I paddled to down to find water rushing over it, as usual. It should be noted that the water level elsewhere around the clearwater river was quite low at this time.
		3	Ever since I was a kid I have remembered watching water running over it, and thinking to myself “what kind of dam lets so much water through”? I find it completely inappropriate and unjust to portray the “natural” state of the dam as it is shown in Figure 3? I am sure in late September it does look that. I am sure it looks like that for approximately two days before the first snowfall in early October.
		4	I have seen fish swim over the weir easily. I understand that depending on rainfall/snowmelt that may or may not be easy, but I have never looked at the weir when it would be impossible to for your average pike to navigate through. in fact, my family has always remarked what a great “natural” fish ladder the weir provides.
		5	In addition to the misunderstanding of the common state of the weir, it should be noted that the weir has been there since at least 1970, not 2009 as the Environmental Assessment states. This casts a shadow of doubt over all of the research presented in the Assessment. What other facts are being guessed at and presented as truth?
		6	Finally, I disagree with Table B. The community in Elbow Lake may be small but I this would be significant to every resident, not “minor” as it is notated.

	7	I hope that FWP and and DNRC will take the community's comments into account. We understand and respect the need for navigable waterways, however, the fallacies about the weir presented in the Environmental Assessment are deeply concerning.
158a E	1	Since its publication on September 30, the Environmental Assessment of the Removal and Remediation of Elbow Lake Dam has caused me to scratch my head in wonder and complete confusion each time I re-read it. It is based on some premises that simply aren't true, and it pays scant attention to the ecological ramifications of the weir's removal.
	2	For 50 years, our family has preserved 158 of our 160 acres exactly as we found them when we discovered the gem of Elbow Lake in 1970. Our aim has been to preserve this land for future Montanans as well as the growing populations of wildlife and plants that have made this lake their habitats for decades. But the removal of the weir--which has been in place in some form or another for almost A CENTURY -- would drastically alter the ecosystem. The Environmental Assessment says the weir's removal would revert the ecosystem to its natural state, given that the weir has been in place for two decades.
	3	A state agency released an Environmental Assessment on September 30 that was based on their contention that the weir had been in place for only 20 years! It's actually been there long before our family bought the property in 1970. So therefore the Environmental Assessment is all based on a fallacy, which means the assessment's conclusions are very flawed.
	4	The Assessment states that there will be little impact on animals and fish and plants if the weir comes down, which is clearly not true. So if you wanted to do a post along the lines of:
	5	"Every summer for my entire life, I've watched the beavers, otters, eagles, herons make Elbow Lake their home. If the weir is removed "thereby turning the lake into a narrow river" the habitats of all these animals would be destroyed. Specifically, there are three large wetlands areas that would completely dry up. Those wetlands are home to many birds and aquatic animals, as well as a drinking supply for deer. And as the water level goes down, more invasive plants would choke the remaining waterway."
	6	You are part of a family that has, for four generations, kept 160 acres completely untouched, preserving it for Montanans for years to come. Removing the weir would destroy what so many people--In addition to our family--have worked to keep in its natural state.
	7	The state agency also claims that the weir is so high that no water or fish can go over it. Johnny, you paddle board down to that weir often and you have never seen it so high that no water or fish could go through it. So that's another fallacy that they're basing their Assessment on. (In fact, the assessment includes a photo - -apparently taken in September one year--that shows the weir high and the water low. That photo is completely not the normal state, and they are pretending it IS the normal state of the weir and are using it as proof.)
	8	Since its publication on September 30, the Environmental Assessment of the Removal and Remediation of Elbow Lake Dam has caused me to scratch my head in utter confusion each time I re-read it. Why would the assessments be based on assertions that simply aren't true? Why would it pay scant attention to the ecological ramifications of the weir's removal?
	9	For 50 years, our family has preserved 158 of our 160 acres (we live on the other two acres) exactly as we found them when we discovered the gem of Elbow Lake in 1970. Our aim has been to preserve this land for future Montanans as well as the populations of wildlife, waterfowl, fish, and plants that have made this lake their habitats for decades. But the removal of the weir--which has been in place in some form or another for almost A CENTURY -- would drastically alter the ecosystem. Yet the Environmental Assessment contends that, because the weir has been in place for two decades, its removal would have "minor" impact on the ecosystem. It is hard to imagine how anyone could spend more than a few hours at Elbow Lake and not see--at the least-- the three areas of wetlands that teem with wildlife, fowl, and aquatic animals. (Perhaps this explains why section A7-10 on page 7 addresses only the effect on fish and barely touches on the effect on the many species of waterfowl, wildlife, amphibians, beavers, etc.) If the lake level goes down 4 feet, as the Environmental Assessment predicts, these marshy areas will completely dry up, as will the channels downstream that fish would need to travel through to get to the site of the (former) weir.
	10	The Environmental Assessment contends that the weir needs to be removed so that fish can pass through. But fish would never get as far downstream as the weir anyway, given that the narrow part of the lake leading to the weir would dry up completely; its level is never deeper than four feet past mid-summer. (Interestingly, the Assessment makes a similar argument that the weir should be removed to allow recreationalists to pass through; again, the recreational paddlers and floaters would go a-ground before they even reached the site of the (former) weir.
	11	Perhaps most astonishing is the Environmental Assessment's dismissal of the concerns of residents in section B10 on page 9: "perceived overall public controversy is low." Does Mr. Knotek not remember an August 2016 meeting in Missoula where many lessees and property owners attended and were extremely concerned? Similarly, calls and letters to Mr. Knotek and many agency officials--that my father (Roland Calhoun) sent for years preceding the August 2016 meeting and in the three years since--are not acknowledged.

	12	Finally, the Assessment claims that residents have not offered to take responsibility for the weir's upkeep (and its removal every September). In August of 2016, our family offered to take on that responsibility. Mr. Knotek responded, "It's too late." But the Assessment erroneously claims that no one has offered to take this on.	
	13	And perhaps to shore up the implication that residents are irresponsible, the Assessment shows includes a photo of the weir built high above the water level. I can honestly say I have never seen it this high, so perhaps this photo was taken in the fall, when I am not in residence. But if so, why use a photo that is clearly an aberration? And why not just have the weir dismantled each September, as we have offered to do, so that the rare situation pictured in that photo never occurs again?	
	14	As I write this, I am scratching my head once again. Of course I want to believe that Montana DNRC and Montana Fish, Wildlife, and Parks, are sincere stewards of the state's natural resources. Their knowledge and experience is deep. But then why write an Assessment founded on such factual inaccuracies as the age of the weir?	
	15	Would a more in-depth (no pun intended) and balanced assessment be possible?	
158b	E	i	Attached please find a letter addressing concerns about the flawed Environmental Assessment of Elbow Lake, issued on September 30.
		ii	I am copying Senator Malek and Representative Hopkins; I appreciate that they have been in communication with others who are equally concerned about the drastic ecological impact of the proposal to abolish the century-old Elbow Lake weir.
		iii	Thank you for your consideration of this letter. (Hard copies to follow) <i>[Comments 158b are generally duplicative of 158a]</i>
		1	Since its publication on September 30, the "Environmental Assessment of the Removal and Remediation of Elbow Lake Dam" has caused me to scratch my head in confusion each time I re-read it. Specifically, I wonder:
		2	Why would an Assessment, written by officials with deep knowledge and experience, be based on two key errors?
		3	Why would it pay scant attention to the ecological ramifications of the weir's removal?
		4	Why would the Assessment advocate for weir removal in order to allow migration of fish, without recognizing that the resulting four-foot drop in water level would completely dry up a narrow channel in the lake, thus making it impossible for fish to pass to and from the weir anyway?
		5	My questions stem from observing Elbow Lake since 1970. Our family has preserved 158 of our 160 acres (we live on the other two acres) exactly as we found them when we discovered the gem of Elbow Lake in 1970. Our aim has been to steward this land for future Montanans as well as the populations of wildlife, waterfowl, fish, and plants that have made this lake their habitats for decades. But the removal of the weir--which has been in place in some form or another for almost a century (as evidenced by early maps as well as 20th-century homesteading cabins still partly erect along the shore)—would drastically alter the ecosystem. Yet the Environmental Assessment erroneously contends that, because the weir has been in place for "two decades," its removal would have "minor" impact on the ecosystem. It is hard to imagine spending even a few hours at Elbow Lake without noting—at the least—the three large marshy areas that teem with waterfowl, aquatic animals, and aquatic plants. (Perhaps this explains why section A7-10 on page 7 addresses only the effect on fish and barely touches on the effect on the many species of waterfowl, wildlife, amphibians, beavers, eagles, herons, etc.) If the lake level drops 4 feet, as the Environmental Assessment predicts, these marshy areas will completely dry up and destroy the ecosystem.
		6	The Environmental Assessment contends that the weir needs to be removed so that fish can pass through. However, fish would be unable to travel as far downstream as the weir anyway, given that the narrow part of the lake leading to the weir site would dry up completely; its level is never deeper than four feet past mid-summer. (Interestingly, the Assessment makes a similar argument that the weir should be removed to allow recreationalists to pass through; again, the recreational paddlers and floaters would go a-ground in the narrow channel long before reaching the site of the weir.)
		7	Perhaps most disturbing is the Environmental Assessment's dismissal of the concerns of residents in section B10 on page 9: "perceived overall public controversy is low." Does Mr. Knotek not remember an August 2016 meeting in Missoula, where many lessees and property owners, including my father, Roland Calhoun, voiced deep concerns on this topic? Similarly, calls and letters from to Mr. Knotek and other agency officials, which my father
		8	sent for years preceding the August 2016 meeting and in the year afterward, must not have been factored when the Assessment concluded "public controversy is low."
		9	Finally, the Assessment claims that residents have not offered to take responsibility for the weir's upkeep (and its removal every September). In August of 2016, our family offered to take on that responsibility. Mr. Knotek responded, "It's too late." Yet, the Assessment erroneously claims that no Elbow Lake resident has offered to take this on.

		10	And perhaps to shore up the implication that residents are irresponsible, the Assessment includes a photo of the weir built high above the water level. I can honestly say I have never seen the weir this high, so perhaps this photo was taken in the fall, when water levels throughout the state are at their lowest. But if so, why use a photo that is clearly an aberration? And why not just have the weir dismantled each September, as we have offered to do, so that the rare situation pictured in that photo never occurs again?
		11	As I write this, I am scratching my head once again. I do believe that Montana DNRC and Montana Fish, Wildlife, and Parks, are sincere stewards of the state's natural resources. Their knowledge and experience is deep. But then why write an Assessment founded on such factual inaccuracies as the age of the weir? Would a more in-depth (no pun intended) and balanced assessment be possible?
		12	Thank you very much for your consideration of the points addressed in this letter.
158c	M		[same as 158c]
159	E	1	There are so many things to love about the people and places around Elbow Lake. But in 1970, when our family bought 160 acres and an old cabin from one of the early (and only) residents, what impressed us most was how business was often done with a handshake.
		2	These days, though, that handshake has been replaced with head-shaking and hand-wringing. Common sense and clear communications have given way to obfuscation and inaccuracy, most recently in the "Environmental Assessment of the Removal and Remediation of Elbow Lake Dam."
		3	For starters, the weir (not dam) is far older than "two decades"; it was in place five decades ago, during our first summer on Elbow Lake, and contemporaneous documents far more reliable than this EA suggest it was there a century ago. There's physical evidence of this around the lake, too: Not just the placement of docks and cabins, but the established wetlands that host all manner of wildlife that could soon find their habitat dried up. And that's just the beginning of a river of errors that runs through this document, leading to a flawed conclusion that seems foregone.
		4	I know that others have elaborated on the flaws in the EA, so I'll focus on the "informal communication by agency personnel with affected residents on numerous occasions over the past 15 years," cited on page 12. If "informal" means nonexistent, then this might be the most accurate part of the EA. Back then, more than 35 years into our tenure on the lake, we were never notified of concerns regarding the weir, much less the agreement made with some leaseholders to maintain it. When we did learn of that agreement (we assumed property owners were the only ones that hadn't been notified, but the lack of communication with Camp Utmost, which has been leasing on the lake for sixty years, belies that), our family partnership offered to take over maintenance tasks, but in August 2016 we were told we were too late.
		5	Apparently not, though: The EA does mention a fourth alternative, "considered, but Not Analyzed in Detail: Authorize existing structure with continuation of customary maintenance by local residents and lessees"?
		6	Since numerous people, including my family members, have stepped forward in recent weeks to volunteer to maintain the weir according to any arrangement the DNRC and WFP deem appropriate, this alternative is certainly worth analyzing in detail. Among other things, it would guarantee that there actually is water that could sustain fish...and maybe even allow kids at Camp Utmost to canoe.
		7	Because as it is, this EA seems as shallow as Elbow Lake will surely be if the weir is removed.
160a	E	1	We're writing to voice our strong opposition to the total removal of the Elbow Lake weir, and to challenge some assertions in the Draft Environmental Assessment report (EA), particularly the statement that "perceived public controversy is low."
		2	For background, our family has owned property and a house on Elbow Lake since early 1970. At that point the weir was very much in place and clearly had been for some time, judging by the longtime docks and piers that existed around the lake then. Even then, a complex wildlife ecosystem had developed based on the weir-supported water level. Wetlands on the east and west sides of the lake still host vast families of ducks, loons, herons, beavers and otters. Osprey and bald eagles survey the area from above in their regular patrols. Sadly, these populations have already begun to decrease since 2016, when the weir maintenance stopped.
		3	We found a number of statements in the EA that are not wholly accurate: For example, the weir is said to have been in place for "two decades" only. The report says that after removing the dam, any change in water quality and quantity would be "minor," change in vegetation cover is similarly deemed as "minor," changes to abundance or movement of species are only identified as "beneficial" with no reference to wetlands species, and the impact to any shoreline vegetation is also minimized. The rationale for the remediation of the dam is an effort to return the area to a previous natural and historic state. But what is that "historic state?" Given the weir's longevity, its removal will surely have a negative impact on several species that have thrived around the lake for many decades, and it's not clear whether this has been considered. Sections A.7, A.8 and A.10 of the report are surprisingly vague on this, though they do acknowledge that "impoundment enhances deeper, peripheral wetlands used by some waterfowl species and beaver..."

