Otter Island Fisheries Conservation Area Additions
Draft Environmental Assessment

July 9, 2014

Region One
Fisheries Program

Montana Fish, Wildlife & Parks

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1.0 OVERVIEW, PURPOSE, AND NEED FOR ACTION

1.1 Overview/Location

Montana Fish, Wildlife & Parks (MFWP) proposes to acquire 19.72 acres of island habitats, called the Otter Island Fisheries Conservation Area (FCA) Additions (Additions), and add these parcels to the existing Otter Island FCA that is located along the west side of the mainstem Flathead River, about 1.5 miles east of downtown Kalispell (Figures 1-3). The purpose of the proposed acquisitions is to expand protection of riparian and wetland habitats along the Flathead River mainstem, islands, and side channels for the benefit of fish and wildlife species. The Additions would be purchased using fisheries mitigation funds from the Bonneville Power Administration (BPA) to help offset the fishery impacts due to inundation of the lands behind Hungry Horse Dam. The parcels would be managed primarily for their habitat values and dispersed public recreation as part of MFWP's Otter Island FCA and guided by the proposed revised Otter Island FCA Management Plan (Appendix B).

The Additions (Figure 3) occupy islands on both the east and west banks of the Flathead River mainstem about a mile south of the existing MFWP Old Steel Bridge Fishing Access Site (FAS) and just south and east of the main Otter Island FCA. The proposed land acquisitions include two different privately held parcels. The current landowners of both additions have expressed an interest in selling their lands to MFWP. The owners of Addition 1 were unable to meet our timelines and needed to expedite their sale of the property. They have already sold and conveyed their parcel to a nonprofit organization, the Montana's Outdoor Legacy Foundation, which is willing to hold the property pending MFWP's public review and approval processes and final decisions by the Fish and Wildlife Commission and State Land Board.

Figure 1. General location of the Otter Island FCA project area south of the MFWP Old Steel Bridge Fishing Access Site near Kalispell, Montana.

If completed, the acquisition of both these Otter Island FCA Additions would complete about 2.5 miles of connected public land ownerships along the west side of the Flathead River mainstem from just north of the Old Steel Bridge to the south end of Owen Sowerwine Natural Area (Figure 2). The parcels do not touch any public roads; they adjoin the existing Otter Island FCA to the north and the Owen Sowerwine Natural Area directly to the south. Private land exists along portions of the boundaries of both

Additions. The adjoining Owen Sowerwine Natural Area is owned by the Montana Department of Natural Resources and Conservation (DNRC), but is managed by both the Montana Audubon and Flathead Audubon Societies as a state-designated Natural Area. The public would be able to access both Otter Island Additions by boat from the Flathead River or, depending on water flows, by heading upstream on the Stillwater River. Walk-in access would be limited to low water conditions. Depending on water levels, the public could access these parcels from the north Otter Island FCA by first fording existing backwater channels of the Flathead River and from the south through the Owen Sowerwine Natural Area after first fording the Stillwater River. Portions of the proposed Additions that lie along islands on the east bank of the Flathead River could only be accessed by boat.

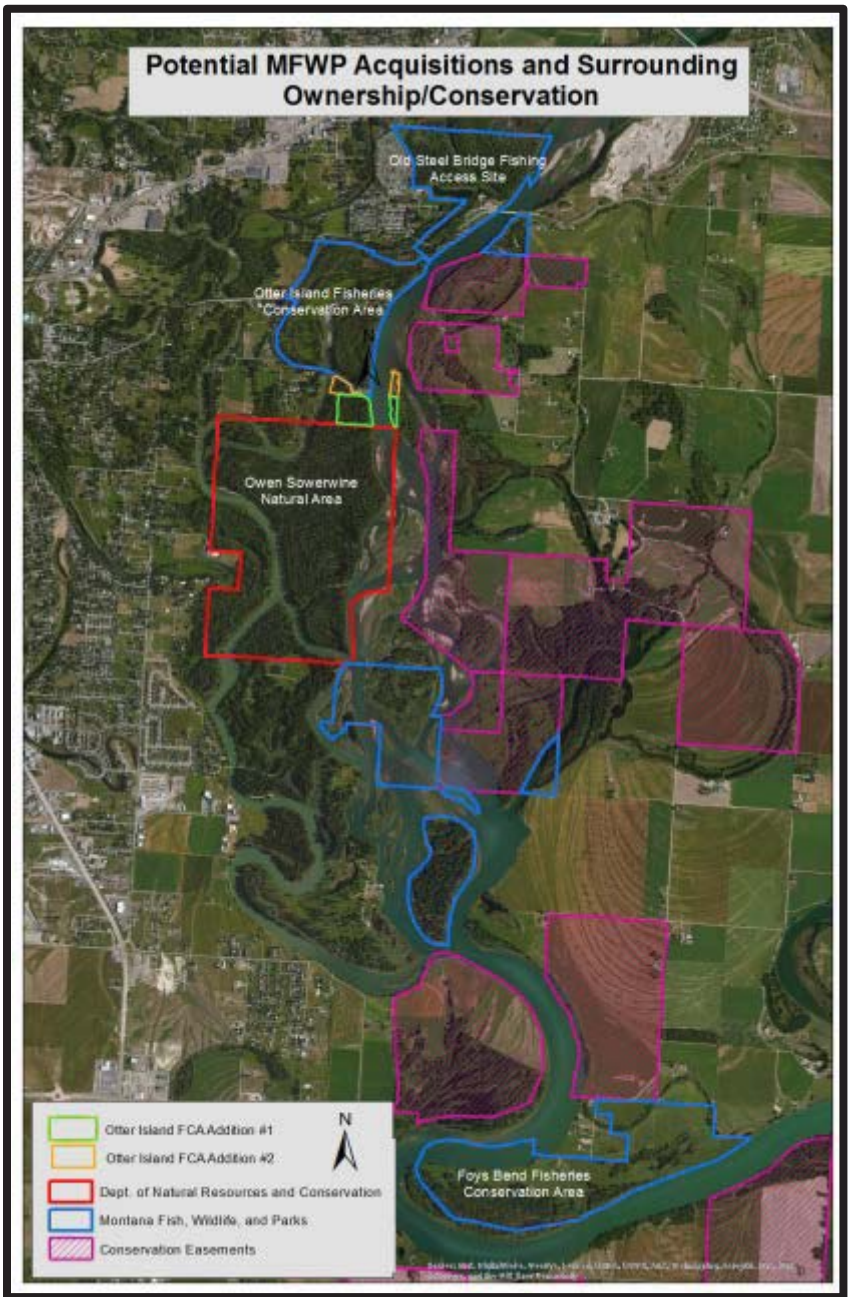


Figure2. Aerial photo showing Otter Island FCA, proposed Additions (yellow and green outlines) as well as other protected lands in the project area.

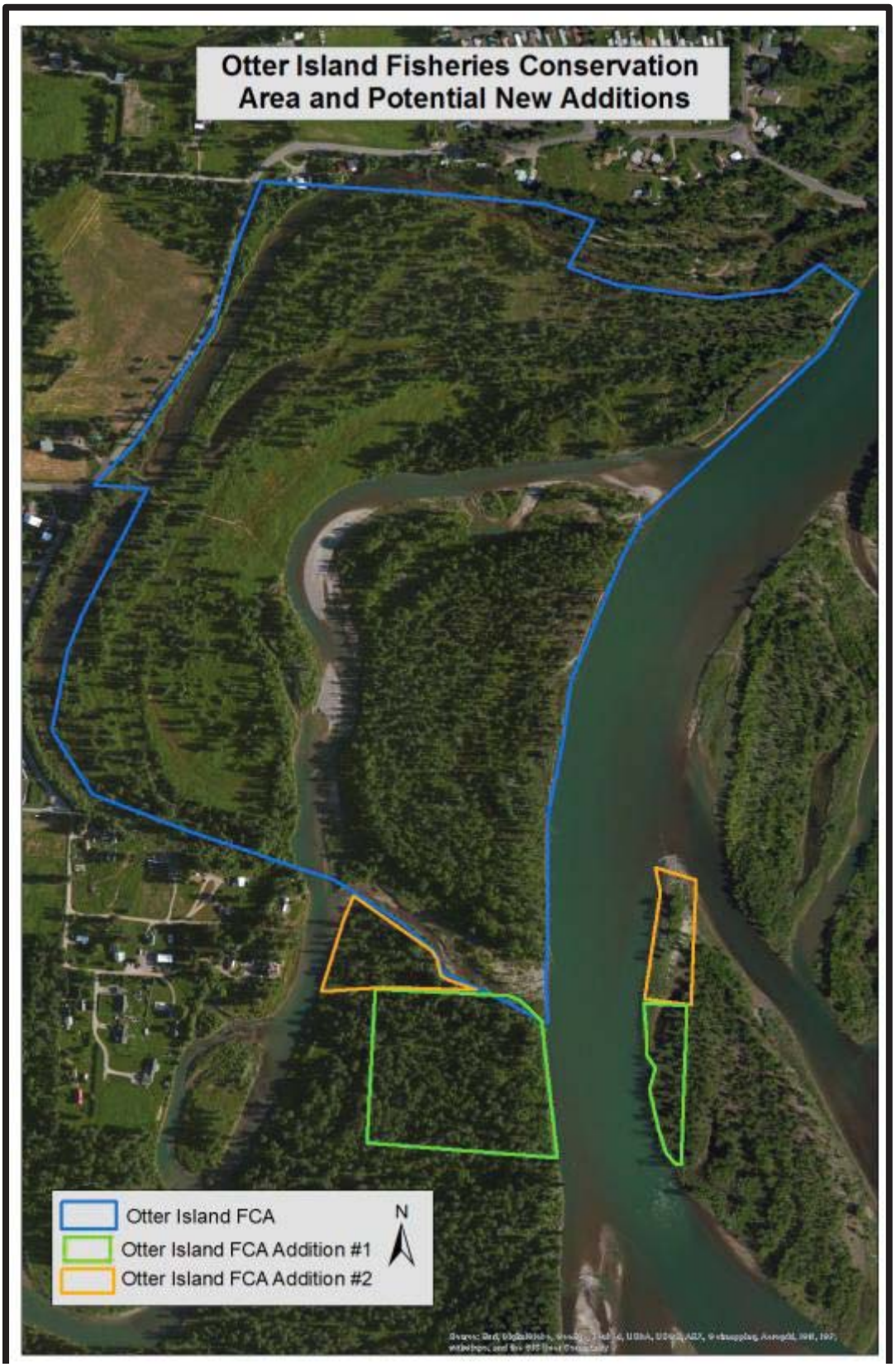


Figure 3. Aerial photo showing boundaries of Otter Island FCA and proposed Additions.

1.2 Appraisal Information and Legal Descriptions

Both Otter Island FCA Additions are located within T28N R21W Sections 9 and 10 along the Flathead River mainstem near Kalispell. Addition 1 consists of 13.6 total acres with portions of this parcel lying on both sides of the main Flathead River channel. This parcel was appraised at approximately $9,000/acre for a total appraised value of $122,000. The landowner has agreed to sell it to MFWP at a below appraised value of $108,800 or $8,000/acre.

Otter Island FCA Addition 2 contains approximately 6.12 total acres also split on both sides of the Flathead River channel. Because of its smaller size, the appraised value of this parcel was approximately $12,000/acre for a total value of $73,000. MFWP and the landowner have agreed on a purchase price of $48,960, also $8,000/acre.

1.3 Funding

Funding for the project would come from the Bonneville Power Administration (BPA) fisheries mitigation program with funds set aside to help offset the fishery impacts due to inundation of the lands behind Hungry Horse Dam. BPA fisheries mitigation funds were also used to fund the original purchase of the147-acre Otter Island FCA by the Confederated Salish and Kootenai Tribes. The Confederated Salish and Kootenai Tribes conveyed the 147-acre Otter Island FCA to MFWP in late 2013. BPA will retain a conservation easement on the Otter Island Additions to ensure the permanent protection of the site's fish and wildlife habitat and other ecosystem components and functions. BPA already holds a similar conservation easement on the main Otter Island FCA.

1.4 Objectives of Proposed Action

- Protect and enhance riparian/wetland habitats that support associated fish and wildlife populations.
- Provide opportunity and access for public hunting, fishing, wildlife viewing, hiking, and other public recreational uses, as long as those activities are consistent with resource protection.

1.5 Authority

MFWP has the authority to purchase lands (Section 87-1-209, Montana Code Annotated) that are suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; for public hunting, fishing, or trapping areas; and for state parks and outdoor recreation.

