



## DECISION NOTICE

### Clymer Private Pond License Review

#### FWP-DN-FSH-R3-24-065

October 11, 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 September 20, 2024, to October 5, 2024. 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. 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 Yellowstone Cutthroat Trout in an unnamed private pond. The pond is a 0.25-surface acre pond located off Bridger Hollow Road in Park County. The pond is south of Livingston, in the vicinity of East River and Sixmile Creek Roads. The pond is about 70 yards east of Sixmile Creek, which is a tributary to the Yellowstone River. Brown Trout, Rainbow Trout, and Yellowstone Cutthroat Trout have been documented in Sixmile Creek and the Yellowstone River. The pond has no inlet. The pond is filled by a groundwater well located at the site. There is a small outlet ditch running from the southwest corner of the pond. There is no structure on the outlet, which flows into a dry basin with little chance of reaching Sixmile Creek. The Yellowstone 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 Yellowstone Cutthroat Trout in the private pond located at 45.29613, -110.75907, 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, Yellowstone 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 keep seeing all these Pond Applications, including the one below called "Clymer Private License Review FWP-CEA-FSH-R3-24-065"*

*To put it bluntly - these pond applications are getting out of hand. There are already issues with ground water in this valley, and no doubt others (see story about Arrowhead school).*

*All the applications say the same thing - filled using 'groundwater well', like that makes it ok. At the same time we both know they will pump water from other available sources, like Sixmile Creek when they see no one is looking - which is all the time. I know this for a fact concerning other "Fish ponds" around here. We also both know they are really just 'vanity ponds'.*

*Questions for your department:*

*- If I come by your office in Livingston can you show me the rules to limit the number of (vanity) ponds?*

- How are you monitoring ground water levels after the installation of all these ponds?
- Can you provide your written rules for verifying that irrigation water is not being used to fill and maintain these ponds?"

**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. Those details are included in the private pond permit application, which was provided to the respondent via email. FWP takes those conditions, which include a valid water right from the Department of Natural Resources and Conservation (DNRC), 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 regularly monitor groundwater. Furthermore, FWP does not have any role in issuing or enforcing water rights for private ponds, which is the responsibility of the DNRC. However, FWP staff will notify the DNRC if they suspect issues with the water being used to maintain a pond during initial inspections or at any time thereafter.*

#### **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,

*Nathan Lance*

Nathan Lance  
Acting Region 3 Supervisor