

STUDY OF PRIVATE FISH PONDS

Chasing trout in Montana's lakes and streams is an established tradition. While many anglers cast for wild rainbows, browns, and cutthroats on public rivers and streams, others ply quieter waters of private fish ponds for these species.

Montana has more than 2,000 licensed private fish ponds, which are licensed by the Montana Department of Fish, Wildlife and Parks.¹ Department fishery biologists and administrators license these ponds to ensure they do not become a conduit for invasive species or lead to habitat destruction.

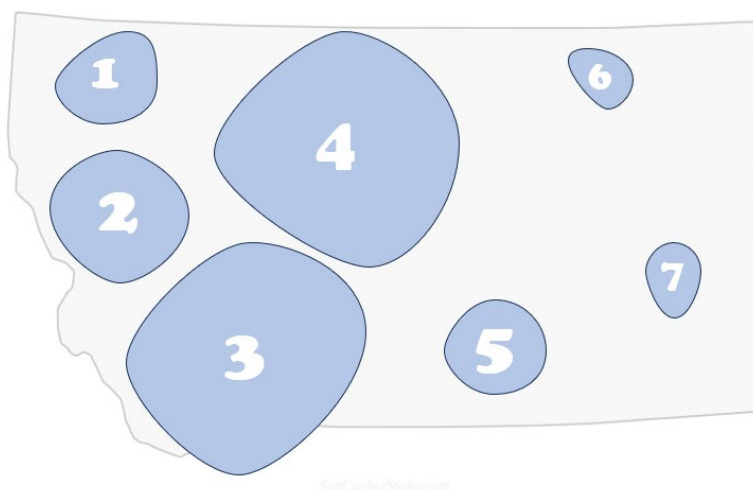
The program charges low fees but incurs much larger costs to administer the program.

Private landowners believe having a private fish pond is freedom of choice and an exercise of their private property rights, as well as a construction that provides water, wildlife habitat, fire protection, and even gravel.² Some private ponds are stockwater ponds licensed to hold authorized fish species.

Montana's program of licensing private fish ponds generally conforms to practices throughout the Northern Rockies region.³

The 2023 Legislature passed a study bill, House Bill 520,⁴ which the Legislative Council assigned to the Water Policy Interim Committee. The bill requires the committee to examine:

- private pond policies, including permitting and protocols;
- impacts of private ponds on aquatic resources as well as water quality and quantity related to drought, high water temperatures, evaporation, and options to mitigate these impacts;
- costs of regulating private ponds, including permitting, enforcement, fines, fees, and restitution; and
- options to provide in-state certified fish to stock private ponds.



Relative number of private fish ponds by FWP region

¹ In 2023, the FWP issued 23 decision notices for private fish ponds, according to the Environmental Quality Council's database of Montana Environmental Policy Act actions. In the first half of 2024, the agency had issued 26.

² Testimony of John Keller to WPIC, Jan. 16, 2024.

³ See table on p. 7, "Regional comparison of private fish pond regulations."

⁴ See Appendix A.

This report serves as a record of the committee's efforts to examine these issues.

LICENSING IN MONTANA

Montana law regulating private fish ponds dates to 1945. As noted in the state license application, "Regulations are intended to allow stocking private fish ponds with appropriate fish species while ensuring that public resources are not adversely affected by unwanted fish or fish diseases ..."

State law defines a private fish pond as a "body of water that does not exceed 500 surface acres."⁵ The pond may be created by "artificial means or from a tributary spring or stream."⁶

A person developing a pond shall:

- obtain a license from the Montana Department of Fish, Wildlife, and Parks;
- procure approved species of fish from a lawful source. Fish approved for stocking are typically limited to those present in the hydrologic basin;
- meet requirements to prevent fish from escaping into adjacent streams or lakes, such as screening inlets and outlets;
- verify through a professional fisheries consultant or with data and documentation that "game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters." Species of concern include arctic grayling, bull trout, cutthroat trout, and burbot;⁷ and
- allow a pond inspection as part of the environmental assessment process (under MEPA).



Committee members visiting private pond near Twin Bridges.

During the 10-year span of the license, the department may take "appropriate action" to address any threat posed by a pond to the state's fisheries resources, including the quarantine or destruction of fish, spawn, or eggs. FWP must approve fish pond license transfers. The department may also revoke a license.⁸

⁵ Section 87-4-603, MCA.

