Part I. Proposed Action Description

1. Applicant/Contact name and address: Montana Fish, Wildlife & Parks
   PO Box 200701
   Helena, MT 59620-0701

2. Type of action: Petition to Modify Change Authorization No. 41C 30072652
   (Statement of Claim No. 41C 110701).

3. Water source name: Divide Creek

4. Location affected by project: Water is diverted from Divide Creek and conveyed via a ditch to Jones Creek, which is used as a natural carrier to Long Creek. The point of diversion is located in the NWSENE of Section 14, T12S, R4W, Madison County. The proposed reach of stream for Instream Flow purposes is Long Creek beginning in the NESWNE Section 31, T12S, R3W, to its confluence with the Red Rock River in the NWSENE Section 8, 14S, R4W in Beaverhead County.

5. Narrative summary of the proposed project, purpose, action to be taken, and benefits:

   Change Authorization 41C 30072652 was issued by the Department on July 18, 2016, to the State of Montana, Department of Fish, Wildlife and Parks (Applicant), authorizing an additional purpose to an existing appropriation of water on Divide Creek (the existing appropriation is for Irrigation purposes). The Applicant was authorized to change Statement of Claim No. 41C 110701 by adding a purpose of Instream Flow, for a portion of the irrigation season, for a temporary period of 10 years. The appropriation includes an importation of water from Divide Creek into the Long Creek drainage (Basin 41A), via a ditch. Authorization was granted to change the management of water in Long Creek during the period of July 1 through September 15 to benefit the fishery. The reach of stream to benefit from the Instream Flow purpose is Long Creek beginning in the NESWNE Section 31, T12S, R3W (Long Creek at the confluence with Jones Creek), to its confluence with the Red Rock River in the NWSENE Section 8, 14S, R4W. The flow rates protected in Long Creek from the Jones Creek confluence to the point where return flows historically entered Long Creek is 7.0 CFS in July, 4.0 CFS in August, and 3.0 CFS from September 1 through September 15, up to a volume of 765.4 AF. The flow rates of water protected in the reach downstream of the point where return flows historically entered Long Creek to the Red Rock River are 4.92 CFS in July, 2.06
CFS in August and 1.10 CFS from September 1 through September 15 up to a volume of 461.7 AF.


**WATER MEASUREMENT RECORDS REQUIRED:**
**THE APPROPRIATOR SHALL MEASURE WATER IN THE FOLLOWING LOCATIONS:**
IN LONG CREEK IN THE SENWSW SECTION 21, T13S, R4W, AT A POINT JUST UPSTREAM OF THE LOCATION WHERE RETURN FLOWS FROM IRRIGATION OF THE PLACES OF USE ENTER LONG CREEK. THIS POINT REPRESENTS THE MOST DOWNSTREAM LOCATION THAT THE FOLLOWING AMOUNTS OF WATER CAN FROM DIVIDE CREEK CAN BE PROTECTED IN LONG CREEK: UP TO 7.0 CFS IN JULY, 4.0 CFS IN AUGUST, AND 3.0 CFS FROM SEPTEMBER 1 THROUGH SEPTEMBER 15.

Applicant proposes to modify the condition for two reasons: 1) the stream reach of Long Creek where the measuring point is currently located is the subject of extensive beaver activity, resulting in recurring stream level modifications and disruption in acquiring accurate measurement/discharge data; and 2) an existing and stable measuring station is available on another segment of Long Creek which will allow all existing water users on the source to access the point by a public road crossing.¹

Applicant proposes to move the measuring point approximately 2.5 miles upstream on Long Creek, to a long-term measuring station that has been in operation for a decade. The site is in the NESESW Section 10, T13S, R4W, Beaverhead County. There are four intervening irrigation diversions between the existing and proposed measuring sites, and the Applicant proposes to monitor/measure two of those diversions using existing measuring flumes to account for appropriations in the intervening stream reach. The other two irrigation diversions do not need to be monitored/measured because they are associated with the water right that was changed to Instream Flow in this present matter. Appropriations for irrigation cannot occur from those two diversions during the period that DFWP leases the water right for Instream flow purposes.

6. Agencies consulted during preparation of the Environmental Assessment:
(include agencies with overlapping jurisdiction)

Dept. of Environmental Quality Website - TMDL 303d listing
Dept. of Environmental Quality Website – Clean Water Act Information Center
MT. National Heritage Program Website - Species of Concern
USDI Fish & Wildlife Service Website - Endangered and Threatened Species

¹ The authorized measuring point is surrounded by private property and not always accessible by vehicle due to wet ground conditions.
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 DFWP. Assess whether the proposed use will worsen the already dewatered condition.

Determination: No Significant Impact.
The source of water associated with the submitted petition is Divide Creek, in Madison County. It is not identified as a chronically or periodically dewatered stream by the State of Montana, Department of Fish, Wildlife and Parks (DFWP). No change is being proposed in the operation or use of the underlying water right in this proceeding. The only proposed change is the measurement point involving the measurement condition applied to the water right during its change proceeding, which occurred in 2016.

**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.

Divide Creek, in Madison County, does not have any data available on the Montana Department of Environmental Quality Website – Clean Water Act Information Center. There is a low likelihood that water quality will be adversely affected as a result of proposed stream measurement location change.

