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ENVIRONMENTAL ASSESSMENT

CHECKLIST

Sacajawea Lagoon Largemouth and Smallmouth Bass Removal

FWP-CEA-FSH-R3-26-XXX

9/xx/26

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I. Compliance with the Montana Environmental Policy Act

Before a proposed project may be approved, environmental review must be conducted to identify and consider potential impacts of the proposed project on the human and physical environment affected by the project. The Montana Environmental Policy Act (MEPA) and its implementing rules and regulations require different levels of environmental review, depending on the proposed project, significance of potential impacts, and the review timeline. § 75-1-201, Montana Code Annotated ("MCA"), and the Administrative Rules of Montana ("ARM") 12.2.430, General Requirements of the Environmental Review Process.

FWP must prepare an EA when:

- *It is considering a "state-proposed project," which is defined in § 75-1-220(8)(a) as:*
  (i) a project, program, or activity initiated and directly undertaken by a state agency;
  (ii) … a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or
  (iii) … a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.
- *It is not clear without preparation of an EA whether the proposed project is a major one significantly affecting the quality of the human environment. ARM 12.2.430(3)(a));*
- *FWP has not otherwise implemented the interdisciplinary analysis and public review purposes listed in ARM 12.2.430(2) (a) and (d) through a similar planning and decision-making process (ARM 12.2.430(3)(b));*
- *Statutory requirements do not allow sufficient time for the FWP to prepare an EIS (ARM 12.2.430(3)(c));*
- *The project is not specifically excluded from MEPA review according to § 75-1-220(8)(b) or ARM 12.2.430(5); or*
- *As an alternative to preparing an EIS, prepare an EA whenever the project is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all the impacts of the proposed project have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance (ARM 12.2.430(4)).*

MEPA is procedural; its intent is to ensure that impacts to the environment associated with a proposed project are fully considered and the public is informed of potential impacts resulting from the project.

II. Background and Description of Proposed Project

Name of Project: Sacajawea Lagoon Largemouth and Smallmouth Bass Removal

The Sacajawea Lagoon, is a public fishing pond in Livingston. FWP annually stocks the pond with Yellowstone cutthroat trout to provide a recreational fishery. The City of Livingston manages flows and water levels for the lagoon. The lagoon and Sacajawea Park are popular recreation areas for the Livingston community especially during the summer. Sacajawea Lagoon is in a densely populated area including 12 residences directly adjacent to the lagoon.

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FWP received reports of smallmouth bass in the Sacajawea Lagoon in late May of 2026. Six largemouth bass and three smallmouth bass were captured using electrofishing by FWP staff on June 1, 2026. The largemouth bass ranged from 11-12 inches, while smallmouth bass ranged from 10-13 inches. The presence of these two species in the lagoon is a threat given their predatory nature, proximity to wild trout populations in the Yellowstone River, and potential to be transported to other nearby waters that support popular trout fisheries. Escapement of bass from the lagoon is possible through a culvert near the inlet of the lagoon that is directly connected to the Yellowstone River. Downstream dispersal of bass into Fleshman Creek, which is connected to the Yellowstone River, is also possible through the outlet structure.

Smallmouth bass have been reported in the Yellowstone River by anglers near Livingston and are found in high abundances downstream of Billings. However, smallmouth bass reproduction is thought to be limited near Livingston, which has restricted their abundance and distribution in the upper Yellowstone River. Failing to address the illegal introductions in the Sacajawea Lagoon would establish source populations of largemouth bass and smallmouth bass in the upper Yellowstone River drainage that could fundamentally alter the trout fisheries near Livingston.

