BUREAU OF RECLAMATION

Appendix C

Regulatory Requirements

Final Environmental Assessment
Dry-Redwater Rural Water Project, Montana
Montana Area Office – Missouri Basin Region

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Final Environmental Assessment
Dry-Redwater Rural Water Project, Montana
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prepared by:

United States Department of the Interior
Bureau of Reclamation
Montana Area Office

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Abbreviations and Acronyms

ARPA	Archaeological Resource Protection Act
BLM	Bureau of Land Management
CAA	Federal Clean Air Act
CAFE	Corporate Average Fuel Economy Standards
CFR	Code of Federal Regulations
CWA	Clean Water Act
dbA	A-weighted decibel
DNRC	Department of Natural Resources and Conservation
DRWA	Dry Redwater Regional Water Authority
EA	Environmental Assessment
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
EO	Executive Order
FEMA	Federal Emergency Management Agency
HAP	hazardous air pollutant
MBTA	Migratory Bird Treaty Act
MCL	maximum contaminant level
MDEQ	Montana Department of Environmental Quality
MY	model year
NAAQS	national ambient air quality standard
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NHTSA	National Highway Traffic Safety Administration
NO_x	nitrous oxide
NPDES	National Pollutant Discharge Elimination System
NPDWR	National Primary Drinking Water Regulations
NSDWR	National Secondary Drinking Water Regulations
PM_{10}	particulate matter with diameter 10 microns or less
$PM_{2.5}$	particulate matter with diameter 2.5 microns or less
ppmw	parts per million by weight
Reclamation	U.S. Department of the Interior, Bureau of Reclamation
RMP	Resource Management Plan
SAFE	Safer Affordable Fuel-Efficient
SDWA	Safe Drinking Water Act
SIP	State Implementation Plan
TI	Tribal Implications
TMDL	total maximum daily load
USACE	U.S. Army Corps of Engineers
USC	United States Code
USFWS	U.S. Fish and Wildlife Service
WAPA	Western Area Power Administration

Appendix C – Regulatory Requirements

Federal Regulations

National Environmental Policy Act of 1969 as Amended

The National Environmental Policy Act (NEPA) was one of the first laws ever written that establishes the broad national framework for protecting our environment. NEPA's basic policy is to assure that all branches of government consider the environment prior to undertaking any major federal action that significantly affects the environment.

NEPA requirements are invoked when airports, buildings, military complexes, highways, parkland purchases, and other federal activities are proposed. Environmental Assessments (EA) and Environmental Impact Statements, which are assessments of the likelihood of impacts from alternative courses of action, are required from all Federal agencies and are the most visible NEPA requirements.

The U.S. Environmental Protection Agency (U.S. EPA, herein after, "EPA") has been charged with implementing national air quality programs. EPA's air quality mandates draw primarily from the Federal Clean Air Act (CAA), which was enacted in 1970, and subsequently amended. The most recent major amendments were made by Congress in 1990. EPA's air quality efforts address both criteria air pollutants and precursors and hazardous air pollutants (HAP). EPA regulations concerning criteria air pollutants and precursors and HAPs are presented in greater detail below.

Clean Air Act

The CAA required EPA to establish the national ambient air quality standards (NAAQS) (42 United States Code Section 7409). The EPA has established primary and secondary NAAQS for the following criteria air pollutants: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter with diameter 10 microns or 2.5 microns (or less, respectively) (PM_{10} and $PM_{2.5}$), and lead. The primary standards protect the public health, and the secondary standards protect public welfare. The CAA also requires each state to prepare a State Implementation Plan (SIP) for attaining and maintaining the NAAQS. The CAA Amendments of 1990 added requirements for states with nonattainment areas to revise their SIPs to incorporate additional control measures to reduce air pollution. Individual SIPs are modified periodically to reflect the latest emissions inventories, planning documents, and rules and regulations of the air basins as reported by their jurisdictional agencies. The EPA is responsible for reviewing all SIPs to determine whether they conform to the mandates of the CAA and its amendments, and whether implementation will achieve air quality goals. If the EPA determines a SIP to be inadequate, a federal implementation plan that imposes additional control measures may be prepared for the nonattainment area.

The EPA regulates HAPs, also known as toxic air contaminants. Statutes and regulations generally require the use of the maximum available control technology or best available control technology for air toxins to limit emissions.

Vehicle Emissions and Fuel Efficiency Standards

The National Highway Traffic Safety Administration (NHTSA) and EPA set the Corporate Average Fuel Economy Standards (CAFE) standards to improve the average fuel economy and reduce greenhouse gas emissions generated by cars and light duty trucks. NHTSA and EPA have proposed to amend the current fuel efficiency standards for passenger cars and light trucks and establish new standards covering model years 2021 through 2026 by maintaining the current model year 2020 standards through 2026 (Safer Affordable Fuel-Efficient [SAFE] Vehicles Rule).

SAFE Rule Part Two was finalized on March 31, 2020, and it went into effect on June 29, 2020. Part Two of the SAFE Rule sets the CAFE standards to increase in stringency by 1.5 percent per year above model year (MY) 2020 levels for MYs 2021–2026. These standards are lower than the previous CAFE standards which required that MYs 2021–2026 increase in stringency by 5 percent per year. At the time of writing this EA, the SAFE Rule Part Two is in place and it is unclear whether the SAFE Rule Part Two will be revoked by EPA or NHTSA.