⁶ Ibid.

⁷ A complete list of native fish, game fish or special concern, and non-native species is available in the private pond licensing application at <https://fwp.mt.gov/buyandapply/fishinglicenses/commercial-fishing-and-floating>.

⁸ Section 87-4-603, MCA.

A commercial pond permit is required to sell fish or spawn. Additional annual sales reports are also required, including who buys or sells fish, fry, or eggs.

RISING ISSUES

Humans have maintained fish ponds for centuries, with the first recorded uses in the gardens and palaces of China, Korea, and Japan and the monasteries and castles of medieval Europe. While early users constructed these ponds to cultivate (and perhaps control) a food source, landowners and organizations today in Montana construct private fish ponds for recreation and enjoyment.

Private fish ponds pose potential challenges including:

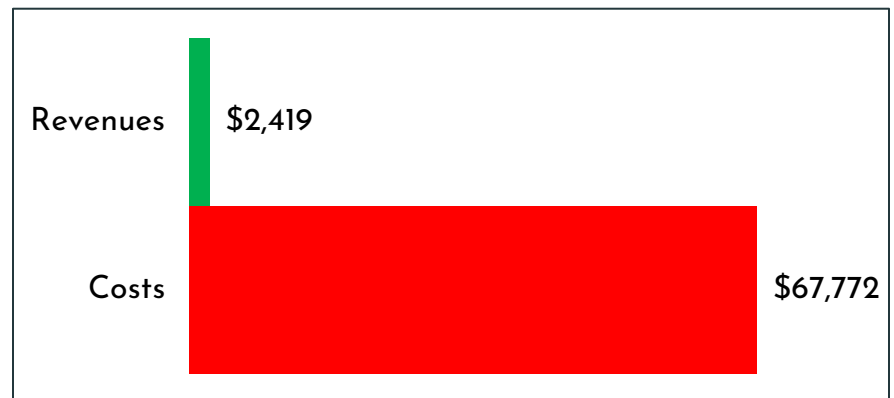
- cost of program administration;
- water rights;
- importation of fish species and illegal species; and
- limited availability of hatchery fish.

COSTS OF LICENSING

In 2005, the Legislature set the cost of a private pond license at \$10 and made it valid for 10 years.⁹

However, the revenue from fees does not meet the department's estimated costs. The department estimates the time and work its biologists and application administrators put in to inspect a site and process the paperwork costs the state nearly \$1,700 per new or renewed license.¹⁰

The department anticipates an average of 100 new pond permits and 140 permit renewals per year, although this number may vary from 81 to 486 a year, according to department calculations.¹¹ (This number also peaks every 10 years since the statutory fee was passed, with the next peak in 2026.) The department estimates license renewals account for about 70% of the department's fish pond licensing costs.



Estimated annual FWP revenues and costs of fish pond licensing program

The department denies about 0-3 permit applications in any given year.¹² For the few that are denied,

⁹ Ch. 376, L. 1989.

¹⁰ Montana Department of Fish, Wildlife, and Parks, *FWP Pond Permitting Cost Estimates* (2024). See Appendix B.

¹¹ Ibid.

¹² Ibid.

reasons include proximity to public waters, which may be susceptible during pond flooding, high risk of fish escape, or inappropriate species for the basin.

WATER RIGHTS CONCERNS

Water rights must be secured to obtain a private fish pond licensure. As the FWP pond application states:

“Many streams suffer from de-watering by consumptive water uses that have been legal in Montana for over 100 years. Additional water withdrawals can compound an already serious problem for wild fish and their habitat. Pond builders should be aware of and be sensitive to the fact that water withdrawals for new fish ponds may negatively impact downstream public resources, including wild fish. All private fish ponds consume water. Every effort should be made to eliminate or minimize the use of stream surface water or alluvial groundwater for ponds.”

A permittee must either:

- have an existing water right, or
- provide proof of a groundwater permit exception.

Water rights with a December 31, 1999, or later priority date must be changed to include a “fishery” or “fish and wildlife” purpose of use.

ILLEGAL IMPORTS

The department has the authority to certify and inspect all importations of fish or eggs.

Certain pathogens are designated as a substantial threat to the health of state fisheries, such as infectious hematopoietic necrosis virus, which affects the kidneys and spleen, causing high mortality in fry and juvenile fish; and viral hemorrhagic septicemia, which causes bleeding from various organs. Pathogens such as these may be carried by illegally or improperly imported fish species.