1.6 Relevant Plans and Overlapping Jurisdictions

Fisheries Mitigation Plan for Losses Attributable to the Construction and Operation of Hungry Horse Dam, March 1991; Determination of Fishery Losses in the Flathead System Resulting from the Construction of Hungry Horse Dam, January 1987. These two documents set the stage for subsequent approval of these fish habitat losses by the Northwest Power Planning Council in 1993 and BPA's Agreements and Implementation Plans with Montana Fish, Wildlife & Parks and the Confederated Salish and Kootenai Tribes to implement appropriate fisheries mitigation projects to offset losses associated with Hungry Horse Dam.

2005 FWP Comprehensive Fish & Wildlife Management Strategy: The Otter Island property falls within a Tier One Focus Area (Flathead River Valley), which is one of the state's geographic areas of "Greatest Conservation Need" according to Montana's 2005 Comprehensive Fish & Wildlife Conservation Strategy (CFWCS). The proposed land acquisition contains one of the three habitat types identified by

the Comprehensive Strategy for the Flathead River Valley Terrestrial Focus Area - Riparian/Wetlands. http://fwp.mt.gov/fishAndWildlife/conservationInAction/fullplan.html

Of the 344 terrestrial vertebrate species found within the Flathead River Valley Focus Area, 16 are designated Tier I species (Greatest Conservation Need). The Otter Island property currently supports, or has the potential to support, 6 Tier I wildlife species as identified in the CFWCS. Those species are western toad, northern leopard frog, bald eagle, black-backed woodpecker, olive-sided flycatcher, Townsend's big-eared bat, and the occasional grizzly bear. This land along the Flathead River is also important for bull trout and westslope cutthroat trout, both are Tier I fish species in the CFWCS.

2007 Flathead County Growth Plan: The Growth Policy is a comprehensive planning document that provides guidance to all other plans and regulations administered by the county. It applies to all of Flathead County, excepting the incorporated cities of Kalispell, Whitefish, and Columbia Falls, and their respective interlocal agreement areas.
http://www.flathead.mt.gov/planning_zoning/growthpolicy2012.php

Goals identified in the Growth Plan that are assisted by this project are:

1) Land Uses
    a. G.9: Open Space Preservation.
    b. G.11: Protection of scenic resources available to both residents and visitors.
2) Natural Resources.
    a. G.35: Protect and preserve water resources within the Flathead watershed for the benefit of current residents and future generations.
    b. G.36: Protect water quality in lakes, rivers, aquifers, and streams from existing and potential pollution sources.
    c. G.38: Preserve and protect floodplains to ensure the safety of resident flood hazards and to prevent the degradation of water quality and wildlife habitat.
    d. G.39: Preserve and protect wetlands and riparian areas to prevent the degradation of natural resources, including and not limited to water quality and critical wildlife habitat.
    e. G.40: Protect sensitive areas over shallow aquifers.
    f. G.41: Promote the preservation of critical fish and wildlife habitat and preserve the area's unique outdoor amenities and quality of life.

2010 Montana Bald Eagle Management Guidelines - An Addendum to the 1994 Montana Bald Eagle Management Plan: Bald eagles are known to nest near the target property (two nests are less than two miles away) and could potentially nest on Otter Island FCA. The Management Guidelines were prepared in cooperation with the Montana Bald Eagle Working Group to provide recommendations for protecting bald eagle habitat and reducing the risk of potential violations of the federal Bald and Golden Eagle Protection Act. http://fwp.mt.gov/fwpDoc.html?id=44181

Bonneville Power Authority (BPA): BPA is committed to mitigating impacts of the federal hydropower system on fish, wildlife, and habitat. As a result, the BPA Integrated Fish and Wildlife Program funds projects to make dams safer for fish, restore damaged habitat, and protect threatened lands in the Columbia River Basin. Requirements of using BPA grant funds include: acknowledgement of BPA funding added to the conservation easement document, access to the property to assure compliance with the terms of the conservation easement, and right to acquire right-of-way easements for the transmission of electrical power in locations that will not impair the conservation values.

As described in the proposed draft conservation easement (CE) (Appendix A) attached to the property, BPA generally maintains the right to (1) access and inspect the property, (2) prevent any activity that is inconsistent with the CE and require restoration of areas damaged by inconsistent activities, and (3) be able to construct, operate, and maintain any future transmission facilities within the easement area.

The following activities would be generally prohibited unless addressed in an approved management plan (Appendix B):

- All residential, commercial, or industrial uses of the Protected Property (including, but not limited to, timber harvest, grazing, and agricultural production uses).
- Erecting of any building, facility, billboard, or sign.
- Depositing of soil, trash, ashes, garbage, waste, bio-solids, or any other material except as allowed under applicable federal, state, and local laws.
- Excavating, dredging, or removing of loam, gravel, soil, rock, minerals, sand, hydrocarbons, or other materials.
- Otherwise altering the general topography of the Protected Property, including but not limited to building of roads and flood control work.
- Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices.

The following activities would be permitted:

- Provide reasonable public access.
- The right of the Confederated Salish and Kootenai Tribal members to conduct traditional usufructuary and spiritual uses including hunting, fishing, and gathering in accordance with applicable law.

1.7 Decision to be Made

The decision to be made is whether MFWP ***should acquire the approximately 19.72-acre Otter Island FCA Additions near Kalispell, Montana, using available fisheries mitigation funding from BPA and add these parcels to the existing Otter Island FCA subject to the BPA conservation easement and consistent with the Otter Island FCA Management Plan, revised June 2014.*** Following completion of the draft EA and public comment period, the MFWP Region One Supervisor would issue a decision notice that makes a recommendation to the MFWP Commission on a course of action. This course of action could be either the Proposed Action or the No-Action Alternative or an action that is within the scope of the analyzed alternatives**.**

As with other MFWP land acquisition projects that involve more than 100 acres or $100,000 in value, the State Board of Land Commissioners must give final approval to the property acquisition. This draft environmental assessment (EA) and the comments MFWP receives are part of the decision-making process**.**

2.0 ALTERNATIVES

2.1 Alternative A: Proposed Action – Pursue acquisition/purchase of the Otter Island FCA Additions.

MFWP would pursue purchase of the Otter Island FCA Additions consisting of two privately held parcels that total 19.72 acres from two different willing sellers using BPA funding, add these parcels to

the existing Otter Island FCA, record the BPA-held CE, and manage the lands for the protection of its riparian and wetland areas according to the attached proposed revised management plan. The decision to purchase one or the other is also within the scope of this alternative.

The Otter Island FCA Management Plan, updated to address the proposed Additions, is attached as Appendix B. Management objectives identified in the proposed revised management plan include:

A. Improve the river and side channel riparian habitat by encouraging native plant regeneration and establishment.
B. Improve upland habitat by restoring native tree and shrub communities to provide better native wildlife habitat.
C. Protect established riparian cottonwood trees from further damage from beaver activity.
D. Minimize the presence of noxious weed species.
E. Allow public access and uses that are consistent with the purpose of this acquisition.
F. Maintain administrative access to the property.
G. Remove items from the old dump site, unneeded fencing, and the vagrant shelter.

Dispersed recreation, such as fishing, bird watching, and hiking, would be allowed as long as those activities do not negatively impact the naturally self-sustaining vegetation and fish and wildlife benefits.

Access to the Additions can be by boat from the Old Steel Bridge FAS (closest boat launch) and seasonally by walk-in from adjacent public lands, depending on water levels. Parking is available at the Old Steel Bridge FAS which is north of the Otter Island FCA; there is a walk-through gate from Old Steel Bridge FAS to the Otter Island FCA. Limited access to the Otter Island FCA Additions also exists from the main island within the Owen Sowerwine Natural Area located to the south. Access to the Owen Sowerwine Natural Area is through Greenridge Drive and Treasure Lane off Willow Glen Road. Access to the main island requires crossing the Stillwater River.

MFWP retains the right to change public use rules and regulations, through appropriate administrative procedures, as conditions dictate, provided that site uses must remain consistent with the terms of the BPA conservation easement.

The following public use rules and regulations would apply to this property. Rules and regulation signs would be posted at the existing Otter Island FCA access points. Boundary signs may be added as needed along the Otter Island FCA Additions' private land boundaries to the east.

Public Use Rules for the Otter Island FCA:

- For garbage, "Pack it in/Pack It Out" rules apply. No trace or low impact day use is encouraged.
- No campfires or fires of any kind are allowed except as may be needed for natural resource management purposes conducted by MFWP.
- No overnight camping.
- No motorized vehicles, bicycles, horses, or other livestock will be allowed on the property except for administrative or management purposes.
- No commercial use without a permit.
- Public trapping is limited to <u>water sets</u> only, as defined in the Montana Trapping and Hunting Regulations.
- Open to discharge of weapons including archery, shotgun, muzzleloaders, and traditional handguns during designated hunting seasons only during legal hunting hours.

Recreational shooting and hunting of nongame animals such as ground squirrels will be prohibited (ARM 12.8.202). No permanent tree stands or ground blinds are allowed. Temporary tree stands or ground blinds may be placed for up to 48 hours. No screw-in tree steps may be used to access tree stands, only strap-on steps or climbing-stick-type climbing aids.

- Dogs must be on a leash at all times, except for when hunting upland game or waterfowl during established seasons.
- The discharge of paintball guns, trap and target shooting, plinking, and similar activities are prohibited.

The property would be patrolled by MFWP wardens and local agency staff to assure that no harm is occurring to the property's conservation values through authorized or unauthorized recreational use.

Under MFWP management, consistent with the terms of the BPA conservation easement and as described in the proposed revised management plan, prohibited land uses would include:

- Altering of grassland, woodland, wildlife habitat, or other natural features by burning, digging, plowing, disking, haying, moving, cutting, or otherwise destroying the vegetative cover, except for noxious weed management;
- Dumping refuse, wastes, sewage, or other debris;
- Harvesting wood products;
- Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
- Diverting or causing or permitting the diversion of surface water into, or out of, the easement area surface by any means;
- Building or placing buildings or structures;
- Planting or harvesting any crop;
- Grazing or allowing livestock on the easement area;
- Mining, excavation, dredging, or removal of soil, sand, gravel, rock, minerals, or other surface or subsurface materials; and
- Activities detrimental to conservation of the following: fish and wildlife habitat, flood control, erosion control, water quality protection and enhancement, traditional cultural materials production, aesthetics, and low impact recreation.

Except for property taxes that are paid by MFWP, most operation and maintenance costs for the property would be paid by BPA mitigation program funds provided annually to MFWP. MFWP anticipates the maintenance costs for the property for the Additions would be about $1,000-2,000/year that would be used for the boundary signs, additional monitoring, signing, weed management, clean up, enforcement, and public education that might be needed.

2.2 Alternative B: No Action - the Property Would Not Be Purchased by MFWP

Under the No-Action Alternative, MFWP would not use available BPA funds to acquire the two Otter Island FCA Additions. Because both landowners have expressed an interest in selling these parcels, they would likely be sold on the private market. The Montana Outdoor Legacy Foundation cannot donate their parcel to MFWP and may or may not be successful in finding a conservation buyer or buyer willing to donate a conservation easement. They have indicated that they would seek to either sell the land to a conservation buyer who would put a conservation easement on the property or they would put a

conservation easement on the property before they sold it. But in both of these circumstances, they need to recoup their investment and there is no guarantee that conservation would occur.

2.3 Other Alternatives

No other alternatives are available for consideration; the landowners have only expressed an interest in selling the properties to MFWP rather than conveying a partial interest such as a conservation easement.

3.0 AFFECTED ENVIRONMENT

3.1 Habitat

The 19.72 acres of the Otter Island FCA Additions will add 0.18 km of mainstem habitat (along both banks of the Flathead River) and 0.36 km of side channel habitat. The property is dominated by black cottonwood riparian/wetland habitat types as defined by Hansen et al. (1995). Three major black cottonwood forest types likely occur on the property: cottonwood/snowberry, cottonwood/red-osier dogwood, and cottonwood/alluvial bar. There are little or no uplands associated with the Additions.

The western portions of the two west Otter Island Additions are located at the tip of an island that also makes up a larger portion of Owen Sowerwine Natural Area to the south. These two western parcels are separated from the current Otter Island FCA by a small overflow channel of the Flathead River (Figs. 2 & 3). Both properties also include small areas on an island across the mainstem on the current east side of the Flathead River. These properties are primarily accessible by boat but they can be reached by foot during low water. Due to this relative inaccessibility, these two properties have seen only occasional hunting and fishing uses by the public or immediate neighbors. They are in good condition from a fisheries and wildlife habitat standpoint (see Appendix B photos).

The Otter Island Additions border the river on one side, some public land to the north or south, but private land on significant portions of their outer boundaries. The private lands adjacent to these parcels do not contain any structures or residences at this time. MFWP will need to mark the private land boundaries to avoid trespass issues and increase safety of the users and the adjoining landowners.

A Phase I hazardous materials site assessment will be completed by BPA in July 2014. This site assessment is required and the property must be clear of any hazardous materials before the lands could be purchased with BPA funds.

