

**DRAFT**

**ENVIRONMENTAL ASSESSMENT**

**CHECKLIST**

**Giant Springs State Park Renewal**

**Of Water Rights Lease, Infrastructure**

**Agreement and Pipeline Easement Agreement**

**FWP-CEA-ADM-R4-25-050**

**12/1/2025**



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# Checklist Environmental Assessment

The Montana Department of Fish, Wildlife and Parks (FWP) has prepared this Draft Environmental Assessment (EA) in accordance with the requirements of the Montana Environmental Policy Act (MEPA). The purpose of an EA is to identify, analyze, and disclose the impacts of a proposed state action. This document may disclose impacts that have no required mitigation measures, or over which FWP, more broadly, has no regulatory authority.

Local governments and other state agencies may have authority over different resources and activities under separate regulations. FWP actions will only be approved if the proposed action complies with all applicable regulations. FWP has a separate obligation to comply with any federal, state, or local laws and to obtain any other permits, licenses, or approvals required for any part of the proposed action.

## 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:** Renewal of Water Rights Lease, Infrastructure Agreement, and Pipeline Easement Agreement (“Agreement”) for Malteurop North America Inc. at Giant Springs State Park.

FWP is proposing to renew the Agreement originally entered with International Malting Company LLC in 2004 and renewed in 2015 with Malteurop North America Inc. (“Malteurop”), successor in interest to International Malting Company LLC. Under the original and renewed agreements, FWP has leased water to the two companies for use in a malting barley plant north of the Missouri River near Great Falls, MT. The source of the leased water is from Giant Springs and held by FWP under water right Provisional Permit 41Q 55863-00. Twelve hundred gallons per minute (gpm), up to 1,936 acre-feet per year, of the water right has been temporarily changed to industrial use. The remainder of the right continues to be used at the Giant Springs Trout Hatchery. This water use is non-consumptive as it returns to the Missouri River via the City of Great Falls’ Wastewater Treatment Plan.

Malteurop also diverts an additional 300 gpm from Giant Springs through the same infrastructure under a water reservation owned by the City of Great Falls. This water is consumptively used at the Matleurop facility. The Agreement also provides for infrastructure and pipeline easements for Malteurop to use the Hatchery wet well and pump building to pump water via a pipeline to the Matleurop facility. The current lease and easement agreements will expire at the end of February 2026. Malteurop wishes to renew the Agreement and continue its operation of the malting plant.

Proceeds from the original and renewed agreements have been deposited into a Fisheries Mitigation Trust Fund and used by FWP to support fisheries-related projects and programs including hatcheries, fish health, fisheries monitoring, water leasing and instream flow enhancement, and fishery restoration. Malteurop currently pays FWP approximately \$500,000 per year with an annual increase of 2.15% which will continue under the new Agreement.

### **Affected Area / Location of Proposed Project:**

- Legal Description
  - Latitude/Longitude: 47.53 – 111.23.
  - Section, Township, and Range: Parts of NW ¼ & NE ¼, Section 33, Township 21 North, Range 4 East, M.P.M.
  - Town/City, County, Montana: Great Falls, Cascade, Montana
  - Location Map

