



SPA 124 PERMIT DECISION NOTICE

Ruby River Temporary Ford Crossing
FWP-DN-FSH-R3-24-051

August 2, 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 USFS is proposing to harden the east bank of the Ruby River to facilitate use of a temporary ford crossing to transport fencing material that will be used to maintain or improve riparian health. The project will consist of constructing a hardened approach on the left side of the Ruby River near the confluence of Poison Creek and crossing the river approximately 52 times (over and back) with equipment (e.g., skidsteer, flatbed truck, and ATV) to transport fence material. Once material is hauled across the river, it will be taken to various points along the existing fence which will require several crossings of Deer Creek and an unnamed tributary. Corduroy crossings will be used on both Deer Creek and unnamed tributary to minimize impacts. Original wood fencing material will be left on site, and old wire will be back hauled. Contractor will access fencing site by ATV. The District Range Specialist will be onsite during construction of the hardened approach and periodically through fence construction.

PURPOSE AND NEED

The purpose of this project is to transport fencing material across the Ruby River from the Centennial Divide Road (Road 100) to the fence reconstruction project with minimal crossings. Deer Creek and unnamed tributary will also be crossed several times. The fencing material is required to replace approximately 1.5 miles of existing riparian fencing running parallel and approximately 500 feet upslope to the river. Fencing is necessary to exclude cattle from the riparian area during summer and used as a holding pasture in the fall.

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 would prevent the USFS from completing their fencing project and lead to long-term habitat degradation in and around the streams.

Alternative 2: Proposed Action

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

1. All streambank work and stream crossings shall occur only during baseflow periods.
2. BMP's (e.g., water bars, rolling dips) will be integrated into the approaches on both sides of the river at the crossing site such that any sediment or water running towards the river is routed into a suitable vegetative filter and cannot reach the river.

3. Trips for equipment and fencing staff shall be minimized to the greatest extent possible.
4. All disturbed areas on both sides of the river should be reclaimed by contouring to match the existing floodplain and revegetating with an emphasis on transplanted native sod mats adjacent to the stream and an approved seed mix in upland areas. A weed management plan shall be developed and implemented.
5. 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 at the end.

Adam Pankratz
Acting Region 3 Supervisor