FWP is proposing to remove all fish from the lagoon by periodically capturing fish while electrofishing as the lagoon is dewatered. To dewater the lagoon, a diversion barrier will be placed where Fleshman Creek enters the lagoon to divert water to the Yellowstone River. The lagoon outlet will be screened to minimize fish escapement downstream. Once screens are in place, check boards on the outlet will be incrementally removed over several days to gradually drain the lagoon to avoid bank erosion and other issues that might result from high flows in Fleshman Creek in residential areas downstream of the lagoon. These efforts will dewater about a mile of Fleshman Creek downstream of the lagoon. However, a spring near M Street should maintain low flows in Fleshman Creek to its confluence with the Yellowstone River. FWP staff will capture and relocate as many fish as possible from the dewatered section of the stream to the section of stream below the spring. The dewatered reach of Fleshman Creek downstream of the Lagoon would remain dewatered until the lagoon is full. All fish will be collected once the lagoon is completely dry. Captured fish will be euthanized and removed from the lagoon. Yellowstone cutthroat trout will be stocked following removal efforts.



Figure 1. Electrofishing of Sacajawea Lagoon on June 1, 2026.



Figure 2. Smallmouth bass captured in Sacajawea Lagoon on June 1, 2026.



Figure 3. Sacajawea Lagoon inlet where Fleshman Creek will be diverted to the Yellowstone River.



Figure 4. Sacajawea Lagoon outlet.

The project is being proposed by FWP Region 3 Fisheries. Removal efforts are proposed to be completed between December 11, 2026 and June 31, 2027.

Affected Area / Location of Proposed Project:

- Legal Description
    - Latitude/Longitude: 45.65505, -110.55864
    - Section, Township, and Range: 24, 02S, AND 09E
    - Town/City, County, Montana: Livingston, Park County, Montana
- Location Map

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MILLER LEAH K
MARTELLO SUE
CHRISTIAN DANA CHARLES
BARNSLEY LINDA M
BEAVER ANNETTE
FOX STEVEN K
HALLIN BERNARD T
DEEN JUSTUS B & LISA C
WORTH CHARLES HOLLADAY
MURPHY JOHN W
BURNS THOMAS & CHARLENE
CHAPEL LAWRENCE J & MICHELLE A
UBERUAGA DAVID V & BARBARA L
LIVINGSTON CITY OF
West Butte Street
River Drive
Sacajawea Park Lagoon
Sacajawea Park
Yellowstone River Levee Trl
Yellowstone River

III. Purpose and Need

The EA must include a description of the benefits and purpose of the proposed project. ARM 12.2.432(3)(b). Benefits of the proposed project refer to benefits to the resource, public, department, state, and/or other.

The purpose of the project is to remove illegally introduced largemouth and smallmouth bass from Sacajawea Lagoon. These species pose predation and competition threats to the trout fishery in the lagoon and more importantly the nearby wild trout populations in the Yellowstone River and its tributaries.

If FWP prepared a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it. ARM 12.2.432(3)(b).

	Yes*	No
Was a cost/benefit analysis prepared for the proposed project?	☐	☒

* If yes, a copy of the cost/benefit analysis prepared for the proposed project is included in Attachment A to this Draft EA

IV. Other Agency Regulatory Responsibilities

FWP must list any federal, state, and/or local agencies that have overlapping or additional jurisdiction, or environmental review responsibility for the proposed project, as well as permits, licenses, and other required authorizations. ARM 12.2.432(3)(c).

*A list of other required local, state, and federal approvals, such as permits, certificates, and/or licenses from affected agencies is included in **Table 1** below. **Table 1** provides a summary of state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. Agency decision-making is governed by state and federal laws, including statutes, rules, and regulations, that form the legal basis for the conditions the proposed project must meet to obtain necessary permits, certificates, licenses, or other approvals. Further, these laws set forth the conditions under which each agency could deny the necessary approvals.*

Table 1: Federal, State, and/or Local Regulatory Responsibilities

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
FWP	SPA124	Effects on Fleshman Creek

V. List of Mitigations, Stipulations

Mitigations, stipulations, and other enforceable controls required by FWP, or another agency, may be relied upon to limit potential impacts associated with a proposed Project. The table below lists and evaluates enforceable conditions FWP may rely on to limit potential impacts associated with the proposed Project. ARM 12.2.432(3)(g).

