



SPA 124 PERMIT DECISION NOTICE

FWP-CEA-FSH-R5-24-029

SPA 124 #: MI-17-24

Biel Bank Stabilization EWP – Phase II

07/24/2024

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 Stillwater Conservation District is sponsoring an Emergency Watershed Protection project to repair and complete a previously permitted bank stabilization project (SPA 124 #: MI-24-04). The initial project was not completed before runoff began in June 2024. Although flood stage was not reached, flows during the 2024 runoff overtopped the constructed soil lifts and washed away recently placed materials (e.g., topsoil, rocks, erosion control fabric). Additionally, 22 supersacks were placed in the river at the upstream end of the project under emergency procedures to divert water away from the bank and a private residence. Phase II proposes to address outstanding issues at this site which includes constructing two more soil lifts at the upstream end of the project and compacting and grading approximately 720 cubic yards of fill in the area between the streambank and soil lifts. Some of the fill will include onsite materials such as rock from existing gravel bar (195 cubic yards) and gravel/sand mixture from the super sacks as well imported topsoil (335 cubic yards). No work will be performed in or below the active channel. Disturbed areas will be reseeded with NRCS-approved native grasses and where applicable, willows and other woody vegetation should be planted to add stability to the streambank.

PURPOSE AND NEED

The overall purpose of this project is to reduce bank erosion risks for several private residences and properties along the upper Stillwater River. This project will not reduce the risk of future flooding. The objective of phase II is to fix the issues from previous construction efforts. Current conditions at this site could put the landowners, streambank, and natural resources with higher risks of erosion, increased sediment into the river, and unwanted channel migration changes. Additionally, the removal of 22 supersacks placed in early June that are still in the active channel will allow the river to better connect to its floodplain.

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.

If the No Action alternative is selected, the streambank would remain in its current condition. Negative long-term impacts could incur and includes increased sedimentation into the river from bank erosion and soil lifts. Trout populations have decreased significantly over the last two decades in the upper Stillwater River and excess sediment can be damaging to all life stages of trout and mountain whitefish. Another undesirable outcome under the No Action alternative is the river's thalweg moving closer towards several houses because the streambed and bank are unstable, and the river cannot properly interact with its floodplain because of the 22 supersacks. For these reasons, the do-nothing alternative was not selected.

Alternative 2: Proposed Action

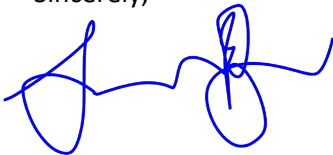
Under the Proposed Action, the 22 supersacks will be removed, two more soil lifts will be constructed, the area behind the soil lifts will be graded with compacted fill, and native plants (e.g., willows, dogwoods) will be planted.

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 blue ink, appearing to read 'Shannon Blackburn', with a stylized, cursive script.

Shannon Blackburn
Region 5 Fisheries Program Manager
Montana Fish, Wildlife & Parks