

# **FINAL ENVIRONMENTAL ASSESSMENT CHECKLIST**

**FWP-CEA-FSH-R5-24-006**

**Biel Emergency Watershed Protection Project**

**05/03/2024**



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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:** Biel Emergency Watershed Protection Project

The Stillwater Conservation District (SCP) is sponsoring an Emergency Watershed Protection project that purposes to stabilize 622 linear feet of riverbank using soft armoring techniques while removing (dredging) materials that were deposited during the June 2022 flood event. Additionally, the project will remove supersacks and a berm placed under emergency measures in 2023 that is interfering with floodplain connectivity. The soft armoring bank stabilization component uses erosion control fabric constructed out of coconut fibers, rock and dredged fill material, riprap, and willows. A toe trench is to be dug and the bank sloped back. Rock will be placed in the trench rock with riprap laid up the bank to the elevation of the low water table. Then willows will be installed using 45-degree bundle method and disturbed areas reseeded with native grasses.

### Affected Area / Location of Proposed Project:

- Legal Description
  - Latitude/Longitude: 45.394375, - 109.868875
  - Section, Township, and Range: 15S 15E 15
  - Town/City, County, Montana: Nye, Montana, Stillwater County
- Location Map



### III. Purpose and Need

*The EA must include a description of the benefits and purpose 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.*

The purpose of this project is to stabilize a portion of the riverbank damaged in the June 2022 flood event while removing non-native materials deposited during the flood. The existing bank is eroding and being undercut which will create future bank loss during future ordinary high-water events. The installation of the proposed soft armoring will reduce erosion and better stabilize the bank. The removal of nonnative materials (e.g., supersacks) and the berm will allow the river to reconnect to its floodplain.

Specific: The goal should target a specific area of improvement or answer a specific need

- M measurable: The goal should be quantifiable, or at least allow for measurable progress
- Achievable: The goal should be realistic, based on available resources and existing constraints
- Relevant: The goal should align with other Agency objectives

- **Time-bound:** The goal must have a deadline or defined-end

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 state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. 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
US Army Corps of Engineers	Permit	Ability to complete work within a navigable river
Montana DEQ	318 Authorization	Reduce the effects of turbidity on the area of impact.
MT DNRC - Floodplain	Floodplain permit	Determine if fill will be placed in floodplain and if project will cause a significant rise in floodplain elevation.

## 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	

SPA 124 Permit - General Requirements (see Appendix 1)	FWP	SPA 124	SPA 124 Permit, General Conditions, provide best management practices in the form of enforceable controls to limit potential adverse impacts from the proposed project. Fines may be levied for violating these general requirements and/or corrective action may be required to remedy non-compliance.
318 Authorization – Short-Term Water Quality Permit	DEQ	DEQ 318	Short-term narrative water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects.
Limiting Fill in a Navigable Waterway	US COE	NW Permit 45 or 13	Uplands damaged by discrete events.
Floodplain permit – general requirements	DNRC/Local administrator	Floodplain	Limiting the amount of fill deposited into the floodplain. Description of how project will contain a ‘no-rise’ effect. See DNRC Permitting information.

## VI. SPA 124 Permit Action

*Any applicable Montana stream work that is not otherwise excluded from MEPA review under the applicable requirements of ARM 12.2.454, Actions that Qualify for a Categorical Exclusion, and has the potential to alter the stream channel or bank, requires a project-specific 124 Stream Protection Act Permit or SPA 124 Permit prior to the start of work. The SPA 124 permit is issued by FWP’s Fisheries Division and includes both the general conditions described in Attachment 1 and any additional Special Conditions deemed necessary to protect and preserve the affected waterway. Additional conditions deemed necessary to protect and preserve the affected stream from potential impacts associated with the proposed project are listed in Table 4 below.*