Table 2: Listing and Evaluation of Enforceable Mitigations Limiting Impacts

Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.			**Yes ☐**	**No ☒**
If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below			**Yes ☐**	**No ☒**
Enforceable Control	**Responsible Agency**	**Authority (Rule, Permit, Stipulation, Other)**	**Effect of Enforceable Control on Proposed Project**	
N/A	N/A	N/A	N/A	

VI. Alternatives Considered

In addition to the proposed Project, and as required by MEPA, FWP analyzes the "no-action" alternative in this EA. Under the "no-action" alternative, FWP would not do the proposed project.

Under the “No Action” alternative, the proposed project would not occur. Therefore, no additional impacts to the physical environment or human population in the analysis area would occur. The “No Action” alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

Under the “No Action” alternative, largemouth and smallmouth bass would not be removed from Sacajawea Lagoon, which would pose a threat to the trout fishery in the lagoon as well as the adjacent Yellowstone River trout fishery.

	Yes*	No
Were any additional alternatives considered and dismissed?	☒	☐

* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review is included below

Alternative 1: Chemical removal

Under alternative 1, rotenone would be used to kill all fish in the lagoon. The lagoon would be drawn down to reduce the volume of water and cost of the treatment. Public access to the lagoon and immediate area would be restricted during chemical applications. Once treated and neutralized, flow from Fleshman Creek would be restored and outflow from the lagoon would resume. This was not the preferred option based on expense, logistics, public use of the lagoon and Sacajawea Park, and proximity of residences to the lagoon. Follow up sampling, including eDNA, would be needed to confirm a complete treatment, which would delay efforts to reestablish a fishery.

Alternative 2: Mechanical removal with no dewatering

Under Alternative 2, FWP would attempt to remove largemouth and smallmouth bass from Sacajawea Lagoon using nets and electrofishing without draining the lagoon. Complete removal of fish using mechanical efforts is rarely successful especially if juvenile fish are present. Largemouth and smallmouth bass could successfully reproduce in the lagoon, so only several fish of either species would be needed to reestablish populations. Even if mechanical removal of fish without draining the lagoon was feasible, it would require multiple efforts over several years for a complete removal followed by eDNA sampling to confirm the absence of nonnative fish, which would leave the Livingston community without a quality fisheries in the lagoon for an extended period of time.

VII. Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population

The impacts analysis identifies and evaluates **direct**, **secondary**, and **cumulative impacts**.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the effect.
- **Secondary impacts** “are further impacts to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.” ARM 12.2.429(18).
- **Cumulative impacts** “means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent

consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures." ARM 12.2.429(7).

Where impacts are expected to occur, the impact analysis estimates the **extent, duration, frequency,** and **severity** of the impact. The duration of an impact is quantified as follows:

- **Short-Term**: impacts that would not last longer than the proposed project.
- **Long-Term**: impacts that would remain or occur following the proposed project.

The severity of an impact is measured using the following:

- **No Impact**: there would be no change from current conditions.
- **Negligible**: an adverse or beneficial effect would occur but would be at the lowest levels of detection.
- **Minor**: the effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate**: the effect would be easily identifiable and would change the function or integrity of the resource.
- **Major**: the effect would irretrievably alter the resource.

Some impacts may require mitigation. As defined in ARM 12.2.429, mitigation means:

- Avoiding an impact by not taking a certain action or parts of a project;
- Minimizing impacts by limiting the degree or magnitude of a project and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or
- Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project or the time period thereafter that an impact continues.

A list of any mitigation strategies including, but not limited to, design, enforceable controls or stipulations, or both, as applicable to the proposed project is included in **Section VI** above.

FWP must analyze impacts to the physical and human environment for each alternative considered. The proposed project considered the following alternatives:

- **Alternative 1: No Action. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

  Under the "No Action" alternative, the proposed project would not occur. Therefore, no additional impacts to the physical environment or human population in the analysis area would occur. The "No Action" alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

- **Alternative 3: Proposed Project. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

  See **Table 4** (Impacts on Physical Environment) and **Table 5** (Impacts on Human Population) below.

