



## SPA 124 PERMIT DECISION NOTICE

### North Burnt Fork Creek Fish Barrier Removal – Lee Metcalf National Wildlife Refuge; Stevensville, MT

June 6, 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**

The Lee Metcalf National Wildlife Refuge has applied for a Montana Stream Protection Act 124 permit to remove an existing water control structure on North Burnt Fork Creek near its confluence with the Bitterroot River. The existing structure, which would be replaced with an aluminum box culvert that spans the channel, is a barrier to upstream fish movement. The project site is located at the junction of North Burnt Fork Creek and a paved, public pedestrian trail on the Refuge. At this crossing, North Burnt Fork Creek passes through two, side-by-side 48" culverts, connected to two stoplog risers. This structure was originally constructed to create backwater habitat for waterfowl in North Burnt Fork Creek. The structure creates a major impoundment in the creek, blocking all upstream fish passage and disrupting natural hydrologic and sediment regimes. Replacement of the existing structure with an aluminum box culvert that spans the channel is the most feasible approach to reconnect the stream to the Bitterroot River while retaining access to the existing public trail system. Additional bank restoration and native vegetation plantings will improve riparian habitat and bank stability along a ½ mile of stream.

### **PURPOSE AND NEED**

The project is necessary because North Burnt Fork Creek was historically a major spawning tributary for fish in the Bitterroot River prior to the installation of the water control structure by the Lee Metcalf National Wildlife Refuge. Replacement of the existing structure with an aluminum box culvert that will allow for upstream aquatic organism passage is the most feasible approach to biologically reconnect the stream to the Bitterroot River while retaining access to the public trail system. Removal of the structure will restore connectivity between 2.5 miles of North Burnt Fork Creek and the Bitterroot River and improve natural hydrologic and sediment transport regimes. Additional bank restoration and native vegetation plantings will also improve riparian habitat and bank stability along a ½ mile of the stream channel.

### **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 existing water control structure would remain in place. It would continue to function as an upstream barrier to fish movement and would also continue to alter natural hydrologic and sediment regimes in North Burnt Fork Creek near its confluence with the Bitterroot River.

**Alternative 2: Proposed Action**

Under the Proposed Action alternative, FWP will issue an SPA 124 permit to the Lee Metcalf National Wildlife Refuge for the North Burnt Fork Creek Fish Barrier Removal Project. Special Conditions include, 1) fish rescued from the dewatered channel shall be returned to the stream outside of the project limits as quickly as possible to avoid handling mortality, and 2) all work in the stream channel shall be completed between 7/15/2024 and 10/15/2024.

**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.

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

Sincerely,



Kendra McKlosky  
Regional Supervisor  
Montana Fish, Wildlife & Parks