



**MONTANA FISH,
WILDLIFE & PARKS**

ENVIRONMENTAL ASSESSMENT

TOWN OF MANHATTAN

WATER RIGHT CONSENT

Executive Summary

The Town of Manhattan (Manhattan) has requested that Montana Fish, Wildlife & Parks (FWP) consent to the modification of the conditions of a municipal water right permit for groundwater and to the issuance of a change application for a West Gallatin irrigation right to provide mitigation for the impacts of the groundwater permit on the Gallatin River. The modifications to the permit conditions would temporarily adversely affect instream flow water rights held by FWP for the Gallatin River. FWP's instream flow water rights protect the fishery and wildlife resources of the Gallatin River. The temporary adverse effect may occur for a period of five years until December 31, 2025, by which time Manhattan plans to complete a project to fully mitigate the impact of the water right permit both in terms of timing and volume.

The Department of Natural Resources and Conservation (DNRC) granted Manhattan a water right permit for 575 gallons per minute up to 256.11 acre-feet of groundwater to serve a new subdivision of the Town (Permit No. 41H 30021840). Manhattan intends to use a portion of this permit to serve the Pioneer Crossing and Centennial Village Subdivisions, up to a maximum consumptive rate of 138.21 acre-feet. The use of the new water permit would result in an estimated year-round depletion of the Gallatin River of 0.19 cubic feet per second (cfs) equivalent to 138.21 acre-feet. DNRC included amongst conditions on the water permit a requirement that the depletion of the Gallatin River be mitigated through the infiltration of West Gallatin River water previously used for irrigation into the local aquifer. This water would have replaced the 0.19 cfs depletion caused by the water permit.

Manhattan is unable to complete the change of the irrigation right to mitigation using infiltration as required by the permit conditions. They do not have the authority or agreement of the ditch company to use the ditch through which the water historically used for irrigation was transported. Manhattan is unable to transport the water needed to infiltrate to provide for mitigation as required by the permit conditions.

This situation resulted in Manhattan petitioning DNRC to modify the permit conditions. The requested modification would remove the permit condition requiring the infiltration of West Gallatin irrigation water to provide for year-round mitigation and would instead leave this water in the West Gallatin River. Additionally, Manhattan would develop a rapid infiltration basin (RIB) to infiltrate treated wastewater from its municipal wastewater system to provide for mitigation of the new water permit during the non-irrigation season. However, Manhattan anticipates it may take through 2025 to complete the RIB.

In order to allow for the prompt use of the water permit, which is needed to serve the continued development of the subdivision, Manhattan has requested that until such time that the RIB is completed, that changing the West Gallatin irrigation right to leave the water in the river would be the only means of mitigating the depletion resulting from the use of the water permit. This would result in a temporary adverse effect to FWP's instream water rights in the Gallatin River during the non-irrigation season when the 0.19 cfs depletion associated with the new permit is not mitigated. This estimated depletion represents the maximum theoretical depletion but is unlikely to occur in full as the subdivision will not likely reach full build-out by the time the RIB is operational. At the same time, it would result in more water in the Gallatin River during the irrigation season than would otherwise be present as the full annual volume needed to be mitigated would be left in the river during the 100-day irrigation season.

Because of the non-irrigation season adverse effect to FWP's instream flow water rights, Manhattan has requested that FWP consent to the modifications of the water permit without consideration to the adverse effect to FWP's instream water rights until such time the RIB is completed and no later than December 31, 2025. During this time period, FWP would refrain from making call on junior water users during the non-irrigation season to the extent of the 0.19 cfs projected depletion caused by the water permit. This Environmental Assessment (EA) evaluates this request and the no-action

alternative. The no-action alternative could result in the developer relying on small wells exempt from water rights permitting. The preferred alternative is to grant Manhattan's request.

Environmental Assessment

PART I. PROPOSED ACTION DESCRIPTION

1. Type of proposed state action:

At the request of the Town of Manhattan, Montana Fish, Wildlife and Parks (FWP) proposes to consent to the modification of conditions of Beneficial Water Use Permit 41H 30021840 and consent to the issuance of Change of Statement of Claim 41H 30069634 to mitigation.

