

# **DRAFT**

# **ENVIRONMENTAL ASSESSMENT**

# **CHECKLIST**

**Private Fish Pond License – Daryl Miller; Corvallis, MT**

**Date of Issuance**



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## I. Compliance with the Montana Environmental Policy Act

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

*FWP must prepare an EA when:*

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

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

## II. Background and Description of Proposed Project

**Name of Project:** Private Fishpond License – Daryl Miller; Corvallis, MT

Daryl Miller of 967 Old Corvallis Road, Corvallis MT has applied for a private fish pond license for a pond located at the same address. The pond is a 5.4 acre reclaimed gravel pit. The applicant is seeking to be licensed to plant largemouth bass, yellow perch and/or rainbow trout into the pond for personal use and enjoyment.

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

- Legal Description
  - Latitude/Longitude: 46.307903/ -114.137087

- Section, Township, and Range: SE NE Section 6, Township 6N, Range 20W
- Town/City, County, Montana: Corvallis, Ravalli, 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.*

Based on state law first passed in 1945, Montana Fish, Wildlife & Parks (FWP) administers private fish pond licensing. Regulations are intended to allow the stocking of private fish ponds while ensuring that public resources are not adversely affected by unwanted fish or fish diseases, that nuisance aquatic species are not planted into ponds where they can escape or be introduced into state waters, and that habitat of wild fish is not harmed.

Daryl Miller of 967 Old Corvallis Road, Corvallis MT has applied for a private fish pond license for a pond located at the same address. The applicant is seeking to be licensed to plant largemouth bass, yellow perch and/or rainbow trout into the pond for personal use and enjoyment.

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 Department of Environmental Quality	Reclamation Release	Release and permit termination for open cut gravel pits relative to the Open Cut Mining Act (MCA 82-4-433).
Montana Department of Natural Resources and Conservation	Water Rights	A private fish pond must have a water right appropriate for the size and location of pond, unless exempted.

## 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 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 checked="" type="checkbox"/>	No <input type="checkbox"/>
Enforceable Control	Responsible Agency	Authority (Rule, Permit, Stipulation, Other)	Effect of Enforceable Control on Proposed Project	
Fish pond license for private fish pond	Montana Fish, Wildlife & Parks	MCA 87-4-603	Eliminate or limit risk to public resources	
Revocation of fish pond license	Montana Fish, Wildlife & Parks	MCA 87-4-607	Eliminate or limit risk to public resources	

## 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.*

Under a "NO ACTION" alternative, FWP would not issue a private pond license and it would remain illegal to liberate any live fish into the pond for personal use and enjoyment.

	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.

If the No Action alternative is selected, FWP would not issue a private pond license and it would remain illegal to liberate any live fish into the pond for personal use and enjoyment.

- **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.

**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	
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"/>	<p>Fish are already present in the pond (from an unauthorized introduction prior to the applicant becoming owner of the pond). Introducing the species requested into the pond will likely have negligible impacts to the existing aquatic invertebrate, reptile, amphibian, and fish community present in or around the pond.</p> <p>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.</p>
Water quality, quantity, and distribution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Geology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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 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 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 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 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<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
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

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

<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
Social structures and mores	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 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 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 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 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 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 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 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 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 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 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

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

If the EA identifies impacts associated with the proposed project FWP must determine the significance of the impacts. ARM 12.2.431. This determination forms the basis for FWP's decision as to whether it is necessary to prepare an environmental impact statement. An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial. ARM 12.2.431.

According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.

