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March 8, 2016

Re: Montana Trout Unlimited Comments on Draft Environmental Assessment for the Willow Creek Dam and Reservoir Transfer Project

Dear Mr. Domino:

Montana Trout Unlimited (MTU) appreciates the opportunity to comment on the Draft Environmental Assessment (EA) for the Willow Creek Dam and Reservoir Transfer Project. MTU is a membership organization comprised of 13 chapters representing approximately 4,000 anglers dedicated to the conservation, protection, and restoration of Montana's wild and native trout. Founded in 1964, MTU is the only statewide grassroots organization dedicated solely to conserving and restoring coldwater fisheries. Protecting and restoring river and stream flows are central to MTU's mission to conserve, protect, and restore Montana's wild and native trout.

MTU supported the transfer of ownership in the 2015 legislature under the expectation that the Department of Natural Resources and Conservation (the Department) would assist the water users in development of an updated reservoir operations plan as part of the transfer. At the time we also expected that the analysis for the updated reservoir management plan would include hydrological and operational information that could better inform the water users how they could more efficiently operate the facility, while also better accommodating downstream water rights and resources such as Montana FWP's instream flow water reservation and Willow Creek's fishery. The EA fails to do this. MTU has a track record of successful collaboration with water users and state and federal agencies to develop workable reservoir operating plans based on solid science. In the Sun River basin, for example, we worked with the Bureau of Reclamation, the Greenfields Irrigation District, the Fort Shaw Irrigation District, the Broken O Ranch, and Sun

River Watershed Group to analyze inflows to the basin and historic snowpack data to develop hydrologic relationships that guide Gibson Reservoir operations.

The hydrologic relationships between forecasted total inflows to the reservoir, and rates of accumulation and melt of the snowpack, now guide reservoir operations at Gibson. This ensures not only that Gibson Reservoir will fill in nearly every year, but that all water rights — both reservoir storage rights and water users' natural flow rights on the Sun River — have the best chance of being fulfilled every year, even in dry years. Of course under drought conditions, the most senior water rights are fulfilled first. But even under drought conditions the reservoir operating plan brings transparency and science to water management that reduces conflict due to water scarcity. Similarly, on Silver Lake and Warm Springs Creek in the Upper Clark Fork River basin, we have worked with water users and the Montana Department of Fish, Wildlife, and Parks, to develop hydrologic relationships and a better understanding of inflows to the basin. This has been key to developing a water management plan on Warm Springs Creek.

Similarly, the development of a reservoir operating plan for Willow Creek Reservoir based on hydrologic relationships will likewise ensure that the reservoir will fill in nearly every year, while also ensuring that other water users' water rights based on the natural flow of Willow Creek have the best chance of being fulfilled. Just as in the Sun River basin, the development of a reservoir operating plan based on sound hydrologic relationships ensures that even under drought conditions, transparent and data-driven water management decisions are made. This not only reduces the potential liability of the dam owner and operator, but also reduces conflict over water scarcity and increases the confidence in decision-making for all water users. Such a reservoir operating plan is also required to meet the State of Montana's obligations under the Montana Environmental Policy Act (MEPA) for the major state action of transferring from public to private ownership the Willow Creek Dam and Reservoir.

Along with the need for an operations plan, MTU found that the Draft EA was silent on analyzing effects of the transfer on reservoir operations, fishing access, fisheries, and water rights. While MTU appreciates the efforts to secure fishing access to the reservoir, the EA fails to provide enough information on which to analyze the effects the transfer of ownership has on access easements. Likewise, although abundant information on fisheries, hydrology, and water quality is available to analyze the effects of reservoir operations and the transfer, no information is presented to analyze effects of the changing ownership on the human environment. For instance, the EA does not disclose what the plans — and the effects of — will be for future water management at Willow Creek Reservoir. Montana TU is not opposed to the transfer of ownership of Willow Creek Reservoir, but we believe before the transfer occurs the EA should provide a detailed hydrological analysis that will enable the water users to more efficiently operate the facility and give them a better idea on what they are inheriting, include options for ensuring downstream effects -- including instream flows for fisheries -- are better accommodated, and include a proposed future operating plan for the project. That is the only way the effects of this transfer can be analyzed.

1. The Draft EA for the Willow Creek Dam and Reservoir Transfer Project Fails to Analyze or Address Likely, Significant Environmental Impacts from Reservoir Operations.

The Draft EA for the Willow Creek Dam and Reservoir Transfer Project omits any substantive review of the likely, significant environmental impacts of transferring ownership from the State of Montana to the Willow Creek Water Users Association. The Draft EA, at page 6, explains that “effects on downstream water quality and quantity” were “considered and **eliminated from further study** because the proposed action does not involve any construction or operational changes.” (emphasis added). There is no other mention of the current or future operation of Willow Creek Dam and Reservoir under the ownership of the Willow Creek Water Users Association in the Draft EA. MTU believes that the transfer of a public facility to private ownership is a major state action that at minimum requires a forward-looking reservoir operations plan and a full environmental analysis of that facility’s current impacts. In the absence of such analysis, the water users and the public both assume significant risk due to great uncertainty.

MEPA requires state decision makers to fully examine the impacts of proposed actions and to evaluate alternatives that may reduce or avoid those impacts. Mont. Code Ann. § 75-1-201. MEPA requires an agency to take a “hard look” at the environmental impacts of a given project or proposal by compiling all pertinent data and reasonably analyzing relevant information. *Ravalli County Fish & Game Assn.*, 273 Mont. 371, 377, 903 P.2d 1362 (1995).

