

EA #:

**ENVIRONMENTAL REVIEW OF FISH INTRODUCTIONS  
PRIVATE POND APPLICATION**

Name and address of applicant: Marc Racster  
1215 Cherry Drive  
Bozeman, MT 59715

Has the pond been approved for a private pond permit in the past? No.

**Location:**

County: Park Township: 5N Range: 10E Section: 5

Name of the drainage where the pond would be located: Smith Creek Drainage

Name(s) of fish species proposed for introduction: Yellowstone cutthroat trout

Is this species native to the drainage? If not, was it introduced legally (i.e. by a fish management agency)? Yes.

List species of special concern present in the drainage: Yellowstone cutthroat trout

**RISKS:**

Inlets to or outlets from the pond? Yes\_\_\_ No X

**Explain:** Inlet is through a 1-inch hose from a cistern and outlet is a pipe with 5/16 of an inch perforations.

**Potential for impacts on genetic structure of wild fish populations?**

None\_\_\_ Minor X Major\_\_\_

**Comments required for minor or major impacts:**

If fish escape from the pond they would have potential to interbreed with wild fish.

**Impacts to any life stage of existing fish populations due to competition and/or predation?**

None\_\_\_ Minor X Major\_\_\_

**Comments required for minor or major impacts:**

If fish escape from the pond they would have potential to compete with wild fish.

**Impacts to other forms of aquatic life that may be caused by this introduction?**

None\_\_\_ Minor X Major\_\_\_

**Comments required for minor or major impacts:**

Local amphibians may experience predation or displacement.

**Potential for the proposed new species to reproduce in this location?**

None X Minor\_\_\_ Major\_\_\_

**Comments required for minor or major impacts:**

**If necessary, would it be feasible to remove this species after it has been stocked? How?**  
Yes. The pond could be drained and netted or chemical removal could take place. Draining and allowing winterkill is an option as well.

**Would this introduction result in impacts that are individually limited, but cumulatively considerable?**

Yes. Private ponds constitute a cumulative impact to wild fisheries and aquatic systems.

**Describe reasonable and prudent alternatives to this action, if any (including no action).**

No action. The landowner would not be granted a permit to stock the pond.

**Describe and evaluate mitigation, stipulations, or other control measures enforceable by the agency, if any.**

Pond must be screened and screens must be functional at all times. Only Yellowstone cutthroat trout from an approved source are to be stocked.

**List any other agencies or individuals that may be affected by the proposed introduction:**

None.

**List all agencies and individuals outside of FWP who have been notified of this proposed introduction:**

None.

**Based on this evaluation, is an EIS required? Yes\_\_\_ No\_\_X\_ If no, explain why the EA is the appropriate level of analysis for the proposed action.**

The limited impacts of this action are not significant enough to warrant an EIS.

**Literature Cited:** N/A

**EA prepared by:** Scott Opitz for Bruce Rich

**Comments will be accepted until:** N/A

**Comments should be sent to:** Bruce Rich  
Montana Fish, Wildlife & Parks  
1400 South 19<sup>th</sup> Avenue  
Bozeman, MT 59718

## **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/stipulations required, or note "None".)**

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

**YES**

**NO**

- |       |       |   |
|-------|-------|---|
| _____ | _____ | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?   |
| _____ | _____ | 2. Does the action result in either a permanent or indefinite physical occupation of private property?  |
| _____ | _____ | 3. Does the action deprive the owner of all economically viable uses of the property?   |
| _____ | _____ | 4. Does the action deny a fundamental attribute of ownership?   |
| _____ | _____ | 5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is <b>NO</b> , 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?   |
| _____ | _____ | 6. Does the action have a severe impact on the value of the property?   |
| _____ | _____ | 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 <b>NO</b> , 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.