	4	Further, the impact on the human environment is hardly recognized in the EA: The changes in aesthetics and recreation are identified as "minor" and something that "can be mitigated." How? There are critical areas of the lake that are barely 4-feet deep now. If the water level drops by 4 feet, there will be no way for kayaks or rafts – much less boats – to navigate from one end of the lake to the other to access the point where the weir is currently in place. Many modes of recreation will be rendered impossible, rather than <i>facilitated</i> , as referenced in the report. The EA points to the weir as an obstruction for floating or boating, which is demonstrably not true. Conversely, a profoundly lower water level will surely prevent a contiguous path for this. In a region where recreation is so crucial to the area's economy, this stance strikes us as reckless.
	5	The EA report also predicts a minimal impact on property values, and sets the stage for this argument by referring to Elbow "Lake" with quotation marks at many points (in conflict with countless government maps and documents over the past several decades that have openly recognized Elbow as a legitimate lake). Yet the notion that the change in water level won't affect property values is simply inconceivable, as evidenced by delayed property assessments around the lake even as we write this.
	6	The EA concludes that "the proposed activities would have an overall positive impact on the physical and human environment and will therefore not require the extensive analysis associated with an EIS [Environmental Impact Statement.]" We do not find the objective data in the report to support such a conclusion. Indeed, the report acknowledges that "the benefits and impacts to local wildlife species are mixed at the project scale." Isn't that statement alone worthy of further investigation?
	7	Section VII of the report concedes that "the primary rationale for retention of the structure involves enhanced social amenities. Unfortunately, these amenities are not associated with a valid water right..." In other words, even if the report acknowledged the substantial impact to the human environment, it wouldn't matter because, they say, no valid water right exists. But – from what we can tell - it was the DNRC itself that abandoned that water right in 1995. Why? Given the weir's existence at least as early as 1970, it would surely have been grandfathered in based on the Water Rights Act of 1972, given that the use of the water rights hasn't changed at all since that time. Why would anyone abandon this right in a manner that is clearly harmful to the lessees who hold multi-decade leases?
	8	Currently, a diminished version of the weir exists on the lake and it is decidedly smaller than what's shown in the dated photos that accompany the EA on the fwp.mt.gov website.
	9	We hope there's room for a compromise, as there doesn't appear to be a reason for particular urgency to remove the structure entirely now (and, indeed, all the circumstances cited in the EA have been in place for decades). In an effort to collaborate on a solution, our family has attended hearings, worked with lawyers, offered our services and our financial support to address the weir in a way that would protect the environment and allow for the free movement of key aquatic species upstream. We have not received any engagement on these offers, but they still stand.
	10	As very interested stakeholders in this issue, we have found the process and communication on this to be extraordinarily difficult to navigate. This is at odds with what we've grown to expect from the transparency and generosity of the people of Montana.
	11	We love Elbow Lake, and we'll do everything we can to maintain the integrity of the environment and the community around it. We hope that our concerns are heard and there will be consideration of alternative solutions before allowing such an extreme measure to take place.
160b	M	[same as 160a]
160c	E	1 We strongly oppose the removal of the weir at the south end of Elbow Lake. We challenge many of the assertions in Environmental Assessment (EA) at fwp.mt.gov, which strikes us as simplistic and one-sided. The weir has certainly been in place since early 1970, when my family first purchased property on the lake, and it was apparently first built decades earlier. In any case, it clearly pre-dates the cutoff identified in the Montana Water Act of 1972, and the associated water rights should have been grandfathered in. The EA states that the weir is only two decades old, which is simply not true.
	2	The EA contains other points of concern:
	3	- It claims that the weir's removal will have only "minor" impact on the lake's ecosystem and surrounding vegetation, when in fact the drop in water level will completely remake the perimeter of the water, effectively draining two major wetland areas.
	4	- It asserts that removal of the weir will facilitate more recreational activities, when in fact major parts of the lake will have no water at all and will prevent such common activities such as boating, kayaking, rafting and swimming, which are common on the lake today.
	5	- It dismisses any concerns that a 4-foot drop in the water level will have negative impact on property values, when it's clear that riverfront property is valued lower than lakefront.
	6	- Most important, the EA minimizes any negative impact on the many wildlife species that have thrived in the wetlands around the lake for at least a half-century, including beaver, otters, loons, herons, and ducks. Indeed, with only the 10-inch drop in the water level that has taken place at the end of each summer since the weir has not been maintained, the beavers are not able to access their dam on the east side of the lake.

		7	We're confused by the focus on the Elbow Lake weir specifically, when there are so many other examples of water being impounded up and down the Clearwater basin, which have been addressed with fish ladders and other alternatives.
		8	Our family has reached out the the DNRC, attended hearings, engaged lawyers, offered our services to maintain a proper fish ladder to support the upstream migration of the bull trout. But we have received no meaningful response from the FWP or DNRC. We urge you to postpone any definitive action on the weir and to consider alternatives before removing a historic feature that has resulted in a complex and thriving ecosystem.
161a	E	1	I am 100 percent against removal of the rock weir on Elbow Lake.
		2	I have been camping, fishing, floating and boating on Elbow Lake since 1977. In 2001, we acquired a DNRC lease on Elbow Lake. It was a dream come true. I am so grateful to have the opportunity to be part of this area and the Elbow Lake ecosystem. I consider myself to be a good steward of the land. On the other hand, I find that the Department of Natural Resources and Fish, Wildlife and Parks have not held up their end of being good land stewards through their lack of communication with Elbow Lake stakeholders, not being inclusive in their decision making and not following the guidelines set out in The Montana Environmental Policy Act(MEPA).
		3	The MPEA states that informed decisions are ones that "consequences of the decision are understood, reasonable alternatives are evaluated, and the public's concerns are known". The letter dated June 21, 2019 from Michael O'Herron, DNRC and Randy Arnold, FWP informed the lessees and landowners that the rock weir would be removed in the Fall of 2019. They hope we'll understand. I don't understand. Other than an opportunity presented in the letter dated September 30, 2019 where the prepared Environmental Assessment was included, we weren't given an opportunity to make a formal comment. I can't see where the two agencies have invited stakeholders or the public to sit down and be part of any discussion. In fact, I have heard from many fellow lessees comments that negate any kind of inclusiveness in decision making. These comments include: the plan is to continue up the Clearwater system and remove any and all dams, nothing can be done about the weir removal. It's a done detail, still waiting to hear back from an email sent to DNRC (the lease holder heard back 10 weeks and 2 days later), I'd be irritated too, if I were you – FWP employee. You better plan on building your dock much further out in the lake- FWP employee (2004).
		4	Camp Upmost has approximately six hundred area youth swimming and canoeing throughout the summer, rafts float down from the gorge, multiple paddle boarders can be seen often, fisher people and families out having fun are all part of why I love Elbow Lake. My family and I especially love observing the wildlife. We have seen loons, grebes, golden eyes, mergansers, sandhill cranes, trumpeter swans, bald and golden eagles, osprey, hawks, bears, beaver, otters, deer, and elk in and around Elbow Lake. Others in the area have observed grizzlies moving through in early spring. From the EA you will see items listed as having a minor effect if the weir is removed: land use, community impact, revenue, aesthetics and recreation, evaluation of significance and general public controversy. I heartily disagree. This action will lower the lake level by up to four feet. Lowering the lake level will drain decades old wetlands impacting plant and wildlife throughout the Clearwater corridor. It unbelievable that two state agencies charged with land and resource management propose draining significant wetlands without a thorough, unbiased environmental review and consistent communication with the stakeholders. This action will degrade property values and impact recreational opportunities that occupants along the lake have enjoyed for many, many years.
		5	Why is it that the Rainey Lake Dam has enhanced fish passage (supported by FWP), Lake Inez has fish ladders and annual removal of boards (supported by FWP),Placid Lake has a dam above the Owl Creek outlet to keep non-native pike from reaching the waterbody (supported by FWP) but it seems that, according to FWP, all problems will be solved by removing the historic rock weir on Elbow Lake?
		6	DFW is making a policy decision, at the staff level, through their actions. These 'policies' have ramifications and set precedent throughout the region and state for other areas with similar operations and similar wildlife and environmental impacts. The weir provides calculable benefits to the area, including recreational and social benefits to the landowners and people who so value the area and extraordinary benefits to the animals and plant life who thrive in the water and wetlands.
		7	The people of Montana, not just Elbow Lake or Seeley Lake, should demand transparency of our state government agencies. Actions like this do not lead to trust building - it erodes trust and does not showcase good faith in bringing everyone to the table to have a robust conversation about the impacts and possibilities. It's clear that these state agencies have an agenda and one outcome they want to see and would prefer their agenda pushed through quickly with little or no input from the impacted stakeholders
		8	<i>[this sentence was placed at the end of the letter]</i> A Guide to the MONTANA ENVIRONMENTAL POLICY ACT produced by John Mundinger and Todd Everts 1998 revised by Larry Mitchell 2004 revised by Todd Everts 2006, pages 11 & 12
161b	M	1-2	<i>[same as 161a.1 to 161a.2]</i>
		3	<i>[same as 161a.3, except items after "These comments include," are in bullet format]</i>
		4-8	<i>[same as 161a.4 to 161a.8, with 2 minor differences in acronym and quotation use]</i>
161c	E	1-10	<i>[paragraphs #1-10 are same as 161a]</i>
		11	MONTANA ENVIRONMENTAL POLICY ACT states

	12	MEPA is a PROBLEM SOLVING tool. One of the broader implied goals of MEPA is to foster wise actions and better decisions by state agencies. This is accomplished by ensuring that relevant environmental information is available to public officials before decisions are made and before actions are taken. MEPA has two central requirements:
	13	• Agencies must consider the effects of pending decisions on the environment and on people prior to making each decision.
	14	• Agencies must ensure that the public is informed of and participates in the decisionmaking process
	15	HOW DO AGENCIES CONSIDER THE EFFECTS OF PENDING DECISIONS AND ACTIONS?
	16	MEPA's chief sponsor, Representative George Darrow, once noted that the fundamental premise of MEPA is common sense. In his words, MEPA is a "think before you act" act. State agencies are required to think through their actions before acting. MEPA provides a process that can help ensure that permitting and other agency decisions that might affect the human environment are INFORMED DECISIONS--informed in the sense that the consequences of the decision are understood, reasonable ALTERNATIVES are evaluated, and the public's concerns are known. MEPA's first objective requires agencies to conduct thorough, honest, unbiased, and scientifically based full DISCLOSURE of all relevant facts concerning impacts on the human environment that may result from agency actions. This is accomplished through a systematic and interdisciplinary analysis that ensures the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking. MEPA embodies the basic tenet of problem solving: think before you act. Before making a decision to implement an action that might affect the human environment, MEPA requires the agency to generate and organize information that:
	17	• describes the need for the action or the problem that the agency intends to solve (PURPOSE AND NEED);
	18	• explains the agency's intended solution to the problem (PROPOSED ACTION);
	19	• discusses other possible solutions to the problem (alternatives);
	20	• analyzes the potential consequences of pursuing one alternative or another in response to the problem (impacts to the human environment); and
	21	• discusses specific procedures for alleviating or minimizing adverse consequences associated with the proposed actions (MITIGATION).
	22	A Guide to the MONTANA ENVIRONMENTAL POLICY ACT produced by John Mundinger and Todd Everts 1998 revised by Larry Mitchell 2004 revised by Todd Everts 2006, pages 11 & 12
161d	E	1 We are writing to make you aware of an action by two state agencies that will have a significant detrimental environmental effect. The Montana Department of Fish Wild Life and Parks (FWP), along with the Montana Department of Natural Resources and Conservation (DNR) are proposing to drain significant historic wetlands along the Clearwater River. The proposed action will have a significant negative impact to wildlife, property values and recreational opportunities.
		2 The Montana Environmental Policy Act (MEPA) states, "MEPA's first objective requires agencies to conduct thorough, honest, unbiased, and scientifically based full DISCLOSURE of all relevant facts concerning impacts on the human environment that may result from agency actions".
		3 FWP and DNR are clearly violating the Montana Environmental Policy Act. In a June 21, 2019 letter from Mike Herron (DNR) and Randy Arnold (FWP) to Lessees and Landowners they clearly state their preferred alternative. On September 30, 2019 FWP published an EA that supports the preferred alternative stated in the June letter. The EA is clearly biased, incomplete and has no scientific basis. All of the alternatives were not considered equally and fairly.
		4 We seek your assistance to help bring these two state agencies to the table to discuss alternatives that work for all involved. There have been two recent newspaper articles, one in the Seeley Lake Pathfinder and one in the Missoulian that discuss the proposed action. We are also enclosing with this letter a copy of the Environmental Assessment (EA) and our comments on the EA.
162a	E	1 I find the draft Environmental Assessment (EA) for the proposed action misleading, biased and lacking scientific support. The EA was written to support a predetermined preferred alternative and does not follow the Montana Environmental Policy Act (MEPA).
		2 The rock structure has been in place for many years and is supporting significant wetland areas upstream. There is evidence that the structure dates back to the late nineteenth or early twentieth century. Your proposed action will effectively drain these wetlands adversely affecting many species of aquatic life, plants, birds and mammals. There is more at stake here than just bull trout. In a September 18, 2019 letter written to Randy Arnold (FWP) and Mike Herron (DNRC) I pointed out that there are other species of plants and animals listed by the US Fish and Wildlife Service as endangered that are known or believed to inhabit the area. Specifically:
		3 • Water Howellia (Howellia Aquatilis)
		4 • Grizzly Bear (Ursus arctos Horribilis)
		5 • Yellowbilled Cuckoo (Coccyzos americanus)
		6 • Canada Lynx (Lynx canadensis)

