

## CHECKLIST ENVIRONMENTAL ASSESSMENT

**Project Name:** Administrative Rules for Senate Bill 35

**Proposed Implementation Date:** December 21, 2012

**Proponent:** DNRC, on behalf of the Montana Board of Land Commissioners, as directed in Senate Bill 35

**Location:** Rivers adjudicated as navigable statewide, including those that may become adjudicated in the future.

**County:** Various across the state

### I. TYPE AND PURPOSE OF ACTION

The proposed rules will implement the provisions of SB 35 enacted by the 2011 Montana Legislature (Chapter 359 of the 2011 Montana Session Laws, codified as Sections 77-1-1109 through 77-1-1117, MCA), which provides a process for obtaining authorization for the use of a bed of a navigable river in the State of Montana upon payment of the full market value of that use.

Section 77-1-1112(7), MCA, provides that uses of navigable river beds occurring prior to October 1, 2011 are exempt from the requirements of Montana's Antiquities Act (Title 22, Chapter 3, Part 4, MCA), and the Montana Environmental Policy Act (Title 75, Chapter 1, Parts 1 and 2, MCA). In addition, Section 77-1-121(2), MCA, exempts any lease or license that is issued by the Department from the requirements of the Montana Environmental Policy Act (Title 75, Chapter 1, Parts 1 and 2, MCA), where that lease or license is issued subject to further permitting under Title 75 or 82 of the Montana Code Annotated.

Required streambed permits from other governmental authorities may include: 310 permit (Conservation Districts - DNRC), 124 Permit (FWP), 404 Permit (Army Corps of Engineers), Section 10 Permit (Army Corps of Engineers), 318 Permit (DEQ), Water Right Permit (Water Rights Bureau – DNRC), or other permits under Title 75 or 82, MCA. If the applicable permits are not obtained due to impacts on the physical environment, or any other reason, the use will not be authorized by the Department.

Environmental review of applications for authority to use a navigable river bed under the proposed rules may occur where MEPA exemptions are inapplicable. It is expected that the vast majority of applications submitted pursuant to these rules will be for existing historic uses pre-dating October 1, 2011, which would also exempt those applications from review under the Montana Environmental Policy Act, 75-1-201, et seq.

This checklist Environmental Assessment evaluates the anticipated impacts to the human environment resulting from the adoption of administrative rules as directed by 77-1-1117, MCA. SB 35, sponsored by Senator Brad Hamlett, and enacted during the 2011 regular legislative session, provides a process by which persons using the beds of navigable rivers may obtain formal authorization from the State pursuant to either a lease, license, or an easement. A copy of the proposed rules is attached to this Environmental Assessment. To summarize their effect, these rules provide for:

- 1) a method to determine the full market value of the use of a navigable river bed and minimum payments for lease and easements;
- 2) an applicant's freedom of choice to apply for a lease, license or easement depending on the type of proposed use and the duration of the use; and
- 3) the relocation or increase in the size of a footprint based on the natural relocation of a navigable river or other factors.

## II. PROJECT DEVELOPMENT

### 1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

*Provide a brief chronology of the scoping and ongoing involvement for this project. List number of individuals contacted, number of responses received, and newspapers in which notices were placed and for how long. Briefly summarize issues received from the public.*

A letter for scoping was sent to 101 individuals on July 19, 2012. Sixty-one comments were received. The scoping notice was also published in the following newspapers for three weeks in the month of August: Helena Independent Record, Great Falls Tribune, Miles City Star, Bozeman Daily Chronicle, Billings Gazette, Missoulian, and Daily Interlake (Kalispell).

Number of responses: There were 61 public comments received. The comments and responses are attached.

### 2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:

*Examples: cost-share agreement with U.S. Forest Service, 124 Permit, 3A Authorization, Air Quality Major Open Burning Permit.*

Other Government Agencies with jurisdiction over streambeds are: Army Corps of Engineers, DEQ; EPA; FWP; Tribal Water Quality Program, Environmental Protection Division; Shoreline Protection, Flathead Reservation Tribal Complex; Other County Government Offices.

Authorization for use of Navigable Rivers requires all applicable streambed permitting be acquired. Streambed permitting may include: 310 permit (Conservation Districts - DNRC), 124 Permit (FWP), 404 Permit (Army Corps of Engineers), Section 10 Permit (Army Corps of Engineers), 318 Permit (DEQ), Water Right Permit (Water Rights Bureau – DNRC).

