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:**

Michael & Sarah Shepherd
123 Creek Meadow CV
Leander, TX 78641

2. **Type of action:**

Surface Water Application for Beneficial Water Use Permit 76LJ 30162801

3. **Water source name:**

Lower Foy Lake (an "Unnamed Lake" in DNRC's Water Rights Database)

Location affected by project:

NW ¼ of Section 23, Township 28 North, Range 22 West, Flathead County

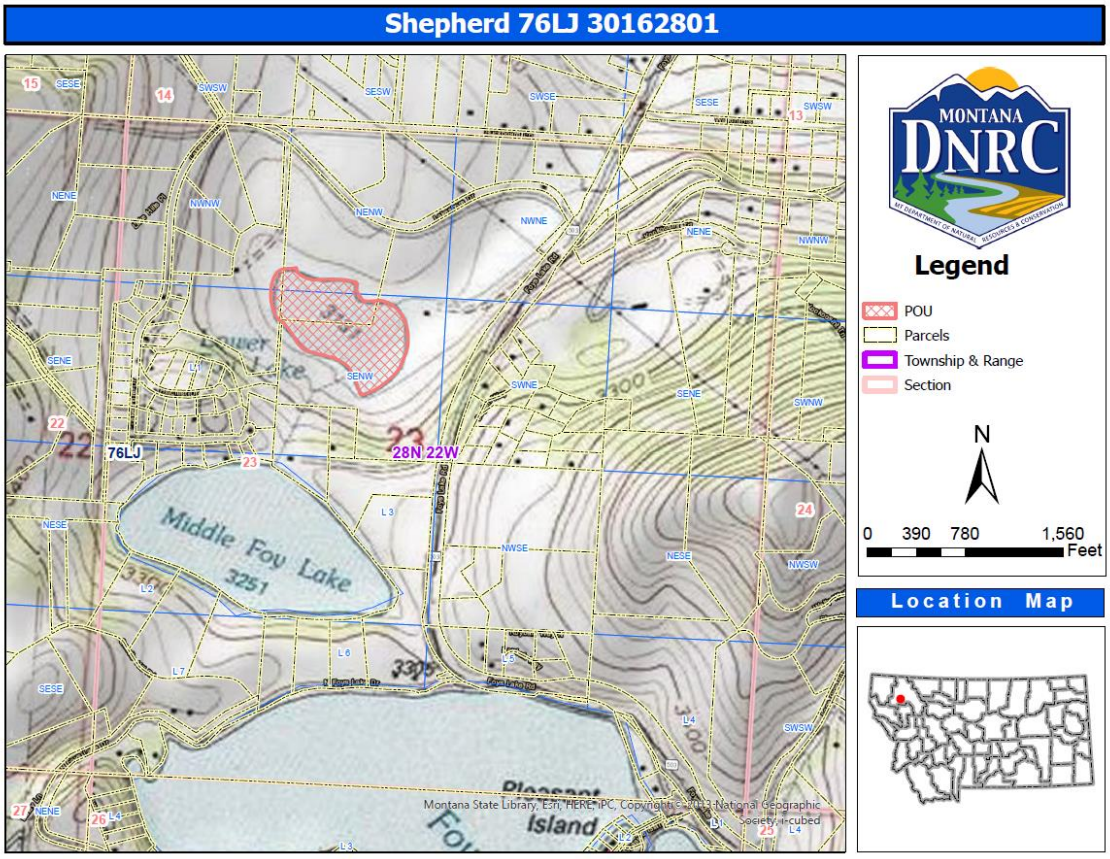

Figure 1. Map of the proposed place of use and point of diversion.

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

The Applicants propose to utilize water from Lower Foy Lake, a permanently flooded freshwater pond as classified by the USFWS, from January 1st through December 31st of every year up to 126.76 AF, for fish and wildlife use. The Applicants propose to stock Lower Foy Lake with Rainbow Trout under permitting and guidance from FWP. The place of use is generally located in the NW ¼ of Section 23, Township 28 North, Range 22 West, Flathead County. Lower Foy Lake was initially impounded by excavation of a wetland historically located within its current footprint to enhance wildlife habitat in the late 1970s. The Lake is fed by overflow from Middle Foy Lake and surrounding areas intermittently during spring runoff events. Overflow from Lower Foy Lake in the spring will spill over into Fisherman's Pond to the northeast and continue north and east through intermittent riverine drainages into Ashley Creek near the southwest region of Kalispell City Limits. The place of use is in the Upper Flathead River Basin (76LJ), in an area not subject to water right basin closures or controlled groundwater area restrictions.

The DNRC shall issue a water use permit if the applicant proves the criteria in 85-2-311 MCA are met.