		7	These species were not even acknowledged in the EA.
		8	According to The Big Blackfoot River Fisheries and Restoration Investigations for 2006 and 2007 report which Ladd Knotek was a co-author, the section of the Clearwater River between the Blackfoot River and Salmon Lake it states, this corridor has not been determined for bull trout, WSCT or other native fish species, and definitely warrants further investigation. Further, in a recent presentation titled Blackfoot River Fishery Update by Patrick Uthe, Montana Fish Wildlife and Parks, Mr. Uthe is discussing bull trout studies on tributaries to the Blackfoot River, it shows that FWP still has not evaluated the Clearwater River for bull trout. It appears that FWP has not performed any recent fish studies on the Clearwater River.
		9	The EA includes photos of the rock structure as it was 10-15 years ago. The structure today bears no resemblance to the photos in the EA. This is very misleading.
		10	In a June 21, 2019 letter from Mike Herron and Randy Arnold to Lessees and Landowners, they clearly state their preferred alternative. On September 30, 2019 FWP publishes an EA that supports the preferred alternative stated in the June letter. The EA is clearly biased. Alternative four was not seriously considered.
		11	It's easy to check a box regarding environmental and human impacts. There is nothing in the EA that backs up the assertions made other than the authors' opinion. There are not any scientific references or citations or any specific mitigation solutions. The Montana Environmental Policy Act (MEPA) states,
		12	"MEPA's first objective requires agencies to conduct thorough, honest, unbiased, and scientifically based full DISCLOSURE of all relevant facts concerning impacts on the human environment that may result from agency actions". This has not been done. A full Environmental Impact Statement needs to be performed by a qualified, unbiased outside consultant.
		13	In section IX of the EA the author concludes that an Environmental Impact Statement (EIS) is not required. I heartily disagree. Land use, community impact, revenue, aesthetics and recreation, evaluation of significance and general public controversy, are all listed in the EA has having minor impact if the weir is removed. This action will lower the lake level by up to four feet. Lowering the lake level will drain decades old wetlands impacting plant and wildlife throughout the Clearwater corridor. It is unbelievable that two state agencies charged with land and resource management propose draining significant wetlands without a thorough, unbiased environmental review. This action will degrade property values and impact recreational opportunities that occupants along the lake have enjoyed for many, many years. It will negatively affect a nondenominational church youth camp that has held a lease for nearly 60 years.
		14	In a recent article in the Missoulian newspaper Mr. Arnold acknowledges working with other groups to maintain structures in the Clearwater River drainage. The only thing preventing alternative number four from being considered is FWP's and DNRC's unwillingness to consider it.
		15	I oppose the proposed action.
162b	M		<i>[same as 162a, except that report and presentation titles in 161a.8 are in bold underlined font]</i>
163	E	1	My name is Shay Watson and I oppose the removal of the weir on Elbow Lake. I was born in Ronan, Montana and grew up in Helena. My family has been camping on Elbow Lake since before I can remember. In 2001 my parents got a leased lot on Elbow Lake. As a small child, some of my favorite memories are going out on the boat and catching turtles, taking some time to study them, and then letting them go again. At night, just before the sun goes down, you can see the beavers swimming across the lake. If you're lucky they will even slap their tail on the glass like water.
		2	I grew up going to Elbow Lake every weekend in the summer months. From the painted turtles to the river otters, I learned so much about the wildlife in Montana. Sometimes we would even see a loon. I learned how to fish on Elbow Lake. I learned how to take care of the land so it could remain the same for years to come and so my kids could go there and learn the important lessons I did growing up in such a beautiful place.
		3	If the weir were to be taken out, we would lose the magic that happens when you have all the wildlife. Eventually, the beavers and the river otters would move on. Slowly the beauty of what Elbow Lake is would fade away. I'm embarrassed that the state of Montana has not taken into consideration all of the other wildlife this would effect. There are other options that could take place instead of removing the weir completely. Also has anyone considered that the pike have taken over the lake? By removing the weir they could potentially migrate into the Blackfoot river causing so many other problems. From my heart, I deeply plead that we come up with another option than completely removing the weir. Please think of the consequences this would have on all of the other animals in the area.
164	M	1	I am writing to formally propose the Calhoun Montana Limited Partnership, LLC become the "individuals responsible for construction and maintenance" of the Elbow Lake dam, Alternate Action Alternative #3, cited in the Environmental Assessment posted on September 30, 2019. Our willingness to work in partnership with the Montana DNRC and FWP agencies on remediation of the dam was first expressed by our father, Roland B. Calhoun, at the public hearing on this matter conducted on August 9, 2016 by Ladd Knotek. Our proposal also includes our willingness to fund all needed actions as responsible stewards of the Elbow Lake dam.

		2	The Calhoun Montana Limited Partnership and our family members have the resources, capabilities, commitment, and local connections needed to develop and successfully execute a remediation plan for the dam, working in collaboration with the relevant Montana agencies and any other parties that are designated by those agencies. And we are willing and able to begin such a partnership immediately, executing the required action plan as early as this fall.
		3	It is important to note that as property owners, not lessees, we were not a part of the agreement between the Missoula Conservation District and the Elbow Lake association that was unsuccessful in properly maintaining the dam several years ago. We can work in concert with the DNRC and DFLP to avoid past mistakes and effectively maintain the dam that has been in place for over 50 years.
		4	The Calhouns purchased the 160-acre parcel of property that is located on both sides of the north section of Elbow Lake in 1970. That year family members and friends constructed a new cabin on the property, the first step in a long and successful series of projects that reflect our commitment to our property, the area, and our neighbors.
		5	The Calhouns have resided on Elbow Lake for 6-10 weeks for 50 consecutive summers. And as members of the Mountain Lakes Church and the Double Arrow Golf Club, and consistent supporters of the Seeley Lake Foundation and other local organizations, the Calhouns have demonstrated our desire and commitment to support and improve the local Montana community.
		6	We look forward to working in collaboration with DNRC and DWFP to develop and implement a remediation plan that meets the needs of the agencies, concerned environmental groups, lessees, and landholders, so that we all can continue to enjoy and respect the wonderful attributes and natural beauty of Montana.
		7	Please let us know if you have any questions or need additional information. We look forward to working with you in the very near future.
165a	E	1	I want to make sure that we are on the record as vehemently opposed to the rock dam removal at Elbow Lake. Please see thread below. I find it interesting that every map I can refer to "Elbow Lake", but you're trying to turn it into the Clearwater River. I assume you'll be taking down the weirs/dams at all of the other lakes in Seeley Swan Chain? Placid Lake? Statewide?
		2	Curious if there are any studies/surveys available regarding migratory fish in that section? Does the dam downstream constitute a barrier? If so how is it being treated? Elbow Lake is on a lake outlet (Salmon Lake), does it have a migratory population of cutthroat or bull trout? Very curious about the Bull Trout in particular as the water temperatures coming out of Salmon Lake are too high for Bull Trout.
		3	This seems arbitrary. Is there no room for a compromise?
165b	E	1	I [Mike O'Herron] called and spoke to Greg Browning today.
		2	I apologized for not getting back to him sooner.
		3	He reiterated verbally the perspectives he shared in his emails below:
		4	A number of people are taken aback by the proposal to remove the dam.
		5	It's not a big deal.
		6	It's supposed to be a lake.
		7	The water is too warm for bull trout.
		8	Nobody cares about the residents.
		9	At one point it was authorized.
		10	There are families affected in real ways such as good memories of using the site.
		11	Thinks there should be a way to permit the dam.
		12	Thinks it's a done deal and we are going through the motions.
		13	His is also not satisfied with the appraisal of his cabin site taking so long - for the sale program.
		14	He said 12 weeks is ridiculous and the original estimate of 6 weeks was too long, too.
		15	And - It all feels greasy. Like a bait and switch
		16	I reminded him to make sure he submits his comments in to the EA process.
		17	He said they are not done fighting it.
		18	Greg was cordial. He apologized for is tone, but his tone was not impolite in any way.
165c	E	i	Open Letter in Response to: Montana DNRC: Draft ENVIRONMENTAL ASSESSMENT Project Title: <u>Removal and Remediation of Elbow Lake Dam</u>
		1	Our family is one of over twenty that own a cabin on Elbow Lake, although we have been owners for only a few years many families have had cabins on the Lake for decades – our family has come to love this beautiful portion of the Clearwater River watershed – we are devastated by your proposed action!
		2	On page 12 section IX. Environmental Assessment Conclusion Section 3, You state: <u>"Is an Environmental Impact Statement (EIS) required? No.</u> We conclude, from this review, that the proposed activities would have an overall positive impact on the physical and human environment and will therefore not require the extensive analysis associated with an EIS"

	3	Your statement, and subsequent conclusion, is “arbitrary and capricious” it is not based upon science or law which means “doing something according to one’s will or caprice and therefore conveying a notion of a tendency to abuse the possession of power”. To imply your actions will have a positive impact on those who have cabins on this wonderful lake is idiocy. Throughout your draft assessment you imply lake front property is the same as riverfront property - this is a false assumption – the aesthetic, scenic, property value and recreational opportunities of a lake are not proportional to riverfront property. <u>An EIS is definitely warranted.</u>
	4	On Page 3 section V. Project Overview and History you state:
	5	“Although the modified structure was originally authorized by a local permitting entity (Missoula Conservation District, 2006, Natural Streambed and Land Preservation Act “310” permit), this permit was approved under the assumption that a valid and legal water right existed. When all submitted claims were extinguished (Montana State Water Court, Case 76F-22), it was evident that no valid and appropriate water right was in place that justified maintenance of the structure, so the 310 permit was discontinued.”
	6	To obtain a Montana 310 permit there are many requirements, but two of those requirements are notification of Montana Fish and Wildlife and permission from the landowner – the State of Montana is the landowner and you (DNRC) are responsible for administrating and management of this property. If the DNRC or Montana Fish and wildlife had a problem with this permit they should have made that fact known before the permit was issued - <u>but one thing a 310 permit does not require is water rights!</u> Many projects are undertaken every year on streams and rivers by entities that do not have water rights. All Montana water is owned by the State of Montana; therefore, the cabin owners did have a legal right based upon a valid 310 permit and it should not have been discontinued by DNRC.
	7	Our family (and I am certain most other cabin owners) certainly do not want to involve the Montana taxpayers in an expensive, time consuming and hurtful lawsuit, so please make a sincere effort to find a way to work with the people who will be the most affected by your proposed action – please do not implement your proposed decision until other options have been honestly explored.
165d	E	<i>[same as 165c, with minor formatting (bold and/or underlined font, quotation marks) not showing]</i>
165e	E	<i>[same as 165c, with minor formatting (bold and/or underlined font, quotation marks) not showing]</i>
165f	E	1 Why weren’t we notified that Elbow Lake Weir was going to be removed when we bought our cabin and signed our lease two years ago? I would like to see your answer to this question in writing please.
		2 It appears this plan has been in the works for quite some time and I believe the DNRC had an obligation to let newer lease holders know.
		3 I’m planning on filing a myriad of FOIA requests and will get to the bottom of this one way or another.
165g	E	1 Separate from the FOIA request, I would still like you to explain to me why we were not notified of plans to turn our lake property into a river property at the time we purchased our cabin and signed our lease agreement which clearly states “Elbow Lake” two years ago. Does the DNRC not have an obligation to inform its lease holders of something this major? This is a massive dereliction of duty on the DNRC’s part.
		2 We are now stuck between an enormous lease payment that is doubling in price or purchasing a river property, when we thought we fulfilling a lifelong dream of buying a lake property. We are blindly going thru the purchase process knowing that if we hesitate one bit we’ll be tossed out of the purchase pool and stuck with massive lease payment and who knows if/when we’ll have another opportunity to buy, or if we even want to buy. How do we sell our cabin now? High lease payment, no lake? We are almost forced to buy at this point.
		3 You would be hard pressed to find a judge in the State of Montana who does not recognize the numerous differences between owning a lake property and a river property. Its plain to any rational person (or judge) to see the untenable situation we are in with the giant lease payment vs. purchase of a RIVER property. We feel bait and switched. Everyone in Missoula I’ve spoken with who are following this saga agrees this is just plain wrong. Everyone.
		4 Put yourself in our shoes. How would you feel if you bought a lake cabin, signed a massive lease (with intent to buy the land all along), only to find out (after the fact) that the lake, as we know it, is going away, when removal plans have been in the works for years?
		5 We want to avoid a costly, painful, lawsuit and urge you and your counterparts at the FWP to come to the table and work with the stakeholders of Elbow Lake to come up with a solution that addresses fish passage while keeping the Lake a Lake. Or, you can continue to needlessly wasting our taxpayer dollars battling us in court.
		6 I look forward to your reply, in writing please.

APPENDIX B

Following are FWP and DNRC's responses to a summary of public comments received during the public comment period.

I. MEPA (Montana Environmental Policy Act) Process

Comment A: *What was the purpose of the EA? An EA appears inadequate, and an EIS should be required.*

Agency Response A: Based on comments received, there appears to be *misunderstanding* surrounding the purpose of the Environmental Assessment (EA) prepared by FWP and DNRC in this context. Continued construction and maintenance of the Elbow Lake dam are illegal in several respects. The EA and public notification were discretionary steps that state management agencies undertook to address aquatic-resource-protection law violations, inform the public and constituents regarding the rationale and process to accomplish public mandates, and attempt to mitigate public natural resource impacts. These steps are beyond what is required by law, as this is essentially an enforcement action that is not subject to MEPA. However, in the interest of transparency in government and to inform interested parties, the State initiated public involvement.

The purpose of the EA was *not* to determine if the structure is illegal or whether perceived benefits to local residents and the environment justify its continued maintenance. Rather, the EA was a mechanism to identify and discuss measures to remedy noncompliance.

- The EA exceeds procedural requirements given the context under which it was prepared--to address unauthorized actions and natural resource impacts on public property and to comply with normal permitting requirements. In addition, it should be noted that other than issuance of a discontinued 310 permit, no environmental review (prior to the recent EA) has been associated with repeated reconstruction and maintenance of Elbow Lake Dam.

