

# **DRAFT**

# **ENVIRONMENTAL ASSESSMENT**

# **CHECKLIST**

**CONSENT TO APPROVE BENEFICIAL WATER USE  
APPLICATION BY PEAK HEALTH MANAGEMENT  
COMPANY LLC**

**August 7, 2023**



## Table of Contents

I.	Compliance with the Montana Environmental Policy Act .....	3
II.	Background and Description of Proposed Project .....	3
III.	Purpose and Need .....	6
IV.	Other Agency Regulatory Responsibilities .....	6
V.	List of Mitigations, Stipulations .....	6
VI.	Alternatives Considered .....	7
VII.	Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population .....	9
VIII.	Private Property Impact Analysis (Takings).....	17
IX.	Public Participation .....	18
X.	Recommendation for Further Environmental Analysis .....	19
XI.	EA Preparation and Review .....	19

## 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: CONSENT TO APPROVE BENEFICIAL WATER USE APPLICATION BY PEAK HEALTH MANAGEMENT COMPANY LLC**

Peak Health Management Company LLC (PEAK) has expanded the use of water from groundwater wells to supply additional developments around its facility located at the intersection of Blue Mountain Road

and HWY 93 southwest of Missoula near the Bitterroot River. With this expanded water use PEAK is exceeding its existing water rights and needs to acquire a new water right permit (pending application 76H 30150412). The new use of groundwater results in a depletion of flow in the lower Bitterroot River where Montana Fish, Wildlife & Parks (FWP) jointly holds with the Confederated Salish and Kootenai Tribes (CSKT) instream flow water rights that are not always met. Because of this, PEAK must mitigate the Bitterroot River flow depletions.

The following table compares the CSKT/FWP monthly instream flow right for the lower Bitterroot River with monthly percentile flow data for the Bitterroot River near Missoula (USGS Gage 12352500) for the 1989-2021 period of record. A percentile is a value on a scale of one hundred that indicates the percent of a distribution that is equal to or below it. For example, a flow at the 80th percentile is equal to or greater than 80 percent of the mean monthly values recorded on for that month of the year during all years that measurements have been made.

The values in red show monthly percentile values less than the instream right reflecting the occurrences when the instream right is not met. The more red values in a column means the instream right is met less often in that month.

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
80th	1009	1233	1601	3818	8464	10476	3571	1066	911	1098	1442	1062
50th	779	816	1151	2612	6487	7251	1980	814	766	890	1018	872
25th	693	717	880	1991	5152	4714	1134	623	620	730	874	749
20th	649	697	858	1614	5079	4553	1087	606	611	715	836	708
10th	613	639	815	1427	4451	3879	1003	546	595	665	786	645
5th	587	543	803	1342	4220	3575	903	501	539	636	770	632
CSKT/FWP Instream Right	900	900	900	900	7707	7707	600	600	600	900	900	900
% years CSKT/FWP Right Not Met	66%	66%	30%		70%	55%		16%	12%	53%	31%	58%

Comparison of instream right to monthly flow values in cubic feet per second.

While in April and July, the mean monthly flow did not drop below the instream right level in any year from 1989-2021, a review of daily flow records finds that in the first part of April and the last part of July flow dropped below the instream right in some years showing that it is not met in all months for all years. When this occurs, the instream right of CSKT/FWP would be adversely affected and therefore PEAK must mitigate the Bitterroot River flow depletions.

PEAK has purchased part of an irrigation water right (Statement of Claim 76H 30122609) across the Bitterroot River from its facility to mitigate the impacts to the Bitterroot River. The portion of the water right was previously used to irrigate the area now occupied by the Jennette Rankin Elementary School. Following table lists the water rights held by PEAK:

NUMBER	TYPE	PRIORITY DATE	SOURCE	FLOW	VOLUME	ACRES
76H 30122609	STATEMENT OF CLAIM	6/30/1958	BITTERROOT RIVER	2.5 CFS		8
76H 30151828	GROUND WATER CERTIFICATE	3/26/2021	GROUNDWATER	35 GPM	1.63	0.65
76H 62593 00	PROVISIONAL PERMIT	5/5/1986	GROUNDWATER	120 GPM	3.5	3
76H 65902 00	GROUND WATER CERTIFICATE	8/3/1987	GROUNDWATER	96.6 GPM	14	2

Existing water rights held by PEAK.