5. Agencies consulted during preparation of the Environmental Assessment:

- U.S. Fish and Wildlife Service (USFWS): National Wetlands Inventory Wetlands Mapper
- Montana Natural Heritage Program: Endangered, Threatened Species, and Species of Special Concern
- Montana Department of Fish Wildlife & Parks (MTDFWP): Dewatered Stream Information
- Montana Department of Environmental Quality (MTDEQ): Clean Water Act Information Center
- U.S. Natural Resources Conservation Service (NRCS): Web Soil Survey

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.*

The Applicant proposes to divert water from Lower Foy Lake, which is not on the MTDFWP list of chronically or periodically dewatered streams.

Determination: No significant impact.

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.*

There is no data supporting whether Lower Foy Lake is listed as water quality impaired or threatened by DEQ, according to the MDEQ Clean Water Act Information Center's 2020 Water Quality Information, accessed February 15, 2024. However, the Applicants to plan a water aeriation system as part of their establishment of a fish and wildlife use in the lake, which may improve water quality.

The proposed project will not affect the water quality of Lower Foy Lake.

Determination: No significant impact.

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: N/A; this project appropriates from a surface water source.

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.*

A historical wetland was excavated in the late 1970s to expand what is now known as Lower Foy Lake. The Lake is intermittently fed by spring runoff from Middle Foy Lake and surrounding areas. Intermittent overflow from Lower Foy Lake occurs in the spring and runs northeast to Fisherman's Pond and north and east to where it joins Ashley Creek near the southwest boundary of Kalispell city limits. There is no artificial control on the outflow of Lower Foy Lake. Aerial imagery, along with a Permanently Flooded designation by the U.S. Fish and Wildlife Service (USFWS), provides evidence of the natural steady state of lake impoundment. The Applicants have no plan to divert water in or out of the Lake in addition to the natural runoff that has occurred annually since it's initial impoundment. Additionally, the applicants plan to install an aeration system in Lower Foy Lake to improve water quality and habitat for fish populations.

This project will not create any channel impacts, flow modifications, barriers, dams, or riparian impacts to Lower Foy Lake, nor will it affect any wells.

Determination: No significant impact.

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, 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."*

The Montana Natural Heritage Program website was reviewed on February 15, 2024 to determine if there are any threatened or endangered fish, wildlife, plants, aquatic species, or any "species of special concern" in Township 28N, Range 22W that could be impacted by the proposed project. Forty-one animal and twenty-two plant species of concern (Tables 1 and 2, respectively) were identified within the township and range where the project is located. Of these species, the Canada Lynx (*lynx canadensis),* the Grizzly Bear (*Ursus arctos*), the Wolverine (*Gulo gulo),* and the Bull Trout (*Salvelinus confluentus)* are listed as threatened by the USFWS. This appropriation of water does not involve any development of the land, which is located within a conservation easement, and it is not anticipated that any species of concern will be further impacted by the proposed project.

Table 1. Animal Species of Concern in and around Township 28 N, Range 22 W, Flathead County.			
	Common Name	**Scientific Name**	**U.S. FWS – Status under the Federal Endangered Species Act of 1973**
Mammals	Canada Lynx	*Lynx canadensis*	Listed Threatened (LT); Critical Habitat (CH)
	Fisher	*Pekania pennanti*	
	Grizzly Bear	*Ursus arctos*	Listed Threatened (LT)
	Hoary Bat	*Lasiurus cinereus*	
	Little Brown Myotis	*Myotis lucifugus*	
	Long-eared Myotis	*Myotis evotis*	
	Long-legged Myotis	*Myotis volans*	
	Wolverine	*Gulo gulo*	Listed Threatened (LT)
Birds	American Bittern	*Botaurus lentiginosus*	Migratory Bird Treaty Act (MBTA)
	Bald Eagle	*Haliaeetus leucocephalus*	Bald and Golden Eagle Protection Act (BGEPA); Migratory Bird Treaty Act (MBTA)
	Black Tern	*Chlidonias niger*	Migratory Bird Treaty Act (MBTA); Birds of Conservation Concern, Regions 10, 11, 17
	Bobolink	*Dolichonyx oryzivorus*	Migratory Bird Treaty Act (MBTA); Birds of Conservation Concern, Regions 10, 11, 17
	Brewer's Sparrow	*Spizella breweri*	Migratory Bird Treaty Act (MBTA)
	Brown Creeper	*Certhia americana*	Migratory Bird Treaty Act (MBTA)
	Cassin's Finch	*Haemorthous cassinii*	Migratory Bird Treaty Act (MBTA); Birds of Conservation Concern, Region 10
	Clark's Nutcracker	*Nucifraga columbiana*	Migratory Bird Treaty Act (MBTA)
	Common Loon	*Gavia immer*	Migratory Bird Treaty Act (MBTA)
	Common Tern	*Sterna hirundo*	Migratory Bird Treaty Act (MBTA)
	Evening Grosbeak	*Coccothraustes vespertinus*	Migratory Bird Treaty Act (MBTA); Birds of Conservation Concern, Region 10
	Golden Eagle	*Aquila chrysaetos*	Bald and Golden Eagle Protection Act (BGEPA); Migratory Bird Treaty Act (MBTA)
	Great Blue Heron	*Ardea herodias*	Migratory Bird Treaty Act (MBTA)
	Great Gray Owl	*Strix nebulosa*	Migratory Bird Treaty Act (MBTA)
	Horned Grebe	*Podiceps auratus*	Migratory Bird Treaty Act (MBTA)
	Lewis's Woodpecker	*Melanerpes lewis*	Migratory Bird Treaty Act (MBTA); Birds of Conservation Concern, Regions 10, 17
	Long-billed Curlew	*Numenius americanus*	Migratory Bird Treaty Act (MBTA); Birds of Conservation Concern, Region 11
	Pacific Wren	*Troglodytes pacificus*	Migratory Bird Treaty Act (MBTA)
	Pileated Woodpecker	*Dryocopus pileatus*	Migratory Bird Treaty Act (MBTA)
	Trumpeter Swan	*Cygnus buccinator*	Migratory Bird Treaty Act (MBTA)
	Varied Thrush	*Ixoreus naevius*	Migratory Bird Treaty Act (MBTA)
	Veery	*Catharus fuscescens*	Migratory Bird Treaty Act (MBTA)
Reptiles	Northern Alligator Lizard	*Elgaria coerulea*	