Comment B: *It appears you have already made the decision to remove the weir prior to the public review/comment period of the EA and is therefore pre-decisional.*

Agency Response B: Initially, both the DNRC and FWP were considering the dam removal proposal as an enforcement response to illegal trespass activities. In 2013, the Montana water court had determined there was no water right allowing the impoundment created by the dam. The Missoula County Conservation District had cancelled the 310 permit it had issued for the structure due to permittee non-compliance with the provisions of the permit. FWP provided notice to lessees in 2013 that further efforts to rebuild the dam were not to occur (see Appendix C, pages C-2 to C-5). Periodically, DNRC has responded to observations of dam rebuilding efforts and has occasionally removed segments of the dam to allow for fish passage. It recently became obvious that these efforts were not curbing persistent reconstruction of the dam. Rather than attempting to identify and pursue a claim against the individuals responsible for repeatedly reconstructing the dam, the agencies determined that the most expedient and effective way to address the situation was for the agencies (FWP and DNRC) to do the work. Work would be done with heavy equipment during low-flow conditions in a manner that would hopefully permanently discourage further attempts to rebuild the dam.

The dam is in violation of the Montana Streambed Protection Act (SPA, "124" permit), the Montana Water Use Act, and the federal Clean Water Act. The dam is in trespass on State land with no authorized purpose or lessee. The dam is an impediment to fish passage. There is no legal discretion to consider an alternative solution involving retention of the dam.

In response to the large volume of feedback received from neighbors and users of Elbow Lake expressing concern for potential impacts associated with dam removal, the agencies decided to use the format of EA. The agencies also hoped that producing an EA would be an effective way to provide information as to why leaving the dam in place was not a selectable alternative, and that DNRC in particular had a legal obligation to remove the dam from state property.

Implementing the MEPA review process has inadvertently created the impression that FWP and DNRC have discretion to allow continued maintenance of the dam. This is incorrect. Compliance with the law does not allow for selection of an alternative that allows for continued maintenance of the dam. The decision to call for a halt on continued maintenance but to defer more aggressive removal is a compromise, if all parties comply.

Comment C: *Alternative 4 [Authorize existing structure with continuation of customary maintenance by local residents and lessees, while pursuing acquisition of legal water rights and applicable permits] should have been analyzed in further detail and included a summary of what it would take to get the regulatory approvals.*

Agency Response C: Acquisition of legal permits and authorizations is extremely unlikely without valid water rights and permission from the landowner (DNRC). See Section VI below for a summary of applicable water rights issues. Removal is a response to two decades of seeking alternatives to bring the structure into compliance with all laws. All options other than removal were explored and failed.

II. General: History of Elbow Lake Dam

Comments:

- A.** *How long has the Elbow Lake Dam structure been in place and why is it a concern?*
- B.** *The dam has been in place for decades and causes no real impact.*
- C.** *Various comments/accounts regarding history, management and legality of the structure.*

Agency Response to A, B, C: The Elbow Lake Dam or “weir” is an unnatural, channel-spanning rock berm that was historically installed to further impound or deepen a naturally wide lake-like portion of the Clearwater River known as Elbow “Lake.” It has consistently been constructed and maintained at this narrower shallower location (N 47.0387, W-113.3945) as this is the logical site to raise water levels and enhance the lake-like environment upstream.

The original date and purpose of initial installation are not clear, but aerial and satellite imagery (DNRC imagery records) verified that the structure was not visible prior to 1955 but is present in later photos. The height of the structure has varied over time (based on historic onsite photos, Missoula CD records and site observations over the past 20 years). The full height of the structure has varied between years and seasonally within years. Since much of the structure is composed of cobble and smaller hand-placed rock, rock near the top is dislodged and “flattened” during natural high-water events each spring. The dam has typically been rebuilt as high spring flows subside and subsequently remained in place until the following spring or until partially dismantled by agency personnel or local residents (Missoula CD file records and photos).

Efforts to permit construction and maintenance of the structure apparently began with issuance of a Natural Streambed and Land Preservation Act (NSLPA “310”) permit to DNRC lessees and local private property owners in 2005 and an annual plan of operations in 2007 (Missoula CD records). As part of the technical review team for these permits, agency personnel expressed concern over the structure’s legality, its biological impact (including upstream fish passage), and the precedent of formally acknowledging construction and maintenance of infrastructure on public waterways and property without legal water rights or a formal environmental assessment.

Legality: As specified in the EA, the structure occurs, and has been maintained in the past, on public property without permission from the designated public land manager (DNRC), without legal water rights (Montana Water Court decision on Case 76F-22), without current local (NSLPA 310 Permit), state (DNRC Land Use License), or federal (US Army Corps of Engineers 404 Permit; Endangered Species Act [ESA] Consultation) permits/ authorizations.

Although temporarily authorized by the Missoula CD in 2005 and 2007, the 310 permit allowing construction and maintenance of the dam was subsequently cancelled by Missoula CD in 2013 based on a lack of underlying water right and lack of support from the responsible land management agency (DNRC).

Biological impacts: The primary biological concern involves upstream fish passage (see more detailed response in Section II, below). More specifically, concern for the ability of all sizes of native and migratory sport fish species to move over/past the structure when it has been reconstructed. Peak periods of movement are September-November and March-June when water temperatures are suitable for coldwater species and when these species instinctively move to reach-referred spawning, overwintering, or foraging areas. Fish movement in mainstem river sections of the Blackfoot and Clearwater Rivers is extensive (e.g., Swanberg 1997; Schmetterling 2003; Pierce et al. 2008; Benson 2009; Pierce et al. 2012b; Knotek et al. 2017). Accordingly, public agencies and private partners have spent millions of dollars over the past two decades to address and mitigate these impacts at sites throughout the basin.

Many commenters suggested that upstream fish passage could be accommodated within the structure (i.e., fish ladders, etc.). While the effectiveness of artificial fish passage facilities is incomplete and varies greatly among fish species and fish size-classes, the main obstacle to pursuing this suggestion is that since continued maintenance of the dam is illegal, construction of any fish passage structures would also be illegal.

Comment D: *The weir appears to be a historic structure. Has anyone contacted SHPO?*

Agency Response D: The Montana State Historic Preservation Office (SHPO) concluded that the dam is not eligible for the National Register of Historic Places (see SHPO letter in Appendix C, page C-6). Since the Elbow Lake outlet dam is annually modified by natural flow events, and it has routinely and illegally been reconstructed and maintained, this suggests that it is not a significant historic structure with respect to SHPO protections and standards.

Comment E: *Without the dam, there will be nothing but a creek left.*

Agency Response E: Historic photos (1938 and 1955 DNRC imagery records), bathymetry, and on-site observations of the “lake” morphology with weir height at various levels exhibit that the wide, lake-like environment persists without the weir in place. The weir simply accentuates the historic lentic features associated with this reach.

Comments:

F. *Have there been efforts to seek compliance or reach a compromise.*

G. *It appears that the structure was permitted previously (e.g., in 2007).*

Agency Response F, G: Yes, there have been efforts to seek compliance or reach a compromise. As mentioned above, in 2005, 2007, and subsequent years, local residents and lessees asserted that the construction and maintenance of the dam were supported by a legal water right. The Missoula CD initially issued 310-permits in 2005 and 2007 largely based on this assertion. Although FWP disagreed with the decision and water right claim, agency personnel assisted in developing appropriate partial mitigation stipulations associated with the 310-permits (Missoula CD file records). These included construction and maintenance of low-tech fish passage channels or ladders at both ends of the structure, maximum dam-height specifications,

and required partial demolition each fall. Many of these stipulations were not implemented consistently or were not followed as per specifications (Missoula CD file records, site photos).

In 2013, a Montana Water Court Masters Report was filed regarding Case 76F-22. This report indicated that claimed water rights associated with Elbow Lake Dam were invalid, and this report was subsequently adopted by Chief Water Judge C. Bruce Loble in February 2013. The Missoula CD subsequently cancelled the annual maintenance permit at the request of DNRC. Further permit applications to reconstruct the dam were denied by the Missoula CD and were not supported by the landowner (DNRC). Other applicable permits, environmental reviews, and authorizations associated with dam construction and maintenance have been lacking, and none have been obtained since the 2013 Water Court decision.

The deferred action outlined in this decision notice is another attempt at a compromise, wherein DNRC and FWP prohibit continued maintenance of the structure but will delay complete removal of the substructure indefinitely as long as maintenance of the cobble and rock overlay ceases and boater and fish passage are not further compromised. That will allow the height of the lake to remain somewhat higher than with complete removal and will largely mitigate the identified resource impacts.

Comments:

H. Why the effort to address Elbow Lake Dam when this dam no different than the ones at outlets of Salmon and Blanchard Lakes or other locations in the Clearwater?

I. If this dam must be removed, shouldn't every dam in the watershed?

Agency Response H, I: Artificial structures have historically been constructed at the outlets of Salmon Lake and Blanchard Lake, as well as the outlets of Placid Lake and Lake Inez, and other locations on the mainstem Clearwater River (e.g., Emily-A Dam between lakes Seeley and Inez).

Although the biological, social, and legal situation at each of these locations is different, FWP and DNRC have addressed all of them on a case by-case basis. However, the underlying and overarching guidance for the Clearwater stream, river and lake system has been consistent: *promote natural, open river systems wherever possible, respect legal water rights, and ensure compliance with Montana state law and other legal requirements.*

The following provides a brief description of the status and context at various other sites in the Clearwater and Blackfoot basins where dams exist or did exist prior to agency facilitated removal:

Blanchard Lake Outlet Dam: Privately maintained irrigation diversion dam with legal water rights and active permits. Irrigators are actively working with FWP, Missoula CD, and private conservation organizations to mitigate impacts through legal permitting processes and potentially eliminate dam if point of diversion is relocated.

Salmon Lake Outlet Dam: A historic dam (likely wood-plank splash dam) was originally constructed at this location but has not been maintained and currently has no significant impact on water conveyance, public access or aquatic organism passage.

Placid Lake Outlet Dam: Actively maintained private structure with legal water rights and routine permitted maintenance by the Placid Lake Homeowners Association (HOA). FWP and DNRC are currently working with the HOA to modify the structure to provide stability and ensure that illegally introduced species such as northern pike do not ascend into the lake.

Lake Inez Outlet Weir: Actively maintained private structure with legal water rights and routine permitted maintenance by the Lake Inez HOA. Cooperative projects between lake associations and FWP have resulted in the installation of a fish ladder and fish passage ramp, active coordination on maintenance, and voluntary water-user efforts to enhance fish passage.

“Emily-A” Dam: Large check dam on mainstem Clearwater River upstream of Seeley Lake that was removed (with site restoration) by FWP in 2009 in cooperation with private landowner.

Bonner Mill Check Dam and Milltown Dam: Both major dams near the mouth of the Blackfoot River were removed within the past 15 years. Restoration of upstream fish passage was a significant objective and biological/social driver on these projects.

Comment J. *Photos in EA do not depict true (current) status of the structure.*

Agency Response J: This is correct. The photos included in the EA depict the typical full-height structure and construction process that has occurred numerous times over recent decades (Missoula CD files). The current (2019-2020) status of the structure represents the base elevation and morphology typical of post-runoff conditions. In other words, the base structure was not maintained or reconstructed after the recent spring runoff event.

Comment K: *A 310-permit does not require water rights*

Agency Response: That is correct; not all projects requiring a 310 permit also require water rights. Construction and maintenance of a man-made impoundment for a reservoir does require a water right from the State Water Rights Bureau.

III. Impacts to Fisheries

Comments:

- A.** *What specifically are fisheries and fish passage issues associated with Elbow Lake Dam?*
- B.** *Referenced fisheries concerns in the EA appear invalid, overstated and unsubstantiated.*
- C.** *Have there been any fisheries studies/surveys regarding fish in that section?*

Agency Response A, B, C: The Elbow Lake Dam is an artificial check structure on the lower mainstem Clearwater River between Salmon Lake and the confluence of the Clearwater and Blackfoot rivers. The lower Clearwater River is the connective corridor for fish and wildlife that links habitat in the Blackfoot River (and associated tributaries) with the upper Clearwater Basin, consisting of a network of interconnected lakes, river sections and cold-water tributary streams.

Trout and other fish species naturally move among various lakes, river reaches and tributaries as they make seasonal movements and complete their life cycles. Some of these movements are small scale (e.g., sculpin movements within a tributary stream), while others are large scale (e.g., trout from mainstem Blackfoot tributaries migrating up the Clearwater River to inhabit lakes). Fish movements occur sporadically and are species-specific, often triggered by appropriate changes in stream flow, stream temperature, day length, etc.

Numerous dams were historically installed on mainstem and tributary portions of the Clearwater and Blackfoot rivers, with little recognition of unintended impacts to fish and wildlife populations. One of the primary impacts is interruption of natural fish migrations and movements. These impacts have been well documented throughout the Clearwater and Blackfoot system (Swanberg 1997; Schmetterling 2003; Pierce et al. 2008; Benson 2009; Pierce et al. 2012b; Knotek et al. 2017) and correcting these issues has been a centerpiece of one of the most successful and widely recognized aquatic restoration programs in the United States (Pierce et al 2019). Section II (Agency Response H and I, above) includes a partial list of projects and efforts to address fish passage issues at dams in the Blackfoot-Clearwater Basin.

In the case of Elbow Lake Dam, impacts to fish moving downstream are likely negligible, while upstream movements for some size classes and species of fish are compromised when the re-built structure is in place. Fish passage issues specifically relate to upstream passage over the

structure when it has been reconstructed to an elevated height and does not have “swim through” capability for multiple sizes and species of fish. Fish movement through the river/lake system is most prevalent from early fall through spring due to the timing of spawning migrations and seasonal movements associated with overwintering or foraging, timing of runoff and normal flow events, and the period when water temperatures are suitable for cold-water species.

Attempted fish passage mitigation efforts on the Elbow Lake dam have been inconsistent and largely ineffective based on accepted standards for fish passage in North America. To suggest that a channel-spanning dam on a mainstem river corridor results in no significant impacts to upstream fish movement is contrary to the body of scientific literature that addresses this issue in the United States and Canada. The burden of proof to suggest otherwise is the responsibility of the proponents of dam construction.

Fisheries monitoring, research, and evaluation in the Clearwater and Blackfoot watersheds have been extensive over the past 25 years. In fact, this system is the most intensely studied region in Western Montana, with specific emphasis on fish movement and fish passage (see attached partial list of relevant references).

