



SPA 124 PERMIT DECISION NOTICE
Bannack Goldleaf Tailing Reservoir Reinforcement
FWP-DN-FSH-R3-24-048

August 1, 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.

DESCRIPTION OF PROPOSED ACTION

With this action, the Beaverhead Conservation District is proposing to reinforce a failing rip rap berm that isolates a toxic heavy metal tailing pile from Grasshopper Creek. The creek is meandering and eroding through a rip-rapped gravel berm that was installed in 1977 to protect an adjacent mine tailings facility containing toxic heavy metals. The proposed project is 860 feet long with about 400 feet of well-established willows and bare rip-rap. The tailings berm will be reinforced by salvaging the failing rip-rap, widening the floodplain, and adding larger rip-rap and willow transplants.

PURPOSE AND NEED

The purpose of this project is to reinforce a failing rip rap berm that isolates a toxic heavy metal tailing pile from Grasshopper Creek.

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 a SPA124 permit, which could threaten the water quality of Grasshopper Creek and downstream habitats with toxic heavy metals.

Alternative 2: Proposed Action

Under the Proposed Action, FWP would issue a SPA124 for the project with the following special conditions:

1. Work shall only occur when willows are dormant and Grasshopper Creek is at baseflow conditions.
2. The area should be contoured to match the existing floodplain and revegetated with an emphasis on transplanted native willow matrix adjacent to the streambank and an approved seed mix in upland areas. A weed management plan shall be developed.
3. BMP's should be used during construction to ensure the tailings reservoir remains isolated from flowing waters.
4. Provide FWP with pictures of the site following construction.

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,

A handwritten signature in black ink, appearing to read "Adam Pankratz", with a stylized flourish extending from the end.

Adam Pankratz
Acting Region 3 Supervisor