



SPA 124 PERMIT DECISION NOTICE

FWP-CEA-FSH-R5-24-004
Dickinson Bank Stabilization EWP

09/06/2024

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 EWP project to rebuild and armor a streambank and replace concrete curbing around a cabin that was damaged in the June 2022 flood event in Carbon County on East Rosebud Creek near Roscoe, Montana. The proposed project will rebuild and place rock rip rap along 235 linear feet of streambank. The bank will be rebuilt with 400 cubic yards of imported fill and armored with 400 cubic yards of class II rock rip rap. Approximately 50 cubic yards of rip rap will be placed below the ordinary high-water mark. Additionally, 10 cubic yards of concrete will be used to fill in the scour hole beneath the foundation of the cabin. Currently, East Rosebud Creek's thalweg is against the eastern bank close to the cabin and when complete, this project would align the creek closer to its pre-2022 location. Disturbed areas will be revegetated with NRCD-recommended native seeds. Additionally, project completed under an emergency was also done at this site after the flood to remove a collapsed bridge. The contractor was able to remove the bridge and remove it from the floodplain before high water in 2023.

PURPOSE AND NEED

The purpose of this project is to return the banks to pre-disaster conditions. Angular rip rap will be placed on the banks near pre-June 2022 bank locations to stabilize the bank and prevent future erosion. Concrete will be placed under the slab on grade foundation to fill the scour hole beneath the foundation where compaction would be difficult to achieve.

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 road damage would likely occur during future high water. The rock rip rap imported during emergency repairs would incrementally be lost to the river channel causing damage to natural resources and making future repairs more expensive. For these reasons, a do-nothing alternative was not considered.

Alternative 2: Proposed Action

Under the Proposed Action, 235 linear feet of streambank will be rebuilt, and armored and concrete curbing will be replaced under a cabin that was damaged in the June 2022 flood event in Carbon County on

East Rosebud Creek near Roscoe, Montana. The bank will be rebuilt with 400 cubic yards of imported fill and armored with 400 cubic yards of class II rock rip rap. Approximately 50 cubic yards of rip rap will be placed below the ordinary high-water mark. Additionally, 10 cubic yards of concrete will be used to fill in the scour hole beneath the foundation of the cabin.

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 "Mike Ruggles". The signature is fluid and cursive, with the first name "Mike" and last name "Ruggles" clearly distinguishable.

Mike Ruggles
Regional Supervisor
Montana Fish, Wildlife & Parks