3.2 Terrestrial Species

The Flathead River supports a diverse number of species, including birds, large and small mammals, reptiles, amphibians, and fishes, many of which are expected to be present or use the Otter Island FCA property.

Migratory waterfowl make use of the river for forage, cover, breeding, and resting areas. Common breeding waterfowl on the river include Canada goose, mallard, common goldeneye, common merganser, and wood duck. Other water-related birds that use the river system along or on this property include great blue heron (species of special concern), osprey, bald eagle, spotted sandpiper, and trumpeter swan. There are also a variety of other bird species, including pileated woodpecker, brown creeper, veery (all 3 are species of special concern) as well as a large number of songbirds that occur in this type of habitat.

Wildlife in the upland areas include white-tailed deer, coyote, raccoon, skunk, fox, and an occasional black bear and grizzly bear, bobcat, mountain lion, moose, and elk that may move through the area. Grizzly bears (listed as threatened under the federal Endangered Species Act) have moved into the river corridor from nearby mountains during summer and fall to forage on chokecherry and hawthorn berries. Populations of semi-aquatic furbearers, including beaver, muskrat, mink, and river otter, use the river's riparian areas as well. There are also several bat species associated with the riparian corridor along the Flathead River, including Townsend's big-eared bats and hoary bats, two more species of special concern.

The small backwater areas and channels are likely to support western garter snakes, rubber boas, western toads, Columbia spotted frogs, Pacific tree frogs, and painted turtles. The western toad is a Montana species of special concern. Leopard frogs, also a species of special concern, used to occupy Flathead River, but have been essentially extirpated from along the Flathead River for several decades.

3.3 Fisheries Species and Water Resources

The mainstem of the Flathead River in the immediate area of the Otter Island FCA is characteristic of many developed western Montana watersheds. The river has been influenced by land management activities such as irrigation, agriculture, development of transportation corridors, and the construction of hydropower facilities. The introduction of nonnative species has also greatly altered the ecology of the river (CSKT and MFWP 2004).

The current fish assemblage is the result of these habitat alterations and fish introductions against a backdrop of indigenous species. The Flathead River in this reach supports both resident and migratory salmonid populations. Historically, the only salmonids in the river were mountain whitefish, pygmy whitefish, bull trout, and westslope cutthroat trout. These species still occur to varying degrees and all but mountain whitefish are state species of special concern. Introduced salmonids that now occupy this section of the Flathead River include rainbow trout, brook trout, lake trout, and lake whitefish. The introduced rainbow trout have hybridized with the native westslope cutthroat trout resulting in self-sustaining hybrid populations. Illegally introduced northern pike along with some other warm water species are found in nearby sloughs. Other native fish found in the immediate area include peamouth, longnose suckers, largescale suckers, Columbia slimy sculpins (and possibly shorthead sculpins), northern pikeminnow, and redside shiners.

The Flathead River is an extremely popular destination for fishermen because of its abundant fisheries, scenic beauty, and close proximity to the City of Kalispell. The section of the river within Flathead County is the second most popular body of water in the county, second only to Flathead Lake. Between March 2011 and February 2012, this section of the river had a total angling pressure of over 31,300 angler-days.

This section of the Flathead River is characterized by cottonwood gallery forests that line steep banks, willow-covered islands, gravel bars, and many backwater and overflow channels. The project falls within the transition zone between the braided upper Flathead River and the meandering portion of the Flathead River where the river gradient rapidly declines. The predominant soil type (approximately 90%) at the target property is loamy fine sand with small areas of Chamokane soils also present (NRCS 2013).

3.4 Recreation Opportunities

The property in currently in private ownership and has not been open to public uses. Boaters and floaters have been passing these properties for many years. There is likely some evidence of use by anglers, trappers, and hunters, along the banks.

3.5 Public Access

There is no motorized vehicle access into the interior of these parcels. The parcels are separated from the mainland by various channels of the Flathead River (Figures 2 & 3). Access by foot would be from the north or south across these channels (at low water) or by boat primarily coming in from or along Flathead River. Private land exists on a portion of the islands and borders the east side of the western portions of these two Additions and along the east boundaries of the eastern portions of these Additions (Figure 3). Administrative access would be by boat or by walking in from adjacent public lands.

3.6 Buildings and Other Improvements

The Otter Island Additions contain no known buildings of any kind. There may be fences from past grazing on either the islands or adjoining lands.

4 PREDICTED ENVIRONMENTAL CONSEQUENCES

4.1 Physical Environment

4.1.1 Land Resources

Proposed Action: No impacts to land resources would occur if MFWP purchases the Otter Island Additions. MFWP's proposed revised management plan for the property does not include any soil-disturbing activities such as for the stabilization of the river banks or creating access roads or trails. Boundary markers or signs will be placed in strategic places. Although unlikely, fences may be constructed if grazing occurs on adjoining lands. Per the terms of the BPA-held conservation easement that would be placed on these properties, disturbances to land resources are prohibited (i.e., excavation, mining, etc.) because such activities would diminish wildlife habitat values. Erosion and deposition of soils along river banks would be allowed to continue since this is primarily the result of natural river processes. These islands may gradually increase or decrease in size depending on river channel movements and migrations.

No Action: Depending on current and future landowners, these parcels could be possibly developed, cleared for grazing, or managed for timber, potentially negatively impacting the soils and land resources through construction of access roads, trails, fences, structures, or utilities. Clearing of the land and preparation of the site for residential or other new land uses could also negatively impact the land resources.

4.1.2 Air Quality

Proposed Action: No impacts are expected to occur to air resources since the project would not contribute particular matter into the air, thus ambient air quality would not change.

No Action: Depending on current and future landowners, the property may remain as is or be developed or altered by new landowners. It is possible that someone would clear the land for timber, agriculture, or other uses; these activities could temporarily affect air quality if slash is burned.

4.1.3 Water Resources

Proposed Action: Water resources associated with the Otter Island property would not be impacted if MFWP purchased these properties. Per the terms of the BPA-held conservation easement that would be placed on these properties, disturbances to land resources are prohibited (i.e., excavation, mining, etc.) because such activities would diminish wildlife habitat values.

No Action: Depending on current and future landowners, someone could change the current land use to agriculture, timber, or recreation and clear some of the land, develop a bridge or other access, build structures, and consequently remove dense vegetation along the banks which could negatively affect water resources.

4.1.4 Vegetation

Proposed Action: If MFWP acquires these parcels, we would not disturb or alter natural vegetation. MFWP may control noxious weeds or other invasive species, should they occur. MFWP would complete a weed inventory and develop a weed management plan in cooperation with Flathead County if the acquisition were approved. Then weeds would be managed under the guidance of a weed management plan approved by the County Weed Control District. Coordination of weed management at the site would also be coordinated with weed management efforts on the rest of Otter Island FCA and MFWP's Old Steel Bridge FAS.

The management goal for this property is to protect and enhance naturally self-sustaining native habitat or native-like habitat that supports indigenous resident fish and wildlife species, so no special vegetative treatments are planned to reduce fuel loads on the property. Riparian forests are less prone to fire than are native upland forests, so the fire risk on this property is naturally low. However, MFWP would limit fire risk by managing public access when extreme fuel or weather conditions warrant or through other measures necessary to comply with the Good Neighbor Policy (MCA 23-1-126) as allowed under the terms of the conservation easement.

No Action: Depending on current and future landowners, someone could clear the land and/or develop the property for agricultural, residential, or commercial land uses which could negatively affect vegetation resources.

4.1.5 Fish and Wildlife Resources

Proposed Action: If MFWP were to purchase the Otter Island Additions, it would be for the benefit of its fisheries and wildlife species per the purpose of the conservation easement and the overall purpose of this acquisition. The property is in excellent condition and requires little enhancement or management. Fish and wildlife species will continue to benefit because of protection of the existing healthy riparian vegetation that traps sediments, reduces impacts of flooding, provides shade for cooling water temperatures, and maintains woody debris for shelter.

Continuing the current management practices of permitting only walk-in activities would limit disturbances to wildlife and continue to provide wildlife with an area to find refuge, shelter, and to allow movement between other nearby wooded areas.

Hunting of deer and waterfowl as well as trapping using water sets only during legal seasons would be allowed activities within the property, consistent with the proposed revised management plan, so some seasonal disturbances to wildlife is expected, but it will be carefully managed to balance wildlife

management goals with public recreational opportunities and public safety. Hunting and trapping are important tools to help us manage vegetation as well as wildlife populations and could help limit overbrowsing on areas where we are trying to maintain or promote native vegetative growth.

No Action: Depending on current and future landowners, someone could clear the land and/or develop the property for agricultural, residential, or possibly commercial land uses, which could negatively affect associated fish and wildlife habitat values.

4.2 Human Environment

4.2.1 Noise and Utilities

Proposed Action: The proposed acquisition would likely result in more people visiting the property over time since it is close to the city of Kalispell and adjacent to a popular fishing access site, and public hunting would again be allowed on the property. Hunting has been allowed on the property in the past, so a seasonal increase in noise level would not be a new occurrence in the area. Effects of general public noise and noise from hunting activities to adjoining private landowners is expected to be minimal; yet, if concerns arise, MFWP would evaluate the potential for changing hunting and recreational opportunities on the property in order to mitigate landowner concerns.

Although there are no power lines transecting the property, as described in the BPA conservation easement, BPA retained the right to be able to construct, locate, operate, maintain, and access future transmission facilities. If or when this clause may be enacted is unknown at this time.

No Action: If sold on the private market, the land could be developed for agricultural, residential, or possibly commercial land uses; a land use change may lead to an increase human-caused noises or require development of utilities that are difficult to predict.

4.2.2 Land Use

Proposed Action: Land use would change from private recreational enjoyment to limited dispersed public recreational use that isn't likely to be intense due to access limitations and dense vegetation. No other land use changes are likely because the property is subject to the terms of a conservation easement, regardless of who owns the property. MFWP would allow legal hunting and trapping (water sets only) on the property during appropriate seasons, a use that may or may not already be occurring.

Public walk-in or boat-in access would be maintained, and MFWP would monitor the property on a regular basis to address illegal camping, fires, trail development, permanent blinds, litter, and other impacts.

No Action: Land uses on the property could change depending on who owns these parcels in the future. If developed for residential or commercial uses, this may increase the tax base for Flathead County. Home and commercial development is limited within floodplains and would likely not impact the entirety of these parcels.

4.2.3 Risk and Health Hazards

Proposed Action: No increases in health or public safety risks are expected if MFWP acquires these parcels.

Under MFWP management, herbicides could be used to reduce and control noxious weeds on the property, as per the Region One Weed Management Plan and with the approval of the County Weed District. Trained, licensed professionals would conduct any weed treatment and storage/use of chemicals in accordance with proper operating procedures and label instructions to minimize potential unintended consequences to wildlife, vegetation, and visitors to the property.

Inherent risks are associated with hunting and recreational activities. MFWP would monitor the area for any increase in hazards and provide educational materials and law enforcement patrols to promote safe and responsible uses of the property. Management of new or increasing hazards could be managed by MFWP through changes of allowable uses within the property and additional patrols by MFWP wardens and working in cooperation with local law enforcement.

No Action: The properties could be developed if sold on the private market. It is unknown what risks or health hazards could occur in the future. The risks may not be as high as other private lands within the Flathead Valley because these parcels are difficult to access, within the floodplain of the Flathead River, and not conducive to intense development or storage or hazardous wastes.

4.2.4 Aesthetics and Recreation

Proposed Action: Nonmotorized public activities, such as fishing, hiking, hunting, and limited trapping (water sets only) would be permitted within the properties. Commercial uses may be allowed, but only by permit. These activities must be consistent with the terms of the conservation easement and not negatively impact the existing resource values. Under the Otter Island FCA Management Plan, MFWP would prohibit overnight camping, horseback riding, biking, grazing, paintball games, and discharge of weapons except during legal hunting seasons. Aesthetics of the parcels would be maintained to a high degree as no development would be allowed. MFWP would monitor and enforce rules designed to protect the site from negative aesthetic impacts such as rules that prohibit camping, fires, vandalism, and permanent blinds.

Per the terms of the BPA conservation easement, Confederated Salish and Kootenai Tribal members continue to retain their existing treaty right to conduct traditional spiritual uses and gathering on the property, including hunting, fishing, and gathering in accordance with applicable law.

Property boundaries, particularly those that border private lands could be marked with posts or signs. Fishing and other permitted activities may increase at the site as it becomes known to be open to the public and because it adjoins the Otter Island FCA and Owen Sowerwine Natural Area and is near the Old Steel Bridge FAS. In 2011, the Old Steel Bridge FAS had over 43,000 visitors.

No Action: If sold on the private market, the aesthetics of these parcels could be degraded depending on who purchases the properties in the future. Future landowners may also keep the parcels as they are now.