2. Agency authority for the proposed action:

Mont. Code Ann. §§ 85-2-311(1)(b) and (9), 85-2-360(3)(b) provide that DNRC may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a permit, and Mont. Code Ann. §§ 85-2-402(1)(c) and (19) provides that DNRC may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a change in appropriation right.

3. Name of project: Town of Manhattan Water Right Consent

4. Project sponsor: Town of Manhattan
PO Box 96
Manhattan, MT 59741-0096

5. Anticipated Schedule:

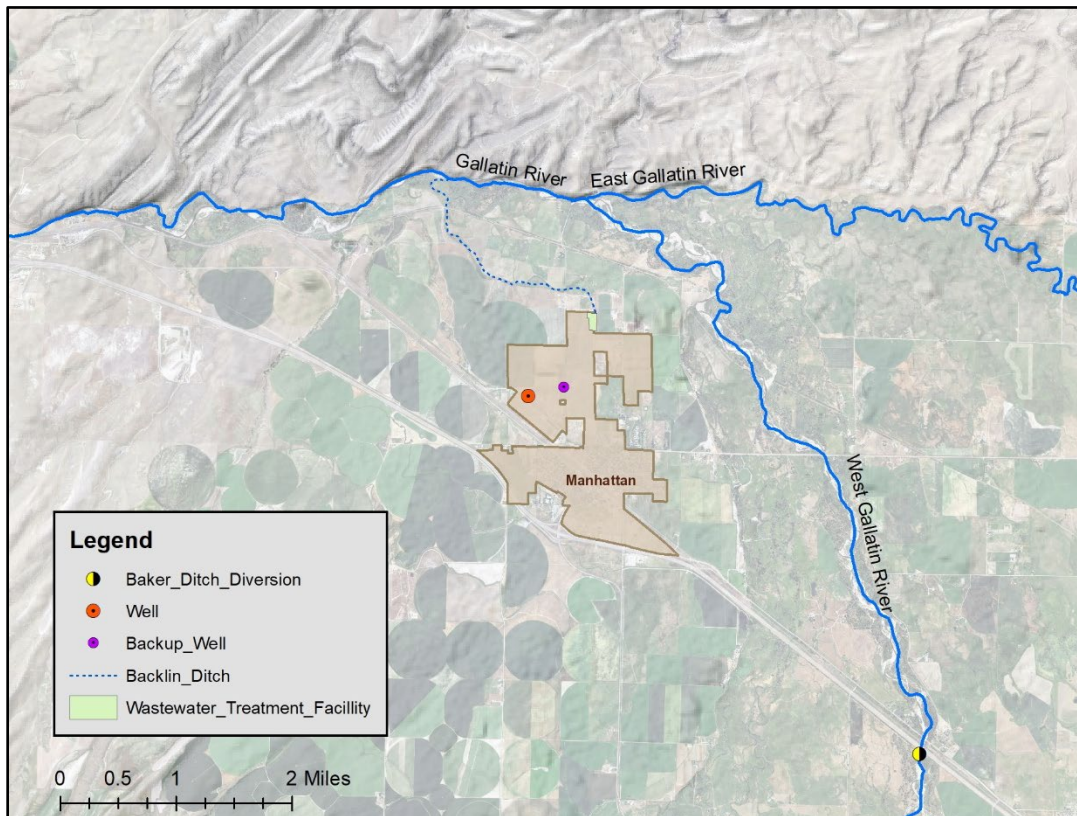
FWP plans to execute or deny the requested consent upon issuance of the Decision Notice following the public comment period.

6. Location affected by proposed action:

Gallatin County: Section 3, TWP 1N, RGE 3E and Sections 28, 33 & 34, TWP 2N, RGE 3E, approximately 12 river miles of the Gallatin River from the confluence of the East and West Gallatin Rivers to its mouth, and approximately 9 river miles of the West Gallatin River from the Baker Ditch diversion immediately upstream of Interstate 90 to the confluence with the East Gallatin River.