**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.

Localized ground water elevations under the acres which were retired as a part of the 2016 change only receive a portion of the total seasonal contributions from irrigation that they had under historic practices. The water right continues to be used for irrigation purposes in May and June however during the period of July 1 through September 15, 478 acres are retired from irrigated production. This project leaves a portion of historically used irrigation water in the source to help the fishery. No significant impacts to ground water levels are anticipated from the proposed stream measurement location change.

**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 Significant Impact.

The 2016 change left a portion of historically used water in the source for a period of 10 years. It also retired the historic point of diversion. No diversion or conveyance facilities are necessary to cease irrigation diversions to enhance the fishery. No impacts to the stream channel, flow modifications, barriers, riparian areas, dams, or well construction are anticipated because of the proposed change in measurement point location.

**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.

The Montana National Heritage Program lists 11 Species of Concern and three plant Species of Concern within Township 13 South, Range 4 West. The common names for the two mammal species include the Wolverine and Grizzly Bear. The seven bird species include Ferruginous Hawk, Greater Sage-Grouse, Peregrine Falcon, Long-billed Curlew, Sage Thrasher, Green-tailed Towhee, and the Brewer's Sparrow. The two fish species are the Westslope Cutthroat Trout and Arctic Grayling. The common names for the plant species include Nodding Locoweed, Mealy Primrose, and Alkali-marsh Ragwort.

The Montana National Heritage Program lists 17 Species of Concern and seven plant Species of Concern within Township 14 South, Range 4 West. The common names for mammals are: the Wolverine, Hoary Bat, Long-eared Myotis, Little Brown Myotis, Preble's Shrew, and Grizzly Bear. The common names for birds are: Ferruginous Hawk, Greater Sage-Grouse, Trumpeter Swan, Peregrine Falcon, Cassin's Finch, Long-billed Curlew, McCown's Longspur, Brewer's Sparrow, and the Great Gray Owl. The common names for the fish are: Westslope Cutthroat Trout and Arctic Grayling. The common names for the plants are: Railroad Canyon Wild Buckweat, Ballhead Ipomopsis, Mealy Primrose, Alkali-marsh Ragwort, Alpine Meadowrue, Idaho Sege, and Sand Wildrye.

The proposed project is located in core sage grouse habitat and the Applicant has consulted with the Sage Grouse Habitat Conservation Program regarding the proposed change in measurement point location.

**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:** No Significant Impact.

The National Wetlands Inventory website shows Freshwater Emergent Type Wetlands and Forested/Shrub wetlands adjacent to the source through much of the Applicant’s claimed place of use. The project involved in the 2016 change enhances stream flows in Long Creek for a period of 10 years, and as such, leaves additional water in the source during the irrigation season. Wetland areas will still see contributions from irrigation in May and June and should not be significantly impacted from the proposed stream measurement location change.

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

**Determination:** No Significant Impact.

This project does not involve a pond. No impact to wildlife, waterfowl, or fisheries is anticipated.
**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.

Because the project leaves a portion of historically used water in the source, there will be less likelihood of soil stability issues, such as those arising from an off-stream diversion and application of water for irrigation purposes. There is a low likelihood of adverse impact to soil quality or stability.

**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.

The Applicant continues to use Statement of Claim No. 41C 110701 for irrigation purposes in May and June, as it historically has, but leaves water instream to benefit the fishery for a portion of the irrigation season (July 1 through September 15). No spread of noxious weeds should result from the proposed stream measurement location change. It is the responsibility of the property owner to control noxious weeds on their property.

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

**Determination:** No Significant Impact.

No impacts to air quality or adverse effects to vegetation are expected as a result of this proposal.

**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:** No Significant Impact.

N/A - Project not located on State or Federal Lands.

**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 Significant Impact.

No additional impacts are anticipated.
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.**

No locally adopted environmental plans or goals have been identified.

**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.**

The proposed action may positively enhance certain recreational activities in the area due to the increased stream flows for a portion of the season.

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

_Determination:_ **No Significant Impact.**

No impacts to human health have been identified.

**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 known impacts.**

**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?** _None_

(b) **Local and state tax base and tax revenues?** _None_

(c) **Existing land uses?** _None_

(d) **Quantity and distribution of employment?** _None_

(e) **Distribution and density of population and housing?** _None_

(f) **Demands for government services?** _None_
(g) **Industrial and commercial activity?**  None

(h) **Utilities?**  None

(i) **Transportation?**  None

(j) **Safety?**  None

(k) **Other appropriate social and economic circumstances?**  None

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:**

   The Applicant will continue to use Statement of Claim No. 41C 110701 for irrigation purposes in May and June, as it historically has, and instream flow purposes during the period July 1 through September 15. The proposal before the Department is to move their measurement point on Long Creek 2.5 miles upstream from the location previously used. The point of measurement is an existing point, and there will be no construction activities associated with it. There is nothing to mitigate.

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 action alternative:** Deny the application. This alternative would result in no change to the existing water rights for irrigation.

**PART III. Conclusion**

1. **Preferred Alternative**

   The preferred alternative is the proposed alternative.

2. **Comments and Responses**

   None Received.

3. **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:
None of the identified impacts for any of the alternatives are significant as defined in ARM 36.2.524.

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

Name: Melissa Norris
Title: Water Resources Specialist
Date: September 9, 2021