



DECISION NOTICE

Daryl Miller Private Fish Pond License

9/11/2023

ACTION

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

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

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

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

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

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

PUBLIC PARTICIPATION PROCESS

The Draft EA was made available for public review and comment from June 30, 2023 to July 15, 2023 and again from July 20, 2023 to August 4, 2023 because of incomplete notification for the first comment period.

A legal Notice was published in The Ravalli Republic for a comment period of 15 days. The Draft EA was posted on FWP's Public Notice webpage: <https://fwp.mt.gov/news/public-notice>. The Draft EA was also made available for public review on the Environmental Quality Council or EQC website: <https://leg.mt.gov/mepa/search/>, by individual request, and through notice to identified interested parties. No comments were received during the first comment period, but five comments were received during the second comment period, with two comments coming from the same individual.

DESCRIPTION OF THE PROPOSED ACTION:

The Department will issue a private fish pond license to Daryl Miller of 967 Old Corvallis Rd, Corvallis, MT for the stocking of largemouth bass, yellow perch, and/or rainbow trout into the pond located at the same address. The pond is located in Ravalli County in the Bitterroot River drainage.

PURPOSE AND NEED

Issuing a private fish pond license will provide the pond owner the opportunity to stock fish from a state approved source into the licensed pond for personal use and enjoyment.

ALTERNATIVES ANALYZED

Alternative 1: No Action

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

Under the No Action alternative an angling opportunity for the species requested would not be available for the landowner in their private pond.

Alternative 2: Proposed Action

Under the Proposed Action, the private pond will provide an angling opportunity for the species requested in their private pond.

PUBLIC COMMENT AND FWP RESPONSE

Comment 1:

Just got the postcard on the Darryl Miller fish pond license and I have a couple questions about the EA.

First, it seems if FWP knows the pond is in the 100 year flood plain that should raise some further concerns than, as the EA states, release of fish species already present in the Bitterroot.

"The pond has no inlet or outlets, so escapement risk of stocked fish is low. The pond is however, in the 100-year mapped floodplain of the Bitterroot River. In an extreme flood event, it may be possible for the pond to be inundated and fish liberated into the Bitterroot River or other adjacent waters. The overall risk to the Bitterroot River fishery is negligible since all of the species proposed for release in the pond are already present in the Bitterroot River."

As you undoubtedly know, fish species are not the only thing FWP is mandated by law to be concerned

about. Specifically, diseases that may be released if the pond floods and overflows into the river. The years long struggle with whirling disease on the Madison comes immediately to mind -- as well as any number of other "hatchery diseases" that may accompany the fish intended to be stocked, especially since they're warm water species.

Nowhere in the EA does this get any attention -- but it should. Does FWP know where those fish will come from? Will you be checking them for diseases? If not, the risk gets a lot higher than "negligible" as stated in the EA. Moreover, the pond was already "illegally stocked" prior to the change in ownership, which should be a red flag for FWP considering the EA doesn't even mention what's already in the pond.

Remember, Colorado's fisheries managers believed whirling disease was only a "hatchery disease" that could not survive in the wild. They were wrong, obviously, although Montana purchased fish and eggs from Colorado hatcheries prior to the Madison whirling disease outbreak. Ponds, and especially the sediment on the bottom of ponds as opposed to free-flowing rock-bottomed streams and rivers are particularly subject to whirling disease propagation.

Second, the pond is not lined -- so how does FWP know whether or not there is transmission through the groundwater, especially since it's in the flood plain and such transmission between the river, the water table, and surface and groundwater occurs all over Montana?

Third, FWP is required to determine if the pond is being filled with an existing water right as noted in the EA.

"A private fish pond must have a water right appropriate for the size and location of pond, unless exempted"

But I can see anywhere in the EA is that issue addressed, quantified, and/or documented through a water right permit registration. Given the entire Bitterroot was just placed on "hoot owl" restrictions today &-24-23), one might think FWP would want to ensure groundwater that should legally be returned to the river as instream flows is not being illegally diverted into the pond and evaporated. Tough to see how FWP could simply overlook that requirement, but it would appear the case in the quickie EA.

