Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau

ENVIRONMENTAL ASSESSMENT
For Routine Actions with Limited Environmental Impact

Part I. Proposed Action Description

1. Applicant/Contact name and address:

   Applicant:
   MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
   PO BOX 200701
   HELENA, MT 59620-0701

   Contact:
   1FWP DEPT OF FISH WILDLIFE & PARKS
   FISHERIES DIVISION – ANDY BRUMMOND
   PO BOX 938
   LEWISTOWN, MT 59457-0938

2. Type of action: Application to Change an Existing Irrigation Water Right No. 43B 30106099

3. Water source name: Cedar Creek, tributary to Upper Yellowstone River

4. Location affected by project: Sections 11, 12, and 13, T8 S, R7 E, Park County. See Figure 1, on the next page, for an overview map.

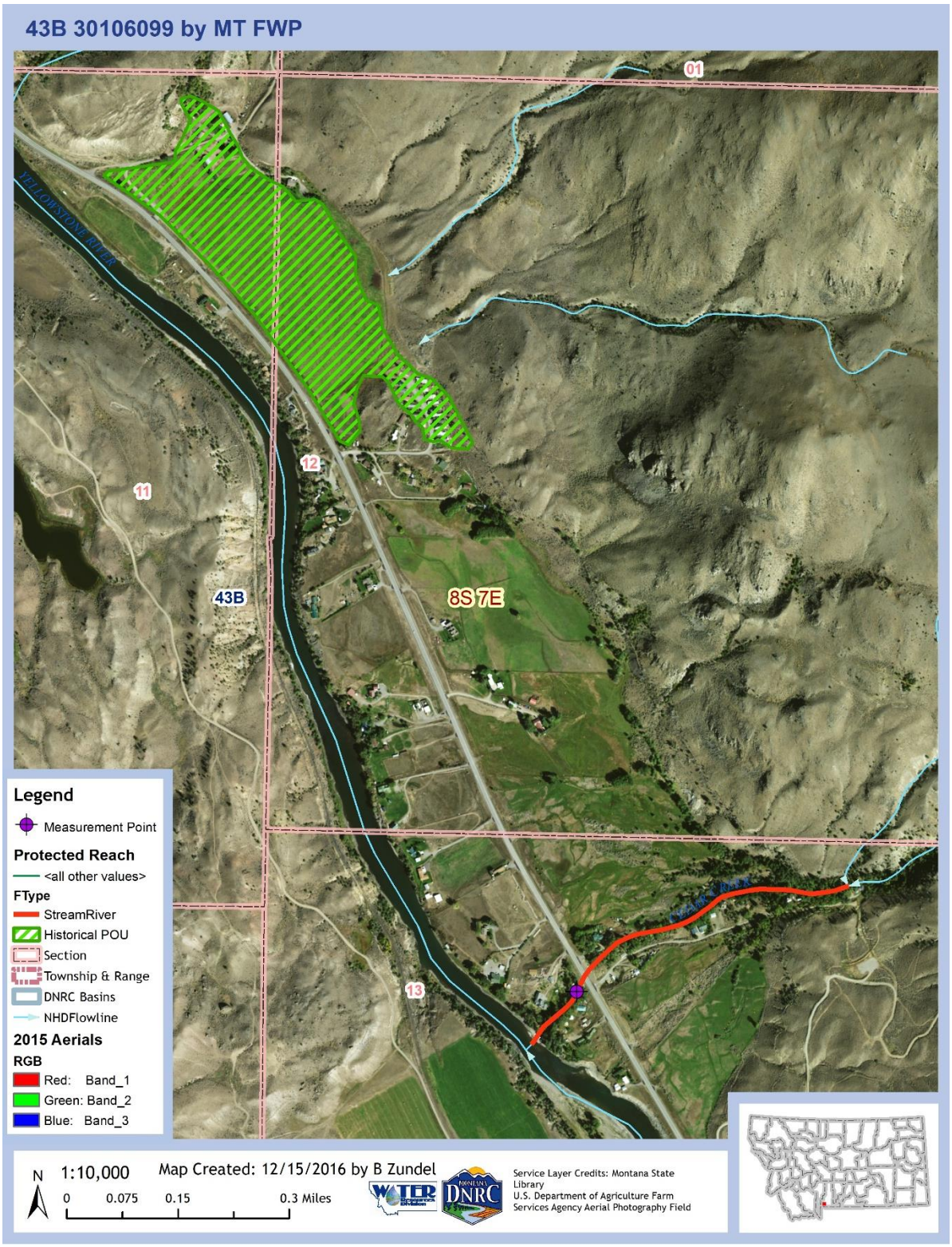

Figure 1: Map of location affected by project.

