

FIRST COMMENT PERIOD - COMMENTS/RESPONSES

Letters, e-mail messages, or postcards were received from the following:

1. Davis, Warren and Hritsco	December 05, 2005
2. Budd-Falen Law Offices.....	November 22, 2005
3. Chris Hunter.....	November 25, 2005
4. Jefferson River Watershed Council.....	November 28, 2005
5. Bob Butler	December 01, 2005
6. Beaverhead County Commissioners.....	December 02, 2005
7. Russ Kipp.....	December 05, 2005
8. Doney, Crowley, Bloomquist, Payne, Uda	December 05, 2005
9. Montana Department of Environmental Quality	December 02, 2005
10. U.S. Army Corps of Engineers	December 06, 2005
11. Public Lands Water Access Association	December 07, 2005
12. Jerry Kustich	December 12, 2005
13. Paul M. Olsen.....	December 13, 2005
14. Bob Butler	December 14, 2005
15. Allen Schallenberger.....	December 14, 2005
16. Raymond Gross	December 15, 2005
17. Bob Hartwell.....	December 16, 2005
18. Curtis Kruer	December 16, 2005
19. Zack Medina.....	December 16, 2005
20. Saltman and Stevens	December 16, 2005
21. Kurt Steadman	December 16, 2005
22. Terry Throckmorton.....	December 16, 2005
23. Lyle W. Barringer	December 17, 2005
24. Bill and Donna Fraser	December 21, 2005
25. Will Murray	December 21, 2005
26. John English.....	December 19, 2005
27. Jeremy Garrett	December 19, 2005
28. Robert Hartwell	December 16, 2005
29. Steve Luebeck	December 19, 2005
30. Trout Unlimited, George Grant Chapter	December 16, 2005
31. Meine Brothers.....	December 19, 2005
32. Mary Smith	December 19, 2005
33. Tom Smith.....	December 19, 2005
34. Eric Troth.....	December 19, 2005
35. 42 Identical Postcards with different Commenters.....	December 15, 2005
36. Budd-Falen Law Offices (block)	December 19, 2005
37. Montana Department of Fish, Wildlife and Parks.....	December 20, 2005
38. Jefferson River Watershed Council.....	December 16, 2005
39. Budd-Falen Law Offices (cursive)	December 16, 2005
40. Trout Unlimited.....	December 19, 2005
41. U.S. Bureau of Land Management.....	December 19, 2005
42. Friends of the Beaverhead.....	December 16, 2005

DAVIS, WARREN & HRITSCO

LAWYERS

LEONARD A. SCHULZ
(1909-1991)
CARL M. DAVIS, P.C.
JOHN S. WARREN, P.C.
WILLIAM A. HRITSCO, P.C.

122 EAST GLENDALE STREET
P. O. BOX 28
DILLON, MONTANA 59725-0028
TELEPHONE (406) 683-2363
FAX (406) 683-2363

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Mr. Jeff Baumberger
U.S. Dept. of Interior - Bureau of Reclamation
Montana Area Office
P.O. Box 30137
Billings, MT 59107-0137
ATTN: MT-231

Re: Clark Canyon Water Supply Company Comments on
Draft Environmental Assessment - Clark Canyon Reservoir/
East Bench Unit Long-Term Contract Renewals

Dear Mr. Baumberger:

As you may recall, this law firm represents Clark Canyon Water Supply Company (CCWSC) of Dillon, MT. Please accept the following *Comments* on behalf of CCWSC on the draft Environmental Assessment released by the Bureau of Reclamation (BOR) regarding contract renewal with CCWSC and the East Bench Irrigation District (EBID).

- 1.1 1. First and foremost, CCWSC wishes to publically acknowledge that the East Bench Unit (the "Project") as a whole functions remarkably well and serves many varied interests. The Project has immeasurably benefitted the economies of Beaverhead and Madison Counties for the past forty years and CCWSC anticipates the continuation of such favorable impact indefinitely.
- 1.2 2. CCWSC noted the following minor errors in the draft Environmental Assessment:
 - (a) The reference to "Canyon Canal" on Page 3 should be to "Canyon Ditch" instead. Canyon Ditch supplies water for lands on the east side of the Beaverhead River, not the west side as stated. Finally, the lands irrigated by Canyon Ditch are far less than the 30,000 acres as stated, and are located only in Beaverhead County, MT.
 - (b) The reference on Page 4 to Albers Slough as an individual ditch company is inaccurate, as Albers Slough is not a ditch company or other separate legal entity. The further reference in the same paragraph to "Westside Ditch" should be to "West Side Canal Company."

1.1: Noted.

1.2: The comment is noted and has been corrected in the revised draft EA.

1.3: The comment is noted and has been corrected in the revised draft EA.

DAVIS, WARREN & HRITSCO

Mr. Jeff Baumberger
December 5, 2005
Page 2

1.4 3. The acreage identified in Paragraph (3), Page 8 as "3rd priority" (i.e., 7,711 acres for CCWSC and 4,448 acres for EBID) remains an estimate only and is subject to further refinement and on-going mapping efforts. The same holds true for the 6,620 acres attributed to "non-signers" on Page 8.

1.5 4. While CCWSC acknowledges that the concept of continued economic viability of the East Bench Unit as a whole is a significant public policy objective of the Project, as discussed on Page 8 regarding the BOR's preferred alternative, such policy must always be tempered with (and under severe enough drought conditions must yield to) the fact that CCWSC shareholders own senior underlying water rights in and to the flow of the Beaverhead River and its tributaries. Despite the fact that CCWSC has agreed to reduce its allotments under the proposed Drought Management Plan, the Company's priority to receive irrigation water due to its senior water rights must always be recognized.

1.6 5. With respect to the expressed targeted minimum in-stream flow of 200 cfs at Clark Canyon Dam, as set forth on Page 9, CCWSC is concerned about the likelihood of flooding along the lower reaches of the Beaverhead River. When stream flow in the upper stretches of the Beaverhead River is high, landowners near Twin Bridges commonly experience flooding, ice jams, and related problems.

1.7 6. With respect to the concept of return flows in general, CCWSC cannot understate the importance of such flows and how the successful operation and management of the entire East Bench Unit is dependent upon such return flows, particularly from Barretts Diversion Dam and downstream therefrom. CCWSC is concerned with language in the proposed contracts suggesting BOR desires to claim all return flows, seepage, and so-called "waste water" from the system and whether such flows could eventually be called upon and put to some other use outside the system. CCWSC deems it critical that all such return flows remain within the Project for use by those intended to be benefitted by the Project. This issue directly affects the water users of CCWSC, EBID, and non-signers as well. Additionally, CCWSC is cognizant of the practical difficulty of distinguishing between stored water return flows and natural water return flows.

1.4: Noted. Acreages in the EA were provided by CCWSC and EBID and are meant to represent maximum irrigated acres. The actual negotiated acreages will likely be less than those indicated.

1.5: It is noted that the shareholders of CCWSC hold senior natural flow water rights to the natural flow water rights of EBID. It is also noted that CCWSC was contractually granted some priority to the utilization of water stored in Clark Canyon Reservoir under Reclamation's water rights.

1.6: Thank you for your comment and information regarding flooding on the lower Beaverhead River. Reclamation intends to communicate and coordinate with all parties on the Beaverhead River when flows are near or exceed 200 cfs.

1.7: Specific contract language regarding Reclamation's claim to "all seepage, return flows, and so-called waste water" is an issue to be negotiated during the formal contract negotiation process.

1.8 7. CCWSC is aware that the BOR relies upon its HYDROSS hydrology method in attempting to predict future river conditions under various alternatives. CCWSC has reservations about the accuracy of the HYDROSS model and whether it should be relied upon in making legal determinations, or rather simply as one of several available management tools.

1.9 8. The BOR contracted with HKM Engineering to research and issue a report entitled Allocation of Water to Non-Signers on the Beaverhead River dated March 21, 2005.

1.8: It is not clear as to what activities are proposed by the commenter to fall under the definition of “legal determinations.”

Reclamation utilized HYDROSS, a general-purpose river basin simulation model, to provide information to resource specialists who evaluated the potential impacts to the human environment when comparing the No Action Alternative to the Preferred Action Alternative described in the Draft EA. Reclamation believes that the HYDROSS model is an appropriate tool to evaluate the impacts between the two alternatives.

1.9: Noted.

DAVIS, WARREN & HRITSCO

Mr. Jeff Baumberger
December 5, 2005
Page 3


1.9 CCWSC wishes to acknowledge that it has not assisted or participated in the preparation of such study and that it has not relied upon the study to date in its approach to contract renewal with the United States.

1.10 9. The draft Environmental Assessments refers throughout to the establishment of a Joint Board comprised of both CCWSC and EBID board members, as well as at least one representative of the United States. To date, CCWSC has not determined whether its members on such board will have anything more than advisory authority. CCWSC intends to resolve this issue during the contract negotiation process.

Thank you for the opportunity to submit these comments on behalf of CCWSC. Because the comment period has been extended to December 19, 2005, CCWSC reserves the opportunity to submit additional comments.

Sincerely yours,

DAVIS, WARREN & HRITSCO

By 
William A. Hritsco

WAH:d

c: CCWSC Board of Directors

Steve Cottom, President, East Bench Irrigation District

John Bloomquist

1.9: Noted.

1.10: Noted.

Budd-Falen Law Offices, L.L.C.

Karen Budd-Falen¹
Franklin J. Falen¹
Marc R. Stimpert^{1,2}
Brandon L. Jensen^{1,4}
Hertha L. Lund⁴
Erin Sass Eastman¹
Kathryn Brack Morrow¹

300 East 18th Street
Post Office Box 346
Cheyenne, Wyoming 82003-0346
Telephone 307/632-5105
Telefax 307/637-3891
main@buddfalen.com
www.buddfalen.com

November 22, 2005

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BOB MTAO		
NOV 23 2005		
FILE:	admitted in Wyoming	
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Via Certified Mail/RRR: 7005 1820 0001 0723 4992
Tom Sawatzke
United States Bureau of Reclamation
PO Box 30137
Billings, MT 59107-0137

Re: Request for a 30-day comment period on Draft Environmental Analysis for renewal of water service contracts for the Clark Canyon Water Supply Company and the East Bench Irrigation District and Freedom of Information Act Request.

Dear Mr. Sawatzke:

My client Robert Van Deren of Open A Ranch Inc. received a letter from you on Saturday, November 19, 2005 in which you provided him a copy of the draft Environmental Assessment ("EA") for the renewal of water service contracts for the Clark Canyon Water Supply Company ("CCWSC") and the East Bench Irrigation District. In that letter, the Bureau of Reclamation ("Bureau") stated that it would be receiving comments until December 6, 2005, which is only a 15-day comment period.

2.1 My client is requesting an extension of the comment period to at least 30 days due to the complexity of the issues involved and the potential impact on his water rights due to the environmental analysis and other documents relied upon during the National Environmental Policy Act ("NEPA") analysis. Furthermore, the Bureau has neglected to provide important and required information as a part of this draft EA.

The information that the Bureau has neglected to provide includes:

- 2.2 1. The location map does not include the CCWSC lands, which is important since the EA concerns water service contracts to CCWSC.
- 2.3 2. The EA does not provide a list of the preparers as is required and normally included in an EA. 40 C.F.R. § 1502.17.
- 2.4 3. On page 5 of that EA the Bureau referenced information such as the Recreation Resource Management Plan and the EA for that project, which is undisclosed information and is not final pending its own public process.

2.1. Reclamation extended the EA comment period until December 19, 2005 with an additional 30-day comment period for the revised draft EA.

2.2: The Location Map has been colored to show both CCWSC and EBID lands

2.3: Section 1502.17 specifically refers to EIS's; a *List of Preparers* is not required for EA's and is not usually included.

2.4: The *Draft RMP for Clark Canyon Reservoir and Barretts Diversion Dam* was released to the public August 2004. Since that date, it has been available at www.usbr.gov/gp/mtao/clarkcanyon/ea/rmp.pdf. The *Final Clark Canyon Reservoir and Barretts Diversion Dam RMP* has been completed and will soon be available online. The RMP has never analyzed the operations of the reservoir (see p.16 of the *Draft EA*).

November 22, 2005

Page 2

- 2.5 4. The Bureau has hired Montana State University ("MSU") to prepare the "Beaverhead, Clark Canyon Irrigation District Water Budget for 2005." This study is complete; however, MSU stated that the Bureau decided not to release the information until 2006 after the Bureau is scheduled to finalize the new contracts on December 31, 2005. This is important information for the public to have as they evaluate and provide comments to the EA.

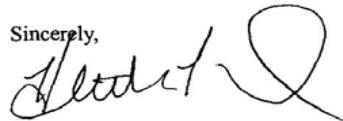
- 2.6 Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552(a) (collectively "FOIA"), on behalf of Open A Ranch Inc., this letter requests that you mail to my office the EA for the Recreation Resource Management Plan and the MSU study about the Beaverhead, Clark Canyon Irrigation District Water Budget for.

This information should not be subject to the Freedom of Information Act or Privacy Act exemptions and access to the requested documents should be granted within twenty (20) working days. I am willing to pay up to \$100.00 for the requested information. If the search or copy charges exceed that amount, please notify me of the excess charges. Note that under the Privacy Act, only photocopy expenses are allowed to be charged to me. Such notification of and request for additional charges must be received by me within the 20 working days set by FOIA.

I also request that if you determine that some of the information requested is exempt from FOIA, that this information be identified by document, along with the statutory basis for your claim and your reasons for not exercising your discretion to release this information. FOIA also provides that if only portions of the file are exempt from release, the remainder of the file must be released. Therefore, I request that I be provided with all non-exempt portions that can reasonably be segregated. If there is any problem in providing this information, please let me know so that further arrangements can be made.

- 2.7 Lastly, on behalf of our client, Open A Ranch, we ask the Bureau to extend the comment period to a 30-day comment period after providing the above-listed information that would complete the EA as required to meet legal and factual requirements of NEPA. If you have any questions, please feel free to contact me at 307-632-5105.

Sincerely,



Hertha L. Lund
BUDD-FALEN LAW OFFICES, LLC

HLL:nec

xc: Robert VanDeren

2.5: While the 2005 fieldwork portion of the MSU Study conducted under contract with Reclamation was complete by November 22, 2005, a draft report was not submitted to Reclamation until December 22, 2005. A progress report was provided to Reclamation on April 10, 2006. Reclamation will continue the ongoing study through the 2006 irrigation season. A final report will be published and available to the public at the completion of the study.

2.6: The FOIA response letter and attachments were sent to the Budd-Falen Law Offices on December 19, 2005.

2.7: The comment period was extended until December 19, 2005 with an additional 30-day comment period on the revised draft EA.

From: "Hunter, Chris" <chunter@mt.gov>
To: <clarkcanyon@gp.usbr.gov>
Date: 11/25/05 12:12PM
Subject: draft EA for renewal of Clark Canyon water service contracts

November 25, 2005

Mr. Tom Sawatzke
Manager, Resource Management Division
Montana Area Office
Bureau of Reclamation
Billings, MT 59107-0137

Dear Mr. Sawatzke:

I am writing with regard to the draft Environmental Assessment for the renewal of water service contracts or conversion to repayment contracts for the Clark Canyon Water Supply Company and the East Bench Irrigation District. As you know the fishery resources of Clark Canyon Reservoir and the Beaverhead River downstream are some of the most prized and visited by anglers in the state of Montana.

3.1

Consequently Montana Fish, Wildlife and Parks is very interested in this EA and the potential affects the No Action and Preferred Alternatives may have on fish populations. We do not feel that the two week long period to review this document and provide comments is adequate, particularly since the period includes a major national holiday.

3.2

I am requesting that you extend the comment period to at least 30 days to allow the public, as well as the resource agencies, adequate time to review and provide comment on the EA.

Sincerely,

Chris Hunter
Chief of Fisheries
Montana Fish, Wildlife and Parks
406.444.2449

CC: "Oswald, Dick" <fishfwpdillon@7pks.com>, "Rich, Bruce" <BrRich@mt.gov>, "Phillips, Glenn" <gphillips@mt.gov>, "Schenk, Bill" <bschenk@mt.gov>

3.1: Noted.

3.2: The comment period was extended until December 19, 2005 with an additional 30-comment period on the revised draft EA.



JEFFERSON RIVER WATERSHED COUNCIL

Phone/Fax: (406) 442-8139

c/o 725 Hillside, Helena, MT 59601

www.JeffersonRiverWC.hometeam.com

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November 28, 2005

Tom Sawatzke
Resource management Division
Bureau of Reclamation
PO Box 30137
Billings, MT 59107-0137

Re: Clark Canyon Contract Renewal Draft Environmental Assessment

Dear Mr. Sawatzke:

4.1 The Jefferson River Watershed Council (JRWC) is interested in providing comments concerning the above-referenced draft EA. We received this document on November 18, 2005 and the deadline for commenting is December 6, 2005. This two week time period does not allow our organization adequate time to review and comment on this important document. Therefore, we are requesting that the Bureau of Reclamation (BOR) extend the comment period until January 6, 2006 allowing 45 days for the public to address concerns with this action.

The JRWC received the document after holding our November meeting on 11/16/05. Since the Council does not meet in December due to the holiday season, we require additional time for review and comment. The general time frame for review and comment on a project of this nature is 30-60 days. Since the reservoir releases water to the Beaverhead River, a headwater to the Jefferson River, we would like adequate time to review the impacts associated with this action.

We appreciate your cooperation concerning this matter.

Sincerely,

Roxann Lincoln
JRWC Coordinator

4.1: The comment period was extended until December 19, 2005 with an additional 30-day comment period on the revised draft EA.

From: "Bob Butler" <crane@3rivers.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/1/05 3:54PM
Subject: Comment on Clark Canyon EA

Please accept following comments on your EA.

5.1 In the final two pages of this document there are ~70 public comments. 45 of these comments deal with conservation and/or fishery and wildlife related issues. NONE of these have been adequately addressed in the document. As none of these issues has been properly addressed the only alternative is to conduct a full EIS. To pursue a new contract without a full EIS will surely result in court actions.

Throughout the document all of the preferred alternatives completely discount or disregard fish and wildlife values so important to the taxpayers who have funded this and other like projects through the years.

The number of obvious mistakes and omissions in the report are too numerous to mention; surely others will address these.

The comment period for a FORTY YEAR CONTRACT SUBSIDIZED BY TAXPAYERS is ridiculously short. Your characterization of some public comments being "irrelevant" because they don't deal directly with the water contract is, at best, a false claim. The taxpayers have funded this project. The proposed "payback" of same has not happened here or ON ANY OTHER BUREAU PROJECT. So all other facets of the watershed effected by the contract ARE legitimate concerns and need to be addressed in full EIS form.

5.2 Please consider a 60 day extension of the comment period . A full EIS is needed.

5.3 Thank you, Bob Butler, Twin Bridges, MT.

5.1: The scoping process is used to determine what issues need to be addressed and for identifying the issues related to the proposed action. Several of these comments were outside the scope of the proposed Federal action. The issues within the scope of the proposed Federal action were included in the EA and impacts regarding those issues were analyzed accordingly.

5-2: The comment period was extended until December 19, 2005 with an additional 30-day comment period on the revised draft EA.

5.3: An EA is written for Federal actions where effects are undetermined and which may or may not require an EIS. An EA is used to clarify the issues and the environmental effects. During the EA process, if impacts of the proposed Federal action are found to significantly affect the quality of the human environment, an EIS is prepared. The Clark Canyon Contract Renewal Draft EA compared the environmental effects of the Preferred Alternative to the No Action Alternative. There is little difference between the two alternatives, mainly an additional 918 acres for EBID and the change in priority use for water. The analysis in the Draft EA has not demonstrated that an EIS is warranted. Mere opposition to the Federal action does not warrant preparation of an EIS.



Beaverhead County Commission

2 South Pacific Street, Cl. #4
 Dillon, Montana 59725-4006

Phone: (406)683-3750 Fax: (406)683-3750

bvhdccommission@bvhdc.com
 trice@co.beaverhead.mt
 mmcguley@co.beaverhead.mt

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December 2, 2005

Jeff Baumberger
 Environmental Specialist
 Bureau of Reclamation
 Great Plains Region
 Montana Area Office
 P.O. Box 30137
 Billings, Montana 59107-0137

SUBJECT: Clark Canyon Contract Renewal Draft Environmental Assessment

Dear Mr. Baumberger:

6.1 The Beaverhead County Commissioners would like the time frame for providing public comments regarding the abovementioned subject to be a minimum of 30 days. Increasing the time frame will give any interested parties more time to comment.

Thank you for your consideration of this request.

Sincerely,

Garth L. Haugland
 Chairman
 Beaverhead County Commissioners

:pto

6.1: The comment period was extended until December 19, 2005 with an additional 30 day comment period on the revised draft EA.

Jeffrey Baumberger - Comment on CCR contract renewal EA

From: "Russ Kipp" <montana@mhcl.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/5/05 10:10PM
Subject: Comment on CCR contract renewal EA

12/5/05

To: US Department of Interior - Bureau of Reclamation

Subject: EA on Clark Canyon Reservoir Contract Renewal

From: Russ Kipp - Outfitter - member of the Beaverhead River Watershed Committee,
Montana Outfitter and Guides Association,
Beaverhead & Big Hole
River Outfitter Association, Montana State
River Recreation Committee

7.1 First I would like to thank you for the opportunity to comment on this issue. I do, however, think the comment period was too short and may violate the NEPA time frame for public comment on an EA.

My father was part of the construction crew that built Clark Canyon Reservoir, the East Bench Canal system and relocated the railroad in the early 60's. This project has had an economic benefit from day one to more than just the agriculture community.

As an outfitter that has operated on the Beaverhead and Clark Canyon Reservoir for the past 30 years it has been the main stay in my fishing operation. I am only a spoke in the fishing industry wheel in southwest Montana. Many business' beside the outfitting industry depend on the fishery created by the construction and operation of Clark Canyon Reservoir.

When reviewing the public comment in the back of this EA it shows a great concern for the fishery, water levels and the operation of the water supply in the Beaverhead River. In the EA itself MFWP biologist Dick Oswald is quoted repeatedly about the relationship with flows and fishery. Conditions ranging from poor to optimum are documented in this EA with matching flows regimes ranging from less that 65 cfs to more than 200 cfs.

A comprehensive water release plan from Clark Canyon Reservoir must be developed that will sustain the fishery in GOOD condition during drought years and OPTIMUM condition during good water years.

7.2 As a member of the Beaverhead Watershed committee much dialog has taken place in the past year concerning the ratio of water supplied to the actual water that makes it to the irrigated ground. This loss of water needs to be addressed in the EA as well as on the ground. If the canal system that delivers water to the fields is antiquated or inefficient it needs to be addressed in this EA and on the ground. The construction of Clark Canyon Reservoir and the East Bench Canal System was all part of one project and needs to be treated as such again. If the loss of water that takes place during delivery is addressed it would be feasible to have winter releases at OPTIMUM levels for the fishery even during drought years.

7.3 The Beaverhead Watershed committee is the appropriate forum to develop a

7.1: The comment period was extended until December 19, 2005 with an additional 30-day comment period on the revised draft EA. In addition, NEPA does not require minimum timeframes for public comment on a draft Environmental Assessment.

7.2: System water losses are described in the Water Losses/Conservation section of Chapter 3 of this revised draft EA.

7.3 drought management plan concerning winter releases and the effects on both stored water and fishery. It is also the appropriate forum to work on receiving grants to address the waste or loss of water during delivery.

7.4 In summary, I disagree with the Preferred Alternative as it refers to winter releases. The EA must address the loss of water that takes place during delivery and must maintain a minimal winter flow that will sustain a GOOD fishery and the economics that are related to it. The \$2.2 million generated by counting vehicles at the reservoir does not begin to reflect the value that this fishery has on our economics in Southwest Montana.

Thank you,

Russ Kipp
PO Box 460473
Polaris, MT 59746
PH: 406-834-3469
Email: Russ@mhct.com

7.3: The Drought Management Plan was developed between CCWSC and EBID, with assistance from Reclamation; since these entities are the parties that have legal binding contractual relationships. The Drought Management Plan is a voluntary reduction in water use by irrigators that have contracted with Reclamation for irrigation water. The Drought Management Plan would benefit not only the irrigators but also other users and resources in Clark Canyon Reservoir and the Beaverhead River. The Drought Management Plan is a small portion of what could be done to improve the Beaverhead River system. There are members of CCWSC and EBID that attend and participate in the Beaverhead Watershed Committee meetings. Reclamation agrees that the Beaverhead Watershed Committee is the appropriate forum to work on other such improvements.

7.4: Reclamation can understand your rationale for stating that minimum winter flows of 200 cfs is necessary to sustain a “good” fishery in the Beaverhead River and a minimum lake level of 60,000 AF provides a “good” reservoir fishery. However, it would be physically impossible to provide those river flows and lake levels every year, due to uncontrollable factors such as drought. The needs of the reservoir, the river, and the contract water users have to be balanced, sometimes resulting in less than “good” years for the river and/or reservoir fisheries, which rebound in “good” water years. Reclamation does not have the authority to withhold water from senior water rights holders during the irrigation season to ensure the in-stream flow junior water rights of 200 cfs is maintained. The state is responsible for enforcing the water rights.

The Preferred Alternative in the *Draft* EA includes a Drought Management Plan that would help conserve water in drought years to minimize effects to all interests, and the revised *Draft* EA includes the development of a partnership with MDFWP to minimize effects of operational issues.

DONEY | CROWLEY | BLOOMQUIST | PAYNE | UDA P.C.

ATTORNEYS AT LAW

Ted J. Doney (1942-1994)
Frank C. Crowley, MS
John E. Bloomquist
Michael J. Udo, MS
R. Allan Payne, RGP, MS

Offices in Helena and Dillon, Montana
sender's email: tdavis@doneylaw.com

Patti L. Rowland
Susan Callaghan
Suzanne Taylor
David R. Stewart, LL.M.
Thomas E. Davis
Abigail J. St. Lawrence

December 5, 2005

VIA ELECTRONIC MAIL
and FACSIMILE

Bureau of Reclamation
Attn: MT-231
P.O. Box 30137
Billings, MT 59107-0137

**RE: COMMENTS OF GEODUCK LAND & CATTLE, L.L.C.
CLARK CANYON CONTRACT RENEWAL DRAFT EA**

Dear Sir or Madam:

This firm represents Geoduck Land & Cattle, L.L.C. ("Geoduck"), a shareholder in the Clark Canyon Water Company ("CCWC") and member of the East Bench Irrigation District ("EBID"). As such, Geoduck is very interested in the Clark Canyon Contract Renewal Draft Environmental Assessment ("Draft EA") as well as the upcoming contract negotiations between the CCWC, EBID, and the U.S. Bureau of Reclamation ("BOR").

By way of background, Geoduck and its predecessors have historically used water for irrigation purposes on the properties known as the Diamond O Ranch and Lasich Ranch. In the early 1960's, Geoduck's predecessors in these properties "signed up" several of their water rights to water from the Beaverhead River in exchange for shares in the CCWC, which had contracted with the BOR to distribute water stored at the BOR's Clark Canyon Reservoir Project ("Project"). Geoduck's predecessors also received water through the EBID.

Based upon its review of the Draft EA, Geoduck now submits these comments. Geoduck also tiers to and incorporates by reference all comments submitted by the CCWC and/or its shareholders, EBID and/or its members, and all other comments made by interested persons and entities to the Draft EA.

**WATER ALLOCATION AND DISTRIBUTION UNDER
THE NO ACTION AND PREFERRED ALTERNATIVE**

In the No Action Alternative, the BOR wants to "continue" providing supplemental irrigation water to CCWSC, in first priority, at the original diversion rate of 4.0 AF/ac for the original

GEODUCK'S COMMENTS ON
CLARK CANYON EA
DECEMBER 5, 2005

25,995 "contract acres" signed up in the Project, and to the EBID, in second priority, at the rate of 3.1 AF/ac for the original 22,689 "contract acres." After these priorities, the BOR would provide additional water for irrigation up to "beneficial use" for 7,711 acres to the CCWC and 4,448 to the EBID. (It appears the acreage amounts are what the BOR considers as "expanded acreage" since the inception of the project.)

The Preferred Alternative appears to provide the CCWC and EBID with the same "contractual" priorities but allow the water users of each entity to place that water on the "contracted acres" as well as the "expanded acres" identified above. However, the amount allowed for appropriation in the first two priorities is limited to 4.0 and 3.1 AF/ac for CCWC and EBID, respectively. After these first two priorities are satisfied, the BOR would provide additional water for irrigation only if approved by a "Joint Board."¹

- 8.1 Nowhere in the EA does the BOR analyze the impact of any of its alternatives on the amount of water CCWC's shareholders and EBID's water users have historically received since inception of the contract. As discussed below, both CCWC's shareholders and EBID's water users have a vested right to the amount of water they historically received and put to beneficial use. As a result, to be sufficient in its analysis, the EA must analyze the amount of water received by CCWC's shareholders and EBID's water users and address the impacts on the alternatives to this analysis. Without doing such an analysis and disclosing potential impacts to water users, the BOR has not engaged in the requisite thorough and robust NEPA analysis leading to an informed-decision making process as required by NEPA. Furthermore, the BOR has not
- 8.2 provided sufficient information to the public so that it can make informed comments on the EA. Both of these are violations of NEPA.

- 8.3 Based upon Geoduck's review of the applicable case law regarding the property nature of water distributed by and through BOR water storage projects such as the Project here, neither the No Action Alternative nor the Preferred Alternative properly recognize the water users' vested right to water received from the Project. CCWC's shareholders and EBID's water users, including Geoduck, have a vested right in Project water based upon the amount of water they historically received and put to "beneficial use" during the past forty-years of the Project. As numerous cases have recognized, while the BOR may own the diversion works, it has generally been held that it is the water users who have a property right in the underlying use of water based upon the amount of water put to "beneficial use."

The rationale in these cases is premised upon the fact that the federal Reclamation Act defers to state water laws for water right ownership and allocation issues. Similar to the state laws analyzed in those cases, Montana law regarding water right ownership and allocation states that appropriation of water for "beneficial use shall be the basis, the measure and the limit of all rights to the use of water." *McDonald v. State* (1986), 220 Mont. 519, 531, 722 P.2d 598, 605 (citation omitted) (emphasis added). As such, the water users' interest in Project water is the amount they and their predecessors have beneficially used since the inception of particular Project.

¹ Geoduck's comments on the formation of a "Joint Board" are included below.

8.1: It is impossible for any of the alternatives to impact water historically received by CCWSC shareholders and EBID water users. The water historically received has already been delivered and put to beneficial use. The Preferred Alternative would continue to deliver the water historically used under similar hydrologic conditions as the previous contracts. Contract negotiators have crafted a water allocation methodology that formalizes those historic practices in the proposed contracts.

8.2: Reclamation believes the Revised Draft EA contains sufficient information for the decision maker to make an informed decision.

8.3: Reclamation is contracting with CCWSC and EBID, not with individual contract water users within the respective entities.

8.4

In reviewing the BOR's No Action and Preferred Alternatives regarding the allocation rate of (4) acre-feet per "contract acre," it appears that water users may be allocated a proportion of water which is much less than the water they and their predecessors have historically received and beneficially used since the inception of the contract based upon a review of the Beaverhead River Water Commissioner Records. Because water users' have a vested property right in the amount of water its predecessors historically placed to "beneficial use," it is not acceptable to limit the extent of a users' right to the number of "contract acres." The BOR should analyze historic water delivery records available and include the information as the baseline of actual use of Project water.

CREATION OF A "JOINT BOARD"

8.5

The EA does not analyze the impact of a "joint board" on CCWC shareholders and EBID water users. Further, the EA fails to recognize that a "joint board" in this context is impermissible under Montana law as CCWC is not an irrigation district. See, M.C.A. § 85-7-1601 et seq.

CLASS "D" SHARES AND APPLICABLE FEES

8.6

Though the Draft EA does not expressly mention² that the BOR wants to assess "expanded acres" an additional fee, including a fee for the Canyon Ferry Project, it is evident from the BOR's participation at the October 20, 2005 meeting of the CCWC's Board of Directors that it wants to assess such a fee. From those discussions, it appears that the BOR's reasoning for assessing such a fee is that any "expanded acreage" has led to an increased demand on the Project and taken water away from the Canyon Ferry Project. Geoduck opposes this concept on several grounds.

First, no such preclusion on "expanded acreage" has ever been a part of Montana water law. In other words, Montana law, prior to 1973, allowed water users to move water, change place of use or means of use, provided other water users were not injured. Second, the BOR's assertion that water was "taken away" from the Canyon Ferry Project is speculative at best. In fact, a review the records showing water distribution to the CCWC by the Beaverhead River Water Commissioner since 1960 actually show the converse as true. Third, the very notion of "expanded acreage" and the determination of such acres lie within the jurisdiction of the Montana Water Court. Expanded acreage occurring prior to July 1, 1973 can only be determined by the Montana Water Court, as it has exclusive jurisdiction over that issue. See, § 3-7-501, M.C.A.; *Jones v. District Court Of Fourth Judicial District* (1997), 283 Mont. 1, 7, 938 P.2d 1312, 1316 ("[i]t is solely within the province of the Water Court... to determine priority dates, flow rates, place of use and means of diversions...."). As a result, "expanded acreage" can only be determined after the underlying water rights owned by CCWC's shareholders' and EBID's members have been adjudicated by the Water Court. To date, there has been no Water Court adjudication on the Beaverhead River.