### 3. ALTERNATIVE DEVELOPMENT:

*Describe alternatives considered and, if applicable, provide brief description of how the alternatives were developed. List alternatives that were considered but eliminated from further analysis and why.*

**Action Alternative-** Adoption of administrative rules as described above in Section I. Type and Purpose of Action

**No Action Alternative-** No rulemaking.

## III. IMPACTS ON THE PHYSICAL ENVIRONMENT

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" if no impacts are identified or the resource is not present.*

### 4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:

*Consider the presence of fragile, compactable or unstable soils. Identify unusual geologic features. Specify any special reclamation considerations. Identify direct, indirect, and cumulative effects to soils.*

The environmental impact resulting from the proposed adoption of the rules, when compared to the existing impacts the no-action alternative, will not result in significant impacts to geology and soil quality, stability and moisture, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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## **5. WATER QUALITY, QUANTITY AND DISTRIBUTION:**

*Identify important surface or groundwater resources. Consider the potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality. Identify direct, indirect, and cumulative effects to water resources.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to water quality, quantity, and distribution, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA; and 5) any further changes to water quantity, and distribution are subject to oversight by the Water Resources Division of the Department under Section 85-2-301, et seq.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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## **6. AIR QUALITY:**

*What pollutants or particulate would be produced (i.e. particulate matter from road use or harvesting, slash pile burning, prescribed burning, etc)? Identify the Airshed and Impact Zone (if any) according to the Montana/Idaho Airshed Group. Identify direct, indirect, and cumulative effects to air quality.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to air quality, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA; and any further changes to water quantity, and distribution are subject to oversight by the Water Resources Division of the Department under Section 85-2-301, et seq.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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## **7. VEGETATION COVER, QUANTITY AND QUALITY:**

*What changes would the action cause to vegetative communities? Consider rare plants or cover types that would be affected. Identify direct, indirect, and cumulative effects to vegetation.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to vegetation cover, quantity, and quality, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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**8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:**

*Consider substantial habitat values and use of the area by wildlife, birds or fish. Identify direct, indirect, and cumulative effects to fish and wildlife.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to terrestrial, avian, and aquatic life and habitats, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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**9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:**

*Consider any federally listed threatened or endangered species or habitat identified in the project area. Determine effects to wetlands. Consider Sensitive Species or Species of special concern. Identify direct, indirect, and cumulative effects to these species and their habitat.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to unique, endangered, fragile or limited environmental resources, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

Review of any impact upon threatened or endangered species by the proposed use of the beds of navigable rivers will be adequately addressed by inserting a provision in any authorization issued that the use is contingent upon receipt of all necessary permits under Title 75 or 82, MCA, including any authorization required under Section 9 of the Endangered Species Act, 16 USC 1538. Permits which may potentially require authorization under Section 9 of the Endangered Species Act include: 310 permits (Conservation Districts - DNRC) Section 75-7-101, et seq., MCA; 124 Permits (FWP) Section 87-5-502, MCA; 404 Permits (Army Corps of Engineers) 33 USC Section 1344; Section 10 Permits (Army Corps of Engineers) 33 USC 403; 318 Permits (DEQ) Section 75-5-318, MCA; Water Right Permits (Water Rights Bureau – DNRC) Section 85-2-301, et seq., MCA, or other permits under Title 75 or 82, MCA. If the applicable permits cannot be obtained, due to failure to obtain authorization under Section 9 of the Endangered Species Act, or any other reason, no use will be authorized under these rules. Further environmental analysis may be conducted if individual circumstances warrant such review before issuance of a permanent easement. The No Action Alternative may result in unauthorized use that may or may not result in effects on unique, endangered, fragile or limited environmental resources.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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**10. HISTORICAL AND ARCHAEOLOGICAL SITES:**

*Identify and determine direct, indirect, and cumulative effects to historical, archaeological or paleontological resources.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to historical and archaeological sites, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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#### **11. AESTHETICS:**

*Determine if the project is located on a prominent topographic feature, or may be visible from populated or scenic areas. What level of noise, light or visual change would be produced? Identify direct, indirect, and cumulative effects to aesthetics.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to aesthetics, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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#### **12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:**

*Determine the amount of limited resources the project would require. Identify other activities nearby that the project would affect. Identify direct, indirect, and cumulative effects to environmental resources.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to land, water, air, or energy, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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#### **13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:**

*List other studies, plans or projects on this tract. Determine cumulative impacts likely to occur as a result of current private, state or federal actions in the analysis area, and from future proposed state actions in the analysis area that are under MEPA review (scoped) or permitting review by any state agency.*

Other documents in preparation considering impacts to navigable waters are:

Intake Diversion Dam Modification Project – The Corps of Engineers and Bureau of Reclamation are preparing an EA to modify this dam on the Yellowstone below Glendive to allow passage of endangered pallid sturgeon.