The EPA has established a number of emission standards for on- and off-road heavy-duty diesel engines used in trucks and other equipment. This was done in part because diesel engines are a significant source of nitrous oxides (NO_X), PM_{10}, and $PM_{2.5}$, and because the EPA has identified diesel particulate matter as a probable carcinogen. Implementation of the heavy-duty diesel on-road vehicle standards and the non-road diesel engine standards is estimated to reduce PM and NO_X emissions from diesel engines up to 95 percent in 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards (EPA 2001).

In concert with the diesel engine emission standards, EPA has also substantially reduced the amount of sulfur allowed in diesel fuels. The sulfur contained in diesel fuel is a significant contributor to the formation of particulate matter in diesel-fueled engine exhaust. The new standards reduced the amount of sulfur allowed by 97 percent for highway diesel fuel (from 500 parts per million by weight [ppmw] to 15 ppmw), and by 99 percent for off-highway diesel fuel (from about 3,000 ppmw to 15 ppmw). The low sulfur highway fuel (15 ppmw sulfur), also called ultra-low sulfur diesel is currently required for use by all vehicles in the U.S.

Antiquities Act of 1906

The Antiquities Act was the first U.S. law to provide general legal protection of cultural and natural resources of historic or scientific interest on federal lands.

The Antiquities Act established that preservation of archeological and historical sites on public lands is in the federal government's purview and in the public's interest. It obligated federal land-managing agencies to carry out measures to protect archeological and historical sites on their lands by

implementing a permitting process and ensuring that any resulting collections went to educational institutions.

Archaeological Resource Protection Act

The Archaeological Resource Protection Act (ARPA) was signed into law on October 31, 1979. ARPA was enacted "to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979" (16 USC §470aa (b)).

American Indian Religious Freedom Act

The American Indian Religious Freedom Act of 1978 (42 USC § 1996.) protects the rights of Native Americans to exercise their traditional religions by ensuring access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

Native American Graves Protection and Repatriation Act

Since 1990, Federal law has provided for the protection and return of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. By enacting the Native American Graves Protection and Repatriation Act of 1990, Congress recognized that human remains of any ancestry "must at all times be treated with dignity and respect." Congress also acknowledged that human remains, and other cultural items removed from Federal or tribal lands belong, in the first instance, to lineal descendants, Indian Tribes, and Native Hawaiian organizations.

The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or (2) in any case in which such lineal descend ants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

National Historic Preservation Act

The National Historic Preservation Act (NHPA) was signed into law on October 15, 1966. It establishes a national preservation program and a system of procedural protections, which encourage both the identification and protection of historic resources, including archeological resources, at the federal level and indirectly at the state and local level.

Projects that require federal permits, receive federal funding, or are located on federal lands must comply with 54 United States Code (USC) 306108, formally and more commonly known as Section 106 of NHPA. To comply with Section 106, a federal agency must "take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places." The implementing regulations for Section 106 are found in Title 36 Code of Federal Regulations (CFR), Part 800, as amended (2004).

The implementing regulations of the NHPA require that cultural resources be evaluated for NRHP eligibility if they cannot be avoided by an undertaking or project. Resources listed or eligible for NRHP listing are called historic properties. To determine if a site, district, structure, object, and/or building is significant, the NRHP Criteria for Evaluation are applied. A resource is significant and considered a historic property when it:

- Is associated with events that have made a significant contribution to the broad patterns of our history; or
- Is associated with the lives of persons significant in our past; or
- Embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that represents a significant and distinguishable entity whose components may lack individual distinction; or
- Yields, or may be likely to yield, information important in prehistory or history.

In addition, 36 CFR Section 60.4 requires that, to be considered significant and historic, resources must also exhibit the quality of significance in American history, architecture, archaeology, engineering, or culture and must possess integrity of location, design, setting, materials, workmanship, feeling, and association.

NHPA creates a specific role for state and local governments, Native American tribes, and Native Hawaiian organizations in carrying out the Act. Through Section 101 of NHPA, states and tribes are responsible for identifying and nominating properties for listing in the NRHP and advising and assisting federal agencies in carrying out their historic preservation responsibilities, including federal agency compliance with Section 106.

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks"

Prioritizes the identification and assessment of environmental health and safety risks that may affect children, and to ensure that Federal agencies' policies, programs, activities, and standards address environmental health risks and safety risks to children. Because children may suffer disproportionately from environmental health and safety risks, the distribution of children and locations where numbers of children may be proportionally high, on and in the vicinity of sites, were determined to ensure that environmental risks and safety risks to children are addressed.

Paleontological Resources and Preservation Act

This regulation provides for the management, preservation, and protection of paleontological resources on lands administered by the Bureau of Land Management (BLM), U.S. Department of the Interior, Bureau of Reclamation, and the U.S. Fish and Wildlife Service (USFWS) and ensures that these federally owned resources are available for present and future generations to enjoy as part of America's national heritage. The regulation addresses the management, collection, and curation of paleontological resources from Federal lands using scientific principles and expertise, including collection in accordance with permits; curation in an approved repository; and maintenance of confidentiality of specific locality data. The regulation details the processes related to the civil and criminal penalties for illegal collecting, damaging, otherwise altering, or defacing, or selling paleontological resources.