4.2.5 Public Services, Taxes, and Community

Proposed Action: Acquiring the Otter Island Additions by MFWP would have no impact on public services, property taxes, or the community. Currently, there are no public services (sewer, garbage disposal, etc.) provided to the property, and this situation would continue since no public facility improvements are planned.

There would be no changes in the amount of property taxes paid to Flathead County. MFWP is required to pay property taxes on fisheries or wildlife lands at the same rate it would be taxed if owned by a private citizen (87-1-603 MCA).

MFWP's acquisition of the Otter Island Additions would not impact the City of Kalispell. The proposed acquisition would continue to support eight of the forty-nine goals set forth in the Flathead County Growth Plan that focus on preserving aesthetic values (i.e., open spaces and wildlife habitat) of the county for the benefit of residents and visitors, protecting water resources, protecting important fish and wildlife habitat, protecting wetlands and riparian areas, and preservation of the character of rural areas. The terms of the conservation easement ensure the property be retained in a natural state in perpetuity for the benefit of fish and wildlife species.

No Action: It is unknown what impacts to the local public services or community might be as this is dependent on who purchases the properties on the private market. If sold to another private entity, the county taxes would continue to be paid.

4.2.6 Cultural and Historic Resources

Proposed Action: No cultural or historic resource inventories have been undertaken. If there were such resources on these properties, they would not be impacted if MFWP purchased these parcels.

A file search was completed by the State Historic Preservation Office (SHPO) and, according to their records, there have been no previously recorded sites within the designated search locale. Because there are no structures, SHPO believes that there is a low likelihood cultural properties would be impacted.

If cultural or historical materials are inadvertently discovered within the property, MFWP would contact SHPO as required by 22-3-424 MCA. MFWP would also consult with SHPO if repairs to the administrative access road required soil-disturbing activities.

Per one of the terms of the BPA conservation easement, Confederated Salish and Kootenai Tribal members continue to retain the right to conduct traditional spiritual uses and gathering on the property, including hunting, fishing, and gathering in accordance with applicable law and existing treaty rights. MFWP must also consult with BPA, SHPO, and the Confederated Salish and Kootenai Tribes if any ground disturbances are proposed.

No Action: If the property remains in private ownership, there is no guarantee that cultural or historic values would be protected.

4.3 Cumulative Effects

There would be little environmental change resulting from sale of the properties to MFWP as these island parcels are in good natural condition and their protection would add to the long-term protection of the riparian/wetland resources along the mainstem of the Flathead River. The conservation easement would prevent risk of future negative impacts to the natural habitat and aesthetic values, but also allow dispersed public recreational uses. The acquisition of the Otter Island Additions would contribute to the preservation and restoration of riparian and wetland areas along the Flathead River. MFWP and other entities and private landowners are working together to implement riparian/wetland conservation and restoration along the mainstem of the Flathead River to improve the fish and wildlife values of this ecosystem. This proposed action, along with ongoing riparian and wetland restoration efforts, would

have a positive beneficial impact on species that need those habitats for forage, shelter, and roosting, as well as those habitats benefiting fisheries species by helping to keep waters cool and providing material for shelter.

5 NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT

Based upon the data and analysis included in this document, MFWP has determined the acquisition of the 19.72 acres of the Otter Island Additions by MFWP does not require the development of an Environmental Impact Statement (EIS). This environmental assessment revealed no significant (negative or positive) impacts from the proposed action and identified a very limited number of minor impacts from the proposed action. The significance criteria described in Administrative Rule 12.2.431 were used in this determination.

6 PUBLIC PARTICIPATION

6.1 Public Involvement

Public notification of the EA release and opportunities to comment will be by:

- Two legal notices in each of these regional papers: *Daily Inter Lake, Flathead Beacon, Bigfork Eagle, Whitefish Pilot, and Missoulian.*
- Direct mailing with the electronic link to the draft EA will be sent to adjacent landowners and interested parties; and
- Placement of the draft EA along with public notice on the Fish, Wildlife & Parks web page: *http://fwp.mt.gov* .

This EA will be available for public review at MFWP Region One headquarters in Kalispell, and through the internet available at Flathead County libraries, the Montana State Library in Helena, and on the MFWP web site (http://fwp.mt.gov).This level of public notice and participation is appropriate for a project of this scope.

6.2 Comment Period

The public comment period will extend for 21days beginning July 9 and ending at 5 p.m. on July 30, 2014. Written comments can be mailed to the address below:

Otter Island Fisheries Conservation Area Additions
Montana Fish, Wildlife & Parks
Region One Headquarters
490 N. Meridian Road
Kalispell, MT 59901

or email comments to: nivy@mt.gov.

6.3 Approximate Timeline of Events

Public Comment Period: July 9-30, 2014
Decision Notice Published: August 1-3
Project Submitted to Commission for review: August 11, 2014
Commission Review and Approval: August 26, Conference Call
Project Submitted to Montana Land Board: September 15, 2014

6.4 Offices & Programs Contributing to the Document

Bonneville Power Administration, Portland, OR
Montana State Historic Preservation Office, Helena MT

7 EA PREPARERS

Rebecca Cooper, MFWP MEPA Coordinator, Helena MT
Kris Tempel, MFWP Resource Specialist, Kalispell MT
Gael Bissell, MFWP Wildlife Biologist, Kalispell, MT

References

Confederated Salish and Kootenia Tribes and Montana Fish, Wildlife & Parks. 2004. Flathead Subbasin Plan: Part 1: Flathead River Subbasin Assessment. A report prepared for the Northwest Power and Conservation Council. Portland, OR.

Hansen, P.L., R.D. Pfister, K. Boggs, B.J. Cook, J. Joy, D.K. Hinckley. 1995. Classification and Management of Montana's Riparian and Wetland Sites. Montana Forest and Conservation Experiment Station, School of Forestry, University of Montana, Missoula, MT.

U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). 2013. Web Soil Survey. Retrieved from: http://websoilsurvey.nrcs.usda.gov/app

U.S. Fish and Wildlife Service. 2013. National Wetlands Inventory. Retrieved from: http://www.fws.gov/wetlands/Wetlands-Mapper.html

Appendix A

AFTER RECORDING, RETURN TO:
Bonneville Power Administration
Real Property Services, TERR
Re: [Insert BPA Tract No.]
P.O. Box 3621
Portland, OR 97208-3621

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is executed this ____ day of _____, 20___, by MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0710 ("**MFWP**" or "**Grantor**"), in favor of the United States of America ("**United States**"), acting by and through the Department of Energy, Bonneville Power Administration ("**BPA**" or "**Grantee**"), headquartered in Portland, Oregon, at P.O. Box 3621, Portland, OR 97208-3621. The Grantor and Grantee together are referred to as the "Parties."

I. RECITALS

A. BPA is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h ("**Northwest Power Act**") to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("**ESA**"). BPA has the authority pursuant to the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. § 838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests; and

B. BPA and MFWP entered into several agreements, including the "Memorandum of Agreement Between the State of Montana, the Bonneville Power Administration, the U.S. Army Corps of Engineers, and the U.S. Bureau of Reclamation" also known as the "Montana Fish Accord" in May of 2008, and the Memorandum of Agreement Between the State of Montana and the Bonneville Power Administration for Resident Fish Mitigation in November of 2010", also known as the "2010 Resident Fish MOA", in which BPA agreed to fund the acquisition of real property interests to permanently protect and enhance important fish and wildlife habitat, where it either currently exists or at one time existed, in exchange for supporting BPA's partial fulfillment of Northwest Power Act and ESA obligations, and in exchange for rights of enforcement, entry, and inspection to the United States and its assigns.

C. BPA in accordance with the mutual commitments of these agreements, copies of which are available from the BPA Manager, Real Property Services, P.O. Box 3621, Portland, OR 97208-3621, provided funding to the Grantor to acquire fee title ownership of certain real property, the Otter Island Fisheries Conservation Area Addition #1("**Protected Property**") in Flathead County, Montana. The Protected Property has important features that help BPA meet its statutory obligations to the public under the Northwest Power Act and other environmental laws.

II. AGREEMENT

A. Conveyance and Consideration. The Grantor, for and in consideration of the funding in the amount of $108,800 in U.S. dollars which BPA provided to acquire fee title ownership of the Protected Property, hereby voluntarily grants and conveys to the United States of America and its assigns a perpetual easement for conservation purposes ("Conservation Easement") over, under, upon and across the Protected Property, legally described in Exhibit A (legal description)[*Note: the legal description must include a description of any water rights accompanying the property in the transaction*], attached and incorporated by reference, and shown in Exhibit B (map/aerial photo) attached and incorporated by reference, created and implemented under applicable state and federal law, and creating an interest in property intended to be a conservation easement under Montana Code Annotated §§ 76-6 *et. seq.* The Parties intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend that its terms and conditions, set forth below, create equitable servitudes and covenants running with the land, burdening Grantor and Grantor's successors and assigns for the benefit of the United States.

B. Purpose. The purpose ("Purpose") of this Conservation Easement is to protect and conserve, and as appropriate, to allow for the restoration or enhancement of the Conservation Values (Section C, below) of the Protected Property in perpetuity. As such, the Purpose of this Conservation Easement includes the prevention of any use of the Protected Property that will materially harm or materially interfere with any of the Conservation Values of the Protected Property. The Grantor intends that this Conservation Easement will confine the use of the Protected Property to activities that comply with the Conservation Easement, including the approved Management Plan. BPA shall have the right, but not the obligation, to enforce any and all terms of this Conservation Easement. Any use of or activities on the Protected Property by the Grantor shall be consistent with the Purpose of this Conservation Easement. In the event that there is a conflict between the Grantor's uses or activities and the Purpose of Conservation Easement, the Purpose of the Conservation Easement shall be construed broadly and shall prevail over any conflicting uses or activities of the Grantor.

C. Conservation Values. The Protected Property, in its present state, comprises approximately 13.6 acres including riparian forest, floodplain, and side channel habitat important to bull trout and westslope cutthroat trout. The Parties agree that the Protected Property includes other important species, habitat, and other important ecosystem attributes, including:

1. Particular kinds of fish and wildlife species including but not limited to ESA-listed species, species serving important roles in the ecosystem, and species which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation, and which are dependent on suitable environmental conditions, with an emphasis on native species. The Conservation Values include important habitat, generally characterized by the biological or physical components that support fish and wildlife species, including but not

limited to space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; and sites for breeding, reproduction, rearing of offspring, and migration; and often identified as important through regulatory categorical designations such as ESA-designated critical habitat or other important environmental areas identified by local, tribal, state, or federal law.

2. Other important components of the ecosystem of which the fish and wildlife habitats are integrally a part, including but not limited to diverse and high-quality native riparian and upland native vegetation communities that are the basis of the food chain and that serve important roles through soil quality and productivity, biodiversity, air quality, carbon sequestration, water quantity (flow levels), and water quality (including but not limited to water quality parameters such as toxins, thermal load, and sediment load).

3. Specifically, the Conservation Values of the Protected Property that currently exist specifically include the following, recognizing that such Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions:

    a. Native fish and wildlife species including bull trout which is listed as threatened under the federal Endangered Species act, and westslope cutthroat trout listed by MFWP as a species of special concern, as well as other native fish and wildlife.

    b. Naturally self-sustaining native riparian and wetland vegetation on the mainstem Flathead River and associated side channel habitat that is important for healthy river function, good water quality, flood water retention, groundwater recharge, natural stream migration, and the overall ecological integrity of the Flathead River.

    c. Scenic views and recreational opportunities enjoyed by members of the general public recreating on the Flathead River and located adjacent to other public lands and in proximity to private conservation easements.

D. Baseline Documentation. The Grantor and BPA agree that the characteristics and conditions of the Protected Property at the time of this grant are documented in a **Baseline Documentation Report**, signed and acknowledged by the Parties; the acknowledgment is Exhibit C, attached and incorporated by reference.

E. Reserved Uses. The Grantor reserves, for itself and its successors and assigns, the right to use the Protected Property in any and all ways which are consistent with the Purpose of this Conservation Easement and which are not otherwise prohibited by this Conservation Easement, including but not limited to: the right to record title, the right to convey, transfer, and otherwise alienate title to these reserved rights; the right of quiet enjoyment of the rights reserved in Protected Property; and the right to prevent trespass and control access.

F. Management Plan. The Grantor shall develop a Management Plan for the Protected Property in accordance with the 2010 Resident Fish MOA, to describe the land and resource management activities, including any restoration actions that MFWP expects to undertake or allow to be

undertaken on the Protected Property. The Management Plan shall also identify the allowable use and access by the public of the Protected Property if appropriate. The Grantor shall develop the Management Plan in consultation with BPA, and relevant interested local, state, tribal, and federal resource agencies, and the Grantor shall provide an opportunity for public input on the Management Plan. BPA has the right to review that Plan and any proposed amendments for conformance with this Conservation Easement and applicable laws, and must approve the Plan or any amendments, prior to its implementation, in accordance with the 2010 Residence Fish MOA. Prior to review of the Management Plan by BPA, the Grantor shall not undertake any ground-disturbing activities on the Protected Property without prior notice to and written approval by BPA. The Grantor shall make the final approved Management Plan, and any amendments, available to the public.

