

DRAFT
ENVIRONMENTAL ASSESSMENT
CHECKLIST

**Closure of Fresno Tailwater FAS for Bureau of
Reclamation - Safety of Dams Project on Fresno Dam**

11/29/2022



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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.

Montana Fish, Wildlife and Parks (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. Description of Proposed Project

Name of Project: Closure of Fresno Tailwater Fishing Access Site (FAS) for Bureau of Reclamation - Safety of Dams Project on Fresno Dam https://www.usbr.gov/gp/mtao/fresno/fresno_fonsi.pdf

Description of Proposed Project: At the request of the Bureau of Reclamation (BoR), FWP proposes to close to public use the Fresno Tailwater Fishing Access Site (FAS) in the Spring of 2023 while the BoR initiates a Safety of Dams project on Fresno Dam (Federal Action). The FAS sits below the Fresno Dam in Hill County northwest of Havre. The FAS is part of an MOU between BoR and FWP. Ninety percent of the developed FAS site is on BoR property. The FAS and the access road to the FAS will be heavily used by contractors to haul and stage materials and equipment during the Federal Action. BoR will be dewatering the toe of the dam for excavation, but the reservoir will not be impacted as part of this action. Given the size of the project and necessary activity in and around the FAS, FWP proposes to close the FAS to public access for the duration of the Federal Action, which is projected for completion in October 2025.

Affected Area / Location of Proposed Project

- Legal Description
 - Latitude/Longitude: N 48 35' 59" W109 56' 31"
 - Section, Township, and Range: 19,20 33N14E
 - Town/City, County, Montana: Havre, Hill, Montana

- Location Map



III. Purpose and Need

BoR is conducting the Federal Action to maintain Fresno Dam and correct safety deficiencies. The Federal Action is needed to meet Reclamation’s duty under the Safety of Dams Act of 1978 (as amended) to ensure that Fresno Dam does not present unreasonable risks to people, property, and the environment. The BoR considers Fresno Dam one of the highest risk dams in the Missouri Basin region.

FWP concurs with the BoR’s request to close the Fresno Tailwater FAS to public use for safety purposes due to the presence of heavy equipment on access roads and near the FAS during the Federal Action, including large trucks hauling fill materials and large equipment being stored in and near the FAS. FWP proposes to close the FAS until the Federal Action is complete. The FAS sits below the dam and will benefit greatly from its repair to a safe condition. Without this repair the dam and the FAS could be lost during a failure of the dam.

As mitigation for the loss of public use of the FAS during the Federal Action, FWP has requested that the FAS’s roadways and parking areas be maintained and enhanced by the BoR for use by the public upon reopening. The request includes that the access road into the FAS will be widened, graded, and graveled to provide better access. An assessment of road condition and needed maintenance by FWP will occur upon BoR project completion. The latrine will also be pumped and cleaned by the construction company during the Federal Action.

	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

A list of other required local, state, and federal approvals, such as permits, certificates, and/or licenses from affected agencies is included in **Table 2** below. **Table 2** provides a summary of state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. Rather, **Table 2** lists the primary state agencies with regulatory responsibilities, the applicable regulation(s) and the purpose of the regulation(s). 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 2: Federal, State, and/or Local Regulatory Responsibilities

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
Bureau of Reclamation	Federal Action Lead; requested closure	Safety of Dams Project on Fresno Reservoir Dam Landowner
Fish, Wildlife, and Parks	Lessee of FAS	Manage Fishing Access Site

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 3: Listing and Evaluation of Enforceable Mitigations Limiting Impacts

<i>Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.</i>			Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<i>If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below</i>			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Enforceable Control	Responsible Agency	Authority (Rule, Permit, Stipulation, Other)	Effect of Enforceable Control on Proposed Project	

VI. Alternatives Considered

In addition to the proposed Project, and as required by MEPA, FWP analyzed the "no-action" alternative for this EA. Under the "no-action" alternative, FWP would not do the proposed project. While the no action alternative would not lead to the short-term loss of recreational and public use at this fishing access site, it would compromise public safety during the BoR's Safety of Dams project on Fresno Reservoir and therefore has been discarded as a viable alternative.