5. Narrative summary of the proposed project, purpose, action to be taken, and benefits: The applicant proposes to change permanently the purpose, place of use, and point of diversion for Statements of Claim Nos. 43B 194242-00, 43B 194243-00, and 43B 194244-00. The new purpose will be instream flow for the benefit of the fishery resource

in Cedar Creek. Water in the amount of 1.7 CFS up to 367.54 AF per annum will be protected in Cedar Creek from May 25 to September 10, inclusive. The point of diversion remains the historical headgate, located in the NWNENE of Section 13, T08 S, R07 E, Park County. The new place of use is the reach of Cedar Creek from the historical headgate to the creek's confluence with the Yellowstone River at a point in the N2SENW, Section 13, T08 S, R07 E, Park County. These water rights are currently part of a temporary change to instream flow; prior to the temporary change, they were used for irrigation.

The Department shall issue a change authorization if the applicant proves the criteria in §85-2-402, MCA, are met.

6. Agencies consulted during preparation of the Environmental Assessment:
   - Montana Department of Fish, Wildlife & Parks (FWP) – FishMT
     - http://fwp.mt.gov/fish/
   - Montana Department of Environmental Quality (DEQ) – Clean Water Act Information Center (CWAIC)
     - http://deq.mt.gov/wqinfo/CWAIC/default.mcpx
   - Montana National Heritage Program (MTNHP) – Species of Concern:
     - http://mtnhp.org/SpeciesOfConcern
   - U.S. Fish & Wildlife Service (USFWS) – National Wetlands Inventory Wetlands Mapper
     - http://www.fws.gov/wetlands/Data/Mapper.html
   - Natural Resource Conservation Service (NRCS) – Web Soil Survey (WSS)
     - http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm
   - Montana Bureau of Mines and Geology (MBMG) – Ground Water Information Center (GWIC)
     - http://mbmggwic.mtech.edu

Part II. Environmental Review

1. Environmental Impact Checklist:

PHYSICAL ENVIRONMENT

WATER QUANTITY, QUALITY AND DISTRIBUTION

Water quantity *- Assess whether the source of supply is identified as a chronically or periodically dewatered stream by FWP. Assess whether the proposed use will worsen the already dewatered condition.*

Determination: No significant impact identified.

According to a December 27, 2018, search of FishMT, FWP lists Cedar Creek as periodically dewatered. This change will positively impact this condition because additional water will be permanently protected instream.

Water quality *- Assess whether the stream is listed as water quality impaired or threatened by DEQ, and whether the proposed project will affect water quality.*

Determination: No significant impact identified.

The 2018 water quality assessment is still in draft format, so finalized data from the 2016 cycle were used in this EA. According to a December 27, 2018, search of the CWAIC website, DEQ has not assessed Cedar Creek. Cedar Creek is a tributary of the Upper Yellowstone River. DEQ lists the reach of the Upper Yellowstone from Reese Creek to Bridger Creek as not fully supporting aquatic life and has not assessed primary contact recreation, agricultural, or drinking water uses. They list impairments as loss of riparian habitat due to alteration in stream-side or littoral vegetative covers and site clearance/streambank modifications-destabilization due to physical substrate habitat alterations.

The proposed change will positively affect these conditions, as additional water from Cedar Creek will be protected instream to support aquatic and riparian habitat.

Groundwater *- Assess if the proposed project impacts ground water quality or supply. If this is a groundwater appropriation, assess if it could impact adjacent surface water flows.*

Determination: No significant impact identified.

The water rights proposed for change are from a surface water source. Additional surface water will be protected instream. Since groundwater and surface water are connected, leaving additional surface water instream may mimic natural flow regimes and positively affect groundwater sources.

DIVERSION WORKS *- Assess whether the means of diversion, construction and operation of the appropriation works of the proposed project will impact any of the following: channel impacts, flow modifications, barriers, riparian areas, dams, well construction.*

Determination: No impact identified.

Since this change is to instream flow, no diversion works are proposed or required. Water will be left instream.

UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES

Endangered and threatened species *- Assess whether the proposed project will impact any threatened or endangered fish, wildlife, plants or aquatic species or any "species of special concern," or create a barrier to the migration or movement of fish or wildlife. For groundwater, assess whether the proposed project, including impacts on adjacent surface flows, would impact any threatened or endangered species or "species of special concern."*

Determination: No significant impact identified.

A December 27, 2018, query of the Montana National Heritage Program's website produced the following results:

Animal Species

- Eleven (11) Species of Concern: Bison, Wolverine, Canada Lynx, Grizzly Bear, Golden Eagle, Evening Grosbeak, Cassin's Finch, Clark's Nutcracker, Green-tailed Towhee, Brewer's Sparrow, Yellowstone Cutthroat Trout.
- Zero (0) Potential Species of Concern.
- One (1) Special Status Species: Bald Eagle.

Plant Species

- Zero (0) Species of Concern.
- Zero (0) Potential Species of Concern.
- Zero (0) Special Status Species.

The proposed project will protect additional water instream in Cedar Creek, so this change will benefit any endangered or threatened species.

Wetlands *- Consult and assess whether the apparent wetland is a functional wetland (according to COE definitions), and whether the wetland resource would be impacted.*

Determination: Not applicable.

A December 27, 2018, search of the USFWS Wetlands Mapper did not identify any wetlands within the project area.