Noise Control Act of 1972

In 1972, the U.S. Congress determined that inadequately controlled noise presents a danger to the health and welfare of the population. The Noise Control Act of 1972 promotes an environment for all Americans free from noise that jeopardizes the public health. The major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce.

Several regulatory authorities at the federal, state, and local levels control the flow, quality, and supply of water in Montana either directly or indirectly. This section focuses on laws related directly to the water quality aspect of the Project.

Clean Water Act

In 1972 Congress enacted the Clean Water Act (CWA) and the act has been amended several times since its inception. This is the primary Federal law regulating water quality in the U.S. and its objective is to reduce or eliminate water pollution in the nation's rivers, streams, lakes, and coastal waters. The objective of the CWA is "to restore and maintain the chemical, physical, and biological

integrity of the nation's waters." The CWA establishes the regulatory framework regulating discharge of pollutants into the waters of the United States and gives the EPA the authority to implement pollution control programs. Specific sections of the CWA applicable to the Project are summarized below.

Section 303

This section of the CWA requires states to adopt water quality standards for all surface waters of the United States. There are three major components of water quality standards: designated users, water quality criteria, and antidegradation policy.

Section 303(d)

Section 303(d) of the CWA requires states and authorized Native American tribes to develop a list of water quality-impaired segments of waterways. The list includes waters that do not meet water quality standards necessary to support the beneficial uses of that waterway, even after point sources of pollution have installed the minimum required levels of pollution control technology, and the pollutants that impair them. Only waters impaired by "pollutants," (pollutants include clean sediments, nutrients [e.g., nitrogen and phosphorus], pathogens, acids/bases, temperature, metals, cyanide, and synthetic organic chemicals), not those impaired by other types of "pollution" (e.g., altered flow and/or channel modification), are to be included on the list.

Section 303(d) of the CWA also requires states to maintain a listing of impaired water bodies so that a total maximum daily load (TMDL) can be established. A TMDL is a plan to restore the beneficial uses of a stream or to otherwise correct an impairment. It establishes the allowable pollutant loadings or other quantifiable parameters (e.g., pH or temperature) for a water body and thereby provides the basis for the establishment of water quality-based controls. The calculation for establishment of TMDLs for each water body must include a margin of safety to ensure that the water body can be used for the purposes the state has designated. Additionally, the calculation also must account for seasonal variation in water quality.

Section 401

This section of the CWA requires an applicant for any federal license or permit that may result in discharge into waters of the United States to obtain a certification from the state that discharge would comply with state water quality standards.

Section 402

This section creates the National Pollutant Discharge Elimination System (NPDES) permit program. This program authorizes point sources of pollution discharging into a surface water body. The NPDES program is administered at the state level.

Section 404

Section 404 of the Clean Water Act requires authorization from the Secretary of the Army, acting through the U.S. Army Corps of Engineers (USACE), for the discharge of dredged or fill material into all waters of the United States, including wetlands.

Discharges of fill material generally include, without limitation: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and subaqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material.

Waters of the United States

On August 29, 2023, the EPA and Department of the Army (the agencies) issued a final rule to amend the final "Revised Definition of 'Waters of the United States'" rule, published in the *Federal Register* on January 18, 2023. This final rule conforms the definition of "waters of the United States" to the U.S. Supreme Court's May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. The agencies have amended key aspects of the regulatory text to conform it to the Court's decision. There is ongoing litigation on the January 2023 Rule in 27 states, including Montana. Due to this, Waters of the United States in these states are being interpreted consistent with the Pre-2015 Regime and the Sackett decision.

The agencies construe the term "waters of the United States" to mean: (1) traditional navigable waters, the territorial seas, and interstate waters ("paragraph (a)(1) waters"); (2) impoundments of "waters of the United States" ("paragraph (a)(2) impoundments"); (3) tributaries to traditional navigable waters, the territorial seas, interstate waters, or paragraph (a)(2) impoundments when the tributaries meet either the relatively permanent standard or the significant nexus standard ("jurisdictional tributaries"); (4) wetlands adjacent to paragraph (a)(1) waters; wetlands adjacent to and with a continuous surface connection to relatively permanent paragraph (a)(2) impoundments or jurisdictional tributaries when the jurisdictional tributaries meet the relatively permanent standard; and wetlands adjacent to paragraph (a)(2) impoundments or jurisdictional tributaries when the wetlands meet the significant nexus standard ("jurisdictional adjacent wetlands"); and (5) intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4) that meet either the relatively permanent standard or the significant nexus standard ("paragraph (a)(5) waters"). This rule also contains, at paragraph (b), the longstanding exclusions in the 1986 regulations, as well as additional exclusions based on well-established practice, from the definition of "waters of the United States" and, at paragraph (c), definitions for terms used in this rule.

Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) was established to protect the quality of drinking water in the United States. The Act authorized EPA to set national health-based standards for drinking water and requires many actions to protect drinking water and its sources, including rivers, lakes, reservoirs, springs, and groundwater wells. Furthermore, the Safe Drinking Water Act requires all owners or operators of public water systems to comply with primary (health-related) standards. The EPA has delegated to the Public Water Supply Bureau at the Montana Department of Environmental Quality (MDEQ) to regulate public water systems and ensure that water meets federal SDWA and state laws and regulations.

