



DECISION NOTICE

Parsons Slough and Willow Spring Creek Water Management and Lease Agreement

2/13/24

ACTION

Decision Notice (DN). Montana Fish, Wildlife & Parks (FWP) shall prepare a DN for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment or Draft EA as final, without modification, and approves Alternative 2, the proposed action.

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

According to the applicable requirements of the Montana Environmental Policy Act or MEPA and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose any potential impacts of the proposed action on the affected human environment. The level of environmental review will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors. *Title 75, Chapter 1, Parts 1 through 3, Montana Code Annotated (MCA)*.

Based on these factors, FWP determined a Checklist EA (Draft EA) constitutes the appropriate level of review for the proposed action. Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA for public review and comment. See *Public Participation Process* below.

Further, FWP must consider any substantive comments received in response to an EA and proceed in accordance with one of the following steps: determine the EA did not adequately reflect the issues raised by the proposed action and issue an Environmental Impact Statement or EIS; determine the EA did not adequately reflect the issues raised by the proposed action and issue a supplemental EA; or determine the Draft EA adequately addressed the issues raised by the proposed action and make a final decision, with appropriate modification resulting from the analysis provided in the Draft EA and the analysis of any substantive public comments received. See *Public Comment and FWP Response* below.

PUBLIC PARTICIPATION PROCESS

The Draft EA was made available for public review and comment from January 12 through January 27,

2024. A legal Notice was published in the Montana Standard and the Draft EA was posted on FWP's Public Notice webpage: <https://fwp.mt.gov/news/public-notice>. The Draft EA was also made available for public review on the Environmental Quality Council or EQC website: <https://leg.mt.gov/mepa/search/>, by individual request, and through notice to identified interested parties. FWP received comments during the public comment period.

DESCRIPTION OF PROPOSED ACTION

Parsons Slough and Willow Spring Creek are tributaries of the Jefferson River near Waterloo that provide cold water refugia along with important spawning habitat for brown and rainbow trout. FWP proposes to enter into an agreement with the owner of the most senior and most downstream irrigation water rights on Parson Slough and the only irrigator on Willow Spring Creek. FWP would lease water in both streams for instream flow and change the points of diversion to pump from the Jefferson River instead of diverting the cold water from Parsons Slough and Willow Spring Creek. Up to 206 acres would remain in irrigation with 97 acres no longer irrigated, although if the landowner chooses to not install two planned center pivot sprinkler systems, less area would remain in irrigation and more water would be protected for instream flow. Streamflow into the Jefferson River from the streams would increase as much as 11 cfs during the period of high irrigation demand and would be expected to cool the water of the Jefferson by nearly 2°F under low flow conditions. The term of the agreement would be 30 years with the option to renew.

PURPOSE AND NEED

§85-2-436, MCA authorizes FWP to lease water rights to protect, maintain or enhance instream flow to benefit the fishery resource. The Jefferson River often experiences low flow and high water temperatures that negatively impact the wild fishery. Predicted reductions in summer streamflow and warmer water temperatures are expected to exacerbate the problem. Spring-fed tributaries such as Parsons Slough and Willow Spring Creek provide cold water refugia along with important spawning habitat for brown and rainbow trout. The cold water helps fish to survive during times of low streamflow and high water temperature in the Jefferson River while the spawning habitat helps sustain overall fish populations. By no longer diverting water from these tributaries, the fishery will be able to better sustain future changes in conditions. Streamflow in the two tributaries would be measured by FWP during the irrigation season to monitor the benefits. In addition, diversion of Parsons Slough for irrigation entrains juvenile trout attempting to migrate downstream to the Jefferson River. Eliminating the need for this diversion allows unobstructed fish passage and connects Parsons Slough to the Jefferson River during all seasons with no fish loss to the irrigation system. The FWP Statewide Fisheries Management Plan (2023-2026) identifies Parson Slough and Willow Spring Creek as key tributaries supporting natural reproduction, providing rearing habitats for juvenile trout, and delivering cool summer streamflow. §§87-1-272-273, MCA directs FWP to administer a Future Fisheries Improvement Program to fund projects to restore degraded fish habitat in rivers and lakes for the purpose of improving wild fisheries.

