



SPA 124 PERMIT DECISION NOTICE

Issue Stream Protection Act 124 Permit to the Forest Service to Replace the Box Elder Creek Low Water Ford Crossing in Carter County

FWP-DN-FISH-R7-25-003

May 30, 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 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

Forest Service will replace the existing dilapidated low water concrete ford crossing with a larger low water concrete ford crossing on Box Elder Creek. Goals of the project are installing a new crossing that meets current design standards for stream function, aquatic organism passage, and ensure reliable transportation for the public and area landowners.

PURPOSE AND NEED

The age and condition of the existing low water crossing has approached the expected life of the structure. The proposed new structure will improve the safety for public using the structure, improve the form and function of the stream due to larger culvert openings, and improve connective for fish migrations as described below by the applicant:

- This proposed project will be constructed in accordance with Best Management Practices (BMPs) to control erosion and sedimentation. Project will require installation of temporary erosion control measures along the stream banks to isolate flow and prevent silt and construction debris from entering the streambed. Areas of channel excavation will be seeded with a certified weed-free seed mix with desirable plant species as soon as possible post-construction.
- Long term, the new structure is designed to meet aquatic organism passage requirements providing stream bed continuity and re-establishing the natural grade of the stream.

- The new structure will improve the hydraulic efficiency of the crossing and reduce the frequency of overtopping events. The box culverts size will be increased from a single 10 feet wide by 2 feet tall to two concrete box culverts 24 feet wide by 8 feet tall. The hydraulic capacity of the new structure is designed for the 5-year storm event with some overtopping of the roadway. The completed project will provide a similar water velocity to the natural conditions during a 2-year storm event and decreases water velocity slightly during larger storm events. The width of the stream at the crossing is being widened at the downstream end of the structure to provide smoother, more natural flow through the crossing, and to replicate the natural stream geometry more closely within the reference reach of the project.

The road surface width will be increased to improve vehicle use of the crossing and will dramatically increase the weight bearing limits of the structure.

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.

The "No Action" alternative would result in not issuing the SPA124 Permit and the existing structure would continue to be the local access route across Box Elder Creek and to the north end of the Forest Service lands and roads. According to the Forest Service, the existing structure is becoming a maintenance challenge both visibly and structurally. This would have an impact to public access to the recreation values in the area and limit adjacent and local landowners from accessing private property in the area. Emergency services to the area, like fighting forest fires, would also be challenged if the existing structure becomes less useable and weight limits reduced due to structural integrity. Eventually, the road could be closed if the crossing becomes a safety concern.

Alternative 2: Proposed Action

Under the Proposed Action, the purpose of the project is replacing the deteriorating low water vented ford crossing with a new vented ford style structure that meets current design standards. The culvert in the existing crossing is undersized and does not meet Aquatic Organism Passage (AOP) requirements and frequently causes the roadway to be overtopped. The proposed new structure includes two larger box culverts sized to increase the hydraulic capacity, so backwater is reduced and the occurrence of stream flows overtopping the crossing should be reduced. The new crossing conforms to current Forest Service Standards and ensures the public is able to safely access the multiple trails, access roads, facilities, and other recreational opportunities located in Custer Gallatin National Forest. The project is located approximately 15 miles east of Ekalaka, and approximately 1.5 miles north of the entrance to

the Custer Gallatin National Forest in Carter County, Montana. The project would first remove the existing undersized 10' span by 2' rise concrete box culvert, along with wingwalls and footings. The replacement low-water crossing consists of (2) 24' span by 8' rise, precast reinforced 4-sided concrete box culverts. The proposed road alignment will closely follow the existing road alignment. The width of the stream at the crossing is being widened to provide smoother, more natural flow through the crossing, and to replicate the natural stream geometry more closely within the reference reach of the project. Streambed material is being placed along the bottom of the new culverts, embedding the culvert inverts 1.5-feet below the streambed.

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 black ink, appearing to read 'Brad Schmitz', with a stylized flourish at the end.

Brad Schmitz
Region 7 Regional Supervisor
Montana Fish, Wildlife & Parks



Stream Projection Act (SPA 124) Permit Review

May 30, 2025

Applicant name: Forest Service Gardiner Office – Autumn Keller
805 Scott St.
Gardiner, MT. 59030

Permit No.: SPA-0530-25-R7

Waterbody: Boxelder Creek (45.31 -106.242) in Carter County

Project Name: Box Elder Creek Low Water Vented Ford Crossing

Description of Project: Forest Service will replace the existing dilapidated low water concrete ford crossing with a larger low water concrete ford crossing on Box Elder Creek. Goals of the project are installing a new crossing that meets current design standards for stream function, aquatic organism passage, and ensure reliable transportation for the public and area landowners.

For awareness, Box Elder Creek is a fish bearing water, thus the project could impact fish, fish habitat, and seasonal fish migrations. Fish sampling demonstrates up to twenty-three fish species (18 native species and one species of special concern) utilize Box Elder Creek in the vicinity of the project (see following table with approximate river miles relative to the project site). Thus, a critical aspect for this project is maintaining and when possible, improving connectivity for upstream and downstream fish migrations. If it is determined that this project negatively impacts fish distributions and fish migrations, mitigation efforts should be initiated to restore fish passage opportunities.