Also, the entire concept of "expanded acreage" has other underlying concerns. It is probable that some of the expanded acreage occurred as a result of water users, including CCWC's

²The underpinnings of BOR's desire in this regard is implicit in its discussion of "3rd Priority" under both the No Action and Preferred Alternative.

8.4: The contract with the CCWSC and the individual subscription agreements between the shareholders of CCWSC and the CCWSC adequately describe the contractual rights of the parties during the previous contract and the future contracts.

8.5: The Joint Board as proposed would have very limited authority to administer the water allocation sub articles of the proposed contracts. The Joint Board was not being proposed to be formed under M.C.A.85-7-1601.

The parties believe they have authority to enter into a Joint Board as proposed by the negotiating parties. The shareholders of CCWSC and the members of EBID will have the opportunity to approve the creation of the Joint Board in the contracts prior to them being executed.

8.6: Section 9(e) of the Reclamation Projects Act of 1939 (P.L. 260) states that "...Each such contract shall be for a period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper..."

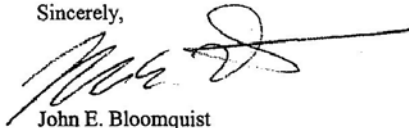
The determination of the appropriate share of the annual operation and maintenance cost is outside the scope of this proposed Federal action. There is a high probability that the some of the acres being irrigated under the 3rd priority of the existing contract would rely on stored water to provide a full supply, in comparison to their natural flow rights. The ability for Reclamation to provide a full supply utilizing water stored in Clark Canyon Reservoir is linked to Canyon Ferry Reservoir.

**GEODUCK'S COMMENTS ON
CLARK CANYON EA
DECEMBER 5, 2005**

shareholders, switching from flood to sprinkler irrigation, which is a more efficient form of irrigation. The water "salvaged" by switching from flood to sprinkler irrigation was used to irrigate additional ground. This was common in the 1960's and 1970's along the Beaverhead River and was authorized and, in fact, encouraged under Montana law. While this does alleviate the fact that this irrigated ground was "expanded acreage," it does rebut the BGR's argument that this expanded acreage put an additional demand on the amount of water available, thus impacting the water available for the Canyon Ferry Project.

Please communicate with my office if you have any questions or would like to discuss this further.

Sincerely,



John E. Bloomquist
Thomas E. Davis
Attorneys For Geoduck

cc: Geoduck Land & Cattle, L.L.C. (via Electronic Mail)
Robert Parmenter (via Hand Delivery)
Clark Canyon Water Company (via Hand Delivery)
Bill Hritsco (via Hand Delivery)



P.O. Box 200901 • Helena, MT 59620-0901 • (406) 441-2344 • www.deq.mt.gov
December 2, 2005

Bureau of Reclamation
Attention: MT231
PO Box 30137
Billings Montana 59107-0137

RE: Clark Canyon Reservoir draft Environmental Assessment

Dear Bureau of Reclamation:

The Montana Department of Environmental Quality is responding to your public notice on the draft Environmental Assessment (draft EA) for the renewal of water service contracts or conversion to repayment contracts with the Clark Canyon Water Supply Company and East Bench Irrigation District.

As identified in the draft EA, the final Environmental Assessment document will be used to make several decisions, including "Would a new contract constitute a major federal action significantly affecting the quality of the human environment, thereby requiring an EIS?" and "Are there any terms and conditions ensuring environmental quality that need to be included in future contracts?"

9.1

As identified in the draft EIS, both the Beaverhead and Jefferson Rivers have segments that are not currently meeting State water quality standards. The DEQ is currently developing required "Total Maximum Daily Loads" on a watershed basis for those segment/pollutant impairment combinations in the Beaverhead and Jefferson watersheds. Probable impairment causes listed in the State's list of Impaired Waterbodies (303(d) list) include dewatering, bank erosion, and flow alterations, and may be linked to Clark Canyon Reservoir. State law requires that owners and operators of water impoundments causing conditions harmful to beneficial uses of state waters demonstrate to the satisfaction of the DEQ that operations are done in the best practicable manner to minimize harmful effects (Administrative Rules of Montana, 17.30.636). Based on the draft EA, DEQ feels that there is not enough information to answer the questions regarding future contract terms and conditions to ensure that harmful effects to beneficial water uses will be minimized. Additionally, DEQ suggests that a new forty-year long-term contract is likely to significantly affect the quality of the human environment and therefore encourages a full environmental review.

Thank you for the opportunity to comment on the draft EA.

Sincerely,

George Mathies
Water Quality Planning Bureau Chief

cc: Art Compton, DEQ
Dean Yashan, DEQ
Robert Ray, DEQ
Tom Elerhoff, DEQ

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9.1: Reclamation is funding two water quality/quantity studies in the Beaverhead River basin through Montana State University and Montana Tech. When data collection and analysis have been completed, these studies will provide needed information in the TMDL planning and implementation process (to be completed in 2008). Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin.

Reclamation also met with MDFWP to address water quality and fisheries concerns in the Beaverhead and Jefferson Rivers. Reclamation and the State will be entering into an agreement, which will require cooperation among agencies to work toward improved water quality and improved fisheries and allow agencies to work toward a flushing flow to reduce impacts of sediment loading.

The draft EA analyzed effects to water quality by comparing the Preferred Alternative to the No Action Alternative as required by NEPA. The finding that the Preferred Alternative would not change water quality substantially from the No Action is based on hydrologic modeling. For median flow years, the hydrographs for both alternatives are very similar with slightly less water being diverted. The similarity between the hydrographs and quantity of water diverted suggests that no adverse impacts to water quality will occur with implementation of the Preferred Alternative.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
106 SOUTH 15TH STREET
OMAHA NE 68102-1616

December 6, 2005

Planning, Programs, and Project Management Division

Mr. Tom Sawatzke
Montana Area Office, Great Plains Region
Bureau of Reclamation
P.O. Box 30137
Billings, Montana 59107-0137

Dear Mr. Sawatzke:

The U.S. Army Corps of Engineers, Omaha District has reviewed the Clark Canyon Contract Renewal Draft Environmental Assessment, and we offer the following comment:
We recommend an appendix containing copies of all agency coordination letters be included in the final Environmental Assessment.

10.1

If you have questions, please contact Ms. Katie Reed at (402) 221-4604. Thank you for the opportunity to review this document.

Sincerely,

Candace Gorton, Chief
Environmental, Economics, and
Cultural Resources Section
Planning Branch



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10.1: A summary of correspondence and coordination with other agencies, interests, and the public has been added to Chapter 5 of the EA.



Public Lands/Water Access Association, Inc.
 Post Office Box 2 ■ Ramsay, Montana 59743-0002 ■ Email: plaal@imt.net ■ 406-782-1560

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December 7, 2005

Bureau of Reclamation
 Attn: MT-231, PO Box 30137
 Billings, MT 59107-0137

Dear Sirs:

Our three organizations consisting of Public Lands/Water Access Association, Inc., Skyline Sportsmen of Butte and Anaconda Sportsmen's Club are submitting our comments on the Draft EA for the Clark Canyon contract renewal. We appreciate the extension of time to submit comments because the plan seemed to be on a fast-track with little public input. We were disappointed that a meeting was not held in Butte, because the commercial and recreational values of the Clark Canyon fisheries is enjoyed by large numbers of individuals in the surrounding area.

- 11.1 First and foremost, forty years is a long time for a project to operate without additional oversight as irrigation methods improve, changing hydrology, drought cycles, recreational uses, etc. There should be a change in the EA to allow public review every ten years over the forty year contract.
- 11.2 We feel that the EA does not adequately address recreational uses, fisheries, habitat and commercial uses as mandated in the National Multiple Use Act, which is a violation of NEPA.
- 11.3 The document does not address any commercial uses on the lower Beaverhead and the Jefferson River nor the affect of how water temperatures that decimates aquatic life and the entire fishery.
- 11.4 This degrading of the lower rivers would be intensified by the EA's proposal to expand irrigation uses beyond the project area. This is foolhardy when you consider that there is not enough water in the holding facility to handle the existing uses. Any expansion of use further degrades the fishery, not only in the reservoir but also the lower rivers. There is nothing in the EA that recognizes the importance of recreational opportunities and commercial use by guides and outfitters. Since tourism and recreation are Montana's second largest industry, this important fact should not be ignored in the EA. This fact shows that the private use water companies are the only benefactors and is a flagrant violation of the National Multiple Use Mandate.
- 11.5 The EA promotes the status-quo and doesn't emphasize the importance of water conservation over the life of the project. This short-sightedness is inexcusable when dealing with public resources such as the entire upstream and downstream fisheries. Many of these concerns were brought out in the scoping process but were not addressed in the EA.

11.1: See description of contract terms in the contracting section in Chap. 1 of the revised draft EA. Appropriate NEPA compliance will be completed when future Federal actions take place such as if changes to the new negotiated contracts are proposed. Reclamation is the Federal agency responsible to ensure the terms of the contracts are upheld. The Congress retains oversight of Reclamation.

11.2: The comment refers to the National Multiple Use Act in general. The Federal Land Policy and Management Act of 1976 (P.L. 94-579) articulates management responsibility of the Bureau of Land Management. The Multiple-Use Sustained-Yield Act of 1960 (P.L. 86-517) establishes management policy for the U.S. Forest Service for the administration of National Forests. Reclamation operates under different authority from Congress. Neither of these acts is applicable to Reclamation, this Federal action, or the operation of Clark Canyon Dam and Reservoir.

11.3: See the response to Comment 9.1

11.4: Additional information has been added to the *Draft* EA in the recreation section that discusses recreational opportunities and commercial uses.

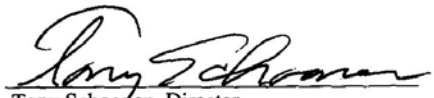
11.5: See water conservation requirements described in the Water Losses/Conservation section in Chap. 3 of the revised draft EA.

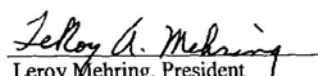
11.6 In fact, we feel that there are so many violations of NEPA and the National and State Multiple Use Act that a complete EIS must be prepared before contracts are renewed. Our groups would also like the Fish, Wildlife and Park's comments to be included as part of our official comments since they have much more expertise on this issue than we have.


11.7
11.8

Your consideration of our concerns will be greatly appreciated.

Sincerely,


Tony Schoonen, Director
Public Lands/Water Access Association, Inc.


Leroy Mehring, President
Skyline Sportsmen's Association


Larry Thomas, President
Anaconda Sportsmen's Club

11.6: See the response to Comment 11.2.
11.7: See the response to Comment 5.3.
11.8: Noted.

December 12, 2005

Bureau of Recreation,

I am a citizen of Twin Bridges and my life is directly impacted by the Beaverhead River in many ways. I am very disappointed at the low-key status quo approach to the Clark Canyon Contract Renewal given the fact that it is for forty years and the socio-economic dynamic of the region is changing so rapidly.

- 12.1 When I first moved here in 1983 I was led to believe that irrigators financed the cost of the entire Clark Canyon Project and that they had the exclusive right to all the water. Since that time I now understand that public funds have also been used to build and manage the system. Additionally, it is my understanding that very few ranching operations don't get government subsidies. It is this public funding source that essentially helps pay for their "private water rights." Furthermore, many ranchers are selling off properties to folks who come here to build a dream home predicated on a quality of life linked to the river. This is an important economic fact in terms of future jobs and taxes that is given very little consideration in the Contract. There is also a serious economic impact regarding the blue ribbon fisheries given little regard as well. What seems to be apparent beyond the obvious desire to cling to the status quo is the plan to add irrigated acreage in a system that can't even deliver 1880 water rights to ranchers on the Jefferson.
- 12.2 This plan is unacceptable. It does not take into account even one dollar of my tax contribution to the cause. I demand further review that requires a good look into the future of the region and a plan that can adapt to those changes.

- 12.3 This plan is unacceptable. It does not take into account even one dollar of my tax contribution to the cause. I demand further review that requires a good look into the future of the region and a plan that can adapt to those changes.

Jerry Kustich
Box 432
Twin Bridges, MT 59754

Cc: Senator Conrad Burns, Representative Denny Rehberg, Senator Max Baucus

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12.1: The proposed Federal action is to renew long-term water service contracts or convert the existing contracts to repayment contracts. The CCWSC and EBID irrigators would be responsible to pay a construction component as well as their share of the operation, maintenance and replacement (OM&R) of the system. The contracts are attributed to the irrigated land, so, regardless of property ownership, the construction costs and OM&R would still be paid by the appropriate beneficiaries.

See Table 3.7 for a breakdown of the major industries in Beaverhead and Madison County.

12.2: Reclamation stores water in Clark Canyon Reservoir under stored water rights in accord with the Montana Water Use Act, as amended. There is a total of 918 acres that are proposed to be added to the EBID as part of the proposed Federal action. These 918 acres, if added to EBID, would use stored water from Clark Canyon Reservoir. The 1880 water rights in your comment are natural flow water rights not associated with stored water in Clark Canyon Reservoir.

12.3: A general "plan" for the future of the region is beyond the scope of the proposed Federal action. However, the relationship between this action and other reasonable foreseeable action are addressed in the cumulative impacts sections throughout the document in Chap. 4.

December 13, 2005

Mr. Jeff Baumberger
Bureau of Reclamation, Montana Area Office
Attn: MT231, Clark Canyon Comments
P. O. Box 30137
Billings, MT 59107-0137

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Re: Comments on Clark Canyon Water Delivery Contract Renewals

Dear Mr. Baumberger:

As a concerned sportsman, who fishes the Beaverhead River, I have concerns with the Clark Canyon Water Delivery Contract Renewals. We are no longer living in the 1950's when the original contracts were developed for water use from Clark Canyon Dam. A lot has changed since that time and the river is very important to other users besides irrigators. I realize the dam has created a Blue Ribbon fishery as a by-product of irrigation water storage and releases from the dam but this fishery has a large impact on the economy of Dillon and surrounding areas and it needs to be considered in the renewal process.

- 13.2 The two proposed alternatives are inadequate. Additional alternatives need to be developed that take into account the fisheries, water quality and hydrology of the Beaverhead River, economic effects, and affects of irrigating 13,995 additional acres beyond what was authorized under original contract terms. Alternatives should also consider the conveyance system and its efficiency for delivering water to headgates at the farmer's fields. From your own data in the EA, it shows there are major problems with water losses and those losses, if reduced, could be used to help the fisheries and river morphology.

13.1: Reclamation acknowledges that the Blue Ribbon fishery has an impact on the economy of Dillon and the *Draft* EA analyzed effects to fisheries when the Preferred Alternative was compared to the No Action Alternative as required by NEPA. Both alternatives were modeled and there was very little difference hydrologically and therefore minimal effect to fisheries. The No Action Alternative is basically continuation of conditions that have resulted in the premier trout fishery that exists now. The Preferred Alternative showed a slight beneficial effect in some cases due to the addition of a Drought Management Plan in the *Draft* EA.

Modeling results were misleading, showing several years of poor fisheries predicted under both scenarios due to inclusion of several years of very poor hydrologic conditions in the period of record (i.e. the thirties). NEPA requires comparison to No Action Alternative predictions rather than actual past conditions, so the modeling is the best information available. The analysis has been clarified in the revised *Draft* EA. Fishery effects have been compounded by the severe drought in recent years. To minimize these effects, the Preferred Alternative in the revised *Draft* EA would include further protection for fisheries with addition of a partnership agreement with MDFWP to work through Beaverhead River issues.

13.2: The proposed Federal action is to renew long-term water service contracts or convert the existing contracts to repayment contracts. The President's Council on Environmental Quality recommends that Federal agencies include "reasonable alternatives" to accomplish the purpose and need of the Federal action. The two alternatives in the *Draft* EA were reasonable alternatives to achieve the purpose and need of the proposed Federal action. Any additional alternative with a main goal of correcting all the environmental issues/problems in the Beaverhead River is not a reasonable alternative to satisfy the purpose and need of this Federal action.

The revised *Draft* EA did not include any additional alternatives; however, the Preferred Alternative would contain language to assist Reclamation, the two water user groups, state agencies, and other groups to work cooperatively together in order to address some of the concerns on the Beaverhead River.

The Preferred Alternative should address:

- 13.3 1. Setting minimum flows, not medium flows, during shoulder season months and winter months to reduce adverse impacts to fisheries, aquatic life and habitats, water quality, river hydrology and recreation use.
- 13.4 2. Reducing heavy loads of sediment being released into the river with no power of dilution or transport during periods of drought.
- 13.5 3. Maintaining minimum flows in the lower river during the irrigating season to prevent high water temperatures lethal to trout during summer months.

13.3: The minimum winter flows in the Beaverhead River would be set during the non-irrigation season depending on hydrologic conditions. The in-stream flow may be set as low as 25 cfs in drought years or as high as 200 cfs in normal water years. The Preferred Alternative includes a target minimum reservoir level of 60,000 AF likely to be achieved during normal water years, and a minimum reservoir pool of 10,000 AF during drought years. It also would include a target minimum in-stream flow of 200 cfs likely to be achieved during normal water years and a bottom line minimum in-stream flow of 25 cfs in dry years. The target levels would likely be met during most years; however, during drought years the minimum levels were set to protect (not enhance) fisheries and other aquatic life. A drought impacts many resources, including, but not limited to, fisheries, water quality, recreation, and irrigation.

Reclamation and the contract water users will be looking for various ways of improving water efficiencies and increasing minimum flows in the Beaverhead River. Reclamation and the contract water users will be seeking other partners, including interested parties that use the Beaverhead River, to assist with these improvements, both financially and in-kind.

13.4: Correcting all problems in the Beaverhead River is outside the scope of this Federal Action. Reclamation is one of the many stakeholders in the basin, and as such will work with other stakeholders to remedy water quality concerns. Water quality in the basin is affected by many factors including: flow alteration at CCR; mining; agriculture; silviculture; highway, road and bridge construction and maintenance; domestic water and wastewater; storm water runoff from unimproved roads and urban areas; and land development and urbanization. The water quality issue is complex and will require a concerted basin wide effort from all stakeholders. Reclamation feels the most appropriate avenue to address these problems is to work collaboratively with other interested parties. Many opportunities for cooperation and water quality improvement will occur during the planning and implementation phases of the TMDL process. This document contains a thorough look at water quality problems, probable sources and probable actions that can be taken to improve problems with nutrients, temperatures, sedimentation, dissolved oxygen, metals and other impairments.


13.5: The Preferred Alternative would include a target in-stream flow of 200 cfs during normal water years and a bottom line in-stream flow of 25 cfs during drought years. The target levels would likely be met during most years. During drought years, minimum levels were set to protect fisheries and other aquatic life. Reclamation and the contract water users will be looking for various ways of improving water efficiencies and increasing minimum flows in the Beaverhead River. However, all users in the Beaverhead River basin are responsible for minimum river flows in the lower Beaverhead, not just the project. Therefore, Reclamation and the contract water users will be seeking other partners, including interested parties that use the Beaverhead River, to assist with these improvements, both financially and in-kind.

Reclamation met with MDFWP to address water quality and fisheries concerns in the Beaverhead and Jefferson rivers. Reclamation and the State will be entering into an agreement, which will require cooperation among agencies to work toward improved water quality and improved fisheries and allow agencies to work toward a flushing flow to reduce impacts of sediment loading. Reclamation also will work cooperatively with the Montana Department of Environmental Quality during TMDL planning and implementation.

- 13.6 I feel the EA is inadequate and an ESI should be prepared. Management responsibly for the Clark Canyon Water Delivery system should be with the Bureau of Reclamation and not the present water contractors. There needs to be public accountability on how the system is operated. Existing contracts could be extended until an EIS is completed.
- 13.7

Thank you for your time and consideration of my comments.

Sincerely,


Paul M. Olson
2605 Deep Creek Road
Wise River, Montana 59762

Cc: Governor Brian Schweitzer
Sue Kelly, Montana Area Manager, BOR

13.6: See response to comment 5-3.

13.7: The existing between Reclamation and CCWSC and Reclamation and EBID has been extended in accordance Section 208 of Title II of P.L. 108-447, entitled the Montana Water Contacts Extension (see appendix). P.L. 108-447 allows the existing contracts to be extended for up to two years if necessary. The existing contracts have been extended until December 31, 2006 to allow for appropriate NEPA compliance to be completed and the new contracts to be negotiated.

From: "Bob Butler" <crane@3rivers.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/14/05 10:22AM
Subject: R. G. Butler comment on Clark Canyon EA

To Whom it may concern-

After reading the EA here are some points to consider:

- 14.1 1) There seems to be a "shortage" of alternatives presented. I see no adequate alternatives for several issues critical to the operation of the dam.
- 14.2 2) None of the alternatives address water quantity as it is delivered through the project. It is estimated the system is between 30 and 40% efficient.
- 14.3 3) No where in the EA are the economics of the dam or the East Bench Irrigation Project explained. It appears that both entities have been funded by the taxpayers. What is not clear are the repayments of that debt. As the request is for a second forty year contract, taxpayers want to know the EXACT financial condition before any contracts are approved. This request should be granted both for the dam and the East Bench Irrigation Project.

14.1: See the responses to Comments 13.2.

14.2: It is unclear what the commenter is trying to state. Both alternatives measure water quantity at the point of diversion on the Beaverhead River, and irrigation return flows are discussed in the *Draft* EA. There are canal inefficiencies throughout the system, and water conservation measures are being implemented through other programs as funding allows.

See Water Losses/Conservation section in Chap. 3 of the revised draft EA.

14.3: Economics are addressed in Chap. 3 and Chap. 4 of the revised draft EA. The contract information section in Chap. 1 describes in more detail the project repayment component.

The EBID's water conveyance (main canal, laterals, diversion dam, etc.) and drainage works and Clark Canyon Reservoir were constructed by Reclamation as authorized by Congress. One of the main purposes of the contract with EBID as described in the Preferred Alternative is to negotiate repayment of the appropriate share of the cost of constructing the facilities from the district. This is in accordance with Federal law as described in Contract Information section.

Reclamation also proposes to negotiate repayment of the appropriate share of the construction cost of constructing the water supply works (Clark Canyon Reservoir) with CCWSC.

From: "Bob Butler" <crane@3rivers.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/14/05 10:22AM
Subject: R. G. Butler comment on Clark Canyon EA

- 14.4 [4\)Downstream irrigators concerns for adequate summer flows are not addressed.](#)
- 14.5 [5\)Downstream water quality issues have not been addressed](#)
- 14.6 [6\)Winter flows have not been addressed](#)

14.4: Reclamation, EBID, and the shareholders of CCWSC are obligated to exercise their water rights in accordance with the Montana Water Use Act, as amended. Downstream irrigators have provisions under that act to ensure their state-based water rights are fulfilled.

14.5: Water quality parameters were sampled by Reclamation as far downstream as Geim Bridge. These parameters were used as part of the analysis in the draft EA. In addition, Reclamation contracted with Montana State University for water quantity work and Montana Tech to more completely understand impacts of operations on water quality in the Beaverhead and Jefferson River basins.

14.6: Wintertime or non-irrigation in streams flows are addressed as part of the Preferred Alternative and throughout various sections in the EA. For more information on target flows during normal water years and minimum flows during dry years, see the response to comment 13-3.

From: "Bob Butler" <crane@3rivers.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/14/05 10:22AM
Subject: R. G. Butler comment on Clark Canyon EA

To Whom it may concern-

- 14.7 In general I am stunned by the complete disregard to the taxpaying public. The whole of the dam and accompanying irrigation projects have been funded by the American taxpayer. Repayment of same
- 14.8 REMAINS A MYSTERY to the public. This EA seems to COMPLETELY ignore any possible values outside of irrigation.
- 14.9 To properly evaluate the dam properly a full EIS should be completed. Consider a 1 or 2 year interim
- 14.10 contract until that EIS is complete. The interim contract should provide for increased winter flows.

Thank you,
R. G. Butler

14.7: See response to comment 14-3. The repayment contracts, when negotiated, will be in accordance with appropriate provision of Federal Law established by the Congress and delegated to the Secretary of the Interior. See language in the contract information section located in Chap. 1 of the revised draft EA for more details.

14.8: There are many "values outside of irrigation" that are discussed and disclosed in Chap. 3 and Chap. 4 of the revised draft EA. These values include wildlife, recreation, fisheries, water quality, etc. The revised draft EA analyzes the impacts that the proposed Federal action has on these values.

14.9: See the response to Comment 5.3.

14.10: See the response to Comment 13.7.

Allen Schallenger
53 Elser Lane
Sheridan, MT 59749-9604
406-842-5134

Dec. 14, 2005

Dan Jewell, MT Area Manager
Bureau of Reclamation
Attn: MT-232, P.O. Box 30137
Billings, MT 59107-0137

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Dear Mr. Jewell:

- 15.1 I am writing to comment on the highly inadequate EA you prepared for re-issuing leases on Clark Canyon Reservoir water for 40 more years. Clearly what needs to be done are interim yearly water leases for irrigators until all the problems can be sorted out in an EIS and management plans written which will correct or mitigate the terrible river problems of the last 40 years. The problems affect all including ranchers and irrigators, local towns and communities, trade centers such as Bozeman and Butte, anglers, other recreationists and tourists and even the bureau itself which must take credit for the problems and responsibility for improving the situation. Two major rivers the Beaverhead 80 miles long and the Jefferson 85 miles long have been badly impacted. Probably even the larger Missouri River has also been harmed. Millions of people have been affected in the past 40 years and will be harmed in the future if the preferred alternative is approved.
- 15.2
- 15.3 1) The range of two alternatives was poor and did not include one which would remove or mitigate the impacts of sediment accumulation, nutrients, poor flow regime in the river, high conveyance losses which cause great problems for irrigators and high winter flows in the lower river, and absence of a natural hydrograph which has greatly harmed desirable river bank cover and fish.
- 15.4 2) The explanation was poor on the original project size and how much it was enlarged over the years after conversion from flood to sprinkler irrigation. That conversion certainly decreased river flows in summer and water available to downstream irrigators. The loss of over 60 per cent of the water before it gets to the fields is outrageous. Also outrageous is the proposal for an additional 13,995 acres to be irrigated given the poor condition of the Beaverhead and Jefferson Rivers. Drought management plans appear to decrease the necessary winter flows of 200 cfs to 25 cfs immediately below the dam. Those plans must be modified so you are not harming the rivers and fish and the local economy.
- 15.5 3) Much work by others is on-going to solve the problems on the Beaverhead, Ruby, Big Hole and Jefferson Rivers. Your inadequate and inaccurate EA did not take into account work already done by others including TMDL's on the Beaverhead and other rivers, research by Jim Bauder at MSU on the Beaverhead which apparently is still not

15.1: See the response to Comment 5.3.

15.2: Reclamation is in the process of entering into an agreement with Montana FWP and will continue to work with other entities to improve the various issues that occur on the Beaverhead River.

15.3: See the responses to Comments 13.2 and 13.3.

15.4: See language and further description in Background section in Chap. 1 of the revised draft EA.

15.5: Correcting all problems in the Beaverhead River is outside of the scope of this Federal action. However, Reclamation is committed to working with other entities, including Montana FWP and the Beaverhead River Watershed Committee, to improve the various issues that occur on the Beaverhead River.

15.5 available, research which is on-going by MT Tech on the numerous recent irrigation wells put in place and the effects on the river and other information such as the effects of the many fish and duck ponds and subdivisions going in.

15.6 3) Nutrients, sediment, high temperatures and excessive algae and aquatic plant growth are causing serious water quality problems. You have not shown how you will remove or mitigate those problems. BOR did not even attempt to get accurate data on dissolved O2 but instead ran one monthly test in late afternoons. Most everyone knows low O2 occurs during the early morning hours. Low O2 is killing young fish on the Jefferson River and probably also on the Beaverhead River.

15.7 4) Cumulative impacts on page 45 says there will be no effects on the Jefferson River fishery. Because I have an M.S. in Fish and Wildlife Management from MSU, Bozeman, started and continue to serve on the Jefferson River Watershed Council and because I have fished the area rivers for 15 years as a general outfitter I want to assure you your position is highly inaccurate. Your people would only have to take one float trip to the confluence of the Beaverhead and Big Hole Rivers to see some of the problems that are occurring. The lower Beaverhead has some of the lowest fish populations occurring in the upper Missouri River watershed due to your past management.

Periodic bank full flushing flows are badly needed on the Beaverhead River to remove sediment, improve the channel health, bank cover and which should be timed with high flows on the Big Hole and Ruby to do the most good on the Jefferson River. Other rivers with irrigation dams have been able to provide desirable natural flow regimes. Why can't you do that also? Do you want to continue to degrade the river for another 40 years? The last flushing flow occurred in 1984.

15.8 5) Your analysis methods and data appear to be inadequate. Winter flow models do not fit reality. We believe the high winter flows at Twin Bridges and at the USGS measuring station 11 miles airline miles southwest at Beaverhead Rock are resulting from ditch leakage and sprinkler irrigation carried out long distances from the river. We have a reverse hydrograph from a normal river. Reducing water losses could benefit everyone and the rivers greatly.

15.10 6) Your social and economic discussions are highly inadequate and should include comprehensive data for all alternatives including one which would remove or mitigate past problems and future problems. If you adopt either of your two present alternatives, excessive water will be consumed, water quality and river channel health will continue to deteriorate as will fish populations, irrigators on the project and downstream irrigators will not receive necessary water, and the fisheries and recreational economy in the area will continue to decline. We have had about 75 per cent decline in anglers on the Jefferson River since the early 1980's.

We believe that you should get to work and craft a win-win situation for everyone instead of harming everyone. We believe that money is available from Congress to correct the problems. Homeland security may be able to help you. I learned today they

15.5: Reclamation is funding water quantity and water quality studies in the Beaverhead basin through Montana State University and Montana Tech. When data collection and analysis have been completed, these studies will provide needed information in the TMDL planning and implementation process (to be completed in 2008). Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin.

15.6: See the response to Comment 13.4

15.7: Effects to the Jefferson River, like all other resources, were considered by comparison of the Preferred Alternative to the No Action Alternative. Using the model to predict river flows in the Jefferson, there was no discernable difference between the two alternatives, so no fisheries impacts due to the Preferred Alternative were determined. Past effects to fisheries due to operation of the project is discussed in the Affected Environment section. The revised *Draft* EA includes more detailed discussion of the Jefferson River and cumulative effects. The Preferred Alternative in the revised *Draft* EA includes further protection for fisheries with the addition of a partnership agreement with MDFWP to work through the various issues related to the Beaverhead River, which would include positive effects to the Jefferson River.

15.8: The flow hydrographs in the Beaverhead River depicted in Figures 4.3 and 4.5 (Beaverhead River near Twin Bridges) of the first *Draft* EA are sufficient predictions of future conditions on which to base analysis of impacts of the Preferred Alternative. The model used past hydrologic data and the present level of system demands to predict future conditions.

15.9: The "reverse hydrograph" is a historic condition that is part of the environmental benchmark condition. For additional information, please review the long-term historic data available from the USGS for USGS station number 06018500.

15.10: The commenter indicates that alternatives "should include comprehensive (economic) data for all alternatives including one which would remove or mitigate past problems and future problems." Additional social and economic discussions for the two alternatives have been included in the revised *Draft* EA. Including a single alternative that "would remove or mitigate past problems and future problems" is outside the scope of this Federal action and not reasonable. See the response to Comments 13.2 and 13.3 for explanation of "reasonable alternatives".

are funding buffalo disease research to the tune of several million. The Iraq war may see reduced U.S. action soon. One half trillion from the US has been spent there so far. Thank you for the opportunity to comment and keep me on your mailing list.

Sincerely,



Allen Schallenberger

Jefferson River Watershed Council member, Lewis and Clark Trout Chapter Trout Unlimited Director, member of Beaverhead/Big Hole Outfitters and Guides Association and Fishing Outfitters Association of Montana, former rancher with 20 years irrigation experience.

c. Senator Conrad Burns, Senator Max Baucus, Congressman Jenny Rehberg, Governor Brian Schweitzer, Senator Bill Tash, Representative Diane Rife

DEC 15 2005

To: Bureau of Reclamation

Ref: Comments on the Draft EA for Clark Canyon-Beaverhead 2005 Water Supply Contract Renewal

December 12, 2005

I have the following comments on the Draft EA for Clark Canyon-Beaverhead 2005 Water Contract Renewal:

- 16.1 1. No alternatives considering improvement of multiple use benefits such as fisheries or hydrology were brought forward. This should be a part of the final alternative.
- 16.2 2. No alternatives considering water conservation methods to increase efficiency of the system were advanced. This should be part of the final alternative.
- 16.3 3. This is a NEPA process for a 40 year contract for the management of an important public resource. Analysis at the Environmental Impact Statement level should be considered because of the environmental, social and economic impacts.
- 16.4 4. The final alternative needs standards for minimum winter flows to protect fisheries and other aquatic life and for maintaining minimum flows in the lower Beaverhead River, during irrigating season, to prevent high temperatures.
- 16.5 5. Dick Oswald, Montana FWP Fisheries Biologist, is the authority on the Beaverhead River and should be part of this ID Team.

