



## SPA 124 PERMIT DECISION NOTICE

FWP-CEA-FSH-R5-24-037

Fromberg Bank Stabilization Extension and Amendment

09/26/2024

### **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 amending the Fromberg EWP Project (Project) in Carbon County (SPA 124 #: MI-01-24) to include placing 350 cubic yards of rip rap along 200 linear feet of the Clarks Fork of the Yellowstone River's streambed and bank. The additional work is needed to better protect future bank scour and erosion during high water events and mitigate lateral migration of the river into infrastructure and residential properties. The channel impact area is estimated at approximately 0.08 acres beyond what was initially proposed and permitted. The additional 350 cubic yards of class III rock rip rap will be placed at or below the ordinary high-water mark. Materials will be sourced from river excavations at the Project site and used to construct the rip rap scour key. Willows should be planted throughout the rock rip rap bank to facilitate vegetation growth. The revegetation plan for the upland bench detailed in the original permit will also be extended to include the additional 200 linear feet of impacted streambank.

#### **PURPOSE AND NEED**

The proposed project is needed to finalize the Fromberg EWP Bank Stabilization project. Currently, the project is too short and does not fully protect an outside bend that is a sheer vertical bank of exposed soil and fine gravel along the Clarks Fork of the Yellowstone River in the town of Fromberg. By extending the project downstream an additional 200 linear feet and adding 350 cubic yards of rock rip rap will better mitigate bank erosion and unwanted channel migration for residential structures, the East River Street Bridge and other infrastructure in the town of Fromberg.

#### **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 Clarks Fork of the Yellowstone River could erode the left bank downstream of the larger EWP project and threaten residential structures and important town infrastructure. Additionally, under this alternative, emergency rip rap would likely be placed during future high water which is more prone to being placed incorrectly and falling into the river channel. Future work and mitigation at this site would be needed and be more expensive and have greater adverse impacts to natural resources than the proposed action.

**Alternative 2: Proposed Action**

Under the Proposed Action, 350 cubic yards of class III rock rip rap will be placed along 200 linear feet of the streambank downstream of the larger EWP project in Fromberg. The rock rip rap will tie into the larger EWP and should provide long term bank stability.

**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", is positioned above the typed name.

Mike Ruggles  
Regional Supervisor  
Montana Fish, Wildlife & Parks