



SPA 124 PERMIT DECISION NOTICE

Wetland Restoration on North Willow Creek – Musselshell County, MT
FWP-CEA-FSH-R5-24-016

5/31/2024

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 Bureau of Land Management (BLM) and the National Wildlife Federation (NWF) are partnering to assist in the restoration of prairie streams on BLM administered lands in collaboration with local watershed groups, non-profits, and agencies. As part of this partnership NWF hired Anabran Solutions to assist developing the assessment and design of low-tech process-based restoration practices (LTPBR; Wheaton et al. 2019) in the Musselshell Region, with phased implementation completed during the 2024 and 2025 seasons. A primary focus of this partnership is to better understand the current conditions of prairie streams and how LTPBR practices may improve overall riverscape health.

The proposed restoration will build up to 224 in-stream beaver dam analogs (BDAs) and/or post-assisted log structures (PALS) on two tributaries of North Willow Creek in the Musselshell watershed to improve in-stream habitat diversity and floodplain connectivity. This project will work in two reaches that cross BLM, State and private land. These structures include BDAs and PALS, which are hand-built structures that mimic the form and function of natural beaver dams and wood jams. They are temporary, semi-permeable structures that can improve in-stream and floodplain health by increasing in-stream physical complexity, increasing channel-floodplain connectivity, and accelerating recovery from channel incision. The applicant anticipates the project to begin July 2024.

PURPOSE AND NEED

The purpose of the proposed project is to use low-tech process-based restoration (LTPBR) techniques to create in channel habitat complexity, such as pools that allow streamflow to maintain during the growing season, repair headcuts, promote groundwater storage and expansion of riparian vegetation, and diversify in-channel and floodplain habitat conditions for aquatic and terrestrial flora and fauna.

LTPBR practices use restoration techniques that are aimed at raising the water table and streambed elevation to restore floodplain subirrigation, which is expected to expand wetland area and halt stream downcutting to prevent further loss of wetlands and mesic areas important for sage grouse chick survival. Site-specific objectives for the first round of restoration will center around the concept of restoring stream channel function by mimicking natural processes that historically maintained the attributes and resource values of the low-gradient prairie streams throughout the region. Site selection focused on reaches that have the potential to respond quickly following restoration, having easy access, and providing learning opportunities for prairie systems and soil types (dispersal clay soils).

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 unnamed tributaries to North Willow Creek would remain disconnected from the active floodplain in various areas throughout the proposed reach and stream flows would continue to be minimal to non-existent during drought periods. In addition, upon site inspection, FWP feels the tributaries are degraded in water quality and likely prevent fish and amphibian assemblages from becoming well established in the area.

Alternative 2: Proposed Action

Under the Proposed Action, the applicant proposes to use construction materials like fill excavated from soil and rock at the work site, brush and woody vegetation from nearby forest thinning operations, and untreated wooden fence posts to install beaver dam analogs and post-assisted log structures. The applicant will build all structures by hand using hand tools (e.g., chainsaw, shovel, loppers) and, where access allows, a portable hydraulic post-pounder to install untreated wooden posts to increase the structure's temporary stability. Construction methods will involve the following: (1) laborers cutting down and hauling woody material to the channel (2) laborers placing woody material and excavated material in the channel, and (3) laborers installing posts with a hydraulic post pounder to stabilize the structure. The applicant expects to implement the project July 2024, with final completion in November 2025.

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
Regional Fisheries Manager
Montana Fish, Wildlife & Parks