Finding of No Significant Impact

North Fork Jocko - Tabor Diversion Project

Introduction

The attached Environmental Assessment (EA-25-21) analyzes the impacts of the North Fork Jocko - Tabor Diversion Project (Project or Proposed Action), located on the Flathead Indian Reservation (Reservation) in Section 24, Township 17 North, Range 18 West, Lake County, Montana. The Project is proposed by the Confederated Salish and Kootenai Tribes (Tribes or CSKT). The federal action is the Bureau of Indian Affairs' (BIA) approval of the Project on Tribal land, and the use of funds associated with the CSKT Water Rights Settlement. The EA was prepared to meet the BIA's responsibilities under the National Environmental Policy Act (NEPA).

The Project would replace the current Tabor Diversion (Facility) on the North Fork Jocko River (NF Jocko). The Facility structure and operation currently cause various adverse impacts to aquatic resources and habitat, namely habitat fragmentation due to the diversion acting as a fish barrier, fish entrainment in the Tabor Canal, an unnatural sediment transport regime, and the inability to meet instream flow requirements due to inefficient operational controls. The diversion is considered a complete barrier to fish, and fish entrainment in the Tabor Canal is an issue as the canal does not have a fish screen.

Agency Coordination and Public Outreach

The following agency coordination and public outreach occurred in the development of the EA:

- The CSKT Interdisciplinary Team was involved in identifying environmental issues, and provided input on the proposed action and alternative design elements in response to environmental concerns and issues.
- The CSKT Department of Engineering and Water Resources (DEWR) coordinated with Tribal and federal environmental regulatory agencies on recommended resource protection measures to avoid and minimize impacts to resources.
- DEWR presented the Project at the following meetings and events:
    - DEWR Jocko Valley projects public meeting in October 2024.
    - Tribal Elders Advisory Groups through the Kootenai Culture Committee and the Selis Qlispe Culture Committee (SQCC) meetings.
    - Hosted an onsite field visit with elders from the SQCC and the Tribal Historic Preservation Office.

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Based on the BIA's review of the EA it was determined that the Proposed Action would not significantly adversely impact the quality of the human environment. No environmental effects meet the definition of significance defined in the BIA NEPA Guidelines (BIA 2012), and an Environmental Impact Statement is not needed. This lack of significance was determined using the context and intensity criteria presented in BIA NEPA Guidelines, including the ten considerations for evaluating intensity.

1. *Impacts that may be both beneficial and adverse.* The EA evaluated both beneficial and adverse impacts, not just the net effects. Table 4 in the EA summarizes temporary and permanent impacts by resource. The Project would result in temporary adverse impacts to many of the resources evaluated, with permanent beneficial impacts to several resources, namely water quality, fish passage, and fish habitat in the NF Jocko (including Bull Trout listed as threatened under the Endangered Species Act (ESA), and their designated critical habitat).
2. *Degree to which the action would affect public health and safety.* See the following EA Sections: 3.3, Air Quality; and 3.7.3, Transportation Networks. The Proposed Action would not impact public health, as increases in vehicle and concrete batch plant emissions would be limited to the Project area, and dust would be controlled on the roads. Hazardous materials would also be managed per standard spill prevention and containment measures. The Project would temporarily impact public safety due to increased traffic on the access roads. The Project would be required to develop a Traffic Control Plan to ensure the safety of construction contractors and the public, including traffic control measures and road closures.
3. *Unique characteristics of the geographic area (historic and cultural resources, parklands, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, and ecologically critical areas).*
    a. Cultural resources were identified within and adjacent to the Project area but the CSKT Tribal Preservation Department (TPD) determined that there would not be adverse impacts to these cultural resources, with the implementation of construction Best Management Practices (BMPs) and cultural resources monitoring. See EA Section 3.5, Cultural Resources.
    b. The Proposed Action would temporarily restrict access to the Project area, which currently receives limited use for recreation such as fishing, hiking, and hunting, and for cultural activities such as gathering plants. See the following EA Sections: 3.5, Cultural Resources; 3.7.1, Hunting, Fishing, and Gathering, 3.7.2, Recreation, and 3.8.1 Wilderness, Refuges, Ecological Sensitive/Critical Areas, Wild and Scenic Rivers.
    c. The Mission Mountain Tribal Wilderness extends slightly (20-50 feet) into the Project area, and the wilderness boundary is located adjacent to the Project area. The Proposed Action would temporarily impact the wilderness character due to increased construction noise. The CSKT Recreation Program Manager evaluated potential Project impacts and issued a statement of Project approval. See EA Section 3.8.1 Wilderness, Refuges, Ecological Sensitive/Critical Areas, Wild and Scenic Rivers.
    d. The Proposed Action would not have adverse impacts on prime farmland, wild and scenic rivers, or ecologically critical areas, as there are no farming activities or designated Wild and Scenic Rivers or ecologically critical areas within the Project area.
    e. The Proposed Action would temporarily impact 1.11 acres of waterbodies (NF Jocko and Tabor Canal), and 0.18 acres of wetlands due to staging, excavation, and flow alteration. All areas of temporary impact would be restored post-construction. The proposed action would also cause temporary impacts to water quality in the NF Jocko

due to increased suspended sediment associated with in-channel work. (BMPs) to protect water quality would be implemented as part of the Project conservation measures, and the Stormwater Pollution Prevention Plan. CSKT worked with the CSKT Shoreline Protection Program, CSKT Water Quality Program, and the U.S. Army Corps of Engineers to obtain the applicable permits. The Project would result in permanent beneficial impacts to NF Jocko water quality and flows, with improved sediment transport, and increased operational control to ensure minimum instream flows. See the following EA Sections: 3.2.1 Waterbodies and Wetlands; and 3.2.2, Water Quality.

