



SPA 124 PERMIT DECISION NOTICE

Sager Lane Diversion and Pumps; Deer Lodge, MT
8/6/2024

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 existing pin-and-plank diversion structure on the Clark Fork River near Deer Lodge, MT is a barrier to fish and a hazard to floaters. The pin-and-plank structure will be replaced with four rock weirs and incorporate bank stabilization. The existing pump station will be relocated further upstream in the existing ditch and will include a new pipeline crossing (siphon) under Dempsey Creek. A bypass channel will be constructed to flush potential debris and sediment built-up at the relocated pump intake and provide a route downstream for any fish that are entrained down ditch. The existing ditch between the existing and proposed pump station locations will be filled.

PURPOSE AND NEED

The goal of this project is to replace the existing pin-and-plank diversion structure with a new diversion structure that provides reliable, low maintenance delivery of irrigator's legal water rights while improving fish passage and improved conditions for recreational floaters. Other project goals include screening ditches from fish and debris and reducing sedimentation in irrigation ditches.

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 Natural Resource Damage Program would not be permitted to do the proposed project and the Sager Lane pumps would continue to operate using the current pin-and-plank diversion.

Alternative 2: Proposed Action

Under the Proposed Action, FWP would issue an SPA 124 permit and the proposed diversion improvement project would be completed as proposed following conditions provided in the SPA 124 permit. Special Conditions include:

1. Unless otherwise conditioned, no in-stream work shall be done from 10/15/2024 to 3/15/2025.
2. The pipe crossing of the Dempsey Creek channel may be completed after 10/15/2024 if mobilized sediments are isolated from the river by closing the headgate at the mouth of Dempsey Creek.
3. Brown trout may begin moving upstream through the site as early as 9/15. Fish passage through the site shall be maintained in the river channel or the temporary bypass channel for the duration of the project.

4. If riprap is needed for the return channel, then it shall terminate before the outlet to the river.
5. The temporary dam used to divert water through the bypass channel shall be removed incrementally over the course of several hours to reduce sediment mobilization and allow fish to adjust to changing flow pathways.

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. The project will allow the Natural Resource Damage Program to complete the proposed diversion upgrades on Sager Lane Diversion and Pumps on the Clark Fork River near Deer Lodge, Montana.

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

Sincerely,



Kendra McKlosky
Regional Supervisor
Montana Fish, Wildlife & Parks