



SPA 124 PERMIT DECISION NOTICE

Lost Horse Creek BRID Headgate Replacement and Fish Screen Installation SPA 124 Bitterroot National Forest; Darby, MT

April 3, 2025

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 Bitterroot National Forest has applied for a Montana Stream Protection Act 124 permit to replace a failing headgate and install a fish screen in the Bitter Root Irrigation District's (BRID) diversion off Lost Horse Creek near Darby, MT. The existing headgate is leaking, and the ditch is not screened; as a result, thousands of trout are entrained annually within the BRID ditch.

Instream work associated with the project is expected to commence in mid-July of 2025 and be completed by September 1, 2025. Work on the fish screen within the BRID ditch will occur after the irrigation season and will likely occur between October and December 2025.

PURPOSE AND NEED

The purpose of the project is to rebuild the BRID headgate structure and install a fish screen approximately 100 feet downstream of the headgate in the ditch that diverts water out of Lost Horse Creek on the Bitterroot National Forest. The BRID ditch is the largest diversion on Lost Horse Creek, and a fish screen at this location would annually prevent the unintentional loss of thousands of fish into the ditch. Fish will remain in the creek rather than perishing down the ditch. Headgate improvements will also eliminate leakage of water from Lost Horse Creek down the BRID ditch outside of the irrigation season.

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.

If the No Action alternative is selected, FWP would not issue an SPA 124 permit and BRID's failing headgate would remain in place. No fish screen would be constructed, and the BRID ditch would continue to entrain thousands of fish annually.

Alternative 2: Proposed Action

Under the Proposed Action alternative, FWP will issue an SPA 124 permit to the Bitterroot National Forest for the Lost Horse Creek BRID headgate replacement and fish screen installation project. The following Special Condition applies:

1. A fish rescue shall be performed as the worksite is dewatered. Fish rescued from the dewatered channel shall be returned to the stream outside of the project limits as quickly as possible to avoid handling mortality.

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 and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an environmental impact statement or EIS is unnecessary. BRID will be allowed to replace a leaky headgate and install a fish screen off Lost Horse Creek near Darby, MT.

FWP hereby adopts the Draft EA as final and approves Alternative 2, the Proposed Action.

Sincerely,



Kendra McKlosky
Regional Supervisor
Montana Fish, Wildlife & Parks