In 2021 for example, officials discovered goldfish in a pond near Big Sandy.¹³ While the source of the illegal importation could not be determined, the fish did pose a threat of escape to public waters. (Koi and goldfish, while not native species, are not illegal in Montana, but must be registered and kept contained if outdoors.) Goldfish may carry the koi herpes virus, a pathogen of high concern to fisheries biologists. And while the virus may not affect trout, the pathogen profoundly affects goldfish and carp and could have other environmental effects. This pond was chemically treated to kill all fish.

HATCHERIES' LIMITS

¹³ Montana Department of Fish, Wildlife, and Parks, *Examples of Illegal Pond Introductions or AIS Introductions* (2024). See Appendix C.

Approved fish species must come from an FWP-approved hatchery. The seven private hatcheries are mostly located in western Montana (Kalispell, Hamilton, Fortine, St. Ignatius, and Ronan), although trout and some warm-water species are raised at commercial hatcheries in Miles City and Lewistown.

The state of Montana operates 12 fish hatcheries. State law requires all fry, fingerlings, and fish “be used to stock the lakes and streams of the state and shall be for free and impartial distribution.” The U.S. Fish and Wildlife Service operates the Creston and Ennis national fish hatcheries within Montana.

Montana FWP has authorized certain out-of-state hatcheries to import stock to Montana. These hatcheries are in:

- Idaho (1)
- Wyoming (2)
- South Dakota (2)
- Kansas (1)

Montana FWP officials said self-reported data estimated that in 2023:¹⁴

- 200,000 fish from commercial, in-state hatcheries were released into 307 private ponds; and
- 58,000 fish from six out-of-state hatcheries were released into 86 private ponds.

However, officials and a hatchery operator said commercial fish ponds in and outside of Montana could find ready buyers for more fish.^{15,16}

A lack of readily available fish may tempt some to illegally import fish. For example, in 2022 FWP discovered rainbow trout and channel catfish were illegally imported from Oregon and stocked in seven unlicensed private ponds. While most of the fish did not survive, fish in ponds near Helena, Three Forks, and Bozeman did. These were tested for pathogens (none were detected), and the landowners were fined.

All FWP-approved hatcheries in and outside of Montana are subject to inspection. The department conforms to fish health standards in the American Fisheries Society Fish Health Section Blue Book.

FINDINGS, RECOMMENDATIONS AND LEGISLATION

In addition to hosting hearings at four committee meetings, WPIC members also visited licensed private ponds in Twin Bridges and Dillon and a former private pond on the Ruby River near Sheridan.



Location of Montana FWP hatcheries

¹⁴ Email from Melissa Watson, FWP, to WPIC members, July 1, 2024.

¹⁵ Ibid.

¹⁶ Testimony of Mark Meyers, Bitterroot Fish Hatchery, to WPIC, July 15, 2024.

As of July 15, 2024, the committee was set to consider legislation¹⁷ that would:

- add requirements for licensing, including a surety bond for commercial ponds, an annual transactions report, proof of water right, and an increased application fee;
- authorize FWP to adopt related administrative rules; and
- reduce the term of a license to 5 years.

¹⁷ See Appendix D.

REGIONAL COMPARISON OF PRIVATE FISH POND REGULATIONS

State	Authority	Authorization	Fee and notes
Idaho	Idaho Fish and Game	Private fish pond permits	<p>No fee; \$23.50 to collect fish and transfer to pond</p> <p>Inlets/outlets must be screened</p> <p>Only approved species from approved hatcheries</p> <p>Records must be kept of fish stocking, source</p> <p>At least 21 state-approved hatcheries</p> <p>Pond may not be constructed in or across natural stream bed, lake or other watercourse containing wild fish, except if water flow and volume of wildlife are not significant part of the wildlife resource of the state</p> <p>Many areas only allow stocking of sterilized rainbow trout or native cutthroat trout</p>
Wyoming	Wyoming Game and Fish Department	Private fish stocking authorization	<p>Free authorization</p> <p>Cannot be significant threat to native species or conflict with management goals from the drainage</p> <p>Eight department-approved hatcheries</p> <p>Water rights information maintained by State Engineers Office</p> <p>Authorized species include tiger trout</p>
Alberta	Alberta Livestock Department	Fish culture license	<p>Fees: recreational pond is \$100/5 years; commercial pond is \$500/5 years</p> <p>Water body must be isolated from other water to the point that stocking fish will not adversely affect the environment or native fish, or fish barriers are in place</p> <p>Nine province-approved fingerling fish suppliers</p> <p>Cultured fish eligible for licensing include tilapia, tiger trout, American eel, Pacific white shrimp, freshwater prawn</p>

