



SPA 124 PERMIT DECISION NOTICE

DNRC East Fork Rock Creek Dam Rehabilitation- SPA 124– Rock Creek; Philipsburg, MT

11/2/2023

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

In 2020, DOWL completed a feasibility study of East Fork Rock Creek Dam to evaluate the existing conditions and to develop alternatives to bring this high hazard dam into compliance with Dam Safety Standards. This study identified three rehabilitation needs: 1. The existing spillway is undersized and in poor condition, 2. There is significant seepage through the foundation under the dam and 3. The outlet works are in relatively good condition but are over 80 years old. DNRC is proposing to mitigate these issues by: 1. reconstructing a new spillway, 2. constructing various seepage control features on the downstream side of the dam and 3. rehabilitating the existing outlet works by refurbishing existing valves and repairing/replacing other components of the outlet works system.

PURPOSE AND NEED

East Fork Rock Creek Dam is a high hazard dam and thus dam safety is important. East Fork Rock Creek Dam also delivers water to several irrigators in the Flint Creek valley that rely on this water to raise a hay crop and support their cattle operations. East Fork Rock Creek Reservoir is also Critical Habitat under the Endangered Species Act and provides important habitat for a very strong adfluvial Bull Trout population and high quality recreational fishery for westslope cutthroat trout. This project aims to solidify long term stability of East Fork Rock Creek Dam which is foundational to providing the above benefits.

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 dam will continue to operate in an unsafe condition.

Alternative 2: Proposed Action

Under the Proposed Action, FWP would issue an SPA 124 permit and the project would be completed as proposed following the General Conditions provided in the SPA 124 permit. There are no Special Conditions affecting construction of the project.

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 address long term stability of a high hazard dam and ensure the stability of East Fork Reservoir. East Fork Reservoir is an important body of water as it maintains habitat for a strong bull trout population and important recreational westslope cutthroat trout fishery.

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

Sincerely,

Randy Arnold
Regional Supervisor
Montana Fish, Wildlife & Parks