



SPA 124 PERMIT DECISION NOTICE

Flint Creek Private Users Diversion Fish Screens Bypass Improvements- SPA 124– near Hall, MT- 11/5/24

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 Montana Natural Resource Damage Program (NRDP) is working to modify the fish bypass pipes associated with three Corrugated Water Screen (CWS) fish screens and irrigation infrastructure improvements on Flint Creek. The fish screens currently bypass fish through a single pipe and this configuration causes hydraulic issues during certain times of the year. These issues result in the water users having to halt use of the fish screens, resulting in fish entrainment in the ditch rather than being bypassed back to the creek. This project will replace the single bypass pipes with three separate pipes, improving these hydraulic conditions and improving the operation of the fish screens and allowing the screens to be utilized for more of the irrigation season.

PURPOSE AND NEED

The fish screens on the Private Users Diversion on Flint Creek provide protection for native bull trout and westslope cutthroat trout that migrate through the lower Flint Creek drainage as well as brown trout, an important sportfish species in the Flint Creek Drainage. Significant entrainment of these species has been observed at this diversion and ditch. Improving the hydraulic conditions of the bypass will allow the screen and bypass to operate more often. Additional fish will be returned to Flint Creek because the screen and bypass will be operated more often and help protect these important native and recreational fish populations.

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 screen and bypass will be operated less often than possible and more trout will be lost to the ditch rather than get back to the creek.

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. Special Conditions include:

- 1) Work window on in-stream rip-rap removal and replacement is Oct 1-May 1, June 15-Sept 30.

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 provide better conditions for bypassing native and recreational trout species from these ditches back to Flint Creek, providing significant benefits to these fish populations.

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

Sincerely,

A handwritten signature in blue ink that reads "Kendra McKlosky". The signature is written in a cursive, flowing style.

Kendra McKlosky
Regional Supervisor
Montana Fish, Wildlife & Parks