Comment D: *Why is the dam referred to as a partial fish passage barrier?*

Agency Response D: As described above, the dam is typically only a barrier to the upstream movement of certain sizes and species of fish. Impacts are most severe for small and moderate size classes and species that cannot jump over the structure when the dam has been reconstructed above the base elevation. Due to the large number of fish species with different jumping ability, range of size classes, variability in river discharge (flow) and dam height, and the complexity of fish migration timing and movements, the severity of fish passage impacts are quite variable depending on dam characteristics, flow level, and size and species of fish.

Comment E: *Why not just install a fish ladder on the dam when built?*

Agency Response E: Fish ladders are partially effective, less suitable mitigation measures that reduce the impact of dams on upstream fish movement. Effectiveness is typically low because constant adjustments are needed as flow conditions change and because fish passage specifications vary among species and sizes of fish. Construction of a consistently effective fish ladder or other fish passage facility on a dam that is reconstructed annually out of cobble with no design standards is unlikely. Fish ladders are only partially effective when they are engineered, designed and maintained by professionals. Regardless, since continued construction or modification of the dam is illegal, pursuing permanent solutions to fish passage issues is illogical in this case.

Comment F: *Haven't fish ladders been in place for years?*

Agency Response F: As stated in Agency Response F and G (Section II, above), effective fish ladders were a requirement of the 310 temporary permit plan of operations (2007) for the Elbow Lake Dam structure, but they were largely ineffective because specifications were not followed or were not implemented consistently. A ladder was used previously because it was (erroneously) believed that the dam was legal, and a presence of a ladder may have provided more fish passage than without one. It is important to emphasize that even well-constructed fish ladders provide only some--and often only a small--part of the fish passage that large, natural rivers like the Clearwater provide.

Comment G: *Does the downstream dam at Potter Diversion constitute a fish passage barrier?*

Agency Response G: The Potter diversion dam is another location of concern regarding upstream fish passage on the mainstem Clearwater River near Clearwater Junction. This is a permitted structure that is *associated with a valid irrigation water right*. Many of the same

upstream fish passage issues have been identified at this site but are being actively mitigated and addressed by water users through physical modifications at the site, maintenance parameters, and changes in operations during peak water diversion. Water users have been actively engaged in mitigation and fish passage improvement efforts associated with short- and long-term operations.

Despite ongoing efforts to minimize impacts of the infrastructure on upstream fish passage and fish entrainment in the irrigation ditch, cooperating parties recognize that the preferred solution for natural resource conservation is elimination of the dam, diversion structure and associated irrigation canal, with relocation of the point of diversion to a pumping station downstream.

Comment H: *Why does dialogue center around bull trout?*

Agency Response H: Dialogue and assessment of impacts to fish in the EA do not center around bull trout. Bull trout are mentioned only once in the EA (Section VI.A, Comments on item A.8; page 7). In this section, bull trout are listed along with nine other native and sport fish species present in the Clearwater River system that are impacted by the dam.

Comment I: *Are bull trout really present and why all the interest?*

Agency Response I: Bull trout are an important native fish species that occur in the Blackfoot and Clearwater basins. Although numerous fish species are present and impacted by Elbow Lake Dam (EA Section VI.A, Comments on item A.8; page 7), impacts to bull trout are typically and preferentially referenced in discussions involving local fisheries for a number of reasons:

First, bull trout are long-range migrants that have a complex and environmentally sensitive life cycle. They are considered a “keystone species” in the Clearwater and Blackfoot Basins because of this complexity, with the idea that if bull trout populations are viable and functioning properly, the needs of many other fish and aquatic species are also being met. Migratory bull trout require cold, clean water with high-quality tributary spawning and rearing habitats that are physically connected to mainstem rivers and lakes. This connectivity is essential in terms of migrations to spawn, as well as seasonal movements associated with reaching preferred feeding, overwintering, and thermally suitable (coldwater refugia) habitats. Documented movements of bull trout from Monture Creek and the North Fork Blackfoot River through the lower Clearwater River to Salmon Lake are a good example that was recently documented (Knotek et al 2017).

Second, much of the available published research and scientific studies regarding fish movement in the basin involve bull trout. Because they are a large, federally listed species that moves great distances and is very sensitive to environmental problems, many of the past and ongoing research and monitoring projects focus on them (e.g., Swanberg 1997; Benson 2009; Knotek et al 2017). However, numerous other projects, studies and monitoring efforts focus on co-occurring fish species in the basin, including westslope cutthroat trout, mountain whitefish, rainbow trout, and largescale suckers (Schmetterling 2001; Schmetterling and McFee 2006; Pierce et al 2007, 2008, 2009, 2012a, 2014).

Finally, bull trout are an important native fish that provide popular recreational fisheries where still abundant. They are also a Federally listed⁵ Species under the Endangered Species Act and a Montana Species of Concern⁶. They are a high-profile megafauna that receive a high amount of attention and seem to stir strong emotions from the public (both positive and negative). Again

⁵ Bull trout is a species listed as Threatened.

⁶ A Montana Species of Concern (SOC) is a native animal (or plant) breeding in Montana and considered to be “at risk” due to declining population trends, threats to its habitats, and/or restricted distribution. Montana's SOC listing highlights species in decline and encourages conservation efforts to reverse population declines and prevent the need for future listing as Threatened or Endangered Species under the Federal Endangered Species Act. Further information available at <http://fwp.mt.gov/fishAndWildlife/species/speciesOfConcern/> (accessed 20 May 2020).

though, the primary problem with the Elbow Lake dam stems from its lack of attendant water right. Impacts to fisheries, while very important, are secondary to the legal issues.

Comment J. *Aren't water temps in Elbow Lake and Clearwater River too high for bull trout?*

Agency Response J: Water temperatures in the Clearwater River and Elbow Lake are typically too warm for bull trout (and many other salmonids) during summer months--particularly July and August. Water temperatures that exceed 60 degrees F are generally considered unsuitable for bull trout. The mainstem Clearwater River is primarily a movement corridor for numerous fish species, and peak periods of movement for coldwater species (i.e., trout and whitefish) occur in fall and spring when temperatures are suitable. Native and wild salmonid species naturally move and migrate during these coldwater periods in the Clearwater and Blackfoot systems, just as they do in numerous other systems in the northwestern United States and Canada.

Comments:

K. *Elbow Lake Dam influences the abundance and distribution of illegally introduced fish species.*

L: *The impoundment provides great pike fishery that would be decimated.*

Agency Response K, L: FWP agrees that further impoundment of a river section that is already, deeper, wider and more "lake-like" relative to other Clearwater River sections enhances habitat and suitability for northern pike, smallmouth bass, yellow perch and other illegally introduced warmwater fish populations.

In the case of northern pike, fisheries managers consider potential habitat changes (impoundment) an added justification for dam height reduction, as northern pike suppression has been the management emphasis in the Clearwater system since its illegal introduction in the 1990s. Northern pike (and other illegally introduced warmwater species in the river system) represent a significant threat for native fish and coldwater sportfish populations.

IV. Removal of Dam Will Cause More Problems Than It Alleviates

Comment A. *Removal of dam will exacerbate invasive weed problems, i.e., fragrant water lily expansion.*

Agency Response A: Terrestrial and aquatic invasive plants are a major issue in western Montana. One of the most common and expanding infestations in the Clearwater watershed involves the American (fragrant) water lily.

This exotic species was first introduced into either Seeley or Placid Lake and has expanded rapidly and become established throughout the lake and river system, including the lower Clearwater River and Elbow "Lake'." Although exotic, it is not on the invasive plant species list in Montana.

Treatment and control of water lilies will likely be an emphasis in the basin going forward for landowners and resource management agencies, but the proposed project will likely not have a major influence on these management efforts or the distribution of this or other invasive plant species.

Comment B. *Removing dam will elevate summer water temperatures.*

Agency Response B: Removal or lowering of the dam is unlikely to significantly affect summer water temperatures in Elbow "Lake" or the Clearwater River reaches upstream and downstream of the project reach. The lower Clearwater River is inherently warm during summer months because discharge in this reach is primarily comprised of epilimnetic release from Salmon Lake.

In other words, the lower Clearwater River is primarily fed by warm surface water flowing out of Salmon Lake.

It is unlikely that raising or lowering the water level in one reach of this system (via dam modification) would significantly alter the water temperature regime, and if it did, most aquatic species in the reach at that time would be unaffected as they are largely adapted to warmwater environments (e.g., northern pike, yellow perch, etc.). As described previously, coldwater species are only abundant when migrating through this river reach during cold and cool water periods--i.e., fall through spring.

Comment C: *Removing the dam will create more disturbance than leaving it.*

Agency Response C: “Leaving” the dam implies that no further work or disturbance would occur on the weir, and the agencies agree that this would be the situation with least disturbance. However, this scenario also relies on and assumes no further disturbance or maintenance at the structure in the future, which is why the state’s decision is to defer action and monitor the situation. If people comply with the directive to stop active maintenance and annual rebuilding of the dam, DNRC and FWP will not pursue complete removal.

Comment D. *Removal of the dam would result in significant Impacts to wetlands, including draining.*

Agency Response D: As part of FWP’s assessment of the impact of the Elbow Lake dam to overall wetland acreage in Elbow Lake, FWP biologists and managers used GIS software to analyze historical aerial imagery from 1955 prior to the dam being built. This imagery was georeferenced and overlaid on more recent aerial imagery, providing a qualitative assessment of the reduction in wetland acreage that could be expected with the removal of the Elbow Lake dam. If the dam were to be completely removed, it is estimated that the surface area of Elbow Lake would shrink by about 14% (from 50 acres to 43 acres). However, under the agency decision to simply let nature take its course and let the dam degrade naturally, the total loss of surface areas would be expected to be somewhat less. It is also anticipated that the effects to flooded areas would diminish, moving upstream from the site of the dam. Relative to the overall availability of still-water wetland habitats in the Clearwater Basin, the reduction around Elbow Lake would be inconsequential to fish and wildlife.

Besides recently introduced species, the plants and animals that inhabit the area in and around Elbow Lake were using the habitats there for thousands of years before the Elbow Lake dam was built. We understand that people often do not want to see changes that have been the same way for many years, but wetland and riparian habitats are the most dynamic habitats in Montana, and they will recover relatively quickly. In fact, these types of habitats thrive on periodic disturbance, and allowing the height of the dam to gradually subside will restore a more natural flood cycle to the system that will benefit the native plants and animals that evolved with such a cycle in place.

Wetlands on the fringe of Elbow Lake have different characteristics based on many environmental factors, one of the main factors being water depth. As you move from the shallows into the depths of the lake, the flora and fauna change as less sunlight reaches the lake floor. However, at no point along that shallow-to-deep spectrum is there a perfect point where the wetlands are the best for wildlife. Each part of the lake benefits a different set of species and having that variety of habitats is what creates biodiversity. Those “layers” of habitat types will remain at Elbow Lake with the degrading of the dam; they will just shift in some areas.

The potential reduction in inundated wetland acreage around Elbow Lake is not a reduction in habitat overall. The exposed nutrient-rich sediment will be colonized by plants and the animals will follow. The freshly exposed shoreline represents an opportunity to create more of a habitat type that is needed around Elbow Lake--shoreline grassy and shrubby habitats. Native plants like sedges, willows, red-osier dogwood, and alders can be encouraged to grow by controlling weeds, planting native shrubs where appropriate, and maintaining as much of a “wild edge” around the

lake as possible. A shrubby shoreline can provide nesting and foraging sites for migratory birds, offer shelter for the shy ducks and shorebirds, provide food and building materials for beavers and muskrats, and stabilize banks. In areas where shrubs will not grow, the sediment will likely be colonized by grasses that will remain green late into summer, offering nutritious forage for grazing animals and boosting invertebrate production along shore.

However, FWP and DNRC are not debating the pros and cons of removing the dam. The dam cannot continue to be legally maintained. This response is to help reassure people that allowing the dam to naturally degrade and the lake depth to lower by a maximum 2.5 to 3 feet will have an overall neutral effect on the area's wetland and riparian habitats. FWP biologists would be happy to work with local land managers to enhance shoreline habitat around Elbow Lake, whether it was affected by this decision or not.

In the big picture, FWP and DNRC managers considered the dam's removal and concluded that the negative effects of removing the dam are well-balanced with the positive effects. That decision, combined with the legal issues surrounding the dam, supports the agency decision.

Comment E: *Removal of the dam will result in negative impacts to aquatic and wetland-based wildlife (beaver, frogs, snakes, turtles, cranes, nesting birds, loons, grebes, goldeneye, mergansers, trumpeter swans, bald and golden eagles, osprey, otters, deer, and more.)*

Agency Response E: Wetland-based wildlife will be minimally affected by allowing Elbow Lake dam to subside and not be rebuilt. The reduction in wetland acreage will be small relative to the overall acreage of wetlands in and around Elbow Lake. The pre-dam acreage of the lake and wetlands ranged from 46 to 49 acres, and with the dam in place, they currently range from 43 to 50 acres in size. It is estimated that up to 7 acres out of 50 may de-water with the dam's removal, a 14 percent decrease. The removal of the dam and subsequent reduction in periphery wetlands will not reduce high-quality habitat overall. It is true that some plants and animals will lose habitat, but a different set of plants and animals will then gain habitat. For example, some wetlands habitats will become too shallow for large numbers of northern pike, but those shallows will now provide refuge for frogs, snakes, ducklings, and smaller fish from the predatory pike. The lake may see a reduction in wetland acreage, but it will likely see a gain in an even rarer wetland type--shoreline grassy and shrubby habitats. The amount and quality of wildlife habitat will depend on what happens to newly exposed shoreline as the dam degrades. Land managers in the area can help enhance the new shoreline habitat by controlling weeds, encouraging native vegetation, and planting native vegetation in appropriate areas. FWP biologists are ready to work with land managers to help guide the shoreline habitat to a path that ends with productive wildlife habitat.

Beaver: The beavers may have to move their lodge somewhere else, but there will still be plenty of habitat available, and beavers are adept at building new lodges when needed.