Sincerely,

Raymond Gross
Raymond Gross

355 Antelope Dr
Dillon, Montana 59725

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16.1: See responses to Comments 13.2.

16.2: See responses to Comments 13.2.

16.3: See the response to Comment 5.3.

16.4: The Preferred Alternative would contain target minimum in-stream flow releases of 200 cfs in normal water years and a minimum in-stream flow release of 25 cfs during drought years. The Preferred Alternative does not contain minimum flow releases during the irrigation season because Reclamation typically releases about 700 cfs from the dam during July and August. The point of delivery of water under the contracts is at the outlet works of Clark Canyon Reservoir. In addition to the EBU project water users; there are other water users with natural flow water rights from the Beaverhead River, including tributaries that divert from the river. Reclamation has no authority to enforce water rights, including the Montana FWP's in-stream flow reservation. If there are stream reaches that are severely dewatered during the irrigation season, the Montana Department of Natural Resources and Conservation or the local river commissioner should be contacted.

16.5: Dick Oswald and other fishery staff from MDFWP were consulted during the development of the *Draft EA*.

From: "Bob Hartwell" <unclebobs@7pks.com>
To: "cc." <clarkcanyon@gp.usbr.gov>
Date: 12/16/05 10:49AM
Subject: CLARK CANYON CONTRACT RENEWAL

TO WHOM IT MAY CONCERN:

- 17.1 DEC.16,2005 I WOULD LIKE TO MAKE YOU PEOPLE DID A VERY POOR JOB IN GETTING THE WORD OUT ABOUT THE DRAFT MEETING. I WAS TOLD ONLY ONE PERSON SHOWED UP TO COMMENT (DICK OSWALD, THE FISHERIES BIOLOGIST). KEVIN, AT THE BUFFALO LODGE RECEIVED A COMMENT SHEET, BUT NO COPY OF THE DRAFT. IT APPEARS THAT THE LESS PEOPLE KNOW ABOUT THE DRAFT, THE BETTER CHANCE IT WILL HAVE TO PASS. MY COMMENTS ARE BASED ON SOME SECOND HAND INFO AND HEARSAY. I HEARD THAT SOME
- 17.2 ADDITIONAL ACREAGE OR PASTED IRRIGATED ACREAGE WILL BE ALLOWED TO BE IRRIGATED, AND THE MINIMUM FLOW WILL BE 25 CFS. IF, ADDITION LAND IS IRRIGATED THIS WILL BENEFIT A FEW PEOPLE, AND IF THIS IS SO IT WILL HURT THE OVER ALL ECONOMY OF DILLON. THIS CAN BE PROVEN BY CHECKING FISHING SHOPS AND OTHER RELATED BUSINESS BEFORE AND NOW.
- 17.3 I WOULD LIKE TO SEE THE MINIMUM LEVEL OF THE LAKE AT 60,000AF. I WOULD LIKE TO SEE THE MINIMUM FLOW ON THE BEAVERHEAD RIVER AT 50CFS. THANK YOU, ROBERT HARTWELL, 1185 DRIVEWAY LANE, DILLON MT. 59725 PHONE# 683 2866

17.1: Reclamation provided the public several opportunities to participate in the decision making process. Reclamation conducted public meetings in January 2005 in Dillon and Twin Bridges, provided a *Draft* EA for public review and comment, and conducted public meetings in Dillon and Twin Bridges in December 2005. These public meetings were announced via several local newspapers, including those in Dillon and Butte. In addition, letters and postcards were sent out to a mailing list of over 100 parties announcing both meetings and the availability of the *Draft* EA.

17.2: There is a total of 918 acres for EBID proposed to be added to the new contracts. EBID boundaries would need to be changed to include this acreage prior to irrigation and delivery of any contract water. The volume of water authorized to be diverted would not change with this increase in acreage (see *2nd priority* under the Preferred Alternative). CCWSC and EBID can only divert a set volume of water (1st and 2nd priority) for a certain number of acres as outlined in Chapter 2 of the document. The 3rd priority of the Preferred Alternative would allow additional water (if available) for "beneficial use".

17.3: See the response to Comment 13.3.

From: Curtis Kruer <kruer@3rivers.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/16/05 7:48PM
Subject: comments on draft EA

To: Mr. Tom Sawatzke:

My wife and I are property owners in Madison County near Sheridan, MT. I have previously provided comments on the draft Environmental Assessment for the renewal of the water service contracts for the Clark Canyon Water Supply and the East Bench Irrigation District. My wife, Stephanie, is an attorney with a small practice in Sheridan, and I work as a conservation biologist in the region and elsewhere. I performed some review work under contract on the Phase I TMDL Program for the Beaverhead Watershed and have conducted some mapping work in Beaverhead County and the watershed. I have reviewed the draft EA provided to me last month.

- 18.1 We are concerned that the draft EA does not adequately address the state and federal TMDL effort currently underway, and impacts of the water management scheme and the preferred alternative on water quality, fisheries and overall resource health of the Beaverhead River downstream of Clark Canyon. Impacts on downstream agriculture, fisheries, water loss due to the delivery system, tourism related to these aquatic systems, and the biodiversity historically found in the Beaverhead River have not been fully addressed. Historical information on the River and historical information on the resources of the River have not been presented to which comparisons can be made to current conditions.
- 18.2

- 18.3 We recommend that temporary annual leases be issued while additional information is obtained and options for improvements in the system are reviewed. This is a very important watershed in the region and BOR should be sure that adequate attention paid and resources committed to provide it the highest level of protection. Options for mitigation of unavoidable adverse impacts due to the renewed contract should be assessed and included adequate to offset impacts. We believe one way to accomplish this review is to prepare an Environmental Impact Statement consistent with requirements of federal law.

Thank you for the opportunity to provide these comments. Please keep us advised on future decisions by the BOR and options for review in this matter.

Curtis Kruer
P.O. Box 753
113 Wisconsin Creek West
Sheridan, MT 59749
406-842-5099
406-842-5053 fax
kruer@3rivers.net

18.1: Reclamation is funding water quantity and water quality studies in the Beaverhead basin through Montana State University and Montana Tech. When data collection and analysis have been completed, these studies will provide needed information in the TMDL planning and implementation process (to be completed in 2008). Reclamation will work cooperatively with the Montana Department of Environmental Quality and other stakeholders during the TMDL process to assist with improving impaired water bodies throughout the basin. Also, see information in the response to Comment 9-1.

18.2: The *Draft* EA never intended to compare historic conditions to current conditions. The comparison is between the No Action Alternative and the Preferred Alternative with the No Action Alternative being used to provide the frame of reference for determining the impacts of the other alternatives. The President's Council on Environmental Quality defines the No Action Alternative as renewing the existing long-term water service contracts with minor changes.

18.3: See response to Comment 5.3.

DEC 16 2005

Jeff Buamberger
BLM
Montana area office
P.O. Box 30137
Billings, Mt. 59107

Subject: Clark Canyon renewal draft (Ea) public comment

Dear Mr. Baumberger:

I would like to take this opportunity to voice a few of my personal concerns regarding the Environmental Assessment for the Clark Canyon water contract renewal. I have not read the entire draft of the renewal contract however some points that were brought to my attention by several individuals have prompted me to write this letter. Some points of interest that concern me are as follows.

- 19.1 • **Minimum water flows**
- 19.2 • **Added acreage for irrigation**
- 19.3 • **40 year contract**

The points listed above are concerns that I have from a local resident's standpoint. As a licensed Montana fishing guide and an avid outdoor sporting enthusiast I spend countless hours working and recreating on the Beaverhead River as well as Clark Canyon reservoir.

- 19.4 • **My major concern is the damage to the riparian habitat and the adjoining wetlands that would be caused by years of chronic low water flows from Clark Canyon reservoir. I would like to see the BLM and the Clark Canyon Watershed Council as well as the East Bench District take into consideration the environmental impact that the proposed contract will inflict upon the Beaverhead watershed, not to mention the economic effects of dewatering a prime recreational resource.**

19.1: The Preferred Alternative would include a target minimum in-stream flow in the Beaverhead River of 200 cfs during normal water years measured at the outlet works at Clark Canyon Dam. This is the in stream flow that Montana FWP strongly recommended during consultations. To the extent possible, 200 cfs would be the goal. In drought years, however, the bottom-line minimum flow might be as low as 25 cfs at the dam.

19.2: See the response to Comment 17-2.

19.3: CCWSC and EBID have right of first renewal for present water service contracts or convert to repayment contracts as explained in the Contracting section of Chap. 1 of this revised draft EA. Standard contract period is 40 years for water service contracts and no expiration date for repayment contracts.

19.4: Noted.

19.5

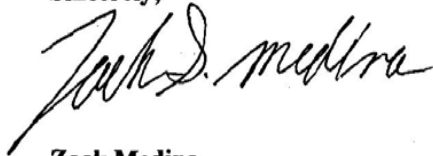
I would also like to see more research done to better gauge the effects of minimal flows from Clark Canyon Dam on the Beaverhead rivers aquatic life as well as the increased level of “stress” that would be placed upon an already limited resource by adding more.

Obviously there are many unanswered questions and concerns that should be addressed before this contract is finalized and passed into effect for the next forty years.

A resource that is as valuable and delicate as the Beaverhead River should be given full consideration when determining the future management of Clark Canyon Reservoir. I hope that more time and consideration will be allowed to fully address the issues that are so important to all of the stakeholders involved.

Thank You,

Sincerely,

A handwritten signature in black ink that reads "Zack Medina". The signature is written in a cursive style with a large initial "Z".

**Zack Medina
Licensed Montana Fishing Guide
#9052**

19.5: See the responses to Comment 18.1.

SALTMAN & STEVENS, P.C.

1801 K Street, N.W., Suite M-110, Washington, D.C. 20006

(202) 452-2140

Fax: (202) 775-8217

E-mail: rgoeken@saltmanandstevens.com

December 6, 2005

**SUBMITTED VIA U.S. MAIL, E-MAIL,
AND BUREAU OF RECLAMATION WEBSITE**

Jeff Baumberger
U.S. Department of the Interior
Bureau of Reclamation
Great Plains Region
Montana Area Office
Attn: MT-231
P.O. Box 30137
Billings, MT 59107

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Re: Request for 60-Day Extension of Comment Period on Draft Environmental Assessment

Dear Mr. Baumberger:

Please be advised that we have been retained to represent Uncle Bob's Outdoors, Inc., Back Country Anglers, and numerous other local guides, outfitters and lodges with respect to reviewing and providing comments on the Draft Environmental Assessment (EA) issued by the Bureau of Reclamation (BOR) for the future operation of the Clark Canyon Reservoir. As is discussed in some detail below, we request that the period for providing comments on the draft EA be extended for an additional 60 days.¹

20.1

¹Despite the severely constrained time frames for providing comments on the EA, we have also included a brief discussion of a number of issues of concern that we have identified so far. We believe that there are many other issues yet to be identified and that the issues we have identified so far could be explored in greater detail to the benefit of the environment, the public and BOR, if the comment period were extended for at least 60 days

20.1: The comment period was extended to December 19, 2005 with an additional 30-day comment period on the revised draft EA.

Alternatively, if for some reason the comment period is not extended, we strongly urge the BOR to prepare an Environmental Impact Statement.

I. Overview Of The Draft EA.

- 20.2 The BOR's preferred alternative in the draft EA involves, among other things, the execution of "new long-term 40 year water service contracts or the conversion of existing contracts to repayment contracts." EA at 8. Moreover, and despite the BOR's recognition that "[t]he Beaverhead watershed has experienced a severe drought for more than 6 years, with inflows into the reservoir about 40% of normal" (EA at 8), the preferred alternative would add 7,711 acres to 1st priority lands and an additional 5,336 acres to 2nd priority lands. EA at 9. Remarkably, nearly 1,000 acres to be added to the 2nd priority lands are not even currently located within the boundaries of the East Bench Irrigation District. In short, the preferred alternative would put considerable additional strain on an already overtaxed resource.
- 20.3 Additionally, the preferred alternative would institute a Drought Management Plan as part of the new contracts and that plan would be administered by a "Joint Board." EA at 8-9. Both the Plan and the Board are new and their operation is not adequately explained in the EA.
- 20.4 The only other alternative considered by the BOR, the so-called "no action alternative," would actually result in the renewal of long term contracts with some "minor changes." EA at 7.

20.2: The 7,711 acres for CCWSC are included in the 3rd priority section of their 1958 contract and the 4,448 acres for EBID are within the irrigable acres of the District boundary. The only difference for this acreage in the Preferred Alternative would be a change in priority in the new contracts. There is an additional 918 acres proposed to be added to EBID's contract. This acreage would have to be included within EBID boundaries prior to being irrigated with contract water. The volume of water presently authorized to be diverted would not change with this increase in acreage.

20.3: The joint board would be comprised of three voting representatives of CCWSC, three voting representatives of EBID, and a non-voting member of the Contracting Officer's representative (Reclamation). Notice of meetings would be posted locally and open to the public to attend. The joint board would be limited to specific duties, including deciding when water supply conditions warranted reduced allotments to both CCWSC and EBID (that is, implementation of the Drought Management Plan) and recommending a winter release rate from Clark Canyon Reservoir for concurrence with the Contracting Officer (Reclamation)

20.4: Minor changes would mean modifying/renewing existing contracts with updated language, clauses, and contracting standards. These minor changes are administrative changes only.

20.4 Unfortunately, it is not a simple matter to tell from the draft EA what these changes are or that they are in fact minor.

II. The Current Time For Comment On The Draft EA Is Needlessly Constrained.

Significant goals of the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* (NEPA), include that federal agencies make a full disclosure of environmental issues raised by agency actions and then provide the public with access to and meaningful participation in the environmental decision making process. See 40 C.F.R. §§ 1500.2, 1506.6 (Agencies shall make diligent efforts to involve the public in NEPA decisions, provide the public with copies of draft NEPA documents and adequate notice of public meetings on those documents). However, the ability of the public to evaluate the draft EA and meaningfully participate in public meetings on the draft document has been significantly and improperly curtailed. That is, most members of the public were not even provided with a copy of the draft EA until the week of November 20th, *i.e.*, the week of Thanksgiving. Of course, this fact limited the ability of the public to review and prepare comments on the EA.

20.5

Additionally, the NEPA regulations require that, in the case of the issuance of a draft EIS, at least 15 days be provided before public meetings are held. 40 C.F.R. § 1506.6(c)(2). Despite this fact, public meetings on the draft EA were scheduled for November 30 at Dillon, MT and December 1 at Twin Bridges, MT, *i.e.*, considerably less than 15 days after most members of the

20.4: "Minor changes" would mean modifying/renewing existing contracts with updated language, clauses, and contracting standards. These minor changes are administrative changes only.

20.5: See the response to Comment 17.1.

Jeff Baumberger
U.S. Department of the Interior
December 16, 2005
Page 4

public received copies of the draft EA.² Thus, given the large scope of the environmental issues to be addressed (which we believe requires that an EIS be prepared, as is discussed below), the period between release of the EA and the public meetings was far too short for participants to meaningfully prepare to participate in them.

20.6 In this same regard, the NEPA regulations contemplate that at least 90 days for comment on a draft EIS will be provided and (unless an emergency situation exists) in no case shall a comment period of less than 45 days be provided. 40 C.F.R §§ 1506.10(a)(1) and (c). Again, given the potentially significant and widespread impacts at issue in the draft EA, roughly comparable time frames for public comment should have been allowed by the BOR. However, despite the BOR's obligation under NEPA to make diligent efforts to involve the public in NEPA decisions, members of the public will not be afforded anything approaching 90 days (or for that matter even 45 days) to evaluate the draft EA and provide the BOR with comments.³

20.6 Accordingly, we strongly urge the BOR to reopen the comment period and provide the public with an additional 60 days, i.e., until February 17, 2006, to evaluate and provide comments on the draft EA.

²We note that neither location was particularly conducive to maximum public participation.

³The initial comment period was to close on December 6, 2005, that period was extended to December 19, 2005, i.e., still less than 30 days after most members of the public received copies of the draft EA.

20.6: See the responses to Comment 5.3 and Comment 17.1.

Jeff Baumberger
U.S. Department of the Interior
December 16, 2005
Page 5

III. The Preparation Of An Environmental Impact Statement Is Required.

From a legal standpoint, we were quite surprised to discover that the BOR believed that it would be appropriate to use an EA to address the potential environmental impacts of an action of this magnitude. NEPA requires a federal agency to take a “hard look” at the environmental impacts of its actions. Id. § 4332(C). Toward that end, the preparation of an EIS is required for major federal actions significantly affecting the quality of the human environment. See id. As noted above, the actions under consideration in the EA certainly qualify for full consideration through the preparation of an EIS. In fact, not surprisingly, the use of an EA in these circumstances is contrary to the BOR’s own regulations, which establish that the preparation of a full EIS is the preferred approach for:

proposed repayment contracts, water service contracts or amendments to such contracts for irrigation; and

proposed modifications to existing projects or proposed changes in the programmed operation of an existing project that may cause a significant new impact.

See “Managing the NEPA Process -- Bureau of Reclamation,” 516 DM 14, § 14.4 (eff. 5/27/04).

20.7 Because the potential environmental impacts of the proposed actions under consideration here have been identified in the BOR regulations as requiring the preparation of an EIS, we strongly suggest that the BOR cannot simply issue a Decision Notice and Finding of No Significant Impact based on the draft EA, but instead should begin the process of preparing an EIS.

20.7: See the responses to Comments 5.3.

IV. The Draft EA Does Not Comply With NEPA.

Even assuming that it could somehow be appropriate to use an EA to document and address the environmental impacts of the considerable magnitude at issue here, the draft EA issued by the BOR does not comply with the requirements of NEPA. That is, NEPA requires the agency, among other things, to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternate uses of available resources.” 42 U.S.C. § 4332(E). Of course, the requirement that agencies consider a full range of alternatives applies with equal force to both EAs and EISs. 40 C.F.R. § 1508.9(3)(b). Here, however, the BOR has only fully addressed one alternative to taking no action, and that alternative is the alternative preferred by the agency. It is impossible to believe that there existed just one reasonable alternative to taking no action in this case. By failing to fully assess a range of reasonable alternatives, the BOR has avoided its obligations under NEPA to take a hard look at the environmental consequences of its actions – this is not appropriate.

20.8 V. BOR Should Have Engaged In Consultation Under the Endangered Species Act.

Section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1531, *et seq.*) requires that:

Each Federal agency shall, in consultation with and with the assistance of the [U.S. Fish and Wildlife Service], insure that any action authorized funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [the critical] habitat of such species.

20.8: Reclamation did informally consult with the U.S. Fish and Wildlife Service prior to the release of the *Draft* EA. However, the *Draft* EA did not explain this informal consultation adequately. The consultation and coordination section of the revised draft EA has been corrected to better explain the informal consultation that took place.

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Agency actions that are potentially subject to consultation include the granting of licenses, contracts, easements, rights-of-way, and permits as well as actions that directly or indirectly cause modifications to the land, water or air. 50 C.F.R. § 402.6. Thus, the effects of the actions under consideration here are of the type on which consultation between a federal agency and the Fish & Wildlife Service are routinely conducted.

Furthermore, it is clear from the draft EA that the BOR was well aware that species listed under the ESA, including the Bald Eagle, Grizzly Bear, Gray Wolf, Canada Lynx, and Ute Ladies' Tresses, "could be found in the area of potential effect." EA at 27. Nevertheless, the BOR's analysis for all five of these threatened species under the preferred alternative takes place in less than two pages. Moreover, for all of the species except the Bald Eagle, the BOR specifically admits that the species occurs in Beaver County but asserts, without any support, that the species is not known to occur "in the area." EA at 27. It is our understanding that, at least with respect to the Ute Ladies' Tresses, the BOR's assertion is simply not correct. In fact, the Montana Fish, Wildlife and Parks Department has submitted information showing that this threatened species has been documented in sites along the lower Beaverhead River as well as the Jefferson River.

The BOR's "analysis" for the Bald Eagle is even more suspect and claims only that "[t]here are no known bald eagle nests within two miles of the Clark Canyon Reservoir or the

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Beaverhead River.” Id. at 27. However, this statement appears to be contradicted by nest site data set forth in the EA itself at page 50. Indeed, our clients are aware of at least two eagle nests located within 200 yards of the river. Thus, the BOR’s conclusion that its actions will have no affect on Bald Eagles does not appear to be supported by the EA.

Additionally, the EA does not disclose what, if any, specific steps the BOR took to determine whether the species actually occurred within the area to be impacted by operation of the reservoir. Nevertheless, and despite the fact that even under the no action alternative long-term contracts would be renewed, the BOR somehow found that “[c]urrent trends, populations, and human disturbance levels would continue as at present.” EA at 50. This conclusion is not supported by evidence presented in the EA.

20.10 Moreover, contrary to the requirements of NEPA, the EA does not disclose whether or not the BOR specifically considered the effects that its proposed actions would have on critical habitat for any of the species. Nevertheless, the BOR baldly concluded “that the Federal action would have no effects to the five Threatened species found in Beaverhead and Madison counties.” EA at 59. Thus, despite its obligations under Section 7 of the ESA to insure that its actions do not result in the destruction or adverse modification of the critical habitat of any listed species, there is no evidence that the BOR ever specifically considered the issue.

20.9: The statement in the draft EA regarding eagle nests locations had a typographic error. Thank you for pointing it out. The revised draft EA has been modified to correctly document the eagle nests.

20.10: The revised draft EA has been corrected to document the listed species better and to discuss critical habitat.

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20.11 Perhaps most importantly, based on its unsupported conclusion that there would be no effects on listed species, the BOR also determined that it did not have to consult, either formally or informally, with the Fish & Wildlife Service. EA at 59. This is truly remarkable in that informal consultation is specifically available for situations such as these where the action agency is trying to ascertain whether or not its actions will have any affect on listed species or their habitat. 50 C.F.R. § 402.13. Indeed, as is noted above, the BOR appears not to have considered the presence of two threatened species in the area. Although the BOR contends that it met with the Fish & Wildlife Service to “discuss various aspects of the EA” (EA at 6), the BOR does not disclose the substance of the Fish & Wildlife’s comments or recommendations regarding species listed under the ESA or whether Fish & Wildlife concurred in the BOR’s conclusion that its actions would not have any affect on species listed under the ESA. See EA at 60.

VI. The Impact Of “Non-Signers” Is Not Addressed.

“Non-signers” are those irrigators who typically have senior water rights to irrigate some 6,620 acres out of the Beaverhead River and who are not currently receiving water from federal contractors. The description of the preferred alternative in Chapter 2 does not even mention the issue of irrigation by non-signers, and the description of the “no action alternative” notes but does not analyze water use by non-signers. This lack of analysis exists despite the fact that the acres subject to irrigation by non-signers equal more than 11% of the total acres to be irrigated

20.11: See the response to Comment 20.8.

Jeff Baumberger
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by the contracting entities. Simply because the non-signers are not part of the federal project, does not mean that their irrigation from the Beaverhead River should have no impact on the BOR's analysis of the reservoir as is claimed in the EA. See EA at 8. In this regard, NEPA requires an agency to

address the cumulative impacts of its proposed actions, *i.e.*, the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but cumulatively significant actions taking place over time.

20.12 40 C.F.R. §§ 1508.7, 1508.9. Despite this requirement, the ongoing impacts of irrigation by non-signers in conjunction with the actions proposed in the EA are not meaningfully considered. The BOR's failure to fully address irrigation use by non-signers and its cumulative impacts to the environment seriously undermines the validity of the environmental conclusions drawn in the EA.

VII. The EA Contains A Limited And Outdated Economic Analysis Of The Value of Recreation.

The draft EA acknowledges that:

Clark Canyon Reservoir provides recreational opportunities for a wide region. The area also attracts people from out-of-state to fish or who are just passing through. . . . Most visitors fish, camp, boat, picnic, swim, or view wildlife. Most recreation is highly dependant on reservoir levels, which in turn are highly influenced by small changes in climatic conditions, as well as annual operations of the Clark Canyon Dam.

20.12: The non-signers' irrigation use has been added to the "Relationship of This Action to Other Actions" in Chapter 1 of the revised *Draft* EA. This Federal action was compared to those past, present, and reasonably foreseeable future actions during the cumulative impact analysis. The only action in the aforementioned section related to the proposed action is the non-signer irrigation use of Beaverhead River water. Non-signers have water rights for natural flows of the River. Reclamation's stored water is released into the Beaverhead River during the irrigation season for CCWSC and EBID. If this stored water were not present during drought years, there is a high probability that during the irrigation season the Beaverhead River would be dry due to depletions of non-signers. Therefore, our analysis has determined there would be no cumulative impacts associated with the proposed action when compared to the irrigation use of the non-signers.

20.13 EA at 31. The EA also specifically recognizes the significant use of both the reservoir and Barretts Diversion Dam by fishermen. Id. However, the EA asserts, without any meaningful analysis, that “[v]isitation at the reservoir would remain constant or increase slightly in the future, regardless of fluctuating water levels to meet the new water contracts.” Id. at 54. Why this would be so, especially when the EA admits that recreation is “highly dependant on reservoir levels,” is not explained. Indeed, our clients believe that the opposite is quite likely to be the case. For example, at present, access to only a single boat launch is possible in dry years (see EA at 54). As common sense would dictate, a further reduction in river flows can only impair recreational opportunities.

20.14 In fact, even the current low spring water flows (25 cfs) are insufficient to scour sediment deposited in the river by spring runoff. As a result, unnatural accumulations of sediment have been steadily building up in the river channels and adversely impacting recreational opportunities. This situation is likely to be exacerbated by the allocation of still more water from the reservoir to the irrigation of increased acreage, as would occur under the BOR’s preferred alternative. However, the draft EA does not attempt to document, much less fully discuss, this growing threat to recreational opportunities or how it might be mitigated.

Similarly, the economic importance of recreational opportunities to the local communities and the individuals who live in them is given exceedingly short shrift. That is, the

20.13: The last few years (prior to 2006) have seen some of the lowest reservoir elevations on record due to the drought. Nobody can predict the future; however, through the Preferred Alternative, and with implementation of the Drought Management Plan, reservoir elevations should remain higher than in the No Action Alternative. In addition, continuing irrigation releases during the irrigation season would continue to provide river flows that created a blue ribbon tailwater fishery and, in turn, attract more recreation. The single boat ramp was extended to provide access to the reservoir during low reservoir elevations. Providing access to the reservoir during drought years will sustain recreation use on the reservoir.

20.14: It is unclear what reach of the river the comment refers to when “unnatural accumulations of sediment” is discussed. However, sediment accumulation does occur and tributaries (such as Clark Canyon Creek) to the Beaverhead River are the main contributors. Reclamation has worked with the Beaverhead River Watershed Committee in the past and will continue to work with them in the future to find ways to address various water quality issues (including sedimentation) on the Beaverhead. The Beaverhead River Watershed Committee is open to all parties. Also, see the response to Comment 15.6.

EA claims that “the ‘Methods of Analysis’ section provides information on how effects of the alternatives [with respect to recreation] were estimated.” EA at 53. However, it is not all apparent that the Methods of Analysis section of the EA contains any such information. In this same regard, the EA suggests that “[v]ehicle counters at the reservoir record about 59,000 visitors annually, generating about \$2.2 million in the surrounding community.” EA at 30. Unfortunately, the sole basis for this assertion is a single study performed by the University of Montana nearly 20 years ago. *Id.* Clearly, the BOR lacks adequate current information upon which to base its conclusion that recreation will not be impacted under either alternative considered in the draft EA. This is particularly true in light of the fact that one of the alternatives under consideration contemplates increased irrigation (and correspondingly reduced river flows) for a 40-year period. By contrast, our clients are well aware that both the number of recreational visitors and the economic importance of those visitors to the surrounding communities have dramatically increased since 1986 and will in all likelihood continue to do so. Accordingly, the draft EA seriously underestimates the potential impacts of the alternatives on recreation and the local economy. We, therefore, strongly urge the BOR to: (1) thoroughly investigate the current economic value of recreation provided for by water from the reservoir and (2) analyze a full range of alternatives (not just two) and the impact of each on the economic value of recreational opportunities to local communities in an EIS.

20.15: Thank you for your comment. Recreation and visitation will remain constant or increase, and the economic importance of these visitors has dramatically increased.

20.16: Thank you for your comment, the revised draft EA has been updated to reflect more recent recreational data. In addition, Reclamation is aware that recreation is highly dependent on reservoir levels, which in turn are influenced by operations of the dam, as well as small changes in climatic conditions (i.e. drought). The last few years (prior to 2006) have seen some of the lowest reservoir elevations on record due to the drought, which in turn has affected all beneficiaries (recreation, irrigation, fisheries, etc). Nobody can predict the future; however, through the Preferred Alternative and with the implementation of the Drought Management Plan, reservoir elevations will likely remain higher in most years than under the No Action Alternative. In addition, continuing irrigation release during the irrigation season will continue to provide river flows creating a superior tailwater fishery benefiting anglers, recreation, and improved economics to the area.

20.17: Reclamation has performed a complete level of analysis and updated the revised draft EA in sections that required more attention (“Water Quality,” “Threatened and Endangered Species,” “Social and Economic Conditions.”). Please see the responses to Comments 13.2 and 13.3 for explanation of the reasonable set of alternatives. See the response to Comment 17.1 for explanation of public participation.

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VIII. Conclusion.

20.18 The BOR has been entrusted by the public with the management and oversight of an extremely valuable resource. We believe, and federal law requires, that the BOR must perform a complete analysis of significant environmental issues associated with operation of the reservoir, develop a full range of reasonable alternatives to address those issues, disclose those issues publicly and provide the public with a meaningful opportunity to participate in the decision making process. However, based on the foregoing, we are convinced that the draft EA is fatally flawed under federal law, both procedurally and substantively. The haste with which the draft EA was apparently finalized, the indefensibly short period of time for public comment and the limited (or non-existent) analysis of several key environmental issues documented in this letter leads us to reiterate our request that the comment period be extended or re-opened for at least 60 days. Failing that, we urge the BOR *in the strongest terms possible* to recognize the need for the preparation of an Environmental Impact Statement containing an analysis of the environmental impacts of a full range of reasonable alternatives.

If the BOR has any questions, or if I can be of assistance in any way, please do not hesitate to contact me.

20.18: See the response to Comment 20.17.

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Very truly yours,

SALTMAN & STEVENS, P.C.

A handwritten signature in black ink, appearing to read "Richard W. Goeken", with a long horizontal flourish extending to the right.

Richard W. Goeken

RWG/hlo

From: "Kurt Steadman" <suenramlaw4@bmt.net>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/16/05 3:48PM
Subject: Clark Canyon Contract Renewal Draft Environmental Assessment

To Whom It May Concern,

- 21.1 A client of mine has asked that I write this email as part of your public comment. My client believes that a EIS needs to occur rather than an EA.
- 21.2 In addition, due to the magnitude of this contract, he requests a 90 day extension for public comment.

Thank you,

Kurt W. Steadman
Attorney at Law

21.1: See the response to Comment 5.3.

21.2: The comment period was extended to December 19, 2005.

DEC 16 2005

To: Bureau of Reclamation

Ref: Comments on the Draft EA for Clark Canyon-Beaverhead 2005 Water Contract Renewal:

I have the following comments on the EA

- 22.1 1. The comment period was way to short and Public notification of the meeting was not well published. It looks like you are trying to run this through without anyone noticing.
- 22.2 2. The future contract needs to be changed from private companies to the Bureau of Reclamation. Otherwise the fox is watching the hen house.
- 22.3 3. Recognize that the past two decades have been dominated by drought conditions and the original contracts cannot be honored. The Beaverhead river is one of the best trout fisheries in the entire United States and minimum flows need to be established to save part of this great fishery.
- 22.4 4. Recognize that agriculture is not the only one taking a loss because of the drought. As a fishing guide, I lose hundreds of dollars every year, and the outfitters and guides as a whole lose thousands of dollars along with the motels, restaurants, and gas stations.
- 22.5 5. It is outrageous that there were only two alternatives and that one plan was to add more irrigated acreage. This should be a NEPA process and an EIS done with the fishery taken into consideration.
- 22.6



Terry Throckmorton
433 Sullivan Lane
Dillon, MT 59725

22.1: The comment period was extended to December 19, 2005 with an additional 30-day comment period on the revised draft EA.