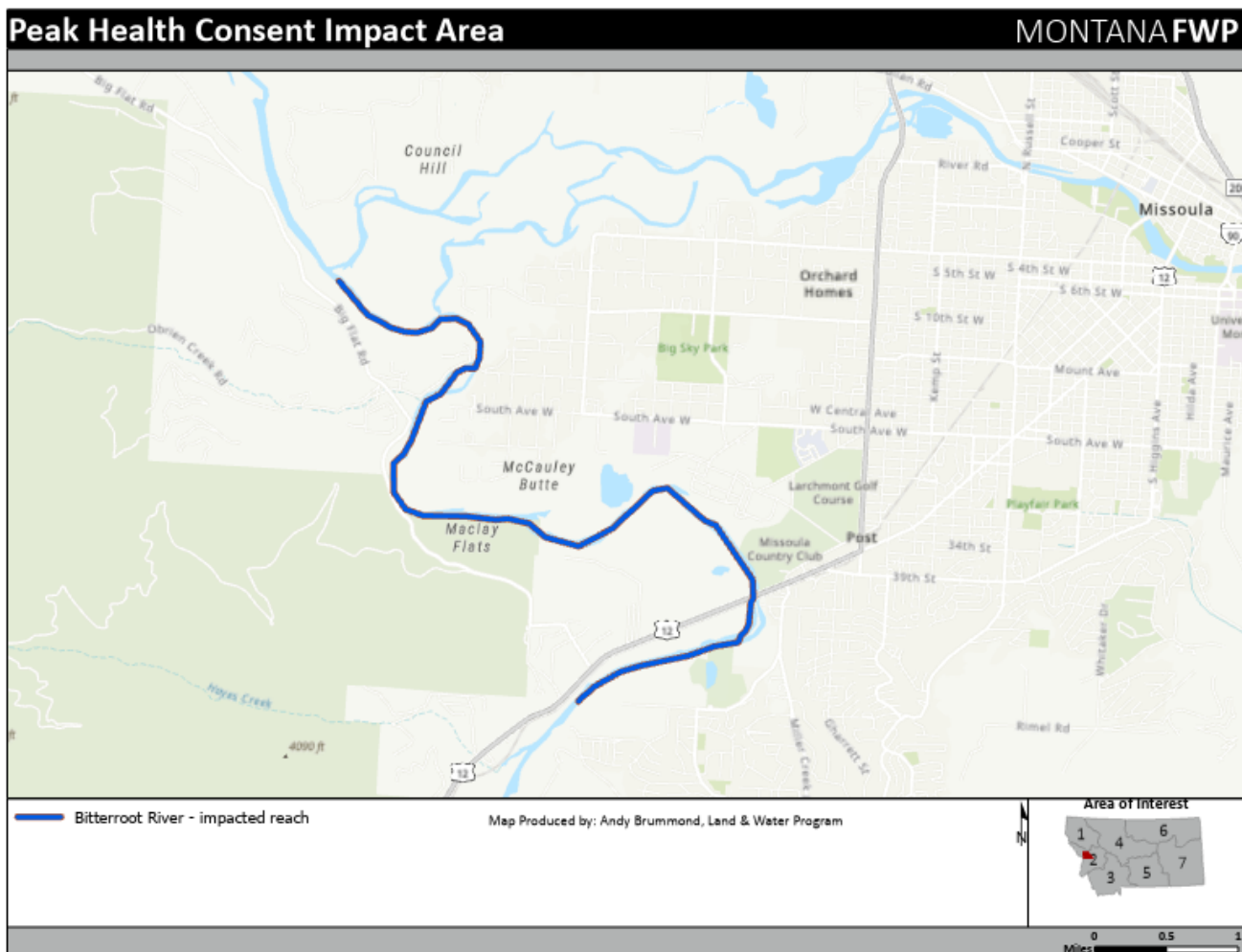
The retirement of the surface water irrigation from the Bitterroot River with a change in purpose to mitigation would offset depletions during the irrigation season but would provide no mitigation during the non-irrigation season (October – April). The other water rights owned by Peak include existing groundwater rights that are junior in priority to the instream water right with a priority date of 7-1-1970

and are currently causing depletions to the Bitterroot River. Because PEAK is unable to fully mitigate the flow depletions to the Bitterroot River in the non-irrigation period caused by its newly requested water right permit, it has requested that FWP consent to the issuance of the groundwater permit under the provisions of §85-2-402(19), MCA. If FWP and CSKT consent, DNRC would not include the CSKT/FWP right in its analysis of adverse effects on other water rights.

The consent would very likely have the practical effect of allowing DNRC to issue PEAK's water right permit and change applications.