Finally, although the EA states all the species the owner intends to plant in the flood plain pond are already in the Bitterroot, I can't recall anyone in my 53 years in Montana saying they caught a perch in the B-root by Corvallis. I know there are pike in the lower sections of the river and smallmouth bass, but also have never heard of anyone saying they caught a large-mouth bass in that area. The EA seems to brush over the issue and provides no data whatsoever to back up the contention that all the warm water species to be planted are already in the river. Seems like if FWP has credible data to back that up through fish-shocking surveys, it should have been presented in the EA.

Given it's location in the flood plain, what appears to be a down-gradient series of small ponds in the picture in the EA and the uncertainty of where the stocked fish will come from, whether or not they may carry hatchery diseases, and that there is a very real possibility of release of these warm water species to the cold-water fishery of the Bitterroot, I have to OPPOSE the project until the above-mentioned concerns are more adequately addressed by FWP to protect the public resource of the Bitterroot River.

Department Response:

The first issue the commentor raises is associated with the potential risk of disease introduction or transmission from fish stocked into the pond. The Montana Code (87-4-603) states that a person who owns

or lawfully controls a private fish pond may apply to the department for a fish pond license. The licensee may stock the fish pond with fish procured from a lawful source. FWP inspects and licenses all in-state commercial hatcheries. Fish sought from sources outside the state also require an import permit from FWP, which also requires disease testing. Additionally, under Montana Code, if the department finds an illegal introduction of fish or the presence of disease in fish in a licensed private fish pond or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. These controls afforded under the Montana Code limit the disease transmission risk of fish stocked into the pond under this proposed action by the department.

The second issue brought up is primarily associated with water rights for the pond. The EA process and FWP action only involve analysis of stocking fish in the Miller Pond. FWP has no jurisdiction or authority related to water rights. Water rights and beneficial uses are under the jurisdiction of the Department of Natural Resources and Conservation. As part of the fish pond application process FWP works with DNRC to ensure ponds have valid water rights, unless exempted. In the case of the Miller Pond, no water right exists or can be secured due to the size of the pond and the closed nature of the basin. However, the Miller Pond is a previously licensed, retired gravel pit that has a reclamation release issued by the Department of Environmental Quality (who regulates gravel mining operations). It is DNRC policy to allow beneficial uses that are considered non-consumptive (such as for fish and wildlife) in gravel pits that have been successfully reclaimed. While this issue was clarified on the department's internal inspection report for the pond, it was not made specifically clear in the EA.

The final comment was associated with the species requested for stocking in the Miller Pond. The commentor questioned whether largemouth bass and yellow perch were present in the Bitterroot River. Neither species is common enough in the mainstem Bitterroot River to be picked up in FWP's standard sampling sections targeted for trout estimates. This is directly related to habitat preferences for these species. Both largemouth bass and yellow perch prefer pond-like habitats with abundant aquatic vegetation, which along the Bitterroot River can only be found in the numerous backwaters. Work done just last year to tag pike in the Bitterroot River near Florence found yellow perch and largemouth bass in the same backwater pike were frequenting to spawn. In addition to backwaters, both species are present in an unknown number of valley bottom ponds, some of which are connected to the river such as those at the Lee Metcalf National Wildlife Refuge or Hieronymous Pond in Hamilton. Hieronymous Pond is a public fishing pond located adjacent to the Bitterroot River that is connected to an open ditch system (Corvallis Canal) that takes water from the Bitterroot River and flows through a good portion of the Bitterroot Valley between Hamilton and Victor on the east side of the river. Both species are often observed in the ditch. Hieronymous Pond is a place the department does have good data due to past sampling efforts in the pond. In addition to these examples, biologists working in the field gain a lot of knowledge regarding fish distribution and abundance in a drainage based on observations in the field and talking with landowners and anglers.