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Table 4 - Potential Impacts of the Proposed Project on the Physical Environment

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Terrestrial, avian, and aquatic life and habitats	☐	☒	☐	☐	☐	☐	☒	☐	No significant adverse impacts to terrestrial, avian, and aquatic life and habitats would be expected because of the proposed project. Project implementation will include draining the lagoon and removing fish by electrofishing. About one mile of Fleshman Creek downstream of the lagoon will be dewatered as well. These habitats will be unavailable until the pond is refilled. Therefore, impacts from the proposed project to terrestrial, avian, and aquatic life and habitats in the affected area would be short-term and moderate.
Water quality, quantity, and distribution	☐	☒	☐	☐	☐	☐	☒	☐	No significant adverse impacts to water quality, quantity, and distribution would be expected because the proposed project will take place outside of peak stream flows and the water will be returned to the lagoon and Fleshman Creek downstream of the lagoon once the project is completed. Water quantity will be reduced during the project but immediately restored following the project. Turbidity may temporarily increase as the lagoon is drained. Therefore, impacts from the proposed project on water quality, quantity, and distribution in the affected area would be short-term and moderate.
Geology	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to geology in the affected area would be expected because of the proposed project. There are no known unique geologic features in the project location or that would be cumulatively impacted by this project. This project is only proposing to drain the lagoon and remove the fish. Therefore, no impacts to geology would be expected because of the proposed project.

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PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Soil quality, stability, and moisture	☐	☒	☐	☐	☒	☐	☐	☐	The project proposal is to drain the lagoon and remove fish. Flows downstream of the lagoon will be maintained at levels that prevent bank erosion or mobilize instream sediments in Fleshman Creek. However, a portion of Fleshman Creek downstream of the lagoon will be dewatered during the project. Therefore, impacts to soil quality, stability, and moisture in the affected area would be expected to short-term and minor.
Vegetation cover, quantity, and quality	☐	☒	☐	☐	☐	☒	☐	☐	No significant adverse impacts to vegetation cover, quantity, and quality in the affected area would be expected because of the proposed project. The lagoon will be drained and fish will be removed. A portion of Fleshman Creek downstream of the lagoon will be dewatered during the project as well. The project does not include any vegetative work or disturbance. The impacts from the proposed project to vegetation cover, quantity, and quality would be short-term and minor.
Aesthetics	☐	☒	☐	☐	☐	☐	☒	☐	No significant adverse impacts to aesthetics in the affected area would be expected because of the proposed project. The proposed project will be visible from the surrounding area at this location, as well as residences along the lagoon and the portion of the Fleshman Creek that will be dewatered. Post project, the lagoon will be filled with water and Fleshman Creek below the lagoon will have flowing water. The impact from the proposed project on aesthetics would be short-term and moderate.
Air quality	☒	☐	☐	☒	☐	☐	☐	☐	Implementation and completion of the project will not result in additional air disturbance in the area. Therefore, no impacts to air quality would be expected because of the proposed project.
Unique, endangered, fragile, or limited	☒	☐	☐	☒	☐	☐	☐	☐	No unique, endangered, fragile, or limited environmental resources are known to exist in the project area.

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PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
environmental resources									Therefore, no impacts to unique, endangered, fragile, or limited environmental resources would be expected because of the proposed project.
Historical and archaeological sites	☒	☐	☐	☒	☐	☐	☐	☐	FWP is not aware of any historical or archaeological sites in the project area. Regardless, the proposed project will not disturb any areas other than a temporary instream diversion at the inlet to drain the lagoon. Therefore, no impacts to historical and archaeological sites would be expected because of the proposed project.
Demands on environmental resources of land, water, air, and energy	☒	☐	☐	☒	☐	☐	☐	☐	The proposed project will consist of draining the lagoon and removing fish. The lagoon will be filled, and flow will be returned to the dewatered portion of Fleshman Creek post project. Therefore, no impacts on demands on environmental resources of land, water, air, and energy would be expected because of the proposed project.