Contaminants of concern relevant to domestic water supply are defined as those that pose a public health threat or that alter the aesthetic acceptability of the water. These types of contaminants are regulated by the National Primary Drinking Water Regulations (NPDWR) and the National Secondary Drinking Water Regulations (NSDWR).

National Primary Drinking Water Regulations

The NPDWRs are legally enforceable primary standards (known as maximum contaminant levels, or "MCLs") and treatment techniques that apply to public water systems. Primary standards and treatment techniques protect public health by limiting the levels of contaminants in drinking water. Contaminants and their concentration limits are included in the NPDWRs. MDEQ has primacy for the SDWA which means it has the authority to implement and enforce the Primary SDWA Regulations. The State of Montana is required to adopt State regulations that meet or exceed the Federal regulations.

National Secondary Drinking Water Regulations

The NSDWRs are limits the EPA recommends on contaminants that do not affect the end user's health however do affect other aspects of finished water quality. These other aspects include taste, color, and smell of the water. Over the past 42 years, several new and modified regulations have been promulgated by EPA and additional regulations or modifications to current regulations are currently under development.

Surface Water Treatment Rules

The Federal Surface Water Treatment Rule became effective in June 1968 and applies to all public water systems using surface or groundwater sources under the direct influence of surface water. It requires most water systems to filter and disinfect water from surface or groundwater sources; establishes maximum contaminant level goals for multiple constituents; and identifies treatment technique requirements for filtered and unfiltered systems. The Long-Term Enhanced Surface Water Treatment Rule 1 and Long-Term Enhanced Surface Water Treatment Rule 2 were passed in January 2002 and January 2006, respectively. These rules were passed to improve public health protection through the control of microbial contaminants, particularly viruses, *Giardia*, and *Cryptosporidium*. Regulations that are applicable to the Proposed Action are shown below in Table 1.

Table 1. Surface Water Treatment Rule Water Quality Regulations

Regulation	Provisions
Revised Total Coliform Rule (RTCR)	1. Requires monthly sampling for total coliforms at designated sampling locations in the distribution system. Samples must be absent of total coliforms in 95 percent of all samples in the month or the system is in violation. Positive samples must be verified by testing for E. Coli, which must be absent. 2. The plant must be designed to fully disinfect ambient fecal matter coliforms, so it does not enter the distribution system, resulting in RTCR violations.
Surface Water Treatment Rule (SWTR)	1. Treatment must achieve 3.0-log (99.9%) or more removal/inactivation for Giardia lamblia. 2. Treatment must achieve a 4.0-log (99.99%) or more removal/inactivation for viruses. 3. Turbidity monitoring continuously or by grab samples every four hours. 4. Establishes chemical disinfection credit based upon the C x T value (disinfection residual concentration "C" multiplied by the disinfection contact time "T").
Lead and Copper Rule (LCR)	1. Requires periodic monitoring of designated locations in the distribution system for concentrations of copper and lead. 2. Action levels for lead and copper is exceeded if the concentration in more than 10 percent of samples collected is greater than 0.015 mg/L and 1.3 mg/L, respectively. 3. Systems exceeding action levels are required to implement treatment to prevent corrosion, lead service line replacement, public education, and additional monitoring.
Interim Enhances Surface Water Treatment Rule (IESWTR)	1. Reduced turbidity requirements to the following: combined filtered water turbidity less than or equal to 0.3 NTU in at least 95% of monthly samples and combined filtered water turbidity never to exceed 1 NTU.
Stage One Disinfectants / Disinfection Byproduct Rule (DBPR)	1. Set total organic carbon (TOC) removal requirement percentages dependent upon the source water alkalinity and TOC concentration. 2. Established DBP MCLs as follows: TTHM - 80 µg/L; HAA - 60 µg/L; bromate – 10 µg/L; and chlorite - 1.0 mg/L. 3. Required monitoring in the distribution system to verify compliance with the DBP MCLs. 4. Establishes MRDLs for chlorine and chloramines.
Radionuclides Rule	1. Established MCL for uranium of 30 µg/L and retains MCLs for gross alpha particles, beta/proton emitters, and radium 226/228. 2. Initially requires four quarterly samples at entry points to distribution system to determine compliance with rule and to set continued monitoring schedule. 3. Management techniques or treatment will be necessary if uranium MCL is exceeded.

Regulation	Provisions
Arsenic Rule	1. Lowered the total arsenic MCL to 10 µg/L in drinking water. 2. Arsenic MCL compliance is calculated as running annual average of quarterly sampling at each distribution system point of entry.
Filter Backwash Recycling Rule	1. Designates that all recycled streams in the WTP are returned to the front of the plant such that the recycled water is treated through all plant processes. 2. Recycled streams can be no more than ten percent of the total plant raw water flowrate.
Filter Term 1 ESWTR (LT1ESWTR)	1. Establishes MCLG for Cryptosporidium at zero. 2. Filtered systems must provide 2.0 log (99%) Cryptosporidium removal. 3. Establishes combined filtered water turbidity standards of < 0.3 NTU in 95% of samples for conventional filters, alternative technologies performance established by the State. 4. Requires systems to develop a disinfection profile and benchmark.
Long Term 2 ESWTR (LT2ESWTR)	1. Requires systems to collect and analyze 24 monthly samples of surface water sources for Cryptosporidium and turbidity. 2. Monitoring results dictate if treatment of Cryptosporidium based upon the running annual average concentration from the collected samples. The average concentration indicates which "Bin" the source water is classified. 3. Treatment requires 2.0 or more log-removal of Cryptosporidium depending on the Bin and the treatment technology. 4. Established a toolbox of processes that can be used to meet the additional removal requirements.
Stage Two Disinfectants / Disinfection Byproduct Rule	1. Revises compliance based upon a locational running annual average (LRAA) at the highest concentration areas in the distribution system.