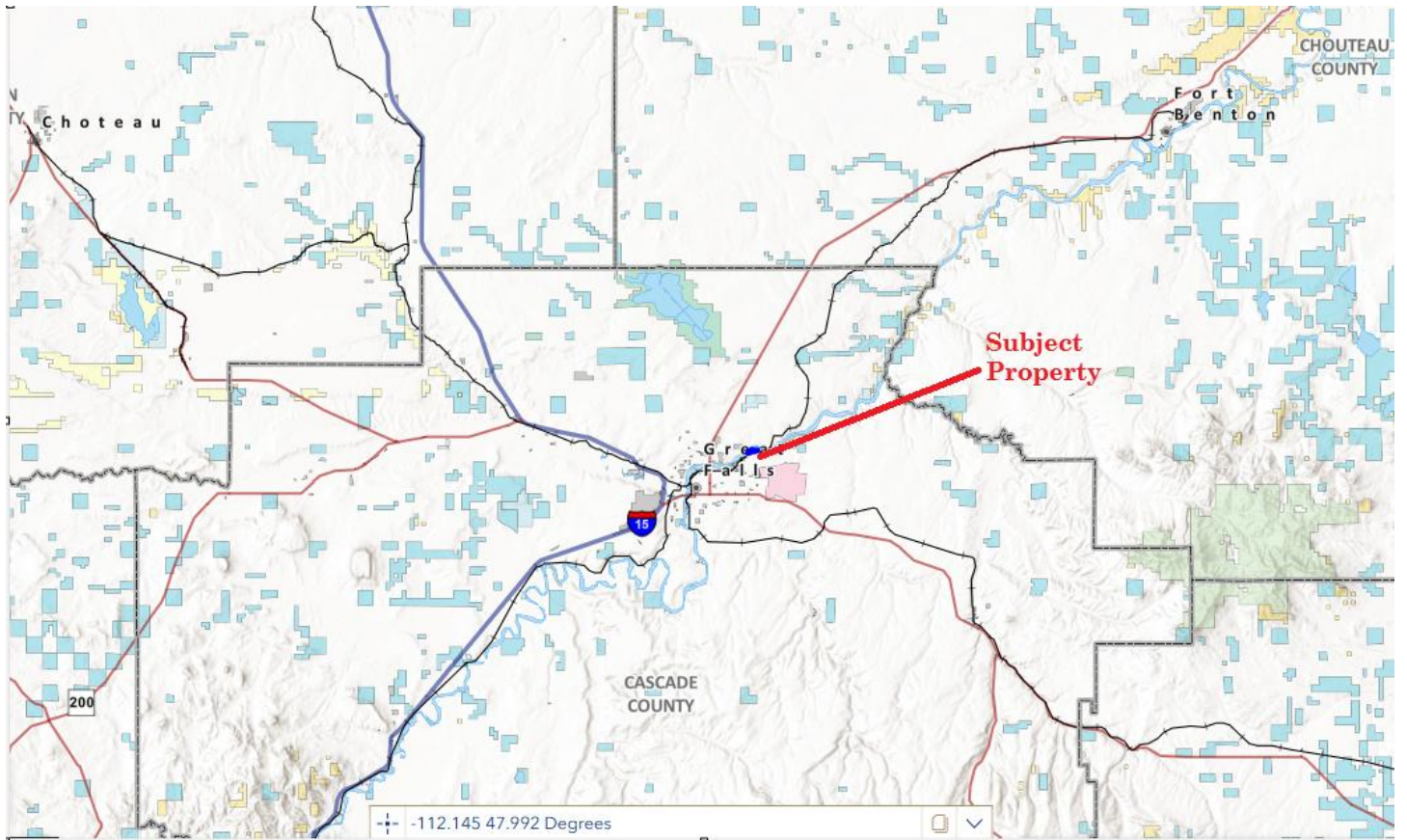


Figure 1. Location of proposed project.

