REVISED RECORD OF DECISION

For the

BILLINGS BYPASS

NCPD 56(55)
Control Number 4199

FINAL ENVIRONMENTAL IMPACT STATEMENT

U.S. Department of Transportation
Federal Highway Administration
Helena, Montana

By: _____ Date: 12/18/19

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In accordance with Title 18, Chapter 2, Section 252, Administrative Rules of Montana (ARM 18.2.252), I hereby accept and concur with the findings and decision as documented in the U.S. Department of Transportation Federal Highway Administration's Revised Record of Decision for this project as approved on 12/18/19.

By: _____ Date: 2/5/20

Montana Department of Transportation

TABLE OF CONTENTS

1 INTRODUCTION AND BACKGROUND 2
2 DESIGN CHANGES TO THE PROJECT SINCE THE JULY 2014 ROD 3
2.1 Yellowstone River Bridge 3
2.2 Bypass Alignment Lane Configuration 4
3 SUMMARY OF IMPACTS, MITIGATION, AND MEASURES TO MINIMIZE HARM 5
3.1 Wetland Modifications 5
3.2 Threatened and Endangered Species 6
3.3 Wildlife and Species of Concern 6
3.3.1 Bald Eagles 7
3.3.2 Greater Sage Grouse 7
4 COORDINATION AND PUBLIC OUTREACH 7
4.1 Comments Received 7
5 DECISION 8

LIST OF FIGURES

Figure 1. Proposed Yellowstone River Bridge 4
Figure 2. Three-lane Typical Section North of Bridge 4
Figure 3. Three-Lane Typical Section with Median North of Bridge 5

APPENDICES

APPENDIX A – JULY 2014 ROD
APPENDIX B – FIVE MILE ROAD SEGMENT AND YELLOWSTONE RIVER SEGMENT RE-EVALUATED EISs
APPENDIX C – PUBLIC COMMENTS AND RESPONSES

1 INTRODUCTION AND BACKGROUND

The Federal Highway Administration (FHWA) and the Montana Department of Transportation (MDT) environmental process for the Billings Bypass was initiated in 2010 with a Draft Environmental Impact Statement (DEIS) provided to the public in August 2012. The Final Environmental Impact Statement (FEIS) was released in March 2014, with the Record of Decision (ROD) approved and released in July 2014. The issuance of the July 2014 ROD (Appendix A) approved Mary Street Option 2 as the Preferred Alternative and authorized moving forward with Phase I of the Preferred Alternative. This included the construction of an initial two-lane bypass along the entire length of the Preferred Alternative alignment and all right-of-way acquisition for a future four-lane road (Phase II full buildout).

Since the ROD was approved in July 2014, FHWA and MDT have agreed to implement Phase I of the Billings Bypass Preferred Alternative as six separate project segments due to availability and type of funding. Given the length of time since the 2014 FEIS and ROD, FHWA and MDT determined the FEIS should be re-evaluated under each project segment to determine the need for a Supplemental EIS (SEIS). The Council on Environmental Quality (CEQ) regulations require FHWA to prepare an SEIS when the agency makes substantial changes to a proposed action, or when new circumstances or information are relevant to environmental concerns. Further, FHWA regulations require a SEIS if the changes or new information may result in significant environmental impacts that were not evaluated in the FEIS (23 Code of Federal Regulations [CFR] 771.130).

Currently, the FEIS has been re-evaluated for two of the six project segments: the Five Mile Road segment and the Yellowstone River segment. During the FEIS re-evaluation for these two segments, design modifications along the Yellowstone River segment were identified, including the proposed construction of one 4-lane bridge across the Yellowstone River instead of two 2-lane bridges. No design modifications were identified for the Five Mile Road segment. These design modifications within the Yellowstone River segment would take place along the Preferred Alternative alignment, and no changes to the preferred alignment, or right-of-way requirements, are proposed. These design modifications, however, were not identified in the 2014 ROD.

Based on a thorough review of the June 2018 re-evaluation for the Five Mile Road segment, the December 2019 re-evaluation for Yellowstone River Bridge segment, the July 2014 ROD, and the March 2014 FEIS, MDT and FHWA have concluded that a SEIS is not required, as described in 23 CFR 771.130, and that the requirements of both the National and Montana Environmental Policy Acts (NEPA and MEPA) would be met for the Five Mile Road segment and the Yellowstone River segment, under Phase I, through Re-Evaluated EISs (refer to Appendix B) as described in 23 CFR 771.129(b).

