



DECISION NOTICE

Hull Private Pond License Review

FWP-DN-FSH-R3-24-045

September 23, 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 June 24, 2024 to July 9, 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 received one 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 Rainbow Trout in an unnamed private pond. The pond is 0.34-surface acres, constructed by excavation, and located off East River Road, near the small communities of Pine Creek and Pray, in Park County, MT. The pond is located approximately 0.1 mile (100 yards) east of Elbow Creek, which is a tributary to the Yellowstone River. Brown Trout, Rainbow Trout, Yellowstone Cutthroat Trout, and Mountain Whitefish have been documented in lower Elbow Creek and in the Yellowstone River. The pond has no inlet or outlet. The pond is filled via spigot and hose, which is fed by a groundwater well located at the site. The pond is filled manually by the landowner. There is no outlet from the pond. If water were to crest the pond edges, it would flow into adjacent fields before reaching Elbow Creek.

Risk of escapement is minimal. Fish that do escape the pond will be stranded on dry ground with no chance of reaching state waters. Rainbow Trout have been documented in lower Elbow Creek and are present in the Yellowstone River. The Rainbow 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 for a private landowner to stock Rainbow Trout in the private pond located at T5S R9E S4, 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, Rainbow 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 am against the private pond requests for both the Hull and Willow Creek, LLC. I think a more thorough review of both projects needs to be done before approval can proceed.*

FWP Response: *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. This pond has an appropriate water right and was determined not to present any major threats to the surrounding aquatic resources following a thorough inspection and communication with the landowner.*

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 Regional Supervisor
Montana Fish, Wildlife & Parks