1. The Parties acknowledge the right of the Confederated Salish and Kootenai tribal members to conduct traditional usufructuary and spiritual uses including hunting, fishing, and gathering in accordance with applicable law.

G. Public Access. The Grantor shall provide reasonable public access to the Protected Property (for example, for undeveloped recreational uses, such as hiking, tent camping, bird watching, hunting, and fishing) unless the Grantor and BPA determine such access may materially impair one or more of the Conservation Values of the Protected Property. The Grantor will address public access in the Management Plan.

H. Annual Report. The Grantor shall annually submit a report to BPA that describes, at a minimum any: changes in real property interests (including water rights) in the Protected Property; uses or activities undertaken, in progress, or planned; violations or threatened violations of the Conservation Easement; and enforcement action taken. The Grantor shall provide the initial annual report in the fifteenth month after the closing date of the acquisition of the Protected Property, and then annually on that initial report date anniversary thereafter, unless otherwise agreed by BPA.

I. Rights Conveyed to Grantee

1. General Rights. The Grantor has conveyed this Conservation Easement to the United States. BPA is the acquiring federal agency having jurisdiction and control over this Conservation Easement. Subject to valid existing rights of record and those rights specifically reserved to the Grantor, all development rights associated with the Protected Property are vested in Grantee. In addition to any other rights granted to the Grantee pursuant to this Conservation Easement, Grantee has the right to:

a. Access and inspect the Protected Property at all reasonable times upon reasonable notice (which may be by phone or electronic mail) to assure compliance with this Conservation Easement;
b. To access the Protected Property upon reasonable notice (which may be by phone or electronic mail) to survey the fish and wildlife habitat and evaluate the status of the Conservation Values;
c. Prevent any activity on the Protected Property inconsistent with this Conservation Easement, and to require the restoration of areas or features of the Protected Property that are damaged by any inconsistent activity; and
d. Should the Grantor fail to do so, to retain and maintain the right to use any and all of the water rights associated with the Protected Property, and to protect those rights from threat

of abandonment or forfeiture under relevant law; Grantee may, after providing 90 days advance written notice to the Grantor enter upon the Protected Property and take actions reasonably necessary to maintain the validity of the water rights.

2. **Transmission Facilities.** The Grantor conveys the following rights to the United States: to construct, locate, operate, maintain, repair, reconstruct, upgrade, keep clear, access and patrol future transmission facilities including ancillary transmission communications facilities within the Conservation Easement at no additional cost for securing the transmission easement for these purposes. Should such a perpetual transmission easement be needed, the Parties shall negotiate the final terms and conditions of the transmission easement in a form substantially similar to Exhibit D, Form Transmission Easement. Such transmission easement shall not be presumptively precluded by the terms of this Conservation Easement. The Parties shall seek to negotiate terms and conditions of the transmission easement that reflect the Purpose of this Conservation Easement, and may include mitigation measures in accordance with the MOA or as otherwise identified as part of an environmental analysis for the transmission easement under the National Environmental Policy Act, ESA, or any other applicable laws. Transmission easements shall be for the sole purpose of transmission of electrical power and ancillary communications.

J. Prohibited Uses. The Grantor shall manage the Protected Property to protect its fish and wildlife habitat on behalf of BPA, preventing any and all uses of the Protected Property that are inconsistent with the Purpose of this Conservation Easement. The Grantor may also manage the Protected Property to restore or enhance fish and wildlife habitat, provided the restoration or enhancement activities are approved by BPA, either in an approved Management Plan or by prior written approval. Prohibited uses of the Protected Property include those specifically listed below. The Parties intend that any activity that may materially harm or materially interfere with one or more of the Conservation Values is prohibited, and therefore the list identified below is not exhaustive.

1. *Residential, Commerical or Industrial Uses*. Any residential, commercial, or industrial uses of the Protected Property is prohibited, including commericial timber harvesting, grazing of livestock, and agricultural production.

2. *Construction of Buildings, Facilities, or Other Structures*. Construction of new buildings, facilities, or other structures is prohibited. Repair, maintenance, or replacement of existing buildings, facilities, fences or other structures identified in the Baseline Documentation Report are permitted at the same location and within the existing footprint of such structures.

3. *Utilities*. Except as provided for in Section K.2, the installation or relocation of new public or private utilities, including electric, telephone, or other communications services is prohibited. Existing utilities on, over, or under the Protected Property may be maintained, repaired, removed or replaced at their current location as that location is documented in the Baseline Documentation Report.

4. *Signs*. Except for no trespassing signs, for sale signs, signs identifying the owner of the Protected Property, and signs that may be erected by the Grantee identifying the Purpose of the Protected Property and management regulations, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size.

5. *Fences*. Fences can be built and maintained to protect conservation values, encourage

revegetation, and indicate property boundaries or other land management purpose as long as such fences are included in the approved Management Plan.

6. *Waste.* Dumping, collecting, recycling, accumulating, or storing of trash, refuse, waste, sewage, bio-solids, or other debris is prohibited.

7. *Mining.* Subject to valid existing rights, if any, held by third parties at the granting of this Conservation Easement, the exploration, development, mining or extraction of soil, sand, loam, gravel, mineral, oil, gas, or other substance from the surface or subsface of the Protected Property is prohibited. Grantor shall notify the Grantee of any planned exploration, development, mining or extraction of any substances by third parties with valid existing rights as soon as possible, and at least 60 days before commencement of the action.

8. *Topography.* Altering the existing topography of the Protected Property by digging, plowing, disking, or otherwise disturbing the surface or subsurface is prohibited.

9. *Watercourses/Wetlands*. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or any other alteration of any watercourses, ponds, seeps, bogs, springs, wetlands, or any seasonally wet area is prohibited, as is altering or tampering with existing water control structures or devices.

10. *Vegetation Management.* The cutting, trimming, shaping, killing, or removal of any native vegetation from the Protected Property, except for noxious weeds, is prohibited.

11. *Exotic Species.* The introduction, cultivation, or use of exotic plant or animal species on the Protected Property is prohibited. Exotic plants include non-native invasive plant species.

12. *Roads and Impervious Surfaces*. Existing roads identified in the Baseline Documentation Report may be maintained and repaired in their current condition and within their existing footprint as identified in the Report. Maintenance and repair of existing roads shall not be construed to permit the paving of any existing road not already paved or otherwise covered in an impervious material as of the date of this Conservation Easement.

13. *Vehicle Use*. The use of motorized vehicles is prohibited, except as necessary to carry out activities approved by the Grantee, or for limited, de-minimus, non-commercial recreational uses such as hunting or bird watching if those activities are approved uses in the Management Plan.

14. *Subdivision*. The legal or "de facto" division, subdivision or partioning of the Protected Property is prohibited.

15. *Grant of Rights.* The granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases, without the prior written consent of the Grantee is prohibited.

K. Permitted Uses. Uses or activities otherwise prohibited under Section K above may be allowed but only if: (1) the use or activity does not materially harm or materially intefere with the Purpose of this Conservation Easement; and (2) the use or activity and any necessary limits or prescriptions are approved by BPA in advance, either in an approved Management Plan under procedures described in

II.G above, or by written approval or written consent of BPA.

L. Enforcement

1. *Notice of Violation, Corrective Action*. If Grantee determines that the Grantor or its representatives, contractors, successors, or assigns violates or threatens to violate this Conservation Easement, and if such determination or dispute is not resolved by negotiation as set forth in Section N, Grantee will give written notice to the Grantor and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, sufficient to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

2. *Grantor's Failure to Respond***.** The Grantee may bring an action as provided in Section M.3 if the Grantor fails to cure the violation within thirty (30) calendar days after receipt of a notice of violation, or under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

3. *Grantee's Action.* Grantee may pursue an action in a court having jurisdiction to enforce the terms of this Conservation Easement: (1) to enjoin the violation, ex parte as necessary, by temporary or permanent injunction; (2) to require the restoration of the Protected Property to the condition that existed prior to any such injury; and (3) to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing.

4. *Grantor's Action*. In the event that the Grantor seeks a determination as to the legal meaning or effect of this Conservation Easement, or as to any alleged violation hereof by Grantee, and if such determination or dispute is not resolved by negotiation set forth in Section N below, then the Grantor shall be entitled to bring judicial action in a court of competent jurisdiction.

5. *Emergency Enforcement*. Nothwithstanding the provisions of M.1 and M.2, if Grantee determines on the basis of substantial evidence that circumstances require immediate action to prevent or mitigate significant damage to one or more of the Conservation Values, Grantee may undertake reasonable actions to remove, eliminate or mitigate damages to the Protected Property. Grantee shall provide prior notice to the Grantor of such actions to the extent reasonably practicable and may seek Grantor participation in such actions, but may proceed with such actions without permission from the Grantor or without waiting for the Grantor to take any action.

M. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Conservation Easement by negotiation between executives or officials who have authority to settle the controversy.

N. Acts of God/Force Majeure. Nothing contained in this Conservation Easement entitles the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, without limitation, naturally caused fire, flood,

storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Such excuse from performance will be allowed only if such catastrophic event or other event beyond the Grantor's control has caused a substantial degradation of the Conservation Values. The Parties shall make all reasonable efforts to resume performance promptly once the force majeure is eliminated.

O. Waiver. The failure of any Party to require strict performance of any term of this Conservation Easement or a Party's waiver of performance shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.

P. Conveyance and Assignment. The Grantor may not convey the Protected Property nor assign or transfer its rights or delegate its responsibilities under this Conservation Easement without receiving prior written approval from BPA, which shall not be unreasonably withheld.

Q. Proceeds from Activities on the Protected Property. The Grantor shall use any proceeds generated from activities on the Protected Property (e.g., timber sales, leases, etc.) towards the operations, maintenance and restoration of the Protected Property. If proceeds exceed the operations, maintenance and restoration needs of the Protected Property, the Grantor may use the proceeds on other BPA-funded properties owned by Grantor, or the Grantor may place the proceeds in its operations and maintenance account for the property and roll the funds over to the next fiscal year until an operations, maintenance or restoration need arises.

R. Termination or Amendment. The Grantor has agreed that this grant of a perpetual Conservation Easement gives rise to a property right, immediately vested in the United States, with a fair market value of the Protected Property as of the date of this Conservation Easement.

1. **Presumption Against Termination.** MFWP and BPA intend that the Conservation Values (Part II) be protected in perpetuity, and where appropriate improved. Therefore, both Parties agree that this Conservation Easement may be voluntarily terminated by agreement of the Parties only if:

   a) a subsequent, unexpected change in the conditions of the Protected Property or the surrounding area makes *impossible* the continued use of the Protected Property for the Purpose of this Conservation Easement (except that changed environmental conditions related to climate change, or other natural events, for example, wildfire, river channel migration, erosion or avulsion, shall not be grounds for termination); or

   b) BPA agrees to exchange this Protected Property for another property proposed by the Grantor; factors that BPA will consider in determining whether to agree to an exchange include whether the new property is at the time of the proposed exchange determined by BPA to supply equal or better Conservation Values to meet BPA's mitigation needs as compared with the Protected Property; whether the property will be permanently protected pursuant to a covenant or other real property interest issued to BPA on terms substantially similar to this Conservation Easement; and the costs to BPA of undertaking the acquisition of the new property, if any.

2. **Termination Process.** If the Parties agree to voluntarily terminate this Conservation Easement

and have met the above termination standard, the Parties shall terminate this Conservation Easement by executing and recording an instrument appropriate for the purpose. In the event of termination through an exchange for another property, the Parties must agree on the new property and its conservation easement before this Conservation Easement will be terminated.

3. **Proceeds after any Termination.** If this Conservation Easement is terminated either voluntarily by the Parties, or by involuntary extinguishment by a court of competent jurisdiction and the termination results in proceeds, BPA is entitled to either (1) a share of such proceeds in proportion to the amount BPA contributed to the fee title acquisition, which is 89 percent or (2) at BPA's election, to review and approve use of the proceeds by the Grantor to acquire new fish and wildlife habitat for BPA mitigation.

4. **Amendment**. This Conservation Easement may only be amended by agreement of the Parties, and any such amendment shall be properly documented, executed, and recorded. Amendments based on changed conditions may be made only when the Purpose of the Conservation Easement is impractical to achieve, and when the effect of the amendment is to benefit, or least cause no material harm to or material interference with the Conservation Values (for example, amending the Conservation Easement to place further restrictions on the use of or activities on the Protected Property). The Parties may not use amendments to impliedly terminate the Conservation Easement or remove any portion of the Protected Property from its terms, except to the extent consistent with the Purpose of the Conservaton Easement.