22.2: Existing water service contracts with CCWSC and the EBID contain a provision providing them a right to renew their existing contracts or convert them to repayment contracts in accordance with Federal Reclamation Law. Reclamation intends to renew the operation and maintenance agreement with EBID, and Reclamation retains oversight of the operation of the facilities.

22.3: See the response to Comment 7.4 and Comment 13.5.

22.4: See the response to Comment 20.15.

22.5: See the responses to Comment 13.2 for the "two alternatives" comment.

22.6: See the response to Comment 5-3 for the "EIS needed" comment.

Lyle W. Barringer
 81 Yellowstone Trail
 Whitehall, MT. 59759
 barringer5231@netstate.com

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December 17, 2005

The Bureau of Reclamation
 Attn: MT-231
 PO Box 30137
 Billings, MT 59107-0137

Re: Clark Canyon Contract Renewal Draft Environmental Assessment

Dear Bureau of Reclamation:

- 23.1 You're EA on the Clark Canyon Renewal is a document which was, perhaps, adequate for the past forty years but is very inadequate for 2005. Projects such as this demand more public input and require that environmental impacts be mitigated. Your document points out environmental impacts but does not elaborate on any mitigation strategies. This project at the very least demands that an EIS be developed and widely circulated for public input.
- 23.2
- 23.3

I support agricultural activity and water rights of landowners, however, I also support water quality, a healthy river system and a healthy fishery. All these interests can and should be addressed in an EIS.

- 23.4 In you're EA, it appears to me that you list problems with water quality and quantity but make no mention of mitigation strategies. Neither, for that matter, do you seem even concerned about water quality and quantity. You're EA contains inconsistencies which need to be more adequately addressed in an EIS. An example is included on Page 13; "water quality in the Beaverhead would continue to be good." Then on page 18 you state that the Beaverhead river is listed by the Department of Environmental Quality as not supporting the beneficial uses of aquatic life, cold water fisher, and drinking water supply. Which is it? If it's the latter, what steps are you going to take to mitigate the problems?
- 23.5

This is one example of many contradictions and inadequacies in you're EA. You are apparently content to send your problems down river and let them be your neighbor's problem. This is not acceptable in today's society. It appears that if either of your alternatives is adopted, there will be an inordinate amount of water consumed, water quality will continue to deteriorate, river channel health will continue to decline, potential recreational economy will be lost, and there will be excessive drought year impacts on downstream irrigators.

In conclusion, an Environmental Impact Statement should be prepared, and widely circulated for public input, for this action.

Sincerely,

 Lyle W. Barringer

c. Senator Max Baucus, Senator Conrad Burns, Congressman Denny Rehberg

23.1: See the response to Comment 15.6 and Comment 17.1.

23.2: Analysis in the draft EA compared the impacts of the Preferred Alternative to the No Action Alternative. The impacts of implementing the proposed Federal action would be minimal in nature and did not warrant mitigation. However, Reclamation has agreed to work with various local and state groups and organizations to develop viable solutions to address various issues on the Beaverhead River.

23.3: See the response to Comment 5.3.

23.4: See the response to Comment 23.2. In addition, Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin. Reclamation also met with MDFWP to address water quality and fisheries concerns in the Beaverhead and Jefferson rivers. Reclamation and the State will be entering into an agreement, which will require cooperation among agencies to work toward improved water quality, improved fisheries and allow agencies to work toward a flushing flow to reduce impacts of sediment loading.

23.5: The revised draft EA has been changed and inconsistencies removed. Also, see the response to Comment 5.3 regarding the development of an EIS.

December 14, 2005

Mr. Dan Jewel, Area Manager
Montana Area Office
Bureau of Reclamation
Attn: MT - 231
P.O. Box 30137
Billings, MT 59107-0137

Ref: Comments, Draft Environmental Assessment for the Clark Canyon Renewal Contract

Dear Mr. Jewel:

We are residents of Sheridan, Montana, in the Ruby River valley, one of the streams that along with the Beaverhead and Big Hole form the headwaters of the Jefferson River. We sit squarely in the middle of the region that will potentially be impacted by the Clark Canyon renewal contract now under consideration by your office. Although we are wildlife ecologists by profession, agriculture, for a variety of reasons, is increasingly becoming an important component of our family's income (we produce certified hay that we annually sell to customers throughout much of Southwest Montana). We mention this simply to point out that we straddle two communities that are often at odds with each other, and as such have come to understand and respect the diversity of ideas that shape the different perspectives on how our regional natural resources should be managed and used. We read the draft EA with these perspectives in mind, and they in turn are the basis for the comments we express in this letter.

24.1 Fundamentally, we find the EA in its current form to be inadequate, reaching conclusions that are both questionable and at odds with known trends in Beaverhead River water quality, rates of sedimentation, fish populations and a host of other parameters. Moreover, there is throughout the EA the suggestion that some of these conditions have been exacerbated by recent drought, a fair-enough argument, but one that at the same time exposes what in our opinion is one of the EA's most conspicuous flaws. This is its lack of a forward vision in addressing water use in light of what will most surely be a future in which water will be less available. Snow pack throughout the West has been trending downward for the past 50 years, and Montana is no exception, as evidenced, for example, in the massive loss (a 73% decrease) of surface area since 1850 of the glaciers for which Glacier National Park is famously named. You can examine some of the details associated with these statements yourself at <http://commerce.senate.gov/hearings/witnesslist.cfm?id=1176>, a U.S. Senate panel to which one of us provided testimony at the invitation of Senator John McCain. These are alarming trends, especially if one considers them within the context of the remarkable inefficiency of water delivery indicated in the EA (a 60% loss from the diversion point to the field as we read the data in pages 9, 52 and 74), and the future competition for water that is likely to result in this region due to residential and other development.

24.2 Renewing the Clark Canyon contract for another 40 years without considering some of these trends and their implication has in our opinion the potential to threaten irrigators as much as the fish, wildlife and other recreational resources of this watershed. Not losing sight of the fact that this contract has to be renewed, however, we would recommend that it be considered on an annual basis until a full environmental impact statement can be completed that more fully takes into account and addresses the obvious deficiencies of the existing EA. This is the least the BOR could do for the residents of this watershed given the large space and time scales over which this contract could affect our region.

24.3 Sincerely,

Bill and Donna Fraser
P.O. Box 36
Sheridan, MT 59749

24.1: See the response to Comment 9.1.

24.2: Through partnerships with various groups, including the Beaverhead River Watershed Committee, CCWSC, EBID, and MDFWP, Reclamation is looking into various water conservation alternatives to improve water efficiencies.

24.3: See the response to Comment 5.3.

Dan Jewell, MT Area Manager
 Bureau of Reclamation
 Attn: MT-232
 Po Box 30137
 Billings, MT 59107-0137

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Dear Mr. Jewell,

This letter from the Lewis and Clark Chapter of Trout Unlimited (LCTU) is in response to the Environmental Assessment that your office prepared regarding the irrigation leases on Clark Canyon Reservoir water. The nearly 140 members of this Chapter of Trout Unlimited believe that an Environmental Assessment is inadequate in scope and content, and that a more complete and in-depth Environmental Impact Statement should be prepared. It is quite clear that the biological, sociological, and economic impacts of management of water releases from Clark Canyon Dam are far reaching, and, in some cases, difficult to quantify. We at LCTU believe that management of the water stored in Clark Canyon can be done in such a way as to serve the needs of all interested parties and water users, aquatic life included. It is our position that the ranchers and farmers in this watershed are good stewards of the land and should be supported in their endeavors to make a living off of, while caring for, the land. We believe that sound management decisions will come from a partnership effort from all interested parties and agencies. Therefore, it is our suggestion that the Bureau of Reclamation (the Bureau) should issue interim yearly water leases for irrigators until all issues can be addressed, water adjudicated, and mitigation proposed, in an EIS, leading to a management plan written which will comprehensively address the current river management issues of the last contract period (40 years) and the expected issues of the new contract period.

These problems affect all: ranchers and irrigators, local towns and communities, trade centers such as Dillon, Bozeman, and Butte, anglers, guides, other recreationists and tourists, and even the Bureau of Reclamation itself, which is charged with the responsibility of managing the Clark Canyon Dam and its water releases, fairly and wisely. Several years of drought conditions, coupled with some questionable management decisions, have brought two major rivers, the Beaverhead and the Jefferson, to the brink of ecological disaster. It would not be exaggeration to say that the larger Missouri River has also been harmed. The quality of lives, and livelihoods, of thousands of people has been harmed in the past 40 years of management and will be continue to be harmed in the future, if the preferred alternative is approved. The quality of life for us all is inexorably tied to the health of our stream and river systems, mountains, and air. We, as a society, should be, at all times, making sound decisions based on the best information we possess. Listed below are some of the areas that we identified as lacking information or sufficient coverage in the Bureau's EA:

1) The generation of two alternatives is inadequate and does not include a strategy which would remove, or mitigate, the impacts of sediment loading, nutrient loading, poor flow regime in the river, extremely high irrigation water

25.1: See the response to Comment 5.3.

25.2: See the response to Comment 13.5.

25.3: See the responses to Comments 13.2.

conveyance losses (which cause great problems for irrigators as well as aquatic life in the rivers as more water is diverted), unnaturally high winter flows in the lower Beaverhead and Jefferson rivers, and the absence of a natural hydrograph (or a hydrograph that in any way simulates natural), all of which has greatly harmed the rivers' bank cover, fish spawning habitat, fish population and vigor, as well as water quality.

25.4 2) The explanation was poor on the original project size and how much it was enlarged over the years after conversion from flood to sprinkler irrigation. Has that conversion decreased river flows in summer and the water available to downstream irrigators? The loss of over 60% of the diverted irrigation water before it gets to the fields is outrageous. Also in question is the proposal for an additional 13,995 acres to be irrigated given the poor condition of the Beaverhead and Jefferson Rivers. We are against irrigating any new acres with stored water from Clark Canyon Reservoir, unless it is true that the acreage in question is, and has been, irrigated with properly allocated water that is surplus due to increase in irrigation efficiency that comes from conversion from flood irrigation to sprinkler irrigation. The EA does not address the facts on this issue. Drought management plans appear to decrease the necessary winter flows of 200 cfs to 25 cfs immediately below the dam. Those plans must be modified so we are not harming the rivers, fish, and the local economy.

25.5 3) Much work is being conducted in the affected watershed to solve the problems on the Beaverhead, Ruby, Big Hole, and Jefferson Rivers. Your EA did not take into account work already completed by others, including TMDL's on the Beaverhead and Ruby Rivers, research by Jim Bauder at MSU on the Beaverhead, which apparently is still draft and unavailable, an on-going research project by MT Technical on the numerous, recently installed irrigation wells along the Beaverhead and on the benches above it and the effects these are having on the river, and other information, such as the effects of the many fish/duck ponds and subdivisions going in.

25.6 4) Nutrient loading, sediment loading, high water temperatures, and excessive algae and aquatic plant growth are causing serious water quality problems. The EA does not show how you will remove or mitigate those problems. The Bureau did not get accurate and useful data on dissolved O2 (D.O.) content in the water when it collected one monthly test in late afternoons. It is generally accepted that the lowest D.O. occurs during the early morning hours. Extremely low D.O. counts are a major factor in the mortality of young fish on the Jefferson River, as well as the Beaverhead River.

25.7 5) Cumulative impacts on page 45 reads that there will be no effects on the Jefferson River fishery. This Chapter has numerous individuals with a vast array of experience and knowledge of the Jefferson River, and we are appalled at this statement. The fishery on the Jefferson River is in trouble, a consequence of the river being brought to its proverbial knees by drought conditions and poor management. A single trip to the lower Beaverhead and Jefferson Rivers is all it would take for someone to see the problems these rivers

25.4: See description in the Project Development History section in Chap. 1 of the revised draft EA.

25.5: See the response to Comment 9.1 and Comment 15.6.

25.6: See the response to Comment 9.1.

25.7: See the response to Comment 15.7.

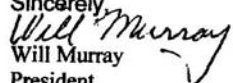
are facing. The lower Beaverhead and Jefferson Rivers have some of the lowest fish populations measured in the upper Missouri River watershed due to extended drought and historical management of Clark Canyon Reservoir and its releases.

25.8 6) The data collected and the analysis methods applied in the EA seem to be inadequate and inappropriate. Winter flow models do not fit reality. We believe the high winter flows at Twin Bridges and at the USGS measuring station 11 miles southwest at Beaverhead Rock are resulting from ditch leakage and irrigation return flows that originate long distances from the river. We currently have a reverse hydrograph from a normal river for this region. Reducing water losses, which would result in higher river flows at critical times, could benefit everyone greatly, as well as the rivers, fishes, and riparian habitat.

25.9 7) Your social and economic discussions are highly insufficient and should include comprehensive data for all alternatives, including an alternative that would remove or mitigate past, and future, river management issues. If either of the two alternatives presented are adopted, excessive water will be consumed; water quality and river channel health will continue to deteriorate, as will fish populations; irrigators on the project and downstream irrigators will not receive necessary water; and the fisheries and recreational economy in the area will continue to decline. We have had ~75% reduction in angler days on the Jefferson River since the early 1980's.

25.10 The last flushing flow on the Beaverhead River occurred in 1984. Periodic bank-full flushing flows are badly needed on the Beaverhead River to remove sediment, improve the channel health and bank cover, and stimulate Cottonwood regeneration. These flushing flows should be coordinated with high flows on the Big Hole and Ruby Rivers to do the most good on the Jefferson River. Other rivers with irrigation dams have been able to provide desirable natural flow regimes. We believe that Clark Canyon Dam could do the same with coordinated and responsive management.

In conclusion, we believe that with time, effort, and cooperation between all affected parties and agencies that the Clark Canyon Reservoir can be managed in such a manner as to benefit all users, effectively making winners of us all. This is the solution that we should strive for. Thank you for your indulgence in this matter.

Sincerely,

 Will Murray
 President
 Lewis and Clark Chapter of Trout Unlimited
 Po Box 903 Sheridan, MT 59749

25.8: It is not clear what's being referred to in the EA. The following table, however, compares the baseline-model simulated and past discharge data for the Beaverhead River near Twin Bridges.

Comparison of Baseline Simulated and Historic Discharge for Beaverhead near Twin Bridges for 1970 – 2002 (values in cfs)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Avg Historic	419	429	465	475	370	360	335	324	425	484	536	464
Avg Simulated	389	410	427	481	500	446	313	239	218	444	458	411
80 %ile Historic	576	564	593	707	573	543	449	383	620	765	807	676
80 %ile Simulated	618	618	537	726	846	635	346	259	251	530	645	665

This data does not show excessive differences between simulated and historic wintertime discharges. We agree that there is potential for much of the discharge in the lower Beaverhead River to be derived from return flows. This EA did not evaluate how the hydrograph for the lower Beaverhead would be impacted by potential changes to system efficiencies.

25.9: See the response to Comment 15.10.

25.10: Clark Canyon Dam operates under different authorities than the “other rivers with irrigation dams” as the commenter indicates. Therefore, it is very difficult to compare the operations of Clark Canyon Dam to these other irrigation dams. However, desirable natural flows can be achieved through coordinated and responsive management in the Beaverhead River, but this takes time and cooperation with many stakeholders. Reclamation is committed to working with various stakeholders to investigate options to improve conditions in the Beaverhead Valley.

From: John English <johnnyeng@gmail.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/19/05 3:58PM
Subject: Comments on the Clark Canyon Dam water contract renewal process.

Dear Mr. Baumberger,

Please consider my comments on the proposed water contract renewal concerning the Clark Canyon Dam Watershed.

- 26.1 [1. Please do an EIS.](#)
- 26.2 [2. Please consider the impact the proposal will have on recreational angling.](#)

Thank you.

John English

26.1: See the response to Comment 5.3.

26.2: The revised *Draft* EA has been updated to reflect more recent recreational data. Thank you for your comment.

From: "jeremy garrett" <jergarr@hotmail.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/19/05 1:38PM
Subject: public comment

My name is Jeremy Garrett, and I am a fishing outfitter from Dillon. My family has been making our living from fishing, predominantly on the Beaverhead river, for nearly thirty years. The Beaverhead is Montana's, and possibly the nation's, best river for supporting big rainbow and brown trout. People come from all over the world specifically to fish the Beaverhead. When it is in good shape, the Beaverhead provides recreation opportunity for tens of thousands of people annually, generating substantial tourist dollars, which boost the area's economy.

With proper management the Beaverhead will continue to be one of the world's premier trout fisheries.

27.1 The current proposals and the draft EA do not even consider the fisheries as an attribute of the Clark Canyon Res./Beaverhead river.

27.2 I would like to see these resources managed for multiple use, with consideration given to all shareholders.

27.3 I would like to see more efficient use of the limited irrigation water before allowing for broader use.

27.1: See the response to Comment 13.1.

27.2: As described in Project Development History section in Chap. 1 of the revised draft EA, the East Bench Unit (including Clark Canyon Dam) was authorized by the Flood Control Act of 1944 (P.L. 78-534). Irrigation and flood control are the primary project purposes authorized by Congress. Recreation is an incidental and indirect benefit provided by the Federal government. CCWSC and EBID pay costs associated with the repayment of Clark Canyon Dam and irrigation facilities. They also pay a portion of the O&M costs associated with the project. Reclamation provides recreation facilities to the public through non-reimbursable costs as an incidental benefit. Also, see the response to Comment 11.2

27.3: More efficient use by irrigators would likely be a factor considered in any future increase of irrigated acres in the unit. Reclamation, the 2 contract water users, and other stakeholders will be working on various cooperative water conservation measures.

From: "jeremy garret" <jergarr@hotmail.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/19/05 1:38PM
Subject: public comment

27.4 People will take whatever they can under the law and then whatever else they can sneak. There are no voluntary use restrictions when conditions are critical. The common irrigator's mentality seems to be to take everything you can because if you don't, someone else downstream will.

Letting the Ag industry dictate policy on the water use is like putting the fox in charge of the henhouse. For proper resource management, the managing agencies need to base policies on the wants and needs of all shareholders.

27.5

If you adopt the current proposals, you run a very high risk of destroying any fishery the Clark Canyon Res./ Beaverhead river ecosystem has supported, eliminating one of the few safe, clean, and renewable natural resources Montana has to offer.

The rest of us shouldn't be made to suffer, and in some cases go out of business, so that a handful of area farmers can make more money.

27.4: The Preferred Alternative describes a Drought Management Plan that would reduce the irrigation allotments in response to hydrologic conditions. These reductions in irrigation allotments are voluntary use restrictions.

27.5: See the response to Comment 13.1.

From: "jeremy garrett" <jergarr@hotmail.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/19/05 1:38PM
Subject: public comment

27.6 I would like the new water policies to insure a minimum flow of 100 cfs remain in the river at all times. I would also like some checks and balances put in place, more closely regulating the water use both downstream, and upstream of clark canyon res.

27.7 I feel we also need mandatory restrictions on what type of crops are produced in what type of conditions. For example, in a critically dry year putting restrictions on the acreages of thirsty crops compared to acreages of slightly less financially lucrative crops that are far less demanding on the water resource.

27.8 The new rules need to manage our valuable water resource for everyone who lives in the area, not just one special interest group solely interested in, not protecting the health of our resource, but maximizing their profits.

27.6: The Preferred Alternative contains target minimum in-stream flow releases of 200 cfs in normal years and bottom-line minimum in-stream flow releases of 25 cfs during drought years. Releases from Clark Canyon Dam are determined by many factors, snow pack, spring run-off, reservoir levels, demands for irrigation water, to name a few. Hydrology models have shown that if high minimum in-stream flows (minimum of 200 cfs) were set in the Beaverhead River, the reservoir would become drastically low during drought years, and irrigation water could not be provided. Reclamation has stored water rights on the Beaverhead River. The checks and balances for regulating water use throughout the basin is the jurisdiction of Montana Department of Natural Resources and Conservation. Please contact them or the local river commissioner if you would like to complain about a water right violation. Reclamation has no authority to regulate violations of water rights on the Beaverhead River, or any other river.

27.7: Reclamation is not aware of any Federal laws that would provide us with the authority to impose mandatory restrictions on the type of crops that could be irrigated in drought years.

Reclamation also is not aware of any limitations under the appropriate provisions of the Montana Water Use Act that would dictate the type of crops that could be produced during drought years. The State has jurisdiction to determine if State waters are being put to beneficial use.

27.8: The proposed Federal action would not be implementing "new rules" as the commenter states. Reclamation is renewing water service contracts for stored irrigation water with water rights held in the name of the United States. Reclamation also provides incidental benefits, such as recreation, fish, and wildlife to the general public and will continue to look for ways to improve all resources.

Dec. 16, 2005

28.1 YOU PEOPLE DID A VERY POOR JOB IN GETTING THE WORD OUT ABOUT THE DRAFT MEETING IN DILLON. I WAS TOLD ONLY ONE PERSON SHOWED UP TO COMMENT (DICK OSWALT, THE FISHERIES BIOLOGIST) OTHER THAN THE B.R. AND C.C DIRECTORS. KEVIN, AT THE BUFFALO LODGE RECEIVED A COMMENT SHEET, BUT NO COPY OF THE DRAFT. IT APPEARS THAT THE LESS PEOPLE KNOW ABOUT THE DRAFT THE BETTER CHANCE IT HAS TO PASS. MY COMMENTS ARE BASED ON HEARSAY AND SECOND HAND INFO. I HEARD THAT EITHER ADDITIONAL ACREAGE OR PASTED ACREAGE WILL BE ALLOWED TO BE IRRIGATED AND THERE IS TO BE

28.2 NO MINIMUM FLOW ON THE BEAVERHEAD RIVER. IF, ADDITIONAL LAND IS IRRIGATED THIS WILL BENEFIT A FEW PEOPLE, AND IT WILL HURT THE OVERALL ECONOMY OF DILLON (THIS CAN BE PROVEN BY CHECKING SOME BUSINESS RECORDS BEFORE THE DROUGHT AND NOW. I WANT A NEPA AND AN EIS DONE

28.3 BEFORE ANY ACTION IS TAKEN. ALSO, I WANT A MINIMUM LEVEL OF THE LAKE AT 60,000 AF AND A MINIMUM FLOW ON THE BEAVERHEAD RIVER OF 50 CFS.

28.4 THANK YOU, ROBERT HARTWELL, 1185 DRIVEWAY LANE, DILLON MT. 59725 PH# 406- 683-2866

Robert Hartwell

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28.1: See the response to Comment 17.1.

28.2: See description of the Project Development History section in Chap.1 of this revised draft EA and the descriptions of the No Action Alternative and the Preferred Alternative in Chap. 2 of the revised draft EA. Historically, there has always been a minimum in stream flow release from the reservoir and that will not change. The Preferred Alternative contains a target minimum in stream flow release of 200 cfs in normal water years and a bottom line minimum in stream flow release of 25 cfs in drought years. The minimum flow will be in response to hydrologic conditions in the watershed and reservoir levels.

28.3: See the response to Comment 5.3.

28.4: See the response to Comment 13.3.

28.5: See the response to Comment 13.3.

From: "Steve Luebeck" <sluebeck@fairmontmontana.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/19/05 1:36PM
Subject: Clark Canyon comments

Thank you for the opportunity to comment on the Clark Canyon EA.

- 29.1 I find the Environmental Assessment completely remiss. Please conduct an EIS to better understand the very real impacts of either of the two alternatives. The preferred alternative is completely unrealistic, as current operations have not allowed the reservoir to meet the needs of current irrigators. Its unrealistic to believe the reservoir will be able to fill its pool, no less serve an additional 9000 acres.
- 29.2 The EA completely ignores the impact on the fishery in the both Clark Canyon and the Beaverhead River. This system will likely collapse even under the current operating regime with clamps flow to 25cfs in the fall and winter. With the collapse of the fishery, will come economic impact from the loss of recreation. This contingency was not even studied.
- 29.3 Fluvial arctic grayling are resident in the lower river, and will likely be listed under the Endangered Species Act in 2007. The preferred alternatives leave very little water for grayling, or any fishery. Again, impacts on grayling were not considered.
- 29.4 It is not possible for BOR to make an informed decision based on the EA. BOR must conduct an EIS to consider economic, biological and social impacts, as well as impacts on fluvial arctic grayling.

Thank you.

Steve Luebeck
17 Queen's Ct
Butte, MT 59701

29.1: See response to Comment 5-3 regarding the "EIS" comment. See the response to comments 13.2 regarding the "Preferred Alternative" comment. There is a total of 918 acres for EBID proposed to be added to the new contract, not 9,000 acres. This acreage would need to be included within EBID boundaries prior to being irrigated with contract water. The volume of water presently authorized to be diverted would not change with the increase acreage (see 2nd priority under the Preferred Alternative).

29.2: See the response to Comment 13.1.

29.3: Fluvial arctic grayling are not listed as threatened or endangered under the Endangered Species Act and therefore not afforded special protections through consultation under ESA. The draft EA analyzed effects to fisheries when the Preferred Alternative was compared to the No Action Alternative, as required by NEPA. This analysis is clarified and arctic grayling discussed in the revised draft EA. Regarding effects specifically to fluvial arctic grayling, more study would be needed to conclude what operational scenarios would be best for the species given the direct competition from the non-native trout fishery that thrives there now. If the species were indeed listed under the ESA, that information would be determined through consultation with the U.S. Fish and Wildlife Service.

29.4: See the response to Comment 5.3.



GEORGE GRANT CHAPTER
 P.O. Box 563
 Butte, Montana 59703

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December 16, 2005

Mr. Jeff Baumberger
 Bureau of Reclamation, Montana Area Office
 Attn: MT-231
 PO Box 30137
 Billings, MT 59107-0137

Dear Mr. Baumberger:

The George Grant Chapter of Trout Unlimited represents over 300 individual members and supporters throughout southwest Montana. As a conservation group representing anglers, we are deeply concerned about the management of Clark Canyon Reservoir and the resulting impacts on the Beaverhead River.

30.1 The George Grant Chapter of Trout Unlimited finds the Environmental Assessment completely inadequate and requests that the Bureau of Reclamation temporarily extend the current water contracts, for no more than two years, while an Environmental Impact Statement is prepared examining both current alternatives in greater detail and providing at least one alternative that recognizes the significant climate change the area has experienced and providing greater instream flow for fisheries and recreation.

30.2 The EA seems filled with broad assumption not based on any formal or in-depth study or evaluation. The EA completely ignores obvious environmental and economic impacts that both alternatives would create and fails to examine an alternative where minimum stream flow and reservoir levels would be mandated.

Like it or not, it's a reality that recreational angling on Clark Canyon Reservoir and the Beaverhead River is an established activity, which relies on a reasonable operation of the Clark Canyon facility. Historically, these fisheries sustained 80,000 to 100,000 angler days a year, pumping tens of millions of dollars into the local economy. Over the last six years, angler opportunity and satisfaction has diminished as reservoir levels dropped to historic lows and river flow was dropped to critical, minimum flows of 25cfs. As a result, fishing seasons on the Beaverhead River were shortened, closed in September rather than November, and diminished stream flows put a strain on the fishery by impacting brown trout spawning and causing over winter stress.

It's apparent to most local residents that southwest Montana has experienced a significant change in climatic conditions over the last 20 years. Summers are hotter and drier than normal, winter

Protecting and restoring wild trout, watersheds, and fishing opportunities in Southwest Montana

30.1: See the response to Comment 5.3.

30.2: The analysis in the draft EA compares the impacts associated with the implementation of the Preferred Alternative to the No Action Alternative. If the No Action Alternative (renewing the existing contracts) were the alternative implemented, there would be no environmental impacts of the proposed Federal action.

<p>precipitation has declined drastically. As a result, the Clark Canyon Reservoir frequently is unable to fill its pool and summer recreation and irrigation has suffered. BOR must recognize the reality that drier climatic conditions are likely to persist into the future and that the Clark Canyon system cannot possibly meet the level of demand that the two current alternatives foresee. <u>Simply put, if either alternative is approved by BOR, over the short-term Clark Canyon and Beaverhead River fisheries, and thus recreational angling, will likely collapse.</u> The end result will be an economic impact not examined or recognized in the EA.</p>	<p>30.3: See the response to Comment 13.1.</p>
<p>30.4</p> <p>Additionally, the lower Beaverhead River harbors a remnant population of fluvial Arctic Grayling, a fish species that is currently classified as Warranted but Precluded by the United States Fish and Wildlife Service (USFWS). Grayling were the subject of a legal settlement in 2005 in which the USFWS agreed to review the fish's status. Almost everyone agrees, by April 2007 fluvial Arctic grayling, including the Beaverhead population, will be listed as either Threatened or Endangered under the Endangered Species Act. <u>The operation of Clark Canyon Dam has a critical impact on the success of the Beaverhead population of fluvial Arctic grayling. This issue was not studied in sufficient detail in the EA, thus an EIS must be conducted to evaluate the impact of this project on a potentially endangered species.</u></p>	<p>30.4: See the response to Comment 29.3.</p>
<p>30.5</p> <p>The following is a list of other critical issues that were not analyzed in sufficient detail, were not analyzed at all or were conclusions are in error:</p>	<p>30.5: See the description in the Water Losses/Conservation section in Chap. 3 of the revised draft EA.</p>
<ul style="list-style-type: none"> • Water conservation. The EA indicates that the efficiency of water delivery is 29%-38%. BOR needs to analyze ways to improve the efficiency of water delivery. A doubling of efficiency would provide adequate water for both irrigation and fisheries. 	<p>30.6: See the response to Comment 9.1 and Comment 15.6.</p>
<ul style="list-style-type: none"> • TMDL process. The EA indicates that water quality is "generally good", though <u>very little study went into this area. In fact, water quality is impaired, nutrients and salts are serious concerns and the EA completely overlooks the need for thermal data. Likewise return flows from the EBID is a significant source of water quality impairment.</u> 	<p>30.7: Water quality effects of project operations on the lower Beaverhead River are discussed in the water quality section of Chap. 3 in the revised draft EA. Fishery effects in the lower river have been compounded by severe drought in recent years. To evaluate drought related effects, as well as other effects, the Preferred Alternative in the revised draft EA includes a partnership agreement with Montana FWP. Reclamation, the 2 contract water users, Montana FWP, and other stakeholders will work toward improving various issues, including fisheries, in the Beaverhead River.</p>
<ul style="list-style-type: none"> • Lower river. <u>There is almost no acknowledgement of problems in the lower Beaverhead River, particularly low stream flows, an inverted hydrograph and resulting low fish density.</u> 	<p>30.8: See the response to Comment 13.1.</p>
<ul style="list-style-type: none"> • Fisheries. <u>The EA indicates that fisheries would be impaired or poor 54% of the time in the reservoir and 67% of the time in the Beaverhead River. Yet, the EA concludes that the preferred alternative would not affect recreational opportunities.</u> 	<p>30.9: The new contract may constitute a major Federal action, but the EA has not concluded that the Federal action would significantly affect the quality of the human environment. An EA is the proper instrument under NEPA.</p>
<p>30.9</p> <p><u>Page 2 of the EA asks the two following questions:</u></p> <p><u>Are there any terms and conditions ensuring environmental quality that need to be included in future contracts, and would a new contract constitute a major Federal action significantly affecting the quality of the human environment, thereby requiring an EIS?</u></p>	<p>30.10: Noted.</p>
<p>30.10</p> <p>30.11</p> <p><u>The answer to both questions is yes. Both alternatives are inadequate, threaten the aquatic environment and fail to take reasonable steps to balance the competing needs of irrigation and fisheries, in fact irrigation is served to the detriment of fisheries in both alternatives. Both alternatives are based upon assumptions and inadequate study. The only reasonable course of action is to temporarily extend the current water contracts, for no more than two</u></p>	<p>30.11: See the responses to Comments 13.2</p>

years, and conduct full EIS incorporating new alternatives recognizing and balancing competing needs and recognize the need to protect fisheries and recreation.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Dave McKernan". The signature is written in a cursive style with a large initial "D".

Dave McKernan
President

Meine Brothers
 Jerry R. Meine – Richard L. Meine
 590 Meine Lane
 Dillon, MT 59725
 Phone: (406) 683-5402

Mr. Jeff Baumberger
 U.S. Dept. of Interior – Bureau of Reclamation
 Montana Area Office
 P.O. Box 30137
 Billings, MT 59107-0137
 ATTN: MT-231

December 19, 2005

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Re: Comments on Contract Renewal Draft Environmental Assessment

Dear Mr. Baumberger:

Meine Brothers is a family farm and ranch operation located approximately 7 miles north of Dillon, MT and 2 miles west of the Beaverhead River. The ranch has been in the Meine family since the late eighteen hundreds. The current owners – Rich, Linda, Jerry and Tammy Meine – purchased the farm from their parents in 1976. Before purchasing in 1976, Rich and Jerry helped with the day-to-day operation of the ranch. Water for irrigation of the farm is supplied from streams flowing through the farm (Willard Slough, Back Slough, Frying Pan Gulch Slough) and from diversions from the Selway Slough and Murray Gilbert Slough. Clark Canyon Water Supply Company shares supplement the Selway Slough water right. Through my irrigation of the farm, I have had the opportunity to observe the flows in these streams and other streams in the area, mainly Albers Slough and the Beaverhead River. I have also been fishing these streams and the Beaverhead River since the late 1950s and have been a part time fishing guide for the last 15 years. I would like to comment on some of the changes that I have observed in my lifetime.

