



SPA 124 PERMIT DECISION NOTICE

Daly Ditches - Republican Diversion Maintenance; Bitterroot River, Hamilton, MT

8/3/2023

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

Daly Ditches has applied for a Montana Stream Protection Act 124 permit for annual maintenance needs at the Republican Diversion located on the Bitterroot River south of Hamilton, MT. Maintenance activities include minor excavation of sand and gravel that accumulates in front of the headgates as well as removal of trees and other large woody debris that get stranded on top of the diversion. This work would be performed by a tracked excavator operating in the river on the diversion. Maintenance activities would occur annually after high water in the spring and would take approximately one day to complete. The maintenance permit would be good for a period of 10 years.

PURPOSE AND NEED

Daly Ditches has irrigation water rights out of the Bitterroot River at the Republican Diversion. In order to divert legally allotted water for downstream agricultural users, as well as maintain public safety for recreational users utilizing the Bitterroot River at the diversion site, Daly Ditches needs to periodically perform maintenance. Maintenance work consists of minor excavation of sand and gravel deposited annually in front of the headgates during spring runoff, as well as the removal of downed trees and other large woody material stranded on top of the diversion.

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 diversion maintenance would not take place. This could hinder the ability of Daly Ditches Irrigation District to divert water for irrigation customers as well as cause an increased risk to recreational floaters encountering trees blocking the diversion boat pass.

Alternative 2: Proposed Action

Under the Proposed Action, FWP will issue a SPA 124 permit for Daly Ditches Irrigation District to perform annual maintenance activities at the Republican Diversion.

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 blue ink, appearing to read "Randy Arnold". The signature is fluid and cursive, with the first name "Randy" and last name "Arnold" clearly distinguishable.

Randy Arnold
Regional Supervisor
Montana Fish, Wildlife & Parks