ACTIVE PRIVATE FISH POND LICENSES BY FWP REGION

Region 1	217
Region 2	302
Region 3	530
Region 4	518
Region 5	251
Region 6	110
Region 7	94
	2,022



AN ACT REQUIRING A STUDY ON THE EFFECTS OF PRIVATE PONDS ON THE STATE, PERMITTING, WATER RIGHTS, AND OPTIONS TO MITIGATE NEGATIVE IMPACTS, INCLUDING INVASIVE SPECIES AND THREATS TO WILD FISH AND AQUATIC RESOURCES; ASSIGNING THE STUDY TO THE WATER POLICY INTERIM COMMITTEE; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana's world-class fisheries are rooted in a philosophy of wild fish management; and

WHEREAS, high-quality fisheries that rely on self-sustaining wild fish and high-quality aquatic habitat may be negatively impacted by private ponds; and

WHEREAS, often touted to increase property values, more than 10,000 pond permits have been issued—most of which remain active; and

WHEREAS, the department of fish, wildlife, and parks issues about 200 pond permits annually to stock fish, and the permit review is complex and burdensome leading to inconsistent administration statewide; and

WHEREAS, the department cost of managing private pond issues far outweighs the cost of the permit—\$10 for a 10-year permit or \$10 annually for a commercial production pond permit; and

WHEREAS, private ponds can provide optimal environments for invasive species and pathogen introduction and propagation; and

WHEREAS, the number of permitted in-state commercial hatcheries providing fish for private pond stocking declined over the last decade, and four of the remaining five commercial hatcheries are on limited quarantine due to invasive species or pathogen detection; and

WHEREAS, applications for importing stocked fish have increased fivefold because of limited in-state sources, increasing the risk of introducing nontarget species that could damage aquatic resources; and

WHEREAS, stocking private ponds illegally from nonpermitted out-of-state commercial hatcheries is

also on the rise due in part to easy access to fish purchased online and from other sources; and

WHEREAS, frequent and severe drought years in southwest Montana harm agriculture and fisheries, yet pond development continues, bringing with it increased water temperature and water loss from evaporation; and

WHEREAS, it is critical to fully understand how the development of ponds may impact constitutionally protected water rights; and

WHEREAS, the prior appropriation doctrine and Montana Water Use Act must be considered when evaluating the cumulative impacts of ponds and the associated consumption of water; and

WHEREAS, the impact of ponds on existing water rights is an important element of determining the level and type of permitting that is necessary for ponds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Study of private ponds. (1) The water policy interim committee, provided for in 5-5-231, shall study issues related to private ponds as defined in 87-4-603.

- (2) The study must examine:
 - (a) private pond policies, including permitting and protocols;
 - (b) impacts of private ponds on aquatic resources as well as water quality and quantity related to drought, high water temperatures, and evaporation and options to mitigate these impacts;
 - (c) costs of regulating private ponds, including for permitting, enforcement, fines, fees, and restitution; and
 - (d) options to provide in-state certified fish to stock private ponds.
- (3) The water policy interim committee shall complete the study by September 15, 2024, and report its findings and recommendations, including legislation, to the 69th legislature.

Section 2. Appropriation. There is appropriated \$50,000 from the general fund to the legislative services division for the biennium beginning July 1, 2023, to pay for costs associated with the study required by [section 1].

Section 3. Contingent voidness. (1) Pursuant to Joint Rule 40-65, if [this act] does not include an appropriation prior to being transmitted to the governor, then [this act] is void.

(2) If the appropriation in [section 2] is vetoed, then [this act] is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [Section 1] terminates December 31, 2024.

- END -

FWP Pond Permitting Cost Estimates

Pond stocking permits are issued by each region and administered between the regions and HQ. Commercial permits (i.e., facilities that sell live fish) are administered from HQ. This table estimates average annual cost for FWP to administer private pond stocking and commercial permits. Legislature initiated 10-year pond stocking permits in 2005 (\$10 for a new pond permit and \$10 to renew every 10 years), so private pond permit load is substantially higher every 10th year (e.g., permit load is expected to be much higher than average in 2026). Number of new or renewed pond permits statewide ranges from 81 to 486 annually.