Comment 2:

Consider this an addition to my comments opposing the Miller pond in the flood plain in Corvallis.

Your EA regarding the potential for flood release of largemouth bass and yellow perch into the Bitterroot River stated: "The overall risk to the Bitterroot River fishery is negligible since all of the species proposed for release in the pond are already present in the Bitterroot River."

You presented NO data to back up that assertion and then, yesterday, your own agency, Fish, Wildlife and

Parks released this "emergency rule" on bass in the Bitterroot -- completely contradicting your statement that there was "negligible" risk of bass and perch into the river.

Obviously, your EA is terribly incorrect and your assessment of risk is 100% off base, meaning the risk to the river from release is far greater than you stated. For this reason, it seems obvious the permit for stocking largemouth bass in the flood plain pond near Corvallis MUST BE DENIED.

You are at odds with your own agency...which is very difficult to understand, but best be getting your information corrected, as well as re-doing the highly erroneous EA.

Department Response:

The commentor appears to be confused by the differentiation of smallmouth bass and largemouth bass. The public notice mentioned pertained to the discovery of smallmouth bass in the lower Bitterroot River near Missoula in July 2023. This was the first official, documented presence of this species in the Bitterroot River. Largemouth bass are a completely separate species with different biology and risk factors. Largemouth bass have been in the Bitterroot drainage for many years and are present in numerous valley bottom ponds as far upstream as Darby. A number of these ponds are connected to the Bitterroot River including ponds at the Lee Metcalf National Wildlife Refuge near Stevensville as well as Hieronymous Pond, a publicly accessible fishing pond in Hamilton that is located upstream of the Miller Pond on a large open ditch network connected to the Bitterroot River. Largemouth bass are more associated with pond and backwater habitat and are not as well suited for freestone streams like the mainstem Bitterroot River. Smallmouth bass are more adaptable and pose a greater risk to native and sport fisheries present in the mainstem Bitterroot River. The department rarely samples largemouth bass in the Bitterroot River because the fish is absent or is in extremely low densities along much of the mainstem of the river due habitat requirements. However, largemouth bass are frequently observed in backwaters along the Bitterroot River and are also regularly reported by anglers in and near these habitat types.

Comment 3:

I don't support Parks and Wildlife killing all his small mouth bass in his pond since under current and future climate conditions, it will never flood into the Bitterroot River. I understand the Metcalf ponds have small mouth bass too with a greater chance of flooding but nothing being done to those ponds.

Not sure why public notice is needed for a private pond, but Daryl has done a tremendous job of landscaping his pond since he has owned it and has had a number of children fishing activities supporting the community.

I support the restocking of his pond after the parks and wildlife kills all his fish.

Department Response:

Comment noted. For clarification, Department removal of fish from this pond is not relevant to the private pond license process nor is it covered in the EA associated with the proposed action. Any department action such as that described in this comment would require a separate Environmental Assessment process by the Department. Additionally, bass present in the ponds at the Lee Metcalf National Wildlife Refuge are largemouth bass, which is the same species proposed for release under this pond license.

Comment 4:

I would like to thank FWP for stocking Daryl's pond with additional fish. This pond has been used for a fishing derby for local children. Also many birds feed off the fish. We have a nest of Osprey that migrate

near the pond every year, has been 12 years that I know of.

I have heard that FWP is planning on poisoning the fish to eliminate the small mouth bass. I do not believe poisoning the pond is necessary. I am all for Daryl being approved for the license he has applied for.

Department Response:

Comment noted. For clarification, the Department has not stocked the pond with any fish. Fish currently in the pond are from a past unauthorized release.

Comment 5:

I am all for Mr. Miller being approved for licensing for his pond. I enjoy watching the Osprey and other birds doing their own fishing for their dinner and feeding their young.

Department Response:

Comment noted.

DECISION

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Arnold', is positioned above the printed name.

Randy Arnold
Regional Supervisor
Montana Fish, Wildlife & Parks