Rivers and Harbors Act

The USACE regulates the construction of any structure or work within navigable waters under Section 10 of the Rivers and Harbors Act. The USACE regulates the construction of wharves, breakwaters, and jetties; bank protection and stabilization projects; permanent mooring structures, vessels, and marinas; intake and outfall pipes; canals; boat ramps; aids to navigation; and other modifications affecting the course, location, condition, and capacity of navigable waters. The USACE jurisdiction under the Rivers and Harbors Act is limited to "navigable waters," or waters subject to the ebb and flow of the tide shoreward to the mean high-water mark that may be used for interstate or foreign commerce. The USACE must consider the following criteria when evaluating projects within navigable waters: (1) the public and private need for the project; (2) reasonable alternative locations and methods; and (3) the beneficial and detrimental effects on the public and private uses to which the area is suited. Rivers and Harbors Act permit requirements are applicable to the proposed intake.

The authority to grant permission for the alteration or use of a USACE Civil Works project falls under Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 USC § 408.

Flood Control Act of 1944

The proposed project is one recognized as an authorized purpose under the provisions of the Flood Control Act of 1944 (Public Law 78-534; 58 Stat. 887), which requires Department of the Army approval for withdraw water stored in a USACE reservoir and to enter into an agreement for this purpose.

Federal Land Policy and Management Act pf 1976 as Amended

The Federal Land Policy and Management Act governs the way in which the public lands administered by the BLM are managed. It changed the way that the federal government managed lands and the resources on those lands by providing the BLM more control over the acquisition and disposal of land and by creating a detailed plan that analyzed the environmental concerns of federal land. The act greatly increased the power of the BLM to acquire and dispose of federal land. It requires BLM to develop and update comprehensive Resource Management Plans (RMP) to determine the environmental value of that land and if it could be designated for public use for each designated BLM management unit (e.g., Miles City RMP). The plan would detail the environmental concerns of the land, requiring that three factors be upheld:

1. The land must be managed in a way that protects the integrity of the natural resources and cultural or historical artifacts found on the land.

2. Segments of the land that were deemed to be in danger or vital had to be protected.

3. Any sections of the land that had environmental significance be established

Federal Endangered Species Act

The purpose of the Endangered Species Act (ESA) is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and provide a program for the conservation of such species. The ESA directs all federal agencies to participate in conserving these species. Specifically, section 7(a)(1) of the ESA charges federal agencies to aid in the conservation of listed species, and section 7(a)(2) requires the agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat.

The provision under Section 7 that is most often associated with the Service and other Federal agencies is section 7(a)(2). It requires Federal agencies to consult with the Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats.

Federal agencies must consult with the USFWS any project or action they authorize, fund, or carry out that may affect a listed species or designated critical habitat. The consultation process can vary depending on the complexity of the project or action.

Critical Habitat

The ESA requires the federal government (i.e., USFWS) to designate critical habitat for any species it lists as endangered or threatened. Critical habitat is identified by the presence of physical or biological features, previously termed primary constituent elements, which are essential to the conservation of a Federally listed species upon which designated or proposed critical habitat for the species is based. Physical and biological features may include but are not limited to space for growth of individuals and populations; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the species' historic geographic and ecological distribution.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) of 1918 enacts the provisions of treaties between the United States, Great Britain, Mexico, Japan, and the Soviet Union and authorizes the U.S. Secretary of the Interior to protect and regulate the taking of migratory birds. This treaty makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed under the act, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations.

A migratory bird species is included on the list if it meets one or more of the following criteria:

- It occurs in the United States or U.S. territories as the result of natural biological or ecological processes and is currently, or was previously listed as, a species or part of a family protected by one of the four international treaties or their amendments.

- Revised taxonomy results in it being newly split from a species that was previously on the list, and the new species occurs in the United States or U.S. territories as the result of natural biological or ecological processes.

- New evidence exists for its natural occurrence in the United States or U.S. territories resulting from natural distributional changes and the species occurs in a protected family.

The Bald and Golden Eagle Protection Act of 1940

The Bald and Golden Eagle Protection Act, enacted in 1940, and amended several times since, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts (including feathers), nests, or eggs.

The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." Regulations further define "disturb" as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to

an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

In addition to immediate impacts, this definition also covers effects that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment. If it is determined the Project would result in take of bald eagles or golden eagle, an incidental take permit from the USFWS would be required.

Federal Permits, Consultations, and Authorizations

U.S. Army Corps of Engineers, Omaha District Permits

Federal Rivers and Harbors Act (Section 408 Permit)

The Fort Peck Dam and Reservoir are owned and operated by USACE. Even though the water right permit grants use of Missouri River Water, Dry Redwater Regional Water Authority (DRWA) still needs permit approval from the USACE to construct the raw water intake in the reservoir.