7. Estimate the number of acres that would be directly affected:

	<u>Acres</u>		<u>Acres</u>
(a) Developed:		(d) Floodplain	<u> 0 </u>
Residential	<u> 0 </u>		
Industrial	<u> 0 </u>	(e) Productive:	
		Irrigated cropland	<u> 0 </u>
(b) Open Space/	<u> 0 </u>	Dry cropland	<u> 0 </u>
Woodlands/Recreation		Forestry	<u> 0 </u>
(c) Wetlands/Riparian	<u> 0 </u>	Rangeland	<u> 0 </u>
Areas		Other	<u> 0 </u>



General Location Map

8. **Other Local, State or Federal agency that has overlapping or additional jurisdiction.**

(a) **Permits:**

Agency Name	Permits
MT DEQ	MPDES and/or MGWCPS Permits
MT DNRC Water Rights	Modification to Beneficial Water Use Permit
	Authorization to Change a Water Right

(b) **Funding:**

Agency Name	Funding Amount
Town of Manhattan	unknown

(c) **Other Overlapping or Additional Jurisdictional Responsibilities:**

Agency Name	Type of Responsibility
MT DNRC State Projects Bureau	Consent to Issuance

9. Summary of the proposed action:

The Town of Manhattan (Manhattan) has requested that Montana Fish, Wildlife & Parks (FWP) consent to the modification of the conditions for municipal water right Permit 41H 30021840 for groundwater to supply 575 gallons per minute (1.28 cfs) and 256.11 acre-feet (ac-ft) annually to a subdivision of Manhattan. The annual water consumption is estimated to be 138.21 ac-ft resulting in a streamflow depletion of 0.19 cfs throughout the year in the Gallatin River. The modifications to the conditions would temporarily adversely affect instream flow water rights held by FWP for the Gallatin River for a period of up to five years. As part of the request, Manhattan also plans to change a portion of an existing West Gallatin Irrigation water right Claim 41H 30069634 to instream use to offset the full volumetric depletion, but this would occur only during the irrigation period. Manhattan has also requested that FWP consent to the issuance of this change authorization.

FWP holds the following instream water rights for the Gallatin River:

Water Right Type	Water Right No.	Priority Date	Flow Rate (cfs)	Period of Use	Reach
Statement of Claim	41H 138952-00	Dec. 21, 1970	800	Sep. 1 – Apr. 30	Mouth to East Gallatin
Statement of Claim	41H 138947-00	Dec. 21, 1970	947	May 1 – May 15	Mouth to East Gallatin
Statement of Claim	41H 138950-00	Dec. 21, 1970	1278	May 16 – May 31	Mouth to East Gallatin
Statement of Claim	41H 138949-00	Dec. 21, 1970	1500	Jun. 1 – Jun. 15	Mouth to East Gallatin
Statement of Claim	41H 138951-00	Dec. 21, 1970	1176	Jun. 16 – Jun. 30	Mouth to East Gallatin
Statement of Claim	41H 138958-00	Dec. 21, 1970	850	Jul. 1 – Aug. 31	Mouth to East Gallatin
Water Reservation	41H 30008915	Jul. 1, 1985	533.5	Jan. 1 – Dec. 31	Mouth to East Gallatin

Table 1. List of FWP Instream Flow Water Rights for Gallatin River

Under Manhattan's request, FWP's rights covering the October 1 to May 14 period would be adversely affected as streamflow in the Gallatin River would be reduced by 0.19 cfs and FWP's instream right levels are not always met. This would occur for a period of up to 5 years. During the May 15 to September 30 irrigation season, the 0.19 cfs depletion would be mitigated by leaving water formerly used for irrigation in the West Gallatin.