A smooth transition of Willow Creek Dam and Reservoir from state to private ownership requires a reservoir operations plan based on a comprehensive review of historic and projected basin inflows and snow-melt rates, together with an analysis of water rights that need to be met in the basin in addition to the storage rights in Willow Creek Reservoir. A revised Willow Creek Draft EA that provides these elements will allow MTU and others to fully support the transfer of Willow Creek Dam and Reservoir.

The Draft EA provides no data or analysis of environmental impacts of current reservoir operations. However, MEPA requires a full review of environmental impacts including the impacts of reservoir operations on fisheries, water quality and water quantity. For example, the existing *Willow Creek Dam Manual for Operation and Maintenance* recognizes that “stoppage of dam releases in winter is a serious problem to downstream fishery.” State Water Projects Bureau 2005. *Willow Creek Dam Manual for Operation and Maintenance*. Dept. of Nat. Res. and Conserv., at 13. However, the Draft EA contains no information on which to gauge how reservoir operations have affected fisheries in Willow Creek below the reservoir or the rainbow trout population in the reservoir (which has provided a significant source of eggs for fisheries management across the region).

Without compiling, reporting and analyzing any information on fisheries and wildlife resources or water quality and quantity, the Department has not conducted an adequate analysis of effects on the human environment and the Draft EA is inadequate. Understanding the effects

of reservoir operations on economics and habitat is important for the both the water users and the public to make informed judgments.

2. The Draft EA for the Willow Creek Dam and Reservoir Transfer Project Fails to Analyze or Address Likely, Significant Impacts from Reservoir Operations on Existing Water Rights, including a State-Owned Instream Flow Reservation.

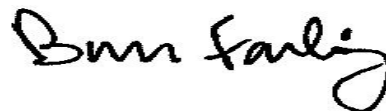
The Draft EA also fails to address impacts of reservoir operations on water rights, including Montana Fish, Wildlife and Parks's (FWP) instream flow reservation for the fishery. The Draft EA makes no mention of any water rights other than the 1935 DNRC storage rights. Draft EA at 8. The Draft EA states "Although the reservoir is filled primarily during spring runoff and is released for beneficial uses during the irrigation season, these rights allow water to be diverted into storage year round. Water can be stored only when water is physically and legally available and there is capacity in the reservoir." *Id.* Water rights for irrigation, livestock, fisheries, and other uses exist both below and above Willow Creek Reservoir. FWP holds a 14 cfs instream flow water right in Willow Creek. It is unclear how reservoir operations may have helped or hampered exercise of this year-round water right. The Draft EA should at least describe the history of outflows from the reservoir since the instream right is specifically included in the Operations Manual. Operations Manual at 13. FWP also holds a 27.9 cfs instream water right for spawning upstream of the reservoir. At least a dozen more water rights are privately owned on Willow Creek below the reservoir and a greater number in tributaries to the reservoir. How reservoir operations' *status quo* is affecting private and public water rights above and below the reservoir requires analysis. Unless flow and storage data is collected and analyzed, how can the water users, the public, or the Department determine if significant impacts exist?

The Draft EA should also mention how the transfer could work to implement the new 2015 State Water Plan, which urges the Department and its partners to address "drought resilience" in the basin by identifying how water storage in State Water Projects could contribute to drought planning and protecting rivers during drought. Stored water at Willow Creek Reservoir could satisfy irrigation demand and still improve drought resilience down Willow Creek and into the Jefferson River. The Jefferson River may be more affected by drought and low water years than any other river basin in Montana; it has a history of more fishing-closure days than any other river in the state. Angler days are also highly correlated with Jefferson River basin streamflows. For example, in 1999, an average water year, there were 17,346 angler days. In 2005, a dry year, there were 53% fewer angler days, or only 9,120 angler days. *See, Montana's Snowpack Economy: Climate Change and the Economics of Fishing the Jefferson River*, Trout Unlimited, Montana Water Project (2006). The Draft EA should include an analysis of water supply and demands over time, in drought and wet years, to help water users meet their obligations to irrigators and assess potential options for surplus storage in the future.

At minimum, MTU requests that the Department collect and analyze available information regarding effects of reservoir operations on the human and physical environment (which includes fish, wildlife, and water rights) and update the operation plan. The Department should gather information from the period of record including inflows to reservoir, snowpack history, reservoir outflows, storage levels, and water deliveries. Ultimately, the EA should include updating the reservoir operating model for Willow Creek Reservoir, on which the water users can make informed decisions in the future. Technical experts with the Department and other partners should be consulted *before* the transfer to ensure the water users aren't assuming a large financial burden *after* the transfer.

In conclusion, the Draft EA fails to gather or analyze crucial information pertaining to the effects of transferring Willow Creek Reservoir to the water users. Without collecting, analyzing, and reporting even minimal information prior to the transfer, the water users, the Department, and the public cannot make a rational judgment on the effects of the transfer on future economic impacts on water users and the environmental impacts of the transfer. MTU acknowledges that the water users are capable of assuming responsibility for operating and maintaining the facility, but a detailed MEPA analysis is required to fully inform the water users and the public on the risks and benefits of the transfer. Without additional hydrological data, detailed disclosure of future operations and their effects, and a good-faith recommendation and analysis on how the reservoir could be managed more efficiently for water users while also accommodating FWP's instream flow reservations and downstream fisheries, Montana TU is reluctant continue to support the transfer. We believe the water users would also benefit from the additional information and analysis.

Sincerely,

A handwritten signature in black ink that reads "Bruce Farling". The signature is written in a cursive, slightly slanted style.

Bruce Farling

Executive Director

cc.

Kevin Smith, DNRC

Fred Robinson, DNRC

Tim Davis, DNRC

Ziemer, TU

Byorth, TU