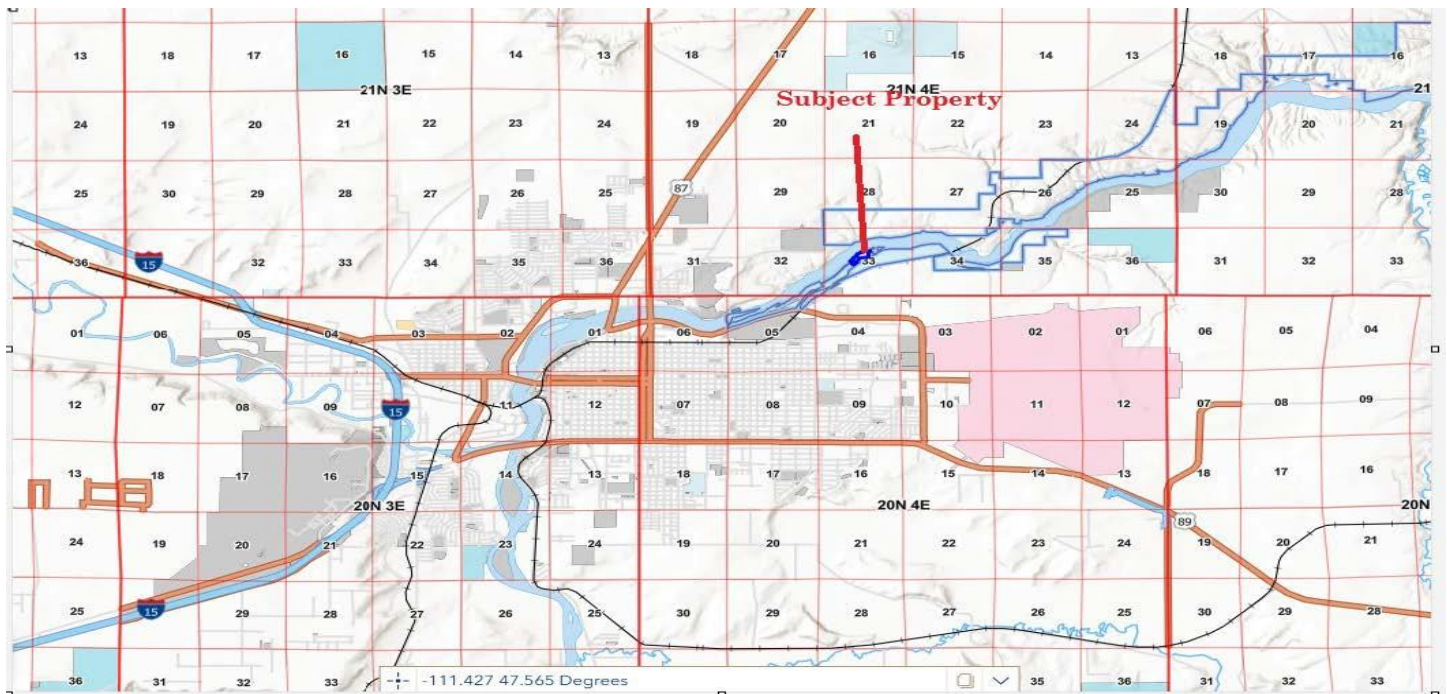


Figure 2. Location of proposed project.

### III. Purpose and Need

*The EA must include a description of the purpose and need or benefits 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.*

International Malting Company, LLC (“IMC”) started a malting barley processing plant on the north side of Great Falls in 2004, and the plant has been in operation ever since. Malteurop eventually succeeded IMC as a party to this contract. Malteurop signed an Amended and Restated Water Rights Lease, Infrastructure Agreement, and Pipeline Easement Agreement in conjunction with a 10-year extension in 2015. Malteurop has complied with all terms of the existing agreement and is now seeking to renew the Agreement under similar terms and conditions.

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?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

\* 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 requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed for the proposed project. 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
Montana DNRC	Temporary Authorization to Change a Wate Right	DNRC has granted a temporary change of portions of water right Provisional Permit 41Q 55863-00 to industrial use at the Malteurop facility. The temporary change will need to be renewed in August 2033.

## 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 <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>
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 <input type="checkbox"/>	No <input type="checkbox"/>
Enforceable Control	Responsible Agency	Authority (Rule, Permit, Stipulation, Other)	Effect of Enforceable Control on Proposed Project
Water meter and reporting requirement.	Malteurop to monitor and report to FWP.		Water flow meter ensures that only the authorized amount of water is diverted and transported to malting plant thereby limiting the scope of impact to FWP's hatchery operation.

## 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, 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.

No action Alternative- Under the No Action Alternative, the extension would not be granted to Malteurop. The lease and associated agreements would end and most likely result in the termination of Malteurop's barley malting operation. A number of steps would need to be undertaken for mitigation and to reconfigure the water usage and distribution, as well as address remaining infrastructure. This would result in additional planning and funding that may not have been accounted for in budgets. The No Action Alternative would also result in a net loss of approximately 50 jobs in the Great Falls area, rendering this result generally undesirable.

	Yes*	No
Were any additional and reasonable alternatives considered?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

	Yes*	No
Were any additional alternatives considered and dismissed for cause?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

## 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:

- **None:** 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 Agreement would be allowed to expire. This would most likely lead to the termination of Malteurop’s operation. The impacts to the Physical Environment would be the actions taken at the physical site of operation to develop or restore this area to a different use. Significant infrastructure to support this lease exists in the area, including a pipeline running under the river and a modified water distribution system at Giant Springs. These and the other components would need to be accounted for and remediated depending on the future planned use of those areas and the associated water resources.

The Human Population would likely most impacted by the loss of approximately 50 jobs and Malteurop’s ongoing contribution to the local economy. The local economy would need to adjust accordingly, and the impacted employees would have to find alternate employment. Redevelopment and restoration of the site could also have an impact on the human population, but the possibilities are too diverse to reliably predict. The local tax base would also be negatively affected by the loss of Malteurop’s operation.

**Cumulative Impacts Analysis**

For the purposes of MEPA, "cumulative impact" 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 such 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).

"Action" means a project, program or activity directly undertaken by the agency; a project or activity supported through a contract, grant, subsidy, loan or other form of funding assistance from the agency, either singly or in combination with one or more other state agencies; or a project or activity involving the issuance of a lease, permit, license, certificate, or

other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies. ARM 12.2.429(1). For the purposes of the proposed project, the cumulative impacts analysis applies to all resources analyzed under Alternative 2, Proposed Project. See Tables 3 and 4 of this Draft EA

**Alternative 2: Extend the barley malting operation lease and associated agreements. Evaluation and Summary of Potential Impacts on the Physical Environments and Human Population.**