Tongue River Railroad – The federal Surface Transportation Board is considering a new application for this railroad, which will run from Miles City to the Ashland area. There would be at least one bridge crossing of the navigable stretch of the Tongue. Scoping is under way for the EIS under NEPA. Lisa Axline is coordinating the state's participation in the EIS.

Keystone XL Pipeline – This 36-inch-diameter crude oil pipeline will run from Alberta to Nebraska. DEQ cooperated with the U.S. Department of State on an EIS pursuant to NEPA and MEPA and has issued a permit for the Montana portion, but construction has not begun. The pipeline will be bored under the navigable stretch of the Milk and under the Missouri and the Yellowstone.

The cumulative impacts as a result of the current actions in the analysis area and future proposed actions in the analysis area, in relationship to the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

#### IV. IMPACTS ON THE HUMAN POPULATION

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" if no impacts are identified or the resource is not present.*

#### 14. HUMAN HEALTH AND SAFETY:

*Identify any health and safety risks posed by the project.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to human health and safety, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

#### 15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:

*Identify how the project would add to or alter these activities.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to industrial, commercial, and agriculture activities and production, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical

status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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#### **16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:**

*Estimate the number of jobs the project would create, move or eliminate. Identify direct, indirect, and cumulative effects to the employment market.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to quantity and distribution of employment, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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#### **17. LOCAL AND STATE TAX BASE AND TAX REVENUES:**

*Estimate tax revenue the project would create or eliminate. Identify direct, indirect, and cumulative effects to taxes and revenue.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to local and state tax base and tax revenues, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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#### **18. DEMAND FOR GOVERNMENT SERVICES:**

*Estimate increases in traffic and changes to traffic patterns. What changes would be needed to fire protection, police, schools, etc.? Identify direct, indirect, and cumulative effects of this and other projects on government services*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to demand for government services, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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**19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:**

*List State, County, City, USFS, BLM, Tribal, and other zoning or management plans, and identify how they would affect this project.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to locally adopted environmental plans and goals, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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**20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:**

*Identify any wilderness or recreational areas nearby or access routes through this tract. Determine the effects of the project on recreational potential within the tract. Identify direct, indirect, and cumulative effects to recreational and wilderness activities.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to the access and quality of recreational and wilderness activities, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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**21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:**

*Estimate population changes and additional housing the project would require. Identify direct, indirect, and cumulative effects to population and housing.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to density and distribution of population and housing, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

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**22. SOCIAL STRUCTURES AND MORES:**

*Identify potential disruption of native or traditional lifestyles or communities.*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to social structures and mores, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize

additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

**23. CULTURAL UNIQUENESS AND DIVERSITY:**

*How would the action affect any unique quality of the area?*

The environmental impact resulting from the adoption of the proposed rules, when compared to the existing impacts of the no-action alternative, will not result in significant impacts to cultural uniqueness and diversity, because: 1) the rules simply describe a process for granting future authorizations for use; 2) the rules do not authorize additional physical changes to the human environment; 3) almost all applications will be for historic uses occurring prior to October 1, 2011, which will maintain the existing physical status quo of the human environment; and 4) such historic uses are exempt from MEPA review under Section 77-1-1112(7), MCA.

The effects of selecting the no-action alternative will not appreciably differ from those of the action alternative, since neither alternative is expected to result in significant changes to the human environment and on-going uses of the beds of navigable waters.

**24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:**

*Estimate the return to the trust. Include appropriate economic analysis. Identify potential future uses for the analysis area other than existing management. Identify direct, indirect, and cumulative economic and social effects likely to occur as a result of the proposed action.*

The following fiscal summary is from the SB35 Fiscal Note:

	FY 2012 Difference	FY 2013 Difference	FY 2014 Difference	FY 2015 Difference
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue (Historic Riverbeds)	\$10,000	\$10,000	\$10,000	\$10,000
State Special Revenue (Trust Admin)	\$1,540	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0
<b>Revenue</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue (Historic Riverbeds)	\$10,000	\$10,000	\$10,000	\$10,000
Common Schools Guarantee Acct	\$2,593	\$3,904	\$3,911	\$3,920
Common Schools Perm Fund	\$100,217	\$100,422	\$100,628	\$100,834

**Assumptions:**

1. The beds of navigable rivers have been determined by a court of law to be public trust land under the holding in PPL Montana, LLC v. State, 355 Mont. 402 at 444, 229 P.3d 421 at 450 (2010) (Riverbeds are public trust lands pursuant to Article X, Section 11(1) of the Montana Constitution.)
2. New Section 2(2). "Full market value" means the Board of Land Commissioners ("Land Board") has discretion in determining compensation for uses in navigable waters.