Amphibians	Northern Leopard Frog	*Lithbates pipiens*	
	Western Toad	*Anaxyrus boreas*	
Fish	Bull Trout	*Salvelinus confluentus*	Listed Threatened (LT); Critical Habitat (CH)
	Pigmy Whitefish	*Prosopium coulterii*	
	Westslope Cutthroat Trout	*Oncorhynchus clarkia lewisi*	
Invertibrates	Suckley Cuckoo Bumble Bee	*Bombus suckleyi*	
	Hooked Snowfly	*Isocapnia crinite*	
	Alberta Snowfly	*Isocapnia integra*	
	Ninepipes Ambersnail	*Oxyloma Missoula*	
	Oblique Ambersnail	*Oxyloma nuttallianum*	

Table 2. Plant Species of Concern in and around Section 2, Township 31 N, Range 20 W, Flathead County.

	Common Name	**Scientific Name**
Vascular Plants	Sweetflag	*Acorus americanus*
	Geyer's Onion	*Allium geyeri var. geyeri*
	Beck Water-marigold	*Bidens beckii*
	Bristly Sedge	Carex comosa
	Panic Grass	Dichanthelium acuminatum
	Beaked Spikerush	Eleocharis rostellata
	Giant Helleborine	Epipactis gigantea
	Marsh Horsetail	Equisetum palustre
	Water Star-grass	Heteranthera dubia
	Spiny-spore Quillwort	Isoetes echinospora
	Howell's Quillwort	Isoetes howellii
	Floriferous Monkeyflower	Mimulus floribundus
	Guadalupe Water-nymph	Najas guadalupensis
	Pygmy Water-lily	Nymphaea leibergii
	Straightbeak Buttercup	Ranunculus orthorhynchus
	Water Bulrush	Schoenoplectus subterminalis
	Sprangletop	Scolochloa festucacea
	Tufted Club-rush	Trichophorum cespitosum
	Flatleaf Bladderwort	Utricularia intermedia
	Columbia Water-meal	Wolffia columbiana

Bryophytes	Warnstorfia Moss	Sarmentypnum exannulatum
	A Scorpidium Moss	Scorpidium scorpioides

Determination: No significant impact.

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

Lower Foy Lake exists today as a permanently flooded freshwater pond as classified by the USFWS. Lower Foy Lake was created by excavation of a wetland historically located within its current footprint to enhance wildlife habitat in the late 1970s. The Lake is fed by overflow from Middle Foy Lake and surrounding areas intermittently during spring runoff events. Overflow from Lower Foy Lake in the spring will spill over into Fisherman's Pond to the northeast and continue north and east through intermittent riverine drainages into Ashley Creek near the southwest region of Kalispell City Limits.