**Criteria Used to Determine Significance**

1	<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 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 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 checked="" type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input checked="" 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 checked="" 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

- 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:** 06/30/2023

**Public Comment Period Ends:** 07/15/2023

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

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

Name: Jason Lindstrom

Email: [Jason.Lindstrom@mt.gov](mailto:Jason.Lindstrom@mt.gov)

Mailing Address:

## 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>	Jason Lindstrom	Fisheries Biologist
<b>EA reviewed by:</b>		

13-1966-08 175

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



STEVE BULLOCK  
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1124 9TH AVENUE  
PO BOX 201601  
HELENA, MONTANA 59620-1601

July 2, 2018

To: WRD Regional Managers and New Appropriations Specialists

CC: Jan Langel, Water Resources Division Administrator

From: Millicent Heffner, Water Rights Bureau Chief *MH*

RE: Revised Gravel Pit Policy

If the pit falls under a DEQ exemption (less than 10K yds<sup>3</sup>), the applicant must file a water right with DNRC if the water is put to a beneficial use. Any non-consumptive use (fishery, fish & wildlife, recreation) must be for the entire capacity and evaporation. Any water use that requires secondary diversion (stock directly, pumping to irrigate, etc.) requires a water right for the evaporation and whatever the applicant is diverting. In addition, if the capacity, evaporation, and diversionary requirement exceed 10 AF, a permit is required. If a diverted amount from the pit exceeds 35 GPM or 10 AF, a permit is required.

If a pit required a permit from DEQ (over 10K yds<sup>3</sup>) and the applicant is proposing a non-consumptive use (fishery, fish & wildlife, recreation), no water right is required from DNRC assuming the following items are met:

1. The pit must have been a result of open-cut mining operations and obtained a Reclamation Release form issued by DEQ showing that the mine has received an approval of a Phase II release on the entire permitted area and permit termination before we will recognize a gravel pit-pond as being officially created and OK via the DEQ mining process, MCA -OR- is a result of open-cut mining operations prior to the Open Cut Mining Act of 1973.
2. No additional volume will be used, diverted, impounded, etc. over what already exists prior to the non-consumptive use commencing -AND- no significant redistribution of water or recontouring of the base within the pit is occurring.

For those situations where a water right is not required, DNRC will send a letter to the person inquiring explaining the situation. It is up to the owner to present this information to FWP when asking for a stocking permit. FWP will likely take DNRC's assessment and not require a water right, however, it is out of DNRC's hands.

If a pit requires a permit from DEQ (over 10K yds<sup>3</sup>) and the applicant is proposing a consumptive use, a water right is required. If storage is required for the permit, the applicant must account for the volume and evaporation from the pit (entire capacity and full pit evaporation). If storage is not required, the permit/602 may be for the diverted amount only.

STATE WATER PROJECTS  
BUREAU  
(406) 444-6646

WATER MANAGEMENT  
BUREAU  
(406) 444-6637

WATER OPERATIONS  
BUREAU  
(406) 444-0560

WATER RIGHTS  
BUREAU  
(406) 444-6610

The pit itself is incidental to mining use, not the beneficial use, therefore, the diversion from the pit is the primary POD. If there is a pump in use, the pump is the diversion. If stock are drinking directly from the pit, the tongues are the POD. Pits will be treated as groundwater and modeled as such. If the applicant is not relying on storage from the pit (no more than a user relies on aquifer storage for a well), the applicant may apply for only the portion being diverted. Evaporation will not be accounted for in the application. An applicant does not need to own the entire pit if there is a diversion in play. A pump in the pit will be considered similarly to a well. The applicant needs possessory interest in the portion of the pit where the POD is located (or consent) if a 602. The applicant needs possessory interest in the POU (not POD) if a permit is filed.

If storage is required for the beneficial use, the primary POD is the pit. If a pump or stock remove water from the pit, they are considered secondary. If storage is not required, the primary POD is the pump or stock, etc.

If a pump/stock/etc. is the primary POD, an adequate plan to prevent adverse effect is to stop diverting for beneficial use. If the primary POD is the pit, simply show that water is legally available and then state that the pit was created via mining operations so the beneficial use is incidental to the mining operation and this essentially cannot be called.

If a permit is required, physical availability will be modeled similarly to that of a large diameter well. Pump testing pits is often difficult and likely will not provide accurate results. A variance would likely be required. Visit with WMB about required information for testing of this "large diameter well."

