

**DEPARTMENT OF FISH, WILDLIFE AND PARKS**  
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**ENVIRONMENTAL ASSESSMENT**

Project Title Piney Creek Fish Habitat Enhancement

Division/Bureau Fisheries/Management

Program Fisheries

Description of Project MFWP will hire a crew from the Montana Conservation Corps to assist in hand excavating pools and narrowing the natural channel in Piney Creek to improve fisheries habitat for a population of pure Yellowstone cutthroat trout. A total of 26 pools will be hand excavated within the natural pool riffle periodicity of the stream. Pool dimensions will be based on measurements taken from a reference reach in Piney Creek.

**POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT**

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Terrestrial & aquatic life and habitats		X				X
2. Water quality, quantity & distribution				X		
3. Geology & soil quality, stability & moisture				X		
4. Vegetation cover, quantity & quality				X		
5. Aesthetics				X		
6. Air quality				X		
7. Unique, endangered, fragile, or limited environmental resources		X				X
8. Demands on environmental resources of land, water, air & energy				X		
9. Historical & archaeological sites				X		

1. The purpose of this project is to improve fisheries habitat in Piney Creek. If successful, this project should significantly improve habitat for aquatic life.
2. Piney Creek supports a very limited population of pure Yellowstone cutthroat trout. This population has been significantly reduced by recent drought conditions in the area. This project should prevent this cutthroat population from being lost from Piney Creek next winter, and should help this population rebuild over time.

**POTENTIAL IMPACTS ON HUMAN ENVIRONMENT**

	<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>	<b>NONE</b>	<b>UNKNOWN</b>	<b>COMMENTS ON ATTACHED PAGES</b>
1. Social structures & mores				X		
2. Cultural uniqueness & diversity				X		
3. Local & state tax base & tax revenue				X		
4. Agricultural or industrial production				X		
5. Human health						
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational and wilderness activities				X		
8. Quantity & distribution of employment				X		
9. Distribution & density of population & housing						
10. Demands for government services						
11. Industrial & commercial activity				X		
12. Demands for energy				X		
13. Locally adopted environmental plans & goals				X		
14. Transportation networks & traffic flows						

Other groups or agencies contacted or which may have overlapping jurisdiction Custer National Forest

Individuals or groups contributing to this EA

Recommendation concerning preparation of EIS No significant negative impact is expected so no EIS is required

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#### **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?**

<b>YES</b>	<b>NO</b>	
<u>          </u>	<u>  X  </u>	1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
<u>          </u>	<u>  X  </u>	2. Does the action result in either a permanent or indefinite physical occupation of private property?
<u>          </u>	<u>  X  </u>	3. Does the action deprive the owner of all economically viable uses of the property?
<u>          </u>	<u>  X  </u>	4. Does the action deny a fundamental attribute of ownership?
<u>          </u>	<u>  X  </u>	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.]
<u>          </u>	<u>          </u>	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
<u>          </u>	<u>          </u>	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
<u>          </u>	<u>  X  </u>	6. Does the action have a severe impact on the value of the property?
<u>          </u>	<u>  X  </u>	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.]
<u>          </u>	<u>          </u>	7a. Is the impact of government action direct, peculiar, and significant?
<u>          </u>	<u>          </u>	7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
<u>          </u>	<u>          </u>	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.