The 408 permit authorizes the applicant to make alterations to land flooded by Fort Peck Reservoir. Section 408 assures the proposed alterations will not impair or change the usefulness of the original Fort Peck Dam and Reservoir project.

The authority to grant permission for the alteration or use of a USACE Civil Works project falls under Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 USC § 408.

Federal Rivers and Harbors Act (Section 10 Permit)

A Section 10 permit is required to work in Fort Peck Reservoir since Fort Peck Dam impounds the Missouri River. The Missouri River is classified as a Navigable Waters of the United States and therefore falls under Section 10 of the Rivers and Harbors Act.

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Secretary of the Army, acting through the USACE, for the construction of any structure in or over any navigable water of the United States. Structures or work outside the limits defined for navigable waters of the United States require a Section 10 permit if the structure or work affects the course, location, or condition of the water body.

The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking.

It further includes, without limitation, any wharf, dolphin, weir, boom breakwater, jetty, groin, bank protection (e.g., riprap, revetment, bulkhead), mooring structures such as pilings, aerial or subaqueous power transmission lines, intake, or outfall pipes, permanently moored floating vessel, tunnel, artificial canal, boat ramp, aids to navigation, and any other permanent, or semi-permanent obstacle or obstruction.[2]

The intake construction for the WTP in Fort Peck Reservoir requires this permit.

Clean Water Act (Section 404 Permit)

A Section 404 permit is required for the discharge of dredged or fill material into water of the United States per Section 404 of the Clean Water Act. The project's proposed modifications to Fort Peck Reservoir will determine if this permit and/or a Section 10 permit is required for the intake.

The intake structure may be covered by USACE Nationwide Permit 58 – Utility Line Activities for Water and Other Substances. Effective Date: March 15, 2021; Expiration Date: March 14, 2026 (NWP Final Notice, 86 FR 2744). A 404 permit must be accompanied by Section 401 permit and processed by MDEQ. This permit application can be submitted jointly with state and local permits through the respective county's Conservation District. In the State of Montana, permits under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act are under the jurisdiction of the USACOE Regulatory Division.

Real Estate Outgrant

Use of government property under the stewardship of the USACE requires the issuance of a real estate outgrant by the USACE Real Estate Division in accordance with Army Regulation 405-80 *Management of Title and Granting Use of Real Property*.

A real estate outgrant "authorizes the right to use Army controlled real property. It is a written legal document that establishes the timeframe, consideration, conditions, and restrictions on the use of Army property." An outgrant is typically in the form of a lease, easement or license authorized by 16 USC Section 460d, 10 USC Section 267, 10 USC Section 2668, and 30 USC Section 185. All new non-recreational outgrant requests for use of USACE fee owned lands and water by the public, federally recognized Indian tribes, private sector, quasi-public entities, or individuals at civil works water resources projects operated and maintained by USACE must obtain a real estate outgrant.

As a USACE real estate decision and Section 408 decision are both needed, USACE will conduct these evaluations in a coordinated and concurrent manner to the maximum extent practicable. While evaluations will be conducted concurrently, final decision making requires that the Section 408 decision be rendered before or concurrent with, but not after, the USACE real estate decisions to ensure the real estate decision would not be detrimental to the federal project or harmful to the public. Implementing regulations and policies for the real estate decisions require the evaluation of proposed activities and their compatibility with the project needs and objectives.

Bureau of Land Management, Miles City District

- *Federal Land Management Policy Act (Permit to Construct)*
- *Federal Land Management Policy Act (Special Use Permit to Occupy Federal Lands)*

Natural Resource Conservation Service, West Region

- *Funding Agreement*

U.S. Fish and Wildlife Service

Endangered Species Act, Section 7 Consultation

The ESA directs all federal agencies to participate in conserving these species. Specifically, section 7(a)(1) of the ESA charges federal agencies to aid in the conservation of listed species, and section 7(a)(2) requires the agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat.

Western Area Power Administration

Authorization to Connect to Existing WAPA Infrastructure

Applicants must discuss the proposed project with a representative at the Western Area Power Administration (WAPA) office that controls the area in which the interconnection will occur. After initial contact with the WAPA representative, interconnection related information, including the application, will be provided.

Executive Orders

Federal agencies are guided by Presidential Executive Orders (EO) established to protect the environment. Relevant Executive Orders include:

Executive Order 11988

Under EO 11988, the Federal Emergency Management Agency (FEMA) is responsible for managing floodplain areas, which are defined as the lowland and relatively flat areas adjoining inland and coastal waters subject to a 1 percent or greater chance of flooding in any given year (the 100-year floodplain). FEMA requires that local governments covered by federal flood insurance pass and enforce a floodplain management ordinance that specifies minimum requirements for any construction within the 100-year floodplain.

Executive Order 11990

For projects that could affect wetlands, Federal agencies are required to demonstrate that no practicable alternative exists to avoid the wetland(s) and that all practicable avoidance, mitigation, and/or preservation measures have been incorporated into the project to minimize impacts on

wetlands. Federal agencies are also required to provide opportunity for early public review of any plans or proposals for new construction in wetlands.

