



**SPA 124 PERMIT DECISION NOTICE**  
**SPA 124 Permit Cottonwood Creek Channel Alteration**  
**FWP-CEA-FSH-R4-23-016**

8/29/2023

**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**

Fergus County has applied for a Stream Protection Act (SPA) 124 Permit to alter the active channel of Cottonwood Creek where it recently captured the roadway ditch of Cottonwood Creek Road.

The project consists of:

- (1) Excavating a portion of a log-jam plug in the old active channel of Cottonwood Creek
- (2) Excavating sediment from a deposition plug in the old active channel of Cottonwood Creek
- (3) Returning flow to the old active channel of Cottonwood Creek
- (4) Plugging the braided channels connecting flow from Cottonwood Creek to the roadway ditch using the material excavated from the log-jam and sediment plug

The disturbance area is expected to be roughly 2 acres of Cottonwood Creek channel and riparian area. The project would be expected to take 1-14 days to complete.

The project is sponsored by Fergus County and the SPA 124 Permit would be valid for a period of 2 years from the date of issuance.

#### **PURPOSE AND NEED**

The purpose of this project is to issue a Stream Protection Act 124 Permit to Fergus County for the purpose of altering the active channel of Cottonwood Creek. Flow events this spring resulted in a large log-jam and sediment plug developing in Cottonwood Creek. The barriers to flow induced channel migration upstream, where the active flow of Cottonwood Creek was rerouted across the riparian area where it eventually captured the roadway ditch, flowing along the roadway embankment for roughly 900-feet before flowing across the floodplain away from the roadway. The active flow along the roadway created significant maintenance issues for the county and was a long-term concern from both a roadway safety perspective and aquatic/riparian habitat. Removing some of the instream obstacles and rerouting flow back to the previous channel would create better habitat conditions for the aquatic and terrestrial organisms associated with Cottonwood Creek and improve the long-term viability and safety of the county road system at this location.

#### **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 the SPA 124 Permit, no action would occur, the proposed work would not be implemented, and the status quo would be maintained.

**Alternative 2: Proposed Action**

Under the Proposed Action, FWP would issue the SPA 124 Permit to Fergus County, the proposed work would occur, and the statutory obligations of MCA 87-5-502:509 would be abided and enforced.

**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,



Jason Rhoten  
Regional Supervisor – Region 4  
Montana Fish, Wildlife & Parks