However, the proposed design modifications at the Yellowstone River segment require preparation of a Revised ROD in accordance with 23 CFR 771.127(b). This regulation states:

> If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative, but was fully evaluated in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which reviewed the final EIS under CFR 771.125(c). To the extent practicable, the approved revised ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS pursuant to CFR 771.125(g).

The proposed design modifications at the Yellowstone River segment would not require substantial changes to the findings discussed in the 2014 ROD. The modifications, however, are considered a design alternative, which was not identified as part of the Mary Street Option 2 Preferred Alternative in the 2014 ROD. These modifications are, however, within the Preferred Alternative right-of-way that was studied in the 2014 FEIS and ROD.

This Revised ROD documents MDT and FHWA's decision to reaffirm the approval of the Preferred Alternative, as described in the July 2014 ROD, for Phase I of Mary Street Option 2 and incorporates the design modifications, as described in the December 2019 Re-Evaluated EIS for the Yellowstone River segment. Except for the findings and decisions referenced in the sections below, the findings and determinations made in the July 2014 ROD are unaltered and remain valid. However, additional revisions to the ROD may be required at a later date as FEIS re-evaluations take place and designs are finalized for future project segments.

2 DESIGN CHANGES TO THE PROJECT SINCE THE JULY 2014 ROD

This section describes the proposed project design changes for the Yellowstone River segment of the Mary Street Option 2 Preferred Alternative. These design changes would be constructed within the preferred alignment outlined in the March 2014 FEIS and July 2014 ROD and require no additional right-of-way or easements from what was studied in the 2014 FEIS and ROD.

2.1 YELLOWSTONE RIVER BRIDGE

As outlined in the March 2014 FEIS and July 2014 ROD, the Preferred Alternative for the Yellowstone River crossing would construct side-by-side, two-lane bridges approximately 1,890 feet long. The current bridge design is to construct a single, four-lane structure using a full deck at a length of approximately 1,850-feet. The new bridge structure is designed as a full buildout section and would include four 12-foot travel lanes, with 8-foot shoulders, and a 10-foot-wide multi-use path on the west side of the bridge (Figure 1). A traffic barrier would be installed between the path and the adjacent travel lane/shoulder. Constructing a single structure would reduce impacts to the Yellowstone River, by decreasing the overall footprint within the active river channel, the floodplain, and within adjacent riparian and wetland areas. A single structure would also result in cost savings over time due to reduced initial construction costs and long-term maintenance costs.

The 2014 FEIS and 2014 ROD also stated 8-foot shoulders would be provided along the Yellowstone River segment of the project, which would be suitable for pedestrian and bicycle access. As part of the refined design, 8-foot shoulders would still be provided for bicyclists and pedestrians along the new roadway alignment; however, the refined bridge design would now include a 10-foot-wide multi-use path on the west side of the bridge, with a traffic barrier installed between the path and the adjacent travel lane/shoulder. At each end of the bridge, a multi-use path would be constructed down to the MDT right-of-way limits. This connection would provide access points to the bridge crossing, which the John H. Dover Memorial Park (Yellowstone River Parks Association) could connect to with their internal trail system north of the structure, and the Community of Lockwood and/or the planned Targeted Economic Development District could connect to with their own trail system south of the structure.

In addition, during the installation of the northern bridge abutment, a portion of the cliff wall adjacent to the abutment would be over excavated to provide an opening for a possible future trail to be constructed by the Yellowstone River Parks Association.