Ponds *- For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.*

Determination: Not applicable.

This project does not involve ponds.

GEOLOGY/SOIL QUALITY, STABILITY AND MOISTURE *- Assess whether there will be degradation of soil quality, alteration of soil stability, or moisture content. Assess whether the soils are heavy in salts that could cause saline seep.*

Determination: No significant impact identified.

Protecting additional water instream should not affect soil characteristics significantly and may help soil quality, stability, and moisture content by providing additional water. This additional water could help establish riparian plants, which may improve soil stability and moisture content.

A December 27, 2018, search of the NRCS WSS site did not identify any saline seeps in the area.

VEGETATION COVER, QUANTITY AND QUALITY/NOXIOUS WEEDS - *Assess impacts to existing vegetative cover. Assess whether the proposed project would result in the establishment or spread of noxious weeds.*

Determination: No significant impact identified.

Leaving additional water instream for the benefit of fisheries may improve vegetative characteristics.

AIR QUALITY - *Assess whether there will be a deterioration of air quality or adverse effects on vegetation due to increased air pollutants.*

Determination: No impact identified.

This project will not impact air quality.

HISTORICAL AND ARCHEOLOGICAL SITES - *Assess whether there will be degradation of unique archeological or historical sites in the vicinity of the proposed project if it is on State or Federal Lands. If it is not on State or Federal Lands simply state NA-project not located on State or Federal Lands.*

Determination: Not applicable.

The project is not located on State or Federal Lands. Furthermore, the applicant made no mention of significant historical or archeological sites on the property.

DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY - *Assess any other impacts on environmental resources of land, water and energy not already addressed.*

Determination: No impact identified.

No other demands on environmental resources of land, water, and energy have been identified.

HUMAN ENVIRONMENT

LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS - *Assess whether the proposed project is inconsistent with any locally adopted environmental plans and goals.*

Determination: No significant impact identified.

The applicant's goals are to protect additional water instream in Cedar Creek for the benefit of the fishery resource and specifically for Yellowstone cutthroat trout. The stream is periodically dewatered, and FWP research has shown that is the most important spawning tributary for fluvial Yellowstone cutthroat trout in the Upper Yellowstone River. The proposed project is consistent with local environmental plans and goals.

ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES - *Assess whether the proposed project will impact access to or the quality of recreational and wilderness activities.*

Determination: No significant impact identified.

Cedar Creek rises in public lands and then flows through private lands before its confluence with the Yellowstone River. This project would permanently protect additional water in the creek, which will benefit the quality of recreational and wilderness activities.

HUMAN HEALTH - *Assess whether the proposed project impacts on human health.*

Determination: No impact identified.

Protecting additional water instream will not impact human health.

PRIVATE PROPERTY - *Assess whether there are any government regulatory impacts on private property rights.*
Yes___ No _X_ If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights.

Determination: No impact identified.

The project does not impact government regulations on private property rights.

OTHER HUMAN ENVIRONMENTAL ISSUES - *For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.*

Impacts on:

(a) *Cultural uniqueness and diversity?* No impacts identified.

(b) *Local and state tax base and tax revenues?* No significant impacts identified.

(c) *Existing land uses?* No significant impacts identified.

(d) *Quantity and distribution of employment?* No impacts identified.

(e) *Distribution and density of population and housing?* No impacts identified.

(f) *Demands for government services?* No significant impacts identified.

(g) *Industrial and commercial activity?* No impacts identified.

(h) *Utilities?* No impacts identified.

(i) *Transportation?* No impacts identified.

(j) *Safety?* No impacts identified.

(k) *Other appropriate social and economic circumstances?* No impacts identified.

2. ***Secondary and cumulative impacts on the physical environment and human population:***

Secondary Impacts: No secondary impacts have been identified.

Cumulative Impacts: No cumulative impacts have been identified.

3. ***Describe any mitigation/stipulation measures:*** No mitigation or stipulation measures are anticipated at this time.

4. ***Description and analysis of reasonable alternatives to the proposed action, including the no action alternative, if an alternative is reasonably available and prudent to consider:*** No reasonable alternatives have been identified that would allow the applicant to protect permanently additional water instream in Cedar Creek.

The no-action alternative would be for the applicant not to change their water rights to instream flow and to perpetuate the periodic dewatering of Cedar Creek.

PART III. Conclusion

1. ***Preferred Alternative:*** The preferred alternative is to grant the change application if the applicant can prove that the criteria in §85-2-402, MCA, are met.

2 ***Comments and Responses***: None.

4. ***Finding:***
Yes___ No_X_ Based on the significance criteria evaluated in this EA, is an EIS required?

If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action: The EA is the appropriate level of analysis because the proposed project is to protect permanently water rights instream. None of the identified impacts for any of the alternatives is significant as defined in ARM 36.2.524. No significant adverse effects are anticipated.

Name of person(s) responsible for preparation of EA:

Name: Brent Zundel
Title: Hydrologist/Water Resource Specialist
Date: December 27, 2018