	River Miles						
fish species	20.5	25.7	30.4	37.5	38.4	38.6	103
black bullhead							X
brassy minnow			X				X
channel catfish	X						
common carp		X	X				X
creek chub			X				
emerald shiner		X			X		X
fathead minnow	X	X	X	X	X		X
flathead chub		X	X				
goldeye	X	X	X				
green sunfish	X	X	X	X	X		X
lake chub		X					
longnose dace		X	X	X			
longnose sucker			X	X	X		
northern pike		X	X				
plains minnow	X						X
river carpsucker	X	X	X		X		
sand shiner	X	X	X	X	X		X
sauger			X		X		
shorthead redhorse sucker			X		X		X
stone cat		X	X				
western silvery minnow	X	X					X
white sucker		X	X	X			X
yellow perch							X
subtotal:	8	14	15	6	8		12

Vented Ford - Project Location

In accordance with the Montana Stream Protection Act (SPA), Montana Fish, Wildlife & Parks has reviewed the project based on information provided in the joint application. Authorization for this work is approved provided work is carried out as presented in the application, meets the following stipulations, and adheres to the attached general conditions.

1. Construction conducted during low flow periods and all in-stream work shall be completed expeditiously to minimize potential impacts to the stream and fish passage.

Term of Permit: 2.0 years

Timing Restrictions: April 1- May 15 (sauger spawning period)

318 Authorization Review: The above project has also been reviewed on behalf of the Montana Department of Environmental Quality (DEQ) pursuant to the Montana Water Quality Act Short-term Water Quality Standards for Turbidity 75-5-318 MCA. Based on review of the project application, turbidity generated from this project is expected to be short-term and have only temporary and minor impacts on the physical and biological environment. Therefore, compliance with the conditions stated in the attached letter outlining *DEQ's Short Term Water Quality Standard for Turbidity Related to Construction Activity*, as well as other conditions listed in the 124 Permit, are appropriate for this project. Please review, sign, and return a signed copy for the files.

This project also requires review for a Section 404 Permit from the U.S. Army Corps of Engineers. Please contact the Corps office in Helena (406) 441-1363 for further information.

Please call or email if you have questions or concerns regarding this permit or other aspects of the project.

Issuing Biologist: Kenneth M Backes, Regional Fisheries Manager
PO Box 1630
Miles City, MT. 59301
406-234-0925
mibacke@mt.gov

Signature: _____

Cc: Jeremy Anderson (Corps of Engineers)
Keenan Storrar (Department of Environmental Quality)
Jake Chaffin (Forest Service)

Stream Protection Act 124 Permit General Conditions

1. Complete work affecting a streambed or stream bank in an expeditious manner to avoid unnecessary impacts to the stream.
2. Limit the clearing of vegetation to that which is necessary for construction of the project. Take precautions to preserve existing riparian vegetation. Salvage and reuse native vegetation where possible.
3. Install and maintain erosion control measures where appropriate to protect aquatic resources. Do not clear and grub land adjacent to streams prior to installing proper erosion and sedimentation controls. Conduct all work in a manner that minimizes turbidity and other disturbances to aquatic resources.
4. Plan temporary construction facilities to:
 - a. Minimize disturbance to stream banks, stream bank vegetation, and the streambed by locating staging or storage facilities at least 50' horizontally from the highest anticipated water level during construction.
 - b. not restrict or impede fish passage in streams.
 - c. not restrict any flow anticipated during use.
5. Provide sediment controls for drainage from topsoil stockpiles, staging areas, access roads, channel changes, and instream excavations.
6. Isolate work zones from flowing and standing waters to prevent turbid water and sediments from being discharged into streams or other drainages that flow directly into the stream. Divert flowing waters around the work zone.
7. Do not spill or dump material into streams. Store and handle petroleum products, chemicals, cement, and other deleterious materials in a manner that will prevent their entering streams.
8. Do not permit wash water from cleaning concrete-related equipment or wet concrete to enter streams.
9. Do not operate mechanized equipment in any stream or flowing water unless special authorization is obtained. If special authorization is granted, the following conditions apply:
 - a. Power wash all equipment allowed in a stream prior to entering the stream channel.
 - b. Clean and maintain all equipment so that petroleum-based products and hydraulic fluids do not leak or spill into the waterway.
10. Reclaim streambeds and stream banks as closely as possible to their pre-disturbed condition.
11. Restore disturbed stream banks to their natural or pre-disturbed configuration to match adjacent ground contours or as specified in the project plans. Stabilize, reseed, and re-vegetate disturbed areas. Install and maintain long-term biodegradable erosion-control measures to protect these areas until adequate vegetation has been established.
12. Restore temporary access routes and any temporarily disturbed areas to original conditions, including original contours and vegetation.
13. Dispose of any excess material generated from the project above the ordinary high-water mark and in an area not classified as a wetland.