Manhattan has filed an application to change Claim 41H 30069634 with DNRC that would leave the amounts of water listed in Table 2 instream in the West Gallatin. The amounts for each month are based on the historic use of the water rights. Manhattan's water right has an additional 138.13 acre-feet of water historically consumed by irrigation that is not part of the proposed change to mitigation. However, Manhattan has agreed not to use this additional water until the alternate mitigation described below becomes functional. This additional water is also reflected in Table 2 as it will not be diverted from the West Gallatin River.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave.
Depletion (cfs)	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19
Mitigation Change (cfs)	0	0	0	0	0.45	1.12	0.25	0.17	0.31	0	0	0	0.19
Remainder of Right (cfs)	0	0	0	0	0.45	1.12	0.25	0.17	0.31	0	0	0	0.19
Net Flow Change (cfs)	-0.19	-0.19	-0.19	-0.19	0.71	2.05	0.31	0.15	0.43	-0.19	-0.19	-0.19	0.19

Table 2 – Average monthly change in flow in the Gallatin River until additional mitigation is implemented.

During the 5-year period, Manhattan intends to construct a rapid infiltration basin (RIB) to infiltrate treated wastewater from its municipal wastewater system. Once the RIB is completed, this water infiltrated into the local aquifer would offset the non-irrigation season depletion to the Gallatin River alleviating the adverse effect to FWP's instream water rights. Currently, treated wastewater from Manhattan is released into the Backlin Ditch which ultimately inflows to the Gallatin River. Under Manhattan's proposal a portion of the treated wastewater currently returning to the Gallatin River would be infiltrated through the RIB to offset depletions caused by the water permit. Table 3 reflects these amounts by month. In addition, the treated wastewater associated with the subdivision and water permit would be infiltrated in the RIB instead of returning directly to the Gallatin River as required by the current water permit conditions. Table 3 reflects conditions after the RIB is functioning and the subdivision is fully developed. The irrigation water to be changed to instream flow under Manhattan's pending application would continue to remain instream.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave.
Depletion (cfs)	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19
Mitigation Change (cfs)	0	0	0	0	0.45	1.12	0.25	0.17	0.31	0	0	0	0.19
RIB Mitigation (cfs)	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19
Net Flow Change (cfs)	0.004	0.004	0.004	0.004	0.45	1.12	0.25	0.17	0.31	0.004	0.004	0.004	0.19

Table 3 – Average monthly change in flow in the Gallatin River after additional mitigation is implemented.

The infiltration of the current treated wastewater (instead of flowing to the Gallatin River) would result in a corresponding decrease in flow in the Gallatin River as this water would be assigned to offset the water permit depletion where it currently is not assigned to offset any depletion. While this would result in a decrease in flow in the Gallatin River during the winter months when it cannot be offset by the change to mitigation of the West Gallatin irrigation right, this is not considered an adverse effect to FWP or other water right holders. DNRC takes the position treated wastewater that has not yet left the control of the discharge permit holder is not considered appropriable water as long as the management of the water is in conformance with discharge permit conditions. In other words, Manhattan is not required to continue to release the treated wastewater into the Gallatin River and can instead infiltrate it as no other water user, including FWP, can demand its continued release to the Gallatin River. Table 3 does not reflect this reduction and FWP could not prevent this reduction by selecting the no-action alternative.

Until the RIB is operational, FWP would refrain from making call on junior water users during the non-irrigation season (October through April) but only to the extent of the 0.19 cfs projected depletion caused by the water permit. This is to prevent the potential to adversely affect water rights junior in priority that would theoretically be subject to call slightly more frequently due to FWP, in effect, consenting to a temporary non-irrigation season depletion of 0.19 cfs.

FWP is considering entering a Temporary Waiver Agreement and filing a Consent to Approval that would effectuate the modifications to water permit conditions and a change in irrigation right to mitigation as described above. This EA considers the impacts of such a proposed action.

10. Description and analysis of reasonable alternatives

Alternative A: Consent to Permit Modification and Change Issuance (preferred alternative)

FWP would enter a Temporary Waiver Agreement and file a Consent to Approval that would effectuate the modifications to water permit conditions and a change in irrigation right to mitigation. This action would have minor effects on wildlife and water resources and no effects on air, recreation, vegetation, and the human environment.

