



SPA 124 PERMIT DECISION NOTICE

Hawkes Ditch Headgate and Fish Screen Replacement SPA 124 – Bitterroot National Forest; Darby, MT

8/15/2023

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 Bitterroot National Forest has applied for a Montana Stream Protection Act 124 permit to replace an existing headgate and passive fish screen on the Hawkes Ditch off of Chicken Creek, a tributary to the upper West Fork of the Bitterroot River above Painted Rocks Reservoir.

The project consists of:

- (1) removing the existing headgate along with its passive screen and 12-inch diameter culvert; replacing it with a new steel modular headgate structure with a rectangular stainless-steel sliding gate.
- (2) excavating and installing a corrugated water screen in the Hawkes Ditch at a site about 40 feet downstream from the point of diversion.
- (3) burying a 12-inch diameter PVC “fish return” pipe between the corrugated water screen and Chicken Creek.
- (4) replacing the 12-inch diameter HDPE culvert that is currently in the ditch with a 24-inch diameter by 18-inch-high corrugated metal pipe arch.

The footprint of the excavation needed to install the corrugated water screen is estimated at 10’ wide x 10’ long. This disturbance would be isolated to the ditch itself and would not affect Chicken Creek. Replacing the headgate at the point of diversion and burying the fish return pipe would disturb approximately ten lineal feet of Chicken Creek’s south bank. This project is expected to take 2-4 days to complete.

PURPOSE AND NEED

The purpose of this project is to replace an existing headgate and passive fish screen on the Hawkes Ditch off of Chicken Creek, a tributary to the upper West Fork of the Bitterroot River above Painted Rocks Reservoir. Monitoring by the Forest Service has found that the existing passive screen mounted to the front of the headgate is only partially effective at keeping fish from being entrained into the ditch. Chicken Creek contains low densities of bull trout, a species listed as “threatened” under the Federal Endangered Species Act. Bull trout have been found in the Hawkes Ditch on multiple occasions, which is what precipitated the need to improve the existing headgate and passive fish screen to reduce entrainment risk.

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 Hawkes Ditch headgate and fish screen would not be upgraded. Fish, including federally listed bull trout, would continue to be entrained into the Hawkes ditch at low levels.

Alternative 2: Proposed Action

Under the Proposed Action alternative, FWP will issue an SPA 124 permit to the Bitterroot National Forest for the replacement of the Hawkes Ditch headgate and fish screen.

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, appearing to read "Randy Arnold", written in a cursive style.

Randy Arnold
Regional Supervisor
Montana Fish, Wildlife & Parks