**Table 3: SPA 124 Permit Conditions the Department Will Require to Issue Permit.**

Activity	Special Condition	Description
Work activity	Work shall not occur outside of the project scope outlined in permit. Failure to comply could result in violations.	Clearly defining expectations that work should follow scope established by project proponent in joint application.
Construction	Work shall be completed from the bank and in the dry whenever possible; limit use of heavy machinery to immediate affected area.	FWP acknowledges there will be impacts to the stream bed but BMPs will be implemented to minimize negative effects
Construction	The project area shall be revegetated with native vegetation after the project	To ensure vegetation and riparian habitat are improved post-construction

Overall project	Project can be extended beyond expiration date; however will be subject to spring timing restrictions for spawning fish	Timing of the project is unknown at the time. Condition is included for natural resource protection (i.e., fisheries).
FWP Right	FWP reserves the right to revisit, modify, deny, issue an amendment or violation to a previously approved permit.	Clearly defines expectations in the event an amendment and/or modification is required from either the project proponent or FWP staff.

## VII. 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, FWP would not do the proposed project.

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.

	Yes*	No
Were any additional alternatives considered and dismissed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

\* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review is included below

### Alternative 3:

The SCD considered removing approximately 6,000 cubic yards of the gravel bed to improve streamflow capacity. FWP was opposed to this alternative as it would negatively influence fish habitat, fish spawning activities, stream hydraulics, and could further destabilize the adjacent bank. Additionally, the area appears to be a depositional zone. The Montana Stream Permitting guidebook states "channel excavation or dredging is often a temporary solution because channels rapidly refill with sediment." The SCD selected the alternative that is less expensive and impactful to the river and streambank.

## VIII. 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.

- **Alternative 2: Proposed Project. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

See **Table 4** (Impacts on Physical Environment) and **Table 5** (Impacts on Human Population) below.



**Table 4 - Potential Impacts of the 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant adverse impacts to terrestrial, avian, and aquatic life and habitats because of the proposed project. The project will be completed outside of the active channel. Minor, short-term impacts may include disturbances to terrestrial, avian, and aquatic during the project duration because of the movement of sediment and operation of heavy operating machinery.
Water quality, quantity, and distribution	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to water quality, quantity, and distribution would be expected because of the proposed project. Project implementation is expected to result in a short-term and minor increase in water turbidity. Operation of equipment in the stream channel will be minimized to the extent practicable. Because of minimal effects to short-term water quality standards are unknown, applicant will need to obtain a 3a8 Authorization from DEQ The project will result in long-term benefits with the removal of the emergency super sacks and berm, allowing the river to connect better to its floodplain, and removing excess loose soils from previous disturbances deposited above the ordinary high-water mark.
Geology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect any significant impacts to the geology because of this project. There are no known unique geologic features, and the project is occurring is a relatively small area that would not pick up any geologic impact.
Soil quality, stability, and moisture	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to soil quality, stability, and moisture in the affected area would be expected because of the proposed project. The proposed project is taking place in a previously heavily disturbed area and will reseed with native grasses. The bank treatments and

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
									riparian plantings are intended to encourage root growth and hold soil together. As a result of this project, more soil would be contained within the streambanks and would not erode into the channel. Impacts would be long-term, minor, and beneficial.
Vegetation cover, quantity, and quality	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	This project would have a moderate improvement on vegetation cover, quantity, and quality by revegetation of the stream banks and riparian area. Vegetative communities will be actively created through planting and native seeding, and the use of riparian fencing. Natural recruitment will be encouraged. Increased overhead and in-stream vegetative cover should provide additional habitat for aquatic species. This project will encourage a functional and diverse stream and riparian corridor. Impacts would be long-term, moderate, and beneficial.
Aesthetics	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No significant negative adverse impacts to aesthetics are expected because of the proposed project. Short-term negligible impacts may occur for several private landowner with the operating of heavy machinery near their residence for the duration of the project. The project will remove nonnative deposited materials from the 2022 flood and emergency super sacks and berm, while adding riparian vegetation which will improve aesthetics moderately in the long-term.
Air quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to air quality in the affected area would be expected because of the proposed project. Fugitive dust and vehicle exhaust emissions resulting from the movement of heavy equipment and materials for the proposed project may directly impact air quality in the area. Any impacts would be short-term, and minor, lasting only as long as the proposed project.
Unique, endangered, fragile, or limited	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant impacts to unique, endangered, fragile, or limited environmental resources