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Table 5 - Potential Impacts of the Proposed Project on the Human Population

HUMAN POPULATION	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Social structures and mores	☐	☒	☐	☐	☐	☐	☒	☐	No significant adverse impacts to social structures and mores in the affected area would be expected because of the proposed project. The proposed project will limit the use of the lagoon by the public and a portion of Fleshman Creek during the project. The impact of the proposed project on social structures, customs, values, and conventions in the affected area will be short-term and moderate, only occurring during the project.
Cultural uniqueness and diversity	☒	☐	☐	☒	☐	☐	☐	☐	The project will not impact any pre-project cultural uniqueness or diversity in the affected area.
Access to and quality of recreational and wilderness activities	☐	☒	☒	☐	☐	☐	☒	☐	No significant adverse impacts to access or the quality of recreational and wilderness activities would be expected because of the proposed project. Recreational use of the lagoon and the dewatered portion of Fleshman Creek will not be available to the public during the proposed project. The public will have the same pre-project level of access and recreational use when the proposed project is complete. Therefore, the impact on access and the quality of recreational and wilderness activities in the affected area would be short-term and minor.
Local and state tax base and tax revenues	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to the local and state tax base and tax revenue would be expected because of the proposed project. The proposed project will drain the lagoon and remove fish. The project would be expected to increase state and local tax revenues for the sale of fuel, supplies and/or equipment to complete the project. Any impacts to the local and state tax base and tax revenue would be short-term and negligible, lasting only as long as the project.

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HUMAN POPULATION	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Agricultural or Industrial production	☒	☐	☐	☒	☐	☐	☐	☐	The proposed project will include draining the lagoon and removing fish. No current agricultural or industrial production occurs in the project area and will not result in changes to agricultural or industrial production. Therefore, no impacts on agriculture or industrial production would be expected because of the proposed project.
Human health and safety	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to human health and safety would be expected because of the proposed project. The proposed project will drain the lagoon and remove fish. A portion of Fleshman Creek will be dewatered. The proposed project would employ electrofishing equipment, which can be dangerous if not done in a safe manner. Affected staff conducting the activity may realize increased risk to human health and safety; however, FWP requires staff to operate in a safe manner and utilize available safety precautions. Therefore, any potential impact to human health and safety would be short-term and negligible, lasting only as long as the proposed project.
Quantity and distribution of employment	☒	☐	☐	☒	☐	☐	☐	☐	No impact on the quantity and distribution of employment in the affected area would be expected because of the proposed project.
Distribution and density of population and housing	☒	☐	☐	☒	☐	☐	☐	☐	The project is unrelated to housing, both current and future. Therefore, no impacts on distribution and density of population and housing would be expected because of the proposed project.
Demands for government services	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to demands for government services would be expected because of the proposed project. The proposed project would use existing FWP staff. No additional demands for government services would be expected because of the proposed

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HUMAN POPULATION	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
									project. Activities of this nature are included in the roles of FWP staff. Any impacts would be short-term and negligible, lasting only as long as the proposed project.
Industrial, agricultural, and commercial activity	☒	☐	☐	☒	☐	☐	☐	☐	The project is in an area that has no industrial, agricultural, or commercial activity. Therefore, no impacts to industrial, agricultural, and commercial activity would be expected from the proposed project.
Locally adopted environmental plans and goals	☐	☐	☒	☐	☐	☒	☐	☐	No significant adverse impacts to locally adopted environmental plans and goals would be expected because of the proposed project. FWP has a Statewide Fish Management Plan, which lists this work as a high priority to prevent expansion of illegally introduced species. Therefore, impacts on any locally adopted environmental plans and goals would be long-term, minor, and beneficial.
Other appropriate social and economic circumstances	☐	☒	☐	☐	☒	☐	☐	☐	FWP is unaware of any other appropriate social and economic circumstances that may be impacted by the proposed project. However, the project is proposed for winter months to avoid periods of high public use, so impacts to other appropriate social and economic circumstances would likely be short-term and negligible.