The USFWS National Wetlands Inventory lists Lower Foy Lake as an 19.21-acre fresh water pond. The

USFWS gives Lower Foy Lake a **PABH** classification, where:

- **P**- Palustrine system including all nontidal wetlands dominated by trees, shrubs, persistent emergent, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5 ppt. It also includes wetlands lacking such vegetation, but with all of the following characteristics:
    - Area less than 8 ha (20 acres);
    - Active wave formed or bedrock shoreline features lacking;
    - Water depth in the deepest part of the basin less than 3.5 m (8.2 ft) at low water;
    - And salinity due to ocean derived salts less than 0.5 ppt.
- **AB**- Aquatic Bed class, which includes wetlands and deepwater habitats dominated by plants that grow principally on or below the surface of the water for most of the growing season in most years.
- **H**- Permanently Flooded water regime, where water covers the substrate throughout the year in all years.

Fisherman's Pond is a 3.59 acre Freshwater Pond classified by USFWS as **PABGh** meaning:

- **P**- same as above.
- **AB**- same as above.
- **G**- represents an Intermittently Exposed water regime, where water covers the substrate throughout the year except in years of extreme drought.
- **h**- means a Diked/Impounded special modifier, meaning that the wetlands have been created or modified by a man-made barrier or dam that obstructs the inflow or outflow of water.

Additionally, within the vicinity Lower Foy Lake and Fisherman's Pond are freshwater emergent wetlands classified as **PEM1C** by the USFWS, meaning:

- **P**- Same as above.
- **EM**- Emergent class, characterized by erect, rooted, herbaceous hydrophytes excluding mosses and lichens. This vegetation is present for most of the season in most years. These wetlands are usually dominated by perennial plants.

- **1**- Persistent subclass, dominated by species that normally remain standing at least until the beginning of the next growing season. This subclass is found only in the Estuarine and Palustrine systems.
- **C**- Seasonally Flooded water regime, where surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

Determination: The proposed appropriation does not involve any development of the land and is for a fish and wildlife purpose that involves stocking the Lake with fish under the guidance and permitting of Montana FWP, and therefore no impact or improved impact is expected.

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

Lower Foy Lake itself is classified by the USFWS as a Freshwater Pond. The applicants propose to add an aeration system to the Lake to improve water quality and fish habitat.

Determination: The proposed appropriation does not involve any development of the land and is for a fish and wildlife purpose that involves stocking the Lake with fish under the guidance and permitting of Montana FWP, and therefore no impact or improved impact is expected.

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.*

The proposed fish and wildlife purpose for fish stocking will not negatively impact the soil quality, stability, or moisture content. The soil type in the project area is comprised of gravelly to cobbly silt loam derived from calcareous siltstone generated from glacial moraine and outwash activity. Slopes are 0 to 50 percent. Soils in this area are part of the hydrologic soil group B, meaning that they have a moderately low runoff potential when wet. Soils in this area are not likely susceptible to saline seep.

Determination: No significant impact.

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.*

There is no proposed development associated with this appropriation. It is not anticipated that issuance of a water use permit will contribute to the establishment or spread of noxious weeds in the project area. Noxious weed prevention and control will be the responsibility of the landowners, who must follow local noxious weed regulations.

Determination: No significant impact.

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

There will be no impact to air quality associated with issuance of the proposed permit for beneficial use of surface water.

Determination: No significant impact.

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: 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.*

All impacts to land, water, and energy have been identified. No further impacts are anticipated.

Determination: No significant impact.

HUMAN ENVIRONMENT

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

The project is consistent with planned land uses. It shall be the landowners' responsibility to comply with all local county & city planning and zoning regulations.

Determination: No significant impact.

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.*

The proposed project will not inhibit, alter, or impair access to present recreational opportunities in the area. The land surrounding the lake has been placed in a private conservation easement. The project is not expected to create any significant pollution, noise, or traffic congestion in the area that may alter the quality of recreational opportunities. The proposed place of use and diversion do not exist on land designated as wilderness.

Determination: No significant impact.

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

This proposed use will not adversely impact human health.

Determination: No significant impact.

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.

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 identified.

(*b) Local and state tax base and tax revenues?* None identified.

(c) *Existing land uses?* None identified.

(d) *Quantity and distribution of employment?* None identified.

(e) *Distribution and density of population and housing?* None identified.

(f) *Demands for government services?* None identified.

(g) *Industrial and commercial activity?* None identified.

(h) *Utilities?* None identified.

(i) *Transportation?* None identified.

(j) *Safety?* None identified.

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

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

Secondary Impacts: None identified.

Cumulative Impacts: None identified.

3. *Describe any mitigation/stipulation measures:*

None.

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:*

The only alternative to the proposed action would be the no action alternative. The no action alternative would not authorize the appropriation of water from Lower Foy Lake for fish and wildlife purposes.

III. Conclusion

1. Preferred Alternative

Issue a water use permit if the Applicants prove the criteria in 85-2-311 MCA are met.

2. Comments and Responses

None.

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:

No significant impacts related to the proposed project have been identified.

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

Name: Kristal Kiel
Title: Water Resource Specialist
Date: June 3, 2024