	R1	R2	R3	R4	R5	R6	R7	Commercial	Avg/Region
Avg new / yr	12	13	35	17	11	3	5	1	12
Avg renew / yr	20	21	35	33	16	10	2	9	18
Avg total permits / yr	32	34	70	50	27	13	7	9	30
Avg time / inspection (hrs)	1	3.5	1	2	2	1.5	2	6	2
Avg travel / inspection (hrs)	2	2	2.5	3	2	1.5	1.5	2	2
Avg time / renewal inspection (hrs)	1	1.5	1.25	1.5	1.5	0.5	0.5	8	2
Avg admin time / application (hrs)	1	2	1	1	1	1	1	2	1
Admin Salary / hr.	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00
Biologist Salary / hr.	\$37.00	\$37.00	\$37.00	\$37.00	\$37.00	\$37.00	\$37.00	\$37.00	\$37.00

Pond Permits	R1	R2	R3	R4	R5	R6	R7	HQ	Avg	Total	Next 10 years	Next 10 years
FWP - New App Costs	\$2,097	\$2,184	\$6,099	\$2,967	\$1,923	\$531	\$879	\$4,135	\$2,602	\$20,815	\$208,192.90	\$238,669.80
FWP - Renewal Costs	\$1,417	\$1,487	\$2,473	\$2,332	\$1,135	\$713	\$178	\$37,220	\$5,869	\$46,955	\$469,585.60	\$538,327.30
FWP – Cost to Administer	\$3,514	\$3,672	\$8,572	\$5,299	\$3,059	\$1,244	\$1,057	\$41,355	\$8,472	\$67,772	\$677,772.00	\$776,930.60
Permit Revenue	\$320	\$335	\$700	\$500	\$270	\$130	\$74	\$90	\$302	\$2,419	\$24,190.00	\$27,731.12

Total cost / year to administer pond permits = \$67,772 and total annual revenue from permitting fees = \$2,419.
Estimate \$1,700/ permit to cover costs to administer program (\$67,772 / 240 permits per year = \$1,694.30).

Few private pond stocking permits are outright denied each year (average 0 – 3 denials statewide). Typical denied applications are due to proximity to public waters (e.g., high risk of pond flooding), high risk of fish escapement, or species inappropriate for the basin (e.g., stocking non-native species in a basin with high native fish conservation value). Most pond owners are cooperative to incorporate measures to make a pond permittable.

Many permit applications are modified to be permitted. Typical modifications include type of fish stocked, fish screening, or other mechanisms to reduce escapement risk. Number of modified applications generally ranges from 5 – 25 per year statewide.

Examples of Illegal Pond Introductions or AIS Introductions

Each year several illegal pond introductions or AIS introductions are detected or reported to FWP. The table below describes examples of scenarios of illegal pond private pond introductions or AIS detections over the past few years.

Unauthorized Species	FWP Region	Description	Mitigation Action	FWP Expenses	Total Estimated Cost to FWP
New Zealand Mudsnaill	R2	In 2021, New Zealand mudsnaill (NZMS) were introduced to the Bitterroot Fish Hatchery (private commercial facility) through a contaminated load of fish. NZMS were detected during a routine annual AIS survey at the facility.	FWP staff worked with the owner to clean and secure the facility from future invasions. The facility was decontaminated, ponds were dried out, and the facility was retrofitted to improve security against future contamination. Post clean-up inspections have found no new detections of NZMS. FWP also did follow-up monitoring at 137 private ponds that were stocked from the facility.	<ul style="list-style-type: none"> Administrative costs: 40 hours FWP assessment and planning (\$45/hr) = \$1,800 FWP clean-up: 3 people, 2 days @ \$35/hr = \$1,680. Materials (e.g., diesel for pressure sprayers, propane, brushes, etc.) + travel = \$3,500. Inspection of private ponds stocked from hatchery: 137 ponds @ \$500/pond = \$68,500 	\$75,480
Smallmouth Bass	R2	Smallmouth bass have been detected in one 5-acre pond near Corvallis and other ponds in proximity are suspected to have bass. Some are known to have largemouth bass (an authorized species in some ponds).	Action pending. Potential actions include further investigation of known population, assessment of other ponds to determine presence/absence of smallmouth bass, determine risk to state waters and wild fish populations, assess cost/benefit of fish removal from ponds.	<ul style="list-style-type: none"> Administrative costs: 20 hours FWP assessment and planning @ \$45/hr = \$900 	\$900
Koi/Goldfish	R2	In 2021 koi and goldfish were discovered in an unreported koi pond within the 100-year floodplain of the Bitterroot River. Koi ponds are lightly regulated and stocking of koi ponds that meet criteria are self-reported after the fact.	Due to time constraints and escapement risk to the Bitterroot River, FWP covered costs of chemical treatment to remove koi and goldfish from the pond. The pond owner offered restitution, but state accounting procedures make this difficult without prosecution.	<ul style="list-style-type: none"> Administrative costs: 40 hours FWP assessment and planning (\$45/hr) = \$1,800 Contract to administer chemical treatment 40 hrs @ \$50/hr = \$2,000 	\$3,800

