



SPA 124 PERMIT DECISION NOTICE

Lion Creek Culvert Replacement
DN#-FWP-DN-FSH-R1-23-006

10/24/2023

ACTION

Decision Notice (DN). Montana Fish, Wildlife & Parks (FWP) shall prepare a DN for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment or Draft EA prepared for the proposed action as final, and approves Alternative 2, the proposed action.

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

According to the applicable requirements of the Montana Environmental Policy Act or MEPA and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose any potential impacts of the proposed action on the affected human environment. The level of environmental review will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors. *Title 75, Chapter 1, Parts 1 through 3, Montana Code Annotated (MCA)*. Based on these factors, FWP determined a Checklist EA (Draft EA) constitutes the appropriate level of review for the proposed action. Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA.

PUBLIC PARTICIPATION PROCESS

Under usual circumstances, FWP makes the Draft EA available for public review and comment. However, in this circumstance, MEPA's required public process for projects of this nature is impacted by a competing statutory deadline. MEPA requires FWP to comply with its terms *"to the fullest extent possible."* To fulfill the stated policy of MEPA, the agency shall conform to the applicable rules prior to reaching a final decision on proposed actions covered by MEPA. *ARM 12.2.428, Policy Statement Concerning MEPA Rules*. More specifically, § 87-5-504, *MCA*, states:

"Within 30 days after the receipt of such plans [for a project subject to SPA 124 permitting], the department shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the department notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which

will eliminate or diminish such adverse effect."

Effectively, within 30 days after receipt of an application [for an SPA 124 Permit], FWP must make a final decision on the proposed action/project. Within the applicable 30-day timeframe, the MEPA practitioner or author of the Draft EA must conduct a rigorous process, making it difficult or impossible for FWP to accommodate a public comment period for the Draft EA within the required 30-day time-period. § 87-5-504, MCA.

Therefore, for the purposes of achieving compliance with MEPA, *"to the fullest extent possible,"* FWP prepares a Draft EA for file, sans public comment, and issues a DN identifying the agency decision, reasons for the decision, and any special conditions surrounding the decision or its implementation. Conditions applicable to the approved action, including recommendations or alternative plans to eliminate or diminish any adverse effects, are contained in the approved SPA 124 Permit (see attached).

DESCRIPTION OF PROPOSED ACTION

The proposed action will entail removing an existing 18" 80-foot culvert which is undersized and failing and replace with 24" 80-foot culvert. About 10 linear feet of bank will be impacted upstream of the culvert and 20 linear feet on the downstream side. The work should be conducted when the stream channel of Lion Creek is dry. The disturbed area along the stream should be reseeded with native grasses this fall and reseeded/planted with native grasses or vegetation in spring if needed. This condition will reduce sediment delivery to stream and minimize bank disturbance during wet periods which will in turn reduce potential impacts to aquatic organism and habitats.

PURPOSE AND NEED

The purpose of this project is to replace an existing undersized, deteriorating galvanized culvert on Lion Creek (intermittent non-fish bearing stream) NFSR 152 crossing with a new properly sized culvert that is sized for 100-year flood events. The existing culvert is 18" and 80 feet long and will be replaced with a 24" culvert that is 80 feet long. The undersized culvert is at risk of failing from flooding or becoming plugged with debris which could lead to excess sedimentation to the stream and even road failure. The NFSR 152 is the main access road into Big Beaver Creek and Little Beaver Creek watersheds and is heavily used by the public.

ALTERNATIVES ANALYZED

Alternative 1: No Action

In addition to the proposed action, and as required by MEPA, FWP analyzes the "No-Action" alternative in the EA. Under the No-Action alternative, the proposed action would not occur. Therefore, no additional impacts to the human environment would occur. The No Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the No Action alternative, the culvert on Lion Creek at the NFSR 152 will continue to deteriorate and remain undersized which increase chances of flooding, becoming plugged with debris and could lead to road failure at the site and increased sedimentation to downstream stream reaches.

Alternative 2: Proposed Action

Under the Proposed Action, the deteriorating and undersized culvert will be upgraded with a properly sized culvert to accommodate 100-year flood events which will reduce the likelihood of flooding, road failure and sediment delivery to downstream stream reaches.

DECISION

Based on the environmental review provided in the Draft EA, and, to the greatest extent possible, in accordance with all applicable laws, rules, regulations, and policies, FWP determined the proposed action (Alternative 2), will not have significant adverse impacts on the human environment associated with the proposed action and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an environmental impact statement or EIS is unnecessary.

FWP hereby adopts the Draft EA as final and approves Alternative 2, the Proposed Action.

Sincerely,

A handwritten signature in cursive script that reads "Lee Anderson".

Lee Anderson
Region 1 Supervisor
Montana Fish, Wildlife & Parks