Executive Order 11593

The Federal Government shall provide leadership in preserving, restoring, and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 USC 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

Executive Order 13007

By the authority vested in me as President by the Constitution and the laws of the United States in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Sec. 1. Accommodation of Sacred Sites.

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions,

(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and

(2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

Executive Order 13112

Federal agencies are required to prevent the introduction of invasive species and not authorize actions that could cause or promote the introduction or spread of invasive species. Federal agencies need to identify feasible and prudent measures to minimize the risk of harm caused by invasive species.

Executive Order 13175

Consultation and Coordination with Indian Tribal Governments

EO 13175 was issued by President William J. Clinton in 2000. It applies to rules, policies, and guidance with Tribal Implications (TI). Under the executive order, to the extent practicable and

permitted by law, the Agency cannot promulgate two types of rules unless we meet certain conditions as described below. The two types of rules are:

1) Rules with TI, substantial direct compliance costs on Indian tribal governments, and not required by statute, and

2) Rules with TI and that preempt tribal law.

TI is defined as having substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Executive Order 13186

Federal agencies are required to evaluate the effects of their actions on migratory birds, with emphasis on species of concern, and to minimize the take of migratory birds through development of procedures for evaluating such take and conservation efforts in coordination with the USFWS. This EO further implements the MBTA and requires coordination between the USFWS and Federal agencies.

State Regulations

Montana Water Quality Act

The Montana Water Quality Act provides guidelines to prevent, abate, and control pollution of Montana waters consistent with national standards. It prohibits the pollution of state waters and the placement of wastes in a location where they are likely to cause pollution of any state water.

Stream Access in Montana

Montana State Law allows Stream Access below the high-water mark. The law states that rivers and streams capable of recreational use may be so used by the public regardless of streambed owner-ship. It also states that certain activities require landowner permission.

Montana Environmental Policy Act

The purpose of the Montana Environmental Policy Act is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state.

No improvement shall be passed over, under, or through the walls, levees, improved channels or floodways, nor shall any excavation or construction be permitted within the limits of the project right-of-way, nor shall any change be made in any feature of the works without prior determination

by the District Engineer of the Department of the Army or his authorized representative that such improvement, excavation, construction, or alteration will not adversely affect the functioning of the protective facilities.

Montana Code Annotated

The Montana Code Annotated has multiple statutes that are relevant to noise disturbances. Many of them are in regard to noise from boating operations.

7-32-4302 (Control of Disturbances of the Peace)

Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals.

23-1-126 (Good Neighbor Policy – Public Recreational Lands)

The good neighbor policy of public land use, as applied to public recreational lands, seeks a goal of no impact upon adjoining private and public lands by preventing impact on those adjoining lands from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy.

23-2-521 (3) (a)

The exhaust of an internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise to 90 A-weighted decibels (dbA) or less when measured at a distance of 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats. The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.

23-2-523 (9)

The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526 in order to protect the public health and safety.

23-2-526 (3)

Except as provided in 23-2-523(9), for the purposes of 45-8-101 and 45-8-111, the operation of a motorboat or personal watercraft that emits noise in excess of 86 dbA when measured at a distance of 50 feet or emits exhaust noise in excess of 90 dbA measured 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005) is presumed to be a public nuisance and constitute disorderly conduct, except when otherwise lawfully operated under a motorboat racing permit issued by a political subdivision of the state.

State Permits

Montana Department of Environmental Quality

General Permit for Storm Water Discharge Associated with Construction Activities

Requires public signage, notice of intent form, Storm Water Pollution Prevention Plan form and certification, and Sage Grouse program consultation.

Montana Pollutant Discharge Elimination System (MPDES Permit)

Applies to all discharges to surface water or groundwater, including those related to industrial, municipal, and other commercial discharges. To prevent degradation of surface waters from pollutants such as sediment, waste materials, industrial chemicals or materials, heavy metals, and petroleum products. To protect existing water quality. To implement and monitor the effectiveness of Best Management Practices (erosion and sediment controls, etc.) used to reduce pollutant loads. In addition, several general discharge permits have been developed to streamline permitting of construction dewatering, sand and gravel operations, sewage lagoons, fish farms, animal feeding operations, disinfected water, suction dredging, and placer mining projects.

Water Quality Certification (401 Certification)

May be programmatically granted through USACE or an individual CWA Section 401 Water Quality Certification would be required through MDEQ.

Applies to all activities, public and private, that do not qualify for a USACE CWA 404 nationwide permit or general permit that results in discharge or placement of dredged or fill material into waters of the United States or work done in federally navigable rivers under the under Section 10 of the Rivers and Harbors Act (see Section E.) The COE will notify the applicant whether 401 Certification is required. Fees apply.

Short-Term Water Quality Standard for Turbidity (318 Authorization)

Any person, agency, or entity, both public and private, initiating construction activity that will cause short term or temporary violations of state surface water quality standards for turbidity. To provide a short-term water quality turbidity standard for construction activities, protect water quality and minimize sedimentation. Activities must be carried out in accordance with conditions prescribed by the Department of Environmental Quality.

This permit may not be required if the project will be boring under streams and wetlands.

Montana Department of Transportation

Occupancy / Encroachment

On a county-by-county basis. Use Utilities Permitting Administration System for Montana Department of Transportation's only permitting process applications.

