



SPA 124 PERMIT DECISION NOTICE

FWP-CEA-FSH-R5-24-017

MI-09-24

Danford Ditch Headgate EWP

7/25/2024

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

Damages caused by the 500-year flood event in June 2022 on the Clarks Fork of the Yellowstone River made the Danford Ditch Irrigation infrastructure (e.g., ditch, headgate, flow check structure) non-functional. Temporary stabilization of the site, under an emergency provision, addressed short-term control of water diversion and mitigated additional streambank erosion. The project included a permanent headgate, headwall, and additional bank protection to ensure long-term operations for the irrigation users up to a 100-year flood event.

The project consists of adding additional 170 cubic yards of MDT class 3 riprap along 250' linear feet up- and downstream of the headgate. New riprap will be installed starting at the toe of the existing riprap. The Stillwater Conservation District does not expect the riprap to extend into, fill, or impact the Clarks Fork of the Yellowstone River beyond what is necessary to stabilize the site and meet NRCS and local floodplain ordinances. The project will install 3–48" corrugated pipes attached to 48" spigot backed headgates fixed to a reinforced concrete headwall at or near the existing temporary structure. Backfill with salvaged native material will occur around and behind the concrete headwall at the Danford Irrigation Ditch. The existing headgate infrastructure will be removed and replaced with a concrete headwall (~10 cubic yards) at or near the same location.

PURPOSE AND NEED

Temporary stabilization of the site addressed short-term control of water diversion and protection for irrigation users. The purpose of this project is to install a new headgate, headwall, and provide additional bank protection to ensure for long-term operations of the irrigation system and protection of the streambank up to a 100-year flood event.

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 and leaving the site in its existing condition allows for water control into the irrigation ditch system but is challenging to access and control the headgates and could fail during the next high-water event.

Alternative 2: Proposed Action

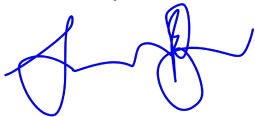
Under the Proposed Action, the Danford Ditch irrigators will install a new, and permanent, headgate, headwall, and have bank protection that ensures operational infrastructure up to a 100-year flood event.

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,



Shannon Blackburn
R5 Fisheries Program Manager
Montana Fish, Wildlife & Parks