- 31.1 1. The use of a 25 CFS minimum flow in times of drought has maintained a good fishery in the Beaverhead River. Although size and numbers of fish declined during this flow, a viable fishery for outfitting still remained.
- 31.2 2. Flows in the lower Beaverhead River around the Anderson Lane have been greatly stabilized since the construction of Clark Canyon Dam. Before the dam and during late summer or in low water years, it was a common practice for irrigators to divert all of the flows of the Beaverhead River by means of a gravel dam. Flows in the river would resume below the diversion through seepage and wastage and would increase until the next diversion. The river was often not fishable because of high amounts of moss and low flows. Because of better management and supplementing river flows from storage water, I have not seen this occur since the construction of the dam.

31.1: Noted.

31.2: Noted.

3. Flows in Selway Slough, Murray Gilbert Slough, Flying Pan Gulch Slough, Albers Slough, Willard Slough and Back (Black) Slough have been reduced 50 to 80% in the last 40 years.

Meine's have a 2/3rds share on a decreed water right (Case # 1053) of 342 miners inches of water from a point of diversion (NW1/4 SE1/4 NW1/4 Section 32, T6S,R8W) on Selway Slough. Flows have decreased at this point of diversion to where we no longer divert water from Selway Slough and have to bring water from the river to supply this water right. This directly affects river flows and the amount from storage needed to satisfy this use.

Flows in the Willard and Back (Black) Sloughs have also decreased in a similar fashion. Because these streams are not side channels of the Beaverhead River and are not signed up under the Dam, we are not able to divert water from the Beaverhead to satisfy these water rights. Loss of water in these streams has greatly affected the viability of our farming operation. Meine's attempted to address this issue in 2001 by formally requesting additional stock in Clark Canyon Water Supply Company. The company has been unable to sign us up for additional shares at this time. Hopefully this will be addressed in the new contract.

31.3

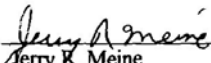
With the change in irrigation practice from flood to sprinkler and the increase of irrigated acres, there has been a noticeable decrease in the return flows to these and other streams in the area.

31.4

4. Consumption of water has increased in the Beaverhead Valley. The old plan for water needed to satisfy the Clark Canyon Water users was based on consumption by crops, water returned to the system to be used again and water lost out of the system. I do not feel the increase of consumption and its affects on the whole system have been adequately addressed in the EA. I do not feel the affects it has and will have on nonsigner water rights and there viability has been looked at close enough.

Thank you for the opportunity to submit these comments.

Sincerely,
Meine Brothers

By 
Jerry A. Meine

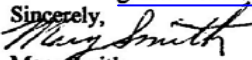
31.3: The conversion of flood irrigation to sprinkler irrigation is an on-farm irrigation practice. Reclamation has no discretion regarding the conversion, and it is outside the scope of the Federal action. If the commenter believes there are water rights violations, they should formally notify the Montana Department of Natural Resources and Conservation. Reclamation has no regulatory authority for water right violations.

31.4: If the commenter is concerned about consumption in the Beaverhead Valley increasing and the impacts consumption has on non-signer water rights, then the commenter should formally notify the Montana Department of Natural Resources and Conservation. Again, Reclamation has no regulatory authority for water right violations.

Public Comment-Bureau of Reclamation Draft EA Clark Canyon -- Beaverhead 2005 Water Contract Renewal

As a citizen of Beaverhead County I have the following comments on the Bureau of Reclamations Draft EA Clark Canyon - Beaverhead 2005 Water Contract Renewal:

- 32.1 1. The range of alternatives was inadequate. There should be alternatives considering water conservation improvements, fisheries improvements, environmental improvements and economic impact alternatives.
- 32.2 2. There needs to be an in depth environmental impact study done not only of how the dam has impacted the area but how it will impact the area in the future.
- 32.3 3. The recreation and the economic impact the fishery creates should be studied. The impact is much greater than one realizes from the outside.
- 32.4 4. Water quality is an issue that should be studied in more depth.
- 32.5 5. The river needs higher minimum flows in the non-irrigating season than 25cfs.
- 32.6 6. Dick Oswald from Montana Fish Wildlife and Parks has spent his life studying the river and its environment. He and other knowledgeable people like him should be part of this process.
- 32.7 7. I would like there to be more time for public comment and better publication of meeting leading up to the renewal of this contract.
- 32.8 8. I would like to see the contract renewal period be of a shorter duration. Forty years is too long a time period.
- 32.9 9. The contract should be with an agency that is accountable to the US government and the public not private interests only.

Sincerely,

 Mary Smith
 426 South Atlantic St.
 Dillon, Montana 59725

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32.1: See the responses to Comments 13.2.

32.2: The Federal action is to renew long-term water service contracts or convert to repayment contracts. The EA analyzes the impacts of implementing the Preferred Alternative. The environmental benchmark of this Federal action is the existing environmental conditions.

32.3: Reclamation acknowledges that recreation and fisheries in general are beneficial to the economies of Dillon and the surrounding communities. Agriculture and irrigated agriculture are also very beneficial. The commenter requests that "recreation and the economic impact the fishery creates should be studied," and they were. The draft EA evaluates the impacts of the Preferred Alternative, compared to the No Action Alternative, and the effects it has on various resources, including recreation and fishery. See Chapters 3 and 4 in the revised draft EA for further information.

32.4: See the response to Comment 18.1.

32.5: See the response to Comment 13.3.

32.6: Dick Oswald of Montana FWP was involved in the process. Montana FWP publications were the basis for "Fisheries" in Chapter 3, and Mr. Oswald provided valuable input to the criteria for evaluation of effects.

32.7: See the response to Comment 2.1 and Comment 17.1.

32.8: The Reclamation Project Act of 1956, as described in the Contracts Information section in Chap. 1 of the revised Draft EA, allows the existing contracts to be renewed for up to 40 years. The previous contract term was 40 years subject to renewal as another 40-year water service contract or conversion to a repayment contract, which is non-expiring.

32.9: Both CCWSC and the EBID are "accountable" to the U.S. government. Reclamation, an agency of the Department of the Interior, has an obligation to administer the proposed contracts to ensure both entities abide by the terms set forward therein.

Public Comment-Bureau of Reclamation Draft EA Clark Canyon – Beaverhead 2005 Water Contract Renewal

As a citizen of Beaverhead County I have the following comments on the Bureau of Reclamations Draft EA Clark Canyon - Beaverhead 2005 Water Contract Renewal:

- 33.1 1. I would like there to be more time for public comment and better publication of meeting leading up to the renewal of this contract.
- 33.2 2. I would like to see the contract renewal period be of a shorter duration. Forty years is too long a time period.
- 33.3 3. There should be a temporary contract until an EIS is completed.
- 33.4 4. The range of alternatives was inadequate. There should be alternatives considering water conservation improvements, fisheries improvements, environmental improvements and economic impact alternatives.
- 33.5 5. There needs to be an in depth environmental impact study done not only of how the dam has impacted the area but how it will impact the area in the future.
- 33.6 6. The recreation and the economic impact the fishery creates should be studied. The impact is much greater than one realizes from the outside.
- 33.7 7. Water quality is an issue that should be studied in more depth.
- 33.8 8. The river needs higher minimum flows in the non-irrigating season than 25cfs.
- 33.9 9. Dick Oswald from Montana Fish Wildlife and Parks has spent his life studying the river and its environment. He and other knowledgeable people like him should be part of this process.
- 33.10 10. The contract should be with an agency that is accountable to the US government and the public not private interests only.

Sincerely,



Tom Smith
426 South Atlantic St.
Dillon, Montana 59725

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33.1: See the response to Comment 2.1 and Comment 17.1.

33.2: See the response to Comment 32.8.

33.3: See the response to Comment 5.3.

33.4: See the responses to Comments 13.2.

33.5: See the response to Comment 32.2.

33.6: See the response to Comment 32.3.

33.7: See the response Comment 18.1.

33.8: See response to Comment 13.3.

33.9: See the response to Comment 32.6.

33.10: See the response to Comment 32.9.

From: Eric Troth <etroth@yahoo.com>
To: <clarkcanyon@gp.usbr.gov>
Date: 12/19/05 4:22PM
Subject: Comment on EA for Clark Canyon Contract Renewal

I will confine my comments on the Clark Canyon Contract Renewal to the topic of greatest familiarity and deepest concern to me. I speak as someone who has lived in Dillon since 1973 and grew up fishing the Beaverhead River and as a guide/outfitter who has earned most of his living working on that river since 1981.

34.1 My most pressing concern (though certainly not my only one) is the rate of discharge into the Beaverhead River from Clark Canyon Reservoir during the winter, that is, non-irrigation season. While all of the ideas for boat ramp and parking lot improvements, etc. can sound nice, the bottom line is that water is what will ultimately make or break the fishery which, in turn, will have a considerable ongoing impact on the overall economy of southwestern Montana.

34.2 While I am quite sympathetic with the needs and concerns of area irrigators, the needs for sustaining a premier fishery such as the Beaverhead unfortunately do not overlap exactly with releases scheduled solely to meet irrigation demands. As the biologists have undoubtedly described already, there must be a certain minimum flow maintained outside of the irrigation season to preserve the aquatic environment as well as a sensitivity to water level fluctuations during the critical spawning periods of spring and fall. In the recent series of drought years we have already been well below the target minimum for winter releases and it has had significant negative consequences for the river.

34.3 I am very troubled that the range of alternatives presented does nothing to address such a concern but rather preserves the status quo or even seeks to put more acreage into irrigation (presumably at the expense of maintaining those minimum flows during other times of the year). Given the apparent changes in the area's climate and precipitation patterns, water use practices, etc. over recent decades, this issue needs to be assessed much more carefully. Moreover, renewing contracts for 40 year management periods seems excessively long for a resource of this nature under such changing conditions.

34.4 I am aware, for instance, of the gross inefficiencies of the water delivery system (i.e. leakage in the canal system before the water even gets to the fields) and wonder if there are other more effective ways to meet the water needs of both irrigators and the fishery/river environment by addressing those issues more seriously. Both agriculture and recreation-based tourism are essential elements of our area's economy and it would be a shame to unnecessarily harm either without due consideration of other potentially win-win alternatives.

Thank you for receiving my comments.

Eric Troth
P.O. Box 1307
Dillon, MT 59725
406-683-9314
etroth@yahoo.com

34.1: See the response to Comment 7.4.

34.2: See the response to Comment 13.1.

34.3: See the responses to Comments 13.2.

34.4: See the Water Losses/Conservation Section in Chap. 3 of the revised draft EA for further information.

Comments on the EA for the 40 year water supply contract for Clark
Canyon-Beaverhead 2005 Water Contract Renewal

- 35.1 The final alternative should consider the importance of fisheries and recreational use of the project area. Minimum winter flows to protect fish and other aquatic life and minimum flows during irrigation season in the lower Beaverhead River to prevent high water temperatures need to be established. This is an important public resource, used by many. Multiple use benefits and environmental concerns should be analysed and addressed.
- 35.2
- 35.3

Thank you,

The following names submitted identical postcards shown above:

Todd Throckmorton	Wallace Miller
Karen Throckmorton	Mary Odle
Brian Throckmorton	Dennis Rehse
Tim Boka	Kathy Wise
Kerry Clark	Steve Bielenberg
Robert Des Jardine	Donald Dvoroznak
Crystal Dunlap	Raymond Gibson
R. Quinn Henley	D.L. Griffis
Deborah Jadrny	Kelly Kimzey
Frank Jadrny	Jim Nelson
Bill Johnson	Patricia Rose
Tim Kern	Cliff Beil
Melissa Kern	Matt Bryn
Rene Loder	Eric Stala
Steve Lubinski	Scott McDougal
Jerry & Shelly McDonald	Bob Chin
Kevin McDonald	Jeff Goody
Johanna McLaughlin	Kyle Nye
Jeff Mikunda	Gayleen Merry-Reynolds
	T.J. Thomas
	Teresa Tollett
	Tim Tollett
	Illegible Name

35.1: See responses to Comment 13.2.

35.2: See the response to Comment 7.4.

35.3: See the response to Comment 11.2 and Comment 27.2.

Budd-Falen Law Offices, L.L.C.

Karen Budd-Falen¹
Franklin J. Falen¹
Marc R. Stimpert^{1,2}
Brandon L. Jensen^{1,3}
Hertha L. Lund⁴
Erin Sass Eastman¹
Kathryn Brack Morrow²

300 East 18th Street
Post Office Box 346
Cheyenne, Wyoming 82003-0346
Telephone 307/632-5105
Telefax 307/637-3891
main@buddfalen.com
www.buddfalen.com

¹admitted in Wyoming
²admitted in Oklahoma
³admitted in Colorado
⁴admitted in Montana

**COPY FOR YOUR
INFORMATION**

December 19, 2005

John Chaffin
United States Bureau of Reclamation
PO Box 30137
Billings, MT 59107-0137

RE: Open A Ranch and Van Derens' Comments On Contract Negotiations and
Lack of NEPA Analysis

Dear Mr. Chaffin:

This letter contains the Open A Ranch and Van Derens' (hereafter collectively called "Open A Ranch") comments on the current contract negotiations between the Bureau of Reclamation ("Bureau") and Clark Canyon Water Supply Company ("Clark Canyon") and the Bureau and East Bench Irrigation District ("East Bench"). As you are aware, Open A Ranch holds senior water rights and is a non-signer to the Bureau contracts. Also, as you are aware, Open A Ranch is very concerned about these negotiations, the Draft Environmental Assessment ("EA"), and how these analysis and contracts will impact their ability to receive their senior water right.

The following comments are not exhaustive of Open A Ranch's comments and Open A Ranch retains the right to supplement and amend their comments as the process continues to unfold. Underlying all of Open A Ranch's comments is one basic premise: under Montana water law, Open A Ranch holds senior water rights to natural flow and is, therefore, first in time and first in right to receive that water in relation to the Bureau and the irrigation districts. The burden is on the Bureau and the irrigation districts, as users of stored water, to affirmatively disprove interference with Open A Ranch's water rights. Furthermore, any actions such as expanding acres, changing to sprinkler irrigation, or allowing members of the district or company to apply more water than is their rights are likely to violate Montana laws that do not allow changes in water rights unless those changes do not interfere with other valid water rights like Open A Ranch's senior water right.

COMMENTS

36.1 1. Potential Inconsistencies with the Beaverhead River Decree # 1053

After reviewing the location map in the Draft EA, it seems that the proposed contracts will not be consistent with the decree that has not been amended to allow the changes contained in the draft contract. It appears that natural flow deliveries to Clark Canyon will be inconsistent with the points of diversion, places of uses, and uses of the underlying water rights specified in the decree. Therefore, the draft contracts seem to be inconsistent with the decree. Furthermore, any nonconformance with the decree and lack of enforcement of that decree will impact senior water rights holders like Open A Ranch.

36.2 2. Other Potential Inconsistencies with Montana Water Law

The Definite Plan Report ("DPR") map that accompanied the complete description of the Bureau project when it was approved in 1960 authorized 28,004 acres for Clark Canyon and 21,800 for East Bench, which is significantly different than the approximately 55,000 acres for Clark Canyon and approximately 30,000 acres depicted in the location map in the Draft EA. It seems that these expanded acres have not had the necessary analysis required by the National Environmental Policy Act ("NEPA"), have not been approved in the Montana District Court process necessary for an irrigation district to expand their acres, and are not consistent with the acres that the irrigation district have been paying taxes upon. Furthermore, these expanded acres, changes in place of use, point of diversion, amount of use, etc. have not gone through the change approval process mandated by Montana water law, nor have they been determined to be part of the districts' historical water rights by the Montana Water Court. This illegal expansion in acres and water rights has great potential to damage Open A Ranch and its right to senior natural flow water rights.

36.3 3. Potential Inconsistencies with the DPR and Current Management

The DPR planned for and authorized East Bench and Clark Canyon as flood irrigation projects, which was meant to provide return flows to senior water users in the Beaverhead River basin. Since the DPR, both Clark Canyon and East Bench have expanded the amount of acres irrigated and allowed the conversion to sprinkler irrigation. Both of these changes greatly influence the amount of return flow available to senior water rights holders and seem to be in conflict with the DPR. In fact, the original DPR included consideration of alternatives that would have allowed expanded acres or sprinkler irrigation, and these alternatives were found to be unreasonable, unviable, or otherwise impracticable. Reductions in return flows caused by these expansions have resulted in a reduction in water available at Open A Ranch's headgate to satisfy its rights. Furthermore, the current draft contracts and draft EA provide no mitigation or inadequate mitigation for these practices, which seems illegal as discussed above.

CONCLUSION

The apparent illegal increase in acres irrigated and change to sprinkler irrigation

36.1: The maps in the *Draft EA* are general in nature. Delivery of water for both CCWSC and EBID would be at Clark Canyon Reservoir outlet works in the proposed new repayment contracts. Shareholders of CCWSC have an obligation to ensure that natural flow water rights are properly exercised. Reclamation is not aware of any determination of injury to senior water right holders in the Beaverhead River Basin. See the Project Development History section in Chap.1 of the revised draft EA.

36.2: The 1960 DPR is a planning document, not an authorizing document. The East Bench Unit was developed under authority of the Flood Control Act of 1944 (P.L. 78-534). See the Project Development History section in Chap. 1 of the revised draft EA. The 33,706 acres for CCWSC and 27,137 acres for the EBID have historically been irrigated, and are included as part of the existing contracts and, thus, the No Action Alternative. The Preferred Alternative includes an additional 918 that might become part of EBID. Analysis of inclusion of these additional acres was included in the *Draft EA*. EBID has the discretion to determine how assessments are structured to meet its financial obligations in accordance with Montana Law. EBID provides that information to the county assessor's offices to be collected on its behalf. The water rights adjudication process is continuing under the jurisdiction of the State of Montana. Water right claims have been filed by individual water right holders and by Reclamation. Again, see the Project Development History Section in Chap. 1 of the revised draft EA for further information. Reclamation is not aware of any formal allegations of injury under the Case #1053 water rights decree.

36.3: The 1960 DPR laid out the plan for the project as conceived at that time. It stated that the "general scheme of irrigation in the whole area is one of continual flooding" (p.1). The 1960 DPR also states, "the general plan of irrigation is that of continual flooding" (p.23).

The 1960 DPR further stated "wild flooding from contour or border dikes is the most popular method of spreading water on the presently irrigated land in the vicinity of the East Bench Unit. This method is not efficient in use of the water and should be discontinued even though excessive erosion is not evident" (p.99). It is evident from the 1960 DPR that flood irrigation was the expected method to continue into the future but that some flood methods were not considered an efficient use of available water. One could venture that if current low-pressure pivot irrigation methods were known at the time of the 1960 DPR, that would have been the recommended irrigation method since some flood irrigation techniques were already recognized not to be an efficient use of water. No mitigation is required since both the incremental development of acres in the East Bench Unit and irrigation practices are historic in nature and are part of the environmental benchmark condition from whence the analysis of the Preferred Alternative was conducted.

December 19, 2005

Page 3

have led to a decrease in return flows and shortage of water during low water years, which led to East Bench's and Clark Canyon's attempts to call on Open A Ranch's senior water rights. Furthermore, the Bureau has tried to justify this approach in the HKM report as we provided comment on October 26, 2005. Open A Ranch has senior water rights to natural flow and will object to any contract that does not respect those water rights.

Lastly, my client has repeatedly asked for notice of meetings and drafts of contracts or amendments in his comments to the Bureau. To date he has not received notice or copies of the drafts from the Bureau.

We are open to discussing our concerns with the Bureau and the Board of Directors of either/both East Bench and Clark Canyon. My client has hired me to find a way to resolve his concerns prior to Clark Canyon and East Bench seeking confirmation of the validity of the contract terms and boundary changes at the district court or any other legal action. Please feel free to contact either myself, Hertha L. Lund, at 307-632-5105 or Michael Cusick at 406-587-5511. We would be happy to discuss this issue on the phone or to set up an in-person meeting prior to the finalization of these contracts.

Sincerely,

Hertha L. Lund
BUDD-FALEN LAW OFFICES, LLC

HLL:nec

cc: Board of Directors, East Bench Irrigation District
Board of Directors, Clark Canyon Water Supply Company
Robert Van Deren, Open A Ranch Inc.
Michael Cusick, Moore Law Firm



**Montana Fish
Wildlife & Parks**

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Jeff Baumberger
Bureau of Reclamation
MT-231
P.O. Box 30137
Billings, MT 59107-0137

Dear Jeff,

Enclosed are the Montana Department of Fish, Wildlife and Parks' comments to the Bureau of Reclamation's Draft Environmental Assessment on renewal of long-term water service contracts for Clark Canyon Reservoir.

Thank you for considering these issues. If you need clarification of these comments or would like to discuss any related matter, please contact me at 406-444-7319. Again, we appreciate the opportunity to comment.

Sincerely,


Chris Hunter,
Fisheries Division Administrator

Montana Department of Fish, Wildlife and Parks' Comments on the Bureau Of Reclamation's Draft Environmental Assessment on Renewal of Long-Term Water Service Contracts from Clark Canyon Reservoir

Introduction

The operation of Clark Canyon Dam and the irrigation projects that it serves have a profound effect on fisheries and other aquatic life in the Upper Beaverhead River, both above and below the Barretts diversion. Ultimately, water quality and quantity in the lower Beaverhead River have a significant influence on the Jefferson River. The Montana Department of Fish Wildlife and Parks (FWP) appreciates the Bureau's effort in soliciting agency and public comments, drafting the EA, and the opportunity to comment on the Bureau of Reclamation's Draft Environmental Assessment on Renewal of Long-Term Service Contracts from Clark Canyon Reservoir. FWP's comments are broken down into three sections. The first is a general section that provides comments on the scope of the EA and other specific issues. The second and third sections provide page-by-page commentary from the perspectives of fisheries management biologists who work on the Beaverhead and Jefferson Rivers respectively.

I. General Comments

- 37.1 The Draft EA does not adequately address the management of an important public resource for the next 40 years. It is disappointing that BOR has seriously considered only two alternatives, one that maintains status quo for water storage and irrigation delivery and another that increases irrigation use. Little difference can be discerned between the two alternatives in the areas of aquatic life and habitats, water quality, river hydrology, and recreational use of the project area. The EA simply falls short of its purpose to disclose impacts to the natural and human environment associated with the project.
- 37.2
- 37.3

The past two decades have been dominated by drought conditions leading to water shortages throughout the Beaverhead and Jefferson basins. It is painfully obvious that the project is not able to deliver enough water to honor the original contracts on a regular basis. The Preferred Alternative seeks to increase the acres irrigated by CCWSC and EBID including acres outside of the defined project area, provide additional irrigation water to both entities under Priority 3 with no apparent guidelines or limitations, and expand seasonal use of irrigation water without release from storage under the "shoulder seasons." BOR considered no alternatives that would improve any multiple use benefits or other environmental concerns such as fisheries or recreation, water quality, or hydrology. More importantly, the EA advances no alternatives considering water conservation methods to provide for the increased irrigation or multiple use benefits.

The document thoroughly ignores important changes that have occurred over the life of the project that could significantly reduce surface water available for irrigation and instream flow. Foremost are the persistent drought conditions that have dominated the area's climate since the late 1980's. Further examples include the proliferation of new

37.1: See the responses to Comments 13.2.

37.2: See the responses to Comments 13.2.

37.3: As the commenter stated, "Little difference can be discerned between the two alternatives in the areas of aquatic life and habitats, water quality, river hydrology, and recreational use of the project area". That statement is correct. The impacts associated with the proposed Federal action of renewing two long-term water service contracts or converting them to repayment contracts were disclosed in the *Draft* EA. However, the *Draft* EA did not disclose and analyze all problems or issues associated with the Beaverhead River because they were outside the scope of this Federal action.

irrigation wells, subdivision development around Dillon, and evaporative loss from numerous new fish and waterfowl ponds.

On page two, the document states that the EA will be used to make decisions regarding four topics. Each of the four decisions are important, but FWP believes that two of the decisions are particularly important: First, whether to include terms and conditions ensuring environmental quality in future contracts, and second, whether to provide the more comprehensive environmental analysis that accompanies the development of an environmental impact statement. FWP feels that both should be included.

Scope of the EA

As noted above BOR only evaluates two relatively similar alternatives, the No Action Alternative and the Negotiated Contract Alternative (p.7). BOR simply does not appear to consider operational changes for a project that will continue to serve about 30,000 acres of cropland. It fails to address flow, sediment, temperature, and nutrient impacts that have been observed for decades and simply ignores the issues and concerns of the public (see pp. 5 and 6). For example, the EA discusses TMDL status on page 19. The EA indicates the 63-mile reach of the Beaverhead River downstream of Grasshopper Creek is listed as not supporting the beneficial uses of aquatic life and cold-water fisheries. The EA states, “[p]robable causes are bank erosion, dewatering, fish habitat degradation, flow alteration, mercury, metals, habitat alterations, and siltation.” FWP believes that changes in water releases from Clark Canyon Reservoir could help alleviate (or if done incorrectly, worsen) these conditions. In short, the EA proposes no significant changes in operation to address known problems in the Beaverhead River.

37.4 The EA does not adequately address the affects of the proposed action on downstream environments (the lower Beaverhead and Jefferson Rivers) including affects of an inverted hydrograph, channel maintenance and atrophy, woody riparian species, and important parameters such as water temperature, sediment accumulation, and increased growth of aquatic vegetation. The document fails to analyze or account for project benefits derived from recreation, primarily fishing. It does not address loss of recreational activity from the reservoir and river fisheries due to low storage pools and low river flows. It should contain an economic analysis of these losses.

BOR’s apparent disregard of most of the public comment and input from early scoping meetings reveals a business-as-usual bias toward management of these important resources. Clark Canyon, a public resource has been managed by and for private water user companies. Under the preferred alternative, this program bias will continue, and even expand. This system is flawed, and as recently as this year, fraught with error. For example, the 2005 fishing season opened with a minimum dam release of approximately 25 cfs as Clark Canyon dumped heavy loads of sediment into a river with no power of dilution or transport in an obvious attempt to withhold stored water for later irrigation release. In July, flows in the lower river failed to even meet the 25 cfs minimum at Beaverhead Rock. These low flows directly corresponded with water temperatures that attained daily maxima in excess of 70 degrees F. every day of the month and sometimes exceeded 80 degrees F. The river reached a maximum of 82 degrees and exhibited daily

37.4: See the response to Comment 9.1.

mean temperatures in excess of 70 degrees on 17 days of the month. Again, we assume that this management was directed at maximum storage of water for irrigation. This action was followed by a September release regime that deviated significantly from recent past actions under which dam releases were cut back to the over winter minimum of approximately 25 cfs immediately after Labor Day. Instead, with slightly improved storage in the reservoir in 2005, the water supply companies continued to release stored water through September 23, seemingly reversing the trend of maximum water storage management in Clark Canyon Reservoir. Finally, an inspection of the Clark Canyon Dam outlet which required the shut down of all water releases for at least two hours was scheduled and performed after dam outflow was reduced to the over winter minimum rather than during the reduced release period between labor Day and September 23rd. This action unnecessarily increased the risk of dewatering in downstream environments and loss of aquatic organisms. We submit that all of these actions are indicative of a virtual lack of any concern for fisheries and other aquatic resources and a singular management of one commodity; storage and delivery of irrigation water at the expense of all other public benefits associated with the project. We suggest and hope that the future contract change management responsibility for the project from the present private companies to the Bureau of Reclamation, a public agency accountable for the management of a public resource.

It is evident that BOR views this federal action very narrowly, a simple question of the best mechanism to renew contracts and keep supplying water to irrigators. While the Reclamation Act may require BOR to provide current contract holders a first right of renewal, there is no discussion of whether the Act, or any other law requires BOR to service acres or expand contracts beyond the original ones. There is no serious discussion of whether improved efficiency could help provide water for more irrigation and increased flows in the river. We can only assume that these are discretionary issues; BOR made a choice not to consider them. Clearly, as discussed above, operation of the project has a profound effect on the natural and human environment. Due to the importance of the issue and the public resources at stake, BOR should take this opportunity to explore ways in which the project could be operated or improved to benefit not only the irrigators but also the river, its fishery and those who rely on it both recreationally and economically. The title of the document doesn't matter; the real question is whether these issues are seriously considered. But the process that forces federal agencies to analyze and disclose the environmental affects of its actions is to prepare an Environmental Impact Statement. Therefore, FWP recommends that BOR prepare an EIS.

Drought Management

Page nine states that the Preferred Alternative would include a target minimum pool of 60,000 AF in Clark Canyon Reservoir in most years, with a minimum reservoir pool of 10,000 AF in the driest years. The Drought Management Plan would be triggered when August EOM forecasts were 50,000 AF or less. This alternative would also include a target minimum in-stream flow of 200 cfs at Clark Canyon Dam, with a bottom-line minimum in-stream flow of 25 cfs at the dam. The EA notes that FWP has recommended that 200 cfs stay in the river. FWP realizes that the reservoir will not always be able to

supply 200 cfs to the river. However, at the time of this writing (11/29/05, 12:20 p.m.) the BOR's website reports that reservoir inflow is 239 cfs and outflow is 25.8 cfs. In other words, outflows are only 12.9 percent of FWP's recommended minimum and 10.8 percent of reservoir inflows. This means that 89.2 percent of the Beaverhead's natural flow is being retained for storage.

FWP generally approves of the idea of a drought management plan, and agrees with the idea of cutting back on allotments in anticipation of low August EOM forecasted reservoir levels. However, the "bottom-line" minimum in-stream flow of 25 cfs is inadequate. It will not come as a surprise that FWP advocates that more water be released from Clark Canyon, and be allowed to pass by the diversion at Barretts. Further, there is no apparent relationship between the drought plan and the releases from the reservoir outside of the irrigation season. This relationship should be discussed. FWP's concern is that in spite of a target minimum release of 200 cfs, the reservoir will frequently be operated at 25 cfs outflow throughout the non-irrigation months in order to avoid triggering the Drought Management Plan. The ultimate question is: What conditions would trigger a drop below a 200 cfs release and when would that be implemented? FWP is also concerned that expansion of irrigated acreage has contributed to the project's inability to deliver adequate instream flows.

Expansion of irrigated acreage and "Shoulder Season."

On page three the EA states that many original flood-irrigated lands in the EBID have been converted to the more efficient sprinkler irrigation. The document states "EBID has extended, or "spread", their allotted water to more acres than were irrigated under the original contract. However, these additional acres are still within the boundaries of the irrigation district." It is likely that the conversion to sprinkler irrigation and the increase in acreage resulted in increased consumption of water. Has this caused an adverse affect to other water users? The following paragraph (p. 3-4) states that water right claims for EBID and Clark Canyon Reservoir have been filed according to the Montana Water Use Act, as amended and that the districts' water rights will be adjudicated once the final water rights decree for the basin is issued by the State of Montana.

Montana's general water rights adjudication is meant to quantify use of water associated with claims filed on pre-1973 water use. Generally, post-1973 acreage expansions and water use expansions are not included in adjudicated claims. The EA appears to suggest that as long as the new acreage is incorporated into the district boundaries, those acres may be irrigated with project water. Given the outcome of the adjudication, this may not be the case. FWP feels that the BOR should discuss this issue.

Page 8 and 9 discuss the priorities of water delivery. It is difficult to understand why the BOR would prefer an additional 7,711 acres above the 25,995 that were presumably included in the original contract with CCWSC. Similarly, the preferred alternative would add an additional 5,366 acres, including 918 acres currently outside the district's boundaries.

As mentioned above in our discussion of the statewide adjudication, given the date of development, it is possible that some of these acres – especially those currently outside the districts – should not be irrigated with Clark Canyon water. Rather, because that water use; i.e. post-1973 expansion in water use, may not be a legitimate part of the claims, it should be permitted use under the Montana Water Use Act. Depending on the date of appropriation, some of that water may be junior to FWP’s instream flow reservation.

The expansion of acreage raises many important questions. When did the expansions take place and where? The final EA or EIS should analyze and disclose the pattern of irrigation development. Why is the Bureau allowing additional acres to be included in priority one and how does this affect the availability of water for other users? The EA discusses “shoulder season”. Is use of water during “shoulder season” going to expand the use of project water? Will shoulder season water go toward the expanded acres? How will this affect reservoir operations? If the answer is not at all, does any mention of shoulder season really belong in the contracts? Is use of water in shoulder season legitimate under Montana Water Law? Discussion of this topic is simply inadequate.

