



SPA 124 PERMIT DECISION NOTICE

Butte-Silver Bow Twin Lakes Creek Diversion Cleanout – Twin Lakes Creek; Anaconda, MT
12/20/2023

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

Twin Lakes Diversion, located at river mile 2.2, impounds a small amount of water on Twin Lakes Creek to divert water to Silver Lake. The impoundment fills with sediment over time and periodically needs to be drained and cleaned out. The city and county government of Butte-Silver Bow (BSB) owns and operates the diversion and completes this routine maintenance. BSB is proposing to drain the reservoir and clean out the sediments in the spring or fall of 2024. The entire procedure is expected to take less than one week.

PURPOSE AND NEED

This project intends to clean out sediments accumulated in the Twin Lakes Creek Diversion impoundment. Sediments accumulated in the pond impact the ability for BSB to operate the facility.

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 FWP would not issue an SPA 124 permit and the county would not be permitted to clean out sediments impounded at the Twin Lakes Creek Diversion. Ultimately this would impact their ability to operate the Silver Lake Water System.

Alternative 2: Proposed Action

Under the Proposed Action, FWP would issue a SPA 124 permit and the project would be completed following conditions provided in the SPA 124 permit and sediments impounded would be removed. The Special Conditions for this permit include:

1. There shall be no sediments mobilized downstream, and no noticeable increase in turbidity in the stream downstream of the project. This is critical because it will impact trout that spawn downstream of the project site.
2. Fill from the reservoir shall be removed from the immediate floodplain and discharged to a location where they will not interact with the stream.
3. No work on this project in the stream channel or reservoir shall be completed between 5/15/2024 and 7/15/2024.
4. The reservoir shall be re-filled slowly to avoid mobilizing remaining sediments out of the reservoir downstream.

5. The stream downstream of the diversion shall always remain wetted, particularly while the bypass is filling. This may be accomplished with a pump or siphon.

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 and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an environmental impact statement or EIS is unnecessary. The project will allow Butte-Silver Bow to clean out sediments from the Twin Lakes Creek Diversion and continue to operate their water system.

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

Sincerely,



Randy Arnold
Regional Supervisor
Montana Fish, Wildlife & Parks