APPENDIX C

Unauthorized Species	FWP Region	Description	Mitigation Action	FWP Expenses	Total Estimated Cost to FWP
Goldfish	R6	In 2021 goldfish were discovered in a stock pond near Big Sandy. The pond posed a high risk of fish escapement into public waters.	FWP determined that fish removal was warranted due to risk of escapement to public waters and source of illegal introduction was not determined. Water levels were drawn down and FWP chemically treated the remaining pool to kill all fish present.	<ul style="list-style-type: none"> • Administrative costs: 65 hours FWP assessment, planning, and MEPA @\$35/hr = \$2,275 • FWP personnel services (manager, biologist, technician, and other time): \$14,195 • FWP operations and equipment: \$8,148 	\$24,618
Brown Trout	R3	In the fall of 2023, FWP received a report of brook trout and brown trout stocked in a pond near the Valley Garden FAS. Initial investigation indicated fish were present in the unpermitted pond.	Pond owner was not aware that trout were in the pond and not sure how they got there. FWP sampling confirmed brown trout presence in the pond. Since the fish source was unknown FWP determined pathogen and AIS testing was warranted. AIS sampling did not detect any invasive species. The pond froze before pathogen testing could be completed, but samples are expected to be collected in spring. Enforcement issued a written warning for illegally stocking the pond on December 29, 2023.	<ul style="list-style-type: none"> • Administrative costs: 20 hours FWP assessment (\$35/hr) + mileage (0.37/mile) = \$800 • Anticipated 2024 fish health costs: \$1900 	\$2,700

APPENDIX C

Unauthorized Species	FWP Region	Description	Mitigation Action	FWP Expenses	Total Estimated Cost to FWP
Rainbow Trout and Channel Catfish	R1, R2, R3, R4, R5	FWP investigation discovered illegal sale and shipments of rainbow trout and channel catfish from a commercial hatchery in Oregon for stocking in seven private ponds in Montana. Fish for four ponds fish died in shipment or died shortly after stocking due to ponds drying out. Viable rainbow trout were found in one pond near Helena, one near Three Forks, and one near Bozeman. None of the seven ponds were permitted for the species stocked. Due to presence of viable populations and proximity to public waters FWP determined additional testing of ponds near Helena, Three Forks, and Bozeman was warranted. Restitution to cover additional costs for pathogen and AIS testing was negotiated between FWP, Dept of Justice, and the landowners.	Disease testing and AIS sampling occurred at each of the three ponds during spring and summer, 2022. As part of the settlement agreement, the landowners paid a \$500 fine, paid restitution of \$2,500 for each pond for pathogen and AIS testing, and agreed to allow FWP access for pathogen and AIS testing. As part of the settlement, pond owners agreed to pay the costs for any additional mitigation should pathogens or AIS be found (e.g., costs associated with large-scale fish removal, dewatering or pumping a pond dry, other measures). No pathogens or AIS were discovered. After the ponds were determined AIS and pathogen free, owners of two of the ponds submitted applications for stocking and received permits to legally stock rainbow trout from a lawful source.	Expenses for pathogen and AIS testing were largely covered through the settlement agreement. Estimated \$2,500 / pond x 3 ponds = \$7,500. Other FWP costs (e.g., travel, admin, preparation and planning): \$45/hr x 20 hr = \$900	\$8,400

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MAY 25, 2023

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