II. The View From the Beaverhead River.

Introduction – Chapter 1

Background and Descriptive: The section appears to contain descriptive errors which question the quality of the document. For example, the southern limit of the drainage basin is bounded by the Centennial Mountains rather than the Targhee (Targhee refers to the National Forest in Idaho) and the Montana River Mile Index has Barretts Diversion located 16, rather than 11 miles downstream from Clark Canyon Dam. The reservoir storage pools don’t add up to the total storage figure listed nor do the pool capacities listed in Table 3.1 on Page 15. Also, the various pools should be defined for better reader understanding of reservoir capacity and allocation.

CCWSC and EBID: Under what laws or authority did both water companies substantially increase irrigated acreage beyond that covered in the contract? Did anyone file for a change of place of use under Montana Water law? Why was conserved water not managed for other potential beneficial uses in addition to irrigation by BOR?

Shoulder Season: This is a particularly insidious concept for fisheries as the practice can result in severe dewatering during critical spring and fall spawning under low non-irrigation flow regimes. We have seen this practice result in October flows of less than 40 cfs in the river reach near Dillon. The proposal does not address what plant growth or soil benefits would be gained from irrigation at that time of year in the project vicinity and elevation. Moreover, does the proposed action require modification of permits to expand season of use under Montana Water law and, if so, would this “shoulder” irrigation be junior to the FWP Instream Flow Reservation of 200 cfs? We strongly suggest that, if the “shoulder season” concept is to be implemented, that it be done under the following conditions only: 1) defined minimum storage pool and flow release from Clark Canyon

37.5: The EA has been changed as suggested for the mountain range comment. Barretts Diversion Dam is 11 highway miles from Clark Canyon Reservoir.

37.6: The EA has been changed as suggested.

37.7: See Project Development History section in Chapter 1 of this revised draft EA.

37.8: To Reclamation’s knowledge, conserved water (that is, water saved by conversion from flood irrigation to center pivots) was either privately financed or financed through state or Federal programs other than those offered by Reclamation. It is assumed the agencies that funded the water conservation projects (not including privately funded projects) ensured their program objectives were met.

37.9: The shoulder season concept is recognition of the exercise of historic natural flow water rights of the shareholders of CCWSC and EBID. The shoulder season will use their natural flow rights, most of which enter into the Beaverhead River below the outlet works of Clark Canyon Dam. The natural flow rights, while not adjudicated, are believed to have priority dates of 1962 and earlier, and would be senior to MDFWP’s In-stream Flow Reservation with a 1985 priority date.

dam as well as defined flow minima at the Dillon and Beaverhead Rock Gages, 2) reservoir outflow be adjusted to match or exceed reservoir inflow to supply this need such that base instream flows are not diminished as a result.

37.10 **Public Concerns:** While some public concerns identified through scoping are summarized (p.77 – 79), they are not seriously addressed in the EA.

Alternatives – Chapter 2

37.11 **No Action Alternative:** Again, the no action Alternative seeks to provide irrigation water to more acreage than was specified under the original contract. Recent drought years have resulted in a failure to meet even the original contract irrigation needs. This alternative should only be advanced with accompanying water conservation measures. The 3rd priority is not limited in terms of quantity or the term “beneficial use” and appears to be entirely subject to the discretion of the water user boards. The document and the alternative do not provide for the substantial acreage represented by the “non signers”. We suggest that the irrigation requirements of the “non signers” be supplied, under minimum flow conditions, by a dam release that matches outflow with reservoir inflow and wonder why this practice has not been a part of past management. Irrigation by “non signers” under minimal dam releases holds the potential to dewater river reaches as potential water to service their headgates is being stored in the reservoir.

37.12 **Preferred Alternative:** The document acknowledges that the Beaverhead watershed has experienced a severe drought for more than 6 years, obviously referring to the most recent episode. We submit that the watershed has been dominated by a drought trend over the past twenty years. Over the past two decades, winter flow releases from Clark Canyon Reservoir have not provided the minimum instream flow of 200 cfs in the upper river in 13 of the 20 years while summer flow regimes in the lower river have failed to provide the minimum instream flow in 14 of the 20 years in question. For these reasons, we find it dubious that the preferred alternative seeks to expand irrigated acres and provide more water for irrigation than has been provided in the past. Again, the alternative expects to provide more water over more acres without any discussion of water conservation measures. As in the No Action Alternative, the 3rd Priority delivery appears to be undefined and unlimited. While the Drought Management Plan appears to be a step in the right direction, we doubt that it would have any appreciable affect on fisheries. This is also apparent in the BOR analysis. We applaud the definition of water reductions to CCWSC and EBID but wonder why the reductions would not be put into affect before the reservoir dropped into a deficit condition below 50,000 acre feet. We feel that prevention of extremely depleted pools would be far better than allowing the pool to decline to 20,000 or 10,000 acre-feet. While the minimum target pool of 60,000 acre feet could potentially afford a level of protection for reservoir fisheries, we fear that the “target” could become a standard, rather than a minimum, for the water users, especially without any apparent limitations on 3rd Priority volumes when water is available. We suggest that an “optimum target pool” accompany a “minimum target pool” definition to clarify the point that more water in storage is better for fisheries than the minimum. Finally, we do not feel that 10,000 acre-feet is an acceptable minimum pool for the Reservoir. It represents a reduction in productive surface acreage of about 80% for

37.13

37.10: See the response to Comment 5.1.

37.11: The Council on Environmental Quality defines the water service contract renewal’s No Action Alternative as renewing existing contracts with minor changes. The 3rd priority in those contracts provides irrigation water up to “beneficial use” as described in Montana water laws. The determination of beneficial use is under the jurisdiction of the State of Montana.

37.12: The difference in acreage between the No Action Alternative and the Preferred Alternative is 918 acres. An additional 918 acres for EBID is proposed to be included as part of the Preferred Alternative. These 918 acres would need to be included in EBID boundaries prior to them being irrigated with contract water. In addition, the volume of water proposed for EBID is based on 22,689 acres, and that quantity would not change if the 918 acres were added.

37.13: The Preferred Alternative’s Drought Management Plan would set minimum pool levels, both target and bottom. The Federal action is not proposing to set the target minimum pool of 60,000 AF as “a standard pool level”, as the commenter indicated. It is common knowledge that more water in storage is beneficial to everyone and everything, including fisheries. Therefore, in general terms, anything above the target minimum pool is optimum.

37.14 fisheries and a deficit condition in storage that perpetuates low river flows for fisheries and irrigation water shortages. Emphasis should be on water conservation practices to avoid storage deficits. Similar reasoning would apply to the Beaverhead River flow regimes. While the "target flow" of 200 cfs represents a minimum condition under which fisheries can flourish, the base of 25 cfs is woefully inadequate. All of the US Fish and Wildlife Service documents and findings prior to the construction of Clark Canyon Reservoir called for a minimum flow of 200 cfs between the dam and Barretts and 250 cfs from Barretts to the mouth of the Ruby River. The Ruby River, a much smaller river – reservoir complex releases a minimum of 25 cfs from the dam. We find a minimum flow of 25 cfs to be inadequate to support fisheries in any reach of the Beaverhead River.

37.15 Alternatives Considered but Eliminated: We reviewed the other alternatives and found none that would have recognized multiple use benefits of the project and improved their condition. We do not support any of the eliminated alternatives and wonder why no alternatives that developed or supported the development of water conservation efforts were considered.

Table 2.1 Effects of Alternatives:

Description: Again, we would much prefer to see a higher storage trigger than 50,000 acre feet and higher minima for storage and flow than 10,000 acre feet and 25 cfs. Under what guidelines, conditions, or standards would reservoir storage drop to or below the 60,000 acre-foot target? We fear that the target would become the standard.

Water Supply: How would March EOM reservoir contents rebound from 10,000 or 30,000 acre-feet to the 147,600 – 151,000 acre-foot range under drought conditions? In reality March EOM contents have not rebounded to half those amounts during the current drought episode.

Water Quality: The statement that water quality would "remain good" is dubious at best. No attempt is made to address problems in Stone and Spring Creeks. The effects of low flow on water quality, high water temperatures in the lower river, sedimentation, and gas bubble disease were not even addressed. This will be discussed in more detail later in our comments.

Fisheries: Conditions that result in impaired or poor fish populations half or more of the time are unacceptable. The document also does not even address other forms of aquatic life such as plankton, macroinvertebrates, periphyton, and macrophytes.

Wetlands: The document focuses on artificial creation of wetlands via irrigation water returns, drains, ditch loss, etc. but fails to acknowledge how much natural wetland has been lost due to drain ditch construction throughout the valley. We submit that improved instream flows via water conservation would improve adjacent wetlands and riparian cross section along the river and tributaries.

Social and Economic: We submit that a system that is predicated on 34% to 38 % efficiency in water delivered to the field versus water diverted from the river is flawed and holds a great deal of room for improvement. Small improvements in water conservation could potentially provide much more water for other beneficial uses as well as irrigation. Again, we strongly recommend development of alternatives that emphasize water conservation.

7

37.14: The Preferred Alternative would include a target in-stream flow of 200 cfs during normal water years and a bottom line in-stream flow of 25 cfs during drought years. The target levels would likely be met during most years. However, during drought years, minimum levels were set to protect fisheries and other aquatic life. Reclamation and the contract water users will be looking for various ways of improving water efficiencies and increasing minimum flows in the Beaverhead River. Reclamation and the contract water users will be seeking other partners, including interested parties that use the Beaverhead River, to assist with these improvements, both financially and in-kind.

37.15: (See the response to Comment 7.4). Reclamation has funded and implemented water conservation measures in the past and will continue to do so in the future. As discussed in previous meetings between Reclamation and MDFWP, language has been added to the revised *Draft EA* that will foster cooperation and communication between Reclamation, the two water user groups, state agencies, and any other group willing to address some of the concerns on the Beaverhead River, including water conservation.

Recreation: Recent trends in reservoir storage and river flow have resulted in dramatically reduced recreational use on Clark Canyon Reservoir and the Beaverhead River. This trend could continue under the same conditions that resulted in the classification of fisheries as poor or impaired half of the time or more. The EA fails to adequately address the affects of the two alternatives on recreational use of the project.

Affected Environment – Chapter 3

Water Supply: This section should contain a thorough discussion of hydrology issues to include important results of the current management. These issues should include, at a minimum, analysis and discussion of the affects of the project on dominant channel maintaining discharges and channel atrophy, the inverted hydrograph of the lower river, floodplain and woody riparian communities, particularly cottonwood stands, and ice gorging – winter flooding. While the section discusses increased average annual flow improvement to 302,100 acre feet for the 1964 – 2003 period, we suggest that the section contain an analysis for the 1985 – 2004 period as a better indication of the present climate trend. Again, Table 3.1 does not add up to the total stated on page 3, and pools should be defined.

37.16

Water Quality: Water quality in the Reservoir should be compared with the work of Rodney Berg (1974) rather than Smith (1973) as cited. Tables of mean values should be presented for data comparison rather than a general statement that “overall water quality is good having changed little over the years”. The same means of comparison should be applied to the river sections for comparison with data from Smith (1973). We question the statement that river water quality is generally good due to a lack of information in key areas. Severe water temperatures that exceed 80 degrees F have accompanied low summer flows in the lower river. We disagree that this is what would “typically be expected in a similar system”. Such temperatures were documented as recently as 2003 and 2005, yet temperature is not analyzed or mentioned in the document. Gas bubble disease has been cited as a water quality problem directly affecting fish health in the upper river by both FWP and BOR studies, yet this parameter was not included in the EA. Sediment analysis, TSS, or turbidity measurements were not included during the winter in the lower river when USGS Gage data clearly demonstrate maximum sediment movement nor were they collected in the upper river when irrigation flow releases are increased in the spring. Sampling for mercury, a metal often associated with methylating conditions in reservoir ecosystems and concentration in fish flesh, was apparently not even included in the analysis for the EA. The EA consistently points out nutrient level problems in Stone and Spring Creeks but fails to address the problem in any other fashion, merely stating that the problems are expected to continue under both Alternatives. The EA also fails to mention elevated levels of salt forming ions (particularly Na and K) in both streams and a sample revealing lead concentrations of 30 ug/l in Stone Creek. Finally, the document appears to lack any significant coordination with Montana Department of Environmental Quality (DEQ) and their TMDL sampling and evaluation process in the Beaverhead drainage.

37.17

37.16: The table has been revised.

37.17: The water quality section in the revised draft EA has been modified where appropriate. Also, see the responses to comment 9.1 and comment 15.6 for further water quality information.

37.18

Fisheries: This section appears to be the most thoughtful and well-written section in the document and also appears to be best coordinated with an outside agency. Similar to the situation with water quality analysis, the section should probably divide the Beaverhead River into different reaches for analysis of fish populations. We would suggest discussing fish populations in terms of reaches defined from the dam to Barretts, Barretts to the Westside Canal, and Westside canal to the mouth. This subdivision would be based on dominant flow regime, productivity, temperature, and quality and diversity of habitat niche. We also suggest that tables demonstrating trout abundance, standing crop, and size distribution through the system would be helpful to the reader. A minor correction should be applied to Table 3.3 through the addition of both westslope cutthroat trout and brook trout to the list of species collected in the Beaverhead River.

Clark Canyon Reservoir: The discussion of fishing pressure should probably acknowledge that heavy fishing pressure occurs at average or above average storage pools but declines markedly as storage pools drop below average. Typical modern fishing pressure on Clark Canyon under normal storage conditions can exceed 50,000 angler days per year, about half of which is generated by nonresident anglers. Under extremely low pool conditions in 2003, pressure declined to about 15,000 angler days of which only about 4,000 were generated by nonresident anglers. Some mention should also be made of angling restrictions (derby limitations and bag limit reductions) that have accompanied low storage conditions.

Lower Beaverhead River: This section contains no mention of the lower river with its limited habitat associated with the inverted hydrograph, chronic low flows and high water temperatures. The fisheries of this reach would best be described as severely impaired. Brown trout and mountain whitefish populations typically vary between about 200 and 400 fish per mile, the lowest densities observed for the species in any river study sections in the Red Rock, Beaverhead, Ruby, and Big Hole Rivers. Current densities have dropped to all time recorded lows of less than 100 Age II and older fish per mile. Brown trout densities in these sections have remained low and unchanged since the early 1970's as opposed to most area study sections that have improved markedly over the period. U.S. Fish and Wildlife Service studies prior to dam construction (USFWS 1956) recognized dewatering problems in the lower river but characterized the fishery as "a good trout river in a comparison of trout streams throughout the United States" and estimated angler use between the Dillon and the mouth of the Ruby at 8,500 angler days per year.

Upper Beaverhead River: In the upper river, some mention of angler crowding and the Biennial Rule process that addressed the problem should probably be included. The biennial rule analysis identified severe crowding issues in the tailwater reach. Prior to dam construction and operation, the U.S. Fish and Wildlife Service (USFWS 1956) estimated angler use of the Beaverhead at 45,500 total angler days per year as distributed as 27,000 between the dam and Barretts sites, 10,000 between Barretts and Dillon, and 8,500 between Dillon and the mouth of the Ruby. As was the case for the reservoir, some mention should also be made of the large differences in angling pressure resulting from flow regime. Typically, modern angling pressure on the Beaverhead can exceed 40,000

37.18: Table 3.6 has been revised with the exception of trout abundance and standing crop.

37.19

angler days per year under strong flow regimes but can decline to 15,000 angler days or less under poor flow regimes like those experienced in 1991 or 2001. The document fails to acknowledge flow related health problems in upper river trout populations to include outbreaks of gas bubble disease and bacterial furunculosis. The furunculosis outbreaks of the 1980's resulted in large fish kills between the dam and Dillon. The document should also acknowledge the recent arrival of whirling disease and the New Zealand mud snail into the system. The upper river discussion makes emphasis of the point that stable winter flows are needed for successful brown trout reproduction. It should also probably recognize the fact that over winter flows above the critical minima are necessary for good over winter survival of adult spawning age brown trout. The document refers to the FWP fluvial grayling introductions but should probably add that the introductions have been suspended due to extremely low flow regimes and high water temperatures in the lower river. Finally, the document fails to mention the native fluvial grayling of the Red Rock – Beaverhead River system. FWP sampling crews have collected a very few wild fluvial grayling in the Beaverhead and Jefferson Rivers over the past two decades. U.S. Fish and Wildlife Service studies of the system (A Detailed Report on Fish and Wildlife Resources in Relation to the water Development Plan for the East Bench Unit, 1956) clearly documents the presence of Arctic grayling in both the Beaverhead and Red Rock Rivers prior to the construction and operation of Clark Canyon Dam. Only one wild grayling has been documented in the Beaverhead River and none in the Red Rock River below Lima Dam since that time.

Wetlands: This section appears to be used to somehow justify inefficiency of irrigation water delivery as beneficial. While some wetlands are undoubtedly formed as a result of irrigation water seepage, the document does not account for the amount of native wetland lost in the Beaverhead valley as a result of drain ditch construction. The section also does not address wetland loss along the adjacent stream channel riparian corridor in association with chronic low flows. FWP studies of the lower Beaverhad River from the early 1970's noted extremely poor woody riparian cover adjacent to the channel along both banks.

Threatened and Endangered Species: The document places the Beaverhead Valley on the westernmost boundary of the Central Flyway. Beaverhead and Madison Counties are actually considered to be in the Pacific Flyway.

37.20

Bald Eagle: The document states that there are no known Bald Eagle Nests within 2 miles of Clark Canyon Reservoir or the Beaverhead River. This is obviously erroneous and contradictory to nest site data presented later in the document (Page 50).

Ute Ladies' Tresses: The document states that the species is not known to occur in the area. In reality, the plant has been documented from a minimum of 2 sites along the lower Beaverhead River and sites along the Jefferson River. As was mentioned before, these errors or omissions cast a poor light on the accuracy of the document.

37.21

Social and Economic: Table 3.6 combines the per capita income from adjacent counties along the project area. What is that figure supposed to represent? In the recreation section, a table should be placed so that readers can compare the difference in economic impact as Clark Canyon angler days decline from 50,000 to 15,000 per year and as the

37.22

37.19: Chapter 3 "Fisheries" has been revised as suggested.

37.20: Thank you for your comment. Errors have been corrected in the revised *Draft* EA and updated with additional information.

37.21: The EA has been revised as suggested.

37.22: The revised *Draft* EA has been updated to reflect more recent recreational data and has additional tables.

37.23

nonresident component declines from more than 25,000 to 4,000 per year. The same analysis should be applied to the river fishery that is not even mentioned in the section.

Recreation: Again, a graph or table should be presented to demonstrate how total angler days and the resident – nonresident angler day balance declines and is shifted as reservoir storage and river flows are reduced.

Other Effects – Water Conservation: This is one of the few mentions of water conservation in the entire EA and still contains no description of options, alternatives, or potential actions.

Environmental Consequences – Chapter 4

Much of what is discussed in this chapter has already been addressed in our prior comments. As such, please refer to these prior comments as companion to the issues discussed in Chapter 4 to reduce repetition.

Water Supply: FWP questions BOR’s prediction that the proposed action would result in “reduced demands from reservoir storage and river flows.” BOR models demonstrate that contract renewal may increase the frequency of low river flows and reservoir storage. We fail to see how the following actions can possibly result in anything but increased demand from both the river and the reservoir: 1) increasing the acreage in the 1st and 2nd priorities, 2) providing additional 3rd Priority volumes to all of the acreage, 3) adding 918 acres to the EBID project area, 4) providing for “shoulder season” irrigation from the river, and 5) implementing no new provisions for improved efficiency of delivery between the diversion and the field;

37.24

Water Quality: The statement that “continued operation of diversions, canals, laterals...etc. would not degrade water quality” is obviously erroneous in the case of Stone and Spring Creeks at a minimum. Table 4.1 clearly shows that the Preferred Alternative would result in the worst flow and storage conditions in the worst years. That is, total diversions in April, July, and August increase markedly over the No Action Alternative in the 10 Driest Years. That brings into question the effectiveness of the Drought Plan Component of the Preferred Alternative.

Fisheries: Figure 4.3 appears overly optimistic for the 10 Driest Years. In reality, July and August flows have averaged less than 100 cfs at the Twin Bridges Gage in 7 of the past 18 years, and have averaged less than the 200 cfs minimum in 12 of the last 18 years. As discussed earlier, Figure 4.5 shows no appreciable improvement in either alternative scenario for the highly impaired lower river reach. This lack of any sort of meaningful attention assures that the reach will suffer chronic low summer flows, temperatures in excess of 70 and sometimes 80 degrees F., and support the lowest river trout populations in the Missouri River headwaters for another 40 year period.

Threatened and Endangered Species: The earlier error referencing bald eagle nests was noted and seemingly corrected with Table 4.6. The statement that Reclamation

37.23: The revised *Draft* EA has been updated to reflect more recent recreational data and has additional tables.

37.24: The Drought Management Plan was not intended to cure all of the Beaverhead River problems during a drought. It was intended to alleviate drought-related impacts to the irrigators and the Beaverhead River in general.

37.25

“determined that these nests are not within the area of potential effects” appears to be interesting since some of the nests are located immediately adjacent to the river along irrigated fields and in relatively close proximity to ditches and diversions. We suggest that USFWS should have been consulted to make that determination. Again, Ute Ladies’ Tresses are found along the lower Beaverhead River.

Recreation: Table 4.10 presents some interesting data regarding the impact of the two Alternatives on median flow of the river at Barretts in the non-irrigation period October – March. The Preferred Alternative is virtually identical or very slightly less than the No Action. Moreover, the flows don’t come close to matching the recommended minimum instream flow of 200 cfs and usually are only slightly more than half of that amount. Using measured flow relationships under low flow conditions (FWP data files), it can be assumed that the flow at Barretts will generally be about 20 cfs greater than that at Henneberry or Pipe Organ FAS’s which will, in turn, be about 20 to 25 cfs greater than that measured at High Bridge FAS. Flow at High Bridge is usually measured at about 15 to 20 cfs more than the reported dam release at minimum flow. Thus, median October through February flows would be predicted to be about 86 – 96 cfs in the Henneberry – Pipe Organ Reach and only 66 – 76 cfs in the highly productive High Bridge – Henneberry reach, and be lower than that in about half of the years. This also assumes dam releases of 45 to 60 cfs or worse in about half the years. Data show that over winter flow regimes within that range would result in impaired trout populations and limit recreational activity. The predicted median of 112 cfs for October would also limit float fishing during a very popular and heavily used fishing month on the Beaverhead (FWP Fishing Pressure Estimates) at normal flow regimes.

III. The View From The Jefferson River Basin

The following comments relate to the operation of Clark Canyon Reservoir as it potentially affects the lower Beaverhead River and the Upper Jefferson River.

37.26

Page 22. The EA includes a general discussion of the Jefferson River, but no real mention of how the Beaverhead River affects the Jefferson River. FWP’s review of USGS data at Beaverhead @ TB (06018500) and the Jefferson @ TB (06026500) indicate that the Beaverhead River (not counting the Ruby River) provides roughly 20% of the mean annual flow to the Jefferson. Therefore, water quality/quantity issues in the lower Beaverhead have a significant impact on the fishery of the upper Jefferson. It should also be noted that grayling have occasionally been observed in the Jefferson River near Waterloo in the mid 1990’s prior to introductions by FWP. In addition, grayling introductions in the Jefferson River have been conducted near Three Forks, MT, approximately 70 miles downstream of the confluence with the Beaverhead River.

37.27

Page 24. The EA discussed return flows for the Beaverhead at Twin Bridges by month. It does not state how this is determined nor discuss the quality of the return flow water (especially relating to temperature, sediment, nutrients). Algae growth, relatively high water temperature, and turbid water conditions are noticeable in the lower Beaverhead near Twin Bridges. How much of this is natural and how much is caused by return flows should be compared.

37.25: Thank you for your comment. The EA has been corrected.

37.26: Following are the average ratios of Beaverhead River near Twin Bridges discharge to the Jefferson River near Twin Bridges discharge:

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Percent	40%	40%	38%	22%	8%	8%	14%	27%	35%	34%	39%	40%	22%

Based on these values, we agree that the Beaverhead River (excluding discharge from the Ruby River) provides a significant contribution to the Jefferson, especially during wintertime flows. Figure 4.6 in the Draft EA graphically demonstrates incremental impacts to the Jefferson between No Action and the Preferred Alternatives. As stated on page 45 of the Draft EA, there would be little or no change to the hydrograph of the Jefferson River by the Preferred Alternative.

37. 27: See “Methods of Analysis” in the Draft EA for explanation of the hydrologic model. As for the water quality comment, this section of the EA pertains to wetlands, and the purpose of documenting return flow information is to simply show the baseline return flows for comparison between the No Action Alternative and the Preferred Alternatives in Chapter 4. The Montana

Tech study is looking at return flows impacts on this stretch of the river, both quality and quantity. The area in question does not have a conduit to return the flows (such as Stone Creek or Spring Creek) but comes in through groundwater connections and springs.

Reclamation is funding a water quality study in the Beaverhead basin through Montana Tech to evaluate return flows. When data collection and analysis have been completed, this study will provide needed information in the TMDL planning and implementation process. Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin.

Page 37. The EA states: “Reduced diversions during droughts would lessen return flows available for irrigation of downstream lands.” The document goes on to explain that the preferred alternative would provide 86,200 AF of return flow near Twin Bridges compared to 87,900 AF for the No Action alternative. Both alternatives recognizes that the project provides a tremendous quantity of water, but there is inadequate information to determine if the timing of return flow positively or negatively impacts aquatic life, nor does the document adequately address the issue of water quality associated with this large volume of water. For the no action alternative and the preferred alternative, the document simply says (page 37 and 38) that continued operation would not degrade water quality.

Page 42. The use of the 50 percentile and the “10 driest years average” flows for the Jefferson near Twin Bridges to compare no action to the preferred alternative is not very useful. Both graphs indicate the Jefferson River flow remains at or above 500 cfs during the critical months of August and September. During recent drought years (2000 – 2005), flow frequently drops below 300 cfs and water users in the Jefferson and Big Hole implement voluntary water savings to keep flow above established triggers. What actions are BOR and Beaverhead water users willing to take to maintain flows in the Beaverhead where a large storage facility is available?

Page 56. For the preferred alternative, the document states, “No specific water conservation measures were included...” It seems odd to not discuss the need to conserve water, particularly during periods of drought. Water conservation can be very expensive when implementing large projects to line delivery systems or it can be relatively inexpensive requiring irrigation scheduling and coordination between users. We recommend that, at a minimum, irrigation scheduling and coordination is required during periods of water shortage.

Conclusion

BOR’s Clark Canyon Water Contract Renewal EA is a good start toward analyzing the issues associate with contract renewal. However, FWP strongly believes its scope is too narrow to fully disclose the environmental effects associated with adoption of the preferred alternative. We feel strongly that BOR should prepare an EIS with alternatives that include contract renewal with no service for new irrigation unless instream flow recommendations are met and conservation measures such as increased conveyance efficiency. And, BOR should seriously consider these alternatives.

To be clear, FWP is not advocating that BOR fail to renew irrigation contracts. The Clark Canyon project is vital to the economic well being of Beaverhead County. However, it is undeniable that the project dramatically impacts the fisheries of the Beaverhead and Jefferson Rivers. As noted in these comments, BOR states on the first page of the EA that “the Reclamation Act of 1956 requires Reclamation to provide water users holding contracts a first right of renewal to a project’s available water supply...” Clearly, BOR has focused its energy on the *first right of renewal*, while failing to

37.28: See the response to Comment 5.3.

37.28

consider all of the factors that determine the *available water supply*. FWP submits that the availability of project water can not be determined without analyzing the expansion of irrigated acres that the project serves and comparing that demand to other state-based water uses. Serious conservation measures could increase availability for all uses.



JEFFERSON RIVER WATERSHED COUNCIL

Phone/Fax: (406) 442-8139

c/o 725 Hillside, Helena, MT 59601

www.JeffersonRiverWC.homestead.com

December 16, 2005

Dan Jewel
Bureau of Reclamation
Attn: MT-231
PO Box 30137
Billings, MT 59107-0137

Re: Clark Canyon Contract Renewal Draft Environmental Assessment

Dear Mr. Jewel:

The Jefferson River Watershed Council (JRWC) has reviewed the above-referenced document and has the following comments. JRWC supports agricultural activities, irrigation and water rights of landowners. However, the Council also supports water quality, a healthy river system and a healthy fishery in the Beaverhead and the Jefferson rivers. Therefore, we recommend that the Bureau of Reclamation issue temporary annual water leases for Clark Canyon Reservoir until the impacts and conservation measures can be agreed upon. A Total Maximum Daily Load (TMDL) for removing the Beaverhead River from the 303(d) list is due in 2006. Water leases for Clark Canyon Reservoir will need to be consistent with the TMDL requirements for the river.

38.1

38.2

38.3

The EA has not adequately addressed the impacts to water quality and a healthy fishery from the 40 years of irrigation releases from Clark Canyon Reservoir. Page 13 states "water quality in the Beaverhead would continue to be good." Then on page 18 you discuss the Beaverhead River as being listed by the Department of Environmental Quality (DEQ) as not supporting the beneficial uses of aquatic life, cold water fishery, and drinking water supply. These two statements are conflicting. If water quality in the Beaverhead River was good, it would not be listed as not supporting these beneficial uses.

38.4

In Chapter 5 you have not coordinated with DEQ or EPA concerning water quality and how the renewal of these allotments will comply with the TMDL for the Beaverhead River that is due in 2006. You indicate on page 18 that you have sampled the water in the Beaverhead River for a number of chemical parameters but you have not discussed the results of the sampling and how they compare to state water quality standards.

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38.1: Reclamation has extended the existing contracts until December 31, 2006 and until NEPA is completed.

38.2: Reclamation is just one of many stakeholders in the Beaverhead Watershed currently impacting water quality. As a stakeholder, Reclamation will continue to support efforts of the Beaverhead Watershed Group, continuing research by Montana State University and Montana Tech related to water quality and will participate in the TMDL planning and implementation phases. Reclamation is funding two water quality and/or water quantity related studies in the Beaverhead basin through Montana State University and Montana Tech. When data collection and analysis has been completed, these studies will provide needed information in the TMDL planning and implementation process (to be completed in 2008). Reclamation will work cooperatively with the Montana Department of Environmental Quality during the TMDL process to assist with improving impaired water bodies throughout the basin.

38.3: See the responses to Comments 9.1 and 32.2.

38.4: Reclamation is working cooperatively with the Montana Department of Environmental Quality to cooperatively fill existing water quality data gaps to further planning phases of the TMDL development. Reclamation, as a stakeholder in the valley, will be working with the Department of Environmental Quality in the planning and implementation phases of the TMDL process to assist with improving impaired water bodies throughout the basin. Montana Department of Environmental Quality is the agency responsible for the Beaverhead TMDL, so consultation with the EPA is not needed.

38.4 This same reasoning applies to the trout fishery. On page 13 you state “reservoir fisheries would be “optimal” or “good” 46% of the time, “impaired” or “poor” 54% of the time for the No Action Alternative and 50% good and 50% poor for the Preferred Alternative. For the Beaverhead River you state the fisheries would be good 33% of the time and poor 67% of the time for the No Action Alternative and 32% good and 68% poor for the Preferred Alternative. We realize that there is a delicate “balancing act” that must be negotiated between the reservoir and the river. It is our opinion that the river and fishery needs to have additional focus.

38.5 You have not discussed the various fish species present, populations or trends in the reservoir or Beaverhead River. Are the existing trout species healthy, stable or declining and how have you determined this? On page 44 under Cumulative Effects you state “renewal of long term water service contracts or conversion to repayment contracts would not affect fisheries.” This is contradictory to statements addressed in the above paragraph.

38.6 JRWC strongly supports the development of a Drought Management Plan; however, the Board for implementing this plan needs broader representation. The Board should contain members from the Beaverhead Watershed Committee and county officials. The
38.7 “Water Conservation Plans” noted in the text are not included. The water differences between the amount being diverted (page 9) and the amount being delivered (page 52) show substantial delivery losses. Addressing this issue could provide sufficient water for both agriculture and river uses.

38.8 There are no details provided in the EA on problems with nutrients, sediment, flow regime and water loss by conveyance systems. You have not addresses how these impacts affect agriculture, fishing and tourism, the economy, or the health of the rivers, fish and aquatic insects. The JRWC and the Beaverhead Watershed Committee have collected a variety of data over the past several years on these rivers in relation to developing TMDLs. In addition, there is much data available concerning river monitoring and healthy systems.

38.9 Lastly there is no mention in the EA about development such as new subdivisions and their impact to groundwater resources. At present, there are on-going studies of the areas groundwater resources, a study by Dean Snyder of Montana Tech and a MSU surface hydrology study. It would seem prudent to extend the current water contracts on a temporary basis until this information is available for consideration.

We appreciate the opportunity to comment on this federal action and urge you to adequately address the impacts related to this decision.

Sincerely,



Gary Nelson
Chair

38.4: See the response to Comment 7.4.

38.5: See the response to Comment 13.1 and see the Fisheries Section in the revised draft EA.

