



## SPA 124 PERMIT DECISION NOTICE

Basin Creek Fuels Reduction Crossings; Butte, MT  
8/7/2024

### 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**

Montana Department of Natural Resources and Conservation is conducting a fuels reduction project around drinking water reservoirs in the Basin Creek drainage outside of Butte, Mt. The Project is being completed on United States Forest Service property in conjunction with the City/County of Butte-Silver Bow. There is currently an access road on the north side of the reservoirs that is closed to the public but used administratively. This road is being improved to access several units within the project footprint. The road crosses two small un-named tributaries to Basin Creek. Culverts at these crossing are too short and in poor condition. The Department of Natural Resources and Conservation is proposing to replace these crossings with 18” culverts of appropriate length.

### **PURPOSE AND NEED**

The Forest Service and Butte-Silver Bow County have been working to reduce fuel loading and fire hazard in the watershed. Stream crossings need to be improved so equipment can use the road and reach treatment units adjacent to the Upper Reservoir. The goal of the project is to reduce fire risk in the watershed to protect water quality in the reservoirs, so water remains treatable for municipal use.

### **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 Montana Department of Natural Resources and Conservation would not be permitted to do the proposed crossings. Access to several units within the proposed projects would be impacted.

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

Under the Proposed Action, FWP would issue an SPA 124 permit and the proposed crossings would be upgraded as proposed following conditions provided in the SPA 124 permit. Special Conditions to the permit include:

1. Appropriate sediment controls shall be used around culverts to keep road material from entering the stream channels during construction and hauling.
2. In-stream work shall be completed before 5/15/2025.

3. The area disturbed around the culverts during installation shall be revegetated using a USFS approved seed mix.

### **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 allow the Montana Department of Natural Resources and Conservation to complete the proposed stream crossing upgrades and improve access to several units within the project footprint.

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

Sincerely,



Kendra McKlosky  
Regional Supervisor  
Montana Fish, Wildlife & Parks