Alternative B: No Action

Under the no action alternative, FWP would not consent to the modification of the water permit conditions and issuance of the change of irrigation rights to mitigation. The status quo would prevail with Manhattan holding a valid water permit but with conditions that it may not be able to meet. It may also result in the subdivision developer reverting to the use of many small wells, the impacts of which would not be mitigated.

PART II. ENVIRONMENTAL REVIEW CHECKLIST

The analysis of the physical and human environments discussed on the following pages is limited to the impacts associated with modifying the water permit conditions and changing the irrigation water right to instream mitigation in the West Gallatin River. The water right permit has already been issued and evaluated under the Montana Environmental Policy Act by DNRC.

1. Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the Physical and Human Environment.

A. Physical Environment

1. Land Resources

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Soil instability or changes in geologic substructure?		X				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil which would reduce productivity or fertility?		X				
c. Destruction, covering or modification of any unique geologic or physical features?		X				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		X				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		X				

2. Water

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?			X			2a
b. Changes in drainage patterns or the rate and amount of surface runoff?		X				
c. Alteration of the course or magnitude of flood water or other flows?		X				
d. Changes in the amount of surface water in any water body or creation of a new water body?			X			2d
e. Exposure of people or property to water related hazards such as flooding?		X				
f. Changes in the quality of groundwater?			X			2f
g. Changes in the quantity of groundwater?			X			2g
h. Increase in risk of contamination of surface or groundwater?		X				
i. Effects on any existing water right or reservation?			X		X	2i
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		X				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?			X		X	2k
l. Will the project affect a designated floodplain?		X				
m. Will the project result in any discharge that will affect federal or state water quality regulations? (Also see 2a)			X			

Comment 2a. By no longer discharging a portion of the treated wastewater through the Backlin Ditch to the Gallatin River but instead infiltrating it in the local aquifer, the water reaching the Gallatin River will have moderated temperatures and possibly higher overall water quality creating a minor beneficial impact.

Comment 2d. During the 5-year period before the RIB is completed, the 0.19 cfs maximum potential depletion represents 0.024% of FWP's 800 cfs instream water right for September 1 to April 30. This estimated depletion represents the maximum theoretical depletion but is unlikely to occur as the subdivision will not likely reach full build-out by the time the RIB is operational. Streamflow during this non-irrigation period is most often below FWP's right as shown in Figure 1. The 80th percentile exceedance is that flow that is expected to be met or exceeded on a given day in at least 8 out of 10 years (low flow condition) based on the historical record while the 20th percentile exceedance is that flow that is expected to be met or exceeded on a given day in at least 2 out of 10 years (high flow condition). The median flow, or the 50th percentile exceedance, can be expected to be met or exceeded on a given day in at least 5 out of 10 years which is often considered a normal flow.

Based on the hydrologic record, FWP's instream flow rights are farthest from being met during mid-summer to early fall. Water temperatures are the highest during mid to late summer. Both the low flow and elevated water temperature negatively impact the fishery. During the winter months when FWP's right is still not met much of the time, the fishery can be negatively impacted by a reduction in streamflow as higher flow buffers against icing and reduction in important pool habitat. However, non-irrigation season flow is closer to the instream flow needs as reflected by FWP's instream rights than during the summer irrigation season. Increasing flow during the summer through a change in the West Gallatin Irrigation right, while small in relation to the typical flow in the river, provides benefits that outweigh small negative impacts in winter due to reduction in flow. It also provides added flow to the West Gallatin River that it would otherwise not have in the reach between the Baker Ditch diversion and the confluence with the East Gallatin River.