38.6: The joint board will be comprised of representatives from the contracting entities (CCWSC, EBID, and Reclamation). Joint Board meetings will be public noticed so interested members of the public may attend.

38.7: The water conservation plans for CCWSC and the EBID are available. See the Water Losses/Conservation section in Chap. 3 of this revised *Draft* EA.

38.8: See the response to Comment 18.1.

38.9: The *Draft* EA did not mention new subdivision’s impact on groundwater resources because it was outside of the scope of this Federal action. However, subdivision language has been added to Chapter 1 of the revised *Draft* EA (“Relationship of This Action to Other Actions”). New wells and additional groundwater use is a concern of Reclamation’s as well, and Reclamation is funding some of the studies the commenter mentions. Reclamation is not the agency that regulates the groundwater resource; please contact the Montana Department of Natural Resources and Conservation if there are concerns about water rights or groundwater wells.

Budd-Falen Law Offices, L.L.C.

Karen Budd-Falen¹
Franklin J. Falen¹
Marc R. Stimpert^{1,2}
Brandon L. Jensen^{1,3}
Hertha L. Lund⁴
Erin Sass Eastman¹
Kathryn Brack Morrow³

300 East 18th Street
Post Office Box 346
Cheyenne, Wyoming 82003-0346
Telephone 307/632-5105
Telefax 307/637-3891
main@buddfalen.com
www.buddfalen.com

¹admitted in Wyoming
²admitted in Oklahoma
³admitted in Colorado
⁴admitted in Montana

December 19, 2005

Via Certified U.S. Mail: 7005 1820 0001 0723 4985
and Via E-Mail: clarkcanyon@gp.usbr.gov
Bureau of Reclamation
ATTN: MT-231
PO Box 30137
Billings, MT 59107-0137

**Re: Comments on Draft Environmental Assessment, Clark Canyon Reservoir,
Montana**

Dear Planning Coordinator:

Open A Ranch, Inc. and Robert Van Deren (hereafter collectively referred to as "Open A Ranch") have hired the Budd-Falen Law Offices to provide comments on the Draft Environmental Assessment ("EA") Clark Canyon Reservoir that was released in November 2005. Originally, the Bureau of Reclamation ("Bureau") was only going to provide a two-week comment period. We sent in a request for an extension of time due to the Thanksgiving holiday and short comment period and the Bureau extended the comment period until December 19, 2005.

Open A Ranch has land that is intermingled and neighbors the Clark Canyon Water Supply Company ("Clark Canyon") and the East Bench Irrigation District ("East Bench"). Also, Open A Ranch is a non-signer to the Clark Canyon and East Bench delivery contracts with the Bureau and has water rights to natural flows senior to those administered by the Bureau. Therefore, Open A Ranch is directly impacted by the Bureau's actions in delivering water to East Bench and Clark Canyon. Furthermore, the Van Deren family has lived and ranched on the Open A Ranch for over four decades and has a deep love and concern for the environment impacted by this EA, as well as having an interest in ongoing fishing on their land that is directly impacted by the Bureau's decision.

I. INTRODUCTION

The Draft EA fails to comply with Federal and State law. These failures need to be addressed and rectified before the Draft EA is finalized.

Page 1 of 6

The National Environmental Policy Act (“NEPA”) establishes an environmental policy that requires Federal agencies to do environmental planning and requires that the decision makers within the Federal agencies take environmental factors into account when making their decisions. 42 U.S.C. § 4321. NEPA is primarily a procedural statute (See Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978); Oregon Environmental Council v. Kuzman, 817 F.2d 484, 492 (9th Cir. 1987)) and establishes a process by which Federal agencies must study the environmental impacts and effects of actions before such actions are taken. NEPA applies to any Federal action. NEPA exists to ensure a process, not a result. Northwest Environmental Defense Center v. Bonneville Power Administration, 117 F.3d 1520 (9th Cir. 1997); quoting Inland Empire Public Lands v. United States Forest Service, 88 F.3d 754, 758 (9th Cir. 1996). NEPA’s procedures are designed to (1) ensure that an agency will have detailed information on significant environmental impacts when it makes its decision; and (2) guarantee that this information will be available to a larger audience. *Id.* Any action taken without observance of the procedures required by NEPA will be set aside. Save the Yaak Committee v. Block, 840 F.2d 714, 717 (9th Cir. 1988).

II. INADEQUATE ANALYSIS ON THE PROPOSED INCREASED ACREAGE

39.1 The Definite Plan Report (“DPR”) map that accompanied the complete description of the Bureau project when it was approved in 1960 authorized 28,004 acres for Clark Canyon and 21,800 for East Bench. This is significantly different than the approximately 55,000 acres for Clark Canyon and approximately 30,000 acres for East Bench depicted in the location map in the Draft EA. This is also significantly different than the 33,706 acres for Clark Canyon and the 27, 137 acres for East Bench listed in the Draft EA as the currently irrigated acres (i.e. the no action alternative). EA at 8, 12. These expanded acres have not had the necessary NEPA analysis. Additionally, while the Bureau admits that water spreading is being employed (EA t 3-4), no analysis has been completed on the impacts of water spreading. See Part III below.

A. Cumulative Effects Analysis is Lacking

NEPA and the Council of Environmental Quality (“CEQ”) regulations contain specific provisions which require agency attention and compliance throughout the EA process. For example, the CEQ regulations require that both the “cumulative impacts” of and “connected actions” to the proposed agency action be considered. 40 C.F.R. § 1508.25(a). Cumulative impact is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.7.

39.2 In discussing cumulative effects, the Bureau simply states that there will not be any cumulative effects when this action is added to past, present, and reasonably foreseeable actions. See EA at 37, 40, 45, 49, 50, 51, 53, 56, 57. These are simply conclusory statements without any indication of what past, present, or reasonably foreseeable actions were considered or what cumulative effects analysis was completed. Natural Resources Defense Council v. U.S. Forest Service, 421 F.3d 797, 814 (9th Cir. 2005) (“An EIS must include a ‘useful analysis of the cumulative impacts of past, present and future projects’ in sufficient detail to be ‘useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts.’”).

39.1: The DPR is not an authorizing document. It is a planning document. The East Bench Unit was developed under authority of the Flood Control Act of 1944 (P.L. 78-534). See the Project Development History section in Chap. 1 of the revised draft EA. In addition, see the response to Comment 36.2.

39.2: Other past, present, and reasonably foreseeable future actions were listed on p.5 of the Draft EA, “Relationship of This Action to Other Actions.” This Federal action was compared to those past, present, and reasonably foreseeable future actions during the cumulative impact analysis. The only action in “Relationship of This Action to Other Actions” related to the Federal action was the non-signer irrigation use of Beaverhead River water. Non-signers have water rights for natural flows of the Beaverhead River. Reclamation’s stored water is released into the Beaverhead River during the irrigation season for CCWSC and EBID. If this stored water were not available during drought years, there is a high probability that the Beaverhead would be dry due to depletions of the non-signers during the irrigation season. Therefore, our analysis has determined there will not be cumulative impacts associated with the Federal action when compared to irrigation use of the non-signers.

B. The Bureau Failed to Take a Hard Look at Increased Acreage

39.3 Under NEPA, the Bureau must take a “hard look” at the consequences of its actions. Native Ecosystems Council v. U.S. Forest Service, 428 F.3d 1233, 1239 (9th Cir. 2005). They have not done so. Rather, they have increased the acres being irrigated without analyzing where the additional water will come from or what the effects of the additional water consumption will be. The EA’s scope and analysis is extraordinarily narrow and only analyzes if the East Bench/Clark Canyon expanded acres should be irrigated as third priority or first and second priority acres.

39.4 The Bureau has provided no explanation of how the increased acreage will be irrigated when water is already in short supply. Because of this, the public has been provided with no explanation of how this federal action is even feasible. Alternatives considered need to be feasible and reasonably related to the purpose of the proposed action. In other words, alternatives not only need to be able to fulfill the purpose sought to be achieved by the action, but they must be able to be accomplished. See Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 195 (D.C. Cir. 1991); see also City of Aurora v. Hunt, 749 F.2d 1457, 1466 (10th Cir. 1984) (Alternatives should include reasonable alternatives to a proposed action, which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact.)

C. The Alternatives Are Legally Inadequate

The alternatives analyzed in a NEPA analysis must be statements of legal management options. The alternatives allegedly analyzed by the Bureau are not feasible, nor are even legal options, for the agency to consider. Obviously, alternatives that cannot be legally considered nor implemented are not reasonable alternatives and therefore constitute a violation of NEPA.

39.4 The EA notes that non-signers are not included in either of the alternatives because they are not part of the Federal action. EA at 8, 9. Unfortunately, the EA fails to provide any discussion or methodology as to how the non-signers with senior water rights will be provided their water rights. In other words, the EA fails to explain how the expanded acres will not take natural flow out of priority to the detriment of Open A Ranch’s senior rights or how the storage water deliveries in the natural channel of the Beaverhead meet the burden of proof in demonstrating they do not interfere with Open A Ranch’s senior rights.

Nor has the EA provided an explanation of how the expanded acres comply with Montana water law. Under Montana water law, Open A Ranch holds senior water rights to natural flow and is, therefore, first in time and first in right to receive that water in relation to the Bureau and the irrigation districts. The burden is on the Bureau and the irrigation districts, as users of stored water, to affirmatively disprove interference with Open A Ranch’s water rights. Furthermore, any actions such as expanding acres, changing to sprinkler irrigation, or allowing members of the district or company to apply more water than is their right is likely to violate Montana laws that do not allow changes in water rights unless those changes do not interfere with other valid water rights like Open A Ranch’s senior water right.

39.3: See response to Comment 36.2. In addition, the Federal action is to renew long-term water service contracts or convert to repayment contracts with CCWSC and EBID. The *Draft EA* analyzed impacts of implementing the Preferred Alternative when compared to the No Action Alternative. The purpose and need for this action is described in “Purpose and Need,” p.1 of the *Draft EA*.

39.4: The non-signers were not included in the analysis because they are not part of the Federal action, and the exercise of their historic water rights is expected to continue. Water was allocated to non-signers in the hydrology model is based on relative priorities and estimated natural flow available to meet their demands.

The administration of water rights is under the jurisdiction of the State of Montana. Reclamation is unaware of any formal complaints filed under the Montana Water Use Act with the state relative to the exercise of Reclamation’s water rights or the water rights of the shareholders of the CCWSC.

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III. INADEQUATE ANALYSIS ON THE CHANGE FROM FLOOD IRRIGATION TO SPRINKLER IRRIGATION

The DPR planned for and authorized East Bench and Clark Canyon as flood irrigation projects, which was meant to provide return flows to senior water users in the Beaverhead River basin. When the contracts were issued 40 years ago, the DPR specifically considered a sprinkler irrigation alternative but found it to be unreasonable, unviable or otherwise impracticable. Since then, both Clark Canyon and East Bench have allowed conversion to sprinkler irrigation. Reductions in return flows caused by sprinkler irrigation has resulted in a reduction in water available at Open A Ranch's headgate to satisfy its rights.

A. Cumulative Effects Analysis is Lacking

As discussed above, NEPA and the CEQ regulations require that both the "cumulative impacts" of and "connected actions" to the proposed agency action be considered. 40 C.F.R. § 1508.25(a). Cumulative impact is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7.

In discussing cumulative effects the Bureau simply states that there will not be any cumulative effects when this action is added to past, present, and reasonably foreseeable actions. See EA at 37, 40, 45, 49, 50, 51, 53, 56, 57. These are simply conclusory statements without any indication of what past, present, or reasonably foreseeable actions were considered or what cumulative effects analysis was completed. Natural Resources Defense Council v. U.S. Forest Service, 421 F.3d 797, 814 (9th Cir. 2005) ("An EIS must include a 'useful analysis of the cumulative impacts of past, present and future projects' in sufficient detail to be 'useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts.'").

B. Bureau Failed to Take a Hard Look at Sprinkler Irrigation

Under NEPA, the Bureau must take a "hard look" at the consequences of its actions. Native Ecosystems Council v. U.S. Forest Service, 428 F.3d 1233, 1239 (9th Cir. 2005). They have not done so. The EA does not look at the effects of sprinkler irrigation at all. Changing from flood irrigation to sprinkler irrigation can have various impacts including diminished return flows, fewer wetland areas, and negative impacts to plants and animals that have adapted to the environment created by flood irrigation. By providing no discussion, and presumably no analysis, on the effects of sprinkler irrigation, the Bureau has violated NEPA for failing to take a hard look at the consequences of its actions.

IV. NO ANALYSIS OR EXPLANATION OF MITIGATION

An EA is supposed to address mitigation measures that will be implemented to reduce harmful environmental impacts. According to the NEPA regulations:

39.5: The 1960 DPR is a planning document not an authorizing document. The East Bench Unit was developed under the Flood Control Act of 1944 (P.L. 78-534). See the Project Development History section in Chap. 1 of the revised draft EA.

See response to Comment 36.3

39.6: See the response to Comment 39.2 above.

39.7: The conversion of flood irrigation to sprinkler irrigation is an on-farm irrigation practice. Reclamation has no discretion regarding conversion, and it is outside the scope of the Federal action.

39.8: Analysis in the *Draft* EA compared the impacts of the Preferred Alternative to the No Action Alternative. The impacts of implementing the proposed Federal action would be minimal in nature and did not warrant mitigation. However, Reclamation has agreed to work with various local and state groups and organizations to address various issues on the Beaverhead River.

39.8

Mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

40 C.F.R. § 1508.20.

The EA provides absolutely no discussion of mitigation for the expanded acres or sprinkler irrigation and, as such, violates NEPA.

V. THE BUREAU FAILED TO TAKE A HARD LOOK AT DOWNSTREAM IMPACTS

39.9

In the EA, the Bureau failed to take a hard look at downstream impacts of the reservoir operations on water quality, riparian areas, wetlands, and downstream morphology. The Bureau has failed to perform all the required water quality tests, such as total suspended solids and chlorophyll A. Moreover, the changes in the river hydrograph have resulted in decreased cottonwood recruitment and riparian function and condition. This has resulted in less stable stream banks and flooding.

VI. INADEQUATE CONSULTATION AND COORDINATION

The opportunity for local citizens or other interested parties to participate in preparation of an environmental analysis is mandatory under NEPA. 42 U.S.C. §§ 4321–4370f; see Colony Federal Savings and Loan Association v. Harris, 482 F.Supp. 296, 304 (W.D. Pa. 1980). Citizen participation is a vital ingredient in the success of NEPA. See id.; see also Oregon Natural Resources Council v. Devlin, 776 F.Supp. 1440, 1446 (D. Oregon 1991) (stating that “[p]ublic notice and participation is integral to the goals of NEPA to provide information to agency decisionmakers and to facilitate public involvement in agency decisionmaking.”). NEPA is specifically designed to encourage public participation in the decisionmaking process. See Burkey v. Ellis, 483 F.Supp. 897, 915 (N.D. Ala. 1979).

39.10

Although Mr. Van Deren had requested copies of various documents and notices of all meetings pertaining to the contract renewal and EA, the Bureau failed to provide him notice of any meetings or copies of the requested documents.

39.8: Analysis in the *Draft EA* compared the impacts of the Preferred Alternative to the No Action Alternative. The impacts of implementing the proposed Federal action would be minimal in nature and did not warrant mitigation. However, Reclamation has agreed to work with various local and state groups and organizations to address various issues on the Beaverhead River.

39.9: Reclamation did take a hard look at the impacts of the Preferred Alternative compared to the No Action Alternative. As indicated on p.18 of the *Draft EA*, Reclamation sampled water quality in EBID and the Beaverhead River. The parameters sampled are listed on p.18, with further information provided in the “Methods of Analysis” at the end of the *Draft EA*. In addition, see the response to Comment 38.2

39.10: Your client, Mr. Van Deren has been on Reclamation’s mailing list from the start of the EA process, as well as prior projects, and was provided written notice of any and all public meetings related to the continuing NEPA process. Reclamation has provided the public the opportunity to participate in the decision making process. Reclamation conducted public scoping meetings in January 2005 in Dillon and Twin Bridges, provided copies of the *Draft EA* for public review and comment, conducted public meetings in Dillon and Twin Bridges in December 2005 as part of the process, and is providing this revised *Draft EA* for review and comment.

Notices of formal contract negotiations sessions were published in local newspapers of wide circulation. A point of contact was provided in those notices for those wishing to be personally informed of formal negotiation sessions and to receive copies of draft contracts. Draft contracts were available at each of those formal negotiation sessions.

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39.11 Additionally, the Bureau failed to properly coordinate with Beaverhead County. Beaverhead County has a Resource Use Plan and Resource Use Guidance as part of the Growth Plan. The Bureau should have coordinated with Beaverhead County to ensure compliance with this plan.

VII. CONCLUSION

39.12 The Draft EA is not ready for finalization. There are substantial and significant errors and omissions that constitute violations of NEPA. The Bureau should review all public comments and address those comments through substantive and real changes so that the EA is improved and compliant with the pertinent law.

Thank you for your attention to this matter. Should you have any questions or need any clarification with points made in these comments, please do not hesitate to contact me.

Sincerely,

/s/ Hertha Lund

Hertha Lund
BUDD-FALEN LAW OFFICES, L.L.C.

HLL:nec

xc: Robert Van Deren

39.11: Beaverhead County Commissioners were aware of this process as evident by comment letter #6, signed by Garth L. Haugland, chairman of the Beaverhead County Commissioners. They have elected not to become more involved in the process.

39.12: This revised draft EA has been modified to address issues raised by the public during the review and comment period on the November 2005 *Draft* EA.



Laura Ziemer
Director
Montana Water Project

December 19, 2005

Mr. Jeff Baumberger
Bureau of Reclamation, Montana Area Office
Attn: MT-231, Clark Canyon Comments
P. O. Box 30137
Billings, MT 59107-0137

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Re: Comments on Draft EA for Clark Canyon Water Delivery Contracts

Dear Mr. Baumberger:

Trout Unlimited thanks you for the invitation to provide comment on the "Draft Environmental Assessment for the Clark Canyon Reservoir" water delivery contract renewal (Bureau of Reclamation, November 2005) (hereinafter, "Draft EA,"), and we look forward to working with the Bureau of Reclamation on this process. As we expressed in our January 2005 comment letter during the scoping process, Trout Unlimited believes that the Beaverhead River faces a crossroads. On the one hand, working together we can improve water delivery, water quality, and the health of the Beaverhead River by thinking creatively and working on known resource problems. On the other hand, these problems could simply be ignored, and the River could continue its decline, putting the viability of the river, and the irrigators who depend on that river, at risk. We believe the more optimistic approach is within reach and fully supported by the Bureau of Reclamation's "Water 2025" philosophy of responsible water management for the 21st century.

Unfortunately, the *Draft EA* does not support a vision for restoring the health of the Beaverhead River. Instead, it treats Clark Canyon as a single-purpose project, effectively focusing on its irrigation purpose and nothing else. Ironically, this puts the irrigators who depend on the river at risk, and fails to ensure the long-term viability of the broader agricultural community within the basin.

The *Draft EA* also fails to fulfill the Bureau's mandatory, statutory obligations under the National Environmental Policy Act, ("NEPA"), 42 U.S.C.A. §§ 4321- 4370b, and the Federal Water Pollution Control Act, ("Clean Water Act"), 33 U.S.C. A. §§ 1251-1387. Trout Unlimited enumerates the legal deficiencies of the *Draft EA* below, and explains in detail why the Bureau must prepare a full Environmental Impact Statement ("EIS") to adequately meet non-discretionary, statutory obligations.

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization
321 East Main St., Suite 411 • Bozeman, MT 59715 • (406) 522-7291 • Fax (406) 522-7695 • lziemer@tu.org

In addition, the Bureau's obligations to operate Clark Canyon Reservoir as a multi-purpose facility underscore its NEPA obligations. Montana's federal district court has Clark Canyon dam was conceived and built as multi-purpose dam. In *United States v. 361.91 Acres of Land, et al.*, Civil No. 994 (D. Mont. 1965), Judge Murray rejected an argument that Clark Canyon Dam was intended by Congress to serve only irrigation and flood control purposes, saying:

"The Clark Canyon Dam and Reservoir is included in the comprehensive plan for the development of the Missouri River Basin on page 62 of Senate Document 191. Senate Document 191, at page 13, indicates that consideration for the protection of fish and wildlife and for recreation were included in the overall plan for the development of the Missouri River Basin, as well as flood control, irrigation, and power." *United States v. 361.91 Acres* at p. 3.

In addition, the Clark Canyon Water Supply Company's ("CCWSC's") 1958 contract explains that water will be impounded for irrigation, flood control, and "other purposes." See United States Department of the Interior, Bureau of Reclamation, East Bench Unit, Missouri River Basin Project, *Contract Between the United States and the Clark Canyon Water Supply Co., Inc., for Water Service and For a Supplemental Supply*, Contract Number 14-06-600-3592, at *Preliminary Statements Made in Explanation* (a). These are later identified as "fish and wildlife." (A 1964 attachment to the 1958 Clark Canyon Contract states the project costs are to be allocated to irrigation, flood control, and "fish and wildlife." Memo from BOR Regional Director dated June 12, 1964).

Trout Unlimited has invested significant expertise, thought, and time in these comments in an effort to work cooperatively with the Bureau to improve its Clark Canyon project operations, as well as to provide a blue-print for how the Bureau can meet its statutory obligations under NEPA and the Clean Water Act. We whole-heartedly support a restored Beaverhead River and an economically-viable community within the basin. We look forward to working with the Bureau to achieve these goals.

I. Failure to Address Changed Conditions.

While we are heartened that the BOR has recognized that the Clark Canyon water delivery contract renewal does not fit the categorical exemption from NEPA review, Trout Unlimited is disappointed that the *Draft EA* falls short of meeting the Bureau's NEPA obligations. See, Department of the Interior, Departmental Manual, *Part 516: National Environmental Policy Act of 1969, Chapter 14: Managing the NEPA Process-Bureau of Reclamation*, 516 DM 14, 14.5 (D)(14) (May 27, 2004), at <http://elips.doi.gov/elips/release/3624.htm>. The manual states that the following requires an EIS: "Proposed repayment contracts and water service contracts or amendments thereof or supplements thereto, for irrigation, municipal, domestic, or industrial water where NEPA compliance has not already been accomplished." Id. at 14.4 (A)(3) (emphasis added).

40.1: The reference cited in your letter allows Reclamation to prepare an EA when it is initially decided not to prepare an EIS. In this case, Reclamation was initially uncertain as to the potential for significant impacts and determined that an EA was the appropriate NEPA document to assess the potential effects of the proposed action and alternatives to it.

40.1

The *Draft EA*, at 2, acknowledges that one of the questions that it must address is, “[w]ould a new contract constitute a major Federal action significantly affecting the quality of the human environment, thereby requiring an EIS?” The *Draft EA*, however, commits a fundamental mistake in its truncated analysis of this question by a complete failure to address changed conditions underlying contract renewal.

Here, there have been substantial changes in the amount of irrigated acreage from the conditions under the original 1958 contracts. As the *Draft EA*, at 9, notes, the Clark Canyon Water Supply Company (“CCWSC”) has expanded its irrigated acreage by 29.6% (7,711 acres), and the East Bench Irrigation District (“EBID”) has expanded its irrigated acreage by 23.7% (5,366 acres). The *Draft EA* notes that much of the original flood-irrigated lands within both the CCWSC and EBID areas have been converted to sprinkler irrigation. “This conversion has allowed the CCWSC to spread water on additional acres as specified in the original contract.” *Draft EA* at 4.

The *Draft EA* contains no analysis of the significant impact of increasing consumptive water use by nearly a third through contract renewal. In fact, the document’s only reference at all to this significant impact is in speculation regarding impacts if *more* irrigated acreage were converted to higher-efficiency irrigation systems at some point in the future. *Draft EA* at 36. Even then, the *Draft EA* does nothing more than conclude without analysis that the reduction in return flow due to increased consumptive water use “would be offset by reduced demands for water from reservoir storage and river flows.” *Id.* There is a substantial body of hydro-geological work that suggests that such a conclusion is seriously deficient.

There is no analysis of the significant impact of reducing the amount of water available to down-stream water users through increased consumptive use. This failure, standing alone, is sufficient to trigger the requirement for a full EIS. 42 U.S.C.A. § 4332(2)(c) (EIS is required for every federal action that has a significant impact on the environment). The omission is even more staggering given that since the 1958 contracts, the State of Montana has closed the upper Missouri River to additional surface water appropriations, thereby prohibiting any increases in new surface water use. A fundamental premise of Montana Water Law is to protect the water rights of downstream users from the adverse effects of new and expanded uses, and the upper Missouri River Basin Closure statute reinforces this mandate. Particularly in light of the Upper Missouri River Basin Closure statute, Mont. Code Ann. § 85-2-342 *et seq.*, and the region’s deep drought, an increase in irrigated acres that increases consumptive use by nearly a third is a major federal action that significantly affects the quality of the human environment, with implications for all water users in the basin.

II. Failure to Identify Correct Base-Line Condition and Failure to Address Adequate Range of Alternatives.

40.2

The *Draft EA* fails to address significant adverse environmental impacts because it does not begin its analysis from the correct environmental baseline condition. The

40.2: The Council on Environmental Quality suggests that in water service contract renewal cases the No Action be defined as the status quo or renewing the existing contracts with minor (administrative language) changes (*Federal Register*, Vol. 54, No. 128, Thurs. July 6, 1989, pp. 28477-78).

correct environmental baseline for the Bureau's NEPA analysis is conditions at the time of the 1958 contracts. The Bureau's NEPA analysis must address the changes in river and project conditions since this time. The *Draft EA*'s environmental baseline is current river and project conditions, at the time of expiration of the contracts. By looking only at future impacts of contract renewal relative to conditions at the time of contract expiration, the *Draft EA* fails to analyze significant adverse cumulative impacts to the environment under contract renewal. In *American Rivers v. FERC*, 201 F.3d 1186, 1198 (9th Cir. 2000) the Court noted that if the baseline constituted an already degraded environment, the agency still had the obligation to consider past degradation in its cumulative impacts analysis.

40.3 As a result of the document's failure to correctly identify the base-line condition, the *Draft EA* also fails to contain an adequate range of alternatives. The *Draft EA*'s two alternatives, the "Preferred" and the "No Action" alternatives, each fail to address the significant adverse environmental impacts due to contract renewal. The *Draft EA* notes many impacts of the current water-delivery contracts--canal seepage, return flow, nutrient loading, and sediment production--but does not provide any alternative to mitigate these impacts. NEPA requires agencies to "rigorously explore and objectively evaluate all reasonable alternatives" to a proposed plan of action that has significant environmental effects. 40 C.F.R. § 1502.14(a). This requirement has been called "the heart on an EIS." *City of Carmel-by-the-Sea v. United States Dep't of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985).

40.4 The Ninth Circuit recently found that the Forest Service had violated NEPA by failing to consider an adequate range of alternatives in its EIS prepared for its Tongass National Forest Plan revision. *Natural Resources Defense Council v. United States Forest Service*, 421 F.3d 797, 814 (9th Cir. 2005). In this case, the court held that the Forest Service's EIS failed to consider an adequate range of alternatives, because no alternative (among the eleven considered) included accurate timber-demand information. *Id.* at 813-814. Similarly, the BOR's draft EA fails to include any alternative that describes reasonable mitigation measures for the foreseeable adverse environmental impacts under contract renewal. A full EIS must evaluate all reasonable alternatives. 40 C.F.R. § 1502.14(a).

III. Failure to Meet Clean Water Act Obligations.

The Clean Water Act requires all federal agencies to meet state water quality standards. 33 U.S.C.A. § 1323 (a) ("federal facilities clause"); *Idaho Sporting Congress v. Thomas*, 92 F.3d 792, 798-99 (9th Cir 1996) ("Under the Clean Water Act, all federal agencies must comply with state water quality standards"). Since the start of the 1958 contracts, the State of Montana has documented violation of a number of state water quality standards below the Bureau's Clark Canyon Reservoir. Indeed, the *Draft EA* discusses the Beaverhead River's water quality standard violations: "[t]he Beaverhead River between Clark Canyon Dam and Grasshopper Creek is listed as not supporting

40.3: See the responses to Comments 13.2 and Comment 40.2.

40.4: The commenter is correct. The *Draft EA* did not "include any alternative that describes reasonable mitigation measures for the foreseeable adverse environmental impacts" because the resource analysis in the *Draft EA* did not identify any adverse environmental impacts. Please also see the response to Comments 13.2 regarding alternatives.

aquatic life, cold water fishery, and a drinking water supply. Probable causes are bank erosion, dewatering, flow alteration, lead, metals and habitat alteration.” *Draft EA* at 18.

The *Draft EA* also notes that the 63-mile stretch of the Beaverhead River from Grasshopper Creek to the mouth is similarly water-quality impaired, adding “fish habitat alteration” and “siltation” as probable causes. *Draft EA* at 19. The *Draft EA* acknowledges, at 2, that a decision that must be made in the document is whether there “[a]re any terms and conditions ensuring environmental quality that need to be included in future contracts?” Yet there is no attempt in the Bureau’s NEPA analysis to address the Bureau’s failure to meet water quality standards, and neither the “Preferred” nor the “No Action” alternatives include conditions or mitigation actions to bring water quality into compliance with state standards.

40.5

The Ninth Circuit has found that the operation of federally-owned dams must comply with state water quality standards. *National Wildlife Federation v. United States Army Corps of Engineers*, 384 F.3d 1163, 1167 (9th Cir. 2004). In that case, the court performed a searching review of the Army Corps’ record, and concluded that the Army Corps had rationally concluded “that here were no further steps it could take to reduce temperature exceedences in the lower Snake River” short of breaching the dams. *National Wildlife Federation* at 1175. Here, in contrast, the BOR makes no attempt to even address the water quality violations resulting from the operation of the Clark Canyon dam to meet the 1958 water-delivery contract duties.

Below, Trout Unlimited addresses water quality violations arising out of the Bureau’s operation of the Clark Canyon Reservoir to fulfill the water-delivery contracts. A full EIS must analyze these water quality impacts and provide a preferred alternative that will bring the Bureau’s operation into compliance with state water quality standards.

1. Sediment Deposition and Bank-full Flow Events.

Since the execution of the 1958 contracts, the lower Beaverhead River channel has suffered from considerable sediment deposition. One contributing cause to this increase in fine sediment deposition is the decrease in bank-full flow events during spring high flows. The average three-day, spring-peak discharge prior to the execution of the 1958 contracts was approximately 600 cubic feet per second (cfs). That magnitude of spring discharge now only occurs in about 20% of the years.

This dramatic reduction in the frequency of bank-full flow events on the Beaverhead River has also resulted in the loss of healthy channel geometry, in addition to the increase in fine-sediment deposition within the channel. As a result, when the bank-full spring flow events now *do* occur, these events result in more overland flow (flooding) than when the 1958 contracts were executed, since the channel’s conveyance area has been reduced. The long-term result will be channels that are wider, shallower, straighter, and that contain less habitat complexity. With more fine sediment field in the channel, insect populations will continue to change toward more numerous, small,

40.5: See the response to Comment 38.2.

sediment-tolerant species. Fish reproductive success will continue to decline. Holding water will become less abundant since the channel is filling. The over-all fish populations in the Beaverhead River will decline with poorer spawning success, less desirable and abundant food sources, and less habitat to support a diversity of trout age groups. Downstream in the Jefferson River, the impacts will be similar. In addition, the degraded channel condition reduces the ability of the Beaverhead to deliver water to downstream irrigators.

Currently, all water originating above Clark Canyon Dam is stored. The *Draft EA* does not discuss remedial actions in order to restore periodic bank-full spring flow events to ensure channel health. Since the execution of the 1958 contracts, the lower Beaverhead River channel shows considerable sediment deposition, and this deposition will continue if no corrective measures are employed.

Fortunately, the corrective measures are not only straight-forward and technically feasible, but also help fulfill the multiple-purpose mandate of the project. During "wet" years, a planned spill event for as little as 72 hours could help reverse the trend of fine sediment deposition and loss of channel diversity. In addition, if such flow releases were synchronized with the Big Hole River peak flows (about 5 years in 10), the recurrence interval on the Jefferson River could be substantially improved.

This approach of replicating high-flow events below dams is being employed in the Trinity, Truckee and Owens Rivers in California. Other locations that are applying this mitigation technique include the Green River in Utah, the San Juan River in Utah and New Mexico, the Gunnison River in Colorado, and the Bill Williams River in Arizona. A detailed discussion of this approach is contained in a paper entitled "The Natural Flow Regime," *BioScience*, Vol. 47, No. 11 (Dec. 1997).

Trout Unlimited looks forward to working with the BOR to explore and adopt this necessary mitigation action on the Beaverhead River. Trout Unlimited would be willing to provide a fluvial geomorphologist to work with the BOR staff to determine desirable bank-full flows and proper recurrence intervals. The full EIS that must be prepared on the major federal action of water-delivery contract renewal should include a detailed examination of this necessary mitigation action.