4. *Degree to which effects are likely to be highly controversial*. The anticipated effects of the Project are not considered controversial, given that the temporary impacts would be minor, and the Project would result in permanent beneficial impacts. CSKT has also conducted local outreach at community meetings over the past two years, and has consulted with the CSKT Tribal Elders Advisory Groups through the Kootenai Culture Committee and the SQCC meetings.
5. *Degree to which effects are highly uncertain or involve unique or unknown risks.* There are no potential effects from the Proposed Action that are highly uncertain or unknown.
6. *Degree to which the action may establish a precedent for future actions with significant impacts.* Approval of the Proposed Action would not establish a precedent that would imply approval of future actions.
7. *Whether the action is related to other actions with cumulatively significant impacts.* See EA Section 3.9, Cumulative Impacts. The Proposed Action would not contribute to cumulatively significant environmental effects when combined with other past, present, or reasonably foreseeable future actions.
8. *Degree to which properties eligible of listed on the National Register of Historic Places (NRHP) are adversely affected.* See EA Section 3.5, Cultural Resources. CSKT TPD determined that the proposed action would not have any adverse effects to resources listed or eligible for listing under the NRHP, or to Tribal cultural resources. If NRHP-listed or eligible resources, or Tribal cultural resources are discovered during construction, work would stop and the contractor would follow the procedures listed in the cultural clearance letters provided by TPD (see EA Attachment C).
9. *Degree to which threatened or endangered species and their critical habitat are adversely affected.* See EA Section 3.4.3, Threatened, Endangered, and Special Status Species. The Biological Assessment (BA, see EA Attachment B) prepared for the Project analyzed potential Project effects to ESA-listed species. The BA made an effects determination of *May affect, likely to adversely affect,* for Bull Trout and critical habitat, and Grizzly Bear. The U.S. Fish and Wildlife Service concurred with the findings of the BA, and prepared Biological Opinions and Incidental Take Statements for Bull Trout and Bull Trout critical habitat, and Grizzly Bear. With the implementation of the proposed conservation measures, BMPs, and regulatory requirements, the Proposed Action would potentially cause minor adverse temporary impacts

to threatened and endangered species. The Project would result in permanent beneficial impacts to Bull Trout and critical habitat in the NF Jocko.

10. *Threaten violation of Federal, State, or local law or requirements imposed for the protection of the environment.* The Proposed Action is consistent with all Federal, State, Tribal, or local laws. CSKT worked with the following Tribal and Federal agencies to obtain all applicable environmental permits and concurrences:
    a. CSKT Shoreline Protection Program (Aquatic Lands Conservation Ordinance permit).
    b. CSKT Water Quality Program (Clean Water Act Section 401 Water Quality Certification).
    c. U.S. Army Corps of Engineers (Clean Water Act Section 404 permits).
    d. U.S. Fish and Wildlife Service (ESA Section 7 consultation and Bald Eagle General Disturbance Permit).
    e. Environmental Protection Agency National Pollution Discharge Elimination System (Construction General Stormwater permit).

In addition to the review of the above significance criteria the Proposed Action would support the rights of the CSKT to implement fisheries habitat restoration and irrigation infrastructure improvements on the Flathead Indian Reservation, per historic treaty rights, and in line with their watershed management plans and the CSKT-Montana Water Compact.

Executive Order 14154, Unleashing American Energy (Jan. 20, 2025), and a Presidential Memorandum, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025), require the Department to strictly adhere to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. Further, such Order and Memorandum repeal Executive Orders 12898 (Feb. 11, 1994) and 14096 (Apr. 21, 2023). Because Executive Orders 12898 and 14096 have been repealed, complying with such Orders is a legal impossibility. The Bureau of Indian Affairs, Northwest Regional Office (BIA NWRO), verifies that it has complied with the requirements of NEPA, including the Department's regulations and procedures implementing NEPA at 43 C.F.R. Part 46 and Part 516 of the Departmental Manual, consistent with the President's January 2025 Order and Memorandum. The BIA NWRO has also voluntarily considered the Council on Environmental Quality's rescinded regulations implementing NEPA, previously found at 40 C.F.R. Parts 1500–1508, as guidance to the extent appropriate and consistent with the requirements of NEPA and Executive Order 14154.

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Shane R. Hendrickson Date
Flathead Agency Superintendent
Bureau of Indian Affairs, U.S. Department of the Interior

Environmental Assessment for the North Fork Jocko- Tabor Diversion Project