State Historic Preservation Office

National Historic Preservation Act, Section 106 Consultation

File database search permit– on a county-by-county basis.

The Montana Department of Natural Resources and Conservation

Montana Land-Use License or Easement on Navigable Waters

Any entity proposing a project on lands below the low water mark of navigable waters must apply. The permit is to protect riparian areas and the navigable status of the water body, and to provide for the beneficial use of state lands for public and private purposes in a manner that will provide revenues without harming the long-term capability of the land or restricting the original commercial navigability.

Montana Water Use Act (Water Right Permit and Change Authorization)

Any person, agency, or governmental entity intending to acquire new or additional water rights or change an existing water right in the state must apply for a water right permit or change authorization or qualify under an exemption.

DRWA Water Rights

DRWA has a Provisional Permit No. 40E 30064997 from Montana Department of Natural Resources and Conservation (DNRC) to withdraw water from the Missouri River with the Point of Diversion in Fort Peck Reservoir to serve their system. The purpose of the permit is for Water Marketing with the Place of Use (Point of Sale) at the future Water Treatment Plant. The permit withdrawal rate is a maximum flow of 4,200 gallons per minute (over 6 million gallons per day) with a maximum annual withdrawal volume of 3,990 acre-feet (over 1 billion gallons per calendar year). DRWA's water right has a priority date of December 10, 2012, for Municipal & Domestic Water Supply. The deadline for the Project Completion Notice is December 31, 2025. This deadline will not be met due to lack of federal funding. The funding process DRWA has been participating in with the BOR and the State of Montana since 2005 is ongoing. Before December 31, 2025, DRWA must file with DNRC a Form 607 – Application for Extension of Time.

An update to the permit was issued on June 15, 2015, by the Water Rights Bureau Chief for the DNRC. This update informs DRWA that the June 4, 2015, Final Order issued in the Matter of Application for Beneficial Use Permit Application No. 40S 30066181 by Atlantis Water Solutions, LLC has implications for the type of evidence DRWA must submit when filing a Form 617 Project Completion Notice for their marketing permit. DRWA's Project Completion Notice, when submitted, will require DRWA to have firm contractual agreements for all water claimed to be perfected. DNRC will only consider the water right perfected up to the amount of the water described in each contractual agreement for water that was diverted. Water measurement reports must be included, as well.

Montana Water Use Act (Water Reservation)

Any governmental entity may apply to reserve water for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water. Any person or entity that needs water for a new or existing development within the boundaries of a conservation district that holds a water reservation may apply to use a portion of the conservation district's water reservation.

Montana Fish Wildlife & Parks

Montana Stream Protection Act (SPA 124 Permit)

Any agency or subdivision of state, county, or city government proposing a project that may affect the beds or banks of any stream in Montana. To protect and preserve fish and wildlife resources, and to maintain streams and rivers in their natural or existing state.

Local Regulations

Conservation Districts

Montana Natural Streambed and Land Protection Act (310 Permit)

The purpose of the 310 law is to keep rivers and streams in as natural or existing condition as possible, to minimize sedimentation and to recognize beneficial uses. Any individual or corporation proposing construction in a perennial stream must apply for a 310 permit through the local conservation district.

County Government Offices

Lakeshore Protection Act

Applies to all private individuals and government entities proposing to do work in or near a body of water within a county's jurisdictional area. Contact the County Government Office.

Dry-Redwater Water Authority

DRWA Regulations

The Display Energy Certificate Report requested clarification for pipe easements and the subsequent costs. In DRWA's Regulations, it is required that each user shall grant or convey to DRWA a temporary construction easement, a permanent pipeline easement, and right-of-way across any property owned by user at no cost to DRWA. This language is also stated in the DRWA User Agreement form that is signed by the landowners when purchasing a connection.

Local Permits

Local permits will be investigated and issued on a case-by-case basis. Summarized below are types of local permits that have already been considered.

Right of Way/ Utility Permit

Encroachment: on a county-by-county basis.

Electrical Companies

LYREC, McCone Electric, MDU: no permits required.

Western Area Power Administration

Crossing – stay 50' from electrical poles. Submit detailed map to start permit process.

Internet / Telephone Companies

MidRivers Communications and Nemont: no permit required.

Gas Companies

WBI Energy: Crossing permit.

MDU: No permit required.

BNSF Railroad

Pipeline Crossing and/or Longitudinal. Safety training and insurance is required.

Oil Companies

Continental Resources, Inc. and Oneok Rockies Midstream: Crossing permits.

Hiland Partners and Plains Pipeline, Inc.: No permit required.

Kinder Morgan: Encroachment permit.

Floodplain Administrators

A floodplain permit is on a county-by-county basis via the local floodplain administrator. It is used to promote the public health, safety, and general welfare of the residents and to minimize public and private losses due to flood conditions in Regulated Flood Hazard Areas. Review and permit appropriate uses, within the designated floodplain and floodway areas, which will not be seriously damaged or present a hazard to life, if flooded, thereby limiting the expenditure of public tax dollars for emergency operations and disaster relief. Anyone planning new development within a designated Special Flood Hazard Areas must apply. Check with local floodplain administrator to determine whether a Special Flood Hazard Areas has been designated for the stream of interest.