



1400 South 19<sup>th</sup> Avenue  
Bozeman MT 59718-5496

## **SPA 124 PERMIT DECISION NOTICE**

### **East Gallatin (Rocky Creek Road) Bank Stabilization**

FWP-FSH-R3-23-015

November 13, 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**

To help minimize channel migration towards Rocky Creek Road, Gallatin County will install about 100 feet of riprap along the south bank of the East Gallatin River. The County will use Class II riprap installed in a similar manner to MDT Standard Detail 613-16. It is anticipated that the top half of the existing vertical slope will be graded back to a 1:1.5 slope and below that point the riprap will be used for fill to make the approximate 1:1.5 slope. The total riprap used will be limited to 125 cubic yards. BMPs will be used pre and post construction to prevent erosion and sedimentation.

#### **PURPOSE AND NEED**

The streambank is susceptible to erosion because of the lack of vegetation along the riparian area. Stabilizing the bank with riprap will limit erosion and help protect nearby Rocky Creek Road and the adjacent railroad.

#### **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 a SPA124 permit, which could result in continued streambank erosion that would threaten Rocky Creek Road and the nearby railroad.

##### **Alternative 2: Proposed Action**

Under the Proposed Action, FWP would issue a SPA124 for the project with the following special conditions:

1. Riprap shall be limited to no more than half, preferably 1/3, of the vertical bank height and incorporate willow cuttings to the extent possible without undermining the function of the riprap.
2. No trees will be removed during construction.

#### **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 "Warren Hansen", with a long, sweeping horizontal line extending to the right.

Warren Hansen  
Acting Region 3 Supervisor  
Montana Fish, Wildlife & Parks