ALTERNATIVES ANALYZED

Alternative 1: No Action

In addition to the proposed action, and as required by MEPA, FWP analyzes the "No-Action" alternative in the EA. Under the No-Action alternative, the proposed action would not occur. Therefore, no additional impacts to the human environment would occur. The No Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the No Action alternative, irrigation would continue from Parsons Slough and Willow Springs Creek. Benefits to the fishery associated with the two streams and the Jefferson River would not be realized.

Alternative 2: Proposed Action

Under the Proposed Action, a water lease and associated infrastructure improvements would be initiated to increase instream flow in Parsons Slough and Willow Spring Creek.

PUBLIC COMMENT AND FWP RESPONSE

FWP received substantive public comments on the Draft EA. A substantive public comment was defined as the identification of a specific issue or impact. The following provides the public comments received and FWP response(s).

- COMMENT: Count me in as a member of the public who strongly supports the proposed leasing of water rights for instream flows in Parsons and Willow Spring Creeks. The EA checklist doesn't mention cost, but I'm sure you guys have arrived at an appropriate number. Also unclear is who the lessee is. I presume FWP. No matter, it's completely worth it. My personal engagement with Ron Spoon and former TU Jefferson River Coordinator Bruce Rehwinkel on habitat improvement on both spring creeks convinced me that additional investment in flows would likely result in measurable improvements. The rainbow and brown trout recruitment from those two tribbs — as well as their role as thermal refugia and rearing habitat — has proven to be crucial to the Jefferson's fishery. And now, the potential for improved flow contributions that this lease project could secure should measurably improve both discharge and thermal conditions in the river. This will help protect the previous investments in habitat and modified fishing regulations. Thanks for the opportunity to comment on this worthwhile project.
 - RESPONSE: Thank you for the support.
- COMMENT: The Jefferson Valley Sportsmen Association from Whitehall would like to go on record as supporting the parsons slough and willow springs lease agreement. These agreements have been a great asset in helping to keep fish in the Jefferson. Keep up the good work!
 - RESPONSE: Thank you for the support.
- I'm in support of this project, having been the lead lobbyist on the water leasing for instream flows law ('89) as well as the author and lead lobbyist on the Future Fisheries Improvement Act ('95). Would also like to add that FWP is late to the game on water leasing but better late than never -- and you're going to need a lot more of these types of projects given our shorter winters, longer summers, and overall hotter and dryer climate -- at least if you're going to keep coldwater fisheries alive in Montana in the future.
 - RESPONSE: Thank you for the support.
- COMMENT: Concern over the process of public notice and the Draft EA comment period.
 - RESPONSE: Although a bi-weekly press release summarizing recent public opportunities was released on 1/23/24, the comment period began on 1/12/24 with a public notice on the FWP website and dissemination to the interested parties list and the Environmental Quality Council. A legal notice was published in the Montana Standard newspaper on the first available date of 1/18/2024 and adjacent landowners were contacted. We apologize for any confusion and have provided instructions for how to sign up for the interested parties list as follows:
 - We encourage all interested parties to sign up for inclusion on FWP's *interested parties list* to ensure timely notice regarding the availability of Draft EAs and other actions and opportunities for public participation in FWP projects. To receive

notices of this kind via email, select *Public Notices and Public Comment Opportunities* for All actions, or specifically for Fisheries, depending on your interest. There are two ways to sign up for inclusion on FWP's *interested parties list*:

1. Go directly to the link:
https://public.govdelivery.com/accounts/MTFWP/subscriber/new?topic_id=MTFWP_236
2. Visit <https://fwp.mt.gov/> and scroll to the bottom of the page where you can select "subscribe to our mailing list"

DECISION

Based on the environmental review provided in the Draft EA, and in accordance with all applicable laws, rules, regulations, and policies, FWP determined the proposed action (Alternative 2), will not have significant adverse impacts on the human environment associated with the proposed action and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an EIS is unnecessary. FWP hereby adopts the Draft EA as final and approves the Alternative 2, the proposed action.

With this DN, FWP hereby adopts the Draft EA, without modification, and approves the proposed action.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Schenk". The signature is fluid and cursive, with the first name "Bill" being more prominent than the last name "Schenk".

Bill Schenk
Land and Water Program Manager
Montana Fish, Wildlife & Parks