Frogs: Total reduction in wetland acreage is expected to be minimal. Frogs are likely more limited by the amount of vegetated shoreline habitat where they do much of their foraging and breeding.

Snakes: Wild shoreline habitat will be highly beneficial to snakes by providing cover near feeding areas. Shallower wetlands may invite more small fish that provide prey for some snake species.

Turtles: Total reduction in wetland acreage is expected to be minimal. Wild shoreline habitat and freshly exposed sediment would be beneficial to turtles for nesting habitat.

Cranes: Wild shoreline habitat would provide foraging areas and hiding cover for sandhill cranes and their colts. Lost inundated-wetland habitat is unlikely to impact sandhill cranes.

Nesting birds: Some nesting birds will lose habitat; some will gain habitat. A wild shoreline would provide nesting sites for songbirds and may encourage more water birds to nest in the area.

Loons: One of the determinates of loon nesting success is human disturbance. Loons most often nest in the most remote backwaters and bays of lakes, where human disturbance is minimal. This aspect of loon reproduction is so important, FWP hires an intern to patrol the area lakes and educate people about loon nesting and humans. No loon nesting or long-term occupancy has ever been documented on Elbow Lake.

Grebes: Grebes primarily feed in deeper open water, so their foraging areas would be minimally affected by dam removal. Many grebes anchor their nests to emergent vegetation out in the open, so shoreline cover provides greater security from human disturbance. Nesting habitat would be enhanced with a wild shoreline around backwater wetland habitats.

Goldeneye: Goldeneye primarily feed in deeper open water and drop-offs, so their foraging areas would be minimally affected by dam subsidence. These birds are cavity nesters, so no nesting habitat would be impacted by changes in lake level.

Mergansers: Mergansers primarily feed in deeper open water and shallower shelves, so their foraging areas would be minimally affected by dam removal. The merganser species that frequent Elbow Lake are also essentially cavity nesters, so their nesting habitat would be minimally impacted by changing lake levels.

Trumpeter swans: Similar to common loons, trumpeter swans are also sensitive to human disturbance, and prefer to forage and nest in areas where there is good shoreline vegetative cover. Trumpeter swans are not known to nest in Elbow Lake, and the small reduction in wetland acreage would minimally affect their foraging areas.

Bald eagles: See Agency Response G (below) regarding bald eagles.

Golden eagles: There are very few resources in and around Elbow Lake that would be used by golden eagles. Golden eagles tend to inhabit open areas and nest in large trees or on cliffs overlooking these areas. They hunt and scavenge almost entirely terrestrial prey, so Elbow Lake offers few resources for this species. It is easy to mistake immature bald eagles for golden eagles, so there may be a perception of golden eagles using Elbow Lake frequently, but it is highly unlikely.

Osprey: The impacts to osprey would be similar to those outlined for bald eagles below. Osprey tend to hunt in open water without much emergent plant growth, so the impacts to wetlands from changing lake levels will minimally impact foraging areas.

Otters: Some fringe wetlands on Elbow Lake may become too shallow or thick with emergent vegetation for otters to hunt, but that impact is expected to be minimal. Otters are highly adaptable and will still be able to find abundant resources in Elbow Lake.

Deer: Deer will likely benefit from the lowering of Elbow Lake dam as newly exposed shoreline is colonized by green vegetation that remains green even in late summer. Inundated wetland habitats do not offer important resources for deer.

Comment F: *The project will result in loss of beaver dams and beaver activity.*

Agency Response F: No beaver dams will be lost with the lowering of Elbow Lake dam. The beavers in Elbow Lake likely would not need to rely on dams for over-winter survival, and therefore would rarely build dams because the lake provides adequate water depth to cover lodge entrances and prevent freeze-up of overwinter food caches. It is possible that a lowering in the lake level may cause abandonment of some lodges, but beavers are highly adaptable and

capable of building new lodges along shore within a few weeks. Abandoned lodges would be important habitat for muskrats and otters, and the beavers themselves would likely still use abandoned lodges during high water periods.

Comment G: *Changes to the dam will negatively impact bald eagles.*

Agency Response G: The bald eagle population in Montana is near its highest level since they were listed as endangered under the federal Endangered Species Act in 1976. The species has recovered to the point of being fully delisted, but bald eagles are still protected under the Bald and Golden Eagle Protection Act. There are approximately 15 different nest records within 10 air-miles of Elbow Lake.

Bald eagles that use the habitats in and around Elbow Lake are unlikely to be disrupted by removal of the Elbow Lake dam. Elbow Lake will remain a mostly lentic system supporting the same fish species as when the dam was maintained. Bald eagles may lose some shallower water areas to hunt fish if the lake level is lowered, but it is unlikely those lost hunting grounds will be expansive enough to cause measurable harm to bald eagles. In Montana, bald eagle pairs have shown an ability to occupy diverse habitats, feed on a wide range of species, and successfully nest and breed even with major disturbances (e.g., human activity, frequent floods). The Clearwater Basin has abundant, high-quality bald eagle habitat and it is highly unlikely the level of impact from the Elbow Lake dam would cause any measurable impact on that population.

Comment H: *Changes to the dam will negatively impact grizzly bears.*

Agency Response H: Lowering Elbow Lake dam will not impact grizzly bear populations. Resources important to grizzly bears are limited along the Elbow Lake shoreline.

Comment I: *Dam removal will reduce/impact prime avian habitat.*

Agency Response I: The characteristics of wetland habitats that are important to birds fluctuate based on water depth, and no one water depth provides resources that are good for all avian species generally. Different forms of wetlands will offer a different set of resources that attract a different set of plant and animal species. Some shallower periphery wetlands on Elbow Lake will be exposed or become shallower with the removal of the Elbow Lake dam. But those newly exposed areas will be colonized by plants and become habitat themselves as a normal part of succession. Additionally, in areas of the lake where it is currently too deep for sunlight to reach the lakebed, the water will become shallow enough for new emergent plant growth, and the loss of emergent vegetation near shore will be, in a way, offset by this new growth. Overall, one habitat type does not win out over the other. The perturbation caused by the natural degradation of the dam is simply not large enough to significantly impact habitat in a general sense for the 100+ bird species that use the habitat resources in and around Elbow Lake.

Comment J: *A 4-foot drop in water elevation would have significant impacts on wildlife.*

Agency Response J: The total drop in water level elevation depends on how high the structure has been built (currently 2.5-3 feet, but typically 4 feet or higher). There will not be an overall reduction in wildlife habitat. Newly exposed shoreline will become a new type of wildlife habitat as plants colonize exposed sediment and animals move in to take advantage. A variety of habitats in an area is the most important factor for biodiversity, and the gradual degradation of the dam is more likely to increase habitat diversity than to reduce it.

V. Impacts to Lessees and Recreationists

Comment A: *Property value and use of leases will be adversely affected.*

Agency Response A: Property values in the Elbow Lake area of the Clearwater River may be affected by the probable degradation of the Elbow Lake rock dam. Factors such as the finite availability of waterfront properties in the Seeley-Clearwater River area influence property values as well. Given that property values are not based solely on factors such as dam presence and water levels, it is impossible to quantify the extent to which property values may be affected nor can one state that adverse effects are guaranteed.

Elbow Lake of the Clearwater River is not leased property. DNRC leases lands adjacent to Elbow Lake to private citizens. Use of the leases in the Elbow Lake area of the Clearwater River may be affected by changes to the Elbow Lake dam. Specific to the leased lots, dock placements may shift. During the late summer use *off* the leased lots in the Elbow Lake area of the Clearwater River is likely to be affected by natural degradation or removal of the dam because recreational use and watercraft type is expected to change due to changes in water depths associated with low late-summer river flows.

The Land Use License granted by DNRC to Camp Utmost is not a lease but rather a temporary non-exclusive authorization. This authorization does not grant rights similar or equivalent to leased property.

Comment B: *Removal of dam will reduce DNRC lease income.*

Agency Response B: Allowing the Elbow Lake rock dam to naturally degrade may or may not reduce DNRC lease income. Lease rates are based upon Montana Department of Revenue values. These valuations consider several factors including waterfrontage but are not fine enough in scale to necessarily reflect changes specific to one cabin site neighborhood.

Comment C: *Removing the dam would have devastating impacts to swimmers at Camp Utmost license site.*

Agency Response C: Swimmers at Camp Utmost may or may not be affected by the allowing the Elbow Lake rock dam to continue to degrade. At 2.5 to 3 feet in height, the dam is currently 1 to 1.5 feet below the previous height of 4 feet at the dam location. This likely translates to a similar 1- to 1.5-foot decrease in water depth at the swimming site immediately upstream from the dam. If the dam is permitted to naturally degrade it is anticipated that initially swimming would still be possible at the site throughout the summer. As the dam degrades further or if the dam is removed due to future unauthorized rebuilding, swimming is anticipated to be difficult from early August through mid-September due to naturally lowering water levels associated with decreased summertime river flows.

While we acknowledge that lowered water levels can affect use of the license site, recreational activities cannot dictate the need to illegally impound water rights nor maintain an unauthorized structure.

Comment D: *Aesthetics may be impacted upstream after removal.*

Agency Response D: Aesthetic impacts upstream are unlikely to be negatively impacted by the proposed action. As the river and lake level naturally fluctuates annually and over longer time periods, lake and shoreline vegetation is also constantly in flux. Riverine systems and associated wetland and riparian areas are dynamic and allowing the area to return to a more natural state will have a neutral or positive impact on aesthetics of the project area.

Comment E: *Removing the dam will reduce navigability within Elbow Lake.*

Agency Response E: Eventual degradation of the rock dam is likely to reduce water levels. This may affect the ability to use some types of watercraft such as motorboats and drift boats depending on the season of use and water levels. An analysis of 5 historic aerial photographs spanning the time period between 1939 and the present illustrates that the dam in its present location originated sometime between 1955 and 1964 (DNRC imagery records). The area of open water has varied from 43 to 50 acres in size over this period. The area of open water in the 2 photos prior to the dam varied in size from 46 to 49 acres. In the three photos post-dam the area of open water varied from 43 to 50 acres. The most evident change in the usable portions of the lake (as illustrated in the photos) is the large increase in lily pads and other wetland vegetation in shallow areas of the lake which were previously open water.

Comment F: *How do we know water will only drop 4 feet in depth?*

Agency Response: Based upon historic photographs mentioned above (Agency Response E), it would not appear that allowing the dam to degrade would cause a substantial decrease in acreage of the lake and a corresponding major reduction in depth. The current height of the dam is already lower than the previous full-constructed height. The following URL link provides a graphic comparison tool of the lake footprint on a 1955 (pre-dam) photo with a current photo (post-dam) photo. The icons in the upper left corner of the color photo allow you to pick a 1938, 1955 or 1964 photo for comparison to the current (color) photo and turn on the swipe (slider) function to move the boundary between photos. Note the 1938 photo is too far south to provide much evidence of lake size above the dam. It does however illustrate that at the time this photo was taken there was not a dam at its current location.

<https://mtdnrc.maps.arcgis.com/apps/webappviewer/index.html?id=237d6a9029cf4a77b2bccdfdc96bf64>

The area of most change associated with dam removal would be immediately above the dam and would taper off upstream.

Comment G: *Why weren't we notified that Elbow Lake Weir was going to be removed when we bought our cabin and signed our lease two years ago?*

Agency Response G: The dam is an unauthorized structure located on DNRC land, off of the DNRC residential lease sites. In 2013 the lessees were instructed to allow the dam to naturally degrade. Following that, the dam has been reconstructed without notification or permission and was subsequently notched by DNRC upon learning of continued illegal maintenance. There was no necessity for DNRC to notify new or current lessees of an intent to remove an unauthorized structure that is not within any leased area.

Comment H: *Some leaseholders and owners of adjacent private lands have stated to DNRC and FWP that they are willing to sit down and try to work out an agreement that would mitigate all the issues including water rights, permitting and other legal issues.*

Agency Response H: Although there may be a willingness on the part of some leaseholders and private landowners of adjacent lands to sit down and work out an agreement with affected parties, they do not own the state property and have not been authorized to manage the lake or to build and maintain the dam which is illegally impounding water. Please see agency responses in Section II (items F and G) for a summary of past efforts to work out an agreement with adjacent lessees and private landowners. The draft EA in Section VIII.4 (Alternative Considered, but not Analyzed in Detail) also contains a summary of issues associated with retaining the dam. The discussion of this alternative concludes: ". . . due to the complexity of the applications required, the high potential for adverse effect to existing water users, the lack of potential mitigation water available in the drainage, and the cost incurred to DNRC School Trust Lands, as well as the

liability of owning and maintaining a dam and reservoir on DNRC School Trust Lands, DNRC does not consider obtaining a water right for the existing non-permitted dam to be a viable option.”

VI. Water Rights and Other Legal Issues

Comments:

A. *If the DNRC or FWP had a problem with this permit they should have made that fact known before the permit was issued.*

B. *The DNRC owns the land and could have and should have helped their lease holders with water rights, this has been permitted before. Why is DNRC not sticking up for its lease holders?*

C: *It was the DNRC itself that abandoned that water right in 1995. Why?*

Agency Response to A, B, C: Applicable Water Rights Summary

The source of water, the Clearwater River, is located within the boundaries of the Upper Clark Fork River Basin. This basin was legislatively closed to all new appropriations of surface water in 1995, and as the law is codified, DNRC cannot accept or process any applications for surface water rights. The basin closure statute is found in Montana Code Annotated (MCA) § 85-2-335 and 85-2-336. The Upper Clark Basin closure statute does allow for DNRC to accept a Beneficial Water Use Application for the storage of surface water. Since the inception of the closure, DNRC has not received an application for storage within the basin.

Any successful application would require that statutory criteria be met, including physical availability, legal availability, adverse effect, possessory interest in the place of use, and adequate means of diversion. It is DNRC's position that the applicant would not be able to meet the statutory criteria and that, although an application may be submitted, it is highly unlikely to meet the criteria for issuance.

