



**DECISION NOTICE**  
**188 Foxtail Pine, LLC Private Pond License Review**  
**FWP-DN-FSH-R3-24-037**

July 9, 2024

**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 May 30, 2024, through June 14, 2024. The Draft EA was posted on FWP's Public Notice webpage: <https://fwp.mt.gov/news/public-notices>. 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. FWP did not receive any comments during the public comment period.

### **DESCRIPTION OF PROPOSED ACTION**

A private landowner is applying for a Private Fish Pond License and proposes to stock Westslope Cutthroat Trout in an unnamed private pond. The pond is 2.0 surface acres. The pond is located on 188 Foxtail Pine Road, Big Sky, MT. The pond is about one mile north of the South Fork of the West Fork (South Fork), which is a tributary to the West Gallatin River. The South Fork contains Brook Trout and Westslope Cutthroat Trout. The pond is fed from a groundwater well located at the site. The outlet consists of a screened Agri-Drain control structure. The outlet of the pond is directed to a vegetated swale on the property. Risk of escapement is low.

Westslope Cutthroat Trout are native to the South Fork of the West Fork Gallatin River and the West Gallatin River. A conservation population of Westslope Cutthroat Trout exists upstream of Ousel Falls, which necessitates limiting the permit to cutthroat trout. Westslope Cutthroat Trout could be removed from the pond via chemical treatments or through senescence.

The project is sponsored by the private landowner and the license would be active for 10 years from the year of issuance (2024). The license can be renewed for additional 10-year intervals at the end of each term, and the license is transferable.

### **PURPOSE AND NEED**

The purpose of this project is to issue a Private Fish Pond License for a private landowner to stock Westslope Cutthroat Trout in the private pond located at 45.263781, -111.420586, only after careful review of potential impacts to State fish and wildlife resources stemming from the proposed fish stocking.

### **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 would not be available for the landowner in their private pond.

#### **Alternative 2: Proposed Action**

Under the Proposed Action, FWP would issue the Private Fish Pond License to the applicant, Westslope Cutthroat Trout from a state approved source would be stocked in the reservoir, and the statutory obligations of MCA 87-4-603:610 would be abided and enforced.

### **PUBLIC COMMENT AND FWP RESPONSE**

FWP received one public comment.

**Comment:** *I see multiple pond applications for Big Sky and outside Bozeman. We both know these are pleasure ponds for wealthy peoples own use, using precious groundwater and stream flow. Isn't the purpose of the application process to weed out these type water uses that are, by the way, proliferating in the arid west? I say no. Plus, the wording seems to indicate the ponds already exist. If so, they don't care what you or others think anyways.*

**FWP Response:** *FWP is responsible for minimizing risks associated with legally constructed ponds that have an appropriate water right. Montana statute MCA 87-4-603 stipulates the conditions a private pond owner must meet to obtain a Private Fish Pond License. FWP takes those conditions, which include a valid water right from the Department of Natural Resources and Conservation, flooding concerns, escapement, etc., into account when determining whether to issue a private pond permit. FWP does not dictate whether the pond can be constructed nor does FWP have any role in issuing a water right for private ponds.*

**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.

With this DN, FWP hereby adopts the Final EA, without modifications, and approves the proposed action.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Pankratz", with a stylized flourish extending from the end.

Adam Pankratz  
Acting Region 3 Supervisor