



SPA 124 PERMIT DECISION NOTICE
[USFS Unauthorized Jetty Removal]
FWP-DN-FSH-R1-23-014

[11/30/2023]

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

During summer/fall of 2023, unauthorized public individual(s) used bank material (rock, cobble, soil, sand) to construct two jetties out into the Kootenai River between the Yaak River confluence and the boat ramp at the Yaak River campground. At the downstream jetty, a makeshift retaining wall and flat perch were constructed on the bank. A barrow pit is also present where the jetty and perch source material was removed from.

The USFS, Three Rivers Ranger District is proposing to restore the site to its previous condition by removing the jetties and repairing the bank and barrow pit to avoid erosion because of the unnatural flow path over/around the jetties as well as the expected erosion and collapse of the constructed perch. The proposed project would require a small excavator, commence once all authorizations have been granted, and take less than one day to complete. The USFS would coordinate with Libby Dam operators to ensure dam discharge (and thus Kootenai River flow) is satisfactory during the project.

PURPOSE AND NEED

The purpose of the proposed project is to return the disturbed area to its previous condition by removing the unauthorized jetties, perch, and barrow pit as soon as practical. Site restoration will prevent erosion and further stream and streambank disturbance.

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 unauthorized jetties, barrow pit, and perch would remain, creating risks to further destabilization of the stream bed and bank and posing a potential hazard to boaters.

Alternative 2: Proposed Action

Under the Proposed Action, the unauthorized jetties, barrow pit, and perch would be removed and the site returned to its previous condition, thus stabilizing the stream bed and bank.

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 black ink that reads "Lee Anderson". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Lee Anderson
Region 1 Supervisor
Montana Fish, Wildlife & Parks