S. Control. The Grantor has ownership and control of the Protected Property and is responsible for all incidents of ownership. Such incidents of ownership include, but are not limited to, maintenance and repair of existing structures, hazardous waste response, cultural or historic resource mitigation or preservation, endangered species protection, noxious weed and invasive species response, tort liability, compliance with applicable laws, and payment of applicable taxes and assessments.

T. Hazardous Substances. To the best of the Grantor's knowledge, there are no hazardous substances present in, on, or under the Protected Property, including without limitation, in the soil, air, or groundwater, and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of hazardous substances or the violation of any environmental law on the Protected Property, and that there are no underground storage tanks located on the Protected Property. If, at any time, there occurs, or has occurred a release in, on, or about the Protected Property of any hazardous substances, the Grantor agrees to take all steps necessary to assure its containment and remediation without cost to Grantee, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee will be responsible for remediation in accordance with applicable law. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("**CERCLA**"). The Grantor specifically agrees to release and hold harmless Grantee from and against all liabilities for violations or alleged violations of, or other failure to comply with, any federal state or local environmental law or regulation relating to hazardous substances, including, without limitation, CERCLA, by the Grantor in any way affecting, involving, or relating to the Protected Property, except to the extent such violations or alleged violations are caused by the acts or omissions of Grantee.

U. Notice. Any notice permitted or required by this Conservation Easement, unless otherwise specified, must be in writing, delivered personally to the persons listed below, or will be deemed given on the date deposited in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. The addresses listed below can be modified at any time through written notification to the other Party.

Notices to BPA should be sent to:

Director, Fish & Wildlife Program
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Notices to the Grantor should be sent to:

[Insert sponsor info]

For notices specific to BPA's Real Property Services:

Manager, Real Property Services
RE: [INSERT BPA TRACT NO]
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

V. Effective Date. This Conservation Easement vests when signed by the Grantor, and accepted by the Grantee.

W. GRANT, COVENANTS AND WARRANTIES, SIGNATURE AND ACKNOWLEDGMENTS

To have and to hold the Conservation Easement herein granted unto the United States and its assigns.

The Grantor warrants and covenants to and with the United States that the Grantor is lawfully seized and possessed of the Protected Property in fee simple, with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; that the Protected Property is free and clear of all encumbrances and restrictions except the encumbrances and restrictions specifically set forth in Exhibit E, attached and incorporated by reference; that the United States and its assigns shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement; that the Grantor shall at the request of the United States execute or obtain any reasonable further assurances of the title to the Property; and that the Grantor will forever warrant the title to the Property and defend the United States against all persons who claim a lawful interest in the Property, except for persons who claim interests under the exceptions described in Exhibit E.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____day of _____, 2014.

Grantor

_____

ACKNOWLEDGMENT

STATE OF)
) ss.
County of)

On this _____day of _____, 20_____ , before me personally appeared_____ , known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the _____ acknowledged to me that ___he executed the same freely and voluntarily in such capacity; and on oath stated that ___ he was authorized to execute said instrument in such official or representative capacity.

Notary Public in and for the

State of _____

(SEAL) Residing at _____

My commission expires_____.

ACCEPTANCE BY THE UNITED STATES

_____
By:
Title:
Bonneville Power Administration

_____
Date

ACKNOWLEDGMENT

STATE OF)
) ss.
County of)

On this _____day of _____, 20_____ , before me personally appeared_____ , known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the _____ acknowledged to me that ___he executed the same freely and voluntarily in such capacity; and on oath stated that ___ he was authorized to execute said instrument in such official or representative capacity.

Notary Public in and for the

State of _____

(SEAL) Residing at _____

My commission expires_____.

EXHIBIT A—LEGAL DESCRIPTION

EXHIBIT B—MAP/AERIAL PHOTO

EXHIBIT C—ACKNOWLEDGMENT OF BASELINE DOCUMENTATION REPORT

EXHIBIT D—FORM TRANSMISSION EASEMENT

EXHIBIT E—TITLE WARRANTY EXCEPTIONS

Appendix B

Otter Island Fisheries Conservation Area
Management Plan

Prepared by:

Kris Tempel
Montana Fish, Wildlife & Parks
Region 1 – Fisheries Lands Conservation Program
490 North Meridian Road
Kalispell, MT 59901

REVISED
To Include Otter Island FCA Additions 1 and 2
June 18, 2014

Property Name: Otter Island Fisheries Conservation Area
Current Acreage: 146.8 ac
Proposed Otter Island Additions Total Acreage: *19.72 ac*
Current Stream Distance: 1.04 km (mainstem); 0.98 km (side channel)
Proposed Additional Stream Distance: *0.18 km (mainstem); 0.36 km (side channel)*
Drainage: Flathead River
MFWP Contacts: Kris Tempel (406) 751-4573
Joel Tohtz (406) 751-4570

INTRODUCTION

A. Overview

In January 2011, the Confederated Salish and Kootenai Tribes (CSKT) Fisheries Program used Bonneville Power Administration (BPA) funding to acquire a 147-acre parcel along the Flathead River mainstem as partial mitigation for fisheries habitat lost due to the construction of Hungry Horse Dam. The property is encumbered by a conservation easement held by BPA to protect the conservation values for which the property was originally purchased, namely habitat for fish and wildlife species and other ecosystem components or functions important to fish and wildlife. Montana Fish, Wildlife & Parks (MFWP) acquired this property from CSKT in December 2013 and named it the Otter Island Fisheries Conservation Area (FCA).

In July 2014, MFWP proposed to acquire two additional parcels of land that lie between Otter Island FCA and the Department of Natural Resources and Conservation's (DNRC) Owen Sowerwine Natural Area. These additions would complete public ownership along 2.7 miles of the western bank of the Flathead River from Old Steel Bridge Fishing Access Site (FAS) to the end of Owen Sowerwine Natural Area. The properties will be bought using BPA Fisheries Mitigation Funding under the authority of the 2008 Montana Accord. MFWP updated this management plan in June 2014 to reflect these Additions.

One requirement of BPA who provided acquisition funding for Otter Island FCA as well as the Additions is that a management plan must be written which describes objectives and actions that will be implemented to protect and mitigate harm to resident fish and wildlife habitat. This proposed revised management plan addresses how MFWP will manage this Otter Island FCA, along with these Additions, consistent with the conservation easement held by BPA.

B. Other Nearby Conservation

Otter Island Fisheries Conservation Area (FCA) is located along the Flathead River mainstem between the MFWP's Old Steel Bridge Fishing Access Site (FAS) and the Department of Natural Resources and Conservation's (DNRC) Owen Sowerwine Natural Area. There are also several private conservation easement properties and other state lands located in this portion of the Flathead River (see Attachment A, Fig. 1).

PROJECT DESCRIPTION

A. Riverine Environment and Historical Uses

The 146.8-acre Otter Island FCA and 19.72 acre additions are located along the banks of the Flathead River mainstem just south of the MFWP Old Steel Bridge FAS, about 1.5 miles from downtown Kalispell, Montana (Attachment A, Fig. 1). The property contains a total of 1.04 stream kilometers (km) of the Flathead River mainstem and another 0.98 km of active side channel. The two additions will add 0.18 km of mainstem habitat (along both banks of the Flathead River) and 0.36 km of side channel habitat. The property also includes part of a historical river channel that is now a small spring creek that continues through the two addition properties. All but 13 acres along the outside of the active river channel fall within the Flathead River floodplain.

Otter Island FCA is located just above the Kerr Dam inundation/influence zone on the Flathead River. Photographs of the property are included in Attachment A, Figures 3 through 11. The current Otter Island FCA property is part of a historical homestead founded at the turn of the 20th century. It was owned by the previous landowner's family for nearly 100 years. Before CSKT purchased the property, it included land on both sides of an existing roadway now known as Conrad Drive. The area to the west of Conrad Drive (about 40 acres) contains the original home site along with crop and pasture lands and a portion of the Stillwater River. These lands to the west of Conrad Drive are no longer associated with the Otter Island property.

The current Otter Island FCA consists of two distinct areas that differ in their history and current condition. The most eastern portion is an island, approximately 70 acres, bounded by the mainstem Flathead River to the east and an active secondary channel to the north and west (Fig. 1). It is bounded by a smaller secondary channel to the south. This island has had the least impact from past land management activities. It appears that only some grazing occurred on the island in the past. Access to this part of the property is only by foot across the shallow areas of the secondary channel. During high spring river flows the island area is not accessible except by boat.

The area located closest to Conrad Drive between the spring creek and the secondary channel has had more intense land management activities in the past than the island. This portion of the property was partially logged in the mid-1990s and was actively grazed in the past. This area of the property currently has stands of cottonwood forest, two converted pastures, a power line right of way, a two-track road, trails, and a historic dumping area. It can be accessed directly off of Conrad Drive across an old low-water crossing over the spring creek. During spring runoff when the Flathead River water levels rise, the spring creek usually floods the crossing. The crossing is currently starting to sink in places due to the culverts beneath it failing and high water inundating the surface for long periods in the spring (Fig.15).

In recent years, the original landowner allowed public access to the property for fishing. The property is located directly to the south of the Old Steel Bridge FAS and the original landowner, in conjunction with MFWP, created a pedestrian pass-through along the boundary fence to facilitate fishing access (Fig. 5). As a result of permitted public uses and perhaps other historic activities by neighbors, there now exists an established network of several small trails along the river bank that connect to various other points on the property (Fig. 6).

In the past, the original landowner allowed the property to be used by archery hunters and professional photographers as well as for grazing. At this time, there is no grazing or any other leases on the property.

There is a point of diversion for an irrigation water right of 1.78 cfs on the small spring creek. This water right is for use on the property across Conrad Drive (part of the property owned by the original landowner) and is not associated with Otter Island FCA.

The western portions of the two Otter Island Addition properties are located at the tip of the island portion of Owen Sowerwine Natural Area and separated from the current Otter Island FCA by a small side channel (Figs. 1 and 2). Both properties also include small areas on an island across the mainstem of the Flathead River. These properties are only accessible by boat or possibly foot traffic from Otter Island FCA during low water conditions. Due to this relative inaccessibility, these two properties have seen hunting and fishing use by the current landowners and the public, but very little other uses. They are in good condition from a fisheries and wildlife habitat standpoint (Figs. 17, 18, and 19).

B. Natural Vegetation and Riparian Zones

The property is mostly dominated by black cottonwood riparian/wetland habitat types as defined by Hansen et al. (1995). Three major black cottonwood forest types occur on the property: cottonwood/snowberry, cottonwood/red-osier dogwood, and cottonwood/alluvial bar. A list of common dominant species occurring on the property is included in Table 1. There are little or no uplands within the project area. There are several areas of totally cleared forest that have been cultivated and converted to tame pasture grasses, one area that was used in the past for dumping wood and other wastes that has been mostly cleaned up, and there are several two-track roads and walking trails.

The natural vegetation of the eastern island inside the active channel is in much better condition than the vegetation west of the side channel. The impact of grazing, pasture conversion, and logging have reduced native composition on about half the property that is west of the active side channel.

Beaver are currently having a significant impact along the Flathead River bank. Over the years they have removed most mature cottonwood trees within 100 feet of the river bank (Fig. 7). The bank is actively eroding due to natural processes exacerbated by beaver activity and foot paths. Other human uses (logging and grazing) have also reduced or eliminated native riparian vegetation along portions of the banks of both the active river side channel and the spring creek (Figs. 8, 9, and 10).

C. Noxious Weeds

All of the property has a significant noxious weed infestation of Canada thistle, spotted knapweed, common burdock, leafy spurge, and oxeye daisy. Most of the grasses consist of cheat grass, smooth brome, Kentucky blue grass, reed canary grass, and other nonnative plants (Table 1).

D. Fisheries Status

The mainstem of the Flathead River in the immediate area of the Otter Island FCA is characteristic of many developed western Montana watersheds. The river has been influenced by land management activities such as irrigation, agriculture, development of transportation corridors, and the construction of hydropower facilities. The introduction of nonnative species has also greatly altered the ecology of the river (CSKT and MFWP 2004). The current fish assemblage is the result of these habitat alterations and fish introductions. The Flathead River in this reach supports both resident and migratory salmonid populations. Historically, the only salmonids in the river were mountain whitefish, pygmy whitefish, bull trout, and westslope cutthroat trout. Introduced salmonids that now occupy this section of the

Flathead River include rainbow trout, brook trout, lake trout, and lake whitefish. The introduced rainbow trout have hybridized with the native westslope cutthroat trout resulting in self-sustaining hybrid populations. Other native fish found in the immediate area include peamouth, longnose suckers, largescale suckers, Columbia slimy sculpins (and possibly shorthead sculpins), northern pikeminnow, and redside shiners. A list for this property of fish species and their scientific names is found in Table 2.