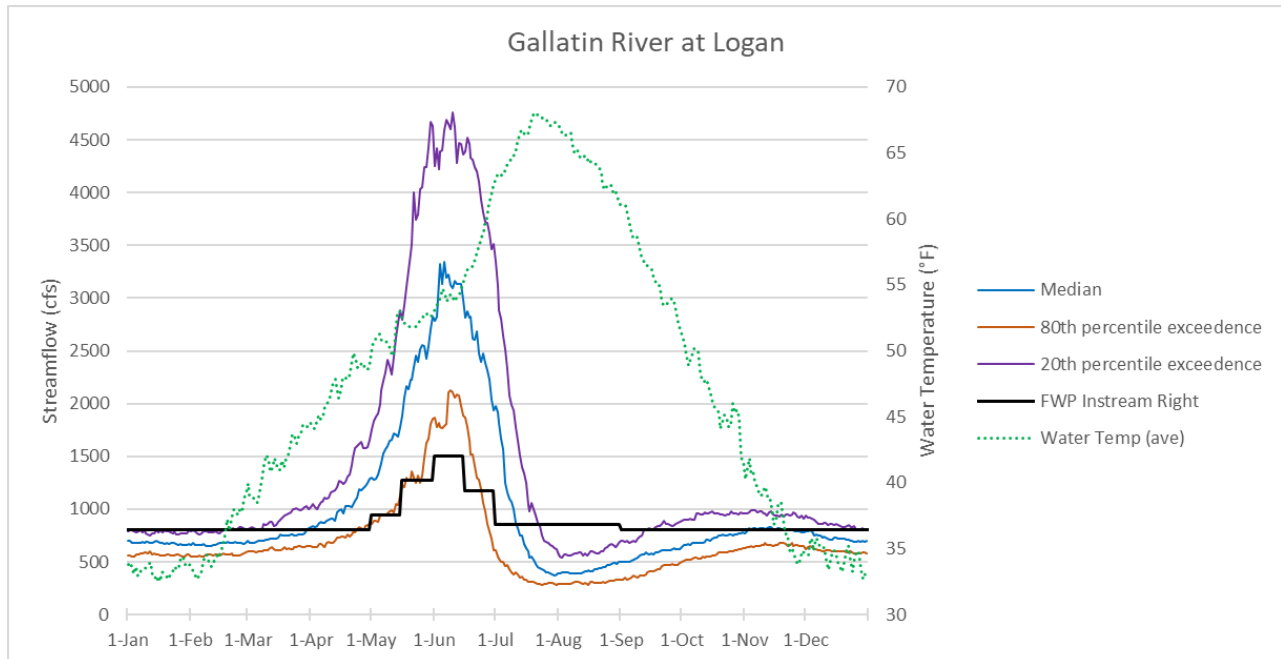


Figure 1. Gallatin River streamflow in comparison to FWP instream water rights, including temperature.

Providing water through a municipal regulated system that is mitigated provides certainty to both the municipal water customers as well as water right holders of the Gallatin River in comparison to many, small wells that are not mitigated or regulated through a permitting process.

Comments 2f & 2g. Groundwater quantity in the local area of the RIB will increase slightly and water quality will decrease slightly in the local area as the treated wastewater would likely introduce slightly lower quality water into the local groundwater system than already occurs. Both parameters would be subject to limitations of the discharge permit evaluated and issued by DEQ.

Comments 2i & 2k. During the 5-year period to bring the RIB online, FWP's instream water rights would see a slight diminishment in flow of 0.19 cfs during the non-irrigation season. This would be offset by an increase in flow during the irrigation season. Once the RIB is in place and functioning, the 0.19 cfs loss will be replaced.

Secondary impacts could occur to water users in the Gallatin River basin with water rights junior in priority to FWP's December 21, 1970, instream flow water rights. Theoretically, during the 5-year period prior to the RIB becoming functional, junior water rights would be at risk of being called slightly sooner and for slightly longer periods due to the added 0.19 cfs flow reduction. To mitigate

this theoretical impact, FWP would agree only to call on junior water users to cease diversions at a flow level 0.19 cfs below the relevant instream flow rights level. Primarily this would occur when the instream right is 800 cfs during most of the non-irrigation season so FWP would not call until flows are below 799.81 cfs instead of 800 cfs. Practically this would have no impact as USGS gage Gallatin River at Fort Logan on which FWP bases calls in the Gallatin basin, reports flow only to the nearest one cfs. Further, FWP does not place call immediately when the instream flow right is crossed as this most often occurs rather quickly and the call is not made until flow is clearly below the instream right level.

