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18 February 2013

Ravalli County Commission
215 South 4th Street
Suite A
Hamilton, MT 59840

Re: USDA Forest Service water reservation application on Blodgett Creek

Dear Commissioners Stoltz, Chilcott, Iman, Burrows and Foss:

Montana Trout Unlimited represents more than 3,400 anglers statewide, including more than 300 volunteers who belong to our Bitterroot Chapter, which has been active in Ravalli County since the 1970s. Among the conservation efforts in Ravalli County we are most proud of are those when we worked collaboratively with water users, state agencies and the Montana Legislature that resulted in securing Painted Rocks Reservoir water being used to maintain stream flows and the trout fishery in the Bitterroot River, and the temporary closing of the Bitterroot River Basin to new applications for water rights for surface water. We also tracked closely and engaged ourselves for more than 10 years in the discussions and development of legislation that resulted in the water compact between the USDA Forest Service and the State of Montana. On a personal note, I am a former Bitterroot Valley resident who once owned private property with water rights in the northern portion of the county. Both my organization and I have an interest in ensuring all who have interests in water in the Bitterroot are accommodated.

We are concerned, however, with misinformation that seems to be circulating in the county regarding the Forest Service's application for an instream flow water reservation for Blodgett Creek. Most of this we have learned from folks who have attended commission meetings where the topic was addressed, or, from what we have learned from newspaper stories. In our view, several concerns simply do not reflect the facts. Please consider these points:

The U.S. Forest Service application for an instream flow reservation on Blodgett Creek is NOT an attempt to take water away from existing water users.

If Montana DNRC approves the application, the Forest Service will be granted a priority date that coincides with the date when the application was submitted, September 29, 2011. The majority of existing valid water rights in the Blodgett Creek drainage date back to around 1890. Every other filed water right, though younger than that, will remain senior to the Forest Service's reservation. Basically, all existing water rights will continue to exist, in the priority they appear today, irrespective of the Forest Service reservation. The Forest Service reservation is prospective in nature. It merely ensures that if future water rights are filed in the Blodgett Creek drainage upstream of the measurement point for the agency right, that they will be junior to the Forest Service's right to keep a certain amount of water in-stream. Importantly, the existing temporary basin closure largely prevents the filing of new water rights anyway.

The Forest Service water reservation helps protect the interests of those who hold existing senior water rights

If the Forest Service has an instream flow water right in Blodgett Creek, it goes a long way to ensuring that water continues to flow off the forest to satisfy existing users downstream. Further, if future appropriators file for new water rights on the forest along Blodgett Creek, it means the Forest Service will have enhanced standing in Montana Water Court to object to any proposal that reduces its right and, importantly, the rights of senior water right holders downstream who have an expectation that their water rights will be satisfied. Essentially, the Forest Service will indirectly defend the water rights of existing downstream senior water right holders, thereby potentially saving these users the cost and headaches of objecting in water court.

The Forest Service's instream flow reservation doesn't prevent future water development in the Blodgett Creek drainage.

Though the reservation serves as a practical disincentive for future development, the agency is not reserving all available flows year-round in the Blodgett Creek drainage. The agency is only filing for flows that meet discharge levels based on the Wetted-P measurement method. Hypothetically it is still possible to build a storage facility in the drainage – even with the basin closure in place -- though the cost would be prohibitive in relation to the benefits. Any new dams would have to be constructed using high-hazard engineering standards. I think most folks can agree the federal government, State of Montana, Ravalli County and local irrigators probably wouldn't make such a multi-million dollar investment a priority today.

The Forest Service instream flow reservation is not a special deal that bypasses the basin closure.

The 1999 Bitterroot Basin Closure (MCA-85-344) resulted from Legislation that passed the Montana Senate 95-3. It passed the Montana House 48-0. The primary sponsor was then Representative Jim Shockley of Victor. Senator Fred Thomas of Stevensville signed on as a co-sponsor. All of the Bitterroot legislative delegation at the time voted for the legislation that created the closure. The basin closure, which we worked on with Rep. Shockley, the Bitterroot Water Forum, DNRC, water users and others, resulted from rigorous public review. Section 85-2-344 (2)(d) of the basin closure legislation that emerged from this review specifically allowed for future water rights that could result from a USDA Forest Service-State of Montana water compact. This section of the legislation make sense because, as federal courts have ruled on a number of occasions, the Forest Service has had implied reserved water rights on western forests such as the Bitterroot National Forest since the 1890s. These rights were just never quantified, which is what the Compact and the process to allow for instream flow reservation attempts to do. It is important to note, too, that the 2007 Montana Legislature approved the Forest Service Compact by a 50-0 margin in the Senate and a 90-10 vote in the House of Representatives. Every Bitterroot legislator voted to ratify the Compact. Further, the negotiating team that represented the State of Montana included several legislators long known as champions for agricultural water rights, including former Senator Lorents Grosfield of Big Timber. Having known him for years, it almost goes without saying that Senator Grosfield more than adequately represents the interests of senior water right holders.

Though we understand that the Forest Service's application for water reservations might raise some concerns among those who aren't familiar with the history of the Compact and the mechanisms it encompasses, it is clear to us and others that it is beneficial for the Bitterroot to have the Forest Service be able to protect streamflows in some tributaries to ensure flows keep coming off the forest to satisfy downstream water rights, and to protect fisheries from future appropriators who might not recognize how important the Bitterroot River and its tributaries are to the customs and culture of county residents and forest users.

It is not our business to tell the county what to do, however we cannot think of a single protectable interest the county has that would merits it filing objections in Montana Water Court opposing this reservation application. It would be taxpayer money and time not well spent. If individual water right holders want to file objections that is certainly their right. However, it is similarly hard to see exactly how they could make the case that their senior water rights would be harmed by a tool that will only help ensure their rights are satisfied in the future. Certainly if people have facts to the contrary, it would be good to get them on the table.

Though I will be unable to attend the public session on February 20, I would be more than happy to meet with you at your convenience in the future to discuss this matter in more detail.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink that reads "Bruce Farling". The signature is written in a cursive style with a large, looped initial "B".

Bruce Farling
Executive Director