



## SPA 124 PERMIT DECISION NOTICE

FWP-CEA-FSH-R5-24-005

DiPietro Emergency Watershed Protection Project

9/06/2024

### **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 Emergency Watershed Protection project to demolish and replace a bridge that was damaged in the 2022 flood event on Fishtail Creek at the Setab Corporation Ranch near Fishtail, Montana. The new bridge has steel beams with a concrete deck and wooden abutments in approximately the same location as the damaged bridge. Additionally, the new bridge has more freeboard allowing water to pass up to the 100-year flood event. The banks will be armored with 60 cubic yards of rock rip rap upstream and underneath the bridge.

#### **PURPOSE AND NEED**

The existing bridge was badly damaged during the June 2022 flood. Access to ranch operations and living space was restricted and dangerous. The project goal is to provide safe access to the ranch with a new bridge that will allow flood conveyance during high water events up to the 100-year mark.

#### **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, additional damage to the bridge and road may occur. The rip rap imported during emergency repairs could incrementally fall into Fishtail Creek, requiring additional costs and environmentally impactful work to occur. For these reasons, a do-nothing alternative was not considered.

##### **Alternative 2: Proposed Action**

Under the Proposed Action, the existing, damaged bridge will be replaced with a new bridge that has higher freeboard and 60 cubic yards of rock rip rap will be used for bank armoring upstream and underneath the bridge.

#### **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  
Region 5 Supervisor  
Montana Fish, Wildlife & Parks