3. Air

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Emission of air pollutants or deterioration of ambient air quality? (also see 13 (c))		X				
b. Creation of objectionable odors?		X				
c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?		X				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		X				

Vegetation

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?		X				
b. Alteration of a plant community?			X			4b
c. Adverse effects on any unique, rare, threatened, or endangered species?		X				
d. Reduction in acreage or productivity of any agricultural land?		X				
e. Establishment or spread of noxious weeds?		X				

f. Will the project affect wetlands, or prime and unique farmland?			X			4f
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Comment 4b. The plant community within and in the immediate area of the RIB may change although the plant community may have experienced similar changes during construction of the infiltration gallery required under the present water permit conditions.

Comment 4f. The reduction in flow in the Backlin Ditch once the RIB complete may cause a very minor impact on the wetland area where it enters the side channel of the Gallatin River.

4. Fish/Wildlife

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Deterioration of critical fish or wildlife habitat?		X				
b. Changes in the diversity or abundance of game animals or bird species?		X				
c. Changes in the diversity or abundance of nongame species?		X				
d. Introduction of new species into an area?		X				
e. Creation of a barrier to the migration or movement of animals?		X				
f. Adverse effects on any unique, rare, threatened, or endangered species?		X				
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?			X			5g
h. Will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f)		X				
i. Will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d)		X				

Comment 5g. The reduction in winter flows will minimally decrease winter fish and wildlife habitat but the impacts would not be expected to stress fish or wildlife populations.

B. Human Environment

5. Noise/Electrical Effects

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Increases in existing noise levels?		X				
b. Exposure of people to serve or nuisance noise levels?		X				
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?		X				
d. Interference with radio or television reception and operation?		X				

6. Land Use

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?		X				
b. Conflicted with a designated natural area or area of unusual scientific or educational importance?		X				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		X				
d. Adverse effects on or relocation of residences?		X				

7. Risks/Health Hazards

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?		X				
b. Affect an existing emergency response or emergency evacuation plan or create a need for a new plan?		X				
c. Creation of any human health hazard or potential hazard?		X				
d. Will any chemical toxicants be used?		X				

8. Community Impact

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?		X				
b. Alteration of the social structure of a community?		X				
c. Alteration of the level or distribution of employment or community or personal income?		X				
d. Changes in industrial or commercial activity?		X				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		X				

9. Public Services/Taxes/Utilities

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Will the proposed action have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:			X			10a
b. Will the proposed action have an effect upon the local or state tax base and revenues?		X				
c. Will the proposed action result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		X				
d. Will the proposed action result in increased used of any energy source?		X				

e. Define projected revenue sources		X				
f. Define projected maintenance costs			X			10f

Comments 10a & 10f. The construction of the RIB will increase the need somewhat for government services related to their construction and operation.

10. Aesthetics/Recreation

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		X				
b. Alteration of the aesthetic character of a community or neighborhood?		X				
c. Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report)		X				
d. Will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c)		X				

11. Cultural/Historic Resources

Will the proposed action result in:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?	X				X	12a
b. Physical change that would affect unique cultural values?	X				X	12b
c. Effects on existing religious or sacred uses of a site or area?	X				X	12c
d. Will the project affect historic or cultural resources?	X				X	12d

Comments 12a - 12d. Any disturbance of previously undisturbed land could result in impacts to cultural or historical resources. This may be mitigated through the cultural resources inventory.

12. Summary Evaluation of Significance

Will the proposed action, considered as a whole:	IMPACT Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources which create a significant effect when considered together or in total.)		X				
b. Involve potential risks or adverse effects which are uncertain but extremely hazardous if they were to occur?		X				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?		X				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		X				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		X				
f. Is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e)		X				
g. List any federal or state permits required.			X			13g

Comment 13g. Modification of the water permit conditions and the change authorization issuance are under the authority of DNRC. Discharge permits changes are under the jurisdiction of DEQ.

