

**FINAL
ENVIRONMENTAL ASSESSMENT
CHECKLIST**

FWP-CEA-FSH-R5-24-037

**Fromberg Bank Stabilization EWP Extension and
Amendment**

9/23/2024



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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: Fromberg Bank Stabilization EWP Extension and Amendment

The Stillwater Conservation District is amending the Fromberg EWP Project (Project) in Carbon County (SPA 124 #: MI-01-24) to include placing 350 cubic yards of rip rap along 200 linear feet of the Clarks Fork of the Yellowstone River’s streambed and bank. The additional work is needed to better protect future bank scour and erosion during high water events and mitigate lateral migration of the river into infrastructure and residential properties. The channel impact area is estimated at approximately 0.08 acres beyond what was initially proposed and permitted. The additional 350 cubic yards of class III rock rip rap will be placed at or below the ordinary high-water mark. Materials will be sourced from river excavations at the Project site and used to construct the rip rap scour key. Willows should be planted throughout

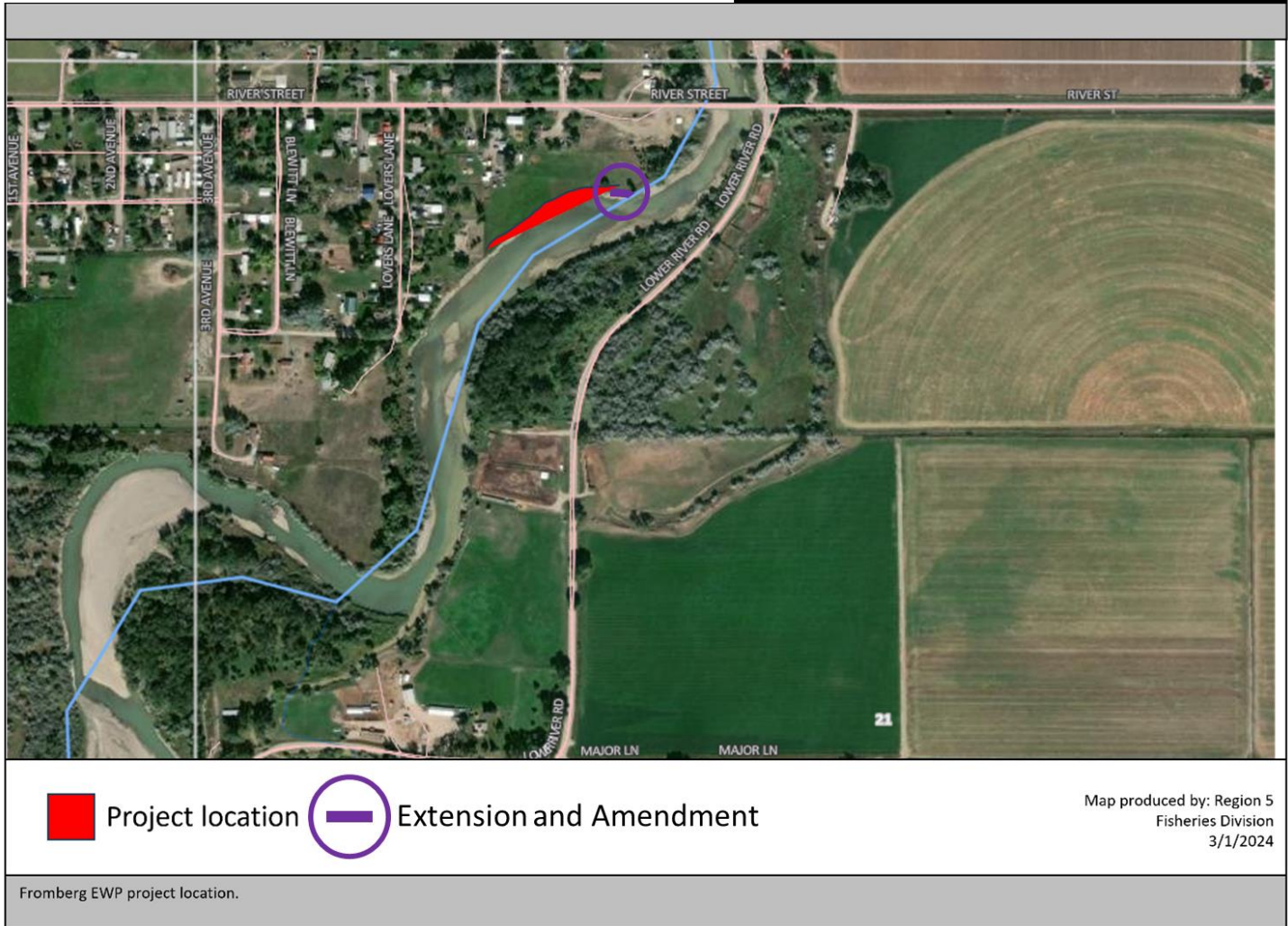
the rock rip rap bank to facilitate vegetation growth. The revegetation plan for the upland bench detailed in the original permit will also be extended to include the additional 200 linear feet of impacted streambank.

Affected Area / Location of Proposed Project:

- Legal Description
 - Latitude/Longitude: 45.3899859, -108.8989284
 - Section, Township, and Range: 5S 23E 21
 - Town/City, County, Montana: Fromberg, Carbon County, MT
- Location Map

MI-20-24 Fromberg EWP Extension and Amendment

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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 proposed project is needed to finalize the Fromberg EWP Bank Stabilization project. Currently, the project length is too short and does not fully protect an outside bend that is a sheer vertical bank of exposed soil and fine gravel along the Clarks Fork of the Yellowstone River in the town of Fromberg. Extending the project downstream an additional 200

linear feet and adding 350 cubic yards of rock rip rap will better mitigate bank erosion and unwanted channel migration for residential structures, the East River Street Bridge and other infrastructure in the town of Fromberg.

- **Specific:** The goal should target a specific area of improvement or answer a specific need
- **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
U.S. Army Corps of Engineers (USCOE)	Nationwide Permit 37	Emergency Watershed Protection and Rehabilitation
Montana Department of Environmental Quality (DEQ)	318 Authorization Short-Term Water Quality Permit	Short-term narrative water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects.
Montana DNRC – Local Floodplain administrator	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.	
Water quality	DEQ/FWP	318 Authorization	Reduce the effects of turbidity on the area of impact.	
Discharge of fill material in navigable waters of the United States or wetlands	USCOE	Section 404	Reduce the placement of fill materials into the navigable waters of the United States.	
Construction Activity on within navigable waters of the United States	USCOE	Section 10	Can limit the amount of construction on a navigable waterway.	
Floodplain	DNRC/Local Administrator	Floodplain Permit	Reduce impacts associated with the deposition of fill and/or modification of the streambank that would be within the 100-year floodplain.	

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; amendments must be requested in advance via email	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	To minimize in stream impacts. FWP acknowledges there will be impacts to the streambed and bank.
Construction	The project area shall be revegetated with native vegetation after the project on the upper bench	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.
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 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

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FWP does not expect any significant impacts to the terrestrial, avian, aquatic life, and habitats because of this project. The proposed actions to extend the Fromberg EWP bank stabilization project an additional 200 linear feet and place 350 cubic yards of class III rip rap along a steep river-facing embankment will cumulatively add to the amount of rip rap along the Clarks Fork of the Yellowstone River. Bank stabilization using rock rip rap negatively affects fish communities by increasing floodplain isolation, altering main channel habitats, and reducing the availability of diverse lateral habitats such as side channels and backwaters. Although the impacts would contribute to the long-term loss of terrestrial and aquatic habitats, the area has been previously armored with rock rip rap. Although the impacts would be a long-term loss of habitat, they are largely minor and necessary to protect existing infrastructure and ensure long-term success of the entire Fromberg EWP bank stabilization project.
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. The installation of 350 cubic yards of class III rip rap and minor river excavations for fill material of the upper bench and scour toe will occur during low flow periods, which could result in a short-term and minor increase in water turbidity. However, turbidity will not exceed what naturally occurs in the river during high flows. While this part of the project is important to the overall success of the Fromberg EWP bank stabilization project, FWP expects long-term, minor impacts with

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
									increased water velocities and temperature near the rip rapped bank.
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 in a relatively small area that would not cause any geologic impact.
Soil quality, stability, and moisture	<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"/>	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 disturbed area. Although soil disturbance would occur with the installation of the 350 cubic yards of rock rip rap along 200 linear feet of streambank, it would be short-term and limited to the immediate project area. There would be long-term, minor, and beneficial impacts associated with reduced erosion near along the rip rapped bank.
Vegetation cover, quantity, and quality	<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"/>	FWP staff do expect significant impacts to vegetation cover, quantity, or quality of vegetation because of this project. The actions of the proposed project include placing 350 cubic yards of class III rip rap along a 200 linear foot section of river-facing embankment, which is mostly devoid of grasses and woody vegetation. Thus, there will be no short-term impacts to vegetation associated with the installation of the rock rip rap. However, rip rap does not provide a suitable environment for vegetation to reestablish, and thus there will be long-term, minor cumulative impacts associated with the loss of natural riparian area vegetation. Planting native vegetation on the upper bench and placing willows throughout the rock rip could offset some of the negative

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	
									effects and benefit vegetation quantity and quality at the site.
Aesthetics	<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"/>	FWP staff do expect long-term minor impacts to the aesthetics because of this project. The project will replace a vertical dirt bank with 350 cubic yards of class III rip rap along a 200 linear foot section of river-facing embankment, which would minimize the occurrence of more natural aesthetics, like woody vegetation and native rock and soil. While rip rap can be a long-lasting material, FWP anticipates reseeding and promoting revegetation where possible, and thus expects the impacts to aesthetics to be minor. The upland bench will be planted with larger trees to stabilize the bank and improve aesthetics.
Air quality	<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"/>	No significant adverse impacts to air quality in the affected area would be expected because of the proposed project. The proposed project includes placing 350 cubic yards of class III rip rap along a 200 linear foot section of a river-facing embankment. 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 negligible, lasting only as long as the proposed project.
Unique, endangered, fragile, or limited environmental resources	<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 impacts to unique, endangered, fragile, or limited environmental resources because of the proposed project. The Natural Heritage Program identified the following animal species of concern in the project area: Yellowstone cutthroat trout, swamp milkweed, wolverine, monarch butterfly, snapping turtle, great blue heron, spiny softshell, spearleaf rabbitbush, and dwarf bulrush. There are likely bald eagles

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	
									present in the project area and could be nesting. The applicant is responsible for ensuring that actions authorized by the NWP complies with the Migratory Bird Treaty Act. The project should not have any long-term impact on these species due to its short timeline and not impacting species-specific habitats. ¹
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 any impacts to historical and archaeological sites because of this project. A Section 106 consultation was completed in cooperation with the NRCS. Preliminary findings indicate no historic properties in the area of this project.
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 used for the proposed project. 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

¹ Montana Natural Heritage Program. Environmental Summary Report.
for Latitude 45.38532 to 45.40297 and Longitude -108.88062 to -108.90450. Retrieved on 4/29/2024.

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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FWP do expect significant impacts to social structures and more because of this project. The actions of the proposed project include extending the Fromberg EWP bank stabilization project another 200 linear feet and placing 350 cubic yards of rock rip rap on a river-facing embankment, which would not disrupt social structures and more in the short-term. The project area is relatively small and FWP expects long term, moderate beneficial impacts because the bank will be better protected from high water events and streambank erosion for local landowners and the town of Fromberg.
Cultural uniqueness and diversity	<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"/>	<input type="checkbox"/>	FWP does not expect significant impacts to cultural uniqueness and diversity because of this project. This project would further protect the local landowners and Fromberg infrastructure from additional bank erosion.
Access to and quality of recreational and wilderness activities	<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"/>	<input type="checkbox"/>	FWP does not expect significant impacts to access to and quality of recreational and wilderness activities because of the proposed project. There is no designated wilderness in the immediate area nor access at this site. There may be short-term impacts to recreational activities immediately at the site and downstream during the rip rap installation but should be negligible and lasting only as long as the project.
Local and state tax base and tax revenues	<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"/>	<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. The actions of the proposed project include placing 350 cubic yards of class III rip rap along a 200 linear foot section of a river-facing embankment and, when completed, would not result in changes to local or state taxes. 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

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	
										would be short-term and negligible, lasting only as long as the proposed project.
Agricultural or Industrial production		<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"/>	FWP does expect long-term, minor beneficial impacts to agricultural or industrial production because of the proposed project. The actions of the proposed project include placing 350 cubic yards of class III rock rip rap along a 200 linear foot section of a river-facing embankment and tying into the larger bank stabilization project. When completed, the proposed project should prevent flows up to the 25-year flood event from damaging the streambank and possibly the East River Bridge that supports agriculture production. Also, short-term, minor effects to transportation may be associated with the operation of heavy machinery; however, this will be limited to the immediate area and likely will not be in the roadway.
Human health and safety		<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"/>	FWP does expect long-term, moderate beneficial impacts to human health and safety because of the proposed project. The actions of the proposed project include placing 350 cubic yards of class III rip rap along a 200 linear foot section of a river-facing embankment and will not immediately affect human health and safety. Long-term goals of the overall Fromberg EWP bank stabilization project is designed to better protect residential structures, a bridge that provides emergency services access, and the city of Fromberg from future undesirable channel migration and additional erosion that could impact city infrastructure and water supply.
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"/>	FWP does not expect impacts to the quantity and distribution of employment in the affected area because of the proposed project. The actions of the proposed project include placing 350 cubic yards of class III rip rap along a 200 linear foot section of a river-facing

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	
									embankment, when completed, would not impact the quantity and distribution of employment in the affected area. Short-term and minor impacts to the local quantity and distribution may be realized because of the need for contracted services to complete construction activities. Any impacts the quantity and distribution of employment 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 protecting an erodible bank and, when completed, would not impact the distribution and density of population and housing in the affected area.
Demands for government services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FWP does expect significant impacts to the demands for government services in the affected area because of the proposed project. Government services associated with the action of extending and amending the Fromberg EWP bank stabilization project and placing 350 cubic yards of rip rap along an additional 200 linear foot section of river-facing embankment includes grant management and permitting, and coordination efforts by federal, state, and local governmental entities. Impacts should be short-term and lasting only as long as the project however, the time frame is unknown but should not last more than one year.
Industrial, agricultural, and commercial activity	<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"/>	FWP does not expect significant negative impacts to industrial, agricultural, and commercial activity because of the proposed project. The project involves protecting an additional 200 linear feet of streambank and does not directly impact these activities. Long-term, minor effects from the project include increased protection for the bridge that provides access to agricultural activities and ensuring uninterrupted availability for agricultural and commercial activity.

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	
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. Carbon County does not have environmental plans or goals.
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>	
Criteria Used to Determine Significance	
1	<p>The severity, duration, geographic extent, and frequency of the occurrence of the impact</p> <p>"Severity" describes the density of the potential impact, while "extent" 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>"Duration" describes the time period during which an impact may occur, while "frequency" 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 54th 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"/>	
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 type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input 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 type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input 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 type="checkbox"/>
Does the proposed action result in taking or damaging implications?		<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.			

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>*
- *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)).*
- *Public notice will announce the availability of the EA, summarize its content, and solicit public comment.*

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

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

Name: R5 FISH DIVISION

Email: shannon.blackburn@mt.gov

Mailing Address:

Montana Fish, Wildlife & Parks

Region 5 Fish Division

Attn: Fromberg EWP Bank Stabilization Project

XI. Recommendation for Further Environmental Analysis

NO further analysis is needed for the proposed action	<input checked="" type="checkbox"/>
FWP must conduct EIS level review for the proposed action	<input type="checkbox"/>

XII. EA Preparation and Review

	Name	Title
EA prepared by:	Shannon Blackburn	R5 Fisheries Program Manager
EA reviewed by:	Bryan Giordano	R5 Fisheries Biologist

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.