Water cannot be found to be legally available due to the existence of instream-flow water rights held in the public trust by FWP. These instream-flow water rights are commonly not met during the later summer months, resulting in the shutting off of junior water users in the basin when flows in the Blackfoot River fall below 700 cubic feet per second (cfs). The addition of a new water right in the basin would potentially increase the frequency and duration of calls made on junior users, resulting in adverse effect to these existing water rights.

The location of the reservoir created by the Elbow Lake dam impoundment is on DNRC School Trust Lands, and as such the applicant would have to be DNRC, as the existing cabin lease holders and private landowners do not have possessory interest in the location of the dam or flooded streambed. In addition, a hand-stacked rock dam would not meet the criteria of adequate means of diversion because the dam does not have a control structure, emergency-bypass spillway or other engineered features that would adequately allow for the release of stored water or safe operation of the dam.

The impoundment of water increases the surface area of Elbow Lake, and the increased evaporation from the impoundment would result in a consumptive use of water. This increased consumptive use would result in adverse effect to existing downstream water users, due to the loss of water in a system that is already over-appropriated with annual calls for water being made that require junior users to stop diverting water.

To successfully obtain a Beneficial Water Use Permit this evaporation would need to be replaced by retiring an existing water right and changing its purpose to mitigation.

We are not aware of DNRC ever having received a request to build the rock dam on state-owned property. Without a record of having granted an authorization for this use, DNRC was not

prompted of the need to secure a water right for this use. DNRC did secure rights for three domestic water rights associated with individual cabin site leases on behalf of lessees who had requested these water rights. In 2005 when the issue of impounded water rights came to light, DNRC made a late attempt to secure water rights for the reservoir by requesting an amendment to three domestic water rights that it had. This attempt was unsuccessful. The letter from FWP (Michael McLane, dated August 23, 2013) provides some insight (see Appendix C, pages C-2 to C-5).

DNRC could again file for a Beneficial Water Use Application, but that would likely be unsuccessful. An application would need to prove that water is physically available, legally available, will not cause adverse effect, have adequate means of diversion, and be a beneficial use. In a closed basin where call for water is made almost annually on the Blackfoot River and its tributaries, it would be difficult to show that water is legally available and that the impoundment would not result in adverse effect.

Comments:

C: *The impoundment at Elbow Lake predates the 1973 Montana Use act and therefore enjoys historic water rights.*

D: *There should be a way for the Elbow Lake Dam to be “grandfathered” in so that it does not have to be removed.*

E: *The “natural” state of rivers and streams is not always the most useful. Elbow Lake is a beautiful lake that is used by hundreds of recreationists every year.*

F: *The State itself has established Elbow Lake as a lake through the process of issuing leases, through the value placed on these leases (higher value for lake versus river property), and mapping that references Elbow Lake.*

Agency Response to C, D, E, F: Past water right law was incorporated into the 1972 Montana Constitution, which states “all existing rights to the use of any waters . . . are hereby recognized and confirmed” (Article IX.3(1)). An existing right is any water right that originated before July 1, 1973. In order to maintain a centralized record keeping system for these pre-1973 existing rights and facilitate the statewide adjudication of these rights, the 1979 State Legislature passed Senate Bill 76 establishing the claim filing procedures for documenting pre-1973 water rights. The first water right claim filing period started in 1979 and is codified in § 85-2-212, MCA. This statute states that “failure to file a claim as required by law will result in a conclusive presumption that the water right or claimed water right has been abandoned.” The principle here is that there is no grandfathering of pre-1973 water rights. If a claim was not filed for the pre-1973 use it is presumed to be abandoned. In addition to this first claim filing period, there were two other “late claim” filing periods, which ultimately gave the citizens of Montana three opportunities to file claims on pre-1973 water rights. Currently there is no legal mechanism to recognize a pre-1973 water right for which a claim was not filed. If a claim was not filed per law during one of the claim filing periods, an Application for a Beneficial Water Use Permit application must be submitted and granted by the State to obtain a water right.

There is no grandfathering in of water rights. The only potential option would be to file an Application for Beneficial Water Use Permit and meet the criteria for issuance. As stated in the EA and in the summary above, meeting the criteria of legal availability and adverse effect would be extremely difficult in a closed basin.

Comment G. *Many projects are undertaken every year on streams and rivers by entities that do not have water rights. All Montana water is owned by the State of Montana; therefore, the cabin owners had a legal right based upon a valid 310 permit and it should not have been discontinued by DNRC.*

Agency Response G: When a County Conservation District issues a 310 permit to conduct work in a stream, it includes language in the permit stating that all other required governmental permits must be obtained by the landowner receiving the permit. This language absolves the

conservation district of any liability from a landowner constructing a diversion or other structure requiring a water right when the landowner does not obtain a water right. It is the landowner's responsibility to obtain a water right for any structure built in a stream requiring a water right. The issuance of a 310 permit does not establish any right to put the water to beneficial use.

Comment H. *The Montana Water Court did not deny an "implied claim" specific to this dam as is stated in the letter dated Sept. 3, 2019 "Responses to Questions and Concerns regarding Elbow Lake Dam Removal" from DNRC and MFWP. The DNRC withdrew the "Implied Claim" that they had themselves filed on behalf of the Lease holders. The DNRC withdrew the "Implied Claim" probably due to several reasons but primarily due to the MFWP objection to that "Implied Claim", as well as the fact that a timely claim was never filed by the DNRC for this use and would likely be denied because of that oversight. Because of the withdrawal, the Montana Water Court had nothing to rule on. This is evident in that the stated ruling noted "76F-22" does not exist in the Montana Water Court case records. It doesn't exist because there was no ruling.*

The Montana Water Court did not rule that the dam must be removed. If the dam was causing downstream water rights problems, we most certainly would have heard about that and the Montana Water Court would most certainly had ordered the dam removed because the impounded water did not have a water right and was adversely affecting downstream water right holders. This has never happened in its very long history.

Agency Response H: DNRC had submitted an amendment to Statement of Claim in 2005 to change statement of claim numbers 76F 10857-00, 76F 10876-00 and 76F-10895-00 from claims for lawn and garden irrigation using pumps to a dam that stored water for recreation and lawn and garden irrigation. The scope of the amendment was such that it replaced every element that was originally claimed. Due to the scope of change, the DNRC Water Resource Division could not implement the amendment, but rather submitted this information to the Montana Water Court to see if a new implied claim could be created for the dam and storage of water for recreation while maintaining the original claim filings for lawn and garden irrigation. The Montana Water Court denied the request to create an implied claim for recreation in a memorandum from Water Master Dan T. Cole (dated March 23, 2006) because the appropriate criteria needed to create an implied claim were not found for any of the three original water right claim filings. The criteria for creating an implied claim is evidence in the original claim filing indicating more than one water right was being claimed on one form. In this instance the original claim filings listed one purpose, lawn and garden irrigation using a pump and one priority date per claim. None of the original claim filings listed a dam as a point of diversion, recreation for a purpose or multiple priority dates and/or purposes indicating more than one water right was being claimed.

Despite the denial of the implied claim request by the Water Court, an issue remark was placed on these three claims to address the issue in a future water court case, with the issue remark stating that an amendment was received that substantially changed the originally claimed elements and that the amendment was not implemented. This issue remark resulted in an objection from the Montana Department of Fish, Wildlife and Parks to the claims and Water Court Case number 76F-22 was established to resolve the issue remark and objection. The two parties to the case, DNRC and FWP resolved the issue remark and objection by DNRC agreeing to formally withdraw the claim amendment, and the Water Court decreed the claims as originally filed, for lawn and garden irrigation.

The result of the settlement of this case was the Water Court decreeing three claims for pumps used for lawn and garden irrigation and no claim for a dam and recreation impoundment. The Water Court did not rule on the legality of the dam because the withdrawal of the claim amendment by DNRC resulted in no claim for a dam, and no water right for the reservoir for the Water Court to review and decree. Without a water right for the dam and impoundment, it became an illegal use of water since a beneficial use of water in Montana with a diversion structure requires a water right. The Montana Water Court's directive is to decree water uses that occurred prior to July 1, 1973. If the Montana Water Court rules that a water right did not exist prior to July 1, 1973, or in this instance the claimant and objector agree that a water right did not

exist prior to July 1, 1973, the Water Court does not issue a ruling requiring the existing point of diversion be removed. Once the Water Court rules that there is no legal pre-July 1, 1973 water right, the water use without a water right becomes an enforcement issue for DNRC. DNRC, upon receiving a valid Water Users Complaint will investigate the alleged violation, and if a violation is found DNRC will work with the violator on compliance. Compliance can take the form of removal of the structure resulting in an illegal use of water or obtaining a provisional permit (post July 1, 1973 water right). At this point in time the DNRC Water Resource Division office has not received a water use complaint and has not pursued enforcement of the Montana Water Use Act. As discussed in other sections of the environmental analysis, DNRC State Lands Division is not choosing to pursue a provisional permit due to difficulty in obtaining a water right in a closed basin, and due to environmental issues including barriers to salmonid passage. It should be noted that the Montana Water Court does not enforce the Montana Water Use Act, and any enforcement action would be in the jurisdiction of the county district court, which has the jurisdiction to order an illegal diversion structure be removed.

Comments:

I. Impounding the water in Elbow Lake does not subject that water to evaporative loss. That perceived water loss due to evaporation has already been accounted for in the total amount of water available for approximately 120 years, and likely is older than most of the water claims in the basin. It can therefore not be considered an increase in water use that needs to be mitigated by purchasing an already existing water claim. It should instead be considered a historic or natural loss that is otherwise immeasurable.

J. The impoundment of water is a well-known feature of water conservation efforts (i.e., beaver dams). Elbow Lake preserves far more water than it loses to evaporation and preserves hundreds of thousands of acre-feet of water for late season use by downstream water rights holders and FWP.

Agency Response to I, J: Evaporative losses occur naturally from the Clearwater River through Elbow Lake. These evaporative losses are part of the water cycle, and evaporative losses from a natural water body do not require a water right. Impounding water in Elbow Lake by constructing a rock weir at the outlet increases the depth and surface area of the natural water body causing inundation of adjacent low-lying land that would otherwise be dry. Increasing the surface area of Elbow Lake results in increased evaporation over what would occur naturally, and only the increased evaporation would be assessed for impacts during processing of a Beneficial Water Use Application. Had a statement of claim been filed for the impoundment of water in Elbow Lake for recreational purposes or some other beneficial use, the increased evaporation would be part of the water availability equation for the Clearwater and Blackfoot River, however since no water right exists for this impoundment a new Beneficial Water Use Permit application would need to be submitted and reviewed for compliance with statutory criteria found in § 85-2-311, MCA. The increase in surface area and associated evaporation over what occurred naturally without the rock weir in place would be considered a consumptive use of water that may result in adverse effect to existing water rights since the basin is legislatively closed and call for water from senior water users occurs on a regular basis in the Blackfoot River drainage. It is a matter of case law that there is no acceptable minimal amount of adverse effect allowed in permitting of new water rights. This concept is known as “de-minimus,” and it was found in the final order denying Application for Beneficial Water Use Permit No. 76N 30010429 by Thompson River Lumber Company (2006) that adverse effect does not have to be measurable, just calculable.

Impoundments that store runoff for release and use later in the summer are considered water conservation projects. However, the rock weir constructed to increase the depth and surface area of Elbow Lake is not operated as a water storage project. Water is not purposefully released from the rock weir to supply water to downstream users. The rock weir constructed at the Elbow Lake outlet functions as a flow-through structure where outflows leaving the rock weir are largely equal to what flows into the lake at the northern end. There is not structure on the rock weir that allows for a controlled release of water, with water either flowing over the top of the structure or through the rocks comprising the weir. Elbow Lake is approximately 50 acres in size, and

assuming the rock weir results in an additional 3 feet of water stored in the lake, the total storage from the rock weir would equal 150 acre-feet that potentially could be released for late season downstream use, not hundreds of thousands of acre-feet. For comparison, Painted Rocks Reservoir in the southern Bitterroot Valley only stores 30,000 acre-feet of useable water for late season release. Impounding water does result in a loss of water through evaporation where the natural surface area of a channel is expanded. This takes water out of the system that should be made available to downstream users, possibly adversely affecting them by reducing the volume of water in the system. Preserving water would indicate that there is a water savings; however, retaining water in a reservoir results in a net loss. Water that should have continued downstream and been made available to valid water rights holders is reduced in volume, and timing may be altered in the event that inflows are not in equilibrium with outflows.

Comment K: *Since the Salish-Kootenai tribes have treaty rights to all the waters that flow in their historic lands, they deserve the right to weigh in on the water rights issues that FWP brings up as the cause of their legal liability.*

Agency Response K: The Confederated Salish and Kootenai Tribes were sent an email from FWP on October 1, 2019 at 1:23 p.m., notifying them that a draft environmental assessment (for the Elbow Lake dam removal proposal) was available for review and comment, along with a web link to the document posted online on FWP's website.

Comment L: *Does DNRC and FWP have the legal right to remove the dam? Can the DNRC, without a court order, remove this structure causing negative impacts to these wetlands?*

Agency Response L: Yes, the agencies working together have both the legal right and obligation to remove the Elbow Lake dam that is impounding water without a legal water right on state land. This action would be expected to involve associated impacts to wetlands and could be taken without a court order. See Section IV, Agency Response D (above) for anticipated impacts.