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

- Legal Description
  - Latitude/Longitude: BITTERROOT RIVER FROM LAT: 46.8200, LONG: -114.0795 TO LAT: 46.8614, LONG: -114.1187
  - Section, Township, and Range: SECTIONS 1 & 2, TWP 12N, RGE 20W  
SECTION 31, TWP 13N, RGE 19W  
SECTIONS 26, 27, 27, 35 & 36, TWP 13N, RGE 20W
  - Town/City, County, Montana: MISSOULA COUNTY, MONTANA
- Location Map



### 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.*

PEAK requests that FWP consent to the issuance of the pending groundwater Permit 76H 30150412 under the provisions of §85-2-402(19), MCA, requiring DNRC to not conduct an adverse effects analysis of the FWP co-owned instream right for the Bitterroot River. The requested consent would allow for the development of the State's water resources as provided for by the Water Use Act while potentially protecting and benefiting the fishery resource of the Bitterroot River.

*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
MT DNRC	Water Use Permit, Water Right Change Authorization	Prevent negative effects to existing water users.

### 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**

<i>Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.</i>			<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input checked="" type="checkbox"/>
<i>If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below</i>			<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>
<b>Enforceable Control</b>	<b>Responsible Agency</b>	<b>Authority (Rule, Permit, Stipulation, Other)</b>	<b>Effect of Enforceable Control on Proposed Project</b>	

## 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.*

### Alternative 1: NO ACTION

PEAK would not be able to obtain a new water right permit. Slight benefits to the Bitterroot River during summer low-flow periods would not be realized.

### Alternative 2: CONSENT TO ISSUANCE WITH MITIGATION AS PROPOSED BY PEAK

PEAK through applications submitted to the Department of Natural Resources and Conservation (DNRC) has proposed to mitigate the net depletions to the Bitterroot River resulting from pending water right permit application 76H 30150412 by changing Claim 76H 30122609 (irrigation from the Bitterroot River) to a mitigation purpose and leaving that water in the river. Only a portion of the changed Bitterroot irrigation right would mitigate the net depletion caused by the pending permit, with the remainder being set aside for future mitigation. Additional mitigation is proposed by the retirement of 0.46 acres from irrigation under existing groundwater Permit 76H 62593-00 with a change to mitigation. The retirement of irrigation under this permit would provide 0.001 cfs of mitigation during the irrigation season (May - September) but this leaves 0.002 cfs of net depletion outside the irrigation season.

Permit 76H 62593-00 with a 5-5-1986 priority date, is junior to FWP's and CSKT's instream right with a 7-1-1970 priority date that needs to be mitigated. In addition, the 1987 and 2021 groundwater certificates also used at the same facility are un-mitigated junior rights. The proposed mitigation by the groundwater permit does not provide effective mitigation to the senior instream flow water right while the existing un-mitigated groundwater use further negatively impacts streamflow.

Note that DNRC would only require the mitigation for the pending permit. The following table shows the change in flow in the Bitterroot River with the net depletion associated with the pending permit and the proposed amount of consumptive use from Claim 76H 30122609 changed to mitigation. It excludes the mitigation proposed from Permit 76H 62593-00 because it is junior to the instream water right being mitigated. Positive values indicate a loss in river flow while negative values indicate a gain.

Bitterroot River	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave
Net Depletion (cfs)	0.003	0.003	0.003	0.003	-0.001	-0.001	-0.001	-0.001	-0.001	0.003	0.003	0.003	0.001

The following table shows the change in flow in the Bitterroot River with the net depletion of all PEAK groundwater rights with the proposed amount of consumptive use for Claim 76H 30122609 changed to mitigation.

Bitterroot River	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave
Net Depletion (cfs)	0.011	0.011	0.011	0.011	0.007	0.007	0.007	0.007	0.007	0.011	0.011	0.011	0.010

Under this alternative FWP would consent to the issuance of the Permit 76H 30150412 with the mitigation scenario proposed by PEAK through its pending applications.

### Alternative 3: CONSENT TO ISSUANCE WITH FULL MITIGATION

All of Claim 76H 30122609 for irrigation from the Bitterroot River would be changed to mitigate the net depletion caused by the pending Permit as well as those net depletions to the Bitterroot River caused by the current use of Permit 76H 62593-00 and Groundwater Certificates 76H 30151282 & 76H 65902-00. No water would be left for future mitigation. The following table shows the change in flow in the Bitterroot River with the net depletion of all PEAK groundwater rights with the full amount of consumptive use for Claim 76H 30122609 changed to mitigation.

Bitterroot River	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave
Net Depletion (cfs)	0.011	0.011	0.011	0.011	0.003	-0.028	-0.042	-0.034	-0.001	0.011	0.011	0.011	-0.002

The following terms would be required for FWP to consent to the issuance of Permit 76H 30150412:

- The currently unused portion of Permit 76H 62593-00 will not be used for mitigation and this unused portion will be terminated by PEAK.
- All of Claim 76H 30122609 will be changed to mitigation of net depletions to the Bitterroot River caused by pending Permit 76H 30150412, Permit 76H 62593-00 and Groundwater Certificates 76H 30151282 & 76H 65902-00.
- Any portion of Claim 76H 30122609 not approved by DNRC for mitigation of pending Permit 76H 30150412, Permit 76H 62593-00 and Groundwater Certificates 76H 30151282 & 76H 65902-00 will be terminated by PEAK.

