



SPA 124 PERMIT DECISION NOTICE
Turkey Creek Berm Removal and Bank Stabilization EWP
FWP-CEA-FSH-R5-24-022

05/31/2024

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 County Conservation District has proposed a project consisting of removing approximately 600 cubic yards (CY) of stockpiled streambed material upstream and downstream of the existing Turkey Creek Drive Bridge that was placed as “Emergency Protection” during and following the June 2022 flood. After removal of the existing streambed material, approximately 280 linear feet (LF) of revetment will be installed between the existing Turkey Creek Drive Bridge and private deck. Of the 280 LF of planned revetment, approximately 200 LF will be constructed using tree trunks placed parallel to the creek with an MDT Class III D100 stone toe. As part of the wooden revetment, biofabric will be installed underneath the stone toe and over top the trees to prevent displacement. Some of the existing streambed material will be retained and used to cap the stone toe, wooden revetment for extra protection and aesthetic purposes. The bank above the revetment will then be graded and seeded and all existing trees will be preserved. Standard 2:1 sloped MDT Class II riprap revetment will be installed upstream and downstream of the stone toe, wooden revetment to protect the existing Turkey Creek Drive Bridge and private deck structures. Both sections of the standard 2:1 sloped riprap revetment will be keyed into the bank to prevent scouring.

PURPOSE AND NEED

This project is necessary to reinforce the streambank of the property, which was heavily eroded in the historic June 2022 flooding on East Rosebud Creek. The “Emergency Protection” installed during and following the flood is not suitable rock to protect the bank from future flooding and the stockpiled material extends above the original bank elevation. The existing Turkey Creek Drive Bridge and private deck on the property is at risk of erosion due to its proximity to the 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, the emergency berm would remain in place and potentially create more bank stability and erosion issues upstream or downstream.

Alternative 2: Proposed Action


Under the Proposed Action, the project will remove the emergency berm and re-establish a more natural bank than post-emergency work.

DECISION

Based on the environmental review provided in the Final 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 Final EA 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
Regional Fisheries Manager
Montana Fish, Wildlife & Parks