Literature Cited

- Benson, A. 2009. Effects of barriers on migratory bull trout and application of a conceptual framework to evaluate tradeoff associates with dam removal in the Clearwater River drainage, Montana. Master's thesis. University of Montana, Missoula.
- Knotek, W. L. 2017. Montana statewide fisheries management investigations--middle Clark Fork and Clearwater River drainages. Federal Aid F-113, Project 3240. Montana Fish, Wildlife & Parks, Missoula, MT. 69 pp.
- Pierce, R., R. Aasheim, and C. Podner. 2007. Fluvial westslope cutthroat trout movements and restoration relationships in the upper Blackfoot basin, Montana. *Intermountain Journal of Sciences* 13(2):72–85.
- Pierce, R., M. Davidson, and C. Podner. 2012a. Spawning behavior of mountain whitefish and cooccurrence of *Myxobolus cerebralis* in the Blackfoot River Basin, Montana. *Transactions of the American Fisheries Society* 141:720-730.
- Pierce, R., W. L. Knotek, C. Podner, and D. Peters. 2019. Blackfoot River restoration: a thirty-year review of a wild trout conservation endeavor. *American Fisheries Society Symposium*. 91:

- Pierce, R., C. Podner, and K. Carim. 2012b. Response of wild trout to stream restoration over two decades in the Blackfoot River Basin, Montana. *Transactions of the American Fisheries Society* 142:68-81.
- Pierce, R., C. Podner, and M. Davidson. 2009. Correlation of fluvial rainbow trout spawning life history with severity of infection by *Myxobolus cerebralis* in the Blackfoot River Basin, Montana. *Transactions of the American Fisheries Society* 138:251–263.
- Pierce, R., C. Podner, M. Davidson, L. Knotek, and J. Thabes. 2008. Big Blackfoot River fisheries and restoration investigations for 2006 and 2007. *Montana Fish, Wildlife and Parks*. Missoula, Montana.
- Pierce, R., C. Podner, T. Wendt, R. Shields, and K. Carim. 2014. Westslope cutthroat trout movements through restored habitat and Coanda diversions in the Nevada Spring Creek complex, Blackfoot Basin, Montana. *Transactions of the American Fisheries Society*. 143:230-239.
- Schmetterling, D. A. 2001. Seasonal movement of fluvial westslope cutthroat trout in the Blackfoot River drainage, Montana. *North American Journal of Fisheries Management*. 21:507-520.
- Schmetterling, D. A. 2003. Reconstructing a fragmented river: movements of westslope cutthroat trout and bull trout after transport upstream of Milltown Dam, Montana. *North American Journal of Fisheries Management*. 23:721-731.
- Schmetterling, D., and J. A. McFee. 2006. Migrations by fluvial largescale suckers (*Catostomus macrocheilus*) after transport upstream of Milltown Dam, Montana. *Northwest Science* 80:18-25.
- Swanberg, T. R. 1997. Movements of and habitat use by fluvial Bull Trout in the Blackfoot River. *Transactions of the American Fisheries Society* 126:735–746.

APPENDIX C

Documents or items presented or mentioned in Appendix A (comments received during public comment period) and Appendix B (FWP and DNRC responses to public comments).

Page C-1: Photo that accompanied comments submitted by Commenter #150.14 in Appendix A.





**Montana Fish,
Wildlife & Parks**

P. O. Box 200701
Helena, MT 59620-0701
(406) 444-3186 - FAX: 406-444-4952

Elbow Lake Homeowners Association
Attn: Jim Barber
619 Southwest Higgins, Suite K
Missoula, MT 59803

August 23, 2013

RE: Adjudication of Elbow Lake recreational water rights

Dear Sirs & Madams

The Montana Water Court's adjudication of Blacsfoot River Basin water rights triggered a review of the Montana State Board of Land Commissioner water rights associated with Elbow Lake leases. (These water rights and land leases are managed by the Department of Natural Resources and Conservation's Trust Lands Division (DNRC).

The adjudication includes a review of the June 2005 *Amendment(s)* which proposed to add the rock diversion located on the Clearwater River to support a recreational purpose. That amendment was attached to three domestic water right claims asserting a diversion from the Clearwater River. Montana Fish Wildlife and Parks (FWP) objected to three water rights held by the Montana State Board of Land Commissioner that referenced the Elbow Lake rock structure and its asserted recreational use. Through settlement negotiations it was determined that the late *Amendment* is inappropriate. DNRC, in negotiating a settlement to those underlying water rights, withdrew those motions to amend.

The Water Master accepted that stipulated settlement as documented in the Master's Report for Case 76F - 22. The Water Judge reviewed, accepted and issued an Order Adopting Master's Report for Case 76F - 22. Both are attached.

It has been asserted that the use of this rock dam and the associated recreational use is simply an extension of a pattern of use that relates back, "100 years when it was first used as a splash dam for the Big Blackfoot Lumber Company and later the Anaconda Mining and Timber Company."

The relationship between the recreational use asserted in the amendments and floating logs at the turn of the previous century was not argued. The issue discussed related to the timeliness of the filing / amendment and the appropriate nature of the 2006 amendment. The following paragraphs describe the filing requirements and deadlines that were not complied with and the statutory penalty for failing to submit a timely claim.

When Montana's legislature initiated the general stream adjudication under the Montana Water Use Act they included a provision that created a deadline to file a Statement of Existing Water Right Claim. Under statute, the failure to file by that deadline was determined to be a conclusive presumption that the water right had been abandoned.

In 1993, prompted by interests representing individuals who failed to file a timely water right claim, Legislature provided an opportunity to file a late claim of existing water right in the adjudication proceedings. The deadline for filing such untimely claims to join the state's general stream adjudication was July 1, 1993.

FWP was the prior owner of the Elbow Lake properties including the site of the rock dam. FWP acquired these lands in 1948 and held title until 1995. FWP did file water right claims for recreational use on many of the Clearwater River's chain of lakes. FWP did not file a water right claim on Elbow Lake for this structure. FWP did not authorize or construct a rock dam at the mouth of Elbow Lake during the period of ownership. In December 1995, FWP transferred ownership of section 20, which includes Elbow Lake, to the State Board of Land Commissioners.

Prior to 1995, the Montana Department of State Land's State Forester administered cabin sites on this property. The Department of State Lands, which is now part of the Department of Natural Resources and Conservation, filed a number of Statements of Existing Water Right Claims, primarily domestic water rights, related to cabin sites on the section 20 land. However, no Statement of Existing Water Right Claim was filed for any recreational use or use requiring a diversion at the mouth of Elbow Lake.

In June 2005, well past the original filing deadline and the late claim filing deadline, DNRC Trust Lands filed an Amendment to Claim(s) 76F 10857, 76F 10876 and 76F 10895. This amendment asserted a recreational use of water impounded behind a rock dam and a new point of diversion. The amendment stated that the dam stored water for use as recreational and irrigation of cabin site lawns. It appears that the staffer was hoping that this amendment would generate an implied claim for recreational use. (An implied claim can be created under the Supreme Court Water Right Examination Rules when the original filing has data that clearly identifies uses that should have been on a separate claim filing. It is also important to note that the Water Courts filing requirements dictated that each use of water have a separate claim. Therefore, under those instructions a separate recreational use would have been asserted on an "Other Uses" claim form and delivered to the court.)

On March 3, 2006, the Montana Water Court denied the creation of an implied claim. The amendment was not implemented.

The Montana Water Court did note the existence of these amendments in the Preliminary Decree for the Blackfoot River Basin. In that decree the claim abstract included the Court's notation that the amendment substantially changed the original claim(s) and sought to create an additional water right.

The adjudication process allows the claimant and other interested and potentially affected parties to object to the claim or this amendment and resolve those concerns. As noted earlier FWP objected to these amended claims for the purpose of resolving questions related to the 2005 amendment and protecting FWP instream flow interests.

FWP asserts that neither a timely or late claim was filed for this recreational use. The failure to file such a claim resulted in a conclusive abandonment of that right. FWP's resource management concerns have been stated before and include,

- Fish passage, especially related to movement between the Blackfoot River and upper Clearwater Basin
- Creation of undesirable habitat utilized by an illegally introduced pike population,
- Annual disturbance of the bed and banks, which over time will continue to create channel instability, and
- Increases in water temperatures created by the increase in shallow water area pooled behind the rock dam, especially under flow conditions during the drought years. (This is a man caused incremental

increase in water temperature. Clearwater River system is already warm and in low flow conditions affects Blackfoot River temperatures all the way to the confluence with the Clark Fork River. These man-caused increases in temperatures in drought years have an adverse impact on wild trout fisheries.)

FWP would also argue, if necessary, that there is no relation back between this new recreational use and the floating of logs.

FWP would acknowledge that logs were floated down the Clearwater River. FWP would also acknowledge that it was a practice-of-the-day that impoundments were constructed, water stored and then breached during high-water to increase the quantity of water available for floating logs. However, FWP would also assert that this practice had not occurred in many decades. Therefore that historic use and the associated water right, if any, has been long abandoned. As noted earlier FWP owned these lands from 1948 to 1995 and during that period did not maintain or authorize the construction of the rock dam during the period of ownership.

With the Water Judge's acceptance of the Masters Report the status of the amendments is decided. The amendments have been withdrawn. The end result is also clear -- a water right does not exist for a diversion dam at the mouth of Elbow Lake.

Without a water right this diversion is illegal. Once breached, by next springs high snow melt flows, the rock dam should not be replaced. (It is illegal in Montana to appropriate water without a valid water right.)

While the Elbow Lake Homeowners Association has not asserted ownership of any water right, they have, been responsible, at least jointly, for the annual re-construction of this rock dam and have been the applicant for a Natural Streambed and Lands Preservation Act permit (SB310 Law) related to the rock dam.

Though this letter, FWP's wishes to make it clear that the Association should not replace this rock diversion next year. The replacement will be considered, at a minimum, a violation of the Montana Water Use Act and an impact to FWP water rights.

Under the 310 permit the rock dam is to be breached by September 15 and high spring flows ^{be} allowed to wash out the structure. Because of low stream flow conditions and FWP's instream flow water right, FWP has, through an earlier letter, already ~~been~~ made a "call" for water and ~~is~~ demanding that the rock dam be breached early -- before the September 15th date.

Reconstruction of the dam next spring will put FWP in a position where relief will be sought through administrative actions (a water use complaint to DNRC under authorities defined in Montana's Water Use Act) or perhaps through injunctive relief in the district court.

If you have any questions concerning this letter, you may contact Michael McLane, FWP Water Conservation Specialist, at 406-444-1563, or mmclane@mt.gov.

Your cooperation and adherence to the law is greatly appreciated.

Sincerely,

Michael McLane
Water Conservation Specialist

cc: Dennis Meyer, Hydrologist DNRC, Trust Lands Division
Missoula Conservation District
DNRC – Missoula Water Resources Regional Office
Millie Heffner Chief, DNRC Water Right Bureau
William Schenk, Legal Counsel, Fish, Wildlife and Parks
Pat Saffel, Fish Manager, FWP Region 2

Trust Lands, section 20 Lessee

TARDIF, MICHAEL E
TOMSICH, LARRY & PAULINE
CLEVINGER, BRAD/HAL/RITCHEY, LINDA
RAMBO, JAMES, MARY LOU & RENEE
BOEHLER, DORIS E
DOUGHERTY, PATRICK & WARD, TOM
LANGSTON, LIBBY
JOHNSON, MARTY
SCHWENK, MICHAEL & PATRICE
SCHWENK, TIMOTHY & CHERYL
DICKINSON, KARIN R
KASL, CHARLOTTE

CLEARWATER PARTNERS, LLP
WELDON, PEGGY JO; WELDON, RICK; WESTBERG,
BARBARA
JOHNSON, MARTY
OHYTT, DAN & CHERYL
DENNING, JEFFREY & MARTIN-DENNING, TERRY
DEPUYDT, ANDREW & SUZANNE
BUDEE CAMP LLC
KEERSEMAKER, JOHN & PENNI
BROWN, CHARLES C
SWARTZ, DOUGLAS, CRAIG & LEONARD
O'CONNELL, MARY & MANCINI, MARY ANN
GROCHOWSKI, JANE
MICHALSKI, DUANE J & TERESA
WATSON, JON & LORI
ANDERSON, BARBARA KAYE & KENT
ANDERSON, DUSTIN, TRAVIS & DALLAS
SCOTT, MARGARET & DAVID
SCHWENK, PATRICK & CATHY

Legal

LOT 21, ELBOW LAKE
LOT 1, ELBOW LAKE
LOT 19, ELBOW LAKE
LOT 20, ELBOW LAKE
LOT 7, ELBOW LAKE
LOT 18, ELBOW LAKE
LOT 14, ELBOW LAKE
LOT 17, ELBOW LAKE
LOT 4, ELBOW LAKE
LOT 16, ELBOW LAKE
LOT 24, ELBOW LAKE
LOT 6, ELBOW LAKE
ELBOW LAKE (LOTS
35-39 & 1
ADDITIONAL ACRE)
LOT 22, ELBOW LAKE
LOT 13, ELBOW LAKE
LOT 12, ELBOW LAKE
LOT 10, ELBOW LAKE
LOT 11, ELBOW LAKE
LOT 3, ELBOW LAKE
LOT 26, ELBOW LAKE
LOT 5, ELBOW LAKE
LOT 15, ELBOW LAKE
LOT 23, ELBOW LAKE
LOT 28, ELBOW LAKE
LOT 8, ELBOW LAKE
LOT 2, ELBOW LAKE
LOT 27, ELBOW LAKE
LOT 25, ELBOW LAKE
LOT 9, ELBOW LAKE
LOT 29, ELBOW LAKE

Big Sky. Big Land. Big History.
Montana
Historical Society

*Historic Preservation
Museum
Outreach & Interpretation
Publications
Research Center*

December 2, 2019

Mr. Patrick Rennie
Department of Natural Resources and Conservation
1625 Elvorth Avenue
P.O. Box 201601
Helena, MT 59620-1601

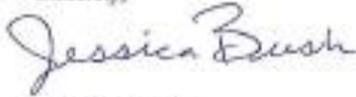
Re: 24MO1743 Eligibility
Missoula County, Montana

Dear Mr. Rennie:

Thank you for the letter (received November 8, 2019) regarding the eligibility of cultural resource 24MO1743. We concur that 24MO1743 is Not Eligible for the National Register of Historic Places.

If you have any questions or concerns, do not hesitate to contact me at (406)444-0388 or JBush2@mt.gov. Thank you for consulting with us.

Sincerely,



Jessica Bush, M.A.
State Archaeologist, Deputy SHPO
Montana State Historic Preservation Office

RECEIVED

DEC 03 2019

D.N.R.C

File: DNRC - 2019 - 2019110804

225 North Roberts Street
P.O. Box 200803
Helena, MT 59620-1203
(406) 444-0304
(406) 444-0393 fax
montanahistoricalociety.org