The termination of a portion of Claim 76H 30122609 would result in the same effect as changing it to mitigation as the Bitterroot River does not run dry and making a call on other water rights to cease diversion based on this water right would not be necessary to effectuate the mitigation benefits.

	Yes*	No
Were any additional alternatives considered and dismissed?	<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:*

- **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.

Small benefits to the Bitterroot River during the late summer when streamflow is low and water temperature is higher would not occur.

**Alternative 2: Proposed Project. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

See **Table 3** (Impacts on Physical Environment) and **Table 4** (Impacts on Human Population) below.

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

See **Table 5** (Impacts on Physical Environment) and **Table 6** (Impacts on Human Population) below.

**Table 3 – Alternative 2 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	
Terrestrial, avian, and aquatic life and habitats	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Very small relative increases in streamflow would occur during the irrigation season which would slightly benefit aquatic habitat, particularly during later summer when streamflow is low and water temperatures are high. Very small reductions in streamflow during the non-irrigation season are not expected to negatively impact aquatic habitat as streamflow is generally higher than during late summer. Overall, the fishery would benefit.
Water quality, quantity, and distribution	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Total annual flow in the Bitterroot River would be slightly reduced. Very small relative increases in streamflow would occur during the irrigation season with very small reductions in streamflow during the non-irrigation season.
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
Demands on environmental resources of land, water, air, and energy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A minute increase in demand on water resources would occur.

**Table 4 – Alternative 2 Potential Impacts of Proposed Project on the Human Population**

<b>HUMAN POPULATION</b>	<b>Duration of Impact</b>			<b>Severity of Impact</b>					
<b>Resource</b>	<b>None</b>	<b>Short-Term</b>	<b>Long-Term</b>	<b>None</b>	<b>Negligible</b>	<b>Minor</b>	<b>Moderate</b>	<b>Major</b>	<b>Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures</b>
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	

<b>HUMAN POPULATION</b>	<b>Duration of Impact</b>			<b>Severity of Impact</b>					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
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"/>	

**Table 5 – Alternative 3 Potential Impacts of Proposed Project on the Physical Environment**

<b>PHYSICAL ENVIRONMENT</b>	<b>Duration of Impact</b>			<b>Severity of Impact</b>					
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	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Very small relative increases in streamflow would occur during the irrigation season which would slightly benefit aquatic habitat particularly during later summer when streamflow is low and water temperatures are high. The benefit would be larger than those occurring under Alternative 2. Very small reductions in streamflow during the non-irrigation season are not expected to negatively impact aquatic habitat as streamflow is generally higher than during late summer. Overall, the fishery would benefit.
Water quality, quantity, and distribution	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Total annual flow in the Bitterroot River would increase slightly. Very small relative increases in streamflow would occur during the irrigation season with very small reductions in streamflow during the non-irrigation season.
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
Unique, endangered, fragile, or limited	<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"/>	

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
environmental resources									
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"/>	
Demands on environmental resources of land, water, air, and energy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	A small decrease on total water resources demand would result.

**Table 6 – Alternative 3 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
Resource	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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	

<b>HUMAN POPULATION</b>	<b>Duration of Impact</b>			<b>Severity of Impact</b>					
<b>Resource</b>	<b>None</b>	<b>Short-Term</b>	<b>Long-Term</b>	<b>None</b>	<b>Negligible</b>	<b>Minor</b>	<b>Moderate</b>	<b>Major</b>	<b>Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures</b>
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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"/>	

**Table 7: 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	<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 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 8: 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 type="checkbox"/>	<input checked="" 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.

## 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>*
- *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 issue public notice in the following newspaper periodical(s) on the date(s) indicated.*

Newspaper / Periodical	Date(s) Public Notice Issued
Missoulian	August 10, 2023
Independent Record	August 10, 2023

- *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:** August 7, 2023

**Public Comment Period Ends:** August 15, 2023

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

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

Name: ANDY BRUMMOND

Email: [abrummond@mt.gov](mailto:abrummond@mt.gov)

Mailing Address:

MONTANA FISH, WILDLIFE & PARKS  
PO BOX 938  
LEWISTOWN, MT 59457

## 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

	Name	Title
<b>EA prepared by:</b>	Andy Brummond	Water Conservation Specialist
<b>EA reviewed by:</b>	Bill Schenk	Land and Water Program Manager
<b>EA reviewed by:</b>	Pat Saffel	Region 2 Fisheries Manager