2. Other control measures, mitigation, stipulations enforceable by the agency or another government agency:

(This section provides an analysis of impacts to private property by proposed restrictions or stipulations in this EA as required under 75-1-201, MCA, and the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The analysis provided in this EA is conducted in accordance with implementation guidance issued by the Montana Legislative Services Division (EQC, 1996). A completed checklist designed to assist state agencies in identifying and evaluating proposed agency actions, such as imposed stipulations, that may result in the taking or damaging of private property, is included in Appendix A.)

Until the RIB is completed and providing offsetting mitigation during the non-irrigation season, FWP would reduce the instream flow rate on which it would call junior water users by the amount of the non-irrigation season depletion (0.19 cfs). This is to prevent the possibility of increasing the frequency and/or duration for which junior water rights are called to reduce or cease water use based on FWP's instream water rights. This temporary provision protects the property interest of water right owners with rights junior in priority to FWP.

PART III. NARRATIVE EVALUATION AND COMMENT

No significant adverse impacts to the human and physical environment are expected to result from the preferred alternative. The minor impacts to water resources identified are quite subtle in nature and even difficult to physically detect in some instances such as the impacts to the rivers. The preferred alternative allows Manhattan to make use of the water permit already approved but with slightly different conditions that would not have major or significant environmental impacts.

The No Action alternative would result in very similar impacts as the preferred alternative would after the RIB is put into operation within five years, but only if Manhattan were able to comply with the current water permit conditions. If unable to comply with the current permit conditions, Manhattan would not be able to allow the subdivision to be developed resulting in negative economic consequences for the developer and the town. Alternatively, the subdivision may be developed using small wells not subject to the water right permitting process resulting in unmitigated impacts to the Gallatin River.

PART IV. PUBLIC PARTICIPATION

1. Description of the level of public involvement:

The public will be notified in the following manner and informed of the opportunity to comment on this draft EA, the proposed action and alternatives:

- A direct mailing to interested parties;
- Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>.

Copies of this Environmental Assessment will be distributed to interested parties to ensure their knowledge of the proposed project.

This level of public notice and participation is appropriate for a project of this scope with limited impacts.

2. Duration of comment period.

The public comment period will extend for (30) thirty days beginning **December 2, 2020**. Written comments will be accepted until 5:00 p.m., January 2, 2021 and can be mailed to the address below:

Andy Brummond
Water Conservationist
Montana Fish, Wildlife and Parks
333 Airport Rd. Ste. 1
Lewistown MT 59457

Or email comments to: abrummond@mt.gov

PART V. EA PREPARATION

1. Explanation of why or why not an EIS is required, explain why the EA is the appropriate level of analysis for this proposed action.

Based on the criteria provided by MEPA Model Rule III to assess if an EIS is required, this environmental review revealed no significant long-term, negative

impacts would be created from the proposed action. Therefore, an EIS is not necessary and an EA is the appropriate level of analysis.

2. Individuals responsible for the preparation of this document:

Andy Brummond
Water Conservationist
Montana Fish, Wildlife and Parks
333 Airport Rd. Ste. 1
Lewistown MT 59457
406-538-2445 x224

3. List of agencies consulted during preparation of the EA:

Montana Fish, Wildlife & Parks
Fisheries Division

APPENDIX A

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions 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 actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without 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 agency to assess the impact of a proposed agency action 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 action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

(LIST ANY MITIGATION OR STIPULATIONS REQUIRED, OR NOTE "NONE")

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

YES NO

___ X 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?

___ X 2. Does the action result in either a permanent or indefinite physical occupation of private property?

___ X 3. Does the action deprive the owner of all economically viable uses of the property?

___ X 4. Does the action deny a fundamental attribute of ownership?

___ X 5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is **NO**, skip questions 5a and 5b and continue with question 6]

___ ___ 5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?

____ 5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?

____ X 6. Does the action have a severe impact on the value of the property?

____ X 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is **NO**, do not answer questions 7a-7c.]

____ 7a. Is the impact of government action direct, peculiar, and significant?

____ 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?

____ 7c. Has 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?

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 questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, 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.