3. Nine rivers or lands have been adjudicated in a court of competent jurisdiction, meeting the definition in Section 2(3). These adjudicated navigable waterways stretch approximately 1,873 miles.
4. Section 3 specifically refers to the lease, license, or easement for a “footprint” on the bed of a navigable river. Therefore, SB35 does not impact the leasing or licensing of minerals below the riverbed pursuant to Title 77, Chapter 3.
5. The bill does not preclude the Department of Natural Resources and Conservation ("department" or "DNRC") from issuing leases, licenses, and easements on rivers where the department had actual historic evidence (navigable in fact) that the river was used for commerce at the time of statehood. Since 2005, eight out of ten permanent easements issued have been across non-adjudicated waterways, and the department has averaged \$25,000 annually for those easements on non-adjudicated waterways.
6. Under 77-1-103, MCA, SB35 would increase the fund balance of the common schools permanent fund for easement revenue, and as a result, the interest revenue generated would be increased as well. The assumption is a long-term interest rate of 4.35% for FY12 and 4.1% for FY13 through FY15.
7. The interest from the common schools permanent fund is 95% distributable to the common schools guarantee account as base aid. The remaining 5% is reinvested in the permanent fund.
8. The assumption is that the department would process an average of 200 easement applications per year, which would include a \$50 application fee for each application. The application fees would be deposited into a new state special revenue account (historic riverbed use account) to fund the processing of the applications. The department would utilize \$10,000 for contracted services each year to assist with the processing of applications.
9. Easement revenue for common schools is based on the following:
  - a. the average appraised value per acre of an adjacent upland parcel is \$2,000. Therefore, the value of the navigable riverbed is 50% of the value of an adjacent upland acre of \$1,000/acre;
  - b. the area of an average easement is approximately 0.50 acres (\$1,000 per acres x 0.50 acres = \$500); and
  - c. two hundred easements at \$500 per easement would generate approximately \$100,000 for the common schools permanent fund each year.
10. Section 6. Notice Required. The section states that the department will provide notice of the requirements of this bill to owners of property adjacent to navigable rivers. The names and addresses of property owners will be obtained from the Department of Revenue ("DOR"). An estimated 1,000 property owners will be notified, and advertisements placed in approximately 11 newspapers for two weeks during FY12 only. The cost of notification will be approximately \$1,540 (postage costs for 1,000 letters = \$440; and 11 newspaper advertisements at \$50 per ad multiplied by two ads = \$1,100). These costs would be paid from the trust administration account (fund 02938) on behalf of common schools.

<b>EA Checklist Prepared By:</b>	<b>Name:</b> Jessica Jenewein	<b>Date:</b> July 31, 2012
	<b>Title:</b> REMB Lease Manager	

**V. FINDING**

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**25. ALTERNATIVE SELECTED:**

**Action Alternative-** Adoption of administrative rules as described above in Section I. Type and Purpose of Action

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**26. SIGNIFICANCE OF POTENTIAL IMPACTS:**

I have evaluated the comments received and potential environment affects and have determined significant environmental effects would not result from adopting the proposed administrative rules which provide a process for issuing leases, licenses, or easements on the beds of state-owned navigable rivers, as directed in Senate Bill 35 (SB 35). Any issuance of licenses, leases, or easements under the proposed rules would be either exempt from MEPA review where the uses pre-dated October 1, 2011, or such authorization would be subject to further permitting under Section 77-1-121(2), MC A allowed under an existing historical use, or would be otherwise subject to additional permitting and MEPA review. Consequently, there are no significant or cumulative effects that may result from the adoption of the administrative rules as proposed.

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**27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:**

Any further environmental analysis would be dependent on type of use that is sought after (license, lease, or easement) and whether that use requires MEPA analysis, or additional permitting and associated MEPA review.

EIS                       More Detailed EA                       No Further Analysis

<b>EA Checklist Approved By:</b>	<b>Name:</b> John Grimm
	<b>Title:</b> Chief/Real Estate Management Bureau
<b>Signature:</b> /s/ John Grimm	<b>Date:</b> October 30, 2012