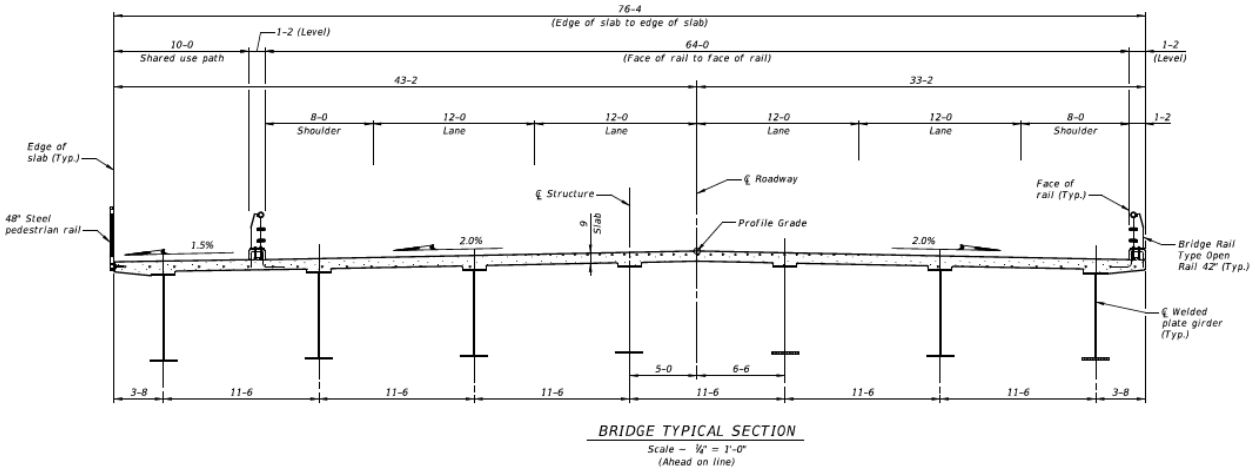

Figure 1. Proposed Yellowstone River Bridge

2.2 BYPASS ALIGNMENT LANE CONFIGURATION

As outlined in the March 2014 FEIS and July 2014 ROD, Phase 1 would design and construct the first two lanes of the primary corridor for the Preferred Alternative alignment. The current design for the Yellowstone River segment calls for the alignment north of the proposed four-lane Yellowstone River bridge to taper down to include one 12-foot westbound travel lane, two 12-foot eastbound travel lanes, and 8-foot shoulders. At the Five Mile Road and Bypass Mainline roundabout, the alignment would then taper down to two 12-foot travel lanes as defined under Phase I (Figures 2 and 3).

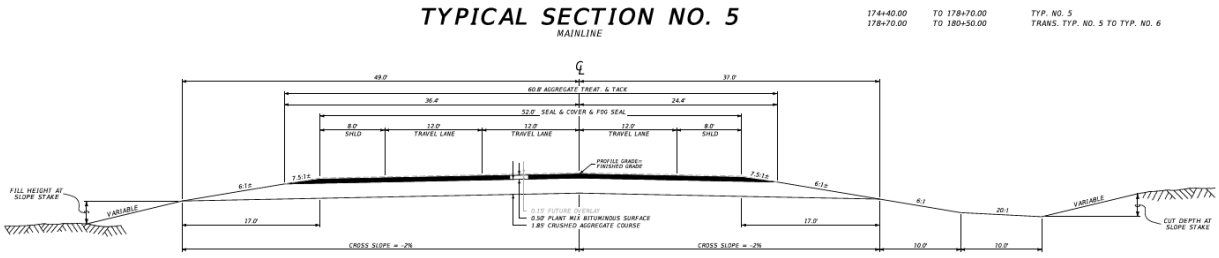

Figure 2. Three-lane Typical Section North of Bridge

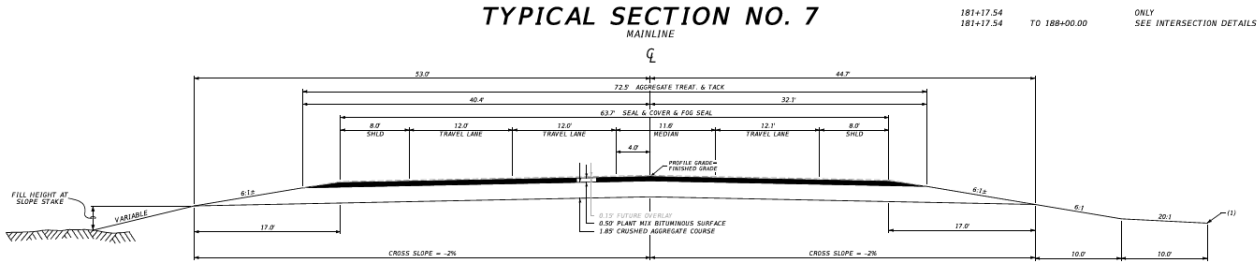

Figure 3. Three-Lane Typical Section with Median North of Bridge

3 SUMMARY OF IMPACTS, MITIGATION, AND MEASURES TO MINIMIZE HARM

Potential impacts, mitigation, and reasonable measures to minimize harm under the Preferred Alternative were discussed in the March 2014 FEIS and July 2014 ROD (Appendix A). Unless otherwise noted, these impacts are still valid and all mitigation and reasonable measures to minimize harm have been adopted.