The Flathead River is characterized by highly erosive banks that are further compromised by removal of riparian vegetation and cattle grazing. The portion of the property along the Flathead River mainstem has mature cottonwood trees and has seen little to no grazing, yet it is actively eroding. The main threat to the riparian vegetation at this time is beaver activity. Beavers are cutting down an extremely high number of trees, leaving the banks more susceptible to erosion (Fig. 7). The side channel has mature trees along some portions of the bank, but other areas have been farmed and grazed up to the banks. The banks of the side channel are actively eroding in areas with and without riparian vegetation (Figs. 8, 9, and 10). This area experiences lateral channel movement and areas of severe erosion caused by several factors: (1) highly erosive soils, (2) the gradient change of the Flathead River at this point, (3) flow fluctuations caused by the operation of Hungry Horse Dam, and (4) unnaturally high river levels just downstream caused by the operation of Kerr Dam.

E. Wildlife Status

In addition to important fisheries resources, the Flathead River supports significant populations of semi-aquatic furbearers including beaver, muskrat, mink, and river otter. The Flathead River also supports abundant migratory waterfowl during both spring and fall. Common breeding waterfowl on the river include Canada geese, mallards, common goldeneyes, common mergansers, and wood ducks. Other water-related birds that use the river system along or on this property include great blue herons, osprey, bald eagles, and trumpeter swans. All of these species except osprey are considered state species of special concern. The small spring creek is likely to support western garter snakes, rubber boas, western toads, Columbia spotted frogs, Pacific treefrogs, and painted turtles. The western toad is a species of special concern. The Flathead River was also home to leopard frogs, but this species has been extirpated from the Flathead River system.

Wildlife in the upland areas include white-tailed deer, coyotes, raccoons, skunks, fox, and an occasional black bear and grizzly bear, bobcat, mountain lion, moose, and elk that may move through the area. Grizzly bears (listed as threatened under the federal Endangered Species Act) have moved into the river corridor from nearby mountains during summer and fall to forage on chokecherry and hawthorn berries. Common birds of the uplands and riparian areas include red-tailed hawk, harrier, ring-necked pheasant, Hungarian partridge, eastern wild turkey, western bluebird, and a variety of other bird species including pileated woodpecker, brown creeper, and veery, all species of special concern. There are also several bat species associated with the riparian corridor along the Flathead River, including Townsend’s big-eared bats and hoary bats, two more species of special concern.

Table 1. Scientific and common names of dominant plant species by cover type. Nonnative species in bold.

Scientific Name	Common Name	Douglas Fir/red-osier dogwood	Cottonwood /snowberry/	Cottonwood/gravel bar	Cottonwood /red-osier
Tree Species:					
Populus trichocapa	black cottonwood	X	X	X	X
Pseudotsuga menziesii	Douglas fir	X	X		X
Pinus ponderosa	ponderosa pine	X	X		
Juniperus scopulorum	Rocky Mountain juniper	X	X		
Picea spp	spruce		X	X	X
Alnus incana	thin-leaved alder		X	X	X
Shrub Species:					
Amelanchier alnifolia	serviceberry		X		
Cornus stolonifera	red-osier dogwood	X	X	X	X
Crataegus douglasii	black hawthorn	X	X		X
Mahonia repens	Oregon grape	X	X		
Prunus virginiana	choke cherry	X	X	X	X
Rosa woodsii	Wood's rose	X	X	X	X
Salix exigua	sandbar willow		X	X	X
Sambucus cerulean?	blue elderberry	X	X		X
Symphoricarpos occidentalis	snowberry	X	X		X
Herbaceous Species:					
Achillea millefolium	common yarrow	X	X	X	X
Agropyron cristatum	crested wheatgrass	X	X		X
Agropyron repens	quackgrass	X	X	X	X
Arctium minus	common burdock	X	X	X	
Bromus sp	smooth brome	X	X	X	X
Carex spp.	sedge (multiple species)		X	X	X
Centaurea stroebe	spotted knapweed	X	X		
Cirsium arvense	Canada thistle	X	X	X	X
Cirsium vulgare	bull thistle	X	X	X	X
Cynoglossum officinale	houndstongue	X	X	X	X
Dactylis glomerata	orchard grass	X	X	X	X
Equisetum spp.	horsetail, souring rush		X	X	X
Heracleum lanatum	cow parsnip				X
Leucanthemum vulgare	oxeye daisy	X	X	X	X
Phalaris arundinaceae	reed canarygrass	X	X	X	X
Smilacina racemosa	western false Solomon's Seal	X	X	X	X
Solanum dulcamara	bittersweet nightshade	X	X		
Taraxacum officinale	dandelion	X	X	X	X
Trifolium spp	clover species (multiple)	X	X	X	X
Typha latifolia	cattail			X	X
Urtica dioica	stinging nettle				X
Verbascum thapsus	common mullein		X		

Table 2. Scientific and common names of fish species found in the Flathead River near the Otter Island Property.

Native Salmonids	
Scientific Name	**Common Name**
Salvelinus confluentus	bull trout
Oncorhynchus clarkii lewisi	westslope cutthroat trout
Prosopium williamsoni	mountain whitefish
Prosopium coulteri	pygmy whitefish

Other Native Fish	
Scientific Name	**Common Name**
Mylocheilus caurinus	peamouth
Richarsonius balteatus	redside shiner
Ptychocheilus oregonensis	northern pikeminnow
Cottus cognatus	Columbia slimy sculpin
Cottus confusus	shorthead sculpin
Catostomus catostomus	longnose sucker
Catostomus macrocheilus	largescale sucker

Introduced Salmonids	
Scientific Name	**Common Name**
Oncorhynchus mykiss	rainbow trout
Salvelinus fontinalis	brook trout
Salvelinus namaycush	lake trout
Coregonus clupeaformis	lake whitefish

INFRASTRUCTURE INVENTORY

This property contains no buildings of any kind. There is a small clearing on the property where some building materials and other appliances were dumped some years ago. The area has been mostly cleaned up, but there are still a few metal objects, some old wood, and car batteries remaining (Figs. 11 and 12).

The property has some fencing around it to separate it from neighboring parcels. There are also two gates on the property and one pedestrian pass-through spot. There is a gate on the north side of the property just to the south of the small spring creek that separates this property from the neighbors to the north (Fig. 13). This gate does not provide access to the property because there is private property between the FCA and Conrad Drive. The other gate was installed by the CSKT maintenance crew in the fall of 2011 and provides administrative access to the property from Conrad Drive (Fig. 14). The road to the property at this spot crosses a causeway across the small spring creek. This old channel is fed by springs and underground water sources from the Flathead River and always has water in it. The causeway is above the water most of the year, but often is flooded in the spring when the Flathead River level rises. The surface of the causeway is in poor condition and if administrative access is to continue in

this area, it will need maintenance and improvement (Fig. 15). This area is not suitable for public access because of the lack of a way to safely enter and exit the property from Conrad Drive and because of the deteriorating state of the causeway. There is no way to provide parking in this area, so the gate was placed intentionally to discourage public parking.

Pedestrian access to the property is located where the FCA abuts the Old Steel Bridge FAS to the north. This access allows people and animals to pass between the two properties, but does not allow motorized vehicles (Fig. 5).

The only "structure" on the property was created by trespassers on the property and consists of branches and limbs stacked around a group of trees to create a makeshift shelter (Fig. 16). This shelter is located on the island portion of the property and contains an old sleeping bag and other evidence of past use and human habitation. Exactly what activities have occurred in and around this shelter have not been fully determined, but transient camping has occurred to the north.

PROHIBITED USES OF THE PROPERTY

The following uses are generally prohibited by BPA's conservation easement. Some land management activities such as managing weeds, timber, or other vegetation can be allowed by BPA if the activity does not harm the conservation values of the property and are preapproved by BPA in a management plan. At this time, MFWP does not propose to allow any uses or undertake any management activities listed below unless they are necessary to promote revegetation of cleared or damaged areas. If MFWP proposes any future timber management or response to insect infestations that are different from what is defined by this Plan, MFWP will update the management plan and submit the new Plan to BPA for approval.

- Haying and/or mowing;
- Altering of grassland, woodland, wildlife habitat, or other natural features by burning digging, plowing, disking, cutting or otherwise destroying the vegetative cover, except for noxious weed management;
- Dumping refuse, wastes, sewage, or other debris;
- Harvesting wood products;
- Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
- Diverting, causing, or permitting the diversion of surface water into, or out of, the easement area surface by any means;
- Building or placing buildings or structures on the easement area;
- Planting or harvesting any crop;
- Grazing or allowing livestock on the easement area;
- Mining - excavation, dredging, or removal of soil, sand, gravel, rock, minerals, or other surface or subsurface materials;
- Incompatible uses - surface use except for such purposes necessary to preserve, enhance, restore, or create wetlands and riparian resource functions and values;
- Acts Detrimental to Conservation - activities detrimental to conservation of the following: fish and wildlife habitat, flood control, erosion control, water quality protection and enhancement, traditional cultural materials production, aesthetics, and low impact recreation; and
- Subdivision—subdivision of land into multiple, independently platted parcels.

MANAGEMENT GOALS AND OBJECTIVES

Otter Island FCA will be managed primarily to protect and enhance naturally self-sustaining native habitat or native-like habitat that supports indigenous resident fish and wildlife species of the area while allowing compatible recreational uses that do not impact natural resource values for which the property was acquired. The following objectives will help MFWP meet these management goals:

A. Minimize the presence of noxious weed species.

- Noxious weeds are prevalent throughout the property and will be controlled or eliminated over time through a variety of methods: motorized and backpack spraying, hand pulling, and/or biological control as appropriate for the infestation. MFWP will complete a weed inventory and develop a weed management plan in cooperation with Flathead County.
- Weed management will be conducted by MFWP staff, certified contractors, and/or the Flathead County Weed Department.
- Control of knapweed and leafy spurge will be the primary focus for the first several years, but all weeds will be treated as funding and time allows.

B. Protect established riparian cottonwood trees from further damage from beaver activity.

- Fence remaining standing cottonwood trees with chicken wire or staked wire fencing as appropriate along the banks of the mainstem Flathead River and active side channel to preserve as many established trees as possible.
- Trap and remove beaver if damage continues.

C. Remove items from the old dump site, unneeded fencing, and the vagrant shelter.

- Remove decaying building materials, old car batteries, and other discarded objects from the area previously used as a dump site.
- Remove old barbed wire fencing from the south end of the island where it is falling down and nonfunctional. This project may need the assistance of an ATV or similar vehicle to place the barbed wire and fence posts on for easier removal.
- Remove the vagrant shelter that consists of limbs and branches erected around a group of trees. Remove any contents left within the shelter.

D. Maintain administrative access to the property.

- One solution is to replace the pipes/culverts under the road and then raise and resurface the entire length of the crossing. This will allow administrative access to the property year-round, but is not the preferred solution because the backwater slough area habitat will still be separated and flow impeded.
- There are two possible preferred solutions:
    - The first is to remove the old, failing culverts and all the fill material. A bridge would then be placed over the slough to allow maintenance vehicles and foot traffic to cross the water. The size of the bridge will be dependent on whether trucks/cars will need to cross it or only ATVs/similar small maintenance vehicles will need access to the property.
    - The second it to widen the access from Old Steel Bridge FAS to allow maintenance

vehicles to enter where the current pedestrian pass through is located. The vehicle access would be gated so only authorized vehicles would be permitted to use it. Some form of pedestrian pass-through would be maintained.

- The solution to motorized maintenance access will be determined in the future based on cost of the various improvement options, feasibility, and funding availability.

E. Improve the river and side channel riparian habitat by encouraging native plant regeneration and establishment.

- In areas where mature native plants already exist, encourage natural regeneration of riparian vegetation. This may include fencing areas with deer-proof fencing and protecting newly established plants from vole damage. Some watering and weed control will be necessary over time within these exclosures.
- In denuded areas, plant native riparian trees and shrubs to restore native plant communities. Some site preparation may be necessary prior to planting an area. This may include mowing, tilling, weed matting, herbicide application, and/or selective burning. The plantings may be fenced to protect them from deer and beaver damage as needed. Vole protection measures may also be implemented. Weeding and possibly watering may be necessary to ensure plant survival over time.
- All restoration treatments will be monitored yearly for overall effectiveness.
- Any future stream or riparian restoration work beyond that described here would be subject to environmental analysis and public review.

F. Improve upland habitat by restoring native tree and shrub communities to provide better native wildlife habitat.

- Over time, reestablish native trees and shrubs in the upland areas that were grazed or farmed in the past.
- The restoration will most likely be done in phases based on budgetary constraints.
- The trees and shrubs will be protected from deer browsing and vole/pocket gopher damage based on the best methods of control known at the time of planting.
- Restoration of the pasture areas to native trees/shrubs will also help reduce the weed problem on the property.