**Table 3 - Potential Impacts of Proposed Project on the Physical Environment**

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Resource									
Terrestrial, avian, and aquatic life and habitats	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	This operation and associated infrastructure have been in place approximately the last 20 years. There would be no physical or operational changes anticipated.
Water quality, quantity, and distribution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact to water quality, quantity, or distribution is expected. No change from historic operations or impacts are expected.
Geology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact to Geology is expected.
Soil quality, stability, and moisture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No new changes to soil are expected. Therefore, FWP does not anticipate any impact to soil quality, stability, or moisture.
Vegetation cover, quantity, and quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No new changes are expected at the site, therefore FWP does not expect any impact to vegetation cover, quality or quantity.
Aesthetics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No physical change is expected and no change in impact to aesthetics is anticipated.
Air quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	This Agreement renewal will not have any new impact on air quality.
Unique, endangered, fragile, or limited environmental resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No changes to impact from the original project are anticipated with the continuation of this operation under a lease renewal.
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No ground disturbance is being proposed at the site and therefore no impacts to historical or archeological sites are anticipated.
Demands on environmental resources of land,	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No impact to environmental demands is anticipated.

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Resource									
water, air, and energy									

**Table 4 - Potential Impacts of Proposed Project on the Human Population**

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Social structures and mores	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No adverse impacts to social structures and mores would be expected. This should allow the operation to continue as it has historically.
Cultural uniqueness and diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No adverse impacts to cultural uniqueness and diversity are expected.
Access to and quality of recreational and wilderness activities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	This Agreement renewal does not seek to alter recreation at the site from what already exists. Therefore, no additional changes to recreation access are expected.
Local and state tax base and tax revenues	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to demands on local and state tax base and tax revenues would be expected.
Agricultural or Industrial production	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to agricultural or industrial production would be expected.
Human health and safety	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to human health and safety would be expected.
Quantity and distribution of employment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to demands on quantity and distribution of employment would be expected as this operation would continue as it has, with respect to the lease renewal factor.

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Resource									
Distribution and density of population and housing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the distribution of population or housing would be expected.
Demands for government services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to demands for government services would be expected.
Industrial, agricultural, and commercial activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to demands on industrial, agricultural, and commercial activity would be expected.
Locally adopted environmental plans and goals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No adverse impacts or demands on locally adopted environmental plans and goals would be expected.
Other appropriate social and economic circumstances	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No adverse impacts to demands on other appropriate social and economic circumstances would be expected.

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

<p>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.</p> <p>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.</p>	
<b>Criteria Used to Determine Significance</b>	
1	<p>The <b>severity, duration, geographic extent, and frequency</b> of the occurrence of the impact</p> <p><b>“Severity”</b> describes the density of the potential impact, while <b>“extent”</b> describes the area where the impact will likely occur, e.g., a project may</p>

	<p>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.</p> <p><b>“Duration”</b> describes the time period during which an impact may occur, while <b>“frequency”</b> 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).</p>
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

## VIII. Private Property Impact Analysis (Takings)

The 54<sup>th</sup> 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)**

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	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action deprive the owner of all economically viable uses of the property?	3	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input type="checkbox"/>
Does the action deny a fundamental attribute of ownership?	5	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action have a severe impact of the value of the property?	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the impact of government action direct, peculiar, and significant?	7a	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>
<b>Does the proposed action result in taking or damaging implications?</b>		<input type="checkbox"/>	<input checked="" type="checkbox"/>

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. Though it does pertain to water management, the lease renewal contemplated in this EA is a transaction between willing lessor and lessee, not a regulatory action.

## 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/news/public-notices>. Public notice will announce the availability of the Draft EA, summarize its content, and solicit public comment.*
- *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 Draft EA to those persons for review and comment (ARM 12.2.433(3)).*
- *FWP issues a biweekly press release containing all FWP public commenting opportunities.*
  - ***Duration of Public Comment Period:*** *The public comment period begins on the date the Draft EA is published on FWP's website. Written or e-mailed comments will be accepted until 5:00 p.m., MST, on the last day of public comment period, as listed below:*

**Length of Public Comment Period:** 15 days

**Public Comment Period Begins:** 12/1/2025

**Public Comment Period Ends:** 12/15/2025

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

- ***Where to Mail or Email Comments on the Draft EA:***

Name: Jason Rhoten

Email: jrhoten@mt.gov

Mailing Address:

Montana Fish, Wildlife and Parks

Attn: Malteurop Barley lease renewal.

## X. Recommendation for Further Environmental Analysis

<b>NO</b> further analysis is needed for the proposed action	<input checked="" type="checkbox"/>
FWP must conduct <b>EIS</b> level review for the proposed action	<input type="checkbox"/>

## XI. EA Preparation and Review

	<b>Name</b>	<b>Title</b>
<b>EA prepared by:</b>	Justin Burt	FWP Land Agent
<b>EA reviewed by:</b>	Andy Brummond	FWP Water Conservationist
<b>EA reviewed by:</b>	Bill Schenk	FWP Land & Water Program Manager