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Table 6: Determining the Significance of Impacts on the Quality of the Human Environment

If the EA identifies impacts associated with the proposed project FWP must determine the significance of the impacts. ARM 12.2.431. This determination forms the basis for FWP's decision as to whether it is necessary to prepare an environmental impact statement. An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial. ARM 12.2.431. According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.	
Criteria Used to Determine Significance	
1	The **severity, duration, geographic extent,** and **frequency** of the occurrence of the impact **"Severity"** describes the density of the potential impact, while **"extent"** describes the area where the impact will likely occur, e.g., a project may propagate ten noxious weeds on a surface area of 1 square foot. Here, the impact may be high in severity, but over a low extent. In contrast, if ten noxious weeds were distributed over ten acres, there may be low severity over a larger extent. **"Duration"** describes the time period during which an impact may occur, while **"frequency"** describes how often the impact may occur, e.g., an operation that uses lights to mine at night may have frequent lighting impacts during one season (duration).
2	The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur
3	Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts
4	The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values
5	The importance to the state and to society of each environmental resource or value that would be affected
6	Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions
7	Potential conflict with local, state, or federal laws, requirements, or formal plans

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VIII. Private Property Impact Analysis (Takings)

The 54th Montana Legislature enacted the Private Property Assessment Act, now found at § 2-10-101. The intent was to establish an orderly and consistent process by which state agencies evaluate their proposed projects under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency projects pertaining to land or water management or to some other environmental matter that, if adopted and enforced without due process of law and just compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agencies to assess the impact of a proposed agency project on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency project has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act.

Table 7: Private Property Assessment (Takings)

		Yes	No
Is FWP regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required		☐	☒
Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required.		☐	☐
Does FWP have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required		☐	☐
If so, FWP must determine if there are alternatives that would reduce, minimize, or eliminate the restriction on the use of private property, and analyze such alternatives. Have alternatives been considered and/or analyzed? If so, describe below:		☐	☐
PRIVATE PROPERTY ASSESMENT ACT (PPAA)			
Does the Proposed Action Have Takings Implications under the PPAA?	**Question #**	**Yes**	**No**
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	☐	☐
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	☐	☐
Does the action deprive the owner of all economically viable uses of the property?	3	☐	☐
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 4a and 4b and continue with question 5)	4	☐	☐
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	☐	☐

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Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	☐	☐
Does the action deny a fundamental attribute of ownership?	5	☐	☐
Does the action have a severe impact of the value of the property?	6	☐	☐
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	☐	☐
Is the impact of government action direct, peculiar, and significant?	7a	☐	☐
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	☐	☐
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	☐	☐
Does the proposed action result in taking or damaging implications?		☐	☐
Taking or damaging implications exist if **YES** is checked in response to Question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to question 4a or 4b.			
If taking or damaging implications exist, the agency must comply with MCA § 2-10-105 of the PPAA, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.			
Alternatives: The analysis under the Private Property Assessment Act, §§ 2-10-101 through -112, MCA, indicates no impact. FWP does not plan to impose conditions that would restrict the regulated person's use of private property to constitute a taking.			

IX. Public Participation

The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. FWP is responsible for adjusting public review to match these factors (ARM 12.2.433(1)). Because FWP determines the proposed action will result in limited environmental impact, and little public interest has been expressed, FWP determines the following public notice strategy will provide an appropriate level of public review:

- *An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to FWP. If the document is out-of-print, a copying charge may be levied (ARM 12.2.433(2)).*
- *Public notice will be served on the Montana Fish, Wildlife and Parks website at: https://fwp.mt.gov/aboutfwp/public-comment-opportunities*
- *Copies will be distributed to neighboring landowners to ensure their knowledge of the proposed project and opportunity for review and comment on the proposed action.*
- *FWP maintains a mailing list of persons interested in a particular action or type of action. FWP will notify all interested persons and distribute copies of the EA to those persons for review and comment (ARM 12.2.433(3)).*
- *FWP will host a public meeting in Livingston prior to the end of the public comment period. A time and location for the meeting have not been finalized but details can be obtained by contacting the FWP contact below.*
- *FWP will issue public notice in the following newspaper periodical(s) on the date(s) indicated.*

Newspaper / Periodical	Date(s) Public Notice Issued
Livingston Enterprise	9/15/2026

- *Public notice will announce the availability of the EA, summarize its content, and solicit public comment.*

- **Duration of Public Comment Period:** *The public comment period begins on the date of publication of legal notice in area newspapers (see above). Written or e-mailed comments will be accepted until 5:00 p.m., MST, on the last day of public comment, as listed below*:

  Length of Public Comment Period: 15 Days
  Public Comment Period Begins: ?
  Public Comment Period Ends: ?

  Comments must be addressed to the FWP contact, as listed below.

- **Where to Mail or Email Comments on the Draft EA:**
  Name: SCOTT OPITZ
  Email: sopitz@mt.gov

  Mailing Address:
  6 Church Drive
  Livingston MT 59047

X. Recommendation for Further Environmental Analysis

NO further analysis is needed for the proposed action	☒
FWP must conduct **EIS** level review for the proposed action	☐

XI. EA Preparation and Review

	Name	**Title**
EA prepared by:	Scott Opitz	Fisheries Biologist – Livingston
EA reviewed by:	Mike Duncan	Region 3 Fish Manager

Draft

Attachment 1

SPA 124 Permit General Conditions

Stream Protection Act 124 Permit General Conditions

1. Complete work affecting a streambed or stream bank in an expeditious manner to avoid unnecessary impacts to the stream.
2. Limit the clearing of vegetation to that which is absolutely necessary for construction of the project. Take precautions to preserve existing riparian vegetation. Salvage and reuse native vegetation where possible.
3. Install and maintain erosion control measures where appropriate to protect aquatic resources. Do not clear and grub land adjacent to streams prior to installing proper erosion and sedimentation controls. Conduct all work in a manner that minimizes turbidity and other disturbances to aquatic resources.
4. Plan temporary construction facilities to:
   a. Minimize disturbance to stream banks, stream bank vegetation, and the streambed by locating staging or storage facilities at least 50' horizontally from the highest anticipated water level during construction;

   b. not restrict or impede fish passage in streams; and

   c. not restrict any flow anticipated during use.

5. Provide sediment controls for drainage from topsoil stockpiles, staging areas, access roads, channel changes, and instream excavations.
6. Isolate work zones from flowing and standing waters to prevent turbid water and sediments from being discharged into streams or other drainages that flow directly into the stream. Divert flowing waters around the work zone.
7. Do not spill or dump material into streams. Store and handle petroleum products, chemicals, cement and other deleterious materials in a manner that will prevent their entering streams.
8. Do not permit wash water from cleaning concrete-related equipment or wet concrete to enter streams.
9. Do not operate mechanized equipment in any stream or flowing water unless special authorization is obtained. If special authorization is granted, the following conditions apply:
   a. Power-wash all equipment allowed in a stream prior to entering the stream channel.
   b. Clean and maintain all equipment so that petroleum-based products and hydraulic fluids do not leak or spill into the waterway.
10. Reclaim streambeds and stream banks as closely as possible to their pre-disturbed condition.
11. Restore disturbed stream banks to their natural or pre-disturbed configuration to match adjacent ground contours or as specified in the project plans. Stabilize, reseed, and re-vegetate disturbed areas. Install and maintain long-term biodegradable erosion-control measures to protect these areas until adequate vegetation has been established.
12. Restore temporary access routes and any temporarily disturbed areas to original conditions, including original contours and vegetation.
13. Dispose of any excess material generated from the project above the ordinary high-water mark and in an area not classified as a wetland.