G. Allow public access and uses that are consistent with the purpose of this acquisition.

- Dispersed recreation such as fishing, bird watching, and hiking will be allowed as long as they do not significantly impact the naturally self-sustaining vegetation and fish and wildlife benefits. Access will be maintained as walk-in only with parking available at the Old Steel Bridge FAS and then following the path through the property boundary fence via an existing pedestrian pass-through.
- Develop and maintain a trail system to provide walk-in access to the property, which may include removal of some trail segments that are contributing to bank erosion and instability.
- Property boundaries will be marked with signs identifying it as a Fisheries Conservation Area. Rules and regulations will be posted at the pedestrian access area. Signs will be used to prevent boat landings along fragile riverbanks or in newly planted, seeded, or revegetated areas.
- The following public use rules and regulations will apply to this property:

- For garbage, “Pack it in/Pack It Out” rules apply. No trace or low impact day use is encouraged.
- No campfires or fires of any kind are allowed except as may be needed for natural resource management purposes conducted by MFWP.
- No overnight camping.
- No motorized vehicles, bicycles, horses, or other livestock will be allowed on the property except for administrative or management purposes.
- No commercial use without a permit.
- Public trapping is limited to water sets only as defined in the Montana Trapping and Hunting Regulations.
- Open to discharge of weapons including archery, shotgun, muzzleloaders, and traditional handguns during designated hunting seasons only during legal hunting seasons. Recreational shooting and hunting of nongame animals such as ground squirrels will be prohibited (ARM 12.8.202). No permanent tree stands or ground blinds are allowed; hunting blinds must be removed or dismantled daily. No screw-in tree steps may be used to access tree stands, only strap-on steps or climbing-stick-type climbing aids. Hunting blinds may not be constructed by cutting or otherwise damaging woody vegetation on the property.
- Dogs must be on a leash at all times, except for when hunting upland game or waterfowl during established seasons.
- The discharge of paintball guns, trap and target shooting, plinking, and similar activities are prohibited.
- The property will be monitored periodically to assure that no harm is occurring to the property’s conservation values through authorized or unauthorized recreational use.

MODIFICATIONS AND ADDITIONS TO THE PLAN

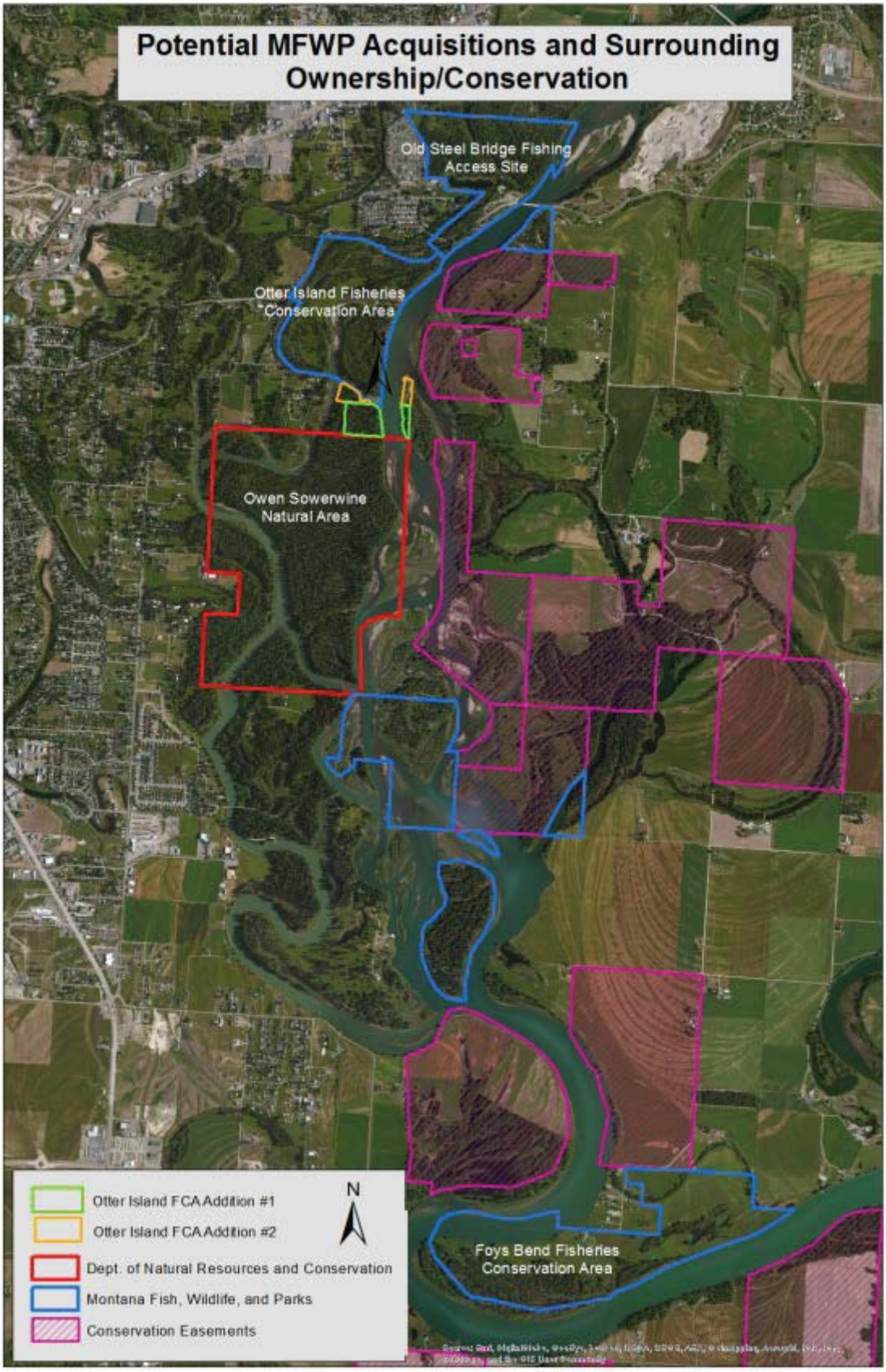
MFWP will modify or adjust this Plan if monitoring indicates that public use, noxious weeds, stream hydrology, fire, or some other event potentially alters or affects the conservation values and requires a change in management. BPA will have 60 days to comment on any modifications or additions before the new Plan is implemented.

LITERATURE CITED

Confederated Salish and Kootenai Tribes and Montana Fish, Wildlife & Parks. 2004. Flathead Subbasin Plan: Part 1: Flathead River Subbasin Assessment. A report prepared for the Northwest Power and Conservation Council. Portland, OR.

Hansen, P.L., R.D. Pfister, K. Boggs, B.J. Cook, J. Joy, D.K. Hinckley. 1995. Classification and Management of Montana’s Riparian and Wetland Sites. Montana Forest and Conservation Experiment Station, School of Forestry, University of Montana, Missoula, MT. 646 p.

ATTACHMENT A
PROPERTY MAP AND PHOTOS


Potential MFWP Acquisitions and Surrounding Ownership/Conservation
Old Steel Bridge Fishing Access Site
Otter Island Fisheries Conservation Area
Owen Sowerwine Natural Area
Foys Bend Fisheries Conservation Area
Otter Island FCA Addition #1
Otter Island FCA Addition #2
Dept. of Natural Resources and Conservation
Montana Fish, Wildlife, and Parks
Conservation Easements
N

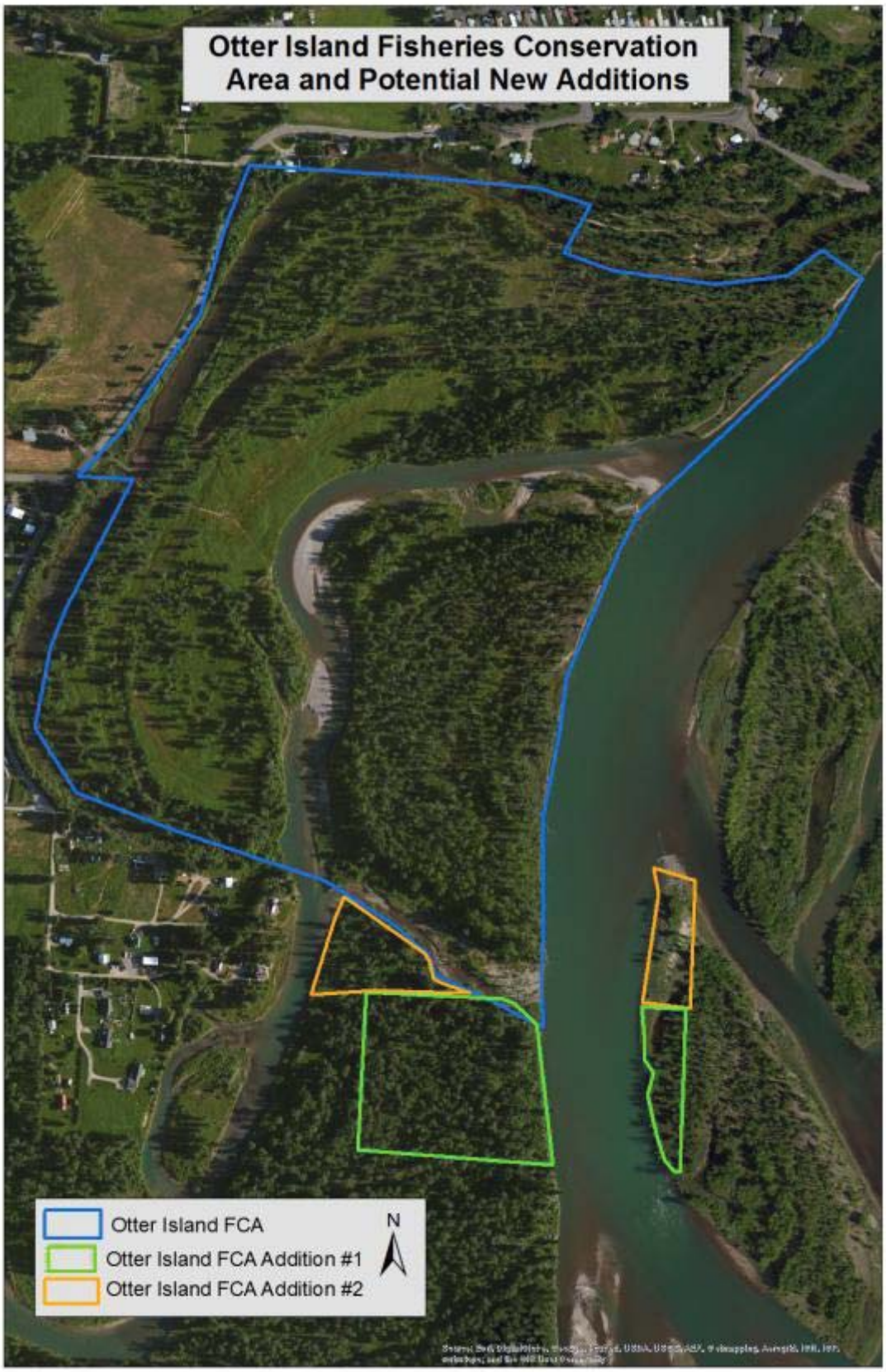


Figure 2. Close-up map of Otter Island FCA property showing the two proposed additional properties in more detail.

Figure 3. Photo taken looking east from the side channel toward the mainstem of the Flathead River.

Figure 4. Photo taken looking southwest across the side channel toward the mature forest on the island.

Figure 5. Photo showing the pedestrian pass-through between the Otter Island FCA and the MFWP FAS.

Figure 6. Photo taken looking north showing a trail along the mainstem of the Flathead River.

Figure 7. Photo taken showing beaver activity along the mainstem of the Flathead River.

Figure 8. Photo showing the eroding banks along the northern border of the side channel.

Figure 9. Photo showing the side channel erosion and the area with riparian vegetation.

Figure 10. Photo showing the erosion on the southern border of the side channel.

Figure 11. Photo showing old building materials discarded at the dump site.

Figure 12. Photo showing the old dump site with batteries and other miscellaneous junk.

Figure 13. Locked gate between private property and the Otter Island FCA property, which does not have vehicle or pedestrian access from Conrad Drive.

Figure 14. Access to the property off of Conrad Drive that is used for property maintenance and administrative use.

Figure 15. Large potholes forming in the causeway across the old Flathead River channel that connects the property to Conrad Drive.

Figure 16. Man-made shelter constructed around a group of trees that is located on the island portion of the property and has been used in the past by vagrants.

Figure 17. View looking south along the seasonal channel that runs along the two Otter Island FCA Addition properties. (Photo courtesy Warren Illi.)

Figure 18. View looking east to the small island portion of Otter Island FCA Addition #1. (Photo courtesy Warren Illi.)

Figure 19. Typical riparian habitat along the Otter Island FCA Additions. (Photo courtesy Warren Illi).