The Five Mile Road Re-evaluated EIS (June 2018) and the Yellowstone River Re-evaluated EIS (December 2019) examined all of the environmental issues originally investigated and reported in the March 2014 FEIS and July 2014 ROD. This examination looked at current environmental conditions (2017-2018) within and adjacent to the Preferred Alternative alignment for these two segments. The Yellowstone River segment Re-evaluated EIS determined the proposed design modifications would not result in substantial changes to identified project impacts associated with these resources. A discussion of proposed design modification impacts and additional mitigation measures are found in the Yellowstone River segment Re-evaluated EIS (Appendix B). The following is a summary of changes to existing conditions since the approval of the July 2014 ROD, potential impacts to environmental resources associated with the proposed design modifications, and the mitigation added in in response to changes in existing environmental conditions and potential impacts.

3.1 WETLAND MODIFICATIONS

A wetland delineation was completed in 2011 during the development of the Billings Bypass FEIS. As it has been more than five years since the original wetland delineation was conducted, a new wetland delineation was conducted in 2017 along the Preferred Alternative alignment. The new delineation served to verify the 2011 wetland and waterway boundaries, eliminate wetlands that no longer existed (e.g., plowed over for agricultural use), and add any new wetlands that were identified during the effort.

To compare wetland impacts, the wetlands mapped in 2017 and the proposed Yellowstone River segment design were reviewed against the 2014 FEIS and 2014 ROD Preferred Alternative conceptual design and 2011 wetland mapping. Under the Preferred Alternative outlined in the 2014 FEIS and 2014 ROD, approximately 1.12 acres of wetland impact was identified for the Yellowstone River segment. Permanent wetland impact as a result of the refined Yellowstone River design and updated wetland delineation is approximately 0.006 acre. The decrease in wetland impact is due to a reduction in wetland boundaries from the 2017 field delineation, a reduced bridge footprint (two bridges to one bridge), and refined design regarding bridge pier locations. Therefore, the impacts from the proposed design modifications on

wetlands are consistent with the findings in the March 2014 FEIS and July 2014 ROD. No additional minimization measures are proposed. Impacts on wetlands resulting from the project would be mitigated in compliance with Section 404 of the Clean Water Act administered by the U.S. Army Corps of Engineers.

3.2 THREATENED AND ENDANGERED SPECIES

The analysis of potential effects to Threatened and Endangered species under the Endangered Species Act is a continuous process. Information in this section provides an update to information presented in the March 2014 FEIS and July 2014 ROD, and a discussion on potential effects to these species based on the proposed design modifications at the Yellowstone River segment.

Due to the time lapse since the March 2014 FEIS and July 2014 ROD, Biological Resources Addendum Reports are being prepared for each project segment. An Addendum Report was completed for the Yellowstone River segment on May 14, 2019. According to the Yellowstone River Addendum Report, the greater sage-grouse (*Centrocercus urophasianus*), black-footed ferret (*Mustela nigripes*), and Sprague's pipit (*Anthus spragueii*) have been removed from the October 2018 list of endangered, threatened, proposed, and candidate species for Yellowstone County. Red knot (*Calidris canutus rufa*) has been added to the Yellowstone County list. Whooping crane (*Grus Americana*) remains on the list.

There are no records of whooping crane or red knot breeding in the state. They are known to migrate through Montana on occasion in the spring and fall as they head to breeding territories in northern Canada and the Arctic, respectively. There are three observations for whooping crane within a 30-mile radius of the proposed Yellowstone River project segment over the last 100 years. The nearest observation was documented more than 10 miles to the northeast as a fly-over in April 2010. One observation of red knot is documented less than 1.5 miles southwest from the proposed Yellowstone River project segment. This individual was a transient (non-breeding and short-term) documented in 1975. No additional sightings within the project vicinity have been made since 1975. Two other red knot observations in the general geographic area are greater than 30 miles from the project vicinity. Neither of these species would be anticipated to occur in the Yellowstone River project segment, as limited appropriate habitat is present. Therefore, design modifications for the Yellowstone River segment would have ***no effect*** on whooping crane and red knot. No additional minimization measures are proposed.