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	
environmental resources									because of the proposed project. Grizzly bears, Canada Lynx, North American Wolverine and Monarch Butterfly have been identified as endangered and threatened species near the project location. However, these species will likely not be impacted by the project. FWP expects short-term, minor impacts to any unique or endangered species/habitats because work will occur in the early spring for a limited amount of time while these animals are generally not known to be in the immediate area.
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant impacts to historical and archaeological sites because of this project. There are no known historic sites in the immediate project area. Work will be performed on already disturbed areas.
Demands on environmental resources of land, water, air, and energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant adverse impacts to demand on the environmental resources of land, water, and air because of the proposed project. Fuel would be required to operate heavy machinery and vehicles. There are no other demands on the environmental resources of land, water, air, and energy because of the proposed project. Therefore, any impacts to demands on environmental resources of land, water, air, and energy in the affected area would be short-term and negligible.

**Table 5 - Potential Impacts of the Proposed Project on the Human Population**

HUMAN POPULATION		Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource		None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Social structures and mores		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impacts to social structures and mores in the affected area would be expected because of the proposed project. The proposed project constitutes streambank and vegetation restoration activities on private land. The proposed project would not impact current land use; therefore, the proposed project would not impact any pre-project social structures, customs, values, or conventions in the affected area.
Cultural uniqueness and diversity		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impacts to cultural uniqueness and diversity in the affected area would be expected because of the proposed project. The proposed project constitutes stream and vegetation restoration activities on private land, and it is not expected this action would result in any relocation of people into or out of the affected area. Therefore, no impacts to the existing cultural uniqueness and diversity of the affected area would be expected because of the proposed project.
Access to and quality of recreational and wilderness activities		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant impacts to access to and quality of recreational and wilderness activities because of the proposed project. The proposed project only impacts private property of the local landowner and neighbor.
Local and state tax base and tax revenues		<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"/>	FWP does not expect significant adverse impacts to the local and state tax base and tax revenues because of the proposed project. FWP anticipates the proposed project would increase state and local tax revenues from the sale of fuel, supplies and/or equipment to complete the project. Any impacts to the local and state tax base and tax revenue would be short-term and negligible, lasting only as long as the proposed project.
Agricultural or Industrial production		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to agricultural or industrial production would be expected. There is no agriculture or industrial production associated with this project.

HUMAN POPULATION		Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource		None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Human health and safety		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to human health and safety in the affected area would be expected because of the proposed project. The project will be addressing natural stream, riparian, and floodplain function. Minor, long-term effect may be realized with the removal of debris that contains concrete and rebar.
Quantity and distribution of employment		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	There are no significant adverse impacts to the distribution and density of population housing in the affected area because of the proposed project. The project would not negatively impact local landowners in the area. Short-term impacts to the local quantity and distribution may be realized because of the need for contracted services to complete maintenance activities. Any impacts the quantity and distribution of population and housing in the affected area would be short-term and negligible.
Distribution and density of population and housing		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	There are no significant impacts to the distribution and density of population and housing in the affected area because of the proposed project. The proposed project constitutes stream and vegetation restoration activities on private property and would not impact the distribution and density of population or housing in the affected area.
Demands for government services		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant adverse effects to the demands for government services because of this project. There may be short-term, moderate effects to transportation associated with the operating heavy machinery; however, this will be limited to the immediate area and likely will not be within the roadway. The project will allow the landowner to access their ranching property on the other side of the creek safely.
Industrial, agricultural, and commercial activity		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to agricultural or industrial and commercial activity would be expected. There is no agriculture associated with this project.

HUMAN POPULATION	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	
Locally adopted environmental plans and goals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant effects to the locally adopted environmental plans and goals. FWP is unaware of any environmental plans or goals implemented by Stillwater County.
Other appropriate social and economic circumstances	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP is unaware of any other appropriate social and economic circumstances that may be impacted by the proposed project.

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

<p>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.</p> <p>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.</p>	
<b>Criteria Used to Determine Significance</b>	
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

## IX. 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)**

	Yes	No	
Is FWP regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Does FWP have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
If so, FWP must determine if there are alternatives that would reduce, minimize, or eliminate the restriction on the use of private property, and analyze such alternatives. Have alternatives been considered and/or analyzed? If so, describe below:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>PRIVATE PROPERTY ASSESMENT ACT (PPAA)</b>			
<b>Does the Proposed Action Have Takings Implications under the PPAA?</b>	<b>Question #</b>	<b>Yes</b>	<b>No</b>
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 <b>YES</b> 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 <b>NO</b> 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.			
<b>Alternatives:</b> 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.			

## X. 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/aboutfwp/public-comment-opportunities>*
- *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
N/A	N/A

- *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:*

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

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

Name: BRYAN GIORDANO

Email: [bryan.giordano@mt.gov](mailto:bryan.giordano@mt.gov)

Mailing Address:

2300 Lake Elmo Dr

Billings, MT 59105

## XI. 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"/>

## XII. EA Preparation and Review

	<b>Name</b>	<b>Title</b>
<b>EA prepared by:</b>	Bryan Giordano	Region 5 Fisheries Biologist
<b>EA reviewed by:</b>	Shannon Blackburn	Region 5 Fisheries Manager

# Attachment 1

## SPA 124 Permit General Conditions

FWP.MT.GOV



THE **OUTSIDE** IS IN US ALL.

### **Stream Protection Act 124 Permit General Conditions**

1. Complete work affecting a streambed or stream bank in an expeditious manner to avoid unnecessary impacts to the stream.
2. Limit the clearing of vegetation to that which is absolutely necessary for construction of the project. Take precautions to preserve existing riparian vegetation. Salvage and reuse native vegetation where possible.
3. Install and maintain erosion control measures where appropriate to protect aquatic resources. Do not clear and grub land adjacent to streams prior to installing proper erosion and sedimentation controls. Conduct all work in a manner that minimizes turbidity and other disturbances to aquatic resources.
4. Plan temporary construction facilities to:
  - a. Minimize disturbance to stream banks, stream bank vegetation, and the streambed by locating staging or storage facilities at least 50' horizontally from the highest anticipated water level during construction;
  - b. not restrict or impede fish passage in streams; and
  - c. not restrict any flow anticipated during use.
5. Provide sediment controls for drainage from topsoil stockpiles, staging areas, access roads, channel changes, and instream excavations.
6. Isolate work zones from flowing and standing waters to prevent turbid water and sediments from being discharged into streams or other drainages that flow directly into the stream. Divert flowing waters around the work zone.
7. Do not spill or dump material into streams. Store and handle petroleum products, chemicals, cement and other deleterious materials in a manner that will prevent their entering streams.
8. Do not permit wash water from cleaning concrete-related equipment or wet concrete to enter streams.
9. Do not operate mechanized equipment in any stream or flowing water unless special authorization is obtained. If special authorization is granted, the following conditions apply:
  - a. Power-wash all equipment allowed in a stream prior to entering the stream channel.
  - b. Clean and maintain all equipment so that petroleum-based products and hydraulic fluids do not leak or spill into the waterway.
10. Reclaim streambeds and stream banks as closely as possible to their pre-disturbed condition.
11. Restore disturbed stream banks to their natural or pre-disturbed configuration to match adjacent ground contours or as specified in the project plans. Stabilize, reseed, and re-vegetate disturbed areas. Install and maintain long-term biodegradable erosion-control measures to protect these areas until adequate vegetation has been established.
12. Restore temporary access routes and any temporarily disturbed areas to original conditions, including original contours and vegetation.
13. Dispose of any excess material generated from the project above the ordinary high-water mark and in an area not classified as a wetland.

Special conditions: Work will not occur outside of project scope outlined in plan, work shall be completed from the bank and in the dry, the project area shall be revegetated with native vegetation after the project, the project can be extended beyond expiration date; however will be subject to spring timing restrictions for spawning fish