## RECLAMATION RELEASE

Operator name: Massa Home Center  
Address: PO Box 31  
City, state, zip: Hamilton, MT 59840  
Existing Permit Acreage: 15.0

Surety: Ravalli County Bank  
Address: 224 W Pinckney  
City, state, zip: Hamilton MT 59840

Site name: Massa Ready Mix  
Permit #: 1457  
County: Ravalli

Agent: n/a  
Agent    or Surety x address  
Bond #: 306730 Total \$: 3,475.00  
Bond #: 305417 Total \$: 5,000.00

The Department of Environmental Quality (DEQ) reviewed the *Release Request* dated **June 28, 2021** and received by the Department on **August 9, 2021**. DEQ conducted a field inspection and assessed site conditions relative to reclamation requirements of the Plan of Operation (Plan). Based on this evaluation and pursuant to the Opencut Mining Act (MCA 82-4-433) and its implementing rules, the DEQ determined to proceed as indicated below.

- A. ☒ **Approve PHASE II Release on the entire permitted area and permit TERMINATION** for the following reasons:  
Site has been successfully reclaimed to the permitted postmining land use..  
The following conditions apply:
1. The **entire** remaining bond # 306730 of **\$3,475.00** is released.
  2. The **entire** remaining bond # 305417 of **\$5,000.00** is released.
  3. Conducting Opencut operations on the terminated permit before obtaining a new permit would be a violation of the Act and its implementing rules.

APPROVED BY: STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY



Coal & Opencut Mining Bureau

Bonding Specialist  
Title

December 28, 2021  
Date

C: (Landowner)



**Montana Fish,  
Wildlife & Parks**

Application of Daryl Miller

Application Date June 13, 2023

**REPORT OF INSPECTION – FISH POND LICENSE**

Is the pond or lake created by artificial impoundment of water? Yes, reclaimed gravel pit

Describe water source: Groundwater

Fish species present? Unauthorized smallmouth bass (visually observed) & possibly yellow perch, pumpkin seeds, and

How is pond constructed? ☒ Excavated ☐ Dam ☐ Other

Northern Pike minnow (one was captured by an angler per owner)

Does the pond include any portion of a natural stream or lake? NO

Describe dam and outlet structure, if any: None

Have screens been provided: NA on diversion inlet? NA on outlet?

Describe discharge of pond water to nearest stream or lake, if any: NA

Fish species present in nearby stream/lake? Bitterroot River: rainbow trout, brown trout, westslope cutthroat trout, whitefish suckers, n. pikeminnow, n. pike, largemouth bass, redbreast shiner, longnose dace

Likelihood of fish escaping from pond? Low; however, pond is w/in 100-yr floodplain of Bitterroot River

Give name of any person(s) who accompanied you during inspection: Daryl Miller (owner)

Do you recommend that a private pond license be granted? ☒ Yes ☐ No

List reasons: Pond does not have water right but is a reclaimed gravel pit (>10k yds<sup>3</sup>)

Pond has a DEQ reclamation release issued in 2021 which meets DWRC requirements for a non-consumptive use.

Region: 2 \*species proposed for release (Largemouth bass, yellow perch, rainbow trout) all occur legally in the Bitterroot drainage. Risk of escapement is low.

Lat/Long (decimal) 46.307903 -114.137087

Comments: - Pond was illegally stocked with fish prior to current owner  
- Pond is loaded with bull frogs.

Jason Lindstrom, Fisheries Biologist  
Inspector

6/22/2023  
Date of inspection

# DECISION RECORD – FISH POND LICENSE

DECISION: Issue/Reissue

☒

Private Pond License

☐

Commercial Pond License

☐

Issue One-Time-Permission-to-Plant Letter

☐

Denial

EA # \_\_\_\_\_ (if applicable)

APPROVED SPECIES: Largemouth Bass, Yellow Perch, Rainbow Trout

LICENSE RESTRICTIONS:

N/A

DECISION REASONING:

☒

Pond meets all requirements for Private Pond License.

☐

Other

\_\_\_\_\_  
Regional Fisheries Manager

\_\_\_\_\_  
Date