2. Nutrient Loading.

Nutrient loading in aquatic systems has well-documented adverse impacts. The concentrations of ammonia-nitrogen, nitrate+nitrite nitrogen, and total phosphorus are usually monitored closely in aquatic systems because of the importance of meeting these water quality standards for aquatic health. A deficiency in the *Draft EA* that must be corrected in an EIS is the failure to discuss the results of the water quality sampling performed between 2001 and 2003 on the Beaverhead River. Although the *Draft EA* notes the locations of the six sampling sites, at 63, and presents the raw data in tables at 64-69, there is no analysis of water quality standard violations.

40.6

40.6: Reclamation has evaluated the proposed action and alternatives to it for potentially significant impacts. We determined that an EA is the appropriate NEPA document. For further information, see the response to Comment 40-2.

40.7

The data in these tables document increases in nutrient loading along the Beaverhead River between Barretts (page 64) and Giem’s Bridge (page 66), but there is no discussion of required mitigation measures, and no discussion of developing a total maximum daily load (“TMDL”) for these nutrient pollutants. Because the Beaverhead River basin is currently engaged in TMDL planning and monitoring, the Draft EA should have at least included an analysis of these efforts and how the BOR’s required mitigation measures could support a basin-wide TMDL. However, the Bureau failed to coordinate with either the Montana Department of Environmental Quality or the Environmental Protection Agency in preparing the Draft EA. See, Draft EA at 60 (list of agencies with whom the Bureau coordinated for NEAP analysis).

40.7: See the response to Comment 38.2.

40.8

The required EIS must include a preferred alternative that analyses water quality degradation with regard to nutrient loading since the execution of the 1958 contracts. A full EIS must also provide mitigation measures to meet water quality standards under contract renewal. Indeed, according to a 1977 amendment to the East Bench Irrigation District’s 1958 contract, the District is also required to comply with all federal and state water pollution laws. See, United States Department of the Interior, Bureau of Reclamation, East Bench Unit, Pick- Sloan Missouri Basin Program, Amendment to Contract Between the United States and the East Bench Irrigation District for Water Service and the Construction of a Distribution System, Amendment Number 2 to Contract Number 14-06-600-3593, § 7 (Apr. 26, 1977).

40.8: See the response to Comment 5.3.

3. Dissolved Oxygen Levels.

Another water quality concern that the *Draft EA* fails to address is low dissolved oxygen levels. The Jefferson River presently experiences excessive algae growth before July 1 in many years, thought to be linked to low dissolved oxygen concentrations. Dissolved oxygen samples taken at night in mid-summer already show dangerously low values (4.7 to 4.8 mg/l). On July 13, 2004, Land and Water Consulting Group tested two locations, Three Forks and Sappington Springs, and found dissolved oxygen levels of 4.7 mg/l at both sites. A second testing on August 11, 2004, revealed Three Forks at 4.8 mg/l, and Sappington Springs again at 4.7 mg/l.

The WQB-7 Bulletin states (at page 37) that the Early Life Stage for B-1 Streams (such as the Jefferson River) is 8.0 mg/l, for inter-gravel environments as a one-day minimum. This means that young trout require dissolved oxygen levels greater than the levels tested in 2004 in order to survive. These recently-documented low dissolved oxygen values of 4.7 to 4.8 mg/l may explain some of the Jefferson River’s recruitment problems.

Typically, the most effective remedial action to improve dissolved oxygen is to reduce the nutrients that are entering the system. A reduction in nutrient loading should reduce excessive algae growth that is likely causing the reduction in dissolved oxygen.

In addition, an increase in streamflow volume would also be likely to lower water temperatures and ameliorate low dissolved-oxygen conditions.

40.9

A full EIS should analyze decreases in available dissolved oxygen since the execution of the 1958 contracts, and prepare a preferred alternative that provides mitigation measures for meeting state water quality standards with respect to dissolved oxygen under contract renewal.

4. Bank Scars and Sediment Pollutants.

Bank scars along the Beaverhead River are another significant source of sediment pollutants during spring high flows. When high spring flows reach newly-exposed bank scars, the result is high amounts of sediment discharged to the river. The observed mechanism causing bank scars is ice-related bank damage, due to higher-than-normal late fall and winter flows (an inverted hydrograph). This inverted hydrograph is largely a result of seepage from the East Bench Canal. Reducing the seepage from the East Bench Canal is very likely to substantially reduce sediment discharge to the river, because the ice-related bank damage would also be minimized. Without exposed bank scars from ice damage, high spring flows will not deposit the high amounts of sediment into the river that they currently deposit.

The *Draft EA* acknowledges that the lower Beaverhead River suffers adverse environmental impacts due to the “suspected effect of return flows contributing to an inverted hydrograph.” *Draft EA* at 73. The *Draft EA* also documents the inverted hydrograph in Figure 4.5, “Lower Beaverhead River Flows,” that shows October and November flows near Twin Bridges that are approximately as high as the spring peak flow. *Draft EA* at 44. The *Draft EA* fails to otherwise comment on the significant inverted hydrograph on the Beaverhead River, and does not address the link between the inverted hydrograph and significant inputs of sediment pollutants to the river.

The *Draft EA* also fails to acknowledge the significant inverted hydrograph on the Beaverhead River in its presentation of return flow data. For example, the *Draft EA*'s presentation of return flow data in Figures 3.3 and 3.4, and Table 3.4 on pages 23 and 24, fail to account for a significant amount of return flow. Table 3.4 states that end-of-month return flows in December, January, and February are 7.8 cfs, 2.9 cfs, and 1.4 cfs, respectively, at Twin Bridges.

Flows during the winter of 2004 are illustrative of the inverted hydrograph. If the winter 2004 releases from Clark Canyon Dam (25 cfs) are added to average flow estimates for Grasshopper, Blacktail and Rattlesnake Creeks (combined total from all three creeks range from 76.0 cfs in December to 66.5 cfs in February), this represents the total river flow—absent any return flows—downstream to the Beaverhead Rock USGS measurement station. Estimates for the flow of tributary creeks are from *Compilation of Records of Surface Water of the United States through September 1950, Part 6-A, Missouri River Basin above Sioux City, Iowa, Geological Survey Water Supply Paper*

40.9: See the response to Comment 38.2.

1309. Adding the 25 cfs released from Clark Canyon to the combined total of the tributary inflows results in an expected flow of 101.0 cfs in December, and 91.5 cfs in February.

However, the Beaverhead Rock USGS gauging station shows flows greater than these expected river flows: 199.7 cfs cfs (in December) and 204.0 cfs (in February). These USGS gauge data do not square with the *Draft EA's* discussion of return flows on pages 23 and 24, because they show a nearly 100 cfs gain over expected river flows.

In addition, the Montana State University's 2004 study river flows, "Beaverhead River: Clark Canyon Irrigation District Water Budget 2004," sponsored by Professor Jim Bauder, was explicitly done in anticipation of the 2005 water delivery contract renewals and involved 22 different flow measurement sites. See, <http://www.waterquality.montana.edu/docs/watermonitoring/BH2004rpt3>. Figure 2 of this report documents the inverted hydrograph at Twin Bridges in the fall. The *Draft EA* does not cite or present the extensive flow monitoring data collected and analyzed by this study that was conducted expressly in anticipation of contract renewals.

Trout Unlimited includes with these comments a photograph taken of the confluence of the Big Hole and Beaverhead Rivers near Twin Bridges. This photograph was taken by Mr. John Babcock, of Land and Water Consulting Group in July 2001 (Trout Unlimited uses this photo with his permission). The attached photo shows the Beaverhead River on the right in a muddy brown color, and the dark green of the Big Hole River on the left. The stark contrast in suspended sediment between the two rivers continues far beyond the confluence, and can be seen in the photograph extending downstream.

Luckily, despite the dramatic impact of these sediment pollutants, required remedial measures are technically feasible. By significantly reducing conveyance losses from the East Bench Canal, the degree of the inverted hydrograph will be greatly lessened. In addition, reducing conveyance losses without increasing consumptive use opens the door to a variety of flow-restoration and drought response measures that could benefit the river.

In non-drought years, water could be made available for short-duration channel shaping flows and improved fishery values on more than 50 miles of the Beaverhead River while maintaining the delivery of water to East Bench irrigators. In drought years, these water savings could contribute to a drought pool in the reservoir to ensure that there are adequate flows below the reservoir to support the Beaverhead River fishery. Finally, each of these efforts would contribute to the health of the Jefferson River. Achieving a more natural annual hydrograph, improving water quality, and contributing to adequate river flows in drought years would carry the benefits beyond the Beaverhead River downstream to the Jefferson River.

40.10

A full EIS must discuss the increase in sediment to the Beaverhead River since the execution of the 1958 contracts. A full EIS must also contain a preferred alternative

40.10: See the responses to Comments 40.2 and 40.6.

that provides adequate proposed mitigation of the significant adverse environmental impacts of sediment pollutants under renewed contracts.

5. Dewatering.

The *Draft EA* notes that the “Jefferson [River] is extensively used for irrigation and is subject to dewatering in low water years.” *Draft EA* at 22. Farnes and Shafer (1975) documented that historically the Beaverhead River contributed 21.4% of the Jefferson River’s flow. See, P.E. Farnes and B.A. Shafer, *Hydrology of the Jefferson River Drainage*, U.S. Dept of Agriculture-Soil Conservation Service (February 1975). The *Draft EA*’s Preferred Alternative proposes an expansion of an additional 13,995 irrigated acres over the amount irrigated under the original 1958 contract terms, yet concludes that contract renewal would have no adverse impact on the Jefferson River fishery. *Draft EA* at 45 (“ . . . renewal of long term water service contracts or conversion to repayment contracts would not affect fisheries.”) The increase in irrigated acres by nearly 14,000 acres represents a dramatic increase in consumptive use (water lost through evapotranspiration to the Beaverhead), that was apparently initiated without any analysis of its effect on downstream uses, both aquatic and agricultural.

40.11

Trout population surveys conducted since the late 1970’s show a different story. When flows were good (mid-1980’s, 800 to 900 cfs minimum) brown trout numbers were over 700 per mile. In recent years (with 300 cfs minimums) the brown trout numbers have dropped to approximately 200 per mile, despite the generous cooperation of Jefferson River irrigators and a time-intensive, voluntary drought plan. Any further expansion of water demand upstream will only cause further harm to the Jefferson’s fishery. The *Draft EA*’s use of *median* flows in Figure 4.4 (and discussion in accompanying text, pages 42-43) mask the problem of low flows, because it is daily *minimum* flows that determine the fishery response to dewatering. Median flows are not representative of the degradation of habitat conditions that occurs under extreme minimum flows.

TU’s proposed mitigation, of reducing conveyance losses *without* increasing consumptive use, would likewise have a positive impact on the lower Beaverhead and Jefferson River fisheries. The *Draft EA* presents data that demonstrate the potential of this mitigation measure:

	<u>Water Diverted, p. 9</u>	<u>Water At Farm Headgate, p. 74</u>	<u>Water to Fields, p. 52</u>
CCWSC	4.0 ac.ft./ac	2.09 ac.ft./ac.	1.51 ac.ft./ac.
EBID	3.1 ac.ft./ac.	2.09 ac.ft./ac	1.06 ac.ft/ac

These data suggest that over 60% of the water diverted from the river is lost in conveyance. This information strongly suggests that a much more aggressive water conservation process is needed. The *Draft EA* misses the opportunity to analyze the

40.11: See the responses to Comment 17.2, Comment 20.2, and Comment 37.12.

possible mitigation measures in reducing conveyance losses and ensuring that the salvaged water remains instream. Page 32 of the *Draft EA* mentions “water conservation plans” but does not include these in this document. Similarly, the *Draft EA*’s preferred “Drought Management Plan” (page 9) only proposes further reductions of winter releases into the Beaverhead River (from the normal of 200 cfs to 25 cfs).

III. Social and Economic Analysis is Inadequate.

40.12

In Trout Unlimited’s January 2005 scoping comments, we requested an economic analysis that analyzed the potential increase in economic activity and community benefit that would likely result from improved river conditions downstream from Dillon. The economic activity generated from fishing on the neighboring Big Hole River is significant.

Presently, an estimated 90% of the angling pressure is occurring in the upper 30 miles of the Beaverhead River, and angling pressure has—not surprisingly—been on the rise for the last 20 years. Dr. John Duffield estimated the economic value of angling in 1982, with an estimated value per angling trip of \$39 per day for resident anglers, and \$205 per day for non-resident anglers, finding that 33% of use was by resident anglers, and 67% was by non-resident anglers. For the purpose of these comments, Trout Unlimited applied a 3% per year inflation calculator (increasing the average daily angler value to \$240). Restoring the lower 50 miles of the Beaverhead River could increase the angling pressure by 37,950 days in an average year. This increased number of angler days, multiplied by the average angler day-value of \$240 yields an estimated income to the river basin of \$9.1 million per year. Such an economic contribution and increase in economic diversity could complement the agricultural production supported by the Clark Canyon project. The *Draft EA* fails to provide such an analysis.

The *Draft EA*’s discussion of social and economic impacts, on pages 52 and 53, is inadequate. It does not discuss the economic costs of failure to mitigate the significant, adverse environmental impacts outlined above. Likewise, it fails to analyze the potential economic benefits of mitigating these environmental impacts, such as our \$9.1 million annual income suggested above. Such a failure to provide accurate economic information has been found to be a NEPA violation, by “impairing the agency’s consideration of the adverse environmental effects.” *Natural Resources Defense Council v. Forest Service*, 421 F.3d 797, 811 (9th Cir. 2005) (quoting *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446-48 (4th Cir. 1996)). An improved fishery and better water quality would support significant economic activity in the region, and a full EIS should include the economic benefit of providing adequate environmental mitigation.

Conclusion

40.12: The Federal action is to renew the existing long-term water service contracts or convert them to repayment contracts. Reclamation supports working with various groups and organizations to improve the quality of the lower Beaverhead River, which, in turn, will improve the recreational economy of the area as the commenter indicated. However, the Preferred Alternative does not identify any specific projects to improve the quality of the lower Beaverhead River. To “analyze the potential increase in economic activity and community benefit” is outside the purpose and need of this proposed Federal action. The Preferred Alternative in the revised *Draft EA* does contain language, which will foster cooperation and communication between Reclamation, the two contract water user groups, state agencies, and any other group willing to address some of the concerns on the Beaverhead River.

The *Draft EA* fails to fulfill the Bureau's NEPA and Clean Water Act statutory duties for the reasons detailed above. If either of the *Draft EA*'s alternatives are adopted, the following will occur:

- excessive water will be consumed to the detriment of both fishery and downstream irrigators;
- water quality will continue to deteriorate;
- river channel health will continue to decline;
- potential recreational economy will be lost; and,
- there will be excessive drought year impacts on downstream irrigators.

To fulfill the Bureau's statutory obligations, a full Environmental Impact Statement must be prepared for this major federal action, with a reasonable range of alternatives that propose mitigation measures for the likely significant adverse environmental impacts of contract renewal. Existing water contracts should be extended on an interim basis, to allow sufficient time to properly conduct an adequate EIS for this project.

In meetings in the past year with the Montana Department of Fish, Wildlife, and Parks, the Bureau has suggested that it has no control over the operation of Clark Canyon dam. While the Bureau contract has allowed the board of the East Bench Irrigation District to assume operation and maintenance of the unit, under both the terms of the contracts and by statute, the Bureau retains considerable authority to influence operations. In addition, while the amount of water to be delivered remains the same in contract renewal, the Bureau of Reclamation has "considerable discretion . . . to change other terms of the renewed contracts." See Memorandum from the Solicitor to the Ass't Secretary, Water and Science, Renewal of Friant Unit Contracts, 96 I.D. 289 (Nov 10, 1988).

40.13

Trout Unlimited's comments identify the primary resource concerns relating to the way that the Bureau of Reclamation meets the demand of the current water delivery contracts. We have described a number of desirable outcomes in future operations of Clark Canyon Dam to meet renewed water delivery contracts:

- achieving a more natural hydrograph to improve the transport of sediments and the maintenance of habitat in both the Beaverhead and Jefferson Rivers;
- eliminating the seepage losses from the East Bench Canal to minimize sediment inputs to the River, and create opportunities for flow restoration;
- improve water quality through mitigation of nutrient loading and restoring dissolved oxygen levels; and
- working toward adequate river flows in drought years.

The renewal provides the Bureau, East Bench Irrigation District, the Clark Canyon Water Supply Company, and other interested parties in the basin to forge a cooperative approach in addressing the challenges listed above. Indeed, a principal promise of the Bureau's Water 2025 initiative is to do just that: "*Water 2025 will help*

40.13: Reference is made by the commenter that "in meetings in the past year with Montana Department of Fish, Wildlife and Parks, the Bureau [Reclamation] has suggested that it has no control over the operation of Clark Canyon dam [sic]". Reclamation has an O&M transfer agreement with EBID for the operation and maintenance of Clark Canyon Dam and associated facilities. Reclamation retains oversight responsibilities to ensure both the contractual terms in the proposed repayment contract and terms in the O&M transfer agreement are adhered to. As long as EBID operates Clark Canyon Dam within the parameters and terms of the O&M transfer agreement, Reclamation will not intervene in the day-to-day operations. That O&M transfer agreement would be renewed as part of the Preferred Alternative.

Furthermore, the commenter is correct by stating, "in addition, the amount of water to be delivered remains the same in contract renewal...". However, Reclamation is unclear with the 2nd part of that sentence "...the Bureau of Reclamation has 'considerable discretion'...to change other terms of renewed contracts"; because Reclamation has changed certain terms of the new contracts.

manage scarce water resources and develop partnerships to nourish a healthy environment and sustain a vibrant economy." Interior Secretary Announces Challenge Grant Program for Western Water Conservation Projects, US Department of the Interior, Office of the Secretary (January 13, 2004). Trout Unlimited is willing to put the time and resources into a successful partnership with the Bureau, the East Bench Irrigation District, the Clark Canyon Water Supply Company, and other interested parties. Not only is a full EIS considering the range of reasonable alternatives to mitigate for elements of contract renewal that address these priority resource concerns legally required, it is an excellent starting point for such a collaborative approach.

Thank you again for the invitation to comment on contract renewal. We look forward to hearing from you.

Yours truly,



Bruce Rehwinkel
Laura Ziemer

Cc: Governor Brian Schweitzer
Senator Conrad Burns
Senator Max Baucus
Representative Rehberg
Sue Kelly, Montana Area Manager, BOR
Susan Camp, Fisheries Natural Resources Specialist, BOR
Chris Hunter, MFWP
Dick Oswald, MFWP
Bruce Farling, Montana Trout Unlimited
John Wilson, Montana Trout Unlimited



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Dillon Field Office
1005 Selway Drive
Dillon, Montana 59725
http://www.mt.blm.gov/dfo

Reply to:

9267

December 19, 2005

OFFICE: FILLMORE, MONTANA
DATE RECEIVED: DEC 21 2005
FILE:
NO REPLY NECESSARY INITIAL DATE
REPLY OR OTHER ACTION TAKEN CODE NO. DATE
INFO COPY TO ROUTE TO INITIAL DATE

Bureau of Reclamation
Attention: MT-231
P.O. Box 30137
Billings, MT 59107-0137

Dear Bureau:

The Bureau of Land Management (BLM), Dillon Field Office has reviewed the draft environmental assessment regarding the renewal of water contracts for the Clark Canyon Reservoir. The Dillon Field Office manages public land that is impacted by the management of Clark Canyon Reservoir and has the following comments on the draft environmental assessment.

The BLM believes there are impacts to public land recreational use, wildlife and fisheries habitat, and weeds on public lands both downstream from, and surrounding the reservoir.

41.1

It appears the Draft Environmental Assessment for Clark Canyon Reservoir, Montana considers a decision that will impact much of Beaverhead County for the next 40 years. While there is discussion of the socio-economic impacts to current water contract holders there is not a discussion of the impacts to other parties. The administration of these water contracts has far-reaching effects on the entire local community, including the local tourist and recreation-based economy, local recreation and lifestyle, and perhaps even local property values.

The Proposed Dillon Resource Management Plan and Final Environmental Impact Statement, released in April 2005 discussed this very issue in the analysis of cumulative impacts to Recreation, where it says,

"Continued management of area reservoirs for irrigation without regard to fisheries needs, if combined with an extended drought would severely impact fisheries, and therefore recreational use of rivers for sport fishing. In this case, projected increases in demand for recreational use of public lands over the life of the plan would be reversed, or at best stagnated."

The Draft EA says that, "Visitation at the reservoir would remain constant or increase slightly in the future, regardless of fluctuating water levels to meet new water contracts." It is doubtful that people would continue to visit the reservoir, much less increase their use, if the fish populations decline, the availability of surface water for boating is reduced, the marina remains closed because the boat ramp doesn't reach the water, and the campgrounds continue to move further from the water.

The BOR's Draft Environmental Assessment considers only the recreational impacts to lands and facilities managed by the Bureau of Reclamation. The Bureau of Land Management manages recreational lands at the old Ney Ranch near Pipe Organ, and provides important recreation opportunities that are largely dependent on the availability of water in this section of the Beaverhead River to provide

41.1: Noted.

fishing, boating, and hunting opportunities. Recreational use of these lands is directly affected by the proposed contract renewals, and should be considered in the analysis. Even though the BLM manages only small amounts of lands along the Beaverhead River, other indirect impacts to recreational use of BLM lands would be expected if the fishing opportunities offered in the Beaverhead River are lost, and Dillon no longer attracts those outdoor recreation enthusiasts who would also take advantage of other opportunities on nearby BLM lands.

The loss of these recreational opportunities would obviously have a substantial impact on the local social and economic conditions as well. While this is not directly a BLM management issue, the subject is not given any consideration in the environmental assessment as required by NEPA. There are several flyfishing shops, local hotels and restaurants, and numerous fishing outfitters and guides who will be directly affected by the renewal of the water contracts. These impacts should be addressed in a NEPA document in order to adequately consider the impacts to the human environment. The human environment goes well beyond Bureau of Reclamation lands and facilities, and local irrigators.

The BLM's RMP also includes analysis of cumulative impacts to fish and wildlife stating, "Cumulative impacts from water diversions and reservoir draw downs for irrigation include increased water temperatures resulting in the loss of habitat in many streams and rivers within the planning area." Fluctuations in the Clark Canyon Reservoir pool are having an effect on the reproduction and survivability of native burbot and the popular rainbow and brown trout populations to the extent that Montana Department of Fish Wildlife and Parks (MTFWP) has felt the need to reduce the bag limit down to 2 fish per day. Catch rates over the past 5 years have steadily dropped. In addition MT FWP has for the most part discontinued stocking until habitat conditions are more favorable. 2005 marked the first stocking in nearly 5 years.

Fishery habitat conditions on the upper and lower Beaverhead under current management are unacceptable due to extreme stream flow fluctuations. This has resulted in fishery habitat degradation on downstream habitat. Bank stability is a noted concern on the BLM's "Pipe Organ" and "Ney Ranch" property. Habitat types in the upper Beaverhead primarily consist of undercut banks and overhead streambank vegetation, however very little or none of this habitat is available after flows are cut back after the irrigation season. This results in a significant reduction in available habitat which leads to increased predation and mortality in fish, especially juveniles needed for recruitment. The winter flow rate for the upper Beaverhead River in most years is insufficient or at best minimally adequate for brown trout reproduction.

The extremely low fall/winter flows restrict brown trout access to suitable spawning areas. Under both the current and preferred alternatives spawning will be restricted to main channel areas. When brown trout are able to utilize side channel spawning areas in October or early November, their redds are typically left exposed when flows are cut back during the winter causing egg mortality. Crowding of fish into smaller pools in the winter also impact recruitment when the big fish eat the little fish. The BOR's Draft EA acknowledges that current management of reservoir releases is impacting fish populations, but does not propose any alternative that considers ways to minimize those impacts.

41.2

The Clark Canyon Reservoir is also one of the areas within Beaverhead County that has a high infestation of spotted knapweed and one of the only known infestations of leafy spurge. To continue at the present level of noxious weed control, as proposed in the E.A., would allow both of these infestations to grow and threaten adjacent lands as well as lands that are down stream from the reservoir. In order for these weeds to be brought under control both an increase in spending and a better management plan need to be implemented. The BLM has worked closely with Beaverhead County and know they are capable of providing an acceptable level of weed control if given a level of funding that is adequate to the task they are ask to do.

41.3

41.4

The threat of new aquatic invasive plants and how they will be treated should be addressed by the Bureau in this environmental assessment. The recreational usage of the reservoir by out of state boaters continues

41.2: See response to Comment 13.1.

41.3: Reclamation agrees that control of noxious weeds is important and currently sprays noxious weeds on Reclamation lands and facilities through a weed management agreement with Beaverhead County and private herbicide applicators. However, noxious weed control is a land management activity. The proposed Federal action is contracting for water and the renewal of those contracts. Reclamation is not proposing to change the noxious weed control that currently exists through this contract renewal process.

41.4: The control of noxious weeds is outside the scope of this Federal action. See the response to Comment 41.3 above.

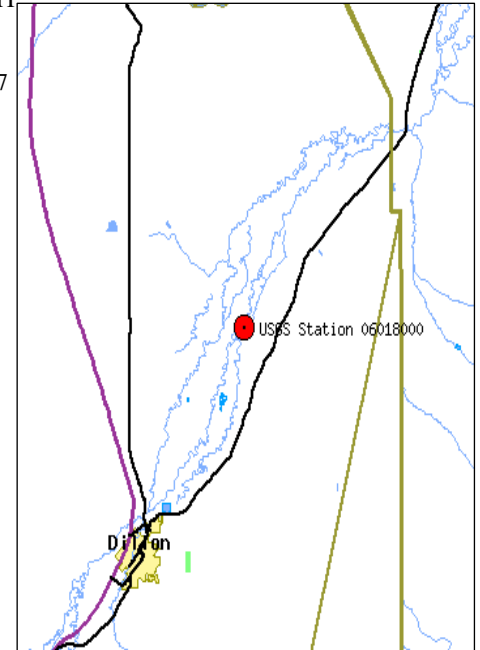
to increase as does the threat to this area by these aggressive plants. Prevention is the most inexpensive form of noxious weed control and something such as an educational posting letting boaters know about these weeds might go a long way in preventing the accidental infestation of the reservoir.

- 41.5 Finally, the wildlife discussion in the environmental assessment is incomplete and inconsistent within the document, specifically for bald eagles. Chapter 3 states that there are no bald eagle nests within the project area, while Chapter 4 lists 8 nests. The document then states that none of the nests are in the project area. All of these nests are located immediately adjacent to Clark Canyon Reservoir or the Beaverhead River, and are totally dependent on the water resources being affected by reservoir operation and the diversion of irrigation water. Additionally, up to 75 bald eagles occur within the Beaverhead River corridor during winter months and are dependent on the availability of open water and waterfowl. There is no discussion of the impact that water diversions have on riverine riparian habitat and specifically on cottonwoods since closure of the dam in 1965, or projected under future management. These impacts have had, and are continuing to have a direct impact on bald eagles. There is no indication that the Bureau of Reclamation has conducted any consultation with United States Fish and Wildlife Service on bald eagles as required under Section 7 ESA.
- 41.6 The EA does not discuss how diverted irrigation waters are being used, how that differs from past use, and what the projected impacts of those changes will have on riverine and palustrine wetlands. When the original diversion authorizations were made the dominant irrigation method was flood irrigation which created wetlands and certainly sustained some return flows to the Beaverhead River. This practice has been replaced by wheel-lines and more recently by center pivot irrigation systems which have progressively reduced surface flows in ditches, and return flows into wetlands and the river. The EA does not disclose where the "near Dillon" flow monitoring station is located or the source of the return flows being monitored. Reduced and inconsistent flows in the Beaverhead River between Barretts and Beaverhead Rock yearlong are having a significant impact on the distribution and productivity of wetland habitat, and dependent wildlife.
- 41.7

41.5: There was an error in the *Draft EA* on p. 27 that made confusing statements. It has been corrected in the revised *Draft EA*. Thank you for the comment. Reclamation did informally consult with the U.S. Fish and Wildlife Service prior to the release of the *Draft EA*. However, the *Draft EA* did not explain this informal consultation very well. Chapter 5 in the revised *Draft EA* has been revised to better explain the informal consultation that took place.

41.6: The benchmark is the environment, as it exists presently, including irrigated lands and irrigation methodologies. The Federal action identified in the Preferred Alternative included continuing historic practices of irrigated lands and methodologies, and also included an additional 918 acres proposed to be irrigated as part of EBID. The Preferred Alternative was analyzed in comparison to the No Action alternative.

41.7: The Beaverhead near Dillon flow monitoring station is a discontinued U.S. Geological Survey site approximately 7 linear miles northeast of Dillon. The following description and map of the Beaverhead near Dillon flow monitoring station was taken from the USGS's NWIS web server: USGS 06018000 Beaverhead River near Dillon MT, Beaverhead County, Montana
Hydrologic Unit Code 10020002
Latitude 45°18'18", Longitude 112°33'45" NAD27
Drainage area 3,484.00 square miles
Gage datum 4,960 feet above sea level NGVD29
Period of record: 1950-10-01 to 1983-10-05



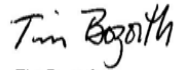
41.8

The Intermountain Joint Venture has recognized the Beaverhead River corridor as a primary focus area and has leveraged several million dollars toward wetland and wildlife habitat protection. Operation of Clark Canyon Reservoir and East Bench Project could complement these efforts, but as proposed is creating environmental conditions, compounded by drought, that are contrary to Venture objectives. For example, the BLM Pipe Organ Ducks Unlimited project is being influenced by instream river flows and the availability of water for project operation. These projects and initiatives are not acknowledged in the EA.

41.9

One last note that does not appear to be a factor in your decision, but is mentioned to improve the accuracy of your document, is that you shouldn't add the "per capita income" of each of the counties affected (Beaverhead and Madison) to come up with a "Total" per capita income that is essentially double the per capita income of the two counties. In other words, if Beaverhead County's per capita income is \$21,482 and Madison County's per capita income is \$20,094, the average per capita income of both counties is \$20,788. Adding the per capita incomes of the two counties does not provide any useful information.

Sincerely,



Tim Bozorth
Field Manager

41.8: Reclamation's Montana Area Office has not been invited recently to participate in the Intermountain Joint Venture and is not aware of the organization's specific objectives and efforts in the Beaverhead River corridor. In addition, BLM's Pipe Organ Ducks Unlimited project receives water from Reclamation through CCWSC, in which BLM is a shareholder.

41.9: The revised *Draft* EA has been changed.

DEC 16 2005

To: Bureau of Reclamation

Ref: Comments on the Draft EA for Clark Canyon-Beaverhead 2005 Water Supply Contract Renewal

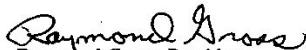
December 12, 2005

The "Friends of the Beaverhead" is an organization that was formed to support balanced recreation management on the Beaverhead River and to support the River Rules.

We have the following comments on the Draft EA for Clark Canyon-Beaverhead 2005 Water Contract Renewal:

- 42.1 1. No alternatives considering improvement of multiple use benefits such as fisheries or hydrology were brought forward. This should be a part of the final alternative.
- 42.2 2. No alternatives considering water conservation methods to increase efficiency of the system were advanced. This should be part of the final alternative.
- 42.3 3. This is a NEPA process for a 40 year contract for the management of an important public resource. Analysis at the Environmental Impact Statement level should be considered because of the environmental, social and economic impacts.
- 42.4 4. The final alternative needs standards for minimum winter flows to protect fisheries and other aquatic life and for maintaining minimum flows in the lower Beaverhead River, during irrigating season, to prevent high temperatures.
- 42.5 5. Dick Oswald, Montana FWP Fisheries Biologist, is the authority on the Beaverhead River and should be part of this ID Team.

Sincerely,


Raymond Gross, President

Robert Desjardins, Secretary Treasurer



Friends of the Beaverhead
355 Antelope Dr
Dillon, Montana 59725

Dave Cullen, Vice President



42.1: See responses to Comments 13.2.

42.2: See responses to Comments 13.2.

42.3: See the response to Comment 5.3.

42.4: The Preferred Alternative would contain target in-stream flow releases of 200 cfs in normal water years and a minimum in-stream flow release of 25 cfs during drought years. The Preferred Alternative does not contain minimum flow releases during the irrigation season because Reclamation typically releases about 700 cfs from the dam during July and August. The point of delivery of water under the contracts is at the outlet works of Clark Canyon Reservoir. In addition to the EBU project water users; there are other water users with natural flow water rights from the Beaverhead River, including tributaries that divert from the river. Reclamation has no authority to enforce water rights including the Montana FWP's in-stream flow reservation. If there are stream reaches that are severely dewatered during the irrigation season, the Montana Department of Natural Resources and Conservation or the local river commissioner should be contacted.

42.5: Dick Oswald and other fishery staff from MDFWP were consulted during the development of the Draft EA.