3.3 WILDLIFE AND SPECIES OF CONCERN

The Yellowstone River 2019 Biological Addendum includes an updated state species of concern recorded occurrence list from Montana Natural Heritage Program (MTNHP) and updated data on bald eagle nests in the area. The MTNHP list identified 38 species of concern within three miles of the Yellowstone River segment. Eleven of these species of concern were discussed in and March 2014 FEIS and July 2014 ROD. No additional impacts or concerns related to the 11 original species have been identified. Of the remaining 27 species not discussed in the 2014 FEIS and 2014 ROD, suitable habitat is found within the Yellowstone River project vicinity for many of the listed species. Permanent vegetation impacts would occur within the proposed construction limits, with both upland and riparian/wetland habitat being impacted. For smaller species, direct mortality may occur due to disturbance of habitat and inability to disperse during construction. Temporary noise related impacts would also occur during construction. Impacts from the proposed design modifications at Yellowstone River segment are consistent with the those identified in the March 2014 FEIS and July 2014 ROD. No additional minimization measures are proposed.

3.3.1 BALD EAGLES

The 2016 Montana Fish, Wildlife, and Parks (FWP) Bald Eagle nest data documented a Bald Eagle nest approximately 0.25 mile to the southwest of the proposed Yellowstone River bridge crossing; however, FWP noted that this nest has since blown down. MTNHP 2017 observation data shows several documented occurrences of Bald Eagle within 0.25 to 0.5 miles of the Yellowstone project limits, and an observation of an adult Bald Eagle within the project limits was recorded during a September 2017 field visit. While Bald Eagles have been observed within the project limits, no active nests currently occur within the 0.25-mile project buffer. Therefore, additional minimization measures and timing restrictions for the Yellowstone Bridge segment are not proposed.

3.3.2 GREATER SAGE GROUSE

On September 22, 2015, USFWS determined that the protection for the greater sage grouse under the Endangered Species Act was no longer warranted and withdrew the species from the candidate species list. In Montana, the state has management authority over sage grouse as outlined under the 2015 Greater Sage Grouse Stewardship Act and Montana Governor's Executive Orders 10-2014, 12-2015, and 21-2015. The Sage Grouse Habitat Conservation Program was created to facilitate implementation of the Executive Orders. State actions implemented by MDT in designated greater sage-grouse habitat must comply with the conservation program.

The Yellowstone River project segment is not within greater sage-grouse designated core habitat, connectivity habitat, or general habitat. The Yellowstone River project activities are consistent with the Montana Sage Grouse Conservation Strategy. No additional minimization measures are proposed.

4 COORDINATION AND PUBLIC OUTREACH

Since the release of the July 2014 Final ROD, additional public information meetings for the Billings Bypass project have been conducted. Two public informational meetings were conducted on September 27 and 28, 2017. The intent of the informational meetings was to provide an update to the public on project schedule, project phasing (i.e., the Bypass being split into six project segments), the bypass alignment, and design refinements/changes. Exhibits of the proposed bridge design change at Yellowstone River, which included section views of the single, four-lane bridge, with 8-foot shoulders, and a 10-foot-wide multi-use path, were displayed. Both meetings were conducted in a public open house format, with the public encouraged to provide comments/input at the meeting or to submit a comment via mail, email, or through the project website. The meeting scheduled on September 27, 2017, took place at Independent Elementary School located on US 87 to accommodate the public located north of the Yellowstone River. The meeting scheduled September 28, 2017, took place at Eileen Johnson Middle School in Lockwood to accommodate the public located south of the Yellowstone River.

4.1 COMMENTS RECEIVED

Five comments specific to the Yellowstone River segment of the bypass project were received during and following the September 2017 public information meetings. Issues, concerns, and opportunities noted in those comments include the following.

- Support for the 10-foot-wide multi-use path across the new Yellowstone River Bridge.
- Potential opportunities to construct a new boat ramp and fishing access near the new bridge.

- Number of lanes at the bridge and the location of intersections in relation to the bridge.
- Concerns about the alignment through John Dover Memorial Park and traffic noise.

Appendix C of this Revised ROD contains copies of the comments received and any associated responses.

5 DECISION

Based upon the information presented in the Yellowstone River Re-evaluated EIS (December 2019), FHWA's decision, in agreement with MDT, is to provide environmental approval for the construction of the requested design modifications for the Yellowstone River segment and incorporate the changes into the previously approved Preferred Alternative. This decision confirms that the design modifications do not constitute a significant change as described in 23 CFR 771.129(c). The original July 2014 ROD remains valid and is incorporated in this Revised ROD.