



## SPA 124 PERMIT DECISION NOTICE

FWP-CEA-FSH-R5-24-032

Miller McGirl Ditch Company Bank Stabilization EWP Project

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**

Yellowstone County is sponsoring the Miller McGirl Ditch Company’s (MMDC) project through the Emergency Watershed Protection program to replace 275 linear feet of rock rip rap along the Yellowstone River. In 2022, high magnitude flows on the Yellowstone River eroded a significant portion of the rip rapped riverbank along the MMDC’s canal embankment just downstream of the Johnson Bridge in the northeast corner of Billings. The river side of the canal embankment has been armored with rock riprap since it was constructed. If left exposed, future high flows may facilitate further erosion and damage to the irrigation canal and possibly the intake. Thus, the MMDC proposes to place 500 cubic yards of class III rip rap on the exposed portion of the riverbank to prevent further damage to infrastructure. The project entails placing 244 cubic yards of rip rap below the ordinary high-water mark, impacting 0.08 acres of channel. The MMDC anticipates using heavy machinery (e.g., dump truck, excavator) to install the rip rap but work will take place from the existing road on the upper bank terrace and not enter the water. This project was initially approved by the Yellowstone County Conservation District (310 permit #: YE-17-23). Project construction was completed in May 2024.

### **PURPOSE AND NEED**

The intent of the project was to replace riprap along 275 linear feet of the Yellowstone River at the MMDC’s intake and canal embankment and restore the area back to pre-2022 flood conditions. This replacement of pre-existing riprap would ensure the longevity of the MMDC’s irrigation infrastructure during high flows and if the river continues to migrate towards the north bank. The MMDC provides irrigation for agricultural purposes in Yellowstone County.

### **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 Yellowstone River could erode along the canal embankment bank and threaten irrigation activities for ditch users.

**Alternative 2: Proposed Action**

Under the Proposed Action, 500 cubic yards of class III rock rip rap will be placed along 275 linear feet of a dirt embankment to prevent further damage to the MMDC's infrastructure.

**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 and title.

Mike Ruggles  
Regional Supervisor  
Montana Fish, Wildlife & Parks