



SPA 124 PERMIT DECISION NOTICE

Powell County Bank Stabilization Old Mullan Trail SPA 124– Little Blackfoot River; Elliston, MT

9/1/2023

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 Little Blackfoot River has been migrating towards the Old Mullan Trail road prism since at least 2011. The river began eroding into the road in the spring of 2022. Powell County dumped trash concrete onto the bank to halt erosion into the road. This action was discovered to be a SPA 124 permit violation in summer of 2022 by FWP staff. The current proposed project intends to address outstanding permit violations and provide a long-term solution to the Little Blackfoot River eroding into the road. The proposed project calls for approximately 80 linear feet of MDT Class III rip-rap to be placed 3' thick (498 CY) to be placed along the Little Blackfoot River.

PURPOSE AND NEED

The purpose of this project is to inhibit the Little Blackfoot River from eroding into the Old Mullan Trail County Road and to correct actions considered to be violations under the Stream Protection Act of Montana. The Little Blackfoot River began migrating towards the road prism in 2011 and by Spring of 2022 was eroding into the road. The county is proposing to remove trash concrete placed in violation of the Stream Protection Act in 2022 and replace it with rip-rap to keep the river from continuing to migrate into the road.

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 bank would likely continue to erode into the Old Mullan Trail road.

Alternative 2: Proposed Action

Under the Proposed Action, FWP would issue an SPA 124 permit and the project would be completed as proposed following conditions provided in the SPA 124 permit.

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 with the following special conditions:

1. Any instream work and rip-rap placement should be completed 7/15 to 10/15 or 3/15 to 5/15. Considering the nature of the violation and length of time it has taken to address, FWP prefers the project be completed before 10/15/2023.
2. All trash concrete put in the river and on the banks as part of initial bank stabilization efforts by the county should be removed and disposed off-site before permitted rip-rap is placed. Excavators can enter the river to get large concrete pieces from the bottom of the river but should keep impacts low by minimizing trips into the river and avoiding vegetation removal.
3. Rip-rap should be limited to boundary discussed at site inspection. Powell County and Great West will coordinate with FWP to mark and stake the project site so that boundaries are clearly marked before construction begins.
4. Great West shall provide on-site project oversight if County road crews or a contractor without extensive streambank experience completes the work.
5. FWP will be notified once the project is completed so a post construction inspection can be completed.

Therefore, preparation of an environmental impact statement or EIS is unnecessary. The project would address outstanding permit violations and provide a long-term solution to the Little Blackfoot River eroding into the road. The proposed project calls for approximately 80 linear feet of MDT Class III rip-rap to be placed 3' thick (498 CY) to be placed along the Little Blackfoot River.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Arnold', is written over the printed name.

Randy Arnold
Regional Supervisor
Montana Fish, Wildlife & Parks