	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

VII. 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.

Table 4: Impacts to the Physical Environment – Alternative 2: Proposed Project

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"/>	No significant impacts to terrestrial, avian or aquatic life and habitats are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may displace terrestrial, avian, or aquatic life and habitats until the Federal Action is completed. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
Water quality, quantity, and distribution	<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 water quality, quantity, and distribution are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may result in minor increases in river turbidity. Water trucks will be used to limit dust impacts. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
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"/>	No significant impacts to geology are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may result in minor changes to the geologic surface. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
Soil quality, stability, and moisture	<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 soil quality, stability, or moisture are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may result in minor short-term changes

									to soil quality, stability, and moisture. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
Vegetation cover, quantity, and quality	<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 vegetation cover, quantity and quality are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may result in minor changes. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
Aesthetics	<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 aesthetics are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may result in minor changes. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
Air quality	<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 air quality are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BOR and its contractors during the Federal Action may result in minor air quality impacts associated with the generation of particulate matter pollution (i.e. dust) from haul roads and movement of construction materials. In addition, diesel emissions from the operation of heavy equipment may impact air quality in the area. However, BoR must use dust suppressant to limit fugitive dust emissions. Further, any diesel emissions will be intermittent and occur within the construction site, which would be closed to the public. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
Unique, endangered, fragile, or limited	<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 unique, endangered, fragile or limited environment resources are expected because of the proposed project. Storage and movement of

environmental resources									equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may result in minor air quality changes. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
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"/>	No significant impacts to historical and archeological sites are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action will result in ground disturbance with the potential to impact existing historical and/or archaeological sites. The BoR consulted with the Montana State Historic Preservation Office (SHPO) regarding historical and archeological sites in the associated EA titled, "Fresno Dam Safety of Dams Modification Milk River Project, Montana, Montana Area Office - Missouri Basin Region". FWP entered into an MOA with the BoR, SHPO, and others regarding BoR's efforts to mitigate impacts to historical properties during the Federal Action and required monitoring and reporting by the BoR. Therefore, any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.
Demands on environmental resources of land, water, air, and energy	<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 demands on environmental resources of land, water, air and energy are expected because of the proposed project. Storage and movement of equipment and construction materials to and from the FAS by the BoR and its contractors during the Federal Action may result in minor impacts to air quality (see Air Quality above), the use of local water resources to limit fugitive dust emissions, the disturbance of land to accommodate haul roads and equipment storage, and the use of diesel fuel to operate heavy equipment. Any impacts will be short-term, minor, and consistent with current impacts given the nature of the Federal Action.

Table 5: Impacts to the Human Population

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	
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 are expected because of the proposed project. Closure of the FAS and storage of equipment and materials at the site during the Federal Action is being done to ensure the safety of an existing dam.
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 impacts to cultural uniqueness and diversity in the affected area are expected because of the proposed project.
Access to and quality of recreational and wilderness activities	<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"/>	Restricted access to the FAS will have a short-term effect on recreational use. Current recreational opportunities at the site are primarily fishing from the riverbank and pier, with limited camping options. The safety of the public outweighs the loss of recreational use of the site for the term of the project. Several public access opportunities are located within the 16 miles of Milk River located between Fresno Reservoir and the Havre Water Weir that will offer alternative public access during the closure.
Local and state tax base and tax revenues	<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 impacts to the local and state tax base and tax revenues are expected because of 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 impacts to agricultural and industrial production are expected because of the proposed project.
Human health and safety	<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"/>	Human safety will be safe guarded with the restricted access of the FAS during the Federal Action. Potential impacts to safety from the Federal Action come in the form of consistent heavy equipment on access roads and

									near the FAS site, large trucks hauling fill materials, and large equipment being stored in and near the FAS area.
Quantity and distribution of employment	<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 impacts to quantity and distribution of employment are expected because of the proposed project.
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"/>	No impacts to distribution and density of population and housing are expected because of the proposed project.
Demands for government services	<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 impacts to the demands for state government services are expected because of the proposed project. BoR will maintain and improve the access road at the FAS and be responsible for pumping the latrine during the Federal Action.
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 impacts to industrial, agricultural, and commercial activity are expected because of the proposed project.
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"/>	No impacts to locally adopted environmental plans and goals are expected because of the proposed project.
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"/>	No impacts to other appropriate social and economic circumstances are expected because of 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.</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> <p style="text-align: center;">Criteria Used to Determine Significance</p>

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

VIII. 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	
<i>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</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>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</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>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:</i>	<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 5a and 5b and continue with question 6.)	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"/>
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 5a or 5b.			
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.			

IX. 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
Helena Independent Record	November 30
Havre Daily News	November 30

- Public notice will announce the availability of the EA, summarize its content, and solicit public comment.
 - **Duration of Public Comment Period:** Written or e-mailed comments will be accepted until 5:00 p.m., MST, on the last day of public comment, as listed below:
Length of Public Comment Period: 14 days
Public Comment Period Begins: November 29, 2022
Public Comment Period Ends: December 12, 2022

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

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

Name: TIM POTTER

Email: tpotter@mt.gov

Mailing Address:

1 Airport Rd

Glasgow, MT 59230

X. 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"/>

XI. EA Preparation and Review

	Name	Title
EA prepared by:	Tim Potter Jr. Drew Henry	R6 Recreation Manager R6 Regional Supervisor
EA reviewed by:	Hope Stockwell